

THE
R E P O R T S

O F

Sir Edward Coke Kt.

In English,

In thirteen Parts Compleat;

(W I T H

REFERENCES to all the Ancient and Modern
BOOKS of the LAW.)

Exactly translated and compared with the First and
Last Edition in *French*, and printed Page for Page
with the same.

To which are now added the

Respective PLEADINGS
in *E N G L I S H*.

The Whole newly Revised, and carefully Corrected
and Translated with many additional NOTES and
REFERENCES.

In the SAVOY:

Printed by E. and R. NUTT, and R. GOSLING, (Assigns
of *Edward Sayer* Esq;) for R. Gosling, W. Pears,
W. Innys and R. Manby, T. Woodward, J. Clay,
A. Ward, J. and W. Knapton, T. Motton, T. Long-
man, D. Browne, T. Osborne, W. Lintot, and
T. Waller. M.DCC.XXXVIII.

The First PART of the
R E P O R T S
O F

Sir Edward Coke Kt.

Her Majesty's ATTORNEY GENERAL.

O F

Divers Resolutions and Judgments given with great Deliberation, by the Reverend Judges and Sages of the Law, of Cases and Matters in Law which were never resolved or adjudged before: And the Reasons and Causes of the said Resolutions and Judgments, during the most happy Reign of the most Illustrious and Renowned Queen *ELIZABETH*, the Fountain of all JUSTICE and the LIFE of the LAW.

With REFERENCES to all the BOOKS of the *COMMON LAW*, as well Ancient as Modern: And the PLEADINGS in *ENGLISH*, carefully Revised and Corrected.

Lex est certa ratio e mente divina manans, qua recta suadet, prohibetque contraria. CICERO.

In the SAVOY:

Printed by E. and R. NUTT, and R. GOSLING, (Assigns of *Edw. Sayer Esq;*) for H. Gosling, W. Pears, W. Innys and H. Panby, T. Woodward, F. Clay, A. Ward, J. and W. Knapton, T. Motton, T. Longman, D. Browne, T. Osborne, H. Lintot, and T. Waller. M.DCC.XXXVIII.

THE
PREFACE
TO THE
READER.

N *NIHIL* est adeo aut memoriæ insitum, aut infixum animo, quin intervallo temporis obscurari, sensimq; sine sensu deleri possit. Proin necessarium plane est, ut si quid dignum nobis, posteris, literarum lucè aliquando contingat, id (testi temporum, veritatis vitæ, nuncio vetustatis) scripto committatur, neque labili tantum mandetur memoriæ, quæ raro sive fidem liberat, sive fidelem

N *NOTHING* is or can be so fixed in Mind, or fastened in Memory, but in short Time is or may be loosened out of the One, and by little and little quite lost out of the Other: It is therefore necessary that memorable Things should be committed to Writing, (the Witnesses of Times, the Light and the Life of Truth,) and not wholly be taken to slippery Memory, which seldom yieldeth a certain

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certain Reckoning: And herein our present Time is of all that ever was to future Posterity the most ungrateful; for they of former (though not of such flourishing Time) to the great Benefit of themselves, of us, and our Posterity, have faithfully and carefully registred in Books, as well the Sayings as the Doings which were in their Time worthy of Note and Observation. For omitting others, and taking one Example for all, how carefully have those of our Profession in former Times reported to Ages succeeding, the Opinions, Censures, and Judgments of their Reverend Judges and Sages of the Common Laws: Which if they had silenced and not set forth in Writing, certainly as their Bodies in the Bowels of the Earth are long ago consumed, so had their grave Opinions, Censures, and Judgments been with them long since wasted and worn away with the Worm of Oblivion: But we, as justly to be blamed, as the Thing it self to be bewailed, having greater Cause, are less careful, having better Opportunity, are less occasioned, and being in greater Necessity, are of all

*acceptorum rationem reddidit: Qua in re ætas hæc nostra succedentibus retro sæculis aliis est ingraticissima; sæculum prius (hoc nostro minus foelix) magis industrium, ad magnum tum ipsorum, tum nostri, tum posteritatis omnis emolumentum, fide & studio singulari, suorum temporum dicta & facta insignioris notæ omnia literis tradiderunt: Nam ut missis cæteris in hoc uno insistam, quam studiose nostri olim ordinis viri sententias, responsa, decreta reverendissimorum nostræ legis præstitum transcripserunt? Quæ si involvisset silentio, neque propalassent, certe eadem terra quæ jamdudum corpora, nomina item & judicia contexisset: Vetum o! nos (sive conqueri de hoc, sive lugere potius debeamus) in causa graviore magis supinos; in majore necessitate minus felicitos, in commodiore oportunitate magis improvidos, quos neque eximia scientiæ perfectio, quæ est suavissima, neque ejus usus in administranda justitia, quæ est res utilissima, neque doctissimi pariter atque gravissimi *viri exemplum, qui in hoc ipso*

* Edmundus Plowden.

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so studio non ita pridem prævit, viamque munivit, præsertim in hoc tanto litteratorum numero, ipsoque bonarum literarum vere, movere potest. Atque hic quidem neglectus (mea sententia) multifariam est periculosus: Quandoquidem sæpius observavi causam aliquam judicium sententiis definitam, dum aut dubia aut mala fide ferebatur relationum errore, (eorum præsertim hominum qui quæstionis statum non intellexerunt) quasi equuleo aliquo distentam, ita hinc atque illinc varie protrahi ac torqueri, ut sæpenumero ipsius causæ membra & partes distortæ, deartuatæ ac luxatæ, recta vero ratio & regula quæ movebat iudices semper aut penitus neglecta aut non animadversa fuerit. Hinc orta sunt tot absurdarum opinionum monstra, quæ errore publico alta ac circumvecta, & gravissimis reverendissimisque legum Judicibus imputata, sæpius apud hominum vulgus, aliquando etiam ab ipsis doctis ita recipiuntur, ut eorum iudiciis sensibusque aut imponant aut illudant. Ut ergo non assentior iis, qui memoriam habent pro

others the most negligent, whom neither the Excellency and Perfection of Knowledge, a Thing most pleasant, nor the Practice thereof in Furtherance of Justice, a Thing most profitable (although one great, learned and grave Man hath made an Entrance) can among so many in this flourishing Spring-time of Knowledge move any other to follow his Example: The Neglect whereof is, in my Opinion, many Ways dangerous; for I have often observed, that for want of a true and certain Report, the Case that hath been adjudged standing upon the Rack of many running Reports (especially of such as understood not the State of the Question) hath been so diversly drawn out, as many Times the true Parts of the Case have been disordered and disjointed, and most commonly the right Reason and Rule of the Judges utterly mistaken. Hereout have sprung many absurd and strange Opinions, which being carried about in a common Charm, and fathered on grave and reverend Judges, many Times with the Multitude, and sometimes with the Learned, receive such Allowance, as either beguile

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Plowden

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education of her Laws, furnished with Judges of such excellent Knowledge and Wisdom (whereunto they have attained in this fruitful Spring-time of her blessed Reign) as I fear that succeeding Ages shall not afford Successors equal unto them, I have adventured to publish certain of their Resolutions (in such sort as my little Leisure would permit) for the Help of their Memory who heard them, and perfectly knew them, for the Instruction of others who knew them not, but imperfectly heard of them; and lastly, for the common Good, (for that is my chief Purpose,) in quieting and establishing of the Possessions of many in these general Cases, wherein there hath been such Variety of Opinions. In these Reports I have (of Purpose) not observed one Method, to the End that in some other Edition (if God so please) I may follow the Form that the Learned shall allow of, and will sequester my own Opinion: For it may be I should prefer those Reports which are less painful, more compendious, and yet (perhaps) no less profitable. I have added the Pleadings at large;

illud sunt assequuti) adeo ut metuendum plane sit ne non proferat ætas subsequens quos substituat pares, attentavi præcipua quædam eorum judicia in lucem emittere (quantum per negotiosum hoc meum, si quod tamen sit omnino otium, licuerit) ad eorum memoriæ adjumentum qui ea audierunt, perfecteque cognoverunt, ad aliorum instructionem qui non cognoverunt, sed imperfecte audierunt, denique ad commune bonum (quod propositi nostri præcipuus scopus est) ut rata ac secura quies & status iis comparetur, qui in generalibus huiusmodi quæstionibus de possessionibus antehac in magna opinionum varietate anxie disceptarunt. In hiis autem iudiciorum relationibus, non unam de industria methodum observavi, quo in alia forte editione (siquidem ita Deo visum fuerit) illam deinceps sequar, quam a doctis probari intellexero: Quin & sententiam subicebo meam, cum fieri possit ut eas relationes præponerem ipse, quæ sunt minus laboriosæ, compendiosæ magis, addo etiam, non minus forte utiles. Apposui insuper & fusiore actionum harum tractionem,

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tum ut recipiantur alacrius, rectiusq; intelligantur res controversæ, tum ut melius instituaturs studiofus Lector ad causas commode riteque agendas, cui rei *Littletonus* noster primas partes tribuit honoris, laudis, utilitatis: Seriem illam continuationum quam vocant omittere optassem penitus, habent tamen & ex illis aliqui suum fructum. Lectori consilium meum hoc esto, ut dum relationes hæc, aut quascunque recentiores alias perlegerit, veteres interea a majoribus olim conscriptas non negligat, quia certo certius est, quod ex antiquis agris nova & læta seges oriri debeat; Atque sic cum Poeta concludo:

as well for the Warrant, and better Understanding of the Cases and Matters in Law, as for the better Instruction of the studious Reader in good Pleading, which Mr. Littleton saith is one of the most honourable, laudable, and profitable Things in the Law: I wish the Continuances had been omitted, and yet some of them also are not without their Fruit. To the Reader my Advice is, that in Reading of these or any new Reports, he neglect not in any Case the Reading of the old Books of Years reported in former Ages, for assuredly out of the old Fields must spring and grow the new Corn; And so I conclude with the Poet:

Lit. Sect. 534.
Co. Lit. 332. b.
303. b.

*Cum tua non edas, hiis utere & annue Lector:
Carpere vel nosi nostra, vel ede tua.*

Bene Vale.

A N

AN
ACCOUNT
OF THE
AUTHORS
Referred to in these
REPORTS.

- A** Leyn — Allen's Reports, 1688.
1, 2 And. — Anderson's Reports.
Bac. of Gov. — Bacon of Government.
O. Bendl. — Bendloe's Reports, 1661.
Bendl. in Kelw. — Bendloe's in Keilway's Reports.
Bro. — Brook's Abridgment, 1573.
B. N. C. — Brook's Novel Cases, 1604.
1, 2, 3 Bulst. — Bulstrode's Reports 3 Parts, 1688.
Camb. Eliz. — Cambden's Elizabeth, 1688.
Cart. — Carter's Reports, 1688.

Carth.

AUTHORS referred to in this Work.

- Carth. R. — Carthew's Reports, 1728.
 Cawl. — Cawley against Recufants,
 1688.
 Co. Lit. — First Institutes, 1629.
 Co. Ent. — Coke's Entries, 1614.
 1, 2, &c. Co. — Coke's Reports 13 Parts.
 Comb. — Comberbatch's Reports, 1724
 Cott. Rec. — Cotton's Records, 1679.
 Cro. Eliz. — Croke Elizabeth, 1683.
 Cro. Jac. — Croke James, 1683.
 Cro. Car. — Croke Charles, 1683.
 Dall. in Kelw. — Dallifon in Kelway's Reports.
 Dalt. Sher. — Dalton's Sheriffs, 1692.
 Dalt. Juff. — Dalton's Justice, 1690.
 Dav. — Davis's Reports, 1674.
 Degg. — Degg's Parsons Counfellow,
 1695.
 D'ews Journ. — D'ews Journal.
 Dr. & Stud. — Doctor and Student, 1638.
 Doct. pla. — Doctrina placitandi, 1677.
 Dugd. Sum. — Dugdale's Summons, 1685.
 Dugd. Bar. — Dugdale's Baronage fecond
 Tome, 1676.
 Duke — Duke on Charitable Uses, 1676.
 Dy. — Dyer's Reports, 1688.
 Elsem. poftn. — Elsemere's Poft Nati, 1690.
 Farr. — Farresley's Reports.
 Finch Arg. — Argument on the *Quo War-
 ranto* againft the City of
London.
 Fitzgib. R. — Fitzgibbon's Reports, 1732.
 Fitzh. — Fitzherbert's Abridgment,
 1577.
 F. N. B. — Fitzherbert's *Natura Brevium*.
 Fort. — Fortefcue de *Laudibus Le-
 gum Anglia*.
 Full. Ch. Hift. — Fuller's Church History.

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Gilb. R.	—	Gilbert's Reports.
Godb.	—	Godbolt's Reports.
Godolph. Abr.	—	Godolphin's Repertorium Canon- icum, 1680.
Goldsb.	—	Gouldsborough's Reports, 1653.
Ha. Pl. Cro.	—	Hale's Pleas Crown, 1694.
Hard.	—	Hardress's Reports, 1693.
Hetl.	—	Hetley's Reports, 1657.
Hob.	—	Hobart's Reports, 1678.
Hutt.	—	Hutton's Reports, 1682.
Jenk.	—	Jenkins's Century, 1661.
2, 3, 4 Inst.	—	Second, third and fourth In- stitutes, 1681.
1 Jones	—	Sir William Jones's Reports, 1675.
2 Jones	—	Sir Thomas Jones's Reports, 1695.
Keel.	—	Keeling's Reports.
Kelw.	—	Keilway's Reports, 1685.
1, 2, 3 Keb.	—	Keble's Reports three Parts, 1685.
Keb. Just.	—	Keble's Justice, 1689.
Lane	—	Lane's Reports, 1657.
Latch	—	Latch's Reports, 1661.
1, 2, 3, 4 Leon.	—	Leonard's Reports four Parts, 1687.
Lucas R.	—	Lucas's Reports, 1736.
1, 2, 3 Lev.	—	Levinz's Reports three Parts.
Lex. Parl.	—	Lex Parliamentaria.
Ley	—	Ley's Reports, 1659.
Litt. Rep.	—	Littleton's Reports, 1683.
Littl.	—	Littleton's Tenures, 1591.
Lutw.	—	Lutwych's Reports two Vol.
Lindw. Prov.	—	Lyndwood's Provinciale, 1679.
March	—	March's Reports, 1675.

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- 1, 2, 3, 4, 5 & 6 Mod. Modern Reports in six Vol.
 Mo. Rep. — Moor's Reports.
 N. Bendl. — Bendloe's Reports, 1689.
 Noy — Noy's Reports, 1669.
 Owen — Owen's Reports, 1656.
 Palm. — Palmer's Reports, 1678.
 Parf. Answ. — Parfon's Answer to Coke's
 fifth Report.
 Perk. — Perkins's Book English, 1640.
 Plowd. — Plowden's Reports, 1613.
 Second Part in 1610.
 Pollexf. Arg. — Arguments in *Quo Warranto*
 against the City of London,
 1690.
 Pollexf. R. — Pollexfen's Reports.
 Poph. — Popham's Reports, 1682.
 Raft. Ent. — Raftal's Entries, 1670.
 Raym. — Raymond's Reports, 1696.
 Regist. — Register of Writs, 1687.
 1, 2 Roll. — Roll's Abridgment two Vol.
 1668.
 1, 2 Rol. Rep. — Roll's Reports 2 Parts, 1675.
 Ryley — Ryley's Pleadings, 1661.
 1, 2, & 3 Salk. — Salkeld's Reports three Vol.
 1, 2 Sand. — Sanders's Reports two Vol.
 Sav. — Savil's Reports, 1675.
 Sawyer Arg. — Arguments on *Quo Warranto*
 against the City of London,
 1690.
 Stamf. Cor. — Stamford's Pleas of the Crown,
 1567.
 Stamf. Prerog. — Stamford's Prerogative, 1568.
 Statham — Statham's Abridgment.
 Selden's Janus — Selden's Tracts.
 Selden's Epinomis Selden's Tracts.
 Seld. Tit. Hon. — Selden's Titles of Honour,
 third Edition.

Skin.

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Skin. R.	—	Skinner's Reports, 1728.
Spelm. Gloss.	—	Spelman's Glossary, 1687.
Styl.	—	Style's Reports, 1658.
Swinb.	—	Swinburn of Wills, 1657.
1, 2 Show.	—	Showers Reports two Vol.
Treby's Arg.	—	Arguments on <i>Quo Warranto</i> against the City of London, 1690.
Vaugh.	—	Vaughan's Reports, 1677.
1, 2 Ventr.	—	Ventris's Reports two Vol.
Vet. N. B.	—	La Vieux Natura Brevium, *1580.
Wentw.	—	Wentworth's Executors.
Wilson's Hist.	—	Wilson's King James, 1653.
Winch	—	Winch's Reports, 1657.
Wing. Max.	—	Wingat's Maxims, 1658.
Yelv.	—	Yelverton's Reports, 1674.

Year B O O K S.

Maynard's Edward the Second.

The first Part of *Edward* the Third, 1596.

The second Part of *Edward* the Third, 1619.

The third Part of *Edward* the Third.

Book of Affize, 1606. *Quadragesimo*, 1600.

Henry the Fourth, 1605. *Henry* the Fifth, 1605.

Edward the Fourth, 1599. *Long Quinto*, 1638.

The first Part of *Henry* the Sixth, 1609.

The second Part of *Henry* the Sixth, 1601.

Henry the Seventh, 1620. *Henry* the Eighth.

To all which may be added *Glanville*, *Bracton*,
Fleta, *Britton*, *Thekwall*, &c.

The Lord BUCKHURST's Case.

Pascha 40 Eliz.

Between Ld. BUCKHURST, Plaintiff,

A N D

FENNER Justice and others, Executors Custody of Charters, &c.
of the Lady DACRES, Defendants
in Chancery.

IN the Chancery, in the great Case betwixt the Lord Moor 488.
Buckhurst Pl. and Justice *Fenner* and others, the Exec- 2Andersf. 118.
utors of the Lady *Dacres*, Def. it was resolved by the
two Chief Justices, *Popham* and *Anderson*, and Justice
Gawdy, whom the Lord Keeper called to him for his Assi-
stance, after many Arguments before them in the Court of
Chancery, and upon Consideration and Conference amongst
themselves.

1. That if a Man for him and his Heirs do warrant Lands (1) 2 Andersf. 118.
to another and his Heirs, it is a general Warranty, because Noy 146.
it is not restrained against any Person in certain. Godb. 152.

2. If a Man seised of Lands in Fee-simple, and having di- Perk. 242.
vers Evidences and Charters, (some containing Warranty and (2) Co. Lit. 6. 2.
some not) conveys the Lands over to another without any Mo. 497, 502,
warranty upon which he may be vouched, the Purchaser shall 503. 18 E. 4. 14.
have all the Charters and Evidences, as well those which com- a. 15. b. Br.
prehend the warranty, as the others, for in as much as the Chart. de ter.
Feoffor hath conveyed over all his Estate in the Land abso- 67. Br. Derinue
lutely, and is not bound to warrant the Land, so that he can- 41.
not be vouched to Warranty, and to render in Value, but 2 Rol. 31. 11 N.
the Feoffee is to defend the Land at his Peril: It is there- Br. 38 G. 7. E.
fore reasonable that the Feoffee, for his better Defence, shall 4. 26. a. 17 E.
have all the Charters and Evidences as Incidents to the 3. 12. 14 H. 6.
Land, although they be not granted to him by express 42. 44 E. 3. 1.
Words; and that the Feoffor shall not have them, because b. 6 H. 7. 3. b.
he can receive no Benefit by keeping them, nor sustain any 11 Co. 50 b Br.
Damage by delivering them. Chart. de terre
54. 63, 56, 15.
9 E. 4. 52. b.
53. a Fitz De-
tinue 26, 28, 44.

The Lord BUCKHURST'S Case. PART I.

- 3 Keb. 48. pl. 3.
2 Rol. 31. N
B. 38. G. 44 E.
3. 1. b. Fitz.
Detinue 44.
Yelv. 22. 6 H.
7. 3. b. 1. Inst.
6. a. Moor 502.
503. 18 E. 4.
14. 2. 15. b.
Br. Chart. de
terre 54. 67.
Br. Detinue 41.
1 Brownl. 223
- 2 Rol. 31. Co.
1. Litt. 6. 5 Co.
74. b. 11 Co. 50.
b. 9 Co. 17. b.
- Moor 503. 1
Inst. 6. a. 2 Rol.
31.
- (4) 1 Inst. 384.
b. 5 Co. 16. b.
3 Co. 63. a.
- (5) Yelv. 29. 200.
Yelv. 223.
Moor 503. 1
Brownl. 222. Br.
Chart. de ter.
44. 3 H. 6. 21.
a. 3 Co. 63. a.
Br. Monstr.
de faits 109.
111. 5 Lit. R.
200. 9 H. 7.
16. b. 23. a. b.
5 Co. 25. a.
- (6) 9 Co. 17. b.
19 H. 6. 65. b.
4 Kel. 8. pl. 3.
Br. Chart. de
ter. 3. 33. 38.
52. 53. 58. 9
E. 4. 53. a.
Fitz. Detinue
20. 28. 29. 31.
39. 44. 48. 9 H.
6. 15. a. b.
9 H. 6. 4. b. 5. a.
Br. double Pl. a.
7. 4 H. 7. 10. a.
2 H. 7. 15. b.
F. N. B. 138.
J. L. 39 E. 3.
17. a. Moor 492
497. P. 11 R. 2.
Fitz Detinue
46. 41 E. 32. a.
15 E. 4. 9. b.
33 H. 6. 29. b.
32. a. Br. Count.
16.
3. If the Feoffor, in the Case aforesaid makes a Feoffment over with Warranty, so as he is bound to render in Value, there (without an express Grant) the Feoffee shall not have any Charters which do comprehend Warranty, upon which the Feoffor may have his Warranty paramount: The Feoffor shall also have such Charters, or Evidences, which serve him to dereign the Warranty paramount; as if *A.* enfeoff *B.* in Fee with Warranty to him, his Heirs and Assigns; and *B.* by Deed enfeoffeth *C.* without Warranty, who enfeoffeth *D.* with Warranty, yet *C.* shall have the first and second Charter. The Feoffor, in the same Case, shall likewise have all the Charters and Evidences which are material for the Maintenance of the Title of the Land, and which are the chief Strength of the Title of the Land; for in Regard the Feoffor is bound to render in Value, it is highly reasonable that he should have all the Evidences which are material or requisite to defend the Title of the Land; For if the Feoffee should have such Evidences, the Feoffor would be bound to render in Value, and yet be disarmed of the Means to defend the Title of the Land: And on the other Side, there is no Reason that the Feoffee should have them, because he hath trusted to his Warranty, whereby he can sustain no Loss, but hath secured himself a Recompence, and hath not relied upon the Title, nor taken upon himself the Defence of the Title, but hath relied upon his Warranty by which he shall vouch his Feoffor, and the Loss will fall upon him, if he cannot defend the Title; but in the same Case, the Feoffee shall have such Evidences as concern the Possession, and not the Title of the Land, as Court-Rolls, &c. as *concomitantia & incidentia* to the Possession.
4. If *A.* enfeoff *B.* with Warranty to him, his Heirs, and Assigns, and *B.* enfeoffeth *C.* with Warranty, although *C.* may vouch *A.* as Assignee, yet he shall not have the first Deed; for *B.* hath made a Warranty to him, and he may be vouched, and therefore he shall have the first Deed to have his Voucher over.
5. If *A.* being seised of a Seigniorie, Rent, Advowson, or any Thing that lies in Grant, grants the same over to *B.* with Warranty, and *B.* grants the same to *C.* with Warranty, in that Case *C.* shall have the first Deed, although *B.* be bound to Warranty, for it is necessary to make his Title, and without it he can make no Defence against *A.* or any claiming by him. And when *B.* grants the Rent, or Advowson to *C.* he ought to have the Effect of his Grant, and *B.* can't detain any thing in Derogation of his Grant that is necessary and essential to it.
6. If a Man makes a Feoffment with Warranty, and dies, the Heir of the Feoffor shall have all the Charters which the Feoffor himself might detain, although the Heir hath nothing by Descent, for the Possibility of Descent

Descent after. And by these Differences all the Books (as *Popb. C. J.* said) which seem to be *pro& con.* are reconciled: And the Reason of the said books prove the said differences; and therefore it appeareth by (b) 44 *E. 3. 1. b. 19 H. 6. 65. b.* 39 *E. 3. 17. a.* and 18 *E. 4. 14. b. & 15. a.* and 10 *E. 4. 9. b.* that the Feoffor shall have the Deeds to have the Benefit of the Warranty paramount; by which it is proved, that if the Feoffor be not bound to Warranty, he shall not have the Deeds, for he shall have them to that Intent to have the Voucher paramount: And 7 *E. 4. 26. a.* agreed by *Moile*, where it is also agreed that the Feoffee shall recover the Deeds against a Stranger. *Et nota bene* 10 *E. 4. 14. b.* by *Moile*, the Lord by Escheat shall have all the Charters which concern the same Land, and the Reason thereof is, (as *Popb. C. J.* said) because the Lord by Escheat is in the *Post*, and cannot vouch, and therefore the Feoffor shall not detain the Evidences, for he can be at no Prejudice. And therefore he said, if *A.* enfeoffeth *B.* with Warranty, *B.* shall not have the Deeds which contain Warranty, or which make, or perfect his Title, as is aforesaid; but if *B.* dieth without Heir, then the Warranty made to *B.* is lost, and *A.* cannot be vouched, and therefore the Lord by Escheat shall have the Charters. *Et vide* 10 *E. 4. 9. b.* if I be enfeoffed to me and my Heirs, and I enfeoff another and his Heirs with Warranty, my Heir shall have Detinue for the Deed by which I am enfeoffed, and shall make a special Count, *viz.* upon the special Matter, in respect of the special Loss and Prejudice that he may have: *Ergo* without special Prejudice, that is to say, if his Ancestor was not bound to Warranty, the Heir of the Feoffor shall not have the Charters: And it is there said in the principal Case that the Heir shall not have the Charters *ratione terræ*; *quod vide Brooke tit. Chart.* 58. where it appears that a Man shall in some Case have the Charters *ratione terræ*, and that is when the Feoffor is not bound to Warranty. *Et vide* 34 *H. 6. 1. a.* a notable Case; for there it is agreed, if a Man enfeoff two and the Heirs of one of them by Deed, and the Deed and other Evidences concerning the same Lands are delivered by the Feoffor to him who hath the Fee, and afterwards he who hath the Fee dies, he who survives shall have the Deed by which he was enfeoffed, because it makes his Estate, but he shall not have the antient Charters, for they were delivered to the other Jointenant for the Safeguard of his Inheritance. And if two Jointenants be enfeoffed to one in Fee, and to the other for Life, afterwards the Feoffor releases to them, and delivers the Deed to him who hath the Fee the other shall not have it, for his Estate was perfect before without that Deed; But by the Reporter, if a Man releases to two, who have a joint Estate by defeasible Title, and delivers the Deed to one, there the other who survives shall have it, because

(b) See Fitzh. Detin. 26, 29, 39, 44. Moor 492, 501, 499. 3 H. 6. 13. 7 H. 6. 31. 9 H. 6. 58. 19 H. 6. 41. 49 H. 6. 14. F. N. B. 133. I & F, & K.

Mo. 492, 501. Br. Chart. de terre 67. 44 E. 3. 1. b. Detinue Fitz. 44. Br. Chart. de terre 15. Detinue Fitz. 29. Br. Chart. de terre 58. Br. Chart. de ter. 32. Detinue Fitz. 39. Br. Chart. de terre 38. Br. Chart. de terre 56. Detinue Fitz. 26. Mo. 492, 497, 499. Br. Chart. de ter. 39. 49 H. 6. 14. in libro E. 4. Mo. 501.

Detinue Fitz. 29. Br. Chart. de ter. 58. Mo. 492, 497. Co. Lit. 286.

Br. Detinue de Chart. 11. Garnish. & Garnishment Fitz. 11.

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B. Charter de
terre 44, 54.
Mo. 499.

it perfects his Estate. Vide 6 E. 7. 3. b. & 21 H. 7. 33. a. which agree with the Reason of that Case.

And it was said, if a Man enfeoffs two to them, and their Heirs, and gives the antient Charters to one of them, and he dies, the Survivor shall have all the Charters, and not his Heir to whom the Gift was made, for he can sustain no Loss from the Want of them, nor receive any Benefit by them if he has them; but *econtra* of the Survivor, and he shall have them as Things which go with the Land. And Sir Thomas Egerton Lord Keeper of the Great Seal of England, upon Consideration of the said Points, did agree in Opinion with the said Justices; and he said, that this ancient Question, which as he said was (*vexata Questio*) in our Books, was now well explained, and all the Books upon good and solid Reason reconciled. Note; this Resolution was by four of the most wise and learned in the Law. *Nota ex hoc*, if A. enfeoffs B. with Warranty, and B. enfeoffs C. by *Dedi*, that B. during his Life shall have the Charters which contain Warranty, and which serve for the necessary Defence of the Title, but his Heir shall not have them, but the Feoffee, *Causa qua supra*.

Co. Lit. 384. a.
4 Co. 81. a.
Yelv. 139. 5 Co.
17. a. Perk.
Sect. 124 Dalt.
101 pl. 35.
6 H. 7. 2. a.
2 Inst. 275, 276.

Yelverton the Queen's Serjeant, Attorney General, and others were of Counsel with the Lord Buckhurst: And Fleming Solicitor General, Francis Moore and others were of Counsel with the Defendants.

[Note; Perk. Sect. 124. says, *Dedi* in a Feoffment comprehends Warranty against the Feoffor, which *Concessi* does not. See 5 Co. 17.]

P E L H A M ' s C a s e .

*Term of St. Michael in the 30th and
31st Year of Queen Eliz. Roll*

*Pleas before the Barons of the Exchequer at
Westminster, at the Pleas of the Term of St.
Michael in the 30th and 31st Year of the La-
dy Elizabeth Queen of England, France and
Ireland, Defender of the Faith, &c.*

M*emorandum*, That at another time, that is to say, in the Term of St. *Hillary* in the Year of the Reign of Q. *Eliz.* that now is, the 30th, *Henry Page*, Debtor of the Lady the now Queen, came before the Barons of the *Excheq.* of the said Lady the Queen at *Westminster*, in the County of *Middlesex*, by *John Hawkefworth* his Attorney, and brought then and there his certain Bill against *Ed. Griffin*, of a Plea of Trespafs and Ejectment of Farm, The Tenor of which Bill followeth in these Words: *ff. London ff. Henry Page* Debtor of the Lady *Elizabeth* the now Queen, cometh before the Barons of this *Exchequer*, the 27th Day of *January*, in this Term, by *John Hawkefworth* his Attorney, and complaineth by Bill against *Edward Griffin*, present here the same Day in Court, by *Richard Hatton* his Attorney, of a Plea of Trespafs and Ejectment of Farm, for that, *viz.* That whereas one *Thomas Boxes*, Master of Arts, the 10th Day of *January* in the Year of the said Lady the now Queen the 29th, at *London*, in the Parish of *St. Mary Wolnoth* in the Ward of *Langborn, London*, had demised, granted, and to Farm letten, to the said *Henry Page*, one Capital Messuage, then or late in the Tenure or Occupation of *Edward Griffin* of *London*, Haberdasher, situate, lying and being in *Lombard-street*, in the Parish of *St. Mary Wolnoth* in the Ward aforesaid, within the City of *London*, commonly called and known by the Name of the *White Lyon*, together with all Shops, Cellars,

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Cellars, Chambers, Places, Easements, Advantages, Profits, and Commodities, with their Appurtenances whatsoever, to the said Messuage belonging, or in any wise appertaining, to have and to hold the said Messuage, and all other the Premises, with their Appurtenances, to the said *H. Page*, his Executors, (Administrators) and Assigns, from the Feast of the Birth of our Lord then last past, until the End and Term of six Years, from thence next and immediately following, to be fully compleat and ended; by Virtue of which Demise, the said *H. Page* into the Messuage aforesaid with the Appurtenances entered, and was thereof possessed, and so being thereof possessed, the said *Edw. Griffin* afterwards, that is to say, the 11th Day of *Jan.* in the Year of the Reign of the said Lady the now Queen the 29th aforesaid, with Force and Arms, &c. into the Messuage aforesaid, with the Appurtenances, which the said *Tho. Bowes* to the said *Henry*, in form aforesaid demised, for the Term aforesaid, which is not yet ended, entred, and the said *Henry* from his Farm aforesaid (his Term aforesaid not then ended) did eject, expel, and amove, and other Wrongs did unto him, to the great Damage of the said *Henry*, and against the Peace of the said Lady the said now Queen; whereupon the said *Henry* saith, that he is the worse, and hath Damage to the Value of 20 Marks; so as the less the aforesaid *Henry* is able to satisfy the now Queen the Debts, which to the said Queen he oweth at her Exchequer; and thereupon he bringeth Suit, &c. Pledges of Suit, *John Doe* and *Richard Roe*. And now at this Day, that is to say, in the *Octaves* of *St. Michael* in this same Term, that is to say, the 30th Year, &c. Until which Day the said *Edw. Griffin* prayed license thereon to imparle, and then to answer, came here as well the said *H. Page*, as the said *Edw. Griffin* by their Attornies aforesaid, and the said *Henry* prayeth that the said *Edw. Griffin* do answer him in the Premises, &c. And upon this, the said *Edw. Griffin*, by his aforesaid Attorney, cometh and defendeth the Force and Injury when, &c. and saith, that he of the Trespass and Ejectment aforesaid is in nothing thereof guilty: And of that he puts himself upon the Country, and the said *H. Page* likewise; therefore let there be a Jury thereof. And it is commanded to the Sheriffs of *London*, that they make to come here, from the Day of *St. Michael* in one Month 12, &c. of the Neighbourhood of the Parish of *St. Mary Wolnoth*, in the Ward of *Langborn* within the City of *Lond.* whereof every one, &c. by whom, &c. and who neither, &c. to recognize, &c. And the same Day is given to the Parties aforesaid here, &c. At which Day came the Parties aforesaid, by their Attornies aforesaid, and the Sheriffs of *London*, that is to say, *Hugh Offley* and *Richard Saltonstall*, send here the Writ of *Venire facias*, of the Jurors aforesaid, with the Panel of the Names of the Jurors to the said Writ annexed,

Imparjance.

and the said Jurors being called, did not appear; therefore it was commanded to the Sheriffs of *Lond.* that they distrain the Jurors aforesaid, by their Lands, &c. So that, &c. upon *Wednesday* the 6th of *November* next to come, unless *Roger Manwood*, Kt. Chief Baron of the Exchequer of the said Lady the Queen, upon *Tuesday* the 5th Day of *Novemb.* next following, at the *Guild-hall* of the City of *London*, by form of the Statute thereof provided, shall first come; so that an Inquiry thereof before the said Chief Baron, then here distinctly and openly taken, shall be had here on the aforesaid *Wednesday*: And it is said to the Parties aforesaid, that they expect to be before the said Ch. Baron, at the *Guild-hall* aforesaid, at the said *Tuesday*, and that they be here the said *Wednesday*, to hear their Judgment upon the Verdict of the Inquisition aforesaid, if, &c. At which Day here came the said Parties by their Attornies aforesaid; and the said Ch. Baron delivered here the Tenor of this Plea, together with the Writ of *Distingas*, of the Jurors aforesaid, with the Panel of the Names of the Jurors to the said Writ annexed, and to the said Tenor filed, which Tenor is indorsed thus: Afterwards the Day and Place within contained, before *Reg. Manwood*, Kt. Ch. Baron of the Excheq. of the Lady the Q. associating to him *Walter Moyle*, Gent. by the form of the Stat. &c. came as well the within named *Hen. Page*, as the within written *Edw. Griffin* by their Attornies within mentioned. And the Jurors, whereof mention is within made, being called, some of them, that is to say, *John Palmer*, *Tho. James*, *Tho. Thomas*, *George Maunfell*, *Tho. Bagnill*, and *Rob. Bilborough* appeared, and in Jury aforesaid were sworn; and because that the rest of the Jurors of that Jury did not appear, therefore other of the Standers-by, by the Sheriffs chosen at the Request of the said *Hen. Page*, and by the command of the said Ch. Baron, were anew put, whose Names are filed to the Panel within written, according to the form of the Statute in such case made and provided; and the Jurors so anew chosen and put, that is to say, *George Clarke*, *John Barnes*, *George Ganbie*, *Tho. Staubauke*, *Will. Sutton*, and *George Roberts*, being called, likewise came, who being together with the other Jurors aforesaid, first impanelled, sworn to say the truth of the Premises within contained, chosen, tried, and sworn, say upon their Oath, That the City of *London* is an ancient City, and that all Lands and Tenements within the said City are, and from the time whereof the memory of Man is not to the contrary, were devisable and bequeathable by Testament in Writing; and that long before the time within written, when it is supposed the Trespass and Ejectment to be done, That one *Martin Bowes*, Kt. was seised of the Messuage within mentioned, with the Appurtenances amongst other Things in his Demesne as of Fee, and that the said *Martin Bowes* had Issue of his Body lawfully begotten,

Nisi prius.
5 Novembris
30 Eliz. 13 E.
1. cap 30.
2 Inst. 421,
4 22.

12 E. 3. cap. 3.

Jur. de circum-
stantibus. 35
H. 8. cap 6.
1 Ro. R. 52.
Poph. 35.

Verdict.

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one *Thomas Bowes*, and that the said *Thomas* had Issue of his Body, lawfully begotten, *Martin Bowes*, and the within named *Thomas Bowes*, M. A. and one *George Bowes*; and also the Jurors say upon their Oath aforesaid, that the aforesaid *Martin Bowes*, Kt. before the Time in which, &c. that is to say, the 29th Day of *July* in the Year of the Reign of the now Queen the 8th, made his Testament and last Will in Writing, and by the same amongst other Things, willed and bequeathed to the said *Thomas Bowes* his Son the Messuage aforesaid, with the Appurtenances, amongst other Things, for the Term of the Life of the said *Thomas*, without Impeachment of Waste; and after his Decease, then the said *Martin Bowes*, Kt. by his Testament aforesaid, willed that the said Messuage aforesaid, with the Appurtenances, amongst other Things, should remain to the said *Martin Bowes*, the Son of the said *Thomas Bowes*, to have and to hold to the said *Martin*, Son of the aforesaid *Thomas*, and the Heirs Males of his Body lawfully begotten: And for Default of such Issue, that then the Messuage aforesaid, with the Appurtenances, amongst other Things, should wholly remain to the said *Thomas Bowes*, second Son of the said *Thomas Bowes*, Son and Heir of the said *Martin Bowes*, Kt. and the Heirs Males of his Body lawfully begotten; and for Default of such Issue, that then the Messuage aforesaid, with the Appurtenances, amongst other Things, should wholly remain to the said *George Bowes*, third Son of the said *Thomas Bowes*, Son and Heir of the said *Martin Bowes*, Kt. and the Heirs Males of his Body lawfully begotten; and for Default of such Issue, that then the Messuage aforesaid, with the Appurtenances, amongst other Things, should wholly remain to the Heirs Males of the Body of the said *Thomas Bowes*, Son and Heir apparent of the said *Martin Bowes*, Kt. lawfully begotten; and for Default of such Issue, that then the Messuage aforesaid, with the Appurtenances, amongst other Things, should wholly remain to one *Martin Bowes*, Son and Heir apparent of one *Martin Bowes*, of *Jenkins*, in the Parish of *Barking* in the County of *Essex*, Esq; and the Heirs Males of his Body lawfully to be begotten; and for Default of such Issue, that the Messuage aforesaid, with the Appurtenances, amongst other Things, should wholly remain to the Heirs Males of the Body of the said *Martin Bowes*, of *Jenkins*, lawfully begotten; and for Default of such Issue, that then the Messuage aforesaid, with the Appurtenances, amongst other Things, should wholly remain to one *William Bowes*, Son of the aforesaid *Martin Bowes*, Kt. and the Heirs Males of his Body lawfully begotten; and for Default of such Issue, that then the said Messuage, with the Appurtenances, amongst other Things, should wholly remain to the right Heirs of the said *George Bowes* for ever. And the aforesaid *Martin Bowes*, Kt. of the Messuage aforesaid, with the Appurtenances, amongst other Things in his Demesne as of Fee, in form aforesaid being seised, afterwards and before the time in which, &c. that is to say, the 1st Day of *Octob.* in the 8th year of the Reign of the said Lady the now Queen,
died

died seised of the Messuage aforesaid, with the Appurtenances, amongst other Things, in form aforesaid; after whose Death the said *Tho. Bowes*, Son and Heir of the said *Martin Bowes*, Kt. into the Messuage aforesaid, with the Appurtenances, did enter, and was thereof, amongst other Things, seised in his Demesne as of Freehold, for the Term of his Life, without Impeachment of Waste, according to the Form and Effect of the Testament aforesaid, with the Remainder thereof in form aforesaid expecting: And the said *Thomas Bowes* so being thereof seised, before the Time in which, &c. that is to say, the 19th Day of *December* in the 14th Year of the Reign of the said Lady the now Queen, by a certain Indenture made between the said *Thomas Bowes* of the one Party, and one *William Pelham*, Esq; of the other Party, bearing Date the same Day and Year, and in the Court of Chancery of the said Lady the now Queen at *Westminster* in the County of *Middlesex*, then being, within six Months then next following, in due Manner of Record inrolled, according to the form of the Statute in such Case made and provided; one Part whereof, sealed with the Seal of the said *Tho. Bowes*, to the Jurors aforesaid was shewed in Evidence, for and in Consideration of a certain Sum of Money to the said *Thomas*, by the aforesaid *William Pelham*, Esq; before hand paid, bargained, and sold to the said *William Pelham*, the Messuage aforesaid, with the Appurtenances, amongst other Things, to have to him and his Heirs and Assigns for ever; the Tenor of which Indenture followeth in these Words.

This Indenture made the nineteenth Day of December 1571, and in the fourteenth Year of the Reign of our Sovereign Lady Elizabeth, by the Grace of God Queen of England, France and Ireland, Defender of the Faith, &c. Between Thomas Bowes, Esq; Son and Heir of Sir Martin Bowes, Kt. late Citizen and Alderman of the City of London, deceased, on the one Party, and William Pelham, of London, Esq; and Lieutenant General of the Queen's Majesty's Ordinance, on the other Party, witnesseth that the said Thomas Bowes, for and in Consideration of the Sum of One thousand Pounds of good and lawful Money of England unto him the said Thomas Bowes, by the same William Pelham, at and before the en sealing of these Presents well and truly contented and paid, whereof and wherewith the said Thomas Bowes acknowledged himself fully contented, satisfied and paid, and thereof and of every Part and Parcel thereof, doth by these Presents clearly acquit, exonerate, and discharge the said William Pelham, his Heirs, Executors, Administrators and Assigns, and every of them for ever by these Presents, hath bargained, sold, given and granted, and by these Presents,
doth

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doth fully and absolutely bargain, sell, give, and grant unto the said William Pelham, his Heirs and Assigns for ever, all those eight Messuages or Tenements, with the Appurtenances situate, lying, and being in the Parish of Saint Mary Wolnoth within the City of London, now or late in the several Tenures or Occupations of Francis Bernard Cook, Thomas Atkinson Scrivener, John Allen, Thomas Giles Haberdasher, John Heath Scrivener, Thomas Riding Clothworker, Citizens of London, Ellen Witten and Elizabeth Baneister of London Widows, or their several Assigns, together with all and singular Shops, Cellars, Solders, Yards, Backsides, void Grounds, Easements, Ways, Profits, Commodities, and Appurtenances to the same Tenements, or any of them belonging or appertaining, or at any Time had, taken, reputed, known, used, or occupied, as Part, Parcel, or Member of them, or any of them, with the Advowson or Patronage, and Gift of the Benefice of the said Parish Church of Saint Mary Wolnoth, together with all the Right, Title, Interest, Claim and Demand, and Reversions, with Rents reserved, which the said Thomas Bowes hath, or of Right ought to have, of, in, or to the same eight Messuages, and other the Premises, or any Part or Parcel of them, or any of them: And also the said Thomas Bowes, for the Consideration aforesaid, hath bargained and sold, given and granted, and by these Presents doth fully and absolutely bargain and sell, give, and grant unto the said William Pelham, his Heirs and Assigns for ever, as well the several Counterpains of the Indentures of Leases made, demised, and granted of the aforesaid several Messuages or Tenements, as also all and every the Deeds, Evidences, Charters, Court-Rolls, Rentals, Escripts, Muniments, and Writings, touching or in any wise concerning the Premises, or any Part or Parcel thereof: All which said several Counterpains of the said several Indentures of Lease, and the said Deeds, Evidences, Court-Rolls, Charters and Muniments before mentioned to be bargained and sold, or as many thereof as be in the Hands, Custody, or Possession of the said Thomas Bowes, or of any other to his Use: The said Thomas Bowes doth covenant, grant, and agree for himself, his Heirs, Executors, Administrators, or Assigns, and every of them, to and with the said William Pelham, his Executors, Administrators and Assigns, and every of them by these Presents, to deliver, or cause to be delivered to the said William Pelham, his Heirs, Executors, Administrators, or Assigns,

at or before the Feast of the Nativity of St. John the Baptist next ensuing after the Date of this Indenture, together with the true Copies of all such other Deeds, Evidences, Charters, Court-Rolls, Rentals, Miniments, and Writings, as concern the said mentioned Premisses, and other Lands, Tenements, and Hereditaments not bargained by these Presents. To have and to hold all and singular the foresaid eight Messuages, and other the Premisses, with the Appurtenances, and every Part and Parcel thereof, by these Presents bargained and sold, unto the said William Pelham, his Heirs and Assigns for ever, to the only proper Use and Beboof of the said William Pelham, his Heirs and Assigns for ever. And further the said Thomas Bowes doth by these Presents, covenant and grant for him, his Heirs and, Executors, to and with the said William Pelham his Heirs, Executors, Administrators and Assigns, by these Presents, That all and singular the said eight Messuages, and other the Premisses with their Appurtenances, and every Part and Parcel thereof by these Presents bargained and sold, now remain and be, and at all and every Time and Times hereafter shall remain and continue, unto the said William Pelham his Heirs and Assigns for ever clearly acquitted, discharged, or otherwise sufficiently saved harmless by the said Thomas Bowes, his Heirs, Executors, Administrators, or Assigns, of and from all Bargains, Sales, Joitures, Dowers, Judgments, Executions, Intrusions, Fines, Alienations, and all other Charges, Duties, and Incumbrances whatsoever, heretofore had, made, done, or suffered by the said Thomas Bowes, or his Assigns, or by any other Person or Persons (the several Leases heretofore made and granted of the Premisses now standing in their full Force only excepted and foreprised) during which said several Terms in the said several Indentures of Leases contained, the said Thomas Bowes doth covenant and grant for him, his Heirs and Assigns, to and with the said William Pelham, his Heirs, Executors and Assigns, That the several Rents thereupon severally reserved, shall and may have Continuance, and be payable to the said William Pelham, his Heirs and Assigns, during the said several Terms, (all manner of chief Rents and Services hereafter to be due for the same to the chief Lord and Lords of the Fee and Fees only excepted.) And further the said Thomas Bowes, doth by these Presents for himself, his
Heirs,

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Heirs, Executors, Administrators and Assigns, and every of them, covenant, grant, and agree, to and with the said William Pelham, his Heirs, Executors, Administrators and Assigns, and every of them, by these Presents, That he the said Thomas Bowes at the Making hereof, standeth and is lawful, and rightful Owner of all and singular the foresaid eight Messuages, and other the Premisses, with their Appurtenances, and every Part and Parcel thereof; And that he is sole, lawfully, and rightfully seised of a good and perfect Estate in Fee-simple, or Fee-tail, in his own Right, and to his own only Use, and without Condition, or other Defeasance, of all the said eight Messuages, and other the Premisses, by these Presents bargained and sold; And that he hath full Power, and perfect, lawful, and good Authority, to bargain, sell, and assure the same, in Manner and Form aforesaid. And further, that he the said Thomas Bowes, and the Heirs of the said Thomas Bowes, and all and every other Person and Persons, and their Heirs, having, or lawfully claiming, any lawful Estate or Interest, of or in the Premisses, or any Part or Parcel thereof, shall and will at the Costs and Charges in the Law of the same William Pelham, his Heirs, Assigns, at all and every Time and Times hereafter, during the Term of four Years next ensuing the Date hereof, at the reasonable Request of the said William Pelham, his Heirs or Assigns, do, cause, procure, and suffer to be done, all and every such reasonable and further Act and Acts, Thing and Things, Devise and Devises, Assurance and Assurances whatsoever, for the further and better Assurance and sure Making, and for the clear and absolute having and enjoying of all and singular the aforesaid Premisses, with their Appurtenances, and every Part and Parcel thereof, to be enjoyed, conveyed, and assured to the said William Pelham, his Heirs and Assigns, be it by Fine, Feoffment, Recovery, Deed or Deeds enrolled, Inrolment of these Presents, Recovery with single or double Vouchers, and with Warranty against all Men, or without Warranty or otherwise, as shall be reasonably devised, or advised by the said William Pelham, or by the Counsel learned in the Laws of this Realm of the said William Pelham, his Heirs or Assigns. And that the said eight Messuages, and other the Premisses by these Presents bargained and sold, now are of the clear year-

ly

ly Value of Sixty-seven Pounds, thirteen Shillings, and eight Pence, of lawful Money of England, over and above all Charges and Reprises: And after the Feast of Saint Michael the Archangel, which shall be in the Year of our Lord God one Thousand, five Hundred, eighty and eight, of the clear yearly Value of seventy and one Pounds, thirteen Shillings, and four Pence, of lawful Money of England, over and above all Charges and Reprises. In Witness whereof the Parties aforesaid, to these Indentures sundrily have set their Seals. Given the Day and Year first above written.

Memorandum, that afterwards, that is to say, the 21st Day of *December* in the Year aforesaid, came the aforesaid *Thomas Bowes* before the said Lady the Queen in her Chancery at *Westminster* in his proper Person, and did acknowledge there the Indenture aforesaid, and all and singular in the same contained and specified in the former above written. By Colour of which Bargain, Sale and Inrolment aforesaid, as also by Force of a certain Act of transferring of Uses into Possession, (made and provided in the Parliament of the Lord *Henry* the 8th, late King of *England*, held at *Westminster* in the County of *Middlesex*, the 4th Day of *February* in the 27th Year of his Reign) the said *William Pelham* was seised of the Messuage aforesaid, with the Appurtenances, amongst other Things, in which, &c. as the Law requireth: And the said *William* being so thereof seised, before the Time in which, &c. A certain Recovery was had in the Court of *Hustings*, of Pleas of Lands, holden in the *Guild-hall London*, before the Mayor and Sheriffs of the same City, according to the Custom of the said City, by *Nicholas Parker* and *Simon Patrick*, Demandants, against the said *William Pelham*, then Tenant of the said Messuage, with the Appurtenances, amongst other Things, in which, &c. in and upon a Writ of the Lady the Queen of Right Patent by the aforesaid *Nicholas* and *Simon* sued out of the Court of *Chancery* of the said Lady the Queen, and in the said Court of *Hustings*, and according to the Custom of the City aforesaid prosecuted. The Tenors of which Writ, and the Return and the Proceedings thereof, as also of the Recovery aforesaid, with all Things touching the same, follow in these Words. *ff.* Pleas of Lands, holden in the *Hustings* in the *Guild-hall London*, on *Monday* next before the Feast of *St. Perpetua & Felicitas*, in the 14th Year of our Lady *Eliz.* by the Grace of God, of *England, France and Ireland* Queen, Defender of the Faith.

The Acknowledgment of the Indenture of Sale by *Thomas Bowes* to *William Pelham*.
St. 27 H. 8 c. 10.
See 2 Inst. 671.

Recovery.

At

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At this *Hustings* came here in their proper Persons, *Nicholas Parker* and *Simon Patrick*, and brought here in Court a Writ of the Lady the Queen of right Patent, to the Mayor and Sheriffs of *London* directed, in these Words. *J. Elizabeth*, by the Grace of God, of *England, France* and *Ireland* Queen, Defender of the Faith, &c. to the Mayor and Sheriffs of *London* Greeting, We command you, that full Right you do to *Nicholas Parker* and *Simon Patrick*, of eight Messuages, with the Appurtenances in *London*, which they claim to hold of us by the free Service of one Penny by the Year, for all Service which *William Pelham*, Esq; deforced them, that no more Clamor thereof we hear for Defect of Right. Witness my self at *Westminster*, the last Day of *February* in the 14th Year of our Reign. And they found Pledges to prosecute the said Writ, that is to say, *John Doe* and *Richard Roe*, and then and there the said *Nicholas Parker* and *Simon Patrick* put in their Place *William Dalby*, their Attorney against the aforesaid *William Pelham*, and by their said Attorney then and there demanded Process, &c. according to the Custom of the City aforesaid; and it is granted unto them, &c. Upon which, it was commanded then and there by the said Court, to the Sheriffs of *London*, according to the Custom of the said City, that they summon by good Summoners the said *William Pelham*, that he be here at the next *Hustings* *London* of Pleas of Lands, in the *Guild-hall* of the City aforesaid, to be holden according to the Custom of the said City, to answer to the said *Nicholas Parker* and *Simon Patrick*, in the same Plea here, &c. At which Day, that is to say, at the *Hustings*, *London*, of Pleas of Lands, holden in the *Guild-hall*, *London*, *Monday* next before the Feast of *St. Edward* King and Martyr, in the 14th Year of the Reign of the said Lady *Elizabeth*, &c. aforesaid. The said *Nicholas Parker* and *Simon Patrick*, by the said *William Dalby* their Attorney, came and appeared here, &c. And the Sheriffs of *London*, that is to say, *Henry Mills* and *John Branch*. now sent and returned here upon the Precept aforesaid to them directed, that they by Virtue of the said Precept summoned the said *William Pelham* to be here at this *Hustings*, to answer to the said *Nicholas Parker* and *Simon Patrick* in the Plea aforesaid, as to them, &c. by *John Doe* and *Richard Roe* Summoners, &c. Which *William* at this *Hustings* put in his Place *Roger Coys* and *Robert Hogeson*, their Attornies jointly and severally, against the said *Nicholas Parker* and *Simon Patrick*, in the Plea aforesaid, &c. by *William Fleetwood*, Esquire, Recorder of the City aforesaid, &c. And upon this the said

Nicholas Parker and *Simon Patrick*, by the said *William Dalby* their Attorney, demand against the said *William Pelham* eight Messuages, with the Appurtenances, situate, lying and being in the Parish of *St. Mary Wolnoth* in the Ward of *Langborn, London*, as their Right, &c. By the Writ of the said Lady the now Queen, of right Patent, &c. And to hold of the said Lady Queen, by the free Service of one Penny by the Year for all Service, &c. And whereupon they say, That they themselves were seised of the aforesaid eight Messuages, with the Appurtenances, &c. in their Demesne as of Fee and Right, &c. in Time of Peace, in the Time of the said Lady the now Queen, &c. taking the Profits thereof to the Value, &c. And that such is their Right they offer, &c. And the said *William Pelham* by his Attorney aforesaid cometh and defendeth the Right of the said *Nicholas Parker* and *Simon Patrick*, when, &c. And the Seisin of the said *Nicholas Parker* and *Simon Patrick*, of which Seisin, &c. and all, &c. and whatsoever, &c. as of Fee and Right, &c. and especially of the said eight Messuages, with the Appurtenances, &c. and vouch thereof to Warranty *Thomas Bowes* of *London*, Esquire; and demand Summons in *London*, by the Aid of this Court, to warrant to the said *William Pelham*, the said eight Messuages, with the Appurtenances, which the said *Nicholas Parker* and *Simon Patrick* claim against the said *William Pelham*, as their Right, &c. And the said *Nicholas Parker* and *Simon Patrick*, by their Attorney aforesaid, do freely grant, That the said *William Pelham* have his Voucher aforesaid: Whereupon upon the Petition of the said *Nicholas Parker* and *Simon Patrick*, it was commanded by the Court to the Sheriffs of *London*, that they summon by good Summoners the said *Thomas Bowes*, that he be here at the next *Hustings, London*, of Pleas of Lands at the *Guild-hall*, of the City aforesaid, to be held, &c. to warrant to the said *William Pelham* the said eight Messuages, with the Appurtenances, &c. against the said *Nicholas Parker* and *Simon Patrick*, &c. And the same Day was then and there given, as well to the said *Nicholas Parker* and *Simon Patrick*, as to the said *William Pelham* in the Plea aforesaid here, &c. At which Day, that is to say, at the *Hustings, London*, of Pleas of Lands, in the *Guild-hall* of the City of *London*, upon *Monday* next before the Feast of *St. Alphege* Bishop, in the 14th Year of the Reign of the said Lady the Queen, &c. come as well the said *Nicholas Parker* and *Simon Patrick*, by the said *William Dalby* their Attorney, as the said *William Pelham* by his Attorney aforesaid; and the Sheriffs of *London*, that is to say, *Henry Mills* and *John Braunch*, now sent and returned here upon the Precept to them directed, that they by Virtue of the said Precept had

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had summoned the said *Thomas Bowes* to be here at this *Hustings*, to warrant to the said *William Pelham* the said eight Messuages with the Appurtenances, &c. as to them, &c. by *John Doe* and *Rich. Roe* Summoners. And upon this, the aforesaid *Thomas Bowes*, whom the said *William Pelham* vouched to warranty, &c. at this *Hustings* put in his place *Roger Coys* and *Robert Hogeson* his Attornies jointly and severally, against the said *Nich. Parker* and *Simon Patrick*, in the Plea aforesaid, &c. By *William Fleetwood* Esq; Recorder of the City aforesaid, &c. And now here at this *Hustings*, the said *Thomas Bowes* by the aforesaid *Roger Coys* and *Rob. Hogeson* came, and freely the aforesaid Messuages with the Appurtenances, &c. to the said *Will. Pelham*, against the said *Nich. Parker* and *Simon Patrick* did warrant, &c. And thereupon the said *Nich. Parker* and *Simon Patrick*, by the said *William Dalby* their Attorney, demanded against the said *Tho. Bowes* Tenant, by his warranty aforesaid, the said eight Messuages with the Appurtenances, &c. as their Right, &c. by the Writ aforesaid, &c. in Form aforesaid, &c. and whereupon they said, that they were seised of the Messuages aforesaid, with the Appurtenances, &c. in their Demesne as of Fee and Right, &c. in the time of Peace, in the time of the said Lady the now Q. &c. taking the Profits thereof to the Value, &c. and that such is their Right they offer, &c. And the said *Tho. Bowes* Tenant by his warranty aforesaid, by the said *Roger Coys* and *Rob. Hogeson* his Attornies came, and denied the Right of the said *Nich. Parker* and *Simon Patrick*, when, &c. and the Seisin of the said *Nich. Parker* and *Simon Patrick*, of which Deseisin, &c. and all, &c. and whatsoever, &c. as of Fee and Right, &c. and chiefly if the said eight Messuages with the Appurtenances, &c. and vouched thereof to warranty *Richard Horsted* of London, Ironmonger, who now is present here in Court in his proper Person, and freely the said eight Messuages with the Appurtenances, &c. to the said *Thomas Bowes* did warrant, &c. and upon this, at the *Hustings* aforesaid, the said *Nich. Parker* and *Simon Patrick*, by the said *Will. Dalby* their Attorney, demanded against the said *Rich. Horsted* Tenant, by his warranty then and there being in his proper Person, the said eight Messuages with the Appurtenances, &c. by the Writ aforesaid, &c. in Form aforesaid, &c. as their Right, &c. and whereupon they say, That they were seised of the aforesaid eight Messuages with the Appurtenances, &c. in their Demesne as of Fee and Right, &c. in Time of Peace, in the Time of the said Lady the Queen that now is, taking thereof the Profits to the Value, &c. and that such is their right they Offer, &c. and the said *Richard Horsted*, Tenant, by his Warranty aforesaid, in his proper Person

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cometh and defendeth the right of the said *Nich. Parker*, and *Sim. Patrick*, when, &c. and the seisin of the said *Nich. Parker*, and *Sim. Patrick*, of which seisin, &c. and all, &c. and whatsoever, &c. and chiefly of the said eight Messuages with the appurtenances, &c. as of fee and right, and faith, that he hath more right to hold the said eight Messuages with the appurtenances as Tenant thereof by his warranty aforesaid, to him and his heirs as he now holdeth, than the said *Nich. Parker* and *Simon Patrick* have to demand the said eight Messuages with the appurtenances, &c. as they above demand, &c. and of this he puts himself on the great assize of the said Lady the *Q.* and demands recognition to him hereupon to be done accord. to the custom of the City aforesaid, &c. and hereupon the said *Nich. Parker* and *Sim. Patrick* by their Attorney aforesaid pray Licence, thereof to im-
 parle, and they have it, &c. and afterwards the said *Nich. Parker* and *Sim. Patrick*, by their Attorney aforesaid, come again at the self same Court of *Hustings*, ready to the plea of the said *Rich. Horsted*, Tenant by his warranty aforesaid, in form aforesaid pleaded to reply, &c. and the said *Rich. Horsted* Tenant by his warranty aforesaid, although solemnly called, came not again but in contempt of the Court departed and made default. Therefore, It is considered by the said Court, that the said *Nich. Parker* and *Sim. Patrick* shall recover seisin against the said *Will. Pelham* of the aforesaid eight Messuages with the appurtenances, &c. to hold to the said *Nich. Parker*, and *Simon Patrick* and their heirs, acquitted from the said *Will. Pelham* and his heirs, and also from the said *Tho. Bowes* and his heirs, as also from the said *Rich. Horsted* and his heirs for ever: and that the said *Will. Pelham* have of the lands and tenem. of the said *Tho. Bowes* to the value, &c. and that the said *Tho. Bowes* have of the lands and tenem. of the afores. *Rich. Horsted* to the value, &c. and that the said *Rich. Horsted* be in mercy, &c. and hereupon at the self same *Hustings* at the petition of the said *Nich. Parker* and *Sim. Patrick*, it was commanded to the Sher. of *London*, that they to the said *Nich. Parker* and *Sim. Patrick*, and their heirs for ever, of the messuages afores. with the appurten. give full and peaceable seisin; and how the said command was executed, that they make known unto the Court here at the next *Hustings* of *London* of pleas of lands in the Guild-hall of the City aforesaid to be holden, &c. at which day, that is to say, at the *Hustings* of pleas of lands holden in the Guildhall *London*, on *Monday* next before the feast of Saint *Philip* and *Jacob*, in the 14th year of the said Lady the Queen aforesaid, the Sheriffs of *London*, that is to say, *Henry Mills* and *John Branch* returned, and certified to the Court here, &c. That they, by virtue of the precept to them directed, full and peaceable seisin to the said *Nicholas Parker* and

Judgment.

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Simon Patrick, of the eight Messuages with the Appurtenances, &c. had made, to have according to the Effect of the Precept aforesaid, as it was above commanded unto them, &c. as by the said recovery aforesaid under the seal of the office of the mayoralty of the city aforesaid, to the Jurors aforesaid shewed in evidence fully appeareth. And farther the Jurors aforesaid say upon their oath aforesaid, that the said *William Pelham* in the Indenture aforesaid named, and the said *William Pelham* against whom the said *Nicholas Parker* and *Simon Patrick* sued forth the writ of right aforesaid, is one and the same person, and not another nor divers. And that the said *Thomas Bowes*, son and heir of the said *Martin Bowes* Knight, and the said *Thomas Bowes* in the recovery aforesaid specified, whom the said *William Pelham* vouched there to warranty, and the said *Thomas Bowes* abovenamed, is one and the same person, and not another, nor divers. By colour whereof the said *Nicholas* and *Simon*, afterwards and before the 8th day of *May* in the 14th year of the reign of the said Lady the now *Q.* that is to say, the first day of *May* in the 14th year afores. into the Messuage aforesaid, with the appurtenances, amongst other things entred, and were thereof amongst other things seised. And farther the said Jurors say upon their oath aforesaid, that the recovery aforesaid of the aforesaid messuage with the appurtenances, amongst other things in form aforesaid had, was had with the assent and agreement of the said *Nicholas* and *Simon*, *William Pelham*, *Thomas Bowes*, Son of the aforesaid *Martin Bowes* Knight, and *Richard Horsted*, and without any just title of the said *Nicholas* and *Simon*, to the use of the said *William Pelham*, his heirs and assigns, for his farther assurance of and in the aforesaid messuage with the appurtenances amongst other things, according to the form and effect of the Covenantants and agreements of the said indenture of bargain and sale specified by the said *Thomas Bowes*, Son of the said *Martin Bowes* Knight, to the said *William Pelham*, as before is said, made; by colour of which recovery, as also by force of the aforesaid Act of Parliament for transferring of uses into possession, the said *William Pelham* was seised of the aforesaid messuage, with the appurtenances amongst other things as the Law requireth: and that afterwards, that is to say, the first day of *December* in the 16th Year of the reign of the said Lady the now *Q.* the said *Mart. Bowes*, Son of the said *Th. Bowes*, Son of the said *Mart. Bowes* Knt. then being within the age of 21 years, that is to say of 17 years, dyed without issue of his body lawfully begotten: And that the aforesaid *William Pelham* the said messuage with the appurtenances, amongst other things, as before is said, recovered in form aforesaid being seised before the aforesaid time, in which, &c. that is to say, the 10th day of *Sept.*
in

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in the 27th year of the reign of the said Lady the now Q. demised the said Messuage with the appurtenances in the declaration aforesaid above specified to the aforesaid *Ed. Griffin*, to have to him and his assigns from the feast of *St. Mich. the Archangel* then next ensuing, until the end and term of 21 years then next following: by virtue of which demise, the said *Ed. Griffin* was of the said messuage with the appurtenances possessed; and that afterwards, that is to say, the 10th day of *Jan.* in the 29th year of the said Lady the now Queen, the aforesaid *Tbo. Bowes*, Son of the said *Thomas Bowes*, Son and heir of the said *Martin Bowes* Knt. into the messuage aforesaid with the appurtenances in the declaration aforesaid above specified, upon the possession of the said *Edward Griffin* thereof entred, and then and there demised, granted, and to farm-let to *Henry Page* the said messuage with the appurtenances, to have to him his executors and assigns, from the within written feast of the birth of our Lord then last past, unto the end and term of the within written six years, and that the said *Ed. Griffin* afterwards, that is to say, the within written 11th day of *January* in the 29th year aforesaid, into the messuage aforesaid, with the appurtenances upon the possession of the said *Henry Page* thereof, did re-enter, and the said *Henry* from the possession of the messuage aforesaid did expel and amove: and that the said *Tbo. Bowes*, Son of the said *M. Bowes* Knt. and Father of the said *Tbo. Bowes*, Master of Arts, is yet living and being in full life, that is to say at *London*, in the parish and ward aforesaid: But whether upon the whole matter aforesaid, in form aforesaid found, the entry of the said *Tbo. Bowes*, Master of Arts, Son of the said *Thomas Bowes*, Son of the said *Martin Bowes* Knt. into the messuage aforesaid with the appurtenances, in the declaration aforesaid specified upon the possession of the aforesaid *Ed. Griffin*, be, and in Law ought to be adjudged, a lawful entry into the said messuage or not, the Jurors aforesaid are altogether ignorant, and thereof pray the advice of the Court here, &c. and if upon the whole matter aforesaid, in form aforesaid found, it shall seem to the Court here, that the aforesaid entry of the said *Thomas Bowes* Master of Arts, Son of the said *Thomas Bowes*, Son of the aforesaid *Martin Bowes* Knt. be a lawful entry, then the Jurors aforesaid say upon their Oath aforesaid, that the said *Ed. Griffin* is guilty of the trespass, and ejection aforesaid, as the said *Henry* within against him complaineth, and assesses the damages of the said *Henry*, by the occasion of the trespass, and ejection aforesaid, besides charges and costs by him sustained about his Suit in this behalf, to 12 pence, and for his charges and costs, to 5 shillings and 4 pence, and if to the Court of the said Lady the Queen here it shall seem, that the aforesaid entry of the aforesaid

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Tho. Bowes Master of Arts, Son of the said *Tho. Bowes*, Son of the said *Martin Bowes* Knt. be not a lawful entry, then the Jurors aforesaid say upon their Oath aforesaid, That the said *Ed. Griffin* is not guilty of the trespass and ejectment aforesaid, as the said *Henry Page* within hath alledged. And because the Barons here will advise, of and upon the premises before they give their judgment thereof, day is given to the parties aforesaid here until 8 days of *St. Hill.* next coming to hear their Judgment, because the Barons here thereof not yet, &c. at which day come the parties aforesaid, by their Attornies aforesaid; and because the Barons are not yet advised of giving their Judgment of and upon the premises, further day is given to the parties aforesaid here until from *Easter* day in 15 days next coming to hear their Judgment, because the Barons thereof not yet, &c. at which day came the said parties by their Attorn. aforesaid: and upon this, the premises by the Barons here being seen, and mature deliberat. thereof had betwixt themselves, because it seemeth to the said Barons, that the aforesaid entry of the said *Tho. Bowes* Master of Arts, Son of the said *Thomas Bowes*, Son of the said *Martin Bowes* Knt. is a lawful entry. Therefore it is considered, that the said *Henry Page* recover against the said *Ed. Griffin* his possession of his term aforesaid, yet to come, of and in the messuage aforesaid with the appurtenances in the declaration aforesaid above specified, and his damages by occasion of the trespass and ejectment aforesaid, to 54 shillings and 4 pence, by the Jurors aforesaid, in form aforesaid assessed, as also further 8 pounds and 10 shillings to the said *Henry Page*, at his request, for his charges and costs aforesaid by the Court here of encrease adjudged; which damages in the whole amount to 11 l. 4 s. 4 d. and that the said *Ed. Griffin* be taken, &c. And hereupon, by a writ of the said Lady the Queen of the Court here issuing forth at the request of the aforesaid *Henry Page*, it is commanded to the Sheriffs of *London*, that to the aforesaid *Henry*, they give to him his full possession of his term, yet to come, of and in the Messuage aforesaid, with the appurtenances, in the declaration above specified without delay; and how the said precept is executed, that the said Sheriffs make it appear to the Barons of the *Excheq.* of the said Lady the Q. here the morrow of the *Holy Trinity* next to come; and also it is commanded to the said Sher. that of the goods and chattels of the said *Edward Griffin* in their *Balywick* the said 11 pounds 4 shill. and 4 pence, for the damages aforesaid, in form aforesaid recovered they do execution; and that the said money, when they have so levyed it, they have before the Barons here at the aforesaid Term, to the said *Henry Page*, or to his Attorney in this behalf then here to be paid, &c. And that afterwards the said Lady the now Q. sent

Hill. 31. Eliz.

Pasch. 31 Eliz.

Judgment pro Quer.

Tiin. 31 Eliz.

sent her writ under her great Seal out of her Chancery, to the Treasurers and her Barons of the *Exchequer* here directed, which is enrolled in the remembrance of this *Exchequer* of the 31st year of the Reign of the now Q. *Eliz.* that is to say, amongst the Records of *Easter* Term remaining with the remembrancer of the said Lady the Q. here; the tenor of which writ followeth in these words; ff. *Eliz.* by the grace of God, of *England, France* and *Ireland* Q. defender of the Faith, &c. to the Treasur. and her Barons of the *Excheq.* greeting; Because that in the record and process, and also of giving of Judgment of a plea which was in our Court before you the aforesaid Barons in our *Excheq.* aforesaid by bill, between *Henry Page* our debtor, and *Edw. Griffin* of a certain trespass and ejection of his farm, to the said *Henry* by the said *Edward* done as is said, manifest error hath intervened, to the grievous damage of the said *Edward*, as of his complaint we have received. And whereas in a Statute in Parliament of the Lord *Ed.* late K. of *England* the 5d, our progenitor at *Westminster*, in the Year of his Reign the 31st holden, made amongst other things, it was agreed and established, that in all cases touching us and other persons, where one complaineth of error done in the *Excheq.* the Chancellor and Treasurer shall make to come before them in some Chamber near unto the *Excheq.* the record and process out of the *Excheq.* and taking to them justices, and other sage persons, such as shall seem fit to them to be taken, and also calling before them the Barons of the *Excheq.* aforesaid, to hear their informations and causes of their judgments, and hereupon shall duly examine the business; and if any Error shall be found to correct the same and to amend the Rolls, and after to send the same into the said *Excheq.* to make thereof execution, as in the statute aforesaid more fully is contained, we therefore willing, Error, if any be, according to the form of the aforesaid statute to be corrected, and to the parties aforesaid full and speedy justice in the premises to be done, command you that if judgment thereupon be given, that then the record and process aforesaid with all things touching the same before our Chancellor of *England*, and you the aforesaid, Treasurer in the Chamber next unto the *Excheq.* aforesaid called the Council Chamber, the third day of *June* next to come, you cause to come, that the said Chancellor and you the aforesaid Treasurer, seeing and examining the record and process aforesaid, and your informations being heard, you the said Barons farther in this behalf, with the Counsel of the said Justices and other sages, do that which of right and according to the form of the Statute aforesaid is to be done. Witness my self at *Westminster* the 6th day of *May* in the 31st year of our Reign: And that afterwards, the said Lady the now Q.

Breve d'Error.
31 E. 3 cap.
12. Sav. 36.
11 Co. 59. a. 8.
H. 7. 13. a
Plow. 209. b.

Pleadings in Pelham's Case. PART I.

sent here another Writ under her Great Seal, out of the Chancery, to the Treasurer and her Barons of this Exchequer directed, which is inrolled in the Remembrancers of the said Exchequer of the 31st Year of the now Queen *Elizabeth*, that is to say, amongst the Records of *Trinity Term Rot.* Remaining with the Remembrancer of the said Lady the Queen here, the Tenor of which Writ followeth in these Words. *ff. Elizabeth*, by the Grace of God, of *England, France and Ireland*, Defender of the Faith, &c. To the Treasurer and Barons of her Exchequer, Greeting: Because in the Record and Process, and also in giving of Judgment of a Plea which was in our Court before you, the aforesaid Barons of our Exchequer aforesaid in *Easter Term* last past, by Bill between *Henry Page* our Debtor, and *Edward Griffin*, of a certain Trespas and Ejectment out of his Farm, to the said *Henry* by the said *Edward* done, as is said, manifest Error intervened, to the grievous Damage of the said *Edward*, as by his Complaint we have received; and whereas in a Statute in Parliament of the Lord *Edward*, late King of *England* the Third, our Progenitor, at *Westminster*, in the Year of his Reign the 13th made, amongst other Things, it was agreed unto and established, that in all Cases the King and other Persons touching, where any complaineth of Error done in the Exchequer, the Chancellor and Treasurer shall cause to come before them, in some Chamber of Council nigh unto the Exchequer, the Record and Process out of the said Exchequer, and taking to them the Justices and other Sages, whom they shall think fit to be taken, and also to be called before them the Barons of the Exchequer aforesaid, to hear their Informations and the Causes of their Judgment, and thereupon shall cause the Business duly to be examined; and if any Error shall be found, that they correct the same, and the Rolls to be amended. We therefore willing Error, if any were, according to the Form of the Statute aforesaid, to be amended, and full and speedy Justice to be done to the Parties in this Behalf, do command you, that if Judgment thereof be given, that then the Record and Process aforesaid, with all things concerning the same, before our Chancellor of *Engl.* and you the aforesaid Treasurer in the Council-Chamber near unto the Exchequer aforesaid, on the 10th Day of this Instant Month of *June*, you cause to come: That the same Chancellor, and you the said Treasurer, the Record and Process aforesaid being seen, and hearing your Informations, you the said Barons further in this Behalf, of the Counsel of the Justices and the other Sages, do that which of Right and according to the Form of the Statute aforesaid is to be done.

Witness

Witness my self at *Westminster*, the 3d Day of *June* in the Year of our Reign the 31st. At which day the aforesaid Chancellor and Treasurer into the Chamber aforesaid did not come; and that afterwards the said lady the Queen, that now is, sent another writ under her great seal out of her Chancery, to the Treasurer and Barons of this Exchequer directed, which is inrolled in the Remembrancers of the said Exchequer of 31st Year of Queen *Elizabeth*, that now is, that is to say, amongst the Records of *Trinity Term Rot.* Remaining with the Remembrancer of the said lady the Queen, the tenor of which writ followeth in these words: *ss. Elizabeth* by the grace of God, of *England, France and Ireland* Queen, Defender of the Faith, &c. To the Treasurer and Barons of the Exchequer, Greeting: Because that in the record and process, and also in giving of judgment, which was in our Court before you, the aforesaid Barons of our Exchequer aforesaid in *Easter Term* last past, by Bill, between *Hen. Page* our debtor, and *Edw. Griffin*, of a certain trespass and ejection of him out of his farm, to the said *Henry*, by the aforesaid *Edward Griffin* done, as is said, Error manifest intervened, to the grievous damage of the said *Edward*, as by his complaint we have received. And whereas in a Statute in Parliament of the Lord *Edward* late K. of *Engl.* the Third, our Progenitor, at *Westm.* in the year of his reign the 31st holden, it was, amongst other things, agreed unto and established, that in all cases the K. and other persons touching, where any complaints of error done in process in the Exchequer, the Chancellor and Treasurer shall cause to come before them, in some Chamber of Council near unto the Exchequer, the said record and process out of the said Exchequer, and taking to them the Justices and other sages, as to them they shall seem good to be taken, and also to be called before them the Barons of the Exchequer aforesaid, to hear their informations and the causes of their judgment, and thereupon the business aforesaid duly to be examined; and if any error shall be found, the same to be corrected, and the rolls to be amended, and afterwards to send them into the said Exchequer to do execution thereof as belongeth, as in the said Stat. is contained. We therefore willing error, if any such shall be, according to the form of the Stat. aforesaid to be corrected, and to the parties aforesaid full and speedy justice to be done in that behalf, command you, that if judgm. be thereof given, then the record and process, with all touching the same before our Chancellor of *Engl.* and you the said treasurer in the chamber of council, near unto the Excheq. aforesaid, called the Council-chamber, the 14th of *Octob.* then following, you cause to come, that the said Chancel. and you the said treasurer seeing and examining the record and process afores. and your informations being heard, you the said Barons further in this behalf, with the counsel of the Justices and other sages, cause to be done what of right and according to the form

Pleadings in Pelham's Case. PART I.

Errors assigned.

of the Statute aforesaid is to be done. Witness my self at *Westminster* the 13th day of *June* in the year of our Reign the 31st. At which 14th day of *Octob.* before *Christopher Hatton*, Kt. Chancellor of *Engl.* and *William Cecil*, Kt. Lord *Burghley*, Treasurer of the Exchequer aforesaid, in the said chamber near the Exchequer aforesaid at *Westminster*, came the said *Edw. Griffin* by *Rich. Hatton* his Attorney, and the aforesaid Treasurer and Barons the record and process aforesaid, with all things touching the same, then and there caused to come; and upon that the said *Edward* said, That in the record and process aforesaid, and also in the giving of the judgment aforesaid, it is manifestly erred; First in this, that is to say, because it doth not appear in the record aforesaid, that the aforesaid *Tho. Bowes*, Master of Arts, in the record aforesaid above-named, was seised of the remainder of the Messuage aforesaid, with the appurtenances in the declaration aforesaid above specified, at the time of the said recovery in the aforesaid Court of *Hustings* in the *Guild-hall* of *London* in form aforesaid had; for which cause, the entry of the said *Tho. Bowes*, Master of Arts, into the Messuage aforesaid, with the appurtenances in the said declaration aforesaid specified, was not lawful. *Item*, in this also it is erred, for that the aforesaid recovery was had in the said Court of *Hustings* before the 3th day of *May* in the 14th year of the reign of the lady the Queen that now is; and that the said *Thomas Bowes*, who before was tenant for term of life, was vouched in the said Court, by the aforesaid *Will. Pelham*, in the said recovery named to warrant the Messuage aforesaid, with the appurtenances, amongst other things; which *Thomas* afterwards, by summons by his Attorney, appeared in Court, and freely the Messuage aforesaid to the said *William* did warrant; and farther vouched to warrant the aforesaid *Rich. Horsted*, who present in the same Court the Messuage aforesaid, with the appurtenances, farther warranted, and afterwards made default; by which Judgment against the said *Will. Pelham* in the said recovery was given, and execution thereof in the form aforesaid was had, so as the said *Tho. Bowes*, Master of Arts, of the remainder, without any demand in the Messuages aforesaid, with the appurtenances, to have stood utterly excluded; and for that cause the aforesaid entry of the aforesaid *Tho. Bowes*, Master of Arts, into the said Messuage, with the appurtenances, after the said recovery in form aforesaid had and executed, was unlawful. *Item*, in this also it is erred, because it was found, that before any entry of the said *Thomas Bowes*, Master of Arts, the Judgment aforesaid was fully and in due Manner executed; after which Execution so had, altho' the said *Tho. Bowes*, Master of Arts, before the Execution aforesaid had, had Title of Entry; yet the said *Thomas*, by the Law of the Land, into the Messuage aforesaid after the Execution aforesaid so had, could

could not enter. *Item*, in this further it is erred, because it is found by the Jurors aforesaid, that the said *Tho. Bowes* the Father, &c. who was Tenant, for Term of his Life, of the Messuage aforesaid, with the Appurtenances, is yet living, and is in full Life; and so the aforesaid Entry of the said *Tho. Bowes*, Master of Arts, in the Messuage aforesaid, with the Appurtenances, in Form aforesaid, during the Life of the said *Tho. Bowes* his Father made, ought not to be adjudged lawful: And for these Causes the Judgment aforesaid for the said *Henry Page*, against the said *Edw. Griffin*, and all thereupon depending, upon the Bill aforesaid, against the said *Edward* in Form aforesaid spoken and exhibited, is not sufficient in Law; and he prayeth, That the said Judgment aforesaid, for the Errors aforesaid, and others in the Record and Process aforesaid being, be reversed, annulled, and utterly holden for none, and that he unto all which, by the occasion of the Judgment aforesaid given he lost, be restored. And further, the said *Edw. Griffin* prayed the Writ of the Queen to warn the said *Henry Page*, that he should be before the said Chancellor and Treasurer in the Court aforesaid at *Westminster*, to hear the Record and Process aforesaid, and also the Errors aforesaid, and further to do and receive what should be just in the Premises, &c. And it was granted to him, returnable upon *Tuesday* the 28th Day of *Octob.* next following, &c. At which Day, before the aforesaid Chancellor and Treasurer, in the Court aforesaid at *Westminster*, came the said *Henry Page*, by his Attorney aforesaid: And the Sheriffs of *London*, that is to say, *Richard Gourney* and *Stephen Soame*, now sent by *Thomas Bickliff* and *Humphry Walsingham*, good and lawful Men of their Bailiwick, That they did warn the said *Henry Page*, that he should be before the Chancellor and Treasurer aforesaid, in the aforesaid Chamber, at the Day and Place aforesaid, to do and receive as the said Writ commanded and required; and thereupon the said *Edward*, by *John Hawkesworth* his Attorney, came likewise, and demanded the hearing of the Record and Process, as also of the Errors aforesaid. And they are read unto him, &c. which being read and heard, the said *Henry Page* said, That in the Record and Process aforesaid, made in the giving of the Judgment aforesaid, it is in nothing erred; and prayed that the Court here proceed as well to the Examination of the Record, and the Process aforesaid, as the Causes aforesaid, for Errors alledged; and that the Judgment aforesaid in all Things might be affirmed. And because the aforesaid Chancellor and Treasurer would advise of and upon the Premises, before they give their Judgment, Day is given to the Parties aforesaid here, that is to say, in the Chamber aforesaid, until *Tuesday* the 11th Day of *Nov.*

Note, by F. N. B. 20. G. this Writ ought to issue the same Term the Judgment is. Q.

The Summoners.

next

Pleadings in Pelham's Case. PART I.

next following, to hear their Judgment, &c. At which Day, before the aforesaid Chancellor and Treasurer in the Chamber aforesaid, at *Westminster*, come the Parties aforesaid, by their Attornies aforesaid: And because the aforesaid Chancellor and Treasurer are not yet advised of giving their Judgment of and upon the Premises, further Day is given to the Parties aforesaid, before the aforesaid Chancellor or Treasurer, in the Chamber aforesaid, until *Tuesday* the 18th Day of *Novemb.* then next following, to hear their Judgment, &c. At which Day, before the aforesaid Chancellor and Treasurer in the Chamber aforesaid, at *Westminster*, come the Parties aforesaid, by their Attornies aforesaid; and because the aforesaid Chancellor and Treasurer are not yet advised of giving their Judgment of and upon the Premises, further Day is given to the Parties aforesaid, until *Tuesday* the 25th Day of *November* following, to hear their Judgment, &c. At which Day, before the aforesaid Chancellor and Treasurer, in the Chamber aforesaid, at *Westminster*, come the Parties aforesaid, by their Attornies aforesaid; and because the aforesaid Chancellor and Treasurer are not yet advised of giving their Judgment of and upon the Premises, further Day is given to the Parties aforesaid here, before the aforesaid Chancellor and Treasurer in the Chamber aforesaid, until *Tuesday* the 27th Day of *Jan.* next following, to hear their Judgment thereof, &c. At which Day, before the aforesaid Chancellor and Treasurer in the Chamber aforesaid, at *Westminster* aforesaid, come as well the said *Henry Page*, by *John Hawkefworth* his Attorney aforesaid, as the aforesaid *Edward Griffin*, by *Rich. Hatton* his Attorney aforesaid; and thereupon the said *Henry* said, That the said *Edward* his Writ aforesaid, for correcting of Errors, against the said *Henry* in this Case, further to prosecute or maintain ought not, because he saith, That after the last Continuance of the Plea aforesaid, that is to say, after the aforesaid *Tuesday*, that is to say, the 25th Day of *November*, from which Day the Plea aforesaid was last continued, until this Day, that is to say, the aforesaid *Tuesday*, that it to say, the 27th Day of *January*, and before this Day, that is to say, the 15th Day of *January* in the 32d Year of the Reign of the said Lady the Queen that now is. The said *Edward*, by the Name of *Edward Griffin*, of *London* Haberdasher, at *London*, in the Parish of *St. Mary of Bow* in the Ward of *Cheap, London*, by his certain Writing of Release, which the said *Henry*, with the Seal of the said *Edward* sealed, here into Court brought, whose Date is the said 15th Day of *January* in 32d Year aforesaid, released and quit-claimed to the said *Henry Page*, by the Name of *Henry Page* of *London* Merchant-Taylor, all Manner of Actions, Suits, Errors, Writs of Error, Quarrels, Plaints and Demands whatsoever, which

which the aforesaid *Edward* against the said *Henry* then had depending, or which at any Time then after he might or ought to have against the said *Henry*, his Executors or Administrators, for any Matter or Thing whatsoever, from the Beginning of the World unto the Day of the Date of the said Writing of Release, as by the said Writing here in Court shewed plainly appeareth; and this the said *Henry* is ready to aver; whereupon he demands Judgment, if the said *Edward* his aforesaid Writ for correcting of Errors against the said Writing of Release of the said *Edward*, further against the said *Henry*, he ought to maintain or prosecute.

*A Tenant for Life, the Remainder in Tail, the Re- Co. Lit. 251. b. mainder in Fee, bargains and sells the Land in Fee 356. a. 362. a. to one who before the Statute 14 Eliz. suffers a Recovery, in which A. is vouched, and vouches over, and he in the Remainder enters, and the Entry adjudg'd lawful, and a Writ upon that is sued, and the Plaintiff doth * release the Errors.* * 6 Mod. 236,

Sir

Sir W. PELHAM'S Case.

Hill. Term. 32 Eliz.

B E T W I X T

P A G E and G R I F F Y N.

2 Leon. 60.
4 Leon. 123.
1 And. 227.
Mo. 271.

I N this Term a Writ of Error was depending in the Exchequer-Chamber, betwixt *Edward Griffyn* Plaintiff, and *Henry Page* Defendant, upon a Judgment given in the Exchequer; and the Case was thus. *Henry Page* had in *Hill. 30 Eliz.* brought an *Ejectione firmæ* in the Exchequer against *Edward Griffyn*, and declared on a Lease made by *Thomas Bowes* Master of Art, 10 *Jan. 29 Eliz.* to the said *Page*, of a Capital Messuage in *Lombard-street*, in the Parish of *St. Mary Wolnoth, &c.* in *London*, called the Sign of the *White Lyon*, for six Years, and that the said *Griffyn* had ejected him; and upon Not-guilty pleaded, the Jurors in *London* by *Nisi Prius* gave a special Verdict to this Effect. They found that *Sir Martin Bowes* Knight, was seised of the said House in Fee, and had Issue one *Thomas Bowes*, and that the said *Thomas* had Issue *Martin Bowes*, and the said *Thomas Bowes* Master of Art now Lessor, and one *George Bowes*; and that the said *Sir Martin* 29 *Julii 8 Eliz.* by his Will in Writing, did devise to the said *Thomas Bowes* his Son the said House for his Life, without Impeachment of Waste, the Remainder to the said *Martin* his Son, and to the Heirs Males of his Body begotten, the Remainder to the said *Tho. Bowes* Master of Art in Tail, the Remainder to the said *George Bowes* in Tail, the Remainder to the said *Thomas* Son of *Sir Martin* in Tail, with divers Remainders over: And afterwards *Anno 8 Eliz.* the said *Sir Martin* died, after whose Decease, the said *Thomas* his Son enter'd, and was seised of the said House for Life, with the Remainders over as aforesaid, and afterwards 19 *Dec. Anno 14 Elizabeth* the said *Thomas*, Son of *Martin*, by Deed indented and enrolled in Chancery, according to the Statute, did bargain and sell the said House to *Sir*
Wil.

Wil. Pelham and his Heirs, who suffer'd a common Recovery, in which *Tbo.* Son of *Sir Martin*, who was Tenant for Life, was vouch'd, and this was before the Statute of 14 *El. c. 8.* and Execution was sued upon the same Recovery; and if this common Recovery should bar the Remainder, or the Entry of him in the Remainder in Tail, was the Question. And in the Exchequer, before the first Judgment was given, the Defendant's Counsel argued, that Judgment ought to be given against the Plaintiff in the *Ejectione firme* for two Reasons; first, because the Remainder of *Thomas Bowes* the Lessor was barred by this Recovery, for this Recovery was out of the Statute of 32 *H. 8. c. 31.* because in this Case, altho' *Sir Wil. Pelham* was but a particular Tenant, yet he doth not in this Recovery vouch the common Vouchee, but him who was Tenant for Life, and so he is a particular Tenant in Law, but not in Deed. And therefore it is agreed in 19 *E. 3. tit. Age, pl. 2. in Fitzherb.* if the Vouchee who is Tenant in Law, vouch the Heir of the Husband in a *Cui in vita*, the *Parol* shall demur by the Statute of *West. 2. c. 40.* for altho' the Words of the Stat. are general, yet they are intended when the Tenant in Deed voucheth the Heir of the Husband, and not when the Tenant in Law voucheth the Heir of the Husband. And 16 *H. 7. 5. a.* Tenant by Receipt shall vouch out of the Degrees in a Writ of Entry in the *Per*, for he is but a Tenant in Law, and not a Tenant in Deed. And it seemeth upon the Letter of the Act of 32 *H. 8.* that this Case is not within the Statute, for in the Body of the Act it is said, All such Recoveries, &c. against such particular Tenants of any Lands, &c. whereof the same particular Tenant is, or shall be seised, as Tenant by the Curtesy, &c. or otherwise for Life, shall be void, &c. against such Persons to whom the Reversion or Remainder shall then appertain, &c. And because the Vouchee in our Case was not seised for Life, but came in as Vouchee, he was therefore out of the Letter of that Statute: And that that Act shall not be taken by Equity, it was holden, as Serjeant *Bendloe's* Reports, 5 *Eliz.* That if Tenant for Life, the Remainder to his eldest Son in Fee be disseised by Covin, and afterwards the Disseisor is impleaded in a Writ of Entry in the *Post*, and vouches the Tenant for Life, who vouches over the common Vouchee, that that was out of the Statute of 32 *H. 8.* because the Tenant for Life came in as Vouchee, and the *Præcipe* was not brought against him; and that the Son being an Infant was not aided by the Statute of 32 *H. 8.* And he reports also, that it was so holden in the Case of one *Lee*, for Lands in the County of *Cornwal*, *An. 15 Eliz.* by the Justices of the Common Pleas: And the Court said, that those Cases were not to be compared to the Case at the Bar, for there, by the Disseisin, all the Remainders were devest'd, so that they had but

3 Co. 60. b.
Co. Lit. 356. a.
362. a.

10 Co. 45. a.

Plow. 17. b.

47. a. 2 Inf.

455. 4 Co. 50. a.

2 Leon. 148.

6 Co. 5. a.

18 E. 4. 16. a. b.

Br. Age 43.

Fitz. Age 2. 46

E. 3. Age 76.

7 E. 2. Age 139.

8 E. 2. Judgment. 240.

14 H. 7. 18. b.

19. a. 6 E. 3.

216. b. Br.

Voucher 164.

2 H. 7. 17. a.

Br. Voucher

139.

Bendl. in Kel.

211. a. 10 Co.

45. a.

n. Bendl. 132.

pl. 194. 4 Leon.

128. 2 Leon.

63. 1 Jones

423. Co. Lit.

362. a. Palm.

230.

10 Co. 45. a.

Co. Lit. 362. a.

Sir WILLIAM PELHAM's Case. PART I.

but a Right; and then that perhaps might be out of the Statute of 32 *H. 8.* because the Words of the Act are (to whom the Reversion or Remainder shall then appertain.) The 2d Point was, that this Recovery being executed, did toll the Entry of him in the Remainder, and put him to a Writ of Entry *in consimili casu*; and to that Purpose the Cases in 15 (a) 1 *Rol. 853. E. 3. rit. Age 95. 41 E. 3. 18. b.* by *Finchden*, (a) 22 *E. 3. 2. b.* and the Preamble of the Statute of 32 *H. 8. c. 31.* were cited. (b) But the Court did resolve for the Plaintiff, because they conceived, that this Recovery was a Forfeiture of the Estate of *Sir Wil. Pelham*, for inasmuch as a common Recovery by Assent was now, by common Usage, in a Manner become a common Assurance and Conveyance, upon which an Use may be limited and averr'd, as well as upon a Fine or Feoffment; for that Cause *Sir Roger Manwood*, Baron *Clark*, and all the Barons of the Exchequer upon great Deliberation did resolve, that the said Recovery was a Forfeiture, and done to the Disinheritance of him in the Remainder in Tail, and was as much in Law, as if the said *Sir Wil. Pelham* had levied a Fine, or made a Feoffment. And a Difference was taken between a Recovery by Assent, which is in the Nature of a common Conveyance, and a Recovery without Assent of the Parties, altho' it be without Title. And it was also adjudged by the whole Court, that the Entry of him in the Remainder in Tail was conceivable as well after the Execution, as after the Judgment; for it being a Forfeiture for the Reason aforesaid, the Suing Execution will not toll the Entry of him in the Remainder. And the Court said, it would be mischievous if before the Statute of 14 *Eliz. cap. 8.* it should be in the Power of Tenant for Life, by suffering a common Recovery, to toll the Entry of him in the Reversion, or Remainder, and put them to their real Actions, and so in Danger to be disinherited or delayed; and to prove the same to be a Forfeiture, the Case adjudged in (c) 5 *Lib. Aff. pl. 3. & 5 E. 3. tit. Entre conceivable 42.* was cited, That where the Plaintiff had demised the Land to one *A.* for Term of his Life, which *A.* procured his Son to bring a Writ of Entry upon the Statute of *Gloucester*, supposing that he held of his Demise for Term of his Life by Collusion, to oust the Plaintiff of his Reversion; to which Writ *A.* appear'd, and could not deny the Action, for which the Son had Judgment, and before Execution, the Plaintiff entred upon *A.* and the Son sued Execution, upon which the Plaintiff brought an Assise, and had Judgment to recover. And it is to be observed, that the Entry of the Plaintiff before Execution, was no Cause of the Judgment, for there *Chauntrel ex assensu Herle*, declares the Reason of the Judgment; that is to say, Because it is found, that the Writ was brought by Collusion, and that the Recovery was by Confession, which we hold but an Alienation in Law to the Disinheritance of him who is Plaintiff for which

which Cause the Court did adjudge that he should recover his Seisin. By which Judgment it appeareth, that the Suing Execution was not material, forasmuch as the Recovery itself was adjudged a Forfeiture. So if in a Writ of Right brought against Tenant for Life, he join the Mise upon the Meer Right, it is a Forfeiture as it is holden in 9 *H.* 5. 14. *a.* & 22 *Aff. pl.* 31. So 14 *E.* 3. *tit. Receipt* 135. That in a *Præcipe* the Tenant (being Tenant for Life) pleaded to Issue the first Day, without taking any Delay, and so by Assent betwixt the Tenant and the Demandant, the Demandant did recover, and it is there held, that the Entry of him in the Remainder was lawful. *Vide* 18 *E.* 3. 28. *b.* And in 25 *E.* 3. 48. *a.* it is holden, that a Recovery by Assent without Title shall not devest a Reversion or Remainder out of the King, because the same being suffered by Assent of the Parties without Title, is but a Conveyance. And 33 *E.* 3. *Assowry* 255. by *Seton*, a Recovery without Title doth countervail a Demise. And the Plaintiff in the Writ of Error in the Exchequer-Chamber, perceiving the Opinion of the Court to incline against him, did release his Writ of Error.

3 Co. 4. b. Co.
Lit. 252. a. 2.
Leon. 61, 62,
63, 66. 4 Leon.
126, 128, 132.
Co. Lit. 215. b.

1 R. 853. Pl.
553. a. Co. L.
254. b. 4 Co.
59. b.

PORTER'S Case.

Information
for Intrusion
in the Excheq.

In the Remembrances of the Exchequer of the 34th Year of Queen Elizabeth, that is to say, amongst the Records of the Term of St. Hillary, in the Year aforesaid, and Rot. 149. remaining in the Exchequer, in the Custody of the Queen's Remembrancer there, amongst other things, it is contained thus :

London, ff.

M Emcrandum, That *John Popham, Esq;* the now Queen's Attorney General, who followeth for the same Lady the Queen, being present here in Court the third Day of *February*, for the Queen gave the Court to understand and be informed, That whereas all that the *Key and Wharf*, called the *Old Woolkey*, and all Messuages, Buildings, Lands, Advantages, Commodities, and Profits, to the same any Way belonging, or appertaining, situate and being in the Parish of *All-Saints Barking*, in the City of *London*, in the Hands and Possession of the said Lady the now Queen, the 26th Day of *January* in the 34th Year of her Reign, and long before, and continually afterwards were and stood, and of Right ought to be, as in the Right of her Crown of *England*, as in very many Records, Rolls, and Remembrances of this *Exchequer*, it more fully appeareth of Record; yet one *John Porter* of *London*, *Fishmonger*, and *Henry Cockain, &c.* the Laws of the said Lady the now Queen little regarding, but intending the Disinheritin of the same Lady the Queen in the Premises, with Force and Arms, &c. the said 26th Day of *January* in the 34th Year aforesaid, in and upon the Possession of the said Lady the now Queen of the Premises entered, intruded, and made Entry, and the Issues and Profits thereof arising took and had to their own uses, and do yet take and have, the Trespass aforesaid hitherto and yet continuing, in Contempt of the said Lady the now Queen, and contrary to her Laws. Whereupon the aforesaid Attorney General of the said Lady the now Q. for the said Lady the Queen prayeth the advice of the Court in the Premises: And that the aforesaid *Porter* and *Cockain* come here to answer the said Lady the Q. in the Premises: Upon which it is awarded to the Sher. of *L.* that the said *J. Porter* and *Henry Cockain* be attached by their Bodies, wheresoever, &c. to answer to the said Lady the Q. in the Premises, &c.

And it is commanded to the aforesaid Sheriffs of the said City of *London*, that they attach the said *John* and *Henry* in form aforesaid, so as, &c. in eight days of the *Purification* of the blessed *Mary* the Virgin in this Term: Before which day, that is to say, the 14th day of *Feb.* in the said Year, the afores. *J. Porter*, here in Court being found, and of the Premises by the Barons here being spoken to, is for the said Premises committed to the Prison of the L. the Q. of the *Fleet*; there to stay until, &c. And presently the same day the said *J. Porter* was brought hither to the Bar by the Warden of the Prison aforesaid, and by favour of the Court was let to bail to *H. Cockain* of the Parish of *All Saints, Barking*, in the Ward of the *Tower, London*, and *Robert Dodd* of the Parish of *St. Buttolph* without *Aldgate, London*, that is to say, to every of them Body for Body, until the next day, and so from Day to Day, and from Term to Term, until, &c. By Pretext of which Bail, the said *J. Porter*, from the Prison aforesaid is delivered, and thereupon came then here the said *J. Porter* and *H. Cockain*, that is to say, the said *J. Porter* in his proper Person, and the aforesaid *H. Cockain* by *Arthur Salway* his Attorney, specially admitted by the Favour of the Court, and pray, &c. the hearing of the Information afores. And it is read unto them; which being read, heard and by them understood, the said *J. Porter* and *Henry* complain them to be by colour of the Premises in the Information specified, grievously troubled and inquieted, and that not justly, for taking it by Protestation, that the Information aforesaid, and the Matter in the same contained, is not sufficient in Law, to which they have not necessity nor by the Law of the Land are bound to answer; yet for Plea, as to the Force and Arms, and what is contrary to the Peace of the said Lady the Queen, or in contempt of the same Lady the Queen, the said *J. Porter* and *Henry* say, that they are in nothing thereof guilty, nor either of them is guilty. And of this they put themselves upon the Country: And the aforesaid Attorney General likewise, and as to the Entry, Intrusion, and ingress in all that the aforesaid *Key* and *Wharf*, called the *Old Woolkey*, and the afores. messuages, buildings, and other premises with the appurt. in the informat. above specified supposed to be done, the said *J. P.* and *H.* say, that the said Lady the now *Q.* them the said *J. Po.* and *H.* or either of them thereof ought not to sue or trouble; because they say, that long before the aforesaid 26 of *Jan.* in the said informat. mentioned, one the Lady *Avice Knevet* widow, late the wife of *Nich. Gilson* of *London*, Grocer, was seised of and in all that aforesaid *Key* and *Wharf*, and other the premises with the appurt. in the said informat. specified, in her demesne as of Fee, and so being seised, the said Lady *Avice* long before the time in which it is supposed the said Entry, Intrusion and Ingress to be done, that is to say, the 13th Day of *April*

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in the Reign of the Lord *Edward*, late K. of *England* the sixth, at *London*, in the Parish of *All Saints, Barking* aforesaid, in the Ward of the Tower of *London*, demised all that the aforesaid *Key* and *Wharf*, and other the Premisses with the Appurtenances, to one *Bartholomew Gibbs*, to have to him and his Assigns, from the Feast of the Birth of our Lord in the Year of our Lord 1566, from thence next ensuing, unto the end and term of 40 Years, from thence next following and fully to be ended; by virtue of which Demise, the aforesaid *Bartholomew*, after the aforesaid Feast of the Birth of our Lord in the aforesaid Year of our Lord 1566. and before the aforesaid time in which, &c. entred, and was thereof possessed, and so being thereof possessed, the said *Bartholomew*, before the Time in which, &c. that is to say, the 1st Day of *Jan.* in the Year of our Lord 1552, at *London* aforesaid, in the Parish and Ward aforesaid, made his Testament and last Will in Writing, and of the same his Testament and last Will made and constituted one *Alice* his then Wife his Executrix; and afterwards the said *Barthol.* the same Day and Year there dyed, of all the afores. *Key* and *Wharf*, and other the Premisses with the Appurtenances possessed; after whose death, and before the time in which, &c. the same *Alice* taking upon her the Charge and Execut. of the Test. and last Will aforesaid, in all the aforesaid *Key* and *Wharf*, and other the Premisses with the Appurt. entred, and was thereof possessed, and so being thereof possessed, the same *Alice*, before the time in which, &c. that is to say, the 4th Day of *May* in the 1st Year of the Reign of the late *Q. Mary*, at *London*, in the Parish and Ward aforesaid, took to Husband one *Tho. Wilcox*, by which the said *Tho.* and *Alice*, in the Right of the said *Alice*, were of all that the aforesaid *Key* and *Wharf*, and of other the Premisses with their Appurtenances possessed; and so thereof being possessed, the said *Tho. Wilcox* and *Alice*, before the Time in which, that is to say, the 16 day of *Nov.* in the 1st and 2d Years of the Reign of the Lord *Philip* and the Lady *Mary*, late K. and *Q.* of *England* at *London*, in the Parish and Ward aforesaid, by their Writing sealed with their Seals, and here into Court brought, whose Date is the same Day and Year, gave and granted, all their Estate, Right, Title, Interest, and Term of Years, which they the said *Tho.* and *Alice* then had to come, of and in all that the aforesaid *Key* and *Wharf*, and the rest of the Premisses aforesaid with their Appurtenances, by reason of the Execut. of the Test. of the aforesaid *Barth. Gibbs* aforesaid, to one *John Haynes*: by Virtue of which Gift and Grant, the same *John Haynes*, before the Time in which, &c. into all that the aforesaid *Key* and *Wharf*, and other the Premisses with

with the appurtenances entred, and was thereof possessed, and so being thereof possessed, the said *J. Haynes*, before the time of which, &c. that is to say, the 21st Day of *Decemb.* in the Year of our Lord 1559, at *London* in the Parish aforesaid, did make his Test. and last Will in writing, and by the same devised and bequeathed the Premises to one *Joice* then his Wife, and thereof made and constituted, &c. *Joice*, then his Wife, his Executrix, and afterwards the same Day and Year, there of all the aforesaid *Key* and *Wharf*, and other the premises with the appurt.dyed possessed: after whose Death, and before the time in which, &c. the aforesaid *Joice*, taking upon her the charge of execution of the testam. and last will of the aforesaid *J. Haynes*, into all the aforesaid *Key* and *Wharf*, and other the premises with the appurt. entred, and was thereof possessed, by virtue of the execut. of the same testam. and last will of the aforesaid *J. Haynes*, and so being thereof possessed, the said *Joice* before the time in which, &c. that is to say, the 6th day of *Octob.* in the 31st year of the reign of the said Lady the now Queen at *London*, in the parish and ward aforesaid, took to husband the aforesaid *John Porter*, by which the said *J. Porter* was, and yet is thereof possessed: By colour of which the same *J. Porter* in his own right, and the aforesaid *H. Cockain*, as servant to the said *J.* and by his commandment into all the aforesaid *Key* and *Wharf*, and other the premises with the appurt. in the said informat. specified, the said time in which, &c. entred, and the issues and profits thereof by the whole time in the said informat. specified took and had, and do yet take and have, as to them it was and is lawful; without that, that the said *J. Porter*, in and upon the possession of the said Lady the now Queen, of the aforesaid *Key* and *Wharf*, with the appurt. in the said informat. mentioned, or any part thereof intruded, or either of them did intrude in manner and form as in the said informat. above is supposed: And without that, that the aforesaid *Key* and *Wharf*, and other the premises with the appurtenances in the said informat. mentioned, or any parcel thereof, the said 26th day of *January* in the 34th Year aforesaid, in the same informat. mentioned, or ever before, or after, stood, or were, or was in the hands and possession of the said Lady the now Queen, in manner and form as in the said information is before supposed. And also without that, that there is any record, roll, or remembrance in the court of the *Exchequer* here, besides the record of the information aforesaid, by which it may appear the aforesaid *Key* and *Wharf*, and other the premises, or any parcel thereof with the appurtenances,

Traverse.

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to be, or of right ought to be, in the hands and possession of the said L. the now Q. All and singular which the said *J.P.* and *H. Cockain* are ready to aver, as the Court here, &c. Whereupon they pray judgment, and that they as to the premisses from this Court be dismissed, &c. and each of them be dismissed, &c. And because the Court here will advise of the Plea aforesaid, until, &c. further day is given here to the afores. *J. Porter* and *H. Cockain*, in the same state as now it is, until to 15 days of *Easter*; at which day the afores. *John* and *Henry* came here as before: and the afores. *J. Popham* Esq; Attorn. Gen. of the Lady the now Q. who follows for the said Lady the Q. present here in Court, at the same day in his proper person, by protesting, not acknowledging any thing in the plea of the said *J. Porter* and *H. Cockain*, by them before pleaded, to be true in manner and form as the said *J. Porter* and *H. Cockain* in the Plea of the said *J. Porter* and *H. Cockain*, by them above pleaded, to be true in manner and form as the said *J. Porter* and *H. Cockain* in their Plea afores. above have pleaded; yet for replicat. the same Attorn. of the said Lady the now Q. for the said Lady the Q. saith as he formerly said, that the aforesaid *J. Porter* and *H. Cockain* in and upon the possession of the said Lady the now Q. of the afores. *Key* and *Wharf*, called the *Old Woolkey*, and other the premisses in the informat. aforesaid specified, entred, intruded, and made entry in manner and form, as in the informat. afores. above is alleged. And this the Attorn. of the said Lady the Q. for the said Lady the Q. prayeth that it may be inquired of by the country; and the said defendants say as before, and pray likewise; Therefore let inquiry be made thereof, &c. and it is commanded to the Sher. of *London*, that they do not omit, &c. and that they cause to be here from *Easter* in one month in this same term, 12 free and lawful men of his Bailiwick, of the neighbourhood of the Parish of *All Saints, Barking*, in the City of *London* aforesaid, whereof each, &c. by whom, &c. and who neither, &c. to recognise in the premisses. And the same day is given here to the said *J. Porter* and *H. Cockain*, at which day the said *John* and *Henry* come here as before, and the Sheriffs, that is to say, *Will. Rider* and *Benedict Burnham* returned the Writ aforesaid, together with the Panel of the names of the Jurors which are in the file of Writs, executed for the Q. of this 34th Year of the Reign of the said Lady the now Q. with the remembrancer of *London*. And the Jurors did not appear, therefore it was commanded the Sher. that they distrain the Jurors by their lands, &c. so that, &c. in 8 days of *Holy Trinity*, or in the mean time, be before the beloved and faithful to the Lady the Q. *Rcg. Manwood* Knt. Ch. Bar. of this *Excheq.* at *Guildhall* of the City of *London* afores. upon *Friday* the 26th Day of *May* in the 34th Year of the said Lady the now Queen, in the afternoon of the same Day, if he shall first come thither. And it is said to the aforesaid *J. Porter*,
and

and *H. Cockain*, that they expect their day before the aforesaid Chief Baron, at the said day and place, and that they be here at the said 8 days of *Holy Trinity*, to hear their Judgment, if, &c. at which day the said *J. Porter* and *H. Cockain* come here as before, and the aforesaid Chief Baron, before whom, &c. delivered here, the tenor of the record afores. in form afores. directed, which is amongst the inquisitions and extents of this Year, *viz.* of the 24th of the reign of the now Q. with this remembrance indorsed thus: *J.* Afterwards, that is to say, the day and place within contained, before *Reg. Manwood* Knt. Ch. Baron of the *Excheq.* of the said Lady the Q. came as well the within named *John Popham*, who prosecutes for the said Lady the Q. as the said within written *J. Porter* and *H. Cockain* in their proper persons, and the Jurors of the jury whereof within mention is made, being called, some of them appear'd, and some of them not, as it appeareth in the panel, &c. and some of them now appearing, that is to say, *Roger Tasker, Humphry Street, George Gunbey, Tho. Cox, Tho. Langhorn, Jo. Eaton, Will. Fruit, and Jo. Math*, upon the Jury aforesaid are sworn; and because the rest of the Jurors of the said Jury did not appear, therefore others of the standers by, by the Sheriffs of the County aforesaid, to this chosen, at the request of the said *J. Popham*, who, &c. and by the command of the aforesaid Ch. Baron were new put, whose names to the panel within written are filed, according to the form of the Statute in such case late made and provided. And the Jurors so a-new put, that is to say, *Tho. Wiggs, Henry Ayleward, Ralph Baily, and Cuthbert Booth*, being called, likewise came, who to the truth of the matter within contained, together with the other Jurors aforesaid first impanelled, elected, tried, and sworn, to say the truth, do say upon their oath, that long before the afores. time of intrusion aforesaid above supposed to be done, one *Nich. Gibson* was seized of and in the wharf and tenem. aforesaid, with the appurt. in the informat. aforesaid specified, in his Demesne as of Fee, and the *Warf* and tenem. afores. held of the Lady the Q. in socage, that is to say, of his free burgage of the City of *London* by fealty only; and so being thereof seised, the said *Nich.* afterwards, and before the time of the intrusion aforesaid, &c. that is to say, the 23d day of *Sept.* in the 32d year of the reign of the Lord *Henry*, late King of *England* the 8th, at *London*, in the Parish of *St. Dunstan's* in the East, made his Testament and last Will in writing, and constituted and ordained one *Avice* then his Wife, Executrix of his said Will, and by his said Will bequeathed and devised, amongst other things, the Wharf and Tenements aforesaid, with the appurtenances, to the aforesaid *Avice* and her Heirs, in these *English* Words, and in form following, that is to say, *In the name of God Amen,*

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I Nicholas Gybson, Citizen and Grocer of London, whole of Mind and of perfect Remembrance, albeit sick of Body, make this my present last Will and Testament, as well concerning the Order and Disposition of my Goods, Chattels, and other Things moveable, as of my Lands and Tenements, Rents, Reversions, and Services, and Hereditaments whatsoever. First, I give and bequeath my Soul unto Almighty God my Maker, Redeemer, and Saviour, and my Body to be buried where it shall please God, after the said Discretion of my well-beloved Wife Avice Gybson my sole Executrix under written, whom I put in special Trust, that she shall see these Things hereafter declared to be well and truly executed, done, and declared, and performed, as hereafter shall be recited: Unto whom I also give and bequeath all my Goods, Chattels, Debts and other Things as well moveable as unmoveable, real and personal Lands and Tenements, Rents, Reversions, Services, and all mine other Profits, Commodities, and other Hereditaments whatsoever, with all and singular the Appurtenances: To have and to hold, possess and enjoy all and singular my said Lands and Tenements, Rents, Reversions, and Services, with the Appurtenances, Goods, Chattels, and other Things, and all and singular other the Premises, with the Appurtenances, unto the said Avice Gybson, her Heirs, Executors, Administrators and Assigns for ever, upon Condition following: That is to say, where it hath pleased God to put me the said Nicholas Gybson in mind to edify divers Meases, Mansions, and Places convenient for a Free-School, the Master of the same, and certain Beadmen and Beadwomen, and that the same cannot be established to continue without great Charges to be employed and bestowed upon the same, and also Lands and Tenements, and other Hereditaments, to be assured, for the Continuance of the same, I will and declare by this my last Will and Testament, That the said Gift, Legacy, and Bequest of my Lands and Tenements, Goods, Chattels, and other Things aforesaid, shall enure and take Effect by Reason hereof unto my said Wife, upon Condition following: That is to say, That my said Wife, by the Advice of learned Counsel, in all convenient Speed after my Decease, shall assure, give and grant all my said Lands and Tenements

Tenements, and other Hereditaments whatsoever for the Maintenance of the said Free-School, Alms-men, and Alms-women for ever, if it shall please God that my said Wife Avice Gybson shall have all the Issues, Revenues, and Profits Yearly coming, arising, and growing of the Premises during her natural Life, bearing the Charges for the keeping of the said School, Beadmen and Bead-women, and other Charges, for the Maintenance of the Premises, in Manner and Form as I the said Nicholas Gybson have kept and maintained the same, and as the same is now kept and maintained, without any Diminution in any wise: Which Avice Gybson I make my sole Executrix of this my present Testament and last Will. These being Witnesses, Thomas Rushton Serjeant at the Law, William Gunston Esq; Thomas Wood Cooper, Thomas Reynolds Clothworker, and John Bucklowe Scrivener. In Witness whereof I have hereunto put my Seal. Given the 23d Day of September in the Year of our Lord God a Thousand five hundred and forty, and in the Two and thirtieth Year of the Reign of our Sovereign Lord King Henry the Eighth; as by the said Will more fully appeareth. And afterwards the said Nicholas Gybson at London, in the Parish of St. Dunstan in the East aforesaid, the 6th Day of Octob. in the 32d Year of the Reign of the said Henry late King of England the 8th aforesaid, died of such his Estate so seised, of the Wharf and Tenements aforesaid, with Appurtenances, without Issue of his body begotten: After the Death of which Nicholas, the aforesaid Avice, in the aforesaid Parish of St. Dunstan, took upon her the charge of Execution of the Testament aforesaid, and before the aforesaid Time of the Intrusion aforesaid, &c. enter'd into the Wharf and Premises, and was thereof seised as the Law requires: And she the said Avice being by Virtue of the said Testament so thereof seised, she the said Avice, before the aforesaid Time of Intrusion aforesaid supposed, that is to say, the 13th Day of April in the 3d Year of the Reign of the Lord Edward late King of England the 6th, at London, in the Parish of All Saints Barking aforesaid, demised the Wharf and Tenements aforesaid, with the Appurtenances, to one Bartholomew Gibbs, To have, and to occupy, to him and his Assigns; from the Feast of the Birth of our Lord, which then should be in the Year of our Lord 1566, until the full End of 40 Years, from thence next following and fully to be ended. By Virtue of which Demise, the same Bartholomew was of the Interest of the Term afores. possessed, and so thereof being possessed, the said Bartholomew

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before the Time in which, &c. that is to say, the 1st Day of *January* in the Year of our Lord 1552, at *London*, in the Parish of *All Saints* aforesaid, made his Testament and last Will in Writing; and constituted and ordained one *Alice*, then his Wife, his Executrix of his said last Will and Testament. And afterwards the said *Bartholomew* then and there died of such his Estate possessed, of the Wharf and Tenements aforesaid, with the Appurtenances; after whose Death, and before the Time in which, &c. the said *Alice* took upon her the charge of the Execution of the Testament aforesaid, in the aforesaid Parish of *All Saints, Barking*, and was of the Interest of the Term aforesaid, of 40 Years possessed, as Executrix of the Testament of the said *Bartholomew*, and so thereof being possessed, the said *Alice*, before the Time in which; &c. at *London*, in the Parish of *All Saints, Barking* aforesaid, took to Husband one *Thomas Wilcox*, by which the said *Thomas* and *Alice*, before the Time in which, &c. were of the Interest of the aforesaid Term of 40 Years, of and in the Wharf and Tenements aforesaid, with the Appurtenances possessed; and the said *Thomas* and *Alice* so thereof being possessed, before the said Time in which, &c. that is to say, the 15th Day of *Novemb.* in the 2d Year of the Reign of the Lady *Mary*, late Queen of *England*, at *London*, in the Parish of *All Saints Barking* aforesaid, granted all their Estate, Interest, and Term of Years, which they then had, of and in the Wharf and Tenements aforesaid, with the Appurtenances, to one *John Haynes*. By Virtue of which Grant, the said *John Haynes* was of the Interest of the aforesaid Term of 40 Years, of and in the Wharf and Tenements aforesaid, with the Appurtenances possessed; and so thereof being possessed, the same *John Haynes*, before the Time in which, &c. that is to say, the 21st Day of *Decemb.* in the Year of our Lord 1559, at *London*, in the Parish of *All Saints Barking* aforesaid, made his Testament and last Will in Writing, and made and ordained one *Joyce*, his then Wife, his Executrix of his said last Will, and by the same his Will willed and bequeathed all his Estate, Interest, and Term of Years, which he then had of and in the Wharf and Tenements aforesaid, with the Appurtenances, to the said *Joyce*. And afterwards the said *John Haynes*, at *London*, in the Parish of *All Saints Barking* aforesaid died, of such his Estate of and in the Wharf and Tenements aforesaid, with the Appurtenances, possessed. After whose Death, the said *Joyce* took upon her the charge of the Execution of the Testament aforesaid, and was of the Interest of the aforesaid Term of 40 Years, of and in the Wharf and Tenements aforesaid, with the Appurtenances, possessed; and so thereof being possessed, the said *Joyce*, before the Time in which, &c.

at

at London, in the Parish of *All Saints Barking* aforesaid, took to Husband the aforesaid *John Porter*, by which the said *John Porter* and *Joyce* were of the Interest of the aforesaid Term of 40 Years, of and in the Wharf and Tenements aforesaid, with the Appurtenances, possessed. And the Jurors aforesaid further say upon their Oath, That one *John Gybson* is Cousin and Heir of the said *Nicholas Gybson*, that is to say, Son and Heir of *Hugh Gybson* deceased, Brother and Heir of the said *Nicholas Gybson*; and that the said *John Gybson*, before the Time in which, &c. that is to say, the 24th Day of *January* in the Year of the Reign of the Lady the now Queen the 34th, entred into the Wharf and Tenements aforesaid, with the Appurtenances, claiming the same Wharfs and Tenements aforesaid, with the Appurtenances, by force of the Testament and last Will of the said *Nicholas Gybson*, by pretence of Forfeiture, and by reason of the Condition in the said last Will before specified, by the aforesaid *Avice*, in her Life forfeited and broken, and was thereof seised in his Demesne as of Fee; and so thereof being seised, the said *John Gybson*, before the aforesaid Time in which, &c. that is to say, the 25th Day of *January* in the 34th Year of the Reign of the said Lady the now Queen, by his Writing indented, bearing Date the same Day and Year, in the Court of the said Lady the Queen of her Chancery at *Westminster*, being in due Manner inrolled, and to the aforesaid Jurors in Evidence shewed, Bargained, Granted, and Sold the Wharf and Tenements aforesaid, with the Appurtenances, to the said Lady the now Queen, To have and to hold to the said Lady the now Queen, her Heirs and Successors for ever. By Pretext of which Grant, Bargain, Sale, and Inrolment, the said Lady the now Queen was of the Wharf and Tenements aforesaid, with the Appurtenances, seised in her Demesne as of Fee in the Right of her Crown of *England*; and the said now Queen so thereof being seised, the aforesaid *John Porter* claiming the Wharf and Tenements aforesaid in his own Right, and the aforesaid *Henry*, as Servant of the said *John Porter*, and by his Commandment at the aforesaid Time in which, &c. into the Wharf and Tenements aforesaid, with the Appurtenances, upon the Possession of the said Lady the now Queen thereof entred and made ingress; but whether upon the whole Matter aforesaid, by them the Jurors in form aforesaid found, the aforesaid Entry of the aforesaid *John Porter* and *Henry* into the Wharf and Tenements aforesaid, with the Appurtenances, be an Intrusion upon the Possession of the said Lady the Queen of the Wharf and Tenements aforesaid, or not, the said Jurors thereof pray the advice of the said Court of Exchequer, here, &c. And if upon the whole Matter aforesaid, by them the Jurors in form aforesaid found, it shall seem to the said Barons and Court here, That the aforesaid Entry of the aforesaid *John Porter* and *Henry*, into the Wharf and Tenements aforesaid, with the Appurtenances, be and ought to be adjudged an Intrusion upon the Possession of the said Lady the Queen; then the said Jurors say upon their Oath, That the aforesaid *John Porter* and *Henry* in and upon the Possession of the said Lady the now Queen, of the aforesaid Key and Wharf, called the *Old Woolkey*,
and

Pleadings in Porter's Case. PART I.

and other the premisses in the information above alledged, entred, intruded, and made ingress in manner and form, as in the information aforesaid above is alledged. And if upon the whole matter aforesaid, by them the Jurors in form aforesaid found, it shall seem to the Barons and Court here, that the aforesaid entry of the aforesaid *John Porter* and *Henry* into the Wharf and Tenements aforesaid, with the appurtenances, be not, nor ought to be adjudged an intrusion upon the possession of the said lady the Queen, of the aforesaid Wharf and Tenements aforesaid, with the appurtenances; then the same Jurors say upon their oath, That the said *John Porter* and *Henry* in and upon the possession of the said lady the now Queen, of the aforesaid Key and Wharf, called the *Old Woolkey*, and other the premisses in the said informat. above alledged, did not intrude and make entry in manner and form, as in the informat. aforesaid above is alledged. And because the Court here will advise of the premisses before further, &c. Day is given here to the said *John Porter* and *Hen. Cockain*, in the same state that now is, until 8 days of *St. Michael*, before which day, that is to say, in the morrow of *St. Michael* in the 34th year of the Reign of the lady the now Queen, the process aforesaid, with all things touching the same, by the writ of the lady the now Queen, of *Common Adjournment*, under her great seal of *Engl.* bearing date at *Westm.* the 23d day of *Septemb.* in the 34th year of the reign of the said lady the now Queen afores. to the afores. Treasurer and Barons of the Exchequer directed, which is inrolled elsewhere in the Remembrances of this Exchequer, of the aforesaid 34th year of the said now Queen, that is to say, amongst the records of this Exchequer, of the term of *St. Michael, Rot.* on the part of this Remembrancer, until a month of *St. Michael* then next following; at which day, the said process aforesaid, with all things touching the same, by another like writ of *Common Adjournment*, bearing date at *Hampton Court* the 25th Day of *Octob.* in the 34th year aforesaid, and amongst the records of the said term of *St. Michael*, in the roll afores. with the part of the Remembrancer afores. likewise inrolled, were further adjourned until the morrow of *All Souls*, from *Westm.* afores. unto the Castle of the lady the Q. of *Hartford*, in the County of *Hartford*. And the same day is given here to the afores. *John Porter* and *Hen. Cockain*; at which day the said *John* and *Henry* come here as before. And the verdict afores. being seen, and the other premisses by the Barons here, and the mature deliberation thereof amongst them being had; because upon the whole matter afores. by the Jurors afores. in form afores. found, it seems to the Barons here, that the entry of the afores. *John Porter* and *Hen. Cockain*, in the Wharf and Tenements afores. with the appurtenances, is an intrusion upon the possess. of the said lady the Q. of the same Wharf and Tenements afores. Therefore it is granted by the same barons, that the afores. *J. Porter* and *H. Cockain*, of the afores. entry,

Intrusion, and Ingress in and upon the Possession of the said Lady the Queen, of the aforesaid Key and Wharf, and other the Premises, be convicted, and either of them be convicted; and that the aforesaid Wharf and Tenements, with the Appurtenances, into the Hands of the said Lady the now Queen be taken, &c. And that the said *John Porter* and *H. Cockain* be attached by their Bodies where-soever, &c. to make a Fine (a) for the Contempt aforesaid, &c. And further, to do what to the Court, &c. And it is commanded to the Sheriffs of *London*, that they attach them in Form aforesaid, so that, &c. in the eighth Day of *St. Hillary*, before which Day, that is to say, the 28th Day of *November* in the 35th Year of the now Queen, the Process aforesaid, together with all Things touching the Premises were further adjourned by another Writ of *Common Adjournment*, under her great Seal of *England*, to the Treasurer and Barons of the *Exchequer* directed, which is inrolled elsewhere in the Remembrances of this *Exchequer*, of the 34th Year of the now Queen, and beginning the 35th, that is to say, amongst the Records of *Michaelmas Term Rot. 2.* with the said Remembrancer from the aforesaid Castle of *Hartford*, unto *Westminster* aforesaid. At which Day the said *John Porter* and *Henry Cockain*, at *Westminster* aforesaid came here as before, and the Sheriffs did not return the Writ; yet the aforesaid *John Porter* and *Henry Cockain*, at the same Time came here as before, and for the Premises submitted themselves to the Favour of the Court; and that they might not be further in the Premises troubled, prayed with the Favour of the Court to be admitted to make a reasonable Fine, with the Lady the Queen in the Premises, which by the Court here is granted to them. And upon this, by Pretext of a Writ of the said Lady the Queen, of her privy Seal, to the Treasurer, Chancellor and Barons, and other Officers of this Court of *Exchequer*, in the second Year of this Queen, that is to say, amongst the Writs directed to the Barons, and in the Term of *Easter*, in this *Exchequer* inrolled, remaining with the Remembrancer of the Queen, of Persons to be admitted by the aforesaid Treasurer, Chancellor, Barons, and other Officers of this *Exchequer*, according to their Discretions they are admitted to make such Fine, &c. according to the Tenor of the aforesaid Writ; and they made a Fine in the Premises, as is contained in these Remembrances, that is to say, amongst the Fines of this Term, remaining on the Part of the Remembrancer of the Queen; by Colour of which Fine it is granted by the Barons here, that against the aforesaid *John Porter* and *Henry Cockain*, for the Contempt aforesaid, there be not here further Execution made, &c.

(a) 1 Ro. R.
271. 3 Bulstr.
92, 93, 94.
1 Ro. 771, 774.
Cro. Car. 442,
45. Cro. Jac.
386 632. Yelv.
130. Hob. 194.
1 Ro. R. 279.
Apes 40. a.
Stat. 16 & 17
Car. 2. cap. 8.
Stat. 22 & 24
Car. 2. cap. 4.
Cro. Jac. 6.
Jenk. Cent. 13.
13 Cro. El. 145.
Pal n. 260. N.
Bend. 184. pl.
226. Poph. 203.
212. Noy 77.
Larch 78, 83.
188. Hob. 327.
1 Bulstr. 125.
126. Hob. 17.
19. 1 Co. 83, a.
119. b. 1 Syd.
70. 1 Bulstr.
179.

PORTER'S Case.

Between the

Queen and Porter.

Mich. 34 & 35 Eliz.

IN an Information of Intrusion in the Exchequer against *John Porter* and others, for an Intrusion into a Wharf, and a House called the *Wool-Key* in *London*, and on Issue joined upon *Non intrusit*, the Jury gave a special Verdict to this Effect: *Nicholas Gibson* was seised of the Wharf and House aforesaid, and held them in free Burgage. And 24 Sept. 32 H. 8. by his last Will in Writing, devised the said Wharf and House to *Avice* his Wife and her Heirs, upon the Condition following, viz. *Upon Condition, that where it hath pleased God to put me the said Nicholas Gibson in Mind to build divers Houses, convenient for a Free-School, the Master of the same, certain Beadmen and Beadwomen: And that the same cannot be established to continue without great Charges to be employed and bestowed upon the same; and also Lands and Tenements, or other Hereditaments to be assured for the Continuance of the same: I will and declare by this my last Will and Testament, that the said Gift of my Lands and Tenements shall enure, and take Effect to my said Wife upon Condition following: That is to say, that my said Wife upon Advice of learned Counsel, in all convenient Speed after my Decease, shall assure, give and grant all my said Lands and Tenements for the Maintenance and Continuance of the said Free (b) School, Alms-men and Alms-women for ever, as it shall please God. And that my said Wife Avice Gibson shall have all the Issues and Profits yearly coming of the Premises during her Life, bearing the Charges of the said School, &c. as the same is now kept and maintained. And made the said Avice his Wife his Executrix, and died 6 October 32 Henry 8. after whose Death Avice entred into the Wharf and House, and was thereof seised accordingly. And afterwards 13 Aprilis, Anno 3 E. 6.*

thg

11 Co. 64. b.
71. a. b.(a) Hob. 124.
Latch. 38.(b) 4 Co. 105.
2. Hob. 124.

the said *Avice* did demise the said Wharf and House to one *Bartolomew Gibbs* from the Feast of *Christmas*, which should be in the Year 1566, for forty Years; which Term was by divers mean Conveyances conveyed to the said *John Porter*; and afterwards *John Gibson*, Cousin and Heir to the said *Nicholas Gibson* 24 *Jan. Anno 34 Eliz.* entred into the said Wharf and House, *pre-textu forisfact' & conditionis in dicto testamento specificat' per pred' Avice in vita sua forisfact' & fract'*, and afterwards 25 *Jan. in 34 Eliz.* by Deed indented and enrolled in the Chancery, did bargain, grant, and sell the said Wharf and House to our Sovereign Lady the Queen, her Heirs and Successors: By Force whereof the Queen was thereof seised in Fee, and so seised, the said *John Porter* did enter upon her, claiming his Term aforesaid. And if the Entry of the said *John Porter* was lawful or not, was the Doubt; which was referred to the Consideration of the Court. And *Mich. 34 & 35 Eliz.* at *Hertford* this Case was argued by *Egerton* then Attorney General, and *Coke* Solicitor for the Queen, and by *Atkinson* and others for the Defendant. And on the Defendant's Part it was said, First, that the said Condition mentioned in the said Will was against Law, and so the Estate of *Avice* absolute. Secondly, if her Estate was conditional, yet it doth not appear by any thing found by the (a) Verdict, that the Condition was broken. And as to the first, *viz.* That the Condition was against Law, it was said by the Defendant's Counsel, that this Point rests only upon the Construction of the Statute of (b) 23 *H. 8. cap. 10.* the Letter of which Act, as to this Purpose, is as followeth: *That by reason of Feoffments, &c. made of Trust, of Mannors, &c. to the Use of Parish-Churches, Chapels, Churchwardens, Guilds, Fraternities, Commonalties, Companies, or Brotherhoods erected and made, of Devotion, or by common Assent of the People without any Corporation, &c. And to the Uses and Intents to have Obits perpetual, or any continual Service of a Priest for ever, &c. or to any other like Uses and Intents, there groweth and issueth to the King our Sovereign Lord, and to other Lords and Subjects of the Realm, the same like Losses and Inconveniences, and is as much prejudicial to them, as doth and is in Case where Lands be aliened in Mortmain. Be it therefore enacted, That all and every such Uses, Intents and Purposes, of what Name, Nature or Quality the same shall be called, &c. shall be utterly void; and if any Person in Defraud of this Statute, do bind, &c. That then every such Pain, Penalty, Craft, Colour, and every other Thing and Things, &c. shall be utterly void. And that this Statute shall be always interpreted, &c. most beneficially to the Destruction of such Uses, &c. and of all other*

(a) Lit. R. 132.

(b) 11 Co. 71. a.
Cro. El. 288,
Poult. de Pace
73. a b.

- other like Uses and Intents. Provided that this Act, &c. shall not extend or hinder the Uses as shall be declared in Writing by the Executors of Rob. Jammes, and (a) John Terrey, late Aldermen of Norwich, of any Lands, &c. to be employed for the Discharge of Tolls and Customs within the said City, at the Gates of the same, for the Discharge of poor People within the same City, of Taxes and Tallages, &c. or for the Cleansing of the Streets, &c. or for any of the said good Purposes, so that the same Ordinance, &c. be had &c. within two Years next ensuing. And it was objected, That the Mischief before the Making of this Statute was, that when Feoffments were made upon Trust and Confidence, that certain Companies erected by Assent, without any Corporation, shall take the Profits, &c. the same was as prejudicial to Lords, as Alienations in Mortmain. For the Statute of 15 R. 2. c. 5. hath provided for Feoffments made unto the Use of any Body incorporate, as well Spiritual as Temporal; that such Feoffments shall be as Purchases made by themselves. But as it appears by the Preamble of the said Statute of 25 (b) H. 8. Feoffments made unto the Use of Companies not incorporate, were as prejudicial to Lords as Alienations in Mortmain. And for that Reason the said Act of 25 H. 8. made Provision against them. And altho' the Erection of a Grammar School to instruct Youth, as well in good Learning as in good Manners, was a Work of Charity, and good in itself; and so to maintain and relieve poor Men and Women; yet when Feoffments were made to a great Number of Persons to such good Uses, the same was as prejudicial to Lords for their Wards, Reliefs, Escheats, &c. as if the Feoffment had been made to the Use of a Body corporate, Spiritual or Temporal, for any good Intent or Purpose. And because the Benefit of Lords was regarded by the Statute, and it is for their Benefit to take away all such Uses, it was therefore said, that the said Uses and Intents mentioned in the said Will were void by the said Act of 23 H. 8. 2. The Statute saith, such Uses, and all other like Uses, Intents, &c. 3. The Intent of the said Act was to include good Uses, for at the Time of the making the said Act; the finding of (c) an Obit, and the Service of a Priest, &c. mentioned in the said Act, were accounted good Uses. 4. It is provided, That the said Act shall be construed as beneficial as may be, for the destroying of the said uses, and all like uses. 5. The last Proviso (d) containing an exception of certain good Uses, as to discharge the poor Citizens of Norwich of Tolls, Customs, Taxes and Tallages out of the said Act, but not simply and absolutely to except them, but to except them *sub modo*; that is to say, If the said Ordinance be made within two Years following, or otherwise to leave the said good Uses to be within the general Purview of the said Act,
- (a) Hob. 123.
- (b) Poph. 7.
- (c) Cro. El. 449.
4 Co. 113. a.
- (d) Poph. 7.

Act, strongly prove (as it was urged) that such good Uses were included within the said Act; and by consequence the said Condition being a Penalty added by the Testator for the Maintenance of the said Uses, was void by the express Words of the Statute; and then the Entry of the Heir of the Testator not lawful. Unto which it was answered by the Queen's Counsel, That our Case was out of the Intent and Meaning of the said Act of

23 H. 8. for two Reasons. (a) First, because it was not the Intention of the said Act to extend to such good and charitable Uses, as the Uses in our Case are. For *distingueda sunt tempora*, and the Time when this was made is to be considered. And as to that, first, it is well known, that before that Time all the Clergy of *England* had acknowledged King *Henry* the Eighth, to be supreme (b) Head of the Church of *England*; and before that Time, divers Superstitions and Errors in the Christian Religion, which had a Pretence and Semblance of Charity and Devotion, were discovered by the Light of God's Word; therefore to take away such (c) superstitious Uses, as to pray for Souls supposed to be in Purgatory, and the like, that Statute was made, and not to prohibit the erecting of Grammar Schools, and Relief for poor Men. For no Time was so (d) barbarous as to abolish Learning and Knowledge, nor so uncharitable as to prohibit relieving the Poor. Besides, it is to be observed, That this Statute doth not make the Feoffment or other Conveyance void, nor gives the Lord any Title to enter for Mortmain (as the Statute of 15 R. 2. cap. 5. doth) but only makes the Use void; so that the Feoffees shall, notwithstanding the Declaration of such Uses, be seised to the Feoffor and (e) his Heirs; and then it cannot be intended that the Design of the Makers of the said Act, was to make good and charitable Uses and Intents void: And the rather, because if the Feoffor had reserved but a (f) Penny Rent, or had taken a Penny in Consideration of the Feoffment, then altho' the Statute makes void the Use expressed, yet the Feoffee shall be seised to their own Use, and not to the Use of the Feoffor; in which Case as great Loss would be to the Lords of their Wards, Reliefs, Escheats, &c. as if the good Uses had continued: And notwithstanding the said Act, the Feoffees in such Case might have maintained the good Uses without any Penalty or Danger; and therefore it seemed to them that the said Act of 23 Hen. 8. in making the Use only void, was of little or no Effect. They likewise said, That the said Act of 23 Hen. 8. was the first Act that was made against superstitious Uses; and then were the Acts

(a) Cro. El. 288. Pult. de Page 74. a. Palm. 125. Poph. 8. 3 Co. 74.

(b) Co. Lit. 7. a. b.

(c) Poph. 8. 4 Co. 106. a.

(d) 11 Co. 71. a. b.

(e) 2 Syd. 47.

(f) Poph. 26. a. 2 Ro. R. 105. 10 Co. 24. a. 34. a. 2 Ro. 787, 788.

of

of 25, 25 & 28 H. 8. made to abolish the usurped Authority of the Pope, &c. and then the Acts of 27 H. 8. & 31 H. 8. were made to suppress Abbies, Pories, Nunneries, &c. And afterwards the Statutes of (a) 37 H. 8. & 1 E. 6. for Chauntries, Colleges, &c. Obits and all such superstitious Uses were made, but by none of these Acts, good and charitable Uses (as the Uses in our Case) are taken away, abolished, or made void, but rather by the Act of 1 E. 6. they are intended to be maintained as appeareth by the Preamble thereof, viz. For the Education of Youth in Virtue and Piety at Grammar Schools, for the further Augmentation of the Universities, and the better Provision of the Poor and Needy, which by the said Act of 1 E. 6. are called good and godly Uses; and therefore it shall not be intended that such good and godly Uses were made void by the Statute of (b) 23 H. 8. And as to the said Proviso for excepting certain good Uses out of the Statute of 23 H. 8. the same was rather to satisfy some Burgeses of the Parliament, who were ignorant in the Laws, than for any Necessity, as in the Statute of (c) 5 E. 6. cap. 16. the Body of the Act extends only to Offices concerning the Administration of Justice, or the King's Revenue, as Receiver, Controller, Treasurer, Aulneger, Auditor, and Surveyor, and yet the Keeper of a Park is excepted out of the same, more for the (d) Satisfaction of some ignorant Burgeses, than for any Necessity. And so they concluded, that good and charitable Uses (not favouring of any Superstition) as to find Grammar Schools, to relieve poor Men, or any such good Use, is not made void by the said Act of 23 H. 8. but (e) only superstitious Uses, and so hath the Statute in common Opinion been always taken. For almost all the Lands belonging to Towns or Boroughs not incorporate, are conveyed to several Inhabitants of the Parish, and their Heirs, upon Trust, and Confidence to employ the Profits to such good Uses, as defraying the Tax of the Town, repairing the Highways, repairing the Church, maintaining the Poor of the Parish, or supporting other Charges of the Parish, and no such Uses (altho' they are common almost in every Town) were ever made void by the Stat. of 23 H. 8. And it would be a thing dishonourable to the Law of the Land, to make such good Uses void, and to restrain Men from giving Lands to such good Uses. And a Case reported by *Bendlowe*, Serjeant at Law, was cited, by which it appeareth, that it was holden in the Common Pleas in 5 & 6 E. 6. That a Feoffment to the Use of poor People was not within the said Act of 23 H. 8. And the second Reason that the Queen's Counsel gave, was, admitting that good and charitable Uses were made void by the said Act of 23 H. 8. yet the Condition is not void, as our Case

(a) Co. Lit. 342. a. Hob. 122. Dyer 337. pl. 38. Latch 38. 4 Co. 111. a. Palm. 125. Cro. El. 449.

(b) Hob. 123. Hard. 306. 434. Palm. 125. Poph. 8.

(c) Hard. 375. 443.

(d) Poph. 8. Plowd. 564.

(e) Poph. 8. 11. Co. 71. a. b. Co. Lit. 342. a.

is, for he hath devised, that his Wife shall have his Lands and Tenements upon condition that she, by the Advice of learned Counsel in convenient Time after his Death, shall assure all his Lands and Tenements for the Maintenance and Continuance of the said Free School, and Alms-men and Alms-women for ever; so that altho' the said Uses were prohibited by the said Act, yet the Testator hath devised, that Counsel learned should advise how the said Lands and Tenements should be assured for the Maintenance and Continuance, &c. and that may be advised lawfully, viz. First to make a Corporation of them by the King's Letters Patents, and afterwards, by (a) Licence to assure the Lands and Tenements to them. So if a Man devise that his Executors shall by the Advice of learned Counsel convey his Lands to any Corporation Spiritual or Temporal; this is not against any Act of Parliament, because it may be lawfully done by Licence, &c. And so doubtless was the Intent of the Testator, for he would have the Land assured for the Maintenance and Continuance of the Free School and Poor for ever, which cannot be done without Incorporation and Licence as is aforesaid; wherefore as this Case is, this Condition is not against Law; And because it might be lawfully devised and done (although the Use had been prohibited, as it really was not) the Wife was bound to perform it, *quod fuit concessum per Curiam*. Thirdly, admitting the Use was prohibited by the said Act, and that the Reference to Counsel learned would not exempt the same out of the Act, yet the Statutes of 32 & 34 H. 8. of Wills have (as it seemeth) taken away the Force of the said Act (b) 23 H. 8. for the Words of the Stat. of 32 & 34 H. 8. are, *That all and every Person having a sole Estate in Fee-simple of any Manors, &c. shall have full and free Liberty, Power, and Authority, to give, dispose, will or devise to any Person or Persons (c) except Bodies Politick and Corporate, by his last Will and Testament in Writing, or otherwise by any other Act's lawfully executed in his Lifetime, all his Manors, &c. at his own free Will and Pleasure, any Law, Statute, Custom, or other Thing heretofore had, made, or used to the contrary notwithstanding*. So for as much as Bodies Politick and Corporate are only excepted, it seems that Companies not incorporated are designedly included and not excepted; and the rather, because it is said in the End of the Clause (any Law, Statute, &c. to the contrary notwithstanding.) And there is not any Statute which hath any Colour to restrain Conveyances or Devises to these good Uses, but the Statute of 23 Hen. 8. and therefore that Statute is taken away by the said Acts of 32 & 34 Hen. 8. And these Acts of 32 & 34 Hen. 8. as to that Purpose will have a kind and

(a) 3 Keb. 214.

(b) Co. Lit. 111. b. 1 Roll. Rep: 92.

(c) Hob. 136. 2 Bulstr. 33. 34. Dy. 255. pl. 7.

(k) 1 Co. 71. a. favourable Construction for the Maintenance of Learning, and good and charitable Uses. And upon the same Reason it was agreed in *Mich. 8 & 9 Eliz.* reported by the *L. Dyer*, (a) fol. 255. b. That the Stat. of 1 & 2 *Phil. & Mar.* shall be favourably expounded. For where a Devise was made to the Master, Fellows, and Scholars of *Trinity College in Cambridge* for finding of certain Grammar Scholars, and poor Scholars, &c. that Devise was held good by the Equity of the said Act, for it was out of the Letter of it, and that for the Maintenance of Learning, and good and charitable Uses. But the said Acts of 52 & 34 *H. 8.* have sufficient Words to take away the said Act of 23 *H. 8.* (as to the Preservation of good Uses) & *leges (v) posteriores priores contrarias abrogant*; but as to that the Barons did not deliver their Opinions, because they resolved upon the two first Points. And as to that which was said, That the (c) Condition, if it was good, is not found to be broken, it was said by the Queen's Counsel, that it was clearly broken by Matter apparent in the Verdict: for when the Wife had the Estate upon Condition, that she by the Advice of Counsel learned, in all (d) convenient Time shall assure, &c. and the Jury find that she continued seised until 5 *E. 6.* and then made the Lease for forty Years, *ut supra*: here appeareth a double Breach of the Condition: 1. That she hath not made the Assurance in convenient Time, for in Effect, the Jury have found that she did not make it in eight Years. 2. By the making of the Lease she hath (e) disabled her self to perform the Condition, as *Litt. 83.* If Feoffee upon such Condition take a Wife, or charge the Lands, or bind him self in a Statute Merchant or Staple, these are Breaches of the Condition, and 44 *E. 3. 9. b. & 26 E. 3. 73.* accord, *a fortiori* in this Case, the Wife by making of the said Lease hath broken the Condition, and therefore the Heir of the Testator hath lawful Cause of Entry. And afterwards in that Term upon a Motion made, the Barons said that they were resolved, 1st, That the Stat. of (f) 23 *H. 8.* did not extend to take away the good and charitable Uses in the Case at the Bar: And secondly, That the Condition for the Causes aforesaid was broken; and thereupon they commanded the last *Monday* of the Term, that Judgment should be entred for the Queen. And the same Day Judgment was given in the King's Bench in the like Case upon the said Statute of 23 *Hen. 8.* So the Law in this Case was resolved by Sir *Roger Manwood* and all the Barons of the Exchequer, and by Sir *John Popham* and all the Justices of the King's Bench, betwixt (g) *John Gibbons* Plaintiff, and *Thomas Maltbywade* and *John Marston* Defendants, in an *Ejectione firmæ* of Lands in *E.* in the County of *Suffolk*, and Judgment there given accordingly.

Note,

(k) 1 Co. 71. a.
Jenk. Cent.
ca. 6. Hob. 136.
3 Keb. 554.
Co. L. 99 a.
Hob. 122.
1 Roll. 556.
2 Brownl. 246.
1 Rol. Rep. 413
2 Keb. 66, 168.
Raymond 112.
Style 391.
Godb. 394.
1 Rol. 166.

(b) 11 Co. 62. b.
64. b. Cro. Jac.
121. 11 Co. 59.
a. 8 Co. 137. b.
Stamf. Pierog.
69. b. 12 Co. 8.
2 Rol. 423.
2 Inst. 685.
Godb. 169.

(c) Lit. R. 132.

(d) Palm. 73.

(e) 1. Ir. Sect. 357.
358. Perk. Sect.
801. Co. Lit.
221. a. b. 222.
a. 2 Co. 59. b.
79. a. 13 H. 7.
23. b. Br. Con-
dition 26.
217. 44 Aff.
26. 20 H. 6.
34. b. 5 Co. 21.
a. Cro. El 45c.
479. 2 And 18.
Mo. 452, 452.
Poph. 110.
Hutt. 48. 1 Ro.
447, 448. 3 Co.
29. a. b. 10 Co.
49. b. 1 Rol.
Rep. 168

(f) 11 Co. 71.
a. b. Cro. El.
288. Co. L.
342. a. Poph 8.
Pulr. de Pace.
74. a. Hob.
124. 2 Bullt.
34.

(g) Cro. El. 288.
Mo. 594.
8 Co. 131. a.
Poph. 6.

Note Reader, That any Man at this Day, may (a) give Lands, Tenements, or Hereditaments to any Person or Persons and their Heirs, for the finding of a Preacher, (b) Maintenance of a School, Relief and Comfort of maimed Soldiers, Suttenance of poor People, Reparation of Churches, Highways, Bridges, Cawfies, discharging of poor Inhabitants of a Town of common Charges; for making of a Stock for poor Labourers in Husbandry, and poor Apprentices; and for the Marriage of poor Virgins, or for any other charitable Uses. And it is good Policy upon every such Feoffment of Estate to reserve a small Rent to the Feoffor and his Heirs, or to express some such Consideration of some (c) small Sum for the Cause before rehearsed.

(a) Pultr. de
Page 74. a.

(b) Hob. 136.

Hob. ibid.

(c) Ant. 24. a.
2 R. 1. 787, 733.
10 Co. 24. a.

[See the Stat. 43 Eliz. c. 4. For redress of the Misemployment of Lands, &c. given to Charitable Uses. But Note; All Superstitious Uses are void, and given to the King, by Stat. 1 Ed. 6. cap. 14. and wherever a Use is given or devised to any Person or Company, which is not a Charitable or good Use in the Eye of the Common Law, or within the aforesaid Stat. of 43. Eliz. such use seems Void and of no effect within the Stat. 23 H. 8. (qr. 27 H. 8.) cap. 10.

34. a.
Vide 8 Co. 130.
2 Inst. 710.

Hob. 136. Cro.
Car. 40 & 525.
See 3 Salk.

334, & 384.

2 Siderf. 13.

34. & 46. post
129, 133, &c.

That Uses are to be directed by the Rules of the Common Law, &c. Vide post. 126, 129, 133.]

The Case of ALTON WOODS.

Trin. Term, 37 Eliz. Rot. 199.

In the Exchequer.

* i. e. (on the Side)

(a) Co. L. 4. b.
Kelw. 14. b.
11 Co. 45. b.
5 Co. 11.

Memorandum, that it is found elsewhere in the Remembrances of this *Exchequer*, in the 37th Year of the now *Q. Eliz.* that is to say, amongst the Records of this Term of *Holy Trinity*, with the Part* of the Queen's Remembrancer, in these Words, That is to say, *Worcester*, *ss. Memorandum*, That *Edward Coke Esq;* Attorney General of the Lady the now *Q.* who prosecutes for the said Lady the Queen present here in Court, the 20th Day of *June* this Term, in his own Person for the said Lady the Queen, gave the Court here to understand and be informed, That whereas a (a) Wood with the Appurtenances, called *Alton*, otherwise *Alvington Wood*, containing by estimation 3000 Acres of Wood in *Alton*, otherwise *Alvington*, and *Rock*, in the aforesaid County of *Worcester*, in the Hands and Possession of the said Lady the now Queen, the first Day of *October* in the first Year of her Reign, and long before, and continually after hitherto were and stood, and of Right ought to be, and still ought, as in the Right of her Crown of *England*, as in very many Records, Rolls, and Remembrances of this *Exchequer*, it is evident and appeareth upon Record: Yet one *Anne Countess of Warwick*, *Humphry Hill*, *Richard Busbopp*, and *Edward Busbopp*, little regarding the Laws and Statutes of the said Lady the now Queen, but intending the disinherison of the said Lady the *Q.* in the Premises, with Force and Arms, &c. the first Day of *October* in the 27th Year of the Reign of the said Lady the now Queen, and diverse Days and turns between the same first Day of *Oct.* in the said 27th Year, and the Day of exhibiting of this Information, in and upon the Possession of the said Lady the Queen of the Premises entred, intruded, and made Entry, and the Issues and Profits thereof coming perceived and had, and as yet do perceive and have to their own Uses, and the same Trespasts continuing, and as yet continuing in contempt of the said Lady the now Queen, and against her Laws: Whereupon the aforesaid Attorney of the said Lady the Queen for the said Lady the Queen prays the Advice of the Court in the premises.

And

And the aforesaid *Anne* Countess of *Warwick*, *Humphrey Hill*, *Richard Busbopp*, and *Edward Busbopp* come here, to answer the said Lady the *Q.* of and in the Premises, as it is contained there: And now, that is to say, from the day of *H. Trin.* in 3 weeks in this Term, came here the aforesaid *Rich. Busbopp*, by *Artb. Salway*, his Attorn. to this, by special favour of the Court specially admitted, and prayeth the hearing of the Informat. aforesaid, and it is read unto him, &c. which being read and heard, and by him the said *Rich.* fully understood, the said *Rich.* complaineth, by colour of the premises in the informat. aforesaid. above specified, to be troubled and unquietted, and that not justly; Because, by protestation, that the informat. aforesaid. and matter in the same contained, is not sufficient in Law, and to which the said *Rich.* is not necessitated, nor by the Law of the Land bound to answer in any manner; by protestat. also that the Wood aforesaid. in the informat. aforesaid. above mentioned, doth not contain, nor the aforesaid. time of the trespass and Intrusion aforesaid above supposed to be done, did contain in it 3000 Acres, in manner and form, as by the informat. aforesaid. above is supposed. Yet for Plea, the said *Rich.* as to the force and arms, or whatsoever is against the Peace of the said Lady the now *Q.* as also the whole trespass, contempt, and intrusion, in the informat. aforesaid. above specified supposed to be done, besides the entry and Ingress into the Wood aforesaid called *Alton Wood*, otherwise *Alvington Wood*, the 21st Day of *Feb.* in the 32d year of the Reign of the Lady the now *Q.* and from the same day, until the day of exhibiting of the informat. aforesaid. and besides the perceiving the Issues and profits thereof by that time coming above supposed, the said *Rich.* saith, that he in nothing thereof is guilty, in manner and form, as by the informat. aforesaid. above is supposed; and upon this he puts himself upon the Country: And the aforesaid. Attorn. General of the said Lady the now *Q.* who for the said Lady the *Q.* in this behalf prosecutes, likewise, &c. therefore (let) an inquisit. be made thereof, &c. And as to the entry and ingress into the Wood aforesaid. the aforesaid. 21st day of *Feb.* in the 32d Year aforesaid. and from that day, until the day of exhibiting of the informat. aforesaid. as also to the taking of the Issues and Profits thereof, by the same time thereof coming above supposed to be done, the said *Richard* saith, That the said Lady the now *Q.* him the said *Rich.* ought not any ways to impeach or trouble for the same, because he saith, That long before the aforesaid time, in which it is supposed the entry, intrusion, and ingress aforesaid to be done One *Anne* Countess of *Warwick* Widow, sometimes Wife of *Richard* sometimes Earl of *Warwick*, was seised of the Manor of *Abbotesley*, otherwise *Abberley*, otherwise *Abbedeley*, with the Appurtenances, in the aforesaid County of *Worcester*, whercof the aforesaid Wood in which, &c.

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then and until the Time of the grant hereafter specified, made to *Robert Earl of Leicester*, the 3d Day of *July* in the 30th Year of *Queen Elizabeth*, hereafter mentioned, and from the Time whereof the Memory of Man then was not to the contrary, was Parcel, in her Demesne as of Fee; and so thereof being seised, levied a Fine in the Court of the Lord *Henry* late King of *England* the 7th, at *Westminster* in the Countrey of *Middlesex*, from the Day of *St. Hillary* in 15 Days in the 3d Year of his Reign, before *Thomas Brian*, *Roger Townsend*, and *John Haugh* Justices, and other the said late King's faithful Subjects then there present, between him the Lord the King Plaintiff, and the aforesaid *Anne* sometimes Countess, sometimes Wife of the aforesaid *Richard Earl of Warwick*, by the Name of *Anne Countess of Warwick*, deforceant, of the Manor aforesaid, with the Appurtenances, whereof, &c. amongst other, &c. whereof a Plea of Covenant was sued between them in the same Court, that is to say, that the said Countess granted to the said Lord the King, the Manor aforesaid, with the Appurtenances, whereof, &c. and the same rendred back to him in the same Court, To have and to hold to the said Lord the King, and the Heirs Males of his Body begotten; and if it shall happen, that the said Lord the King should die without Heir Male of his Body begotten, then after the Decease of the said Lord the King, the aforesaid Manor, with the Appurtenances, whereof, &c. should wholly revert to the same Countess, and her Heirs quieted from the other Heirs of the aforesaid Lord the King, as by the Record of the aforesaid Fine in the Court of the said Lady the now Queen, of the Bench at *Westminster* aforesaid remaining, more fully appeareth. By Virtue of which Fine, the aforesaid late King *Henry* the 7th was seised of the Manor aforesaid, with the Appurtenances, whereof, &c. in his Demesne as Fee-tail, that is to say, to him and the Heirs Males of his Body issuing, the Reversion thereof to the aforesaid Countess, sometimes Wife of the aforesaid *Richard Earl of Warwick*, and the Heirs of the said Countess expectant. And the said late King so thereof being seised, and the Reversion thereof to the said Countess in form aforesaid expectant, the said Countess afterwards, and before the Time aforesaid, in which, &c. at *Abbotesly*, otherwise *Abberly*, in the aforesaid County of *Worcester*, died so as before is said, of the Reversion aforesaid seised; after whose Death the Reversion aforesaid, with the Appurtenances, descended to one *Edw.* Earl of *Warwick*, as Cousin and Heir of the said Countess, that is to say, Son and Heir of *Isabel*, Daughter of the said Countess; by which the said Earl was seised of the Reversion of the Manor aforesaid, with the Appurtenances, whereof, &c. as of Fee and Right; and the said *Edward*, Earl of *Warwick*, so thereof being seised, by an Act in Parliament of the said late King, holden at *Westminster* the aforesaid 25th Day of *Jan.* in the 29th Year of his Reign, amongst other Things, it was enacted by him the said late King, by the Assent of the Lords Spiritual and Temporal, and the Commons in the said Parliament assembled, and by the Authority thereof, That whereas *Peter Warbeck*, with others of the aforesaid late King's Rebellious Enemies and Traitors,

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7 Co. l. b.
3 Inst. 5.
Bacon's H. ff.
li. 7. 105.

in a great Multitude and Number to him associated, entred, and arrived in this Kingdom, in a certain Place called *Whitefsonbay*, in the Parish of *St. Bercie* in the County of *Cornwal*, the 7th Day of *Septemb.* in the 13th Year of the Reign of the said late King; and levied War against the aforesaid late King, notwithstanding the aforesaid *Peter* in his Journey, and issue to the said false and malicious Purpose was overthrown, and was taken, and by the same late King committed to the Prison of the *Tower of London*, where, and in which Place, the aforesaid *Edw.* Earl of *Warwick*, confederated with the aforesaid *Peter*, imagining and intending falsely and traiterously the Death and Destruction of the said late King, and the overthrowing of this Kingdom of *Engl.* intending to make the aforesaid *Peter* King of the same Kingdom, by divers devices amongst them conceived and inspired, endeavoured with divers his Adherents, speedily by divers false Messages and Notes, to set him at liberty and at large, to the Intent to execute his false and traiterous Purpose, to aid and assist him to his utmost Endeavour; for which the aforesaid *Edw.* Earl of *Warwick*, by due Course of Law of the said late King, out of his own Confession was convicted, and attainted of High Treason, as his Deserts in that Behalf required: That the said Earl, for his Offences aforesaid, by Authority of Parliament aforesaid, should be convicted, adjudged, and attainted of High Treason; and that he should forfeit to the aforesaid late King and his Heirs, all his Honours, Castles, Manors, Lordships, Hundreds, Franchises, Liberties, Privileges, Advowsons, Nominations, Presentations, Fees, Tenements, Rents, Services, Reversions, Remainders, Portions, Annuities, Pensions, Rights, Possessions, Hereditaments, Goods, Chattels, and Debts, whereof the said Earl, or any other to his Use, was seised or possessed on the Day of the Treason either committed or done, or at any Time after, within the Kingdom of *England, Ireland, Wales, Calice*, or the Counties or Marches thereof, in Fee-simple, Fee-tail, for Term of Life or Lives, or in which the said Earl then, or at any Time after had lawful Cause of Entry, within *England, Ireland, Wales, Calice*, or the Marches of them. And further, that the aforesaid *Edw.* Earl of *Warwick* should forfeit to the said late King, and his Heirs, all Honours, Castles, Manors, Lordships, Hundreds, Franchises, Liberties, Privileges, Advowsons, Nominations, Presentations, Fees, Lands, Tenements, Rents, Services, Reversions, Remainders, Portions, Annuities, Pensions, Rights, Possessions, Hereditaments, Goods, Chattels, and Debts, whereof the said Earl, or any other Person, seised to his Use, or was possessed of the 2d Day of *August* in the 14th Year of the Reign of the aforesaid late King, or at any Time then after, as by the said Act, amongst other Things, more fully appeareth. And the said *Richard* saith, That the aforesaid *Edward*

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Earl of *Warwick*, Cousin and Heir of the said *Anne Countess of Warwick*, in the Fine aforesaid named, and the aforesaid *Edw.* Earl of *Warwick*, in form aforesaid attainted, and in the Act aforesaid named, are one and the same person, and not other or divers. By colour of which conviction and attainder, and by force of the aforesaid Act of Parliament, the aforesaid late *K. Hen.* the 7th was seised of the reversion of the manor aforesaid, with the appurtenances, whereof, &c. as of fee and of right, in the right of his crown of *Engl.* and so thereof being seised, and of the manor aforesaid, with the appurtenances, in his demesne as of fee-tail, in form aforesaid being seised, the said late lord the *K.* afterwards and before the aforesaid time in which, &c. at *Westminster* aforesaid died, of the manor aforesaid, with the appurtenances, whereof, &c. and of the reversion aforesaid, in form aforesaid seised; after whose death the manor aforesaid, with the appurtenances, whereof, &c. and the reversion aforesaid, descended to the Lord *Hen.* late King of *Engl.* the 8th, as son and heir of the aforesaid late King *Hen.* the 7th; by which the said late King *Hen.* the 8th was seised of the manor aforesaid, with the appurtenances, whereof, &c. in his demesne as of fee-tail, that is to say, to him and the heirs males of his body issuing, and of the reversion of the said manor, with the appurtenances, as of fee and right. And the said late *K. Hen.* the 8th so being thereof seised, by a certain inquisition, taken at the Castle of *Worcester*, in the aforesaid County of *Worcester*, the 5th day of *July* in the 23d year of the reign of the aforesaid late King *Hen.* the 8th, before *Roger Winter*, Esq; then Escheator of the said late *K.* in the same County, by virtue of his office, by the oaths of *Richard Frier* Gent. *Rich. Shelton* Gent. *Will. Andrewes* Gent. *Rich. Dedick* Gent. *Rich. Hill* of *Leigh*, *Edw. Enolt*, *Hen. Dison*, *Roger Ibud*, *Hen. Woodward*, *John Porter* of *Claynes*, *John Brodford*, *Walter Solly*, *Roger Aldern* of *Martley*, and *Richard Walter* taken, it was found amongst other things, That the aforesaid *Anne Countess of Warwick*, in the fine aforesaid named, was seised of the manor aforesaid, with the appurtenances, whereof, &c. in her demesne as of fee; and that she being thereof so seised, the fine aforesaid in form aforesaid was levied; by which the aforesaid *K. Hen.* the 7th was seised of the manor aforesaid with the appurtenances, whereof, &c. in his demesne of fee-tail, that is to say, to him and the heirs males of his body issuing; and that the said Countess was seised of the reversion of the said manor as of fee and right, and that the said Countess of the said reversion so seised, of such her estate thereof died seised; and that after the death of the said Countess, the said reversion descended to the above. *Edw.* late Earl of *Warwick*, as cousin and heir of the said Countess, that is to say, son and heir of *Isabel*, daughter and heir of the said Countess, by which the said *Edw.* late Earl of *Warwick*,

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was seised of the reversion of the manor afores. with the appurtenances as of fee and right; and that the said late Earl being thereof so seised, that the afores. Act in the afores. Parliament of the afores. late K. *Hen.* the 7th in the afores. 19th year of his reign, was made in manner and form afores. and that by colour of the same Act, the said late K. *Hen.* the 7th was seised of the manor afores. with the appurtenances, as of fee and right; and that the said late K. *Hen.* the 7th being so thereof seised, and of the manor afores. with the appurtenances, whereof, &c. in form afores. being seised, of such his estate thereof died seised; after whose death the manor afores. with the appurtenances, whereof, &c. and the reversion afores. descended to the afores. late *Hen.* late K. of *Engl.* the 8th, as son and heir of the afores. Lord K. *Hen.* the 7th; by which the said late K. *Hen.* the 8th was seised of the manor afores. with the appurtenances, whereof, &c. in his demesne of fee-tail, that is to say, to him and the heirs males of his body, lawfully issuing, the reversion thereof to him and his heirs in form afores. expectant, as by the inquisition afores. in the Court of Chancery of the said lady the Q. at *Westmin.* afores. in due manner returned, and there remaining on record more fully appeareth. And the said *Richard* further saith, That the afores. late K. *Hen.* the 8th, so of the manor afores. with the appurtenances, whereof, &c. And of the reversion thereof in form afores. being seised, the said late K. *Hen.* the 8th, the 3d day of *Novemb.* in the 33d year of his reign at *Westmin.* aforesaid, by his letters patents under his great seal of *England* sealed, which the said *Richard* here in Court brings, bearing date at *Westmin.* afores. the same day and year, reciting, That whereas the said late K. *Henry* the 8th, the 20th day of *Octob.* in the 19th year of his reign, by his letters patents, had given and granted unto *Walter Walsbe*, by the name of *Walter Walsbe*, one of the Grooms of his privy chamber, his manor of *Grafton Flevere*, by the name of the manor of *Grafton Fleeфорд*, with his appurtenan. in the county of *Worcester*, and the advowson of the church of *Grafton Fleeфорд* afores. as also all and singular his messuages, lands and tenements whatsoever in *Grafton Fleeфорд* in the county afores. together with the K's fees, wards, marriages, reliefs, rents and services whatsoever, to the manor and other the premises, and to every part thereof any wise soever belonging or appertaining; To have and to hold the said manor, and other the premises, with all and singular their members and appurtenances whatsoever, to the abovesaid *Walter*, for the term of his life, as in the said letters patents more fully it was contained. And whereas also the said late K. *Hen.* the 8th, the 6th day of *Decemb.* in the 21st year of his reign, by other his letters patents, had given and granted to the aforesaid *Walt. Walsbe*, and to one *Elizabeth* then his wife, by the names of *Walt. Walsbe*, one of the grooms of his privy chamb. and *Eliz.* his wife, the manor of *Charleton* in the county of *Somerset*, by the name of his manor of *Charleton* in the county of *Somerset*,

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with all and singular his members and appurtenances whatsoever, by whatsoever right or title the said manor in the hands of the said late K. then were, to have and to hold the said manor, with the appurtenances, to the said *Walter* and *Elizabeth*, and their assigns, for the term of the lives of the said *Walter* and *Elizabeth*, and the longer liver of them, as in the said letters patents it was more fully contained. The afores. late K. *Hen.* the 8th, then in consideration of the true and laudable service to the said lord the K. by the afores. *Walter Walsbe*, before that time done, and from thence after to be done; and for that the said *Walter*, the afores. other letters patents, to him of the afores. manor of *Grafton Fleward*, alias *Fleuard*, and the same *Walter*, and the afores. *Elizabeth*, the afores. other letters patents, to them of the afores. manor of *Charleton*, with their members, and singular their appurtenances, in form aforesaid made, to the said late K. *Henry* the 8th in his Chancery had restored there to be cancelled, to the intent that the said late K. *Hen.* the afores. manor of *Grafton Fleuard*, with the appurtenances, and the said Advowf. of the church of *Grafton Fleuard*, and all and singular messuages, lands and tenements of the said lord the K. in *Grafton Fleuard*, as also the afores. manor of *Abbottesly*, in the afores. county of *Worcester*, with their appurtenances whatsoever, and the Advowfion of the church of *Abbottesly* in the county aforesaid, and all lands and tenements of the said lord the K. whatsoever, with the appurtenances in *Abbottesly*, otherwise *Abberley*, by other letters patents of the said late King to the said *Walter* and *Elizabeth* he would be pleased to grant; which said former letters patents, in the court of Chancery afores. at *Westmin.* afores. to the same intent at the time of the making of the afores. letters patents here in court, were delivered up and cancelled, of the special grace of the said K. and of his certain knowledge and meer motion, by the same letters patents here in court shewed and brought forth, gave and granted unto the said *Walter Walsbe*, and *Eliz.* his wife, the afores. manors of *Grafton Fleuard*, and *Abbottesly*, otherwise *Abberley*, with all and singular their members and appurtenances, as also all and singular lands, tenements, reversions, services, knights fees, liberties, franchises, courts leets, views of frank-pledges, parks, warrens, waifs, strays, and other commodities and privileges whatsoever within the afores. manors, or any of them being, or unto the said manors, or any of them in any manner belonging or appertaining, to have and to hold the manors afores. and every of them, and all the premises so as before is said, by the said lett. patents here in court shewed forth, granted the same and every part thereof with their members and appurtenances whatsoever, to the said *Walter Walsbe* and *Elizabeth* his wife, and to the heirs males of the body of the said *Walter* begotten, as by the said letters patents, amongst other things, more fully appeareth: And the said *Richard* in fact saith, That the afores. *Walter*, long before the making of the afores. letters patents, and at the time of the making thereof,

and long after, was Servant of the said late K. *Henry* the 8th, and one of the Grooms of the *Privy Chamber* of the said late King, and many good, laborious, and laudable Services to the said late K. *Henry* the 8th, before the making of the said Letters Patents, and afterwards did and performed; and that the said *Walter*, the aforesaid other Letters Patents of the aforesaid Manor of *Grafton Fleward*, and the said *Walter* and *Elizabeth*, the aforesaid other Letters Patents to them of the said Manor of *Charleton*, with their several Members and Appurtenances in Form aforesaid made by the said late King *Henry* the 8th, before the making of the said other Letters Patents to them in Form aforesaid made, and here in Court shewed forth in his *Chancery* aforesaid at *Westminster* aforesaid, had surrendred and procured to be cancelled, as in the said letters patents, here in Court shewed forth it is alledged and testified: By Virtue of which Letters Patents, here in Court shewed forth, the said *Walter* and *Elizabeth* were seised of the said Manor of *Abbottesly*, with the Appurtenances, whereof, &c. amongst other, that is to say, The said *Walter* in his Demesne as of Fee-tail, that is to say, to him and the Heirs Males of his Body issuing, and the aforesaid *Eliz.* in her Demesne as of Freehold for the Term of her Life; and the said *Walter* and *Eliz.* so being thereof seised, the said *Eliz.* afterwards, and before the Time in which, &c. at *Abbottesly* aforesaid died; and the aforesaid *Walter* over-lived her, and held himself in the afores. manor of *Abbottesly*; with the appurtenances, whereof, &c. and was thereof seised in his demesne of fee-tail, in form afores. by right of survivor; and the said *Walter*, so thereof being seised, by an Act of Parliament of the same late K. *H.* the 8th, made at a Parliament holden at *Westm'* aforesaid, the 8th day of *July* in the 28th year of his reign, reciting by the said act, Whereas the afores. *Anne* countess of *Warw.* in the fine afores. above named, in the 3d year of the reign of the late K. *Henry* the 7th, by fine then levied before the Justices of the K. of *Common Pleas* at *Westm.* had given and granted unto the said late K. *Henry* the 7th, amongst other things the lordship and man. of *Abbottesly*, with the appurtenances in the co. of *Worcester*, To have to the said K. and the heirs males of his body issuing, as by the same fine remaining on record, amongst other things, it more fully appeared; By virtue of which the said late K. was seised of the said manor, with the appurtenances, in his demesne as of fee-tail, and so thereof being seised, the said countess died; after whose death the reversion of the said manor, with the appurtenances in fee-simple did descend and come to *Edw.* late earl of *Warwick*, which said reversion and fee-simple of the said manor, amongst other castles, honours, manors, lands, tenements and hereditaments then after escheated, and came into the hand and possession of the aforesaid late K. *Henry* the 7th and his heirs, by the Attainder of High Treason of the said *Edward* Earl of *Warwick*, as by the

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Record therefore more fully did appear. And the aforesaid late King *Henry* the 7th so thereof being seised died; after whose Death the same Castles, Honours, Manors, Lands, Tenements and Hereditaments, and other the Premises in the Fine aforesaid contained, amongst other Lands, Manors, Tenements and Hereditaments, descended and came to the said late King *Henry* the 8th, as Son and Heir of the aforesaid late King *Henry* the 7th, by due Course of Inheritance; By Virrue whereof the said late King *Henry* the 8th had been, and was then thereof seised; and because the aforesaid Castles, Manors, Lordships, Lands, Tenements, and other the Premises were of great Value, and had many great and ample Liberties, Preheminences, Commodities and Delights to the same belonging; therefore then and there it was enacted by the Authority of same Parliament, That the aforesaid late King *Henry* the 8th, his Heirs and Successors from thence after should have, hold, and enjoy for ever, all and singular the aforesaid Castles, Manors, Lands, Tenements and Hereditaments, with the Appurtenances, and all and singular the Premises: And that the said Castles, Manors, Lands, Tenements and Hereditaments, with the Appurtenances, and all and singular other the Premises, by Authority of the said Parliament should be adjudged in the aforesaid late K. *Henry* the 8th, his Heirs and successors, in fee-simple for ever, the fine aforesaid, or any other thing or things before then had, made, or used, or to be allowed, to the contrary in any thing notwithstanding, as by the same act more fully appeareth. Saving always to all and singular person and persons, bodies politick and corporate, their heirs and successors, and to the heirs and successors of every of them, other than the afores. late countess of *Warwick*, and her heirs, and the heirs of the said *Richard* late earl of *Warwick*, father of the late countess, all such rights, titles, uses, interests, terms of years, demise, demises, rents, fees, annuities, possessions, reversion, remainder, distresses, entries, actions, grants, offices, commons, conditions, liberties, profits, commodities and suits, in such manner and form, and conditions, as they, or any of them, their heirs and succes. or the heirs or succes. of any of them had, could, might, or ought to have had, if the act afores. never had been had or made, any thing in the said act of parliament to the contrary notwithstanding, as by the said act, amongst other things it more fully appeareth. By colour of which act the reversion aforesaid to the aforesaid manor of *Abbotesley*, otherwise *Abberley*, and the manor aforesaid in reversion, after the estate and interest of the aforesaid *Walter Walshe* and *Elizabeth* his wife, so as aforesaid, granted did belong to the aforesaid late K. *Henry* the 8th, his heirs and successors in fee-simple, according to the form and effect of the act aforesaid.

Note.

By

By which the said late *K. Henry* the 8th was seised of that reversion as of fee and right, and the said late King so being thereof seised, and the said *Walter* of the aforesaid manor of *Abbottesley*, with the appurtenances, whereof, &c. in form aforesaid being seised, the aforesaid *Walter* at *Abbottesley* aforesaid, before the aforesaid time, in which, &c. died of such his estate thereof seised. After whose decease the said manor, with the appurtenances, whereof, &c. descended to one *Walter Walsbe* his son, as son and heir male of the body of the same *Walter Walsbe* his father issuing, by which the said *Walter Walsbe* the son, after, and before the time in which, &c. entred into the said Manor of *Abbottesley*, whereof, &c. and was thereof seised in his demesne as of fee-tail, that is to say, to him and the heirs males of his body issuing, and the aforesaid late *K. Henry* the 8th was seised of the reversion thereof, as of fee and right; and so thereof being seised, the said late King afterwards, and before the time, in which, &c. at *Westminster* aforesaid died of such his estate thereof seised. After whole death the reversion of the aforesaid manor of *Abbottesley*, with the appurtenances, whereof, &c. descended to the Lord *Edward* late King of *England* the 6th, as son and heir of the aforesaid late *K. Henry* the 8th. By which the said late *K. Edward* the 6th was seised of the reversion of the said Manor, with the Appurtenances as of Fee and right, and so thereof being seised, the said late *K. Edward* the 6th afterwards, and before the time in which, &c. at *Westm'* afores. died of such his estate thereof seised, without issue of his body issuing; After whose death the reversion of the afores. manor of *Abbottesley*, with the appurtenances descended to the lady *Mary*, late *Q. of England*, as sister and heir of the said late King *Edward* the 6th. By which the said late *Q. Mary* was seised of the said reversion, as of fee and right, and so thereof being seised, the said late *Q. Mary* afterwards, and before the time in which, &c. at *Westm'* aforesaid died of such her Estate thereof seised, without issue of her body issuing. After whose death the said reversion did descend to the said *L. the Q.* that now is, as sister and heir of the aforesaid *Q. Mary*: By which the said lady the now *Q.* was seised of the said reversion, as of fee and right; and the said lady the now *Q.* so thereof being seised, and the aforesaid *Walter Walsbe* the son, of the afores. manor of *Abbottesley*, whereof, &c. in his demesne as of fee-tail, in form aforesaid being seised, the said *Walter* afterwards, and before the time in which, &c. at *Abbottesley* aforesaid died of such his estate thereof seised: After whose death the said manor, with the appurtenances, whereof, &c. did descend to one *William Walsbe* his son, as son and heir of the body of the aforesaid *Walter Walsbe* the son issuing. By which the said *William* afterwards, and before the time in which, &c. into the said manor, with the appurtenances, whereof, &c. entred,

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entred, and was thereof seised in his demesne as of fee-tail, that is to say, to him and the heirs males of his body issuing, and so thereof being seised the said *William* afterwards, that is to say, the 3d day of *July* in the year of the reign of the said lady the now *Q.* the 30th at *Abbottesley* aforesaid, by his indenture of bargain and sale, between *Robert* then Earl of *Leicester*, by the name of the Right Hon. *Robert*, Earl of *Leicester*, Baron of *Denbigh*, of both the most Noble Orders, of the Garter, and St. *Michael* Knight, Lord High Steward of her Majesty's most Hon. Household, (Lord) Chief Justice of *Oyer* and *Terminer*, of all her Majesty's forests and chaces by South *Trent*, and one of her Majesty's most Hon. Privy Council of the one part, and the aforesaid *Wil. Walshe* by the name of *Wil. Walshe* of *Witley* in the county of *Worcester*, Esq; of the other party made, and afterwards the 8th day of the said month of *July*, according to the form of the statute in that case made and provided, in the Court of Chancery of the said lady the now Queen at *Westminster* aforesaid, in the said county of *Middlesex* then being in due manner of Record inrolled, one part of which sealed with the seal of the said *William Walshe*, the said *Richard Busbopp* here in court sheweth forth, whose Date is the same 3d day of *July* in the 30th year aforesaid, for and in consideration of a certain sum of money to the said *William* by the aforesaid Earl of *Leicester*, then and there before had paid, bargained and sold to the said Earl of *Leicester* the wood aforesaid, with the appurtenances in which, &c. to have and to hold to the said Earl of *Leicester*, his Heirs and Assigns for ever. By colour of which aforesaid Bargain and Sale, and Inrolment thereof, the said Earl of *Leicester* into the Wood aforesaid, with the Appurtenances entred, and was thereof seised in his Demesne as of Fee; and so thereof being seised, the Earl of *Leicester* afterwards, that is to say, the 5th day of *September* in the 30th Year of the Lady the now Queen aforesaid, at *Abbottesley* aforesaid died of such his Estate thereof seised without Heir of his Body issuing; after whose death the Wood aforesaid with the Appurtenances descended to *Ambrose* then Earl of *Warwick*, as Brother and Heir of the aforesaid late Earl of *Warwick*, by which the said *Ambrose* Earl of *Warwick* into the Wood aforesaid with the appurtenances entred, and was thereof seised in his Demesne as of Fee, and so thereof being seised, the said *Ambrose* Earl of *Warwick* afterwards, that is to say, the 24th day of *January* in the 32d Year of the Reign of the said Lady the now Queen at *Abbottesley* aforesaid, by his Indenture, made between him the said *Ambrose* Earl of *Warwick*, by the Name of the Right Honourable *Ambrose*, Earl of *Warwick*, of the most Noble Order of the Garter Knight, of the one Part, and *Edward* then Earl of *Bedford*, and *Will. Russel*, Knt.

Charles Morrison Knt. and *Ambrose Copinger* Esq; by the names of the Right Hon. *Edward* Earl of *Bedford*, *Will. Russel* Knt. *Charles Morrison* Knt. and *Amb. Copinger* Esq; of the other Part, one Part of which, sealed with the Seal of the said *Ambrose* Earl of *Warwick*, the said *Rich. Busbopp* brings here into Court, whose date is the same day and year, for and in consideration of the natural entire and cordial love and affection, which the aforesaid *Ambrose* Earl of *Warwick* then had and bore to his most dear and beloved then wife, the said *Anne* Countess of *Warwick* in the information aforesaid above named, daughter of the Right Hon. *Francis* Earl of *Bedford* deceased, Grandfather of the said *Edward* then Earl of *Bedford*, and Father of the said *Will. Russel*, as for and in consideration of a Marriage before that time had, between the aforesaid *Ambrose* then Earl of *Warwick*, and the aforesaid Lady *Anne* now Countess of *Warwick* then his wife, and for and in consideration of the increase of the Jointure of the said *Anne*, before that time made in the respect of the aforesaid Marriage; and in consideration also of the better advancing and enabling of the said *Anne*, after the death of the said *Ambrose* then Earl of *Warwick*, if she the said her beloved husband should survive, to support and sustain her honourable Estate, and to pay such debts, which the said Earl owed at the time of his death, and also such legacies, as the said Earl of *Warwick* by his last Will in writing should bequeath; the said Earl covenanted and granted for him, his heirs, executors and administrators, to and with the aforesaid *Edward* Earl of *Bedford*, *Will. Russel*, *Charles Morrison*, and *Ambrose Copinger*, their heirs and assigns, and every of them, That immediately from and after the sealing and delivery of the said indenture, the said Earl of *Warwick*, his heirs, and assigns, and every of them should and be seized of and in the Wood aforesaid with the appurtenances amongst other things, by the name or names of *Alton Woods*, otherwise *Alvington Woods*, with the appurtenances, situate and being within the Parish of *Rock*, or elsewhere, within the several Counties of *Worcester* and *Salop*, or any or either of them, to the uses, intents and purposes, afterwards in the said Indenture expressed and declared; that is to say, to the use of him the said *Amb.* Earl of *Warw.* for the term of his life, without impeachment of any waste; and after the decease of him the said Earl of *Warwick*, to the use of the aforesaid *Anne* Countess of *Warwick*, in the Information aforesaid named, by the name of the Lady *Anne*, Countess of *Warwick*, wife of him the said Earl of *Warwick*, and the right Heirs of the said *Anne* for ever; by pretext and force of which covenant and grant aforesaid, and by force of a certain Act of transferring of uses into the possession in the Parliam. of the aforesaid Lord *Henry*, late K. of *England* the 8th, the most dear Father of the said L. the now Q. holden at *Westm.* aforesaid,

said the 4th day of *February* in the 27th year of his reign, made; and provided, the aforesaid *Ambrose* Earl of *Warw.* was seised of the Wood aforesaid with the appurt. amongst other things, in his demesne, as of freehold during his life, without impeachment of waste, the remainder thereof, after the decease of him the said Earl of *Warw.* to the aforesaid *Anne* late Countess of *Warw.* and her heirs expectant; and the said *Ambrose* Earl of *Warw.* so thereof being seised, the remainder thereof in form aforesaid expectant, the said Earl afterwards, that is to say, the aforesaid 21st day of *Feb.* in the 32d year of the reign of the Lady the now *Q.* aforesaid, at *Abbottesley* aforesaid dyed, after whose death the said *Anne*, now Countess of *Warwick*, into the Wood aforesaid, with the appurtenances, as into her remainder thereof entred, and was, and yet is thereof seised in her demesne as of Fee, by colour and force of the premisses: By which the said *Richard Busbopp*, as servant unto the aforesaid *Anne* now Countess of *Warw.* and by her command, the aforesaid 21st day of *Feb.* in the 32 year of the reign of the said Lady the now *Q.* aforesaid, and on the days and times aforesaid, betwixt the same 21st day of *Feb.* in the 32d year aforesaid, and the day of the exhibiting of the information aforesaid, into the Wood aforesaid with the appurtenances entred, and the issues and profits thereof by that time arising, to the use of the said *Anne*, now Countess of *Warwick*, took and had, and doth yet take and have; as it was and is lawful for him to do. And the aforesaid *Richard* further saith, That the aforesaid *Will. Walshe*, yet overliveth, and is in full life, that is to say, at *Abbottesley* aforesaid, without that, that the Wood aforesaid with the appurt. or any parcel thereof, in the Hands and possession of the said Lady the now *Q.* is, or before this was, or of right ought to be in manner and form, as in and by the information aforesaid it is supposed; and without that, that the said *Rich. Busbopp*, in or upon the possession of the said Lady the now *Q.* of the Wood aforesaid with the appurt. or any part thereof entred, intruded, or made ingress, in manner and form as by the information aforesaid it is above supposed, and without that, that there is any record, roll, or remembrance, besides the record of the informat. aforesaid, by which it may appear, that the Wood aforesaid with the appurt. in the informat. above specified, or any parcel thereof in the hands and possession of the said *L.* the now *Q.* is, or standeth, or of right ought to be, or stand, in manner and form as in the informat. aforesaid above is supposed: all and singular which said matters the said *R. Busbopp* is ready to aver, as unto the Court, &c. Whereupon he prayeth Judgment, and that he as to the premisses, from this Court be dismissed. And because the Court here will advise of the Plea aforesaid, before that, &c. further Day is given unto the aforesaid *Rich. Busbopp*, in state as now, until 8 days of *St. Mich. &c.*

At which day the said *Rich. Busbopp* came here as before ; And the said Attorn. Gen. of the said Lady the now Q. who prosecutes for the said Lady the Q. present here in Court in his proper person for his said Lady the Q. by protestation, not acknowledging any thing in the Plea aforesaid of the said *R. Busbopp*, by him above pleaded, to be true in manner and form as the said *Rich.* in his plea afores. above hath pleaded : Yet for reply, the said Attor. of the said L. the Q. for the same L. the Q. saith, That the plea of the said *R. Busbopp*, as to the entry, intrusion, and ingress afores. in the afores. *Wood*, by him the said *Rich.* in the information afores. supposed to be done, is not sufficient in Law to discharge the said *Rich.* of the said entry, intrusion, and ingress ; whereupon for default of sufficient answer in this behalf, the said Attor. of the Lady the Q. for the said Lady the Q. prayeth Judgment, and that the aforesaid *Richard* of the same entry, intrusion, and ingress, by the aforesaid *Richard* thereof supposed to be done, be convicted ; and the said *Richard* saith, That he hath above alledged in bar and preclusion of the said informat. sufficient matter in Law, to bar the said Lady the now Queen, from the possession of the aforesaid *Wood*, in the said informat. specified, and of every parcel thereof, which he is ready to aver, as unto the Court, &c. which matter aforesaid the Attor. of the Lady the Q. for the same Lady the Q. doth not deny, nor to the same any ways for the said Lady the Q. answereth, but the averment aforesaid to admit doth altogether refuse ; wherefore as before the said *Rich.* demandeth Judgment, and that he as to the premisses from this Court be dismissed, &c. And because the Barons here will advise themselves of and upon the premisses, whereof the aforesaid *Rich.* hath above put himself in Judgm. of the Court, before that they give Judgm. thereof, further day is given to the afores. *R. Busbopp* here until 8 days of *St. Hill.* to hear their Judgment thereof, because the said Barons thereof not yet, &c. And as to the trial of the issue aforesaid by the Country to be tried, above joined, It is commanded to the Sheriff of the aforesaid County of *Worcester*, that he do not omit, &c. and that he cause to be here at the said 8 days of *St. Mich.* 12 good and lawful men of the neighbourhood of *Alton*, otherwise *Alwington* and *Rock*, in the said County, whereof each, &c. by whom, &c. and who neither &c. And the same day is given here to the same *Rich. Busbopp* here, &c. At which day cometh the said *Rich. Busbopp*, by his Attorney aforesaid ; and as to the aforesaid writ of *Venire facias*, the Sheriff thereof did nothing ; nor sent that writ ; therefore as to the trial of the issue aforesaid, as at first, it is commanded to the Sheriff of the aforesaid County of *Worcester*, that he do not omit, &c. and that he cause to be here from the day of *Easter* in 15 days, 12 &c. to recognize in form aforesaid, &c. And the same day is given thereof here, to the aforesaid *Richard Busbopp*,

Demurret.

Joinder.

Anno xxx. iiii.
Issue.

Venire.

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And because the Barons here will further advise with themselves of and upon the Premises, whereof the aforesaid *Rich. Busbopp* above puts himself in Judgment of the Court, day thereof is further given to the aforesaid *Rich. Busbopp*, here until from *Easter-day* in 15 days, to hear thereof their Judgment, because the said Barons thereof are not yet, &c. At which day cometh the said *Rich. Busbopp* by his Attorney aforesaid. And as to the aforesaid Writ of *Ven. Facias*, the Sheriff thereof did nothing, nor sent that writ; therefore as to the Trial of the Issue aforesaid, as at first, it is commanded to the Sheriff of the aforesaid County of *Worcester*, that he do not omit, &c. and that he cause to come here in 8 days of *Holy Trinity* 12, &c. to know in form aforesaid: And the same day is given thereof here, to the aforesaid *R. Busbopp*, and because the Barons here will farther advise themselves of and upon the premises, whereof the said *R. Busbopp* above put himself in the Judgment of the Court, farther day is given to the aforesaid *Rich. Busbopp* here, to hear their Judgment thereof, because the same Barons thereof are not yet, &c. At which day here cometh the aforesaid *R. Busbopp* by his Attorney aforesaid, and as to the aforesaid writ of *Venire Facias*, the Sheriff did nothing thereof, nor sent that Writ; therefore as to the trial of the issue aforesaid, as before, it was commanded to the Sheriff of the aforesaid County of *Worcester*, that he do not omit, &c. and that he cause to come here in 8 days of *St. Michael* 12, &c. to recognize in form aforesaid, &c. And the same day thereof is given here, to the aforesaid *Rich. Busbopp*; and because the Barons here will farther advise themselves of and upon the premises, whereof the aforesaid *Richard Busbopp* above put himself in the Judgment of the Court, farther day is given to the aforesaid *Rich. Busbopp* until the aforesaid 8 days of *St. Mich.* to hear thereof their Judgment, because the same Barons thereof are not yet, &c. At which day cometh the said *Rich. Busbopp*, by his Attorney aforesaid; and as to that writ of *Venire Facias*, the Sheriff did nothing, nor sent that writ; therefore to try the issue aforesaid, as at first, it was commanded to the aforesaid Sheriff of the County of *Worcester*, that he do not omit, &c. and that he cause to come here from the day of *St. Hill.* in 14 days 12, &c. And the same day is given here to the aforesaid *Rich. Busbopp*; and because the said *Rich. Busbopp* above put himself on the Judgment of the Court, farther day is given to the aforesaid *Richard Busbopp* here until from the said day of *Saint Hillary* in 15 days to hear their judgment thereof, because the Barons here thereof are not as yet, &c. At which day cometh the said *Rich. Busbopp* by his Attorney aforesaid, and the Barons here the premises being seen whereof the aforesaid *Richard Busbopp* put himself upon in the Judgment of the Court, and

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Judicium.

and mature deliberation thereof amongst them being had, Judgment for the Defend. because it seemeth to the Barons that the plea aforesaid of the said *R. Busbopp* thereof by him in manner and form above pleaded is sufficient in Law to discharge the said *Rich. Busbopp* of the entry, intrusion, and ingress above supposed to be by him done in the aforesaid Wood called *Alton*, otherwise *Alwington Wood*, in the said information specified, the aforesaid 21st day of *Feb.* in the 32d year of the reign of the Lady the now *Q.* and from the said 21st day of *Feb.* until the aforesaid day of exhibiting of the said information, that is to say, the 20th day of *June* in the 37th year of the reign of the said *L.* the now *Q.* and of the taking of the issues and profits thereof for that time arising, (a) It is granted by the Barons, that the aforesaid *R. Busbopp*, as to the afores. entry, intrusion, and ingress by him above supposed to be done in the aforesaid Wood called *Alton*, otherwise *Alwington Wood*, in the information specified, the aforesaid 21st day of *Feb.* in the 32d year of the reign of the *L.* the now *Q.* and from the said 21st day of *Feb.* until the afores. day of the exhibiting of the said informat. that is to say, the 20th day of *June* in the 37th year of the Reign of the said *L.* the *Q.* and as to the taking of the issues and profits thereof for that time arising, go thereof at present, without day, saving always the right of the *Q.* if at another time, &c. And as to the trial of the issue aforesaid above joined by the Country to be tried, it is commanded to the Sheriff of the aforesaid County of *Worcester*, as at first, that he do not omit, &c. and that he cause to come here from the day of *Easter* in 15 days 12, &c. to recognize, &c. And the same day is given here to the aforesaid *R. Busbopp*: At which day, the said *R. Busbopp* comes here as at first, and the afores. Attorn. Gen. of the said Lady the now *Q.* who for the said Lady the *Q.* prosecutes, present here in Court at the same day in his proper person, and by the Barons being spoken to and asked, If he against the said *R. Busbopp* for the trial of the afores. issue above by the Country would farther prosecute, said that No; upon which, the premisses being seen by the Barons here, and mature deliberat. being had amongst them thereof, it is granted by the said Barons, that the afores. *R. Busbopp*, as to the trial of the said Issue, go without day at present, saving always to the *Q.* her action, if at another time, &c. And afterwards, that is to say, the 11th day of *April* in the 39th year of the said Lady the now *Q.* the said *L.* the *Q.* sent here her close writ under the great Seal of *England* to her Treasurer and Barons of this Court of *Excheq.* directed, the tenor of which follows in these words: *ff. Eliz.* by the grace of God of *Eng.* (*Scotl.*) *France* and *Irel.* Queen, defender of the Faith, &c. To the Treasurer and Barons of her *Exchequer*, Greeting: Because in the Record and Process, and also in giving of Judgm. in the plaint which was in our Court before you

(a) Devant 22.
a. Apres 40 a.
119. b. 1. Roll.
R. 278, 279.
3 Bullfr. 92, 93,
94. 1 Ro. 771.
774. Cro. Car.
442, 443. Cro.
Jac. 63, 86, 638.
Yelv. 130. Hob.
17. 19, 194.
337. Stat. 16 &
17 Car. 2. cap.
8 Stat. 22 &
Car. 2. cap.
4. Jenk. Cent.
13. Cro. Eliz.
145. Palm. 260.
N. Benl. 148.
pl. 226. Poph.
203, 212.
Noy 77. Latch
76, 83, 188. 1.
Bullfr. 125, 126.
1 Syd. 70. 1
Bullfr. 179.
Nolle prosequi.

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the aforeſaid Barons of our *Exchequer* aforeſaid, in *Trinity* Term in the 37th Year of our reign, by Bill between us and *Rich. Buſkopp*, of certain treſpaſſes and intruſions in certain of our Woods with the appurtenances, called *Alton*, otherwiſe *Alvington Woods*, containing by eſtimation 3000 Acres of Wood in *Alton*, otherwiſe *Alvington* and *Rock*, in our County of *Worceſter*, manifeſt Error hath intervned to our great damage: And whêreas in the Stat. in the Parliament of the Lord *Edw.* the 3d, late K. of *England*, our progenitor, holden at *Westminster*, and in the 31ſt year of his reign made, amongſt other things, it is agreed and eſtabliſhed, that in all caſes the K. or other perſons touching, whêre any one complaineth of error made in the proceſs in the *Exchequer*, the Chancellor and Treſurer cauſe to come before them in ſome Chamber of Council nigh to the *Exchequer*, the record of the proceſs of the ſame out of the *Exchequer*, and taking to them the Juſtices and ſuch like ſages, as to them ſhall ſeem fit to be taken, they cauſe to be called before them the Barons of the *Excheq.* aforeſ. to hear their informations, and the cauſes of their Judgment, and the buſineſs thereupon cauſe to be duly examined. And if any Error was found, the ſame cauſe to be corrected, and the Rolls to be amended, and afterwards them in the ſaid *Exchequer* to do execution thereof to be remitted as belongeth, as in the ſaid Stat. it is contained: We therefore willing the Errors, if any ſuch there be, ſhall be corrected, according to the form of the Stat. aforeſaid, and ſpeedy Juſtice to be done in that behalf, command you that if Judgm. thereof be given, then the Record and Proceſs aforeſ. with all things concerning the ſame, before our beloved and faithful Counſellor *T. Egerton*, Knt. keeper of our great Seal of *England*, and you the aforeſaid Treſurer in the Council Chamber next to the *Exchequer* aforeſaid, called the Council Chamber, upon *Tuesday*, that is to ſay, the 21ſt day of this Inſt. month of *April*, you cauſe to come. And to the ſame keeper of our great Seal, and you the aforeſaid Treſurer, the record being ſeen and examined, and the proceſs aforeſaid, and your informations being heard, you the aforeſaid Barons further in this part with the Council of the Juſtices and other ſages aforeſaid you cauſe to be done, what of right and according to the Form of the Statute is to be done. Witneſs my ſelf at *Westm.* the 11th day of *April* in the 39th Year of our Reign. *Symons.* At which ſaid 29th day of the ſaid Month of *April*, the aforeſaid worthy Man *Tho. Egerton* Knt. Keeper of the great Seal of *England*, and *William* Lord *Burghley* Lord Treaf. of *England*, cauſed to come before them the Record aforeſaid in the aforeſaid Chamber next to the *Exchequer* aforeſaid, called the *Council Chamber*, and at the ſaid day and place came before the Lord Keeper of the great Seal, and the Lord Treſurer, the aforeſaid Attor. Gen. of the Lady the Q. and for the ſaid

31 E. 3. cap.
12 1 Co 11. a.
6 H. 7. 15. b.
Plov. 206. b.
8 H. 7. 13. a.
Savil 36. 37 H.
8 15. a.

Lady

Lady the Q. said, that in the record and process afores. and in the giving of the judgment afores. of and upon the afores. said demurrer in Law it is diversly erred, that is to say, that the afores. R. *Busbopp* by his plea in Bar of the informat. aforesaid pleaded doth suppose, that the afores. late K. *Henry* the 7th was seised of the reversion of the manor afores. with the appurt. whereof, &c. as of fee and right, in the right of his crown of *England* by colour of the attainder of the afores. *Edw.* late E. of *Warw.* and by the force of the afores. Act of Parliam. in the 19th year of the reign of the said late K. in the Bar afores. mentioned, by which Act it was enacted, that the afores. *Edw.* late Earl should forfeit to the said late K. all his manors, lands, tenem. and hereditam. whereas the aforesaid late K. by virtue of the attainder and Act of Parliam. afores. made as before is said, could not be seised of the Reversion afores. before inquisition thereof taken, and of Record remaining, by which it should be found, that the afores. Earl at the time of the treason afores. by him committed, or any time after was seised of the said reversion as of fee and right, and in this, that the afores. R. doth suppose, that the afores. late K. *Hen.* the 7th dyed seised of that reversion, and that the said reversion descended to the afores. late K. *Hen.* the 8th, as son and heir of the afores. late K. *Hen.* the 7th; whereas in fact the said reversion did not descend to the said late K. *Hen.* the 8th, nor by the Laws of this Kingdom could descend before the inquisition thereof for the aforesaid late K. *Hen.* the 7th thereof to be found, and of record to remain: And in this, that the said R. *Busbopp* supposeth that by a certain inquisition taken at the Castle of *Worcester* the 5th day of *July* in the 23d year of the reign of the afores. late K. *H.* the 8th, before *Roger Winter* Esq; then escheator of the said late K. in the said County, by virtue of his office, it was found that the afores. *Edw.* late E. of *Warw.* was seised of the reversion of the manor afores. as of fee and right, and so thereof being seised, the afores. Act in the afores. Parliam. of the aforesaid late K. *Hen.* the 7th, in the 19th year of his reign afores. was made in manner and form afores. and that by colour of the said Act of Parliament the late K. *Hen.* the 7th was seised of the reversion aforesaid, as by the inquisition aforesaid in the court of Chancery of the said Lady the Q. at *Westminster* in due manner return'd, and there of record remaining, more fully appeareth. Whereas every inquisition taken upon whatsoever attainder of High Treason, taken before the Escheator, by virtue of his office, ought to be returned into the Court of the King's *Exchequer*, and there ought to be filed, and not in the Court of *Chancery*. And if in the Court of *Exchequer* returned, and there of record it be not filed, then the said inquisition is void, and of no Force in Law. And in this, that whereas the aforesaid

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Richard Busbopp supposeth, that the aforesaid late King *Henry* the 8th, the 3d Day of *November* in the 23d Year of his Reign, by his Letters Patents under his Great Seal of *England* sealed, bearing Date the same Day and Year, reciting, That whereas the said late King by the 20th Day of *Octob.* in the 19th Year of his Reign, by his Letters Patents, had given and granted to the abovesaid *Walter Walsbe* the Manor of *Grafton Fleuard* in the County of *W.* and the Advowson of the Church of *Grafton Fleuard*, with the Appurtenances, for the Term of the Life of the said *Walter*; and whereas the same late K. the 6th Day of *Dec.* in the 21st Year of his Reign, by other his Letters Patents, had given and granted to the abovesaid *Walter*, and to one *Elizabeth* then his Wife, the aforesaid Manor of *Charleton*, with the Appurtenances, in the said County of *Somerset*; To have and to hold to the said *Walter* and *Elizabeth*, and their Assigns, for Term of the Lives of the said *Walter* and *Eliz.* and of the longer liver of them, the said late K. *Henry* the 8th, for that, that the said *Walter* the aforesaid Letters Patents to him of the aforesaid Manor of *Grafton Fleuard*, and the said *Walter*, and the aforesaid *Eliz.* the said Letters Patents to them of the aforesaid Manor of *Charleton*, in form aforesaid made, to the said late K. *Henry* the 8th in his Chancery had delivered up there to be cancelled, by the said Letters Patents, (Dated, &c.) gave and granted to the abovesaid *Walter* and *Eliz.* the aforesaid Manor of *Abbotesly*, with the Appurtenances, whereof, &c. To have and to hold to them the said *Walter* and *Eliz.* and to the Heirs Males of the Body of the said *Walter* begotten: And the aforesaid *Rich. Busbopp* in his Plea aforesaid hath not shewed in Fact, that the aforesaid late K. *Henry* the 8th, by his Letters Patents, had given and granted to the aforesaid *Walter* and *Eliz.* the aforesaid Manor of *Charleton*, with the Appurtenances, to have and to hold to the said *Walter* and *Eliz.* for the Term of their Lives, and of the longest liver of them, as by the Law he ought to have shewed; and because expressly it is not shewed in the said Plea, that the same Grants were made, but only by way of Recital, the aforesaid Consideration, in the aforesaid Letters Patents of the aforesaid late K. *Henry* the 8th made, as aforesaid, in the 23d Year of his Reign, are void and insufficient in Law; and the said late K. in his Grant aforesaid, by reason thereof, was deceived: And in this, That the aforesaid *Richard*, in his Plea aforesaid, alledgeth, that the aforesaid *Walter* and *Eliz.* the said Letters Patents to them of the aforesaid Manor of *Charleton*, made in the Chancery of the said late K. *Henry* the 8th, had surrendered and procured to be cancelled, by which the Estate of the said *Walter* and *Eliz.* of and in that Manor was determined; whereas by the Law of the Land the Estate of the said *Eliz.* then being under Covert Baron by the surrendering
and

and cancelling of the said Letters Patents, was not determined or surrendered up: And upon this, That whereas the aforesaid *Rich. Busbopp* in his Pleading alledged, that by the aforesaid Act of Parliament of the said late K. *Henry* the 8th, made the 8th Day of *June* in the 28th Year of his Reign, it was enacted, That the said late K. *Henry* the 8th, his Heirs and Successors, should have, hold and enjoy all and singular the Manors aforesaid, with the Appurtenances, in Fee simple, saving always to all Person and Persons, Bodies Politick and Corporate, their Heirs and Successors, and to the Heirs and Successors of every of them, other than to the aforesaid late Countess of *Warwick* and her Heirs, and the Heirs of the said *Richard* late Earl of *Warwick*, Brother of the said late Countess, all such Rights, Titles, Uses, Interests, Term of Years, Demise, Demises, Entries, Actions, Grants and Conditions, which he, or any of them, their Heirs, or the Heirs or Successors of any of them have or had, or might have, or ought to have had, if the said Act of Parliam. had never been made, any Thing in the said Act to the contrary thereof notwithstanding. And the aforesaid *Rich. Busbopp*, in his Plea aforesaid, doth not alledge in Fact, that the aforesaid *Anne*, now Countess of *Warwick*, in whose Right, and as Servant of which Countess the said *Richard* makes Justification of the Trespass and Intrusion aforesaid, was not Heir of the said *Richard* late Earl of *Warwick*, as by the Law of the Land it ought to be shewed; and in this, that by the said Act of the 28th above said, the aforesaid Manor of *Abbotesley*, with the Appurtenances, whereof, &c. was given by express Words to the said late King *Henry* the 8th, his Heirs and Successors, and thereof the said Saving in the same Act mentioned is repugnant to the said Act and void, to reserve any Right in that Manor to any other Person; and therefore the aforesaid *Walter Walsbe*, and *Elizabeth* his Wife, to have or claim any Right or Estate of or in the said Manor, by force of the said Act of Parliament, are barred. And in this, that whereas the aforesaid Plea of the said *Rich. Busbopp* above in Bar pleaded is insufficient in Law to discharge or excuse him the said *Richard*, of the Trespass, Intrusion and Ingress aforesaid, upon which Plea the aforesaid Attorney of the said Lady the Q. had demurred in Law, and demanded Judgment thereof for the said Lady the Q. yet that notwithstanding, it is adjudged by the Barons, That the Plea of the said *Richard* is sufficient in Law to discharge him the said *Richard* of the Entry and Intrusion into the aforesaid Wood called *Alton Wood*, otherwise *Alvington Wood*, the aforesaid 1st Day of *Feb.* in the 32d Year of the Reign of the said Lady the now Queen, and from the same Day until the exhibiting of the Information afores. and of the taking of the Issues and Profits thereof by that time. And so the same Attorney General for the said lady the Q. saith, that in the record and process afores.

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and in the giving of the Judgment aforesaid it is manifestly erred. And thereupon the said Attorney of the said Lady the Queen, for the said Lady the Queen prayeth, That the Judgment aforesaid for those Errors, and others in the Record and Process aforesaid be revoked, annulled, and be had for nothing: And also a Writ to warn the aforesaid *Richard Busbopp* to be here before the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer, &c. at a certain Day, to hear the Record and Process aforesaid, as also the aforesaid Errors which he the said Attorney General of the said Lady the Queen then there alledged; and it is granted unto him; And it is commanded to the Sheriff of the said County of *Worcester*, that by good and lawful Men of his Bailiwick, he give warning to the said *Rich. Busbopp*, that he be before the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer in the Chamber aforesaid, upon *Tuesday*, falling the 26th Day of the said Month of *April*, to hear in form aforesaid, if, &c. And further, &c. that to the Court, &c. at which Day the same Sheriff, that is to say, *Edward Harwell*, Esq; returned the Writ aforesaid, and sent, that the said Writ was so late delivered unto him, that for the shortness of the Time he could not execute it; yet the aforesaid *Richard Busbopp*, before the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer, at the same Day, comes into the Chamber aforesaid, by *Arthur Salway* his Attorney, and demands the hearing of the Record and of the Process, as also of the aforesaid Errors, and they are read unto him; which being read and heard, the said *Richard* saith, That in the Record and Process aforesaid, and in the giving of the Judgment aforesaid, it is in nothing erred, and prayeth, That the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer do proceed as well to the Examination of the Record and Process, as to the aforesaid Matters for Errors alledged, according to the form of the Statute aforesaid; and the afores. Attorney of the said Lady the Queen saith as above, and thereof prayeth likewise, &c. And because the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer will advise themselves of and upon the Premises before they give their Judgment thereof, Day is given here to the abovesaid *Richard Busbopp*, in the Chamber aforesaid, until the next *Tuesday* after, falling the 3d Day of *May*, to hear their Judgment thereof, &c. At which Day, before the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer, into the Chamber aforesaid the said *Richard Busbopp* comes by his Attorney aforesaid; and because the aforesaid Lord Keeper of the Great Seal, and the Lord Treasurer, are not yet advised of giving their Judgment of and upon the Premises, further Day is given to the abovesaid *Richard Busbopp*, in the Chamber aforesaid, until the first *Tuesday* following in the Term of the *Holy Trinity*, to hear their Judgment thereof, &c. At which Day, before the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer, in the Chamber aforesaid comes the afores. *Rich. Busbopp*, by his Attorney afores. And because the afores. Lord Keeper of the Great Seal and the Lord Treasurer are not yet advised of giving their Judgment of and upon the Premises, further Day is given to the abovesaid *Rich. Busbopp*, in the Chamber afores., until the 2d *Tuesday* in the Term of

In nullo Erratum pleaded.
See 5 Co 36.
Bishop's Case.
6 Mod. 206, 207.

St. Michael next coming, to hear their Judgment thereof, &c. At which day the afores. lord keeper of the great seal, and lord treasurer, in the chamber afores. did not come; but Sir John Popham, Knt. and Edward Anderson, Knt. Chief Justices of each Bench come at the same day, and then are there present, according to the form of the Stat. in such case made: And the afores. *Rich. Busbopp* in the chamber afores. comes by his Attorney afores. before the said Justices; and the afores. business, and suit of errors, by the said Justices is adjourned and continued, by virtue of the said Stat. until Tuesday then next; And the same day is given to the afores. *Rich. Busbopp*, to hear their judgment thereon, &c. At which day, before the afores. lord keeper of the great seal and lord treasurer, in the chamber afores. comes the afores. *Rich. Busbopp*, by his Attorney afores. and because the afores. lord keeper of the great seal and lord treasurer are not yet advised of giving their judgment of and upon the premises, further day is given to the afores. *Rich. Busbopp*, in the chamber afores. until Tuesday, falling the 8th of Novemb. following, to hear their judgment thereof, &c. At which day, before the afores. lord treasurer and the afores. Chief Justices present in the chamber afores. comes the aforesaid *Richard Busbopp* by his Attorney afores. and because for the absence of the afores. lord keeper of the great seal, in the aforesaid business and suit of error it cannot be proceeded, the same cause is continued and adjourned by them the lord treasurer and Ch. Justices, by virtue of the Act afores. made, until Tuesday, falling the 22d day of Nov. then next following, in the chamber aforesaid; And the same day is given to the afores. *Rich. Busbopp*, in the same chamber, to hear their judgment thereof, &c. At which day, before the afores. lord keeper of the great seal and the afores. Justices, in the chamber afores. comes the afores. *Rich. Busbopp*, by his Attorney afores. and the afores. lord treasurer there then not coming, the business and suit of errors afores. is continued and adjourned by them the lord keeper of the great seal, and the Ch. Justices, by virtue of the afores. Act thereof made, until the second Tuesday in the term of St. Hillary then next following; And the same day is given to the afores. *Rich. Busbopp*, in the chamber afores. to hear their judgment thereof. At which day the afores. lord keeper of the great seal and the lord treasurer came not in the chamber afores. but the afores. Ch. Justices of each Bench came into the same chamber, and are there present. And the afores. *Rich. Busbopp*, at the same day in the chamber aforesaid, before the said Justices, likewise cometh by his Attorney aforesaid, and the aforesaid Business and Suit of Errors is continued and adjourned further, by Virtue of the Statute aforesaid thereof made, until the first Tuesday in the Term of Easter next following; And the same Day is given to the aforesaid *Richard Busbopp*, in the Chamber aforesaid, to hear their Judgment, &c.

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At which Day, before the aforesaid Lord Keeper of the Great Seal, and the aforesaid Chief Justices, comes here the aforesaid *Richard Bushopp*, in the Chamber aforesaid, by his Attorney aforesaid; And the said Lord Treasurer then and there not coming, the aforesaid Business and Suit of Errors is continued and adjourned, by the Statute aforesaid thereof made, further, until the last *Tuesday* of the aforesaid Term of *Easter*, in the Chamber aforesaid; And the same Day is given to the aforesaid *Richard Bushopp*, in the Chamber aforesaid, to hear their Judgment thereof, &c. At which Day, the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer afores. come not; but the aforesaid Chief Justices come into the same Chamber, and are there present; and the aforesaid *Richard Bushopp* likewise cometh by his Attorney aforesaid, and the aforesaid Business and Suit of Errors by them is continued and adjourned further, by Virtue of the Statute aforesaid thereof made, until the first *Tuesday* in the Term of the *Holy Trinity* then next following: And the same Day is given to the aforesaid *Richard Bushopp*, in the Chamber aforesaid, to hear their Judgment thereof, &c. At which Day, before the Chief Justices, in the Chamber aforesaid, cometh the aforesaid *Richard Bushopp*, by his Attorney aforesaid; And because the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer then and there come not, the aforesaid Business and Suit of Errors is continued and adjourned, according to the form of the Statute thereof made, further, until *Tuesday* the 4th Day of *July* in the same Term of the *Holy Trinity*; And the same Day is given to the aforesaid *Richard Bushopp*, in the Chamber aforesaid, to hear their Judgment thereof, &c. At which Day, before the aforesaid Chief Justices, in the Chamber aforesaid, cometh the aforesaid *Richard Bushopp*, by his Attorney aforesaid; And because the aforesaid Lord Keeper of the Great Seal and Lord Treasurer come not, therefore the aforesaid Business and Suit of Errors is continued and adjourned, according to the form of the Statute aforesaid, further until the third *Tuesday* in the Term of *St. Michael* next following; And the same Day is given to the aforesaid *Richard Bushopp*, in the Chamber afores. to hear their Judgment thereof, &c. At which Day, before the afores. Ch. Justices, in the Chamber afores. cometh the afores. *Richard Bushopp*, by his Attorney afores. And because the afores. Lord Keeper of the Great Seal and the Lord Treasurer come not, therefore the afores. Business and Suit of Errors is continued and adjourned, by Virtue of the Stat. afores. thereof made, further until the 21st Day of *Nov.* in the same Term of *St. Michael*; And the same Day is given to the afores. *Richard Bushopp*, in the Chamber afores. to hear their Judgment thereof, &c. At which Day, before the afores. Chief Justices, in the Chamber afores. cometh the afores. *Rich. Bushopp*, by his Attorney afores. And because the afores. Lord Keeper of the Great Seal and Lord Treasurer come not, therefore the afores. Business and Suit of Errors is adjourned and continued, according to the form of the Stat. afores. until the second *Tuesday* of the Term of *St. Hillary* next following; And the same Day is given to the afores. *Richard Bushopp*, in the said Chamber, to hear their Judgment thereof, &c. At which Day, before the afores. Chief Justices, in the Chamber aforesaid, cometh the aforesaid

Richard

Richard Bushopp, by his Attorney aforesaid; And because the aforesaid Lord Keeper of the Great Seal and Lord Treasurer come not, therefore the aforesaid Business and Suit of Errors is continued and adjourned, by Virtue of the Statute aforesaid thereof made, further until the first *Tuesday* in the Term of *Easter* then next following; And the same Day is given to the aforesaid *Richard Bushopp*, in the Chamber aforesaid, to hear their Judgment thereof, &c. At which Day, before the aforesaid Chief Justices, in the Chamber aforesaid, cometh the aforesaid *Richard Bushopp*, by his Attorney aforesaid; And because the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer come not; therefore the Business and Suit of Errors aforesaid is continued and adjourned, according to the Form of the Statute aforesaid, until the first *Tuesday* in the Term of the *Holy Trinity* next following; And the same Day is given to the aforesaid *Richard Bushopp* in the Chamber aforesaid to hear their Judgment thereof. At which Day before the aforesaid *Thomas Egerton* Knight, Lord Keeper of the Great Seal, and *Thomas Lord Buckhurst*, now Lord Treasurer of *England*, in the Chamber aforesaid cometh the aforesaid *Richard Bushopp* by his Attorney aforesaid; and the aforesaid Attorney of the Lady the Queen, for the said Lady the Queen, as at first prayeth, &c. And because the aforesaid Lord Keeper of the Great Seal and Lord Treasurer will further advise of giving their Judgment of and upon the Premises before, &c. Further Day is given to the aforesaid *Richard Bushopp* in the Chamber aforesaid, until the second *Tuesday* in the Term of *Saint Michael* then next following to hear their Judgment thereof, &c. At which Day, before the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer, in the Chamber aforesaid cometh the aforesaid *Richard Bushopp* by his Attorney aforesaid; and because the aforesaid Lord Keeper of the Great Seal and Lord Treasurer are not advised yet of giving their Judgment of and upon the Premises, Day further is given to the aforesaid *Richard Bushopp* in the Chamber aforesaid, until *Tuesday* the 23d Day of *October* the same Term of *Saint Michael*, to hear their Judgment thereof, &c. At which Day, before the aforesaid Lord Keeper of the Great Seal and the Lord Treasurer, in the Chamber aforesaid cometh the aforesaid *Richard Bushopp* by his Attorney aforesaid; And because the aforesaid Lord Keeper of the Great Seal and Lord Treasurer are not yet advised of giving their Judgment of and upon the Premises, Day further is given to the aforesaid *Richard Bushopp* in the Chamber aforesaid, until *Tuesday* the 30th Day of the same Month of *October* the same Term of *Saint Michael*, to hear their Judgment thereof, &c. At which Day the aforesaid Lord Keeper of the Great Seal and Lord Treasurer do not come in the Chamber aforesaid, but the aforesaid Chief Justices in the Chamber aforesaid come, and the aforesaid *Richard Bushopp* at the same Day, in the same Chamber, and before the same Justices cometh by his Attorney aforesaid: And the aforesaid Business and Suit of Errors is continued and adjourned by Virtue of the Statute aforesaid thereof made, further until *Tuesday* the sixth Day of *November* the same Term of *Saint Michael*; And the same Day is given unto the aforesaid *Richard Bushopp* in the said Chamber, to hear their Judgment thereof, &c. At which Day neither the

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The former Writ discontinued, and a new Writ of Error issued.

aforesaid Lord Keeper of the Great Seal, nor Lord Treasurer, nor the aforesaid Chief Justices come unto the Chamber aforesaid. Afterwards the said Lady the now Queen sent here another her Writ close under her Great Seal, out of her Court of Chancery, to the Treasurer and Barons of this Exchequer directed, the Tenor of which Writ followeth in these Words, *ff. Elizabeth*, by the Grace of God of *England, France and Ireland* Queen, Defender of the Faith, &c. To the Treasurer and her Barons of her Exchequer Greeting: Because in the Record and Process, and because of giving of Judgment in the Plaint, which was in our Court before you the aforesaid Barons of our Exchequer aforesaid, in the Term of the *Holy Trinity* in the 37th Year of our Reign, by Bill between us and *Richard Bushopp* of a certain Trespas and Intrusion in certain Woods, with the Appurtenances, called *Alton*, otherwise *Alvington* Wood, containing by Estimation 3000 Acres of Wood in *Alton*, otherwise *Alvington* and *Rok*, in our County of *Worcester*, manifest Error intervened to our great Damage; and because in the Statute made in the Parliament of the Lord *Edward* late King of *England* the 3d, our Progenitor, holden at *Westminster* in the 31st Year of his Reign, amongst other Things it is agreed unto and established, that in (a) all Cases the King or other Persons concerning, where any one complaineth of Error done in Process in the Exchequer, the Chancellor and Treasurer cause to come before them in some Chamber of Council nigh unto the Exchequer, the same Record and Process out of the said Exchequer, and taking to them the Justices and other Sages, such as to them they shall seem to be taken, to call before them the Barons of the Exchequer aforesaid, to hear their Informations and the Causes of their Judgment, and thereupon cause the Business to be duly examined; and if any Error should be found, the same Cause to be mended, and the Rolls amended, and after the same into the said Exchequer, to do Execution thereof, cause to be sent back as belongeth, as in the said Statute it is contained: We therefore willing Error, if any such were, according to the Form of the Statute aforesaid to be corrected, and full and speedy Justice to be done, in this Behalf, command you, that if Judgment be thereof given, then the Record and Process aforesaid, with all Things touching the same before our beloved and faithful Counsellor *Thomas Egerton* Knight, Keeper of our Great Seal of *England*, and you, you the aforesaid Treasurer in the Chamber of Council, nigh the Exchequer aforesaid, called the Council Chamber, upon *Tuesday*, that is to say, the 5th Day of *February* next coming, cause to come, that the same Keeper of our Great Seal, and you the aforesaid Treasurer the Record aforesaid seeing, and the Process aforesaid, and hearing your Informations, you the aforesaid Barons cause to be further done, what of Right according to the Form of the Statute aforesaid is to be done. Witness my self at *Westm.* the 29th Day of *Jan.* in the 42d Year of our Reign. *Symons.* And at the aforesaid 5th Day of *Feb.* in the aforesaid Writ mentioned, the aforesaid *Thomas Egerton* Knt. Keeper of the Great Seal of *England*.

(a) Devant 11.
a. 31 E. 3. cap.
12. 11 Co. 59.
a. 8 H. 7. 13. a.
6 H. 7. 15. b.
Plow. 206. b.
Br. Error 147.
Br. Discon. de
Proces 50.
15 E. 4. 21. b.
37 H. 6. 15. a.
4 Inst. 119.
Vet. N. B. 55. a.

England, and *Thomas Lord Buckhurst*, Lord Treasurer of *England*, caused to come before them the record aforesaid, in the aforesaid Chamber, nigh the *Exchequer* aforesaid, called the *Council Chamber*; and at the same day and place, come before the aforesaid Lord Keeper of the Great Seal, and the Lord Treasurer, the aforesaid Attorney of the Lady the Queen, and for the said Lady the Queen saith, that in the record and process, and also in the giving of the Judgment aforesaid, it is diversly erred in manner and form, as by the aforesaid articles of errors by him first alledged and assigned, above it is alledged; and for the said L. the Queen prayeth another Writ of the Lady the Q. to warn the aforesaid *R. Busbopp* to be before the aforesaid Lord Keeper of the Great Seal, and the Lord Treasurer, at a certain day, to hear the record and process aforesaid, and also the errors aforesaid, &c. And it is granted unto him. And it is commanded to the Sheriff of the county of *Worcester*, that by good and lawful men of his bailywick, he warn the said *R. Busbopp* that he be before the afores. Lord Keeper of the great Seal and the Lord Treasurer, in the chamber afores. at *Westminst.* the first *Tuesday* in the term of *Easter* next following, to hear the record and process afores. as also the errors afores. above alledged, and further, &c. what to the court, &c. At which day, before the afores. Lord Keeper and Lord Treasurer, in the Chamber afores. the Sheriff of the County of *Worcester* afores. that is to say, *Will. Childe* Esq; returned the writ afores. indorsed thus: *ff.* By virtue of this writ to me directed, I gave warning to the aforesaid *Rich. Busbopp*, by *John Jolly*, *John Harris*, *T'bo. Pennington*, and *John Wemb*, good and lawful men of my bailywick, to be before the said Keeper of the great Seal, at the day and place within contained, as within to me is commanded. And upon this the aforesaid *Rich. Busbopp*, by *Arthur Salway* his Attorney, at the same day in the Chamber afores. likewise cometh, and demands the hearing of the record and process, as also of the errors afores. and they are read unto him, &c. which being read and heard, the said *Rich.* saith, That in the record and process afores. and in rendring the judgment afores. in nothing it is erred, and prayeth, that the afores. Lords do proceed to the examination as well of the record and process afores. as of the business afores. for errors by the said Attor. of the said L. the Q. above alledged, according to the form of the afores. Statute thereof made: And the afores. Attor. of the Lady the Q. for the said Lady the Q. saith as before he had said, and prayeth likewise, &c. And because the afores. Lord Keeper of the great Seal, and the L. Treasurer will further advise themselves of and upon the premisses, before they give their judgm. thereof, day is given to the afores. *R. Busbopp*, in the Chamber afores. until *Tuesday* next, to hear their judgm. thereof, &c. at which day, before the said L. Keeper, and L. Treas. in the Chamber afores.

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aforef. at *Westm.* cometh the aforesaid *Rich. Busbopp* by his Attorney aforesaid ; and because the aforesaid Lord Keeper and Lord Treasurer are not yet advised of giving their judgment of and upon the premisses, further day is given to the aforesaid *Richard Busbopp* before the aforesaid Lord Keeper of the Great Seal and the Lord Treas. in the Chamber afores. until *Tuesday* next, &c. to hear their judgment thereof, &c. at which day before the Lord Keeper of the Great Seal and the Lord Treasurer, in the Chamber aforesaid at *Westminst.* cometh the aforesaid *R. Busbopp* by his Attorney aforesaid ; And because the aforesaid Lord Keeper and Lord Treasurer are not yet advised of the giving of their judgment of and upon the premisses, further day is given to the aforesaid *Rich. Busbopp*, before the aforesaid Lord Keeper of the great Seal and the Lord Treasurer, in the chamber aforesaid, until the first *Tuesday* in the Term of the *H. Trin.* then next coming, to hear judgment thereof. At which day, before the aforesaid Lord Keeper of the great Seal and the Lord Treasurer, in the chamber aforesaid at *Westminster*, cometh the aforesaid *R. Busbopp* by his Attorney aforesaid ; And because the aforesaid Lord Keeper of the great Seal and Lord Treasurer are not yet advised of giving their judgment of and upon the premisses, day further is given to the aforesaid *R. Busbopp*, before the aforesaid Lord Keeper of the great Seal and Lord Treasurer, in the chamber aforesaid, until *Tuesday* the 3d day of *June* the same term of *H. Trinity*, to hear judgment thereof ; At which day, before the aforesaid Lord Keeper of the Great Seal, and Lord Treasurer, in the Chamber aforesaid, at *Westminster*, cometh the aforesaid *R. Busbopp* by his Attorney aforesaid ; And because the aforesaid Lord Keeper of the Great Seal and Lord Treasurer are not yet advised of giving their judgment of and upon the premisses, day is further given to the aforesaid *R. Busbopp*, before the said Lord Keeper of the Great Seal and the Lord Treasurer, in the chamber aforesaid, until *Tuesday* the 10th day of *June* next the same Term of the *H. Trinity*, to hear their judgment thereof ; At which day before the aforesaid Lord Keeper of the Great Seal and the Lord Treas. in the chamber afores. at *Westminster* cometh *R. Busbopp*, by his Attorney afores. And upon this the premisses being seen by the aforesaid Lord Keeper of the Great Seal of *England*, and the afores. Treasurer, and mature deliberation thereof amongst them being had, and taking to them the aforesaid *John Popham* Knt. Chief Justice of the said Lady the Queen for Pleas, before the Queen her self to be holden assigned, and Sir *Edm. Anderson* Knt. Ch. Just. of the said L. the Q. of the Bench, as also of *Francis Garwy*, one of the Justices to Pleas, before the aforesaid Lady the Q. to be holden assigned, and calling before them the Barons of the *Excheq.* aforesaid, and the reasons of the Judgm. afores. of the said Barons being heard, because

Judgment reversed, &c.

it seemeth to the aforesaid Keeper of the Great Seal of *England*, and to the aforesaid Treasurer, with the Counsel of the Justices aforesaid, that in the Record and Process aforesaid, and also in the giving of the Judgment aforesaid, it is manifestly erred; therefore (a) it is granted by the said Keeper of the Great Seal of *England*, and the aforesaid Treasurer, that the Judgment aforesaid be reversed and annulled; and that the aforesaid *Rich. Busbopp*, of the Entry, Intrusion, Trespafs and Contempt aforesaid be convicted; and that the aforesaid *Richard Busbopp* be amoved from the Possession of the Premisses, and be attached by his Body, wheresoever, &c. to make fine with the Lady the Queen for the aforesaid his Trespafs and Contempt, whereof in form aforesaid he is convicted; And that the Record aforesaid be sent back into the Exchequer aforesaid, for the Execution thereof for the aforesaid Lady the Queen, to be done according to the form of the Statute aforesaid thereof made: Therefore it is agreed by the Barons here, That the Writ of the Lady the now Queen do issue forth out of the Court here, to amove the said *Richard Busbopp* from the Possession of the Premisses aforesaid, and to attach the said *Richard* by his Body, wheresoever, &c. to make Fine for the said Trespafs and Contempt whereof he is convicted in form aforesaid, returnable here in eight Days of *St. Michael*. And it is commanded to the said Sheriff of the said County of *Worcester*, that he amove him the said *Richard*, and him attach in the form aforesaid.

The Case of ALTON WOODS.

Trinity-Term 42 Eliz.

Between the

Queen and RICHARD BUSHOPP.

(a) 2 And. 154.
Jenk. Cent. 251.
Moon 413.
H. b. 230.
10 Co. 68. a.

IN an (a) Information of Intrusion, which began *Trin. 37 Eliz. Rot. 299. Scaccario*, against *Richard Busbopp* for Intrusion in a Wood called *Alton Woods*, in *Alton*, alias *Alvington* and *Rock*, in the County of *Worcester*, &c. The Defendant pleaded, that before the Intrusion, one *Anne* Countess of *Warwick*, who was the Wife of *Richard* Earl of *Warwick*, was seised of the Manor of *Abbotesley*, alias *Abberley*, in the County aforesaid; whereof the said Wood was Parcel in her Demesne as of Fee, and so seised *quindena Hillarii anno 3 H. 7.* did levy a Fine of the said Manor whereof, &c. unto King *Hen. 7.* to have and to hold to him and to the Heirs Males of his Body, saving the Reversion unto the said Countess and her Heirs; and afterwards the said Countess died seised of the said Reversion in Fee, after whose Death it descended unto *Edward* Earl of *Warwick* her Cousin and Heir, that is to say, Son and Heir of *Isabel*, Daughter and Heir of the said Countess; and afterwards, by Act of Parliament 25 *Januarii anno 19 H. 7.* the (b) said *Edward* Earl of *Warwick* was attainted of Treason; and further it was enacted by the said Act, that he should forfeit to the said King and his Heirs, all his Lands, Tenements and Hereditaments, which he had the second Day of *August, anno 14 H. 7. Quarum quidem convictionis & attincture prætextu, præd' nuper Rex H. 7. fuit seiscitus de reversione Manerii præd', unde, &c. ut de feodo & jure, in jure Coronæ suæ Angliæ, & sic inde seiscitus existens, ac de manerio prædicto cum pertinentiis, sicut præfertur, seiscit' existen' idem nuper Rex apud Westmon' in comitatu Mid. obiit, de Manerio præd' cum pertinentiis, unde, &c. ac de reversione*

(b) Bacon's
Hist. H. 7.
fo. 111. Dugd.
Baron. 2 Tom.
164, 165. De-
vant 28. a.
2 And. 154.
Mo. 413.
Jones 79.

versione præd', in forma præd' seifitus, post cujus mortem the Manor and Reversion descended unto Hen. 8. by Force whereof he was of the said Manot and Reversion seifed, &c. and being so thereof seifed, it was found before the Escheator, (a) *virtute officii*, 5 Julii anno 23 H. 8. That the said Countess of Warwick levied the said Fine, and that she died seifed as aforefaid of the Reversion; and that the same descended to the said Edward Earl of Warwick; and that he being of the said Reversion seifed, the said Earl was by the said Act in 19 H. 7. attainted of High Treason; and by the same Act it was ordained that he should forfeit, *ut supra*: by Force of which King Hen. 7. was seifed on the Reversion in Fee; and that the said Estate-tail, and the Reversion also after the Death of Hen. 7. descended to Hen. 8. by Force of which King Hen. 8. was seifed, *viz.* of the Manor in Tail, and of the Reversion in Fee, *prout per Inquisitionem prædict' in Cur. Cancellar. dominæ Reginæ apud Westmonaster. prædict' debito modo retornat'*, & *ibidem de recordo remanen'*, plenius apparet. And that K. Hen. 8. so seifed, that is to say, of the Estate-tail in Possession, and of the Reversion in Fee by his Letters Patents bearing Date (b) 3 Nov. anno 23 H. 8. recitan' *quod cum idem Henricus 8. 20 die Octobris, anno regni sui decimo nono per literas suas Patentes dedisset, & concessisset Waltero Walsbe uni Gromett' private Camere sue, manerium suum de Grafton Fleuord in comitatu Wigornie, habendum sibi pro termino vitæ sue. Cumque etiam prædictus Henricus octavus sexto die Decembris, anno regni sui vicesimo primo, per alias suas literas Patentes dedisset, & concessisset præfato Waltero Walsbe, & cuidam Elizabethæ adtunc uxori ejus, manerium de Charleton in com' Somersjet. Habendum & tenendum manerium illud eisdem Waltero & Elizabethæ pro termino vitæ eorundem Walteri & Elizabethæ, & alterius eorum diutius vivent'*, prædictus nuper Rex Henricus octavus adtunc in consideratione veri & laudabilis servitii eidem domino Regi, per præfatum Walterum Walsbe adtunc impens. & adtunc imposterum impendend'. Ac pro eo quod idem Walterus prædictas literas Patentes de manerio de Grafton Fleuord, ac quod iidem Walterus & Elizabetha, prædictas alias literas Patentes, eis de prædicto manerio de Charleton in forma præd' confectas, dicto nuper Regi Henrico octavo (c) restituisent cancelland', ad intentionem quod idem nuper Rex prædictum manerium de Grafton Fleuord, necnon prædictum manerium de Abbottesley, per alias literas Patentes ejusdem nuper Regis, eisdem Waltero & Elizabethæ concedere dignaretur, quæ quidem separales priores literæ Patentes in Cur' Cancellar' prædict' ad eandem intentionem

(a) 2 And. 32
33, 36, 154.
1 Jones 79.
Mo. 413.

(b) 2 And. 154.
Mo. 413, 414.

(c) Lane 6.
6 Co. 55. b.

The Case of ALTON WOODS. PART I.

tionem tempore consecutionis prædictarum literarum patentium hic in Cur' prolata, restitui, & cancellat' fuerunt, de (a) gratia ipsius Regis speciali ac ex certa scientia & meraq' motu suis, per easdem literas Patentes hic in Curia prolata dedit & concessit eisdem Waltero Walsbe, & Elizabethæ uxori ejus, prædict' maneria de Grafton Fleuord & Abbottesley. Habend' & tenend' prædicta maneria cum pertinentiis prædicto Waltero Walsbe & Elizabethæ uxori ejus, & hæredibus masculis de corpore ipsius Walteri procreat'. (b) And averr'd that he was one of the Grooms of the Privy Chamber to Hen. 8. and that he had done Service, &c. And averr'd also, that he had surrendr'd the said Letters Patents of Grafton Fleuord, and that he and his Wife had surrendr'd the said Letters Patents of Charleton, and afterwards the said Elizabeth died, and the said Walter survived. And afterwards it was enacted and ordained by Parliament holden 8 Junii anno 28 Hen. 8. (c) reciting by the said Act, that whereas the said Countess of Warwick by the said Fine, anno 3 Hen. 7. had given and granted the said Manor of Abbottesley with the Appurtenances (*inter alia*) to have to the said Hen. 7. and to the Heirs Males of his Body; and reciting the Discent of the Reversion of the said Manor from the said Countess unto the said Edward Earl, and his Attainder of High Treason, by which the Reversion in Fee of the said Manor (*inter alia*) escheated unto the said King Hen. 7. and came to his Hands, and reciting the Discent from King Hen. 7. to King Hen. 8. by Force of which King Hen. 8. was thereof seised. *Et quia prædict' maneria & cætera præmissa fuerunt magni valoris & habuerunt multa, magna & ampla libertates, præbeminenc', commoditates & delectamenta, ad eadem spectant': Ideo tunc, & ibidem inactitatum fuit auctoritate ejusdem Parlamenti, quod prædict' nuper Rex Henricus Octavus, hæredes & successores sui, (d) extunc impostero habere, tenerent & gauderent omnia & singula prædicta maneria, &c. ac quod eadem maneria, &c. adjudicarentur auctoritate ejusdem Parlamenti, in prædict' nuper Rege Henrico octavo, hæredibus & successoribus suis in feodo simplici imperpetuum, Fine prædict', seu aliquibus aliis rebus, ante tunc habitis, factis, usitatis, seu allocatis, in contrarium non obstantibus, (e) salvo semper omnibus & singulis personæ & personis, corporibus politicis & corporatis, hæredibus & successoribus suis, aliis quam prædictæ nuper Comitissæ Warwick, & hæredibus suis, & hæredibus Richardi nuper Comitissæ Warwick, patris prædictæ nuper Comitissæ, omnibus talibus juribus, titulis, usibus, &c. in talibus*

(a) 2 And. 155.
Hert. 150.
Mo. 414.

(b) Mo. 414.

(c) 2 And. 154
Mo. 414.

(d) 2 And. 155.

(e) Mo. 414.

talibus modo, & forma, prout præd' actus nunquam habitus seu editus fuisse. By Force of which *H. 8.* was seised of the Reversion of the said Manor in Fee-simple, and conveyed the Estate-tail to *William Walshe*, and the Reversion to the *Q.* that now is: And that *William Walshe* by his Deed indented, enrolled in the Chancery, &c. bearing Date 3 *Julii anno 30 Regin' Eliz.* did bargain and sell to the Earl of *Leicester* and his Heirs, the said Wood, which after his Decease descended to *Ambrose* Earl of *Warwick* his Brother and Heir, who conveyed the same (b) to the Use of *Anne* now Countess of *Warwick* and her Heirs, and died: And *Bushopp* the Def. justified as Servant to the said now Countess, and by her Commandment, &c. upon which Plea *Coke* the Queen's Attorney demurr'd in Law. And this Case was argued at the Bar by the Attorney General, and *Fleming* Solicitor General for the Queen; and by *Heron* Serjeant and *Tho. Stephens* for the Def. And afterwards was argued by the Barons, viz. *Periam* chief Baron, *Clark* and *Ewens*; and *Clark* argued for the Queen, but *Periam* and *Ewens* contrary; and Judgment was given against the Queen: And thereupon the Queen's Attorney caused a (c) Writ of Error to be brought for the Queen; and because the Case was most learnedly argued in the Exchequer-Chamber upon the Writ of Error, I have omitted all the Arguments before the Judgment given in the Exchequer, and the rather because I did not hear the whole Arguments of Baron *Clark* and Baron *Ewens*. And four Exceptions were taken by the Attorney General to the Pleading.

First, the Pleading that *K. Hen. 7.* was seised in Fee of the Reversion by the said Act of Attainder, by which it is enacted, that the said *E. of Warwick* should (d) forfeit all his Lands, &c. and that *K. H. 7.* died seised of the said Reversion; and that it descended to *K. Hen. 8.* is repugnant and insufficient; for in as much as it doth not appear when *Edward* Earl of *Warwick*, who was attainted, died, it is clear that until his (e) Death or Office found nothing vested in *K. H. 7.* And this Point hath oftentimes been resolved and adjudged, 27 *H. 8. tit. Office. Br. 17. Saye's Case, 15 Eliz. Dy. 325. Nichol's Case, Plowd. Comm. 483. b. & 486. a.* And the Stat. of (f) 26 *H. 8. c. 13.* by which Lands in Tail are forfeit. And (g) 33 *H. 8. c. 20.* by which Land forfeited for Treason is by the said Act vested in the King without Office, prove that the Words (shall forfeit) vest nothing in the King without Office or Death, at the Common Law, and all this was affirmed *per tot' Cur'*; and that the Pleading in this Point was not so formal as it might have been, but they were of Opinion that it was notwithstanding sufficient enough in Substance, for *K. H. 7.* did not make the Grant to *Walshe*, for then the Exception had been material. But after Office found *K. Hen. 8.*

(a) 2 And. 155.
 (b) 2 And. 155.
 (c) 2 And. 154.
 (d) 1 Jon. s 79.
 Palm. 354.
 (e) Br. Office
 devant Escheit,
 14, 17. Fitz.
 Scire fac. 113.
 Dy. 325. pl. 38.
 3 Co. 10. b.
 9 Co. 95. b.
 Stam. Pr. 55. b.
 1 Jones 78. Co.
 L. 392. b. Ap-
 pres 48. a. Cro.
 Car. 173. 2 And.
 33, 34. Godb.
 312. Br. n. c.
 103. pl. 486. a.
 Fitz. Travers 5.
 4 E. 4. 22. b.
 Mo. 293. 2 Ro.
 R. 321, 339,
 375, 421, 442.
 497. Br. Char-
 rer de pard. 52.
 (f) 9 Co. 140. a.
 3 Inft. 19. 3 Co.
 10. a. b. 7 Co. 32.
 a. 34. a. b. 4 Inft.
 42. Palm. 439.
 12 Co. 6 Her.
 151, 157. 1 Len.
 21. Godb. 300,
 303, 307, 308,
 309, 311, 313,
 315, 321, 322,
 323, 324. Co.
 Lit. 372. b. 392.
 b. Plow. 552. b.
 Hob. 334, 339,
 340, 341, 343,
 344, 346, 347,
 348. Dy. 332.
 pl. 27. 343. pl.
 56. Co. Entr.
 422. a. 1 Ro.
 R. 162. 2 Ro.
 R. 314, 515,
 318, 319, 320,
 321, 323, 324,
 325, 340, 374,
 416, 418, 420,
 501, 503, 507,
 508. 1 Jones 7.
 71, 75, 76, 77,
 80. Cr. Car. 42.
 (g) Stam. Cor.
 193. a. 5 Co.
 52. b. Kel. 17. b.
 Stam. p. 2. 53.
 a. b. 3 Co. 10.
 a. b. 11. a. Dy.
 80. 7 Co. 120.
 Mo. 307, 311,
 231, 335, 341,
 a. 3 Inft. 19.

43. pl. 56. 344. a. 1 And. 293. Palm. 439. 3 Co. 2. b. 1 Jones 70, 71, 75, 76, 77,
 15. b. Pup. 19. 4 Leon. 169, 172. Cr. Car. 428, 461. Co. Entr. 389. b. 422. b.
 312, 320, 323, 327, 329. 1 Le. 21. Godb. 301, 304, 305, 312, 315. H. b.
 344, 345. Co. Lit. 372. b. 392. b. 2 Ro. R. 318, 321, 324, 375. 503. Ap. es 48.

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granted to *Walshe*; and therefore the Seisin alledged of the Reversion in *Hen. 7.* and the Descent of it to *Hen. 8.* was but a Trifle, and not material.

(a) Mo 416.
Après 52. b.
4 Inst. 225.
Kel. 173 a.
4 Co 57. a.
Ley de Ward
& Liveries 25

The second Exception was to the Return of the said Office found 23 *Hen. 8.* because it was found *virtute officii* before the Escheator, which ought to be returned into the Exchequer, and not into the Chancery; for Offices found *virtute brevis* returnable in the Chancery, ought to be returned into the Chancery; but Offices found *virtute officii* before the Escheator ought to be returned into the Exchequer, to which Court he is properly Attendant, and so is the Book in 4 *E. 4. 24. a. Stanford prærog. fol. 70. b.* But this Exception was disallowed *per totam Curiam* upon the producing a Multitude of Precedents of Offices found before the Escheator *virtute officii*, and returned into the Chancery. And it was also holden by the two *C. J. Popb. and Anderson*, and *Garwy* Justice (whom the Lord Keeper of the great Seal and the Lord Treasurer called unto them according to the Statute) that the Office was sufficient enough to entitle the *K.* altho' it was never * returned; for it appeareth in the Book of Assises, that upon Examinat. of the Escheator, if it appeareth that he hath seised the Land into the King's Hands, altho' the Office by Virtue whereof he seised it was never returned, (for no Mention is made of the Return of it in any Book) it is sufficient enough *vide (b) 30 Aff. pl. 5. &c.*

*5 Co 56. b.

(b) o H 7 to a
F. N. B. 154 e.
B1. Ailize 381

The third Exception was, that the Office entitles *K. Hen. 7.* after his Death, and finds a Seisin in *Hen. 7.* and a Descent to *K. Hen. 8.* so that the Office which was found 23 *Hen. 8.* doth not entitle *K. Hen. 8.* by Force of the Office, and Attainder, but entitleth *K. Hen. 7.* and *K. Hen. 8.* as Heir to him, and that is the Title which the Office finds for *Hen. 8.* and therefore the Office is not sufficient; *sed non allocatur*; for in as much as it was found by Office that the said *E. of Warwick* was seised of the said Reversion at the Time of his Attainder, that was sufficient to entitle *K. Hen. 8.* without finding the Residue of the Matter, which was but Surplusage, and more than was necessary.

(c) Mo 416.
Cr. Jac. 18.

The fourth Exception was, That the Pleading of the Grant made to *Walter Walshe* by *K. Hen. 8.* as to the Consideration, was insufficient, and that for two Reasons. 1. Because it was not (c) averr'd that the *K.* had demised the Manors of *Grafton Fleuord* and *Charteton* as he had recited; for if *in rei veritate* there were not such Leases, then the King was deceived; and the King was induced to grant the Manor of *Grafton Fleuord* in Tail the rather, because he thought he had granted it (as he recites) to *Walshe* for Term of his Life, and was induced to grant the Manor of *Abbottesley* in Tail the rather, because the Manor of *Charteton*, which (as he

he recites) he had granted to *Walsbe* and his Wife for Term of their Lives, should be surrendred; but if *in rei veritate* there were not any such Leases for Life, then the King was (a) deceived in the Consideration which was of Record, and valuable; and if the Defendant had pleaded, that the King had made such Leases, the same had been issuable and traversable, and in Proof thereof the Cases in (b) 21 *E.* 4. 48. & 49. and *Sir Tho. Wrotbe's Case*, *Plow. Com.* 455. were cited; *sed non allocatur*; for the Consideration was, that *Walt. Walsbe* should surrender the Letters Patents of the Manor of *Grafton*, and that he and his Wife should surrender the Letters Patents of the Manor of *Charleton*; and all that he hath averr'd, that is to say, (c) the surrender of the Letters Patents, and that is the Consideration, and not the Surrender of the Estate demised. And it was agreed, that it was not necessary to (d) aver more than is contained within the Consideration it self: and altho' the King doth recite the Demises, yet that is not the Consideration of the new Grant; and a false Recital in this Case of a Thing which was not Parcel of the Consideration, doth not make the Grant void. And it was said by some, that the Recital shall conclude the King according to the Opinion in (e) 9 *H.* 7. 2. a. But the two C. Justices did deny that, for the King shall not be concluded to shew, or to say the Truth, but the Law shall adjudge him rather to be deceived. (f) The other Objection against the Consideration was, that the King was deceived in the Law in this Case; for he intended to have his former Demises of *Grafton Flewood* and of *Charleton* surrendred, and the (g) Surrender of them was the Motive of the new Grant; but here the King was deceived in that, for by the Surrender of the Letters Patents, the Estate demised was not surrendred, namely, of the Manor of *Charleton*, in which the Wife of *Walsbe* had a joint Estate with him: And it was said, that the King ought to have the Effect and (b) full Benefit of that which is intended to be made to him, and not the Shadow and outward Shew thereof, which consists only in Words, and not in Effect: As in 18 *El. Dy.* 352. (i) where a term in shew, and not in effect, was surrendred, and in Consideration thereof, another Lease made, the new Lease is holden to be void, and yet the Grant was *ex certa scientia* & *mero motu*, which Case in Effect was, that one Abbot made a Lease for sixty Years to another Abbot, the Abbot who was Lessee, with the Assent of his Covent, made a Lease for eighty Years, the Reversion came to the Queen, the first Term of sixty Years expired, the Assignee of the Term of eighty Years surrender'd to the Queen *ea intentione*, that the Queen would make a Lease to him for twenty Years; the Q. reciting the Demise for 80 Years, and Surrender, in Consideration thereof *ex certa scientia* & *mero motu* demised for twenty Years; and it was holden that the Demise was void, for the Queen

(a) 6 Co. 55. b.

56. a. 7 Co.

12. a. 11 Co.

87. a. 74. b.

+ 20 35. b.

5 Co. 54. a.

Hob 223.

Lane 12. 2 Co.

54. a.

(b) Fitz Grant

2. Lane 12.

Apres 52. a.

(c) 6 Co. 55. b.

Lane 12.

(d) 2 Ro. R.

277.

(e) Firz Estop-

pel 84. 26 H. 3.

1 b. Br. parent

80 Apres 43.

Hob 339

Hert 156. Flo.

331. 8.

(f) Mo. 414,

415.

(g) Hob. 223.

3 Co. 94. a.

6 Co. 55. b.

(h) 9 Co. 132. a.

331. 8.

(i) Dy 352.

pl. 26. Apres

49 b. 5 Co.

94 a. 10 Co.

68 a. 6 Co

55 b 2 Ro. R.

275.

The Case of ALTON WOODS. PART I.

(a) Lit. R. 135.
 (b) Hob. 339.
 Pio. 331. a.
 9 H. 7. 2. a.
 26 H. 8. 1. b.
 Hetl. 156. Br.
 patent 80. Fitz.
 Estoppel 84.
 Devant 43. a.
 (c) 5 Co. 93. b.
 94 a. Mo. 393.
 10 Co 68 a
 2 Ro R. 273.
 Dav. 40 a.
 Hob 204.
 3 Keb 414.
 Stry. 189. Hard.
 499. Lane 11.
 (d) 2 And. 156.
 Apies 46. a.
 Mo. 416. Hob.
 224. Co L. 27.
 a. b. 13. a. Br.
 Estate 33. 18
 Alf. 5. Flo. 251.
 a Dav. 34. b.
 43 a. 18 E. 3.
 45 b. Lit. Sect
 31. 7 Co 40 b
 138. 1 Ro. 860
 Apies 49.
 1 Bullt. 10, 222
 Mod. R. 196.
 B. N. C. 57.
 2 Brownl 334
 Apies 51.
 1 Brownl. 45.
 Flo. 335. a.
 (e) Apies 137 b.
 Co. L. 27. a.
 Cotton's Re-
 cords 671.
 21 E. 3-41. b.
 8 Co. 16. b.
 25. b. Raym.
 555. Palm. 89.
 1 Ro. R. 198
 Le Matter en
 Lev.
 (f) Hob. 224.
 Jenk. Cent. 251

was deceived, for in truth nothing was surrendered but only in (a) Shew and Appearance. And the said Case proves directly, that the (b) Recital of a Demise shall not conclude the K. but contrary if the same be false, it shall avoid his Grant. So also was it adjudged in the Case of *Barwick* in an Information of Entrusion, *Trin. 39 Eliz.* where the Case in Effect was, The Queen in an. 14. demised the Manor of *Sutton* in *Galtres* in the County of *York* to *Humph. (c) Barwick* for 21 Years, who demised several small Parcels thereof to others for Years; and afterwards the Queen by her Letters Patents, an. 23 *Eliz.* reciting the said Demise to *Humph. Barwick, pro & in consideratione sursumreddit. totius status & termin' annor' de & in premiss. per pred' liter. Patent. eid. Humph. concess.* doth demise and grant the said Manor to the said *Humph. Barwick* for 21 Years; and it was adjudged that this second Lease was void, for all the Estate and Term demised to the said *Humph. Barwick* by the said Letters Patents in an. 14. (in respect of the said petty Leases) were not surrendered according to the Effect of the Consideration. And in that Case the King was deceived in Law, because he thought the Surrender of the Patent was also a Surrender of the Lease and Estate demised; and when the King is deceived, or mistaketh the Law, the Grant is void. As in 18 *H. 8. tit. Patent, Br. 104.* where the King gave Lands to the Lord *Lovel* to have and to hold to him and to his Heirs (d) Males, and that was *ex certa scientia & mero motu*, and yet adjudged void; for he cannot grant such Estate of Inheritance in Fee-simple, to make the Males to be inheritable, and exclude the Females; and because his Intent did not agree with the Law, his Grant was adjudged void. And in 1 *Ma. Dyer 94. K. Edw. 3.* did grant Land to the Duke of *Cornwal, & (e) hered' suis Regibus Angliæ*, and it was holden void *causa qua supra; sed non allocatur ista Exceptio*; for it doth not appear that the King did intend to have more surrendered than the former Letters Patents only; and it doth not appear by any express Matter within the Letters Patents, that he did intend to have the former Estates surrendered, and it would be very dangerous to make the King's Grants void by Construction upon Inferences and Arguments, without direct and express Matter contained in the Letters Patents, and the rather in this Case, because the Grant is *ex certa scientia & mero motu*, in which Case other Intent shall not be collected by Construction, than is expressed in the Patent; and all this was affirmed *per totam Curiam*.

As to the Matter in Law, two Points were moved: One, that the Letters Patents were void, the other admitting that the Letters Patents at the first were good; yet all the Estate which *Walshe* had, was given unto the K. by the Act of 28 *H. 8.* As to the first, the Case is no other, but, (f) The K. being Tenant in Tail of the Manor of *Abbotestley*, to him and his Heirs Males

Males of his Body, by Force of the said Fine of 3 *H.* 7. with the Reversion to him, his Heirs and Successors, by Force of the said Attainder and Office, gives by his Letters Patents the said Manor to *Walter Walsbe*, and to the Heirs Males of his Body; whether this Gift be good or not, was the first Question: And to decide the same, First it is to be considered, if the Grant would have been good, if the King had been Tenant in Tail only, without any Reversion in Fee expectant to him. And in that Case the Queen's Attorney said the Grant was void, for (a) the Intent and Purpose of the King which appeareth in his Grant cannot take Effect, for he intended to grant an Estate-tail, and that he could not, for he had but an Estate-tail himself; and the largest Estate that Tenant in Tail may lawfully grant, is but for (b) his own Life, as *Litt.* saith; for he who hath Land in Tail to him and to the Heirs of his Body, hath such Estate so appropriate and incorporate to him and to the Heirs which shall issue out of his Loins, that he cannot lawfully grant it to a Stranger, and to the Heirs Males of his Body, for that would be against the Form of the Gift, and against the Stat. *De donis conditional'*. So (c) if the King be Tenant for Life, and the King Grants the Land to another and his Heirs, that Grant is void, for the King taketh upon him to grant a greater Estate than he lawfully can grant. And because his Grant cannot take Effect according to his (d) Intent expressed in his Grant, for that Cause his Grant is void, and shall not be construed to pass other Estate than he intended to grant; as to pass an Estate for Life, when the King intended and purposed to grant an Estate of Inheritance. And so the Book is in 7 *H.* 4. 42. & (e) 21 *E.* 3. 47. the Earl of *Kent's* Case. If the King hath the wardship of Land, or a Lease of Land for Years, and by his Letters Patents granteth the Land to another and to his Heirs, this Grant is void, and shall not by Construction amount to a Grant of his Estate or Interest; and so it is agreed in (f) 21 *Aff. Pl.* 15. The King licenceth his Tenant to alien to two Chaplains and their Heirs, and in Truth as it appeared by a Fine in the Treasury, he who aliened had but an Estate-tail, the Reversion to the King: And it was adjudged, that the Licence was void, and should not enure to a Licence to alien so much as he might lawfully alien, *scilicet* to them and their Heirs during his Life, for longer he could not alien, for as much as the Reversion was in the King: But because the King was deceived, when he gave the Licence to alien to them and their Heirs, in as much as he was not consant of his Estate, for that Cause the Licence was utterly void, and the Land seised into the King's Hands. So in the Case at Bar, the K. not knowing his Estate, granted a greater Estate than he could lawfully grant, and therefore his Grant is void, & *vide* (g) 40 *Aff. pl.* 56. which agrees with 21 *Aff.* 15, in all, and no Case in the whole Law can

(a) Hob. 224.

(b) Mo. 414,
419. Lit. Sect.
613. Co. Lit.
331. a. 332.

(c) Apres 50. b.

(d) 5 Co. 94. a.

(e) Mo. 415.
Hob. 155 11 Co.
74. b. 87. a.
2 Ro. 191.
10 Co. 113. b.
Fitz. Travers
41. Apres 50. a.
51. b.(f) 2 And. 156.
Plow. 558. b.
Mo. 415. Br.
Alienation 28.
Br. patent 77.
Br. gard. 62.
Br. releser pro
Rege 24. Br.
Scire fac. 152.(g) Flow. 557 b.
Gram. pra. 18 b.
Br. Alienation
13. Mo. 415.
Br. patent 37.
Br. Scire fac.
59. Br. Sur-
mise 809. Br.
gard. 82.
2 And. 156.

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be found, which denies it, that is to say, that the K.'s grant shall be good when he taketh upon him to grant a larger Estate than he lawfully may; but the contrary is proved by the Books aforesaid. Moreover it was said, that it was a Maxim in Law, that the King's Patent cannot do (a) Wrong: And therefore it is agreed, in 38 H. 8. *Br. Discontinuance* 35. *Inter Regem & Anthon' Lee Militem & tit. Pat.* 101. & *tit. Taile* 39. That if the King be Tenant in Tail, and grant the Land by Patent for Years, or for Life, and die, the Patent is void; for a Grant without Livery doth not make a (b) Discontinuance, nor shall it bind but during the Life of the Grantor; & *eadem Lex* of such Grant in Fee, for a Grant in Fee doth not make a Discontinuance without Warranty; and if the King's Grant should make a Discontinuance, it would do Wrong, which the King by his Grant cannot do, but his Grant shall be rather void. And that Book makes not against the Queen in the principal Case; for first it is to be observed, that no Question is made in those Cases but after the Death of the King who granted, and then without Doubt the Grant is void, so as it never came there in Question, of what Validity the Grant was in the Life of the King. Secondly, in 38 H. 8. it was not resolved, whether the King being Donee in Tail, was bound by the Stat. (c) *de donis conditionalibus*: But afterwards *Trin.* 4 *Eliz.* it was adjudged in the Lord *Barkley's* Case, that he was bound by the Statute. Thirdly, these Words (a Grant without Livery doth not make a Discontinuance) is the general Rule of Law, in the Cases of common Persons; and that is well proved by the subsequent Words; (a Grant in Fee without Warranty doth not make a Discontinuance) for doubtless that is intended in the Case of a common Person, and not of the King, for his Grant in Fee with Warranty is void, and doth not make a Discontinuance. And it is said (d) in the Lord *Barkley's* Case, *Pl. Com.* 246. b. that if Land had been given to the King, and to the Heirs of his Body, he before the Stat. of *Westminst.* 2. could not have aliened in Fee before Issue, for such Alienation by another would be a Wrong; so would it be in the King, if it should be adjudged an Alienation in Fee, and that it cannot be, for the King cannot do wrong, nor would his Prerogative warrant him to do an Injury to another; and the Estate which the King had, would not lawfully suffer such Alienation, for his Estate was not ample and full enough to make such Alienation, and his Prerogative will not alter his Estate, nor make it greater than the Donor gave it him; & *paulo post, scilicet fol.* 247. a. it is said, that the Alienation was *ad exheredation' exituum, ergo* it was *tortiosum*, for to disinherit one is not lawful, and if it were *contra voluntatem donatoris* it is ill done, for Men ought to observe the Intent of others in Things lawful, and to defeat it

(a) 11 Co. 72. b.
2 Inst. 681. Co.
Lit. 19. b. 13
E. 4. 8. a.
Plow. 246. b.
487. b. 5 Co.
55. b. Dav. 75.
a. Cr. argum.
60. 1 Ro. R.
167. Noy 182.
Mo. 415, 416.
7 Co. 12. b.
Godb. 317.
Apres 52. b.
(b) Co. Lit.
372. b. Plow.
233. a. 2 And.
155, 156 Apres
52. b. Mo. 414,
416.

(c) 5 Co. 14. b
Apres 48. a.
Mo. 415. 11 Co
72. a. 7 Co.
21. a. 32. a.

(d) Mo. 415.
Co. Lit. 19. b.

Note.

is ill; and these are the Words of the said Book; *a fortiori* in our Case, the King's Grant being restrained by the Stat. is void. If the King makes a Lease for Years, or for (a) Life, and afterwards grants the Land to another in Fee, or in Tail, without reciting the Lease, the last Grant is void; first, because the King grants an Estate in Possession, where he hath but a Reversion, and so is deceived in his Grant; and the Subject had a Way to come to the Knowledge of the said Lease, for every Patent ought to be enrolled in the Chancery, to which all Subjects may have Access, otherwise is it of Leases not of Record, as it is agreed *tempore H. 8. & E. 6. Br. tit. Patents* 93. Secondly, in the same Case it is not honourable for the King to grant the same Possession to one, which he or his Progenitors have granted to another, for by the Civil Law *Vendens eandem rem duobus falsarius est*; and in our Case *Walsbe* might well have Knowledge of the King's Estate, for his Estate-tail was created by Fine 3 *H. 7.* and his Title to the Reversion of the Fee was by Attainder and Office, all of Record. If a Man by Deed indented and inrolled bargain, sell, and grant Land to a common Person for Life, the Remainder to the King in Fee, and afterwards the King makes a Lease for Life or Years, &c. without reciting the particular Estate, the Lease is void, for the Subject is bound to take Notice of this Enrolment, as well as of the Enrolment of Letters Patents, and the rather because by the same Deed enrolled, the King's Estate is created: Then couple he Reversion in Fee with the Estate-tail; and first if the Grant in Tail to *Walsbe* be void, as to the King's Estate-tail, it cannot be a Grant of the (b) Reversion after the King's Estate-tail is determined, for that would be against the King's Intent and Purpose, which was to grant an Estate-tail in Possession; and *Walsbe* might by reasonable Means have Notice of the King's Estate being upon Record as aforesaid. And to that which was objected by *Heron Serjeant and Tho. Stephens*, that it shall enure as it may lawfully enure, as in (c) 21 *E. 4.* 44. b. & 2 *Ric.* 3. 4. a. b. where it is holden by *Starkie* and others, that if the King's Patent may be good to (d) two Intents, then it shall be taken most beneficial for the King, but if it may be to one Intent good, and to another Intent void, then it shall be taken to that Intent which makes the Grant good, and not to that Intent which makes it void; and therefore there in the principal Case where the K. granted to the Abbot of *Waltham* to be discharged of the Collection of Tenths granted *per Clerum Angliæ*, it shall be taken in the Sense that the Grant may be good, *viz.* of Tenths granted by the Clergy severally, for they never join'd in a Convocation, *quod Jcnny, Choke, Fairefax, Brian, & Hussie Justices concesserunt*; so in the Case at the Bar, it shall enure and shall be construed in such Sense that the Grant may be good, and that is, that the Grant shall be good to *Walsbe* in Possession during the King's Life, and shall be a good Grant of the Reversion in

(a) 4 Co. 35. b.
36. a. Apres 50.
a. 1 Rol. 190.
1 And. 46, 90,
91, 92, 93.
3 Len. 242, 243,
244, 245, 246,
247, 248, 249,
250, 251.
Mo. 415, 416.
Cr. El. 231.
Lane 22, 110,
111. Cr. Jac.
198. Hob. 229.
8 Co. 59. a. 57.
b. Dy. 233. pl.
10. 3 A. 7. *casu*
ultimo. Firz.
grant 35. Br.
parent 52, 66.
Hard. 500.
2 Roll. R. 277.

(b) 2 Co. 17. a.

(c) Dy. 269. pl.
16. Br. patent
71, 90. Br. ex-
emption 9. 14.
8 Co. 56. a. 167.
a. 11 Co. 11. b.
Plow. 32. a.
126. a. 143. b.
Fitz. grant 29.
Br. exposition
28. Mo. 165.
Hard. 500.
3 Keb. 234.
2 Roll. R. 275.
2 Sid. 82.
(d) 8 Co. 56. a.
167. a. 6 Co.
56. a. Kel. 7. b.
175. a. 198. a.
3 Len. 243. 11
Co. 11. a.
2 Rol. R. 275.
Hard. 500.

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Tail; for in such Manner the King may lawfully grant, and therefore *ut res magis valeat quam pereat*, in such Sense the Grant shall be taken. For put the Case, the King had

(a) Apres 46. b.
48. b.

(a) recited his Estate-tail, and his Reversion, and had granted the Land to *Walsbe* for the Life of the King, and the Reversion to him, and the Heirs Males of his Body, that without Question had been good. And it was said, that the Case at the Bar is as strong, for the Grant is *ex gratia speciali, certa scientia, & mero motu*, and therefore the King took Conufance and Knowledge of his Estate, for which Reason his Grant shall enure as it may lawfully enure: And many Cases were cited by them, where the King's Grants *ex certa*

(b) Dy. 269. pl.
19. Apres 46.
a. 48. a. 49. a.
50. b. Plow.
331. a. Br. Char-
ter de Pardon
36, 58. Br. pa-
rent 42. Br. Re-
lease 40. 2 R 3
7. a.

scientia & mero motu shall be taken strongly against the King, 1 H. 7. 13. a. (b) The King pardons *B. omnia debita ex certa scientia & mero motu*, all Debts which he owed as Sheriff are pardoned, 37 H. 6. 21. b. (c) A Pardon *ex mero motu, &c.* shall be taken strong against the King, in *Quatermain's* Case, 41 Aff. 19. (d) A Licence, *ex speciali gratia*, to alien a House in Mortmain is good, although it were

(c) Plow. 331.
b. Br. Charter
de pardon 25.
Br. patent 24.
Fitz. Charter
22. Br. return
de Briefs 59.

holden of the King, and many other Cases were put upon this ground. And it was further said, that the King's Grant *ex certa scientia & mero motu* shall be taken as strong against the King, as if a common Person had made the Grant. And if in our Case a common Person had made the Grant in Tail, without Question it had been good, and shall not be avoided by any, but only by the Issue in Tail, and after the Estate-tail determined, the Reversion in Fee shall be bound therewith.

(d) Plow. 332.
a. 43 E. 3. en-
tre congeable
28. Dy. 269. pl.
19. Br. patent
38. Br. alienati-
on 21. 2 H. 7.
13. a.

Lastly, it was said, that no Case can be found in the Law, that the King shall be obliged to recite his own Estate, but the Estate of others in some Cases he ought to recite, but no Estate which is in himself. To which it was answered, that in as much as the King's Grant cannot do wrong, or make a Discontinuance, as hath been agreed; and that the King being Tenant in Tail, he cannot lawfully grant a greater Estate than for his own Life, and that the King intended to grant an intire Estate-tail in Possession; it would be a hard and violent Constru-

(e) Lane 110.

ction to make this Grant to enure by such (e) Fractions of Estates; viz. in Possession to *Walsbe* and his Heirs Males of his Body for the Life of the King, which in Law is but an Estate *pur auter vie*, and to leave the Reversion of an Estate-tail in the King, and to grant his Reversion to *Walsbe* and the Heirs Males of his Body, upon which the King would have the Reversion in Fee expectant, for that would be against the King's Intent, for his Intent was to grant an intire Estate-tail in Possession, which is an Estate of Inheritance not subject to Waste, or Forfeiture, and such an Estate whereof the King may have Wardship and *primer seisin* of the Possession: But if the Grantee should have but an Estate for the Life of the King in Possession, then that Estate would be subject to Forfeiture and Waste, and of that the King should not have

Wardship

Wardship nor *primer seisin*; so that when the King intended to grant an intire and undivided Estate, the Patentee shall have two several divided Estates, *scil.* an Estate in Possession to him and his Heirs Males of his Body during the King's Life, and the King shall have a Reversion of an Estate-tail, and upon that the Patentee shall have the Estate to him and his Heirs Males of his Body, which was never intended by the King. And such general Grant of the K. will not put the Estate-tail in Abeyance; neither if the King being Tenant in Tail grants *totum statum suum*, this will not put the Estate-tail in Abeyance, for the Possessions of the King are so preserved and protected by the Law, that they cannot be devised by Disseisin, Abatement, &c. and that which the K. cannot by Law transfer to another, shall remain in himself; and in the same Case if the K. grant *totum statum suum*, it is void, for none (other) can have the Estate of the Land in Tail, and because his Grant cannot take Effect according to his Intent, the Grant is void (a) 40 *Aff. p.* 28. one cannot plead a *Que estate* of an Estate in Tail, because none can have his Estate; and the books in (b) 5 *H. 7. 39. a. 7. E. 6. Tit. que estate Br.* 31. 15 *E. 4. 16. a. 2 H. 4. 20.* are to be agreed upon this Difference, *scil.* If a common Person being Tenant in Tail grants *totum statum suum*, it is good during his Life, for his Grant shall be taken most strong against him, and such Grantee may plead it, and aver the Life of Tenant in Tail, but he cannot plead by a *Que estate*.

As to the Rule put by *Starkey*, that the King's Patents shall be taken in such Sense, and to such Intent, as that they shall be good; and as to the said Rule likewise taken, that the King's Patent *ex certa scientia* & *mero motu* shall be taken as strong against the King, as if a common Person had made the Grant; it was answered that there is another Rule in Law, that when the K. is (c) deceived in his Grant, the Grant is void; and that the K.'s Let. Patents shall be construed *secundum intentionem domini Regis*, & *non in deceptione domini Regis*, as *Brian* saith, 1 *H. 7. 13. a.* So the best Exposition is to make all these Rules agree together, and therefore both the said Rules put by the other Party are true with this Limitation, *viz.* unless the King be deceived, so that his Grant cannot take such Effect as he intended by his express Grant. And therefore in the Lord (d) *Lovel's Case*, *an. 18 H. 8. Br. Tit. Patents*, 104. where the King *ex certa scientia* & *mero motu* granted Land to one and his Heirs Males, that Grant was void, for he was deceived in his Grant, in as much as his Grant could not take Effect according to his Intent expressed in his Letters Patents. Also it was adjudged in the Exchequer, *anno 29 Eliz.* That where K. *H. 7.* was seised of two Manors, *viz.* of *Ryton* and *Condor* in the County of *Salop*, and granted *ex certa scientia* & *mero motu totum illud maner' de* (e) *Ryton* & *Condor cum per-*

(a) 2 *And. 155.*
Br. Affise 158.
Br. Que Estate
 18. *Fitz. Que*
Estate 18. Co.
L. 121. a. Cro.
Car. 428.

(b) *Fitz. Que*
 15. *Br. Que*
Estate 29. Co.
Lit. 303. b. Br.
Averm. 30. Lit.
Sect. 613.
 2 *And. 156.*
Godb. 442. Mo.
 474. *Co. 331. a.*

(c) *Mo. 45. 164.*
 9 *H. 6. 28. b.*
Lane 110. 2 Co.
 33. *b. 5 Co. 94.*
 a. 6 *Co. 29. b.*
 55. 7 *Co. 12. a.*
Apres 51. a. 52.
 b. 8 *Co. 56.*
 10 *Co. 112. b.*
 11 *Co. 4. b. 90. a.*
Hob. 223. 229.
Cro. Car. 198.
Yelv. 48.

2 *Ro. 188. Dy.*
 339. *pl. 47. &*
 352. *pl. 26. Co.*
Ent. 384. 41 Aff.
 19. *Br. parent*
 38. *Br. Aliena.*
 21. *Plowd. 332*
 a. *Mod. Rep.*
 196. *Kelw. 8.*
 b. 12. *b.*

(d) *Hob. 224.*
Devant 43. b
Apr. 49. a. 51.
 b. *Mo. 416. Co.*
 L. 13. *a. 27. a.*
 b. *Plow. 251. a.*
 335. *a. 18 Aff.*
 5. *Br. Estates*
 33. 69 *Dav. 34.*
 b. 43. *a. 18 E.*
 3. 45. *b. Lit.*
 Sect. 31. 7 *Co.*
 40. *b. 2 And.*
 138. 156. 1 *Ro.*
 860. 1 *Bullst. 10.*
 222. *Mod. Rep.*
 196. *Br. N. c. 5.*
 1 *Brownl. 55.*
 2 *Brownl. 334.*

(e) *Lane 102.*

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was deceived in his Grant; and yet in both the said Cases, if a common Person had made such Grants, in the first Case the Grantee should have Fee-simple, and in the later Case he should have both the Manors.

And the like Case was resolved in the Exchequer, *Trin. 39 Eliz.* That whereas the Queen was seized of the Manors of *Milborne* and *Sapperton* in the County of *Lincoln*, and the Queen did grant *ex certa scientia & mero motu totum illud maner' de Milborn cum Sapperton in Com. Lin. cln*; and it was held that neither of them pass. Another Case was adjudged in the Excheq. *an. 15 El. K. E. 6.* by his Letters Patents

(a) 1 Ro. R.
142. 2 Ro. R.
180. 3 Bulst. 14.

ex certa scientia & mero motu did grant to *Crowch* (a) *omnes terras dominicales manerii de Wellow, &c.* And it was adjudged that the customary Lands holden by Copy Parcel of the Manor did not pass, and yet they are also in Law Parcel of the Demesnes of the Manor, but the K.'s Grant notwithstanding the said Words, *ex certa scientia & mero motu*, shall not be construed to pass any thing against the King's Intent and Purpose expressed in his Grant; and yet without doubt, in all those Cases, in a common Person's Case, they will pass.

(b) 4 Co. 35. a.
6 Co. 56. a.

And it is well said in *Plowd. Com. fol. 355. a.* that true it is, when the Patent is made *ex gratia speciali, certa scientia & mero motu*, (b) it shall be favourably taken for the Patentee; but that is as to the Thing expressed in the Patent, which the Words shew to be intended to pass, but the same will not make another thing pass which is not expressed, nor oust that which the Words of the Patent shew to be intended:

(c) Plow. 314.
a. 336. b.

And for the same Reason there in the principal Case, where Queen (c) *Mary, de gratia sua speciali, & ex certa scientia & mero motu suis, concessit Thomæ Com. Northumber' solum & magnum vastum vocat' Darwentfelles*, by that Grant the Mine of Gold within it did not pass. And it is also there adjudged, that by the Grant of all Mines in such a Soil, altho' the Grant be *ex certa scientia & mero motu*, Mines Royal of Gold or Silver shall not pass, but the Words (Soil and Mines) shall be taken in a common Sense, and to a common Intent; but to have them pass, there ought to be special Words. So in the Case at the Bar, if the K. had granted the Land for his Life, and after his Decease, without Heir Male of his Body, had granted the Reversion, it had been good, but inasmuch as he granted an Estate-tail in Possession, which cannot take Effect according to his Intent, and cannot pass by such Fractions of Estates, as aforesaid, the Grant to *Walsbe* is void. But admitting it was good, it seems the Act of 28 H. 8. hath given it the King again; and therefore the Case is but thus, *J. S.* is Tenant in Fee-simple of the Manor of *Dale*, or Tenant in Tail thereof, the Reversion to the King, and afterwards this Manor is by express Name given by Act of Parliament to the King, saving the Right, Title, Interest, &c. of all Person

Note.

and

and Persons, &c. whether the Estate of *J. S.* be saved or no; and it seems not, for the (a) Saving as to the Owner of the Land is repugnant, in as much as the Manor is by express Name given to the King: For if the general Saving shall extend to the Owner of the Land, then the Act would be made in vain. And therefore, if it be recited by an Act of Parliament, that whereas *J. S.* is seised of certain Land in Fee, this Land by the same Act is given to the King in Fee, saving the Estates, Rights, &c. of all Persons; the Estate of *J. S.* is not saved thereby, for that would be repugnant, and make the express Gift void. And it appeareth in our Books, that a Saving in an Act of Parliament, which is repugnant to the Body of the Act, is void, as in *Plow. Com.* 563. *b.* where the (b) supposed Attainder of the Duke of Norfolk was by Act of Parliament *1 Mariæ* declared to be void and null *ab initio*, saving the Estates and Leases made by *K. E. 6.* &c. that Saving was void; for when the Attainder was declared to be void, the said Saving was against the Body of the Act, and therefore void. So in the Case *M. 6 & 7 Eliz. Dyer* 231. (c) it is enacted by the Stat. of 31 *H. 8. c. 13.* that all Religious Houses and their Possessions, then or after to be dissolved, shall be unto the King in the same Estate and Condition as they were at the Time of the making of the said Act, saving to all Strangers their Interests, &c. After the said Act, the Abbot of *Ramsfey* granted the next Avoidance of a Church of his Patronage, and afterwards the Abby was dissolved; and it was adjudged that the Grant was void, and the Saving repugnant to the Body of the Act, for if the Advowson shall be in the King in the same Estate and Condition as it was at the Time of the making of the said Act, then a Grant made afterwards cannot be saved. So the Case 27 *H. 8. tit. Parliament & Statut, Brook* 77. If Land escheat to the King by Forfeiture for Treason, and afterwards that Land is given to another by Act of Parliament, (d) saving to all others their Rents, Services, &c. that Saving is repugnant and void, for they were extinct by the Forfeiture. So by the Statute of 1 *E. 6.* of Chaurtries, all Services, Rents, &c. are saved, yet that Saving as to the Services is repugnant and void, for the King cannot hold of any other as it is holden 14 *El. Dy.* (e) 313. *a.* So in our Case when the Manor of *Abbotesfley* is expressly given to the King, the general Saving cannot extend to save the Estate, &c. of him who was seised of the Land, for that would be repugnant to the Body of the Act, and would make all the Act vain and idle: But the Case at the Bar is stronger than the Case before put for the Explanation of this Point. For it is recited by the Preamble of the said Act of 28 *H. 8.* that whereas there were divers Liberties, Preheminences, Commodities, and Delights appertaining to it, therefore it was enacted,

that

(a) Mo. 415.
Styl. 161.
3 Inst. 47.
Cro. Car. 38.
See Skin. 171.
Fitzgib. 195.

(b) Plowd. 565.
a. Mo. 309.
132. Dav. 4. a.
3 Keb. 236.
Lit. R. 44.

(c) Dyer 231.
pl. 1. Bendl. in
Kel. 211. pl. 19.
& in Ash, pl.
19. 2 Co. 49. a.
10 Co. 55. b.
N. Bendl. 132.
pl. 195. Plo.
207. a.

*the grantee claims
under abbot's title
1700. 100*

(d) 6 Co. 5. b.
2 Ro. 502. pl.
9. 514. Dav.
4. a.

(e) Dy. 313. pl.
91. 1 And. 45.
8 Co. 118. b.
Cro. Car. 82, 83.
3 Leon. 58.
4 Leon. 40.
2 Ro. R. 246.
247. Dav. 2. a.
1 Jones 234.
Lit. R. 43.
Co. Lit. 1. a.

The Case of ALTON WOODS. PART I.

(a) Apres 52. b. that K. H. 8. should have it; so as the (a) Delight and Pleasure of the King, and not only his Commodity was intended to be provided for by the said Act; but what Delight may the King expect after *Walsbe* and his Wife shall die without Heir Male of their Body? Further it was enacted, That the K. *extunc imposter haberet & teneret maner' præd'*, so that the Saving of the Estate of *Walsbe*, which peradventure may continue for ever, is repugnant to these Words. Again, 3dly, the Words of the Act are, *Et quod idem maner' adjudicaretur autoritate ejusd' Parliamenti in præd' nuper rege H. 8. hæred' & success. suis*; so that be the Act in the (b) Nature of a Conveyance, or in the Nature of a Judgment, the Saving is repugnant as to him who makes the Conveyance, or against whom the Judgment is given, or from whom the Estate of the Land is to pass. For altho' all are Parties to the Act, yet in Judgment of Law, the Land moves from him who is seised of the Land; as if a Man make a Feoffment to the Use of another in Tail, the Use is transferred into Possession by the Stat. of 27 H. 8. yet he who was Owner of the Land, and from whom the Land moveth, shall be supposed the Donor, 7 E. 6. tit. *Formedon, Br. 46. & 2 E. 6. & 1 M. ib. 49. & 20 El. Dy. (c) 362. b.* And it is said in *Plow. Com. in Talbois Case, 59. a.* that it shall be the Gift of the Terre-tenant (for there the Feoffment to the Use was before the Stat. of 27 H. 8. c. 10. which made the Difference) and the Confirmation of all others who assent to the Act; for there it is said, that if it should be adjudged the Gift of any other, then the Parliament would do wrong to the Terre-tenant, in taking his Land from him, and to make another Donee thereof. And the Conclusion of the Purview of this Act is (the said Fine of 3 H. 7. or any other Thing to the contrary notwithstanding) and the said Grant to *Walsbe* is something; wherefore for all these Causes it was concluded that the Judgment ought to be reversed. And because *Periam Ch. Bar.* shewed the Reason and Causes of the first Judgment, and argued in Maintenance thereof, therefore I shall here make a brief and summary Report of his Argument: He said that this Grant in Tail to *Walsbe* shall take its Effect out of both the Estates of the King, *scil.* his Estate-tail, and his Reversion, because by some Means such Grant may be made: For if the King had recited his Estate, and had made a special Grant (*viz.*) to *Walsbe* for the Life of the K. and after the K.'s Death without Issue Male to *Walsbe* in Tail, it had without Question been good. And he said, if the K. had been Tenant in Tail only, and had made such a Grant in Tail or in Fee it had been good during his Life. So if the King be Tenant for Life, and grant the Land to another in Fee or in Tail, it is good to pass the Estate which the King hath, and he cited the said Case reported by *Brook* in 38 H. 8. and he collected from that Book, that the Grant was good during the King's Life,

for

(c) Dy. 362.
pl. 21. 2 Co.
72. b. Apres
137. a. 1 Jones
179.

for the Book saith, that the Patent was void by his Death, and that his Grant did not make a Discontinuance. He likewise cited the principal Case of the Lord *Berkley, Plow. Com.* 231. a. where in effect the Case was, That K. H. 8. being Tenant of the Manor of *Weston juxta Baldock* in the County of *Hertford*, to him and to the Heirs Males of his Body, an. 35. of his Reign, granted it to Queen *Katharine* for her Life, and having Issue K. E. 6. died, and K. E. 6. granted it to the Earl of *Pembroke* in Fee, and died without Issue Male, &c. and it was adjudged that the King was (a) bound by the Stat. de *Donis Conditionalibus*, and none of those who argued, held that the Grant of K. H. 8. or the Grant of K. E. 6. were void *in initio*, but that they were determined by the Death of the King, who granted them; and that such Grants do not make Discontinuances, which proveth (as he collected) that the Grants were not presently void, but were good during the King's Life who granted and determined by his Death. And he cited the Book in (b) 33 *Aff.* p. 10. where he collected from the Book, that if the Husband seised in the Right of his Wife, be attainted of Felony, and the K. upon Office thereof found, seise the Land, and grants it to another in Fee, that this is good to pass the Estate during the Coverture, which the King gained by his Forfeiture, for there such Patentee had Aid. And he put the Rule before put by *Starkey*, and also said, that for as much as the Patent was *ex certa scientia & mero motu*, it shall be taken as strong as if the Grant were made by a common Person, and put the Cases before cited of (c) 41 *Aff.* pl. 19. (d) 1 *H.* 7. 13. a. and (e) 37 *H.* 6. 21. b. all which you shall find in *Plowd. Comment.* 331 & 332. in the Case of Mines. So that for as much as the Grant is *ex certa scientia*, the King is consant of his Title, and it is as much as if he had recited his Estate, and granted the Land to *Walsbe* in Tail, in which Case the Grant without Question had been good; so that the Grant might have been made good by Means, and (*ex certa scientia*) supplieth the Means, that is to say, the Recital: But he said, the King need not recite his own Estate in any Case that could be found in the Law; he likewise said it would be mischievous to many Men, and the Inheritance of a great Number of the Subjects would be drawn in question, if this Grant of the K. should be adjudged void; for *Norton* and many other Rebels in the North and elsewhere were Tenants in Tail with Remainders over, and were attainted of Treason, by which, and by the Stat. of (f) 33 *H.* 8. c. 20. the Queen hath an Estate to her, her Heirs and Successors, as long as the Traitor hath Heir of his Body, and the Queen hath granted the same over to many of her Subjects and their Heirs generally, without any Recital or Mention of her Estate, and it would be very hard

(a) Devant 44. b. 11. Co. 72. a. 5 Co. 14. b. 7 Co. 21. a. 32. a. (b) Apres 50. a. Br. Aid de Roy 83. Br. Petition 16. (c) lowd. 332. a. 43 E. 3. Entre Congeable 28. Dy. 269 pl. 19. Br. Patent 38. Br. Alienation 21. 2 H 7 13. a. Devant 45. b. (d) Dy. 269. pl. 19. Apres 49. a. 50. b. Devant 45. b. 46. a Plow. 331. a. Br. Chart. de Pardon 36. 58. Br. Releases 40. Br Patent 42. 2 R. 3. 7. a. (e) Flo. 331. b. Br. Patent 24. Br. Ch. de Pardon 25. Br. Ret. de Brief 59. Fitz Charter 22. Devant 45. b. (f) Stamf Cor. 198. a. 3 Co. 2. b. 10. a. b. 5 Co. 52. b. Kel. 17. 7 Co. 12. b 15 b. Stamf. præ. 53. a. b. Dy. 343. pl. 56. 344. a. 1 And. 293. Palm. 439. 1 Jones 70, 71, 75, 76, 77, 80. Poph. 19. 1 Le. 21. 4 Le. 169, 172. Cro. Car. 426, 461. Co. Ent. 389. b. 422. b Mo. 307, 311, 312, 320, 313, 327, 329. Godb. 301, 344, 305, 312, 315. Hob. 331, 335, 341, 344, 345. Co. Lit. 372. b. 392. b. 2 Ro. R. 318, 321, 324, 375, 503. 3 Inf. 19. Devant 42. a.

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hard to avoid all such Grants; but he held all such Grants good, and that the Queen need never to recite her own Estate: So he concluded this Point, That the King's Grant is as strong in this Case, as if a common Person had been Tenant in Tail with the Reversion expectant, and had bargained and sold the Land to another in Fee, or in Tail, by Deed indented and enrolled, in which Case, the Estate pass by the Bargain and Sale should be derived out of both his Estates, and none should avoid it, but the Issue in Tail.

Then as to the Act of 28 H. 8. he conceived, That whereas the Grant in Tail was avoidable by the Issue in Tail, now it is become unavoidable; for now by this Act, the Estate-tail is utterly extinguished and barred for ever. (a) As if Tenant in Tail grant a Rent in Fee, it is determinable by the Death of Tenant in Tail; but if the Tenant in Tail levy a Fine, or suffer a Recovery, by which the Estate-tail is barred, then it is unavoidable. And he recited the Opinion of *Englefield* Justice, 29 H. 8. *tit. Remitter. Br. 49.* That he who taketh a Gift by Act of Parliament of any Land, neither he nor his Heirs shall be remitted, for where Land is expressly given to any Person by Act of Parliament, which is a Judgment, neither he nor his Heirs shall have any other Estate than is given by the Act. But in his Argument he spake nothing to the Point moved touching the Repugnancy of the saving of the said Act.

After which Argument of the Chief Baron, the said Ch. Justices, and Justice *Garwy*, heard again the Counsel on both Parties at Serjeants Inn in *Fleetstreet*, and had Consideration of the Books, which had been cited on each Side; and after Conference had amongst themselves, and upon great Deliberation, they were unanimously agreed. And afterwards in the same Term in the Exchequer-Chamber, the Chief Justice of *England* being asked by the Lord Keeper and the Lord Treasurer, if they were agreed, and ready to shew their Opinions in the said Case, he answered, That they were unanimously agreed, that the said Grant to *Wallsh* and his Wife in Tail was utterly void. And the Ch. Justice did openly declare the Reasons of their Resolutions, and several Answers to the Objections which had been made. First, the King in this Case hath an Estate-tail in Possession, and as to that he may lawfully grant an Estate for his own Life; he hath also the Reversion in Fee, and as to that, he may lawfully grant an Estate-tail; so that in respect of these two Estates, he might by some Means, as it hath been said by the Lord Chief Baron, derive lawful Estates out of both, that is to say, an Estate for his own Life out of one, and an Estate-tail out of the other, and that may be by special Grant; then if by any Means it may be done, it hath been said that the Grant

(a) Cro. El.
793. Hutt. 96.
2 And. 170.
Noy 10. Apres
62. a. b. Co.
L. 348. b.

Grant shall enure to such Effect in the Case at the Bar for two Reasons. 1. Because the Grant was *ex gratia speciali & ex certa scientia & mero motu*. 2. That such Grant is as strong against the King as if a common Person had made such a Gift. As to the first it was agreed, That in many Cases the King's Grant *ex certa scientia & mero motu*, shall be construed (a) beneficially for the Patentee; but such Words shall never produce a violent or strainable Construction, or any Construction which is against the Intent and Purpose of the K. in his Grant, but the Grant notwithstanding those Words shall be taken in an usual and common Sense and Understanding, *b) secund' intentionem domini Regis*, as Brian saith in 1 H. 7. 13. a. And therefore if the King *de gratia sua speciali, & ex certa scientia & mero motu*, grants Lands (c) to one, and to his Heirs Males, the Grant is void, as it was adjudg'd in 18 H. 8. cited before by Master Attorney; and yet if a common Person had made such Grant, the Grant would be good, but if it should be good in the King's Case, it would be a general Estate in Fee-simple, descendable as well to Females as to Males, in Course and Order of Descent, which would be against the Intent and Purpose of the King's Grant, for he intended to grant an Estate in Fee-simple descendable only to Heirs Males: But the Book in 1 H. 7. 13. a. is good Law, where the K. (d) pardons *A.B. ex certa scientia omnia debita*, all Debts which he owed as Sheriff are pardoned, for that is not any strainable Construction, nor doth impugn the Intent and Purpose of the King's Grant: And *Popham* Chief Justice cited the Case of (e) *Torrington* (which is not fully reported by the Lord *Dyer*) with which he was of Counsel; and the Case was such: King *Hen. 8.* was seised of the Manor of *Torrington* in the County of *Devon*, and of a Market within the said Manor every Week, and of a Fair holden there in *Vigilia, festo, & Crastino sancti Michaelis*; and Queen *Mary* incorporated the Town of *Torrington*, by the Name of Mayor, Aldermen and Burgesies, and did not grant to them *feriam suam, or nundinas suas*, but granted to them *de gratia speciali, ex certa scientia & mero motu, quod ipsi & successores sui possint habere & tenere extunc unum mercatum quolibet die Sabbati, &c. & duas nundinas ibidem annuatim, viz. unam in vigilia, festo & Crastino Sancti Michaelis Archangeli, & aliam in festo sancti Georgii martyris, nisi mercatum & nundinae illi essent ad convenientiam vicinorum mercatorum & vicinarum nundinarum*, and it was adjudged, that this Grant was void, because the Queen was not well informed of her own Estate, for when her Intent appeareth by her Grant to create a Fair in *vigilia, festo & Crastino Michaelis, nisi sit ad convenientiam, &c.* which are the usual Words to create a new Fair:

H

And

(a) 6 Co. 6. a.
56. a. 8 Co.
56. a. b. 77. a.
167. a. 9 Co.
30. a. 10 Co.
7. b. 11 Co.
11. a. b. De.
vant 43. b. 46. a.
2 Rol. 200.
3 Bulstr 6.
2 Inlt 496, 497.
Kelw. 175. a.
198 a. 3 Leon.
243.
(b) 3 Bulstr.
14. 3. 8 Co 56 b.
(c) Brownl 45.
2 Bownl. 334.
B. N. c. 5.
Mod. Rep. 196.
1 Bulstr. 10.
222. 1 Ro. 860.
2 And. 138, 156.
7 Co. 40. b.
Lit Sect. 31.
18 E. 3. 45. b.
Co. Lit. 13. a.
27. a. b. Dav.
34. b. 43. a.
18 Aff. 5. Br.
Eita. 33 Flow.
251. a. 335. a.
Mo 416.
Hob. 224. De.
vant 43. b. 46. a.
3 pres 51. b.
(d) Devant
45. b. 46. a.
48 a. Apres
50 b. 1 lowd.
331 a. Br.
Cho de Par.
don 35. Br.
Parent 42 Br.
Releas 40.
2 R. 3. 7. a.
(e) Lane 110,
112. Apres 51. a.
Dyer 276.
21 54, 53, 54
Mo 416. 227.
Jones 163.
1 alon. 83.

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And in the Creation of a new Fair, these Words are always added; that is to say, *Nisi sit ad nocumentum, &c.* But there it was said, that the Patent being *de gratia speciali, certa scientia & mero motu*, should pass the ancient Fair; but it was (a) adjudg'd contrary; for that would be against the Intent and Purpose of her Grant, which was to create a new Fair, and not to grant one which was in Being; and yet if it was in the Case of a common Person, without question the ancient Fair would pass. And to this Purpose the Case of 18 *Eliz. Dyer 352.* and the other Cases put by Master Attorney are to be applied. And to the Inconveniences which have been supposed, it was agreed, that there was not any such Inconvenience as hath been objected, for it was agreed by them, that if the Queen hath a qualified Fee-simple in certain Land, that is to say, as long as a Person attained hath Heir of his Body, and she grant the Land to another and his Heirs, the Grant is good: So if the Queen hath an Estate in Fee-simple conditional, and grants the Land to one and his Heirs absolutely, it is good; for in both Cases the Queen hath a Fee-simple, and grants a Fee-simple, and her Grant stands well with her Estate; otherwise it is in the Case at Bar, for the Estate of *Hen. 8.* in our Case doth not permit such an Estate as he hath granted; and it was not intended by the Queen's Counsel, that the Grant of King *H. 8.* was void, because he did not recite his own Estate, but because he granted such an Estate which could not stand with his own Estate, and so was deceived in the Intent and Purpose of his Grant. And so it was adjudged in the Case of (b) *Huffey, Hill. 40 Eliz. in Commun B.* and the Case was thus: *Charles Duke of Suffolk* was seised of the Advowson of *Welborn* in the County of *Lincoln* in Tail, the Reversion to the King; the said Duke *Anno 30 H. 8.* by Deed inrolled, granted the Advowson to the King, his Heirs and Successors, and afterwards the Statute of 34 *Hen. 8. cap. 21.* was made, by which the Estate-tail was barred, and afterwards King *H. 8.* granted the Advowson to another in Fee, and it was adjudged that the Grant was good; (c) for the King had but one Fee-simple conjoined and consolidated in him, and not two distinct Fees; and if he had two Fees in him, yet his Grant is good, for the intire Fee-simple was in him, and he did not grant more than he lawfully might grant, and which was the King's Intent and Purpose to grant, and the Grant did take Effect according to his Intent and Purpose.

And as to the Lord *Barkley's* Case in *Ploeden's Commentaries*, the Judges grounded their Judgment upon a Point which was clear, that is to say, That after the King's death the Grant was void, and it was great Consideration in them

not

(a) 3 Leon.
241, 248, 249.
Devant 43. a.
2 Ro R. 275
Dy 352. Pl. 26.
Après 52. b
Devant 48. a.

(b) Hob. 323.
Cro. El. 519.
Co. Lit. 18 a.
1 Ro R. 152.
170 2 Ro. R.
220 Mo. 421.
2 And. 42.
1. Jones 6. 33.

(c) Co. Lit. 18 a

not to dispute of that which was not in Judgment before them, *viz.* Whether the Grant was void in the Life of the King, when it was clear it could not be good, the King being dead. And Reporters do wisely to omit Opinions that are delivered accidentally, and which do not conclude to the Point in Question. In 1 & 2 *Phil. & Mar.* 107. *b.* the Archbishop of *Canterbury* had *Catalla felonum de se infra manerium de D.* he commits (a) Treason, afterwards the King makes a general Grant in the usual Form to the Almoner of the Goods of Felons *de se* to dispose in Alms, &c. the Archbishop is attainted; *Hales* who had a Lease for Years there is *felo de se*, the King grants the Term to another, the (b) Grantee shall have it, and not the Almoner, for the Almoner hath not any Interest, but is a Minister, and hath the Disposition of the Queen's Alms (*durante beneplacito.*) And it appeareth by the said Book, that the Queen shall not have the Forfeiture for the Archbishop's Treason (c) but during his Life; yet it is clear that the Queen may grant it at Will, without Recital; for that is a less Estate than she hath. And if the Queen grants the Goods and Chattels of Felons *de se*, she need not recite the Grant of them made to the Almoner, nor to determine her Will as to them, *causa qua supra.* And as to the Case of (d) 33 *Aff. pl.* 10. that doth not prove the Collection which hath been made from it. For first, be the Patent good or void, yet the Patentee shall have Aid, as it is agreed, in 21 *E.* 3. 47, & 7 *H.* 4. 41. Secondly, the Party who was Heir to the Wife was put to his Petition, which proves, that an Office on the Attainder of the Husband for Felony (for in such Case the King could not be entitled (f) without Office) was found, setting forth, that the Husband was seized in Fee at the Time of his Attainder, and then, without doubt, the King had a Fee-simple, which he might grant, but if a (g) special Office was found, setting forth, that the Husband had nothing but in the Right of his Wife, then after his Death the Heir was not put to his Petition. And when the King makes a Lease for Life or Years, afterwards, (h) without reciting them, grants the Land in Fee or in Tail, that is void by the Common Law, altho' the Grant be *ex certa scientia & mero motu*, and there is no Case of special Prerogative; for before the Statute of *de Prerogativa Regis*, Knights Fees, Dowers and Advowsons have passed by the King's general Grant; but the (i) Stat. *de Prerogativa Regis, cap.* 15. restrains them, if they be not granted by express Words; but the said Grant without Recital is void by the Reason of the Common Law, because the King is deceived in his Grant, when he intends to grant that in Possession, which cannot take the Effect which the K. doth purpose and intend, and the Subject hath a Mean to

(a) Mo. 100.
1 And. 19.
1 Leon. 198.
2 Leon. 5. 3.
2 Leon. 20. Dy.
309, 310. O.
Ben 43, 69.
(b) 9 Co 25. b.
Full. Church
Hist. Lib. 5. p.
187. Dav 43. b.
Dy. 107, 108.
pl. 28, 29, 30.
3 Inst. 19.

(c) 3 Inst. 19.

(d) Devant 48.
a. Br. Aid de
Roy 83. Br. Pe-
tition 16.
Devant 44.
a. Fitz. Tra-
vise 41. 10 Co.
113. b. 11 Co.
74. b. 87. b.
2 Ro. 191. Hob.
455. Mo. 415.
Apres 50. b.
(f) 5 Co. 52. b.
(g) 4 Co. 55. a.
(h) Dy. 77. pl.
37. 3 H. 7. casu
ultimo. Witz
Grant 35, 42.
Br. Tar. 52, 54,
57. Br. Corody
15. 6 H. 7. 14.
a. 8 Co 55. b.
57. a. 8 H. 7.
12. b. 39 H. 6.
48. b. Apres 51.
a. 1 Bullstr 8.
(i) Stamf Prae.
41. b. 42, &c.
17 E. 2. c. 15.
10 Co. 63. b.
64. a. 2 R. 3.
4 b. 41 E. 3.
5 b. 11 lowd.
252. a. 8 H. 7.
2. a. 43 E. 3.
27. a. 38 H. 6.
34 b.

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come to the Knowledge of it. Also when the immediate Possession is granted to two several Persons, it begets Suits and Troubles, which the Common Law will not suffer in the King's Grants under the Great Seal, (a) 2 R. 3. 7. a. *J. S.* had been Sheriff to King *Ed.* 4. and afterwards was Sheriff to King *R.* 3. and King *R.* 3. *ex certa scientia & merito motu*, did pardon him *omnia debita & comput' ratione officii sui*, this was void for the Incertainty : So the Queen reciting, that whereas *J. S.* is indebted to her (b) as Executor to *J. N.* pardons *J. S.* *ex certa scientia & merito motu omnia debita*, this will not discharge him of his own Debt, for the Queen's Recital doth declare her Intent and Meaning, which always is the best Direction for the Construction of her Grant. The King, Tenant in Tail, grants the Land for his own Life, and afterwards reciting the Grant for his Life, grants the Reversion to another and his Heirs, this Grant is merely void, for the Estate for Life was all which he could lawfully grant ; then if he cannot grant it in such Manner, he cannot one Time grant that in Tail by the same Letters Patents, which he cannot grant by several Grants. (c) The King, Tenant in Tail, makes a Gift in Tail to another, the Gift is void, and shall not be good for his own Life, for that was not the King's Intent ; and forasmuch as the King cannot grant that which he intended to grant, he was deceived : And because that Estate which he intended to grant, (*scil.*) the Estate-tail cannot take Effect, that which he intended not to grant, *scil.* (an Estate for his own Life) by any constrained Construction shall not take Effect. And there is no Case in Law which is against their Opinion. And the Books in (d) 7 *H.* 4. 41. & 2 *E.* 3. 47. before cited by Master Attorney, prove the Reason of their Resolution : And the Estate-tail shall not pass out of the Reversion in Fee only, for the King intended to pass it in Possession, and without Question it shall not pass by such Fractions of Estates, as hath been objected on the other side : If the King be Tenant in Tail, the Remainder in Fee by the Gift of a common Person, the King makes a Lease for his own Life, and afterwards by other Letters Patents reciting the Estate for Life, grants the Reversion to another and to his Heirs, or in Tail, this is utterly void, and shall not take Effect out of the Remainder in Fee, for the King's Intent was to grant the immediate Reversion expectant on the Estate for Life, and not a Reversion expectant on an Estate-tail, which was remote and mediate. The Chief Justice likewise said, that it was agreed by them, That if the (e) K. be Tenant for Life, and grants the Land to another and his Heirs, or to the Heirs of his Body, it is void, and shall not be good to pass his Estate for Life ; but if the King be Tenant for Life, and lease the Lands for Years, it is good, as it was holden in (f) *Englefield's Case* ; because an Estate for

(a) Dy. 260.
pl. 19. 3 Bullf.
14. Pl. 331. a.

(b) Lane 117.
3 Bullf. 14.
1 And. 94.

(c) 7 Co. 12. a.
Englefield's
Case, Devant
44. a.

(d) Mo. 415.
Hob. 155.
10 Co. 113. b.
11 Co. 74. a.
87. a. 2 Ro.
191. *Fitz Traverse*
41. *Devant*
44. a. 50. a.
51. b.

(e) 7 Co. 12. a.
Devant 47. b.
Apres 52. a.

(f) 7 Co. 14. a.
Devant 44. a.

for Years is less in the Judgment of Law, than an Estate for Life; and as to (a) the Act of Parl. of 28 H. 8. it was also agreed, by them, That if the Grant be void, that, without Doubt, doth not make it good; and admitting it was voidable, yet the Act of Parl. will not make it unavoidable, as the Case of 16 E. (b) *Dyer* 337. b. A Parson makes a Lease for Life of certain Land, the Land is given to the King by Parliament, the King shall have it in the same Right as he had who made the Lease; and therefore after the (c) Death of the Parson, the King shall avoid the Lease, as the Successor might have done, and the Gift by Act of Parliament, doth not make the Lease unavoidable. And all that which *Popham*, Ch. Justice, delivered, was agreed and resolv'd by *Anderfon* and *Gawdy*; but because they were not agreed of the Point mov'd by the Attorney Gen. concerning the Act of 28 H. 8. admitting that the Grant in Tail was good; and because they were agreed that the Grant itself was void, as to the Point of the Act of 28 H. 8. they did not deliver their Opinions, but the Chief Justice, told me his Opinion was, that if the Estate tail was good, that the Act of 28 H. 8. had given it to the King, and that *Walsh* was not within the (d) Saying. And after their Resolutions thus delivered, Sir *Tho. Egerton* Ld Keeper of the Great Seal, asked the Justices two Questions: First, admitting that K. H. 8. had recited that he was seized of the Estate-tail, with the Reversion expectant to him in Fee, and had granted the Land in Tail, if then the said Grant in Tail had been good; and in the same Case, if it should not enure as by Law it might enure: And (e) *Gawdy*, Justice, answered, That altho' it would be a stronger Case than the Case at the Bar, yet he conceived that in such Case the Grant would not be good; for altho' the K. recites his Estate, and is (f) inform'd thereof, yet the Estate which he intends to grant, cannot stand with his Estate; for neither the Estate in Tail in Possession, nor his Reversion, will enable him to a make Grant in Tail in Possession, no more if the K. grant an (g) Office to one for Life, and after the King will recite his former Grant, and grant it to another for his Life, to take Effect presently, this Grant is void, for it cannot take Effect according to his Intent; and if he will have it be effectual, he ought to grant it as the Law requireth, and as it may take Effect, that is to say, to take its Effect after the Death of the first Grantee, So in the Case at the Bar, notwithstanding he recites his Estate, yet if his Grant cannot by Law take Effect according to his Intent, his Grant is void, (h) *quod fuit concessum* by the two Chief Justices, for the Recital of his Estate is not material when the King is (i) deceived in his Grant.

(a) Styl. 161. Apres 52. b.

(b) Hob. 123. 243. Dy. 337. pl. 38. 3 Leon. 158. 7 Co. 8 a.

(c) N. Ben. 225. pl. 253. O. Ben. 29.

(d) 3 Co. 60. a. Co. Lit. 45 a. Mod. R. 203. 205.

(e) Devant. 47. a. Mo. 415. Styl. 161.

(f) Hob. 224.

(g) Devant 48. a.

(h) 2 Ro. 190. 8 Co. 55. b. 57. a. 1 Bullt. 8. 3. H. 7. casu ultimo. Fitz. Grant 35. Br. Patents. 52, 54. 6 H. 7. 14. a. 8 H. 7. 12. b. 11 E. 4. 1. a. b.

(i) Hob. 224.

(j) Mod. 196.

The second Question that the Lord Keeper of the Great Seal

The Case of ALTON WOODS. PART I.

Seal asked, was, what their Opinion was upon the Act of 28 H. 8. admitting the Estate-tail was good. To which the Lord Chief Justice answered, that as to that, they were not resolved. And thereupon the Lord Keeper and the Lord Treasurer, because the Case was of great Importance, desired to have the principal Reasons of the Judges delivered shortly to them in Writing, upon which they would advise; which were delivered to them accordingly; and afterwards, at another Day the same Term, the Lord Keeper and the Lord Treasurer did argue the Case openly in Court. And first, the Lord Keeper said, That altho' it was sufficient for him to rely upon the Opinion of the said grave and reverend Judges, without whom he could not proceed to Judgment, yet it is convenient for every Judge openly to shew the Reason and Cause of his Judgment. This Grant to *Walshe* and his Wife is made (a) *de gratia speciali*, (which implieth Bounty) *ex certa scientia*, (which imports Science and Knowledge) and *ex mero motu* (which manifesteth that it was not made upon Suggestion or Suit of the Party); but all these are not of any Effect or Operation, if the King be deceived, or if the Intent or Purpose of his Grant cannot by Law take Effect. The King ought to be informed of his own Estate, whether it be in Possession or Reversion (for if it be in Lease for Life, or Years of Record, whereof the Subject may take Notice, there altho' he grants it *ex certa scientia*, &c. in Possession without Recital, &c. it is void; so the King ought to be truly informed of the Estate which passeth, for if he intend to pass a new-fashion'd Estate not warranted by Law, as in the (b) Lord *Lovel's* Case, the Grant is void, altho' it be *ex certa scientia* & *mero motu*; but if it had been in the Case of a common Person, such Grant would be good. And he remember'd the Cases of (c) 7 H. 4. 41. & 21 E. 3. 47. put before; and he said, that altho' in the Books a *Scire facias* was brought to have the Letters Patents repealed of Record to be cancelled, yet in Law the Grants were void *ab initio*. And in the Case of *Torrington*, the King was not well apprised of his own Estate and Interest in the old Fair, for then he would never have intended to grant to another a new Fair, to be holden on the same Days, and at the same Place, so that two several Persons should have two several Fairs on the same Days, and in one Place, upon which Confusion would follow. So in our Case the King was not apprised of his own Estate, for then he never would have granted an Estate which could not take Effect according to his Intent and Purpose. And he put the Case (d) M. 3. H. 7. 6. where the King writ to the Prior of *Norwich* to admit his *Vadelet* to a *Corody*; and the Prior return'd, that the Priority was of the Foundation of the (e) Bishop of *Norwich*, and not of the

(a) 3 Leon.
249. Apres 53
2.

(b) 2 And. 156.
138. Devant
43. b. 46. a.
49. a. Mo. 416.
Hob. 224 Co.
Lit. 13. a. 27. a
b. Flow. 251. a.
335. a. Br. E.
itate 33. 18
Aff. 5. Dav.
34. b. 43. a.
1 Rol. 860. 18
E. 3. 45. b.
Lit. sect. 31.
7 Co. 40. b.
1 Bullfr. 10.
222. Mod. Rep
196. B.N.C. 5
1 Broul. 45.
2 Broul. 334.
Sty. 267.

(c) Mo. 415.
Hob. 155. 10
Co. 113. b.
11 Co. 74. b.
87. a. 2 Ro.
191. Fitz. Tra-
verse 41. De-
vant 44. a. 50
a. b. 51. b.
(d) Lane 108
Flowd 131.
1 And. 93.

(e) Br. Corody
34.

the King, and that *R.* and *B.* and others had obtain'd a *Corody* at the Request of Kings, &c. and return'd the Letters Patents of *K. E. 4.* reciting the same Matter, *idem Rex ob* (a) *devotion' quam habuit ad sanct' Trinit' ac caus' premiss'* (a) 3 *H. 7. 6. b.* *de gratia speciali ac certa scientia, & mero motu suis relaxav' eidem Priori, &c. & exoneravit de Recordo,* and because he had not return'd all the Names of those in Certainty who have had the *Corody*, and by what Kings (granted) the *K.* was not well inform'd of his own Title; and for that Cause it was holden in the Book, that the King was (d) deceiv'd, and the (b) Br. patent Charter was not allow'd; and that Case was truly cited as it is reported *M. 3. H. 7.* but see the Roll *M. 3. H. 7. rot. 10. in Scaccario,* the Charter at length was allow'd by the Judgment of the Court, and the same appeareth also in *Plowden's Commentaries* in the Case of Mines, 321. *b.* and he cited the Opinion of *Jen.* in 9 *H. 6. 28. b.* (c) If the *K.* grants the Manor of *D.* which he hath by the Attainder of *A.* and in Truth he hath it not by his Attainder, the Grant is void, for the King was not well inform'd of his own Title, and with his Opinion *Hussey* agreeth, (d) 2 *E. 4. 48. a.* 16 *E. 4. 7. a.* And he said, he had seen a Report in the Time of *H. 7.* that if the King having an Estate for Life in certain Land, grants it in Fee, that the Grant was holden to be void. So if he hath an Estate for Life, or in Tail, and grants (*totum*) *statum suum*, the Grant is void, for it is the Duty of Subjects to see that the King be truly inform'd; for the King hath the Charge of the Commonwealth, and therefore cannot intend his private Business; and the Grants which he makes, he makes as King, and therefore as King he ought to be so instructed, that his Purpose and Intent shall take Effect. And the King's Grants shall not enure to a (e) double Intent; and therefore if the King grants Lands to a Villain, or an Alien, it shall not amount to an Enfranchisement, or a Denization, altho' the Grant be *ex certa scientia & mero motu.* And as to the Cases of 38 *H. 8.* and the Lord *Berkley's* Case, the Question was not, Whether the Grant was void, but whether it was of Force after the King's Death: And he said, that in the Reports and Arguments of Matters in Law, the (f) Point adjudg'd is principally to be observ'd, and not Matters of Discourse which do not tend to the Point adjudg'd. And he said, that (g) Judges in their Judgments have great Regard to the Generality of the Cases of Subjects, and to the Inconveniences which may ensue either way, *talis interp' semper fienda est, ut evitet' absurd' & inconv' & ne judic' sit illusorium*, but in this Case an Absurdity will follow, if there should be such (h) Fraction of Estates, for *Walsbe* (h) 6 *Co. 56. a.* would have an Estate to him and to his Heirs Males of his Body, during the *K.'s* Life, and upon that the *K.* would have an Estate-tail, and after expectant upon that the Patentee would have an Estate-tail, where the *K.* intended to grant an Estate-tail in Possession, upon which a Tenure would be reserv'd, by

(a) 3 *H. 7. 6. b.*

(b) Br. patent

48.

(c) Lane 111.

2 Roll. R. 360.

Mo. 318, 417.

Mod. Rep. 196.

B. N. C. 310.

(d) Devant 43.

a. Fitz. grant

29. Lane 12.

10 Co. 130. a.

(e) Br. patent

62. 5 Co 56. a.

2 Sid. 81, 142.

3 Leon. 243.

(f) Devant 50.

a

(g) Mod. R.

127.

The Case of ALTON WOODS. PART I,

which he should have Wardship or *primer seisin*; and no Inconvenience nor Peril to Estates in general will follow to adjudge this Grant void; for he agreed (a) when the King hath a Fee-simple determinable upon an Estate-tail, that his Grant over is good, for the King hath a Fee-simple to grant, so that the King is not deceived in his Estate.

(a) Devant 49.
b. Hob. 323.
Cr. El. 519.
Co. Lit. 18. a.
1 Roll R. 152.
170. Mo. 421.
2 And. 42.
1 Jones 6. 33.
2 Roll R. 220.
(b) 1 Jones 339.
Cr. Car. 425.
Mo. 415. sty.
161. Devant
57. a.

As to the Act of 28 H. 8. he held that the (b) Saving did not extend to *Walsbe*, for *Walsbe* (admitting the Estate-tail was good, as hath been said) was the Donor, and then the Saving cannot extend to him. Also the Manor is given by exprefs Name, and therefore the Saving as to *Walsbe* is repugnant; and he remember'd the Cases cited before by Master Attorney, when *Savings* in Acts of Parliament shall be void: And he said, the Intent of the Act was to give it the King for two Respects: One for Commodity, the other for Delight, and that would be well perform'd, if the King should have it in Possession, and not wait for his Commodity and Delight till the Determination of an Estate-tail, which peradventure might continue for ever: But without Question the Act of 28 H. 8. can't (c) avail the Defendant who pleads it; for if the Gift be void, the Act doth not make it good, but for his Opinion he held, that admitting the Estate-tail to be good, the said Act gave it the King.

(c) Devant 51.
a. sty. 161.

As to the Pleading, he held it was in Form gross and ignorant, but agreed 'twas well enough in Substance. He likewise agreed clearly, that the (d) Office return'd into the Chancery was sufficient. The Lord Treasurer briefly and effectually argued to the same Purpose, and said there were two Grounds in the Law upon which he founded his Opinion: First, a Rule put by Master Attorney, that the King by his Grant, ought to grant that which he may lawfully grant; and his (e) Grant cannot make a Discontinuance or Wrong; and the King being Tenant in Tail, cannot lawfully grant but during his Life; but in our Case he hath granted an Estate-tail, and never intended to grant for the Term of his Life. Secondly, no violent or strainable Construction is to be made of the King's Grant, but his Grant shall be taken in an usual and common Sense, (f) according to his Intent and Meaning, and not in his Deceit, altho' the Grant be *ex certa scientia & mero motu*; upon this Ground he consider'd two Things: One, what was the King's Intent; the other, if his Intent could take Effect, and if the Grant could take any Effect, but by a violent and strain'd Construction against the King's Intent: As to the first, he intended to grant an Estate of Inheritance, and not for Term of his Life. 2dly, he intended to grant one intire Estate, and (g) not two severall Estates. 3dly, he intended to grant an Estate-tail in Possession, and not Part in Possession and Part in Reversion. 4thly, the King intended to grant such Estate of the Manor, so that the King might have the Ward or *primer seisin* of the Land in Possession, and that the King

(d) Devant 42.
b. 4 Co 57. a.
Mo. 416. 4.
Inst 225. Kel.
173. a. 1 ey de
Gards & Liv-
ties fo. 25.

(e) Co. Lit.
332. b. How.
233. a. 2 And.
156. Devant
44. b.

(f) Godb. 317.
7 Co. 12. b.
Mo 415, 416.
Noy 182.
1 Koll. R. 167.
Cro. argument
60. Dav. 75. a.
5 Co. 55. b.
1 low. 246, 487
13 E. 4. 8. a.
Co. Lit. 19. b.
2 Inst. 681.
11 Co. 72. a.
(g) Devant
46. a. 45 b.
Lane 110.

can-

cannot have, if *Walshe* shall have it for the King's Life; and therefore, he said, the King was deceived in his Grant, and did not intend to have such Fractions and Divisions of Estates as hath been imagin'd, and because that cannot be without a violent and strain'd Construction, therefore the Grant, altho' it be *ex certa scientia & mero motu*, was void; he agreed the Words *de gratia speciali, certa scientia & mero motu* are Words of (a) Bounty, and of great Effect, if the King be not deceived in the Intent and Purpose of his Grant; and such Words shall never be of Force to maintain a Grant in Deceit of the King. And he took a Difference between (b) Matter in Fact, and Matter in Law, as to Matters in Fact it is true, these Words imply that the King is not misconfiant of any Matter of Fact concerning his Grant, but not of Matters of Law, as plainly appears by many Cases cited by Master Attorney, That if it appears to the Court, that (notwithstanding those Words) the King was (c) deceived in the Law in the Purpose and Intent of his Grant, his Grant is void; and this agrees well with a Text of the Civil Law upon these Words, *De gratia speciali, certa scientia & mero motu, quod talis clausula non val' in his in quibus præsum' Princip' esse ignorant'*. And therefore in our Case, the King hath granted such an Estate as by Law he could not grant, for he hath granted an Estate-tail in Possession, where he could not by Law grant an Estate in Possession, but for the Term of his own Life, and forasmuch as the King is deceived in the Law, for this Cause (notwithstanding the Words *ex certa scientia, &c.*) his Grant is void. And as to the Rule which hath been taken, that the King's Letters Patents should not be void, if by any reasonable Construction they may be maintain'd to be good, that is true, if the King's Intent and Purpose in his Grant can take effect, and when the King is not deceived in his Grant. As to the Act of 28 H. 8. that doth not make the Grant good, for two Reasons: First, that Act was made five Years after the Grant, and the Act is, that the King *extunc & imposter'* (that is to say, from the Time of the making of the Act) shall have the Manor in Fee; so that by the Act, the King had not Fee at the Time of his Grant, but five Years after. Secondly, the Grant was void at first, and therefore the Act doth not amend it.

And as to the Mischief which hath been supposed, if this Grant should be adjudg'd void, he said, That no Case can be adjudg'd but it is (d) mischievous to some; but he said, that a Mischief is rather to be suffer'd than an Inconvenience, and great Inconvenience would ensue on the other side, if this Grant (forasmuch as the King is deceiv'd in his Grant) shou'd be adjudg'd good; wherefore he concluded, that the Judgment ought to be revers'd. Upon which the Attorney mov'd,

The Case of ALTON WOODS. PART I.

2 And. 157.

mov'd, that now such Judgment should be given and enter'd for the Queen, as the Barons of the Exchequer ought to have adjudged. Upon which the Court commanded Judgment to be enter'd accordingly, and so it was. And I asked Baron *Savill*, who had heard all the Arguments in the Exchequer-chamber, what his Opinion was in the Case; and he said, he conceived, the Judgment given in the Exchequer ought to be reversed. And he agreed also, that the Act of 28 H. 8. hath given the Estate of *Walsh* to the King, admitting the Estate-tail to be good. I likewise asked Baron *Clark*, who was ever against the Judgment in the Exchequer, and had argued very learnedly in the Exchequer, if he retained his Opinion; and he said, he continued stedfast in his first Opinion for both the Points in Law.

[See this Case cited by *Holt C. J.* in *Skin. 663.* To prove a Surrender of void Letters Patents to be a good Consideration. *Sed Quære.*]

CAPEL'S

CAPEL'S Case.

Pasch. 23 Eliz. in C. B. Rot. 1160.

*Pleas before Edmund Anderson and his
Companions of Easter Term, Anno
23 Eliz. Rot. 1160.*

FORDE.

THO. Gateley was summoned to answer to *John Hunt* of Hereff. ff. a Plea, wherefore he took the Cattle of him the said *John*, and them detained against Gages and Pledges, &c. And whereupon the said *John* by *John Lutwich* his Attorney complains, That the aforesaid *T.* the 27th Day of *Novem-* Decl. in Re-
ber in the 22d Year of the Reign of the Lady the now *Q.* plevin.
at *Howcaple* in a certain Place called *Stockins*, took his Cat-
tle, that is to say, six Oxen and six Cows of him the said
J. and them unjustly detained against Gages and Pledges,
until, &c. Whereupon he saith that he is the worse, and
hath Damage to the Value of 100*l.* and thereof he bring-
eth Suit, &c. And the aforesaid *Thomas* by *Thomas Wil-* Conuifance as
lis his Attorney comes and defends the Force and Injury Bailiff.
when, &c. and as Bailiff of *Anthony Capel* Gent. acknow-
ledgeth the taking of the aforesaid Cattle in the Place afore-
said, in which, &c. and justly, &c. because he saith, That
the Place in which the Taking of the aforesaid Cattle is
supposed to be made doth contain, and at the Time of the
said supposed taking of the said Cattle did contain in it 300
Acres of Land, with the Appurtenances in *Howcaple* afore-
said; and that long before the aforesaid Time in which,
&c. one *Thomas Capel* Esq; was seised of the Manor of
Howcaple, with the Appurtenances in the County aforesaid,
whereof the aforesaid 300 Acres of Land, with the Appur-
tenances in which, &c. are, and at the aforesaid Time in
which, &c. as also Time whereof the Memory of Men is
not to the contrary, were parcel in his Demesne as of Fee;
and so being thereof seised after the 4th Day of *Feb.* in the
27th Year of the Reign of the Lord *Henry*, late K. of *Eng-* Feoffment to
land the 8th, and before the Time in which, &c. Of the
said Manor, with the Appurtenances whereof, &c. amongst
other Things enfeoffed *John Warmcombe*, *Richard Walwein*,
Alex. Whittington, *Thomas Walwein*, *John Lloyd* and *H.* Ufes, with a
Jones; to have and to hold the said Manor, with the Ap- Remainder a-
purtenances, whereof, &c. amongst other Things to the said
ver.
John

Pleadings in Capel's Case. PART I.

John Warmcombe, Rich. Walwein, Alex. Whittington, Tho. Walwein, John Lloyd and Henry Jones, their Heirs and Assigns for ever; To the Use of the aforesaid *Tho. Capel*, and the Heirs Males of his Body lawfully begotten; and for Default of such Issue, to the Use of *Edward Capel*, and the Heirs Males of the Body of the said *Edward* lawfully begotten; and for Default of such Issue, to the Use of *Rich. Capel*, and the Heirs Males of the Body of the said *Rich.* lawfully begotten; and for Default of such Issue, to the Use of *William Capel*, and the Heirs Males of the Body of the said *William* lawfully begotten; and for Default of such Issue, to the Use of *Giles Capel*, for the Term of the Life of the said *Giles*, and after the Decease of the said *Giles*, to the Use of the right Heirs of the said *Tho. Capel* for ever: By Virtue of which Feoffment, and by Force of a certain Act* of Parliament of the aforesaid late King holden at *Westminster*, of transferring Uses into Possession made in the 27th Year aforesaid, the aforesaid *Thomas Capel* was seised of the Manor aforesaid, with the Appurtenances, whereof (amongst other) in his Demesne as of Fee-tail, that is to say, to him and the Heirs Males of his Body lawfully begotten; and for Default of such Issue, the Remainder thereof to the aforesaid *Edward Capel*, and the Heirs Males of his Body lawfully begotten; and for Default of such Issue, the Remainder thereof in Form aforesaid expectant, and the aforesaid *Thomas Capel* of the Manor aforesaid, with the appurtenances, whereof, &c. amongst other, in Form aforesaid being seised, before the aforesaid Time in which, &c. at *Howcaple* aforesaid died, of such his Estate thereof seised; after whose Death, the Manor aforesaid, with the Appurtenances amongst other descended to one *W. Capel*, as Son and Heir of the Body of the aforesaid *Tho. Capel* lawfully begotten, by which the said *W. Capel* the Son, before the aforesaid Time, in which, &c. into the Manor aforesaid, with the Appurtenances, whereof, &c. entred, and was thereof seised in his Demesne as of Fee-tail, that is to say, to him and the Heirs Males of his Body lawfully begotten, and for Default of such Issue, the Remainder thereof to the aforesaid *Edw.* and the Heirs Males of his Body lawfully begotten, in Form aforesaid expectant. And the said *Edw.* of that Remainder as of Fee-tail and Right being seised, before the Time in which, &c. at *Howcaple* aforesaid died of such his Estate seised, after whose Death the Remainder thereof descended to one *Rich. Capel*, as Son and Heir of the Body of the aforesaid *Edw.* lawfully begotten: By which the said *Rich. Capel* the Son was seised of the aforesaid Remainder of the Manor aforesaid, with the Appurtenances, whereof, &c. amongst other as of Fee-tail, that is to say, to him, and the Heirs Males of his Body lawfully begotten; and the said *Richard Capel* the Son being thereof so seised, and the said

Wit.

* 27 H. 8.
cap. 10.

Wil. Capel the Son, of the said Manor, with the Appurtenances, whereof, &c. amongst other, in Form aforesaid being seised, the said *Richard Capel* the Son, before the Time in which, that is to say, the 22d Day of *November* in the 18th Year of the Reign of the said Lady the now Queen at *Howcuple* aforesaid, by his Writing, which the said *Thomas Gateley*, with the Seal of the said *Richard Capel* sealed here brings into Court, whose Date is the same Day and Year, granted to the aforesaid *Anthony Capel*, by the Name of *Anthony Capel* his Son, one Annuity or yearly Rent of 50*l.* to be going out of the Manor aforesaid, with the Appurtenances thereof, whereof, &c. amongst other; To have, hold, and enjoy the aforesaid Annuity, or yearly Rent of 50*l.* to the aforesaid *Anthony Capel*, his Heirs and Assigns for ever, at two Terms of the Year, that is to say, at the Feast of *St. Michael* the Archangel, and the Annunciation of the blessed *Mary* the Virgin, by equal Portions to be paid; and if it should happen the aforesaid Annuity, or yearly Rent of 50*l.* to be behind not paid, in Part, or in all, after any of the Feasts aforesaid in Manner and Form as before is said it ought to be paid by the Space of 20 Days, that then, and from thenceforth, and in all Times, as often as it should happen the aforesaid Annuity, or yearly Rent so to be unpaid, that then it should be lawful to the aforesaid *Anthony Capel*, his Heirs and Assigns, and every of them into the Manor aforesaid, with the Appurtenances, whereof, &c. amongst other, and into any Part or Parcel thereof to enter and distrain, and the Distresses so there taken, and had, to drive, carry away, impound, and with him to retain, until the said *Anthony Capel*, or his Assigns, as well of the aforesaid Annuity, or yearly Rent, so being behind unpaid, as of the Arrearages thereof, if any were, should be satisfied and paid, as by the said Writing, amongst other Things more fully appeareth; and the aforesaid *William Capel* the Son, of the Manor aforesaid, with the Appurtenances thereof, whereof, &c. in Form aforesaid being seised, afterwards, and before the Time in which, &c. that is to say, the 10th Day of *November* in the 19th Year of the Reign of the said Lady the now Queen, at *Howcuple* aforesaid, died without Heir Male of his Body issuing; and because 25*l.* of the aforesaid yearly Rent of 50*l.* after the Death of the said *William Capel* the Son, at the Feast of *St. Michael* the Archangel, in the 20th Year of the Reign of the said Lady the now Queen, by the Space of 20 Days after the Feast, to the aforesaid *Anthony Capel*, the aforesaid Time in which, &c. were behind unpaid, the said *Thomas Gateley*, as Bailiff of the said *Anthony* for the said 25*l.* of the aforesaid yearly Rent in Form aforesaid being behind, doth well avow the taking of the Cattle aforesaid, in the Place in which, &c. and justly, &c. as in Parcel of the Manor aforesaid,

Pleadings in Capel's Case. PART I.

Plea in Bar to
the Avowry.

with the appurtenances, whereof, &c. to the distress of the said *Anthony* aforesaid, charged and bound, &c. with this, that the said *Tho. Gateley* will aver, That the aforesaid *Rich. Capel*, at the time of the taking aforesaid was, and as yet is living, and in full life, that is to say, at *Howcaple* aforesaid, &c. And the aforesaid *John Hunt* saith, That the aforesaid *Tho. Gateley* for the cause before alledged, the taking of the Cattle aforesaid, in the aforesaid place, in which, &c. as Bailiff of the said *Anthony Capel*, to be just ought not to avow, because he saith, that well and true it is, that the aforesaid *Tho. Capel*, Esq; was seised of the aforesaid manor of *Howcaple*, with the appurtenances, whereof, &c. in his demesne as of fee, and so thereof seised, after the aforesaid 4th day of *Feb.* in the 27th year of the reign of the said late King *Henry* the 8th aforesaid, and before the aforesaid time in which, &c. of the said manor, with the appurtenances, whereof, &c. enfeoffed the aforesaid *John Warmcombe*, *Rich. Walweyn*, *Alexander Whittington*, *Tho. Walweyn*, *John Lloyd*, and *Hen. Jones*; To have and to hold the said manor, with the appurtenances, amongst other, to the said *John Warmcombe*, *Richard Walweyn*, *Alexander Whittington*, *Tho. Walweyn*, *John Lloyd*, and *Henry*, and their heirs and assigns for ever, to the use of the aforesaid *Tho. Capel*, and the heirs males of the body of the said *Thomas* lawfully begotten; and for default of such issue, to the use of the aforesaid *Edw. Capel*, and the heirs males of the body of the said *Edward* lawfully begotten; and for default of such issue, to the use of the aforesaid *Rich. Capel*, and the heirs males of the body of the said *Richard* lawfully begotten; and for default of such issue, to the use of the aforesaid *Will. Capel*, and the heirs males of the body of the said *William* lawfully begotten; and for default of such issue, to the use of *Giles Capel*, for the term of the life of the said *Giles*; and after the decease of the said *Giles*, to the use of the right heirs of the said *Tho. Capel* for ever. By virtue of which feoffment, and by force of the Statute afores. the afores. *Tho. Capel* was seised of the manor afores. with the appurtenances, whereof, &c. amongst other in his demesne as of fee-tail, that is to say, to him and the heirs males of his body lawfully begotten; and for default of such issue, the remainder thereof to the afores. *Edw. Capel*, and the heirs males of his body lawfully begotten; and for default of such issue, the remainder thereof in form afores. expectant; and that the afores. *Tho. Capel* of the manor afores. with the appurtenan. whereof, &c. in form afores. being seised, before the afores. time in which, &c. died of such his estate thereof seised; after whose death the manor afores. with the appurtenan. whereof, &c. amongst other, descended to the afores. *Will. Capel*, as son and heir of the body of the aforesaid *Thomas Capel* lawfully begotten; by which the said *Will. Capel* the son, afterwards, and before the time in which, &c. into the manor afores. with the appurtenan. whereof, &c.

amongst other, entred, and was thereof seised in his demesne as of fee-tail, that is to say, to him and his heirs males of his body lawfully begotten; and that the aforesaid *W. Capel* the son, of the said manor with the appurtenances, whereof, &c. among other, in form aforesaid being seised, the said *R. Capel*, son of the aforesaid *Ed. Capel*, the 22d day of *Nov.* in the 18th year of the Reign of the said Lady the now *Q.* at *Howcaple* aforesaid. by the aforesaid writing, granted to the aforesaid *Anth. Capel*, the aforesaid annuity, or yearly rent of 50*l.* to be going out of the manor aforesaid with the appurtenances, whereof, &c. as the aforesaid *Tb. Gately* hath above alledged. But the said *Jo. Hunt* further saith, that the aforesaid *Will. Capel* of the Manor aforesaid, with the appurtenances whereof, &c. in form aforesaid being seised, that a Fine was levied in the court of the said Lady the now Queen, here, at *Westminster* aforesaid, from the day of *St. Martin* in 15 days, in the 19th year of her reign, before *James Dyer, Rich. Harper, Roger Manwood, and Rob. Mounson*, then Justices of the said Lady the *Q.* of the Bench here; and afterwards on the 8th day of *St. Hillary* in the 19th year of the reign of the said *L.* the now *Q.* aforesaid there granted and recorded before the same Justices, and other the said Lady the *Q.*'s faithful people then there present, between *Rich. Wooton* and *Rich. Shrawley* plaintiffs, and the aforesaid *Will. Capel* defend. of the manor aforesaid with the appurtenances, whereof, &c. amongst other, by the names of the manors of *Capel*, otherwise *Hugh Capel, Showle, and Okeridge* with the appurtenances, and 20 messuages, 10 tofts, 20 cottages, 2 mills, 3 dovehouses, 800 acres of land, 260 acres of meadow, 1700 acres of pasture, 200 acres of wood, 1000 acres of furz and heath, and 5 pounds rent with the appurtenances in *Capel*, otherwise *Hugh Capel, Showle, Okeridge, Tarket, and Ledbury*. As also of the advowson of the Church of *Capel*, otherwise *Hugh Capel*, whereof a plea of covenant was summoned between them in the said court, that is to say, That the aforesaid *William* acknowledged the aforesaid manors, tenements, and rents with the appurtenances, and the advowson of the Church aforesaid to be the right of the said *Rich.* as that which the said *Rich.* and *John* had of the gift of the aforesaid *William*, and that remised and quit-claimed, from him and his heirs, to the aforesaid *Rich.* and *John*, and the heirs of the aforesaid *Rich.* for ever. And further, the said *Will.* granted for him and his heirs, that they warrant to the aforesaid *Rich.* and *John*, and to the heirs of the said *Rich.* the aforesaid manors, tenements, rents with the appurtenances, and the advowson aforesaid, against all men for ever: And for that recognition, remise, quit-claim, warranty, fine, and concord, the said *Rich.* and *John* gave to the aforesaid *William* 700 *l.* Sterling; which Fine, in form aforesaid levied, was levied and had to the use of the said *John Hunt* and his Heirs: by virtue of which Fine, and by force of the Statute aforesaid, the said *John* was seised of the

And plead a
Fine levied.

With Warrant

Uses of the
Fine.

Pleadings in Capel's Case. PART I.

And a Recovery thereon, &c.

manor aforesaid with the appurtenances, whereof, &c. in his demesne as of Fee; and the said *John Hunt* so thereof being seized, *Tbo. Spenceley* and *Baldwin Castleton*, before the aforesaid time of the taking, &c. that is to say, the 4th day of *Jan.* in the 19th year of the reign of the said L. the now Q. above: sued forth out of the Court of *Chancery* of the said L. the now Q. at *Westm.* in the County of *Middlesex* then being, a certain Writ of the said L. the Q. of entry upon Disseisin in the *Post*, against him the said *J. Hunt*, of the manor aforesaid with the appurtenances, whereof, &c. amongst other, by the names of the manor of *Capel*, otherwise *Hugh Capel*, otherwise *How Capel* with the appurtenances, and 20 messuages, 10 tofts, one mill, 2 dovehouses, 500 acres of land, 200 acres of meadow, 600 acres of pasture, 100 acres of wood, 700 acres of furz and heath, and 4 *l.* rent with the appurtenances in *Capel*, otherwise *Hugh Capel*, otherwise *How Capel*, *Brocher-ton*, and *Sollersshop*, as also of the advowson of the Church of *Capel*, otherwise *Hugh Capel*, otherwise *How Capel*, to the then Sheriff of the aforesaid county of *Hereford* directed; by which Writ the said L. the now Q. to the said then Sheriff commanded, That the said Sheriff should command the said *J. Hunt*, that justly and without delay, he render to the aforesaid *Tbo. Spenceley* and *Baldwin* the manor, tenements and rents aforesaid with the appurtenances, and the advowson aforesaid, which the said *Tbo.* and *Baldwin* (claimed) to be their right and inheritance, and in which the said *John* then had not entry, but after a disseisin, which *Hugh Hunt* thereof unjustly and without judgment did to the aforesaid *Tbo. Spenceley* and *Baldwin*, within 30 years then last past, as they said; and whereof they complain that the said *J. Hunt* did then them deforce, &c. and if he should not do, and the aforesaid *Tbo. Spenceley* and *Baldwin* should secure him the said Sheriff for the prosecuting of their claim, that then he summon by good summoners him the said *J. Hunt*, that he should be before the then justices of the said L. the Q. here, that is to say, at *Westminst.* aforesaid in 8 days of *St. Hill.* then next following, to shew wherefore he did not do it. And that the then said Sheriff should have there the summons, and that writ: At which 8 days of *St. Hill.* before the aforesaid *Ja. Dyer* Knt. and his companions then justices of the said L. the Q. of the bench here, came as well the aforesaid *T. Spenceley* and *Baldwin*, as the said *Jo. Hunt* in their proper persons, and *Ja. Warmecombe* Esq; then Sheriff of the aforesaid County of *Hereford*, then and there returned the writ aforesaid to him in form aforesaid directed in all things served and executed, that is to say, that the said *Tbo. Spenceley* and *Baldwin* had found to him the said Sheriff sureties for to prosecute that Writ, that is to say, *John Doe* and *Rich. Roe*: And that the said *John Hunt* was summon'd by *John Den* and *Richard Fen*, and upon that the aforesaid *Tbo. Spenceley* and *Baldwin* declaring against him the said *J. Hunt*, upon the writ aforesaid demanded against him the said

John Hunt, the manor, tenements, and rent aforesaid with the appurtenances, and the advowson aforesaid, as their right and inheritance, and in which the said *John* had not then entry, but after the disseisin which *Hugh Hunt* thereof unjustly, and without judgment did to the aforesaid *Th. Spenceley* and *Baldwin*, within 30 years, &c. and whereupon they then said, that they themselves were seised of the manor, tenements, and Rent aforesaid, with the Appurtenances, in their demesne as of fee and right, and of the advowson aforesaid as of fee and right, in the time of Peace, in the time of the L. the Q. that now is, taking the profits thereof to the value, &c. and in which, &c. and thereof then they brought suit, &c. And the said *John Hunt* in his proper person then defended his right when, &c. And vouched thereof to warranty the aforesaid *William Capel*, who then present there in the same Court here in his proper person, willingly the Manor, tenements and rents aforesaid, with the appurtenances, and the advowson aforesaid to him did warrant, and upon that, the said *Tho.* and *Baldwin* then demanded against the aforesaid *Will.* tenant by his warranty, the manor, tenements, and rents aforesaid, with the appurtenances, and the advowson aforesaid, in form aforesaid, &c. and whereupon they then said, that they themselves were seised of the manor, tenements, and rents aforesaid, with the appurtenances, in their demesne as of fee and right, and of the advowson aforesaid as of fee and right in time of peace, in the time of the L. the Q. that now is, taking the profits thereof to the value, &c. and wherein, &c. and thereof they brought suit, &c. and the aforesaid *Will.* tenant by his warranty aforesaid then defended his right when, &c. And further then vouched to warranty *J. Howel*, who then likewise was present here in the said Court in his proper person, and willingly the manor, tenements, and rents aforesaid with the appurtenances, and the advowson aforesaid to him did warrant, &c. And thereupon the said *Tho.* and *Baldwin* then demanded against him the said *J. Howel*, tenant by his warranty, the manor, tenements, and rents aforesaid, with the appurtenances, and the advowson aforesaid in form aforesaid, &c. And whereupon they then said, that they themselves were seised of the manor, tenements, and rents aforesaid in their demesne as of fee and right, and of the advowson aforesaid as of fee and right in the time of peace, in the time of the said L. the now Q. taking the profits thereof to the value, &c. and in which, &c. and thereof then brought suit, &c. and the aforesaid *J. Howell*, tenant by his warranty, defended then his right when, &c. and then said, that the aforesaid *Hugh* did not disseise the aforesaid *Thomas Spenceley* and *Baldwin* of the manor, tenements and rents aforesaid, with the Appurtenances, and of the Advowson aforesaid,

1.3 Voucher.

2.1 Voucher.

Pleadings in Capel's Case. PART I.

as the said *Tho.* and *Baldwin* by their writ and declaration as above then supposed, and of that then put themselves upon the Country; and the aforesaid *Tho. Spenceley* and *J. Baldwin* then demanded licence thereof to imparl, and had it, &c. And afterwards the said *Tho.* and *Baldwin*, came back into the same Court here in the same term in their proper persons; and the aforesaid *Jo. Howel*, although he was solemnly called, did not then come back, but in contempt of the court departed and made default: By which it was then (a) granted in the same court here, that the afores. *T. Spenceley* and *Baldwin* should recover their seisin against him the said *J. Hunt*, of the manor, tenements and rents aforesaid, with the appurtenances and of the advowson aforesaid; and that the said *John* should have of the lands of the said *Will. Capel*, to the value, &c. and that the said *Will.* further should have of the lands of the said *J. Howel*, to the value, &c. and that the said *John* then should be in mercy, &c. By virtue of which recovery, the aforesaid *Tho. Spenceley* and *Baldwin* into the manor and tenements aforesaid, with the appurtenances, entred, and were thereof seised in their demesne as of fee. Which recovery, and the execution thereof in form aforesaid sued forth and had, was to the use of the said *J. Hunt*, and his heirs for ever. By which, and by force of the Statute aforesaid, the said *J. Hunt* was seised of the manor aforesaid with the appurtenances, in his demesne as of fee; and so thereof being seised, before the time of the taking, &c. put his cattle aforesaid into the aforesaid 300 acres of land, the grass then there growing to eat, and the cattle aforesaid were in the said 300 acres of land, the grass in them then growing eating, until the said *Tho. Gateley* the aforesaid 27th day of *Nov.* in the 22d year of the said Lady the now *Q.* at *How Capel* aforesaid, in the aforesaid place called *Stockins*, took the said cattle of him the said *John*, and them unjustly detained against gages and pledges, until, &c. as the said *John* against him above complaineth: And this he is ready to aver: Wherefore, in as much as the aforesaid *Th. Gateley*, the taking of the cattle aforesaid, in the aforesaid place in which, &c. above acknowledgeth, the said *John* demands judgment, and his damages by occasion of the taking and unjustly detaining of the said cattle, to him to be adjudged, &c. And the aforesaid *Thomas Gateley* saith, that the aforesaid plea of the said *John Hunt*, in bar of the avowry aforesaid pleaded, is insufficient in law to bar him the said *Thomas* as Bailliff of the aforesaid *Anthony* from the just avowry of the taking of the cattle aforesaid, in the place in which, &c. and that he to that Plea in form aforesaid pleaded, needeth not, nor is bound by the law to answer; and this he is ready to aver; wherefore, for want of a sufficient Plea in this behalf, the said *Thomas* demands judgment and a return of the Cattle aforesaid, together with his Damages

Judgment on
Default, &c.
(a) Devant
22. a. 40. a.
Après 83. a.
119. b. 1 Roll
R. 278, 279.
3 Bullstr. 92,
93, 94. 1 Ro.
771, 774. Cr.
Câr. 412, 443.
Cr. Jac. 6. 386,
632. Yelv. 130.
Hob. 17, 19,
194, 337. Stat.
16 & 17 Car. 2
c. 8. Star. 22
& 23 Car. 2.
c. 4. Jenk Cent.
13. Cr. El. 145.
Palm. 260.
N. Ben. 184.
pl. 226. Pop.
203, 212. Noy
77. Latch 76,
83, 138.
1 Bullstr. 125,
126, 179. 1 Syd.

Demurrer.

mages to be adjudged unto him, &c. And the aforesaid *John Hunt*, in as much as he sufficient matter in Law to the aforesaid *Thomas* as Bailiff of the same *Anthony*, from the just acknowledging of the taking of the Cattle aforesaid, in the place aforesaid, in which, &c. to be barred above confesseth, (which he is ready to aver, which matter the aforesaid *Thomas* doth not deny, nor to the same any ways answereth, but altogether refuseth to admit the same Averment) as at first demandeth Judgment, and his damages by the occasion of the taking and unjustly detaining of the Cattle aforesaid, to be to him adjudg'd, &c. And because the Justices here will advise themselves of and upon the Premises, before they give their Judgment thereof, day is given to the parties aforesaid here, until the Morrow of *Holy Trinity*, to hear their Judgment thereof, because that the said Justices here thereof are not yet, &c. At which day here come as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, day is given to the Parties aforesaid here, until in 8 Days of *St. Michael*, to hear their Judgment thereof, because the said Justices here thereof are not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves before they give their Judgment of and upon the Premises, Day is given to the Parties aforesaid here, until in 8 Days of *St. Hilary*, to hear their Judgment thereof, because the same Justices here are not thereof yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of giving their Judgment of and upon the Premises, Day is given to the Parties here, until from the Day of *Easter* in 15 Days, to hear their Judgment thereof, because the same Justices here are not thereof as yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves before they give their Judgment of and upon the Premises, Day is given to the Parties aforesaid here until the Morrow of the *Holy Trinity*, to hear their Judgment thereof, because the Justices here thereof are not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves, before they give their Judgment of and upon the Premises, Day is given to the Parties here until the Morrow of *All Souls*, to hear their Judgment thereof, because the same Justices here are not yet, &c. before which Day the Plea aforesaid was adjourned by the Writ of the said Lady the Queen of Common Adjournment from *Westminster* aforesaid, unto the Castle of the Lady the Q. of *Hertford*, in the County of *Hertford*, until the aforesaid morrow of *All Souls*; at which Day, that is to say, at the aforesaid

Continuances;

To Trin.

Mich.

Hill. 24.

Pasch.

Trin.

Mich.

Adjournment; to Hertford.

Castle

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Castle of *Hertford*, cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid ; And because the Justices here will further advise themselves, before that they give their Judgment of and upon the Premisses, Day is given unto the Parties aforesaid, until in 8 Days of *St. Hillary*, to hear their Judgment thereof, because the same Justices here thereof are not yet, &c. before which day the Plea aforesaid was adjourned by the Writ of the Lady the Queen of Common Adjournment, from the aforesaid Castle of *Hertford*, unto *Westminster* aforesaid, at the aforesaid 8 Days of *St. Hillary* ; At which Day here, that is to say, at *Westminster*, cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid ; And because the Justices here will further advise themselves of and upon the Premisses, before that they give their Judgment thereof, further day is given here to the Parties aforesaid, until from *Easter-day* in 15 Days, to hear their Judgment thereof, because the Justices here are not thereof as yet, &c. At which day cometh as well the aforesaid *John Hunt*, as the said *Thomas Gateley*, by their Attornies aforesaid ; And because the Justices here will further advise themselves of and upon the Premisses, before that they give their Judgment thereof, day is given to the Parties aforesaid here, until in the Morrow of the *Holy Trinity*, to hear their Judgment thereof, because the same Justices here are not thereof as yet, &c. At which day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid ; And because the Justices here will further advise themselves, before they give their Judgment of and upon the Premisses, Day is given to the Parties here until in 8 Days of *St. Michael*, for to hear their Judgment thereof, because the same Justices here are not thereof as yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid ; And because the Justices here will further advise themselves, before they give their Judgment of and upon the Premisses, Day is given to the Parties aforesaid here, until in 8 Days of *St. Hillary*, to hear their Judgment thereof, because the same Justices here thereof are not yet, &c. At which Day here cometh as well the said *John Hunt*, as the aforesaid *Tho. Gateley*, by their Attornies aforesaid ; And because the Justices here will further advise themselves, before they give their Judgment of and upon the Premisses, Day is given to the Parties here, until from the Day of *Easter* in 15 Days to hear their Judgment thereof, because the same Justices here are thereof not yet, &c. At which Day here cometh as well the aforesaid *J. Hunt*, as the aforesaid *Th. Gateley*, by their Attornies aforesaid ; And because the Justices here will further advise themselves, before that they give their Judgment of and upon the Premisses, Day is given to the Parties here, until in the Morrow of the *Holy Trinity*, to hear their Judgment thereof, because the same Justices here thereof are not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the said *Thomas Gateley*, by their Attornies aforesaid ; And because the

Hill. 25.

Readjourn'd to Westminster.

Paſch.

Trin.

Mich.

Hill. 26.

Paſch.

Trin.

the

the Justices here will further advise themselves, before that they give their Judgment of and upon the Premises, Day is given to the Parties aforesaid here, until in 8 Days of St. *Michael*, Mich. to hear their Judgment thereof, because the same Justices here are not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will advise themselves of and upon the Premises, before they give their Judgment thereof, Day is given to the Parties aforesaid, until in 8 Days of St. *Hillary*, to hear their Judgment thereof, because the same Justices here thereof are not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, Day is given to the Parties aforesaid, until from the Day of *Easter* in 15 Pasch, Days, to hear their Judgment thereof, because the same Justices here thereof are not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, Day is given to the Parties aforesaid here, until in the morrow of *Holy Trinity*, to hear their Judgment thereof, because the same Justices here thereof are not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before that they give their Judgment thereof, Day is given to the Parties aforesaid here, until in 8 Days of St. *Michael*, to hear their Judgment thereof, because the same Justices here thereof are not yet, &c. At which Day cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise of and upon the Premises, before they give their Judgment thereof, Day is given to the Parties aforesaid here, until in 8 Days of St. *Hillary*, to hear their Judgment thereof, because the same Justices here thereof not as yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise of and upon the Premises, before they give their Judgment thereof, Day is given to the Parties aforesaid here until from *Easter-day*, in 15 Days, to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John Hunt* as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, day is given to the Parties aforesaid, here until the Morrow of *Holy Trinity*, to hear their Judgment thereof, because the same Justices here thereof are not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the said *Thomas Gateley*, by their Attornies aforesaid; And because

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because the Justices will further advise themselves of and upon the premisses, before they give their Judgment thereof, day is given to the parties afores. here until in 8 days of *S. Michael*, to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which day here cometh as well the afores. *John Hunt*, as the afores. *Tho. Gateley*, by their Attornies afores. And because the Justices here will further advise themselves of and upon the premisses, before they give their Judgment thereof, day is given to the parties afores. here until in 8 days of *St. Hillary*, to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which day here cometh as well the afores. *John Hunt*, as the afores. *Tho. Gateley*, by their Attornies afores. And because the Justices here will further advise themselves of and upon the premisses, before that they give their Judgment thereof, day further is given to the parties afores. here until from the day of *Easter* in 5 days, to hear their Judgment thereof, because that the same Justices here thereof not yet, &c. At which day here cometh as well the afores. *John Hunt*, as the afores. *Thomas Gateley*, by their Attornies afores. And because the Justices here will further advise themselves of and upon the premisses, before they give their Judgment thereof, day is given to the parties afores. here until in the morrow of the *Holy Trinity*, to hear their Judgment thereof, because the same Justices here not yet, &c. At which day here cometh as well the afores. *John Hunt*, as the afores. *Tho. Gateley*, by their Attornies afores. And because the Just. here will further advise themselves of and upon the premisses, before that they give their Judgment thereof, day is given to the parties afores. here, until in 8 days of *St. Mich.* to hear their Judgment thereof, because the same Justices hear not yet, &c. At which day here cometh as well the afores. *John Hunt*, as the afores. *Tho. Gateley*, by their Attornies afores. And because the Just. here will further advise themselves of and upon the premisses before they give their Judgment thereof, day is given to the parties afores. here until in 8 days of *St. Hillary*, to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which day here cometh as well the afores. *John Hunt*, as the afores. *Tho. Gateley*, by their Attornies afores. And because the Just. here will further advise themselves of and upon the premisses, before they give their Judgment thereof, day is given to the parties afores. here until from the day of *Easter* in 5 days, to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which day here cometh as well the afores. *John Hunt*, as the afores. *Thomas Gateley*, by their Attornies afores. And because the Just. here will further advise themselves of and upon the premisses, before they give their Judgment thereof, day is given to the parties afores. here until the morrow of the *Holy Trinity*, to hear their Judgment thereof, because the same Just. here thereof not yet, &c. At which day here cometh as well the afores. *John Hunt*, as the afores. *Tho. Gateley*, by their Attornies afores.

Mich.

Hill. 29.

Pasch.

Trin.

Mich.

Hill. 30.

Pasch.

Trin.

And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof. Day is given to the Parties aforesaid here, until in 8 Days of St. Michael, to hear their Judgment thereof, because Mich. the same Justices here thereof not yet, &c. At which Day here cometh as well the said *John Hunt*, as the aforesaid *Tho. Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, Day is given to the Parties aforesaid here, until in 8 Days of St. Hillary, to hear their Judgment Hill. 31. thereof, because the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, Day is given to the Parties aforesaid here, until from the Day of Easter in 15 Days, to hear their Judgment thereof, because Pasch. the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, Day is given to the Parties aforesaid here, until in the morrow of the Holy Trinity, Trin. to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, Day is given to the Parties aforesaid here, until in 8 Days of St. Michael, to hear their Judgment Mich. thereof, because the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Tho. Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, further Day is given to the Parties aforesaid here, until in 8 Days of St. Hillary, to hear their Judgment thereof, because the same Hill. 32. Justices here of their Judgment thereof not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves, before they give their Judgment of and upon the Premises, Day further is given to the Parties aforesaid here, until from the Day of Easter Pasch. in 15 Days, to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices will further advise themselves of and upon the Premises, Day is given to the Parties aforesaid here, until in the morrow of the Holy Trinity, Trin. to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And

Pleadings in Capel's Case, PART I.

And because the Justices here will further advise themselves of the Premises, before they give their Judgment thereof, Day is given to the Parties aforesaid here, until in 8 Days of St. *Michael*, to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Tho. Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, Day further is given to the Parties aforesaid here, until in 8 Days of St. *Hillary*, to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Tho. Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, Day further is given to the Parties aforesaid here, until from the Day of *Easter* in 15 Days, to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John*, as the aforesaid *Thomas*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, Day is given to the Parties aforesaid here, until in the Morrow of the *Holy Trinity*, to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John*, as the aforesaid *Thomas*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, Day is further given to the Parties aforesaid, until in 8 Days of St. *Michael*, to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John Hunt*, as the aforesaid *Thomas Gateley*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, Day further is given to the Parties aforesaid here, until in 8 Days of St. *Hillary*, to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John*, as the aforesaid *Thomas*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, Day further is given to the Parties aforesaid here, until from the Day of *Easter* in 15 Days, to hear their Judgment thereof, because the same Justices here thereof not yet, &c. At which Day here cometh as well the aforesaid *John*, as the aforesaid *Thomas*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premises, before they give their Judgment thereof, Day further is given to the Parties aforesaid here, until the Morrow of the *Holy Trinity*, to hear their Judgment thereof, because the same Just. here thereof not yet, &c. At which Day here cometh as well the afores. *John*,

as the aforef. *Thomas*, by their Attornies aforef. And becaufe the Juftices here will further advife themfelves of and upon the premisses, before they give their Judgm. thereof, further day is given to the parties aforef. here, until the morrow of *All Souls*, to hear their Judgm. thereof, becaufe the faid Juft. here thereof not yet, &c. Before which day the plea aforef. was adjourned by the writ of the L. the Q. of common Adjournm. from *Westm.* in the county of *Middles.* unto the Castle of the L. the Q. of *Hertford*, in the county of *Hertford*, at the same morrow of *All Souls*, &c. At which day here, that is to say, at the Castle of *Hertford*, cometh as well the aforef. *John*, as the aforef. *Tho.* by their Attornies aforef. And becaufe the Juft. here will further advife themfelves of and upon the premisses, before they give their Judgment thereof, day is given to the parties aforef. here in 8 days of *St. Hillary*, to hear their Judgment thereof, becaufe the faid Juft. here thereof not yet, &c. Before which day the plea aforef. was adjourned by the writ of the Q. of common Adjournment, from the faid Castle of the faid Q. of *Hertford*, in the County of *Hertford* unto *Westm.* aforef. in the aforef. County of *Middlesex*, at the same 8 days of *St. Hillary*, &c. And now here, that is to say, at *Westm.* aforef. cometh as well the aforef. *John*, as the aforef. *Tho. Gateley*, by their Attornies aforef. And upon this the premisses being seen, and by the Juftices here fully understood, it seemeth to the same Juft. here, That the aforef. plea of the aforef. *John Hunt* above in bar of the conufance aforef. pleaded is sufficient in law to him the faid *Tho. Gateley*, as Bailiff of the faid *Anthony*, juftly acknowledging the taking of the Cattle aforef. in the aforef. place in which, to bar, as the aforef. *John Hunt* above alledged, for which the aforefaid *John Hunt* his damages, for the occasion of the taking and unjustly detaining of the Cattle aforef. against the aforef. *Tho. Gateley* ought to recover; but becaufe it is not known what damages the aforef. *John Hunt*, for the occasion of taking and unjustly detaining of the Cattle aforef. sustained, it is commanded to the Sheriff, that by the Oaths of good and lawful men of his County, he diligently inquire what damages the faid *J. Hunt* sustained, as well by the occasion of the taking and unjustly detaining of the Cattle aforef. as for his costs and charges by him about his suit in this behalf expended; and the inquiry which, &c. the Sheriff make to appear here from the day of *Easter* in 15 days, under his Seal, &c. and the Seals, &c. At which day here cometh the aforef. *John Hunt*, by his Attorney aforefaid; And thereupon the same *John Hunt* acknowledgeth here in the court, that he would not further prosecute the same *Thomas Gateley* for any damages to him, for the occasion of the taking and unjustly detaining of the Cattle aforefaid to be adjudged, but all the said Damages to him so to be adjudged willingly here in Court to the faid *Thomas Gateley* doth remise and release; therefore the faid *Tho. Gateley* of those Damages is acquitted, &c.

Mich. Adjourned, &c.

Hill. 35.

Judgment.

Inquiry of Damages.

Release of Damages.

CAPEL'S Case.

BETWEEN

John Hunt, *Plaintiff*,

AND

Thomas Gateley, *Defendant*.

In Replevin, Pasch. 23 Eliz. in the Common Pleas, Rot. 1160. The Case in Effect was such.

(*) Poph. 5.
Jenk. Cent.
250. 4 Leon.
150. Mo. 154.
1 And. 2. 182.
Goldsb. 5.
2 Co. 52. b.
10 Co. 42. b.
2 Ro. R. 221.
Apres 127. b.
128. a.
(b) 27 H. 8. c.
10.

Thomas (a) Capel, Esq; being seised of the Manor of *Howcaple* in the County of *Hereford*, in Fee, after the Statute of (b) 27 H. 8. of transferring Uses to Possessions, did thereof enfeoff *John Warcombe* and others in Fee, unto the Use of the said *Thomas Capel*, and the Heirs Males of his Body lawfully issuing; and for Default of such Issue, to the Use of *Edward Capel*, and the Heirs Males of his Body lawfully issuing; and for Default of such Issue, to the Use of *Richard Capel*, and the Heirs of his Body lawfully issuing; and for Default of such Issue, to the Use of *William Capel*, and to the Heirs Males of his Body lawfully issuing; and for Default of such Issue, to the Use of *Giles Capel* for Term of his Life, and after his Decease, to the Use of the right Heirs of the said *Thomas Capel* for ever. By Force whereof, and of the said Statute, *Thomas Capel* was seised of the said Manor in Tail, the Remainder to the said *Edward Capel* in Tail, the Remainder to the said *Richard Capel* in Tail, the Remainder to the said *William Capel* in Tail, the Remainder to the said *Giles Capel* for his Life, the Reversion expectant to the said *Thomas Capel* and his Heirs: And afterwards the said *Thomas Capel* died, after whose Death the said Manor descended to *William Capel* his Son and Heir of his Body; and afterwards the said *Edward Capel* died, and his Remainder of the said Manor descended to *Richard Capel* his Son and Heir, who by his Deed bearing Date 2 *Novemb.* 18 *Eliz.* granted to *Anthony Capel* his Son and his Heirs, a Rent-Charge of 50 l. *per Annum*,

num, issuing out of the said Manor; the said *William Capel* Son of the said *Thomas Capel*, being (a) Tenant in Tail in Possession, *Octab. Hill. 19 Eliz.* levied a fine of the said Manor to *Richard Wotton* and *John Skrawley*, and to the Heirs of the said *Richard Wotton*, which Fine was to the Use of the said *John Hunt* and his Heirs. And afterwards in the same *Hill. Term, Thomas Spencely*, and *Baldwine Castleton* did (b) recover the said Manor against the said *John Hunt*, who vouched the said *Will. Capel* Son of the said *Thomas*, who vouched the (c) common Vouchee, which was executed accordingly; and afterwards the said *William Capel*, Son of the said *Thomas*, 10 Nov. 19 *Eliz.* died without Issue Male of his Body; *Thomas Gateley* as Bailiff to *Anthony Capel* distrained for the said Rent being in Arrear at the Feast of *S. Michael* the Archangel, *Anno 20 Eliz.* and the said *John Hunt* brought a *Replevin*. And this Case was often argued in the Common Pleas, and afterwards in the Exchequer-Chamber, before all the Justices of *England*; and after divers conferences between all the Justices of *England*, it was resolved by them all, That in this Case, the Recoverors, nor any that came in under their Estate, should be (d) subject to the Charge of him in the Remainder. And afterwards *Ter. Mich. 34 & 35 Eliz.* the Justices of the Common Pleas openly declared the Reasons of their Resolution, which I heard, and they were in effect as followeth:

Because the Recoveror is in of an estate which he hath gained under the Tenant in Tail in Possession, which Estate is not subject to the Charge of him in the Remainder: For if Tenant in Tail in Possession in the Case at the Bar had only made a Feoffment in Fee, altho' he had afterwards died without Issue, yet the Possession of the Feoffee (so long as the Feoffment remains in Force) shall not be charged with the Rent, because he is in of the Possession which the Tenant in Tail gave him, which was not subject to the payment of the Rent; and if he in the Remainder had made a Lease for a hundred Years, and afterwards Tenant in Tail in Possession, had made a Lease for a hundred Years, both Leases to commence presently, and afterwards Tenant in Tail had made a Feoffment, or suffered a common Recovery, and died without Issue, they all clearly resolved, that the Lessee of Tenant in Tail in Possession should enjoy the Land against the Lessee of him in the Remainder, altho' the Lease of him in the Remainder was first made, for as long as the Estate, which the Feoffee or Recoveror derived (b) under the Estate of the Tenant in Tail in possession, continueth, so long the Lease of the Tenant in Tail shall stand; and if the Lease of the Tenant in Tail shall be preferred,

by

(a) Mo. 154.

(b) Mo. ibid.

(c) 2 Co. 50. b.
Co. Lit. 372. b.(d) Noy 10.
3 Keb. 288, 289.
2 Co. 52. b.
6 Co. 42. a.
Cro. Jac. 592.
Cro. Car. 103.
Apres 128. a.Poph. 5. Palm.
139. Winch 41.
2 Ro. R. 221.

(e) Apres 128.

(f) Palm. 141.
2 Ro. R. 222.(g) 1 And. 283.
Poph. 5.(b) Cro. El.
793. 2 Co 52.
b. 1. Jones 61,
72. Noy 10.
2 Ro. R. 490.

by the same Reason every other Estate or Interest derived out of his Estate, so long as the Feoffment or Recovery remains in Force, shall be also preferred before any Estate or Interest derived out of the Estate of him in the Remainder. So if he in the Remainder had (a) acknowledged a Recognizance, and afterwards the Tenant in Tail had acknowledged a Recognizance, and after suffered a Recovery, and died without Issue, the Land shall be subject to the Recognizance of the Tenant in Tail, but not to the Recognizance of him in the Remainder; and the Land in none of these Cases can be subject to both the Recognizances, nor to both the Leases, nor to the Charges of (b) both *simul & semel*, for then Confusion and great Inconvenience would ensue; and it would also be absurd, that the Leases, Recognizances and Charges being made at several times, should be leviable on the Land at one and the same time; and therefore without question, in all those Cases the Land is subject to the Leases, Recognizances and Charges of the Tenant in Tail: *Ex hoc sequitur*, that it cannot also be subject to the Leases, Recognizances and Charges of him in the Remainder. *Nota hoc, quia optima ratio, ut mihi videtur.* Another Reason was added, because the Charge of him in the Remainder is good in Law, by Reason of the Possibility that the Land will come into (c) Possession, and then the Possession shall be charged; for the Remainder of itself is not a thing manurable, nor in which a Distress can be taken; but it ought to be taken upon the Land itself, and therefore there is a Condition *tacite* annexed to the Charge of him in the remainder, that is to say, to take Effect, or to commence in Possession, when the Remainder comes in Possession, for the (d) Remainder cannot be charg'd with any Distress, but in respect that it will possibly come into Possession: But when the Tenant in Tail suffereth a common Recovery, the Condition which was tacitly annexed to the Grant is destroyed, for the Remainder can never come in Possession, and by Consequence the Rent-Charge can never commence, for the Possession is only subject to Distress.

Another Reason was added, that the Grantee of him in the Remainder cannot (e) falsify in this Case, because the Recovery was not suffered by him who was chargeable with the Rent, but by one who was discharged of the Rent, and the Recovery barr'd the Remainder, so that he in the Remainder shall never falsify; and by the same Reason no Person that derives an Interest under him shall falsify. And so it was resolved, that no Lease, nor Rent, nor Common, nor Recognizance, nor any other Charge, Interest, or Estate made by him in the Remainder, shall charge the Possession of the Recoveror. And it was also resolv'd by all the Justices aforesaid, *nullo contradicente*, that a common Recovery against Tenant

(a) Mod. R. 109. Poph. 5. 1 Jones 72. Palm. 141. 2 Ro. R. 222. 2 Co. 52. b.

(b) Goldsb. 8. Apres 128. a. Poph. 6.

(c) 2 Bulstr. 44. 45. Apres 128. a. 2 Co. 52. b.

(d) Co. Lit. 47. a. 7 Co. 32. b.

Cro. Jac. 592.

(e) 4 Leon. 154. Mo. 157. Goldsb. 8. Poph. 6. Winch 42.

Post. 136. a. 6 Co. 40. b. 42. Cro. El. 718.

Tenant in Tail, shall (a) bind not only the Remainder, and all Leafes, Charges, &c. granted or made by him in the Remainder, but also the Reversion, and all Leafes, Charges, &c. granted by him in the Reversion, and no Difference between a Reversion and a Remainder expectant upon an Estate-Tail in that Respect. And this Case was resolved by Lord *John Popham*, Chief Justice of *England*, Lord *Edmund Anderson*, Chief Justice of the Common Pleas, Sir *Roger Manwood*, Chief Baron of the Exchequer, and by *Periam*, *Clenche*, *Garwdy*, *Walmesly* and *Fenner*, Justices, *Windham* Justice being Dead, and by *Gent* and *Clark*, Barons of the Exchequer.

(a) 3 Co. 5. 6.
61. Mo. 158.
6 Co. 42. a.
10 Co. 37. b.
2 Ro. 396.
Cro. El. 718.

[See this Case cited, Skinner 317.]

1 C. 63. b.

ARCHER'S *Case.**Trinity Term, Anno 39 El. Rot. 1676.**In the Common Pleas.*

S C O R.

Essex, ff.

Declaration in
Replevin.Consuance as
Bailliff.

Barr.

JOHN Smith Gent. was summoned to answer to *William Baldwin* of a Plea, wherefore he took the Cattle of the said *William*, and them unjustly detained against *Gages* and *Pledges*, &c. And whereupon, the said *William* by *Isaac Hamond* his Attorney complaineth, That the aforesaid *John*, the 9th of *January* in the 36th Year of the Reign of the Lady the now Queen, at *Bocking*, in a certain place called the Meadow, abutting upon the Common High-way, leading from *Braintree* unto *Pantsfield* in the County aforesaid, against the North-East, and upon the Lands of *John Mott* towards the South-West, took the Cattle, that is to say, 26 Sheep of him the said *William*, and them unjustly detained against *Gages* and *Pledges*, until &c. Whereupon he saith he is the worse, and hath *Damage* to the value of 40 pounds, and thereof he bringeth suit, &c. And the aforesaid *John* by *Thomas Reynolds* his Attorney cometh, and defendeth the Force and Injury when, &c. And as Bailliff of *John Kent*, Gent. (Son of *John Kent*, Gent. deceased,) well acknowledgeth the taking of the Cattle aforesaid, in the Place aforesaid, in which, &c. and justly, &c. Because he saith, That the same place, in which it is supposed the taking the Cattle aforesaid above to be done, containeth in itself 4 Acres of Pasture, with the Appurtenances, in *Bocking* aforesaid, which 4 Acres of Pasture with the Appurtenances, at the time aforesaid in which, &c. was the Soil and Freehold of the said *John Kent* the Son; and because the Cattle aforesaid, the time aforesaid in which, &c. were in the same then eating the Grass, and doing Damage there, the said *John Smith*, as Bailliff of the aforesaid *John Kent* the Son, doth well acknowledge the taking of the Cattle aforesaid in the place aforesaid in which, &c. and justly, &c. there so doing Damage, &c. And the aforesaid *William Baldwin* saith, That the said *John Smith*, as Bailliff of the said *John*

John Kent the Son, for the Reason before alledged, ought not to make *Corrusance*, of the taking of the Cattle aforesaid to be just; because he saith, that long before the said taking aforesaid had, One *John Archer*, Gent. was seized of the aforesaid 4 Acres of Pasture, with their Appurtenances, in which, &c. in his demesn as of Fee; and he the said *John* being thereof so seized, before the aforesaid time of the taking aforesaid done, that is to say, the 8th day of *January* in the 36th Year of the Reign of the Lady the now Queen aforesaid, gave licence unto the said *William* to put his Cattle aforesaid into the aforesaid place, in which, &c. to eat the Grass there growing, by virtue of which license, the said *William* afterwards, that is to say, the aforesaid 9th day of *January* in the 36th Year aforesaid, put his Cattle aforesaid in the place, in which, &c. to eat the Grass there growing, which Cattle were in the said place, in which, &c. eating the Grass then growing in the same, until the said *John Smith*, the aforesaid 9th Day of *January* in the 36th Year of the Lady the now Queen aforesaid, at *Bocking* aforesaid, in the aforesaid place called the Meadow, took the Cattle aforesaid of him the said *William*, and them unjustly detained against Gages and Pledges until, &c. as he above against him complaineth, without that, that the aforesaid 4 Acres of Pasture, with the Appurtenances, in which, &c. at the time of the taking aforesaid done, were the Soil and Freehold of the said *John Kent* the Son, as the said *William* above hath alledged; and this he is ready to aver: Wherefore in as much as the said *John Smith* acknowledgeth the taking of the Cattle aforesaid in the aforesaid place, in which, &c. the said *William* demands Judgment and his damages, by the occasion of the taking and unjustly detaining of the same Cattle, to be adjudged to him, &c. And the aforesaid *John Smith*, as at first, saith, that the aforesaid 4 Acres of Pasture with their Appurtenances, in which, &c. at the time aforesaid, in which, &c. were the Soil and Freehold of the said *John Kent* the Son, as he before hath alledged; and of this puts himself upon the Country; and the said *William Baldwin* likewise: And therefore it is commanded to the Sheriff, that he cause to come here from the day of *Holy Trinity* in 3 Weeks 12, &c. by whom, &c. and who neither, &c. to recognize, &c. Because as well, &c. And afterwards the Process was continued between the aforesaid Parties of the aforesaid Plea by Juries (*Jurors*) put between them in respite, here until this day, that is to say, from *Easter-day* in three Weeks, in the 37th Year of the Reign of the said Lady the now Queen. And now here at this day, cometh as well the aforesaid *William*, as the aforesaid *John Smith*, by their Attornies aforesaid, and the Jurors thereof impanelled being called likewise come, who to say the truth of the premisses, being chosen, tried, and sworn, say upon their Oath, That one *Francis Archer*,

Pleadings in Archer's Case. PART I.

Special Verdict.

cher was seised of the said 4 Acres of Pasture, with their Appurtenances, in which, &c. in his Demesne as of Fee, and held the same of one *Thomas Wilson*, as of his Manor of ——— in the County aforesaid, in Free Socage, and that the said *Francis Archer* had Issue one *Robert Archer*, which *Robert* had then Issue the aforesaid *John Archer* the Son, and his right and next Heir Apparent; which aforesaid *Francis Archer*, so of the aforesaid 4 Acres of Pasture with the Appurtenances being seised, before the time in which, &c. that is to say, the 25th Day of *November* in the Year of our Lord 1578, made his last Will and Testament in Writing, and by the same his last Will willed and bequeathed the Tenements aforesaid, with the Appurtenances, amongst other Things, as followeth.

Item, *I give and bequeath to Robert Archer my first Son, all that my Messuage or Tenement, with the Appurtenances, (called the Greyhound) with all and singular the Lands and Grounds, which and whatsoever I late purchased and bought of one John Palmer, as they are set, lying and being in Bocking aforesaid; To have and to hold the said Messuage or Tenement, and other the Premises late purchased and bought of the said John Palmer, as is aforesaid, to the said Robert Archer my Son, from and after the Day of my Death forwards during his natural Life: And after the Death of Robert Archer my said Son, I will my said Messuage or Tenement (called the Greyhound) together with all the said Lands and Grounds which I late purchased of the said John Palmer, shall wholly remain to the right and next Heir of the same Robert Archer, and to the Heirs of his Body lawfully begotten for ever.*

And afterwards the aforesaid *Francis Archer* died, of the aforesaid 4 Acres of Pasture, with the Appurtenances, amongst other Things, in form aforesaid seised. And the said Jurors further say upon their Oath, That the aforesaid *Francis Archer* purchased the aforesaid 4 Acres of Pasture, with their Appurtenances, of the aforesaid *John Palmer*, in the aforesaid last Will of the aforesaid *Francis* named: And the Jurors further say upon their Oath, That after the Death of the said *Francis Archer*, the aforesaid *Robert Archer* being Son and Heir Apparent of the aforesaid *Francis*, into the aforesaid 4 Acres of Pasture, with their Appurtenances, entred, and was thereof seised of such Estate as the Law in this Case requireth; And the said *Robert* so thereof being seised, before the aforesaid Time in which, &c. that is to say, the 21st Day of *Jan.* in the 36th Year of the Reign of the said Lady the now Queen, by his Deed of Feoffment,

with the seal of the said *Rob.* sealed; and to the jurors aforesaid in evidence shewed, enfeoffed one *John Kent*, father of *feoffment.* the said *John Kent*, in the consuance aforesaid above named, of the aforesaid 4 acres of pasture with their appurtenances, in which, &c. amongst other, by the name of all that his messuage or tenement, and all houses, buildings, barns, orchards, gardens, with the appurtenances, sometimes called or known by the name of the *Greybound*, or otherwise, or by what other name or names the same were called or known, situate, lying and being in *Bocking* aforesaid, in a street there called *Bocking Eand*, and of all those lands, meadows, and pastures, to the same belonging or appertaining, or with the same at any time then before demised, used or occupied, lying and being at *Bocking* aforesaid, to have and to hold to the aforesaid *John Kent* the father, his heirs and assigns for ever, to the proper use and behoof of the said *John*, his heirs and assigns for ever. And further the said *Rob. Archer*, and his heirs, by the deed aforesaid, all and singular the aforesaid messuages or tenements, houses, buildings, meadows, pastures, and other the premises aforesaid, with the appurtenances to the aforesaid *John Kent* the father, his heirs and assigns, to the use in the said deed mentioned, against all men did warrant, as by the said charter of feoffm. to the jurors aforesaid given in evidence it more fully appeareth. By virtue of which feoffment, the aforesaid *John Kent* the father, was seised of the aforesaid 4 acres of pasture with their appurtenances, in which, &c. in his demesne as of fee; and further, the jurors afores. say upon their oath, that after the feoffment aforesaid, in form aforesaid made, the aforesaid *J. Archer*, son, and right and next heir apparent of the aforesaid *Robert Archer*, in the lives of the aforesaid *Rob. Archer*, and *John Kent* the father, into the aforesaid 4 acres of pasture with the appurtenances, in which, &c. upon the possession of the aforesaid *J. Kent* the father, thereof entred, upon whose possession of the said *J. Archer* thereof, the said *J. Kent* the father afterwards re-entred, and was of the aforesaid 4 acres of pasture with their appurtenances, in which, &c. seised as the law in this case requireth, and the said *J. Kent* the father so thereof being seised, before the afores. time in which, that is to say, the 16th day of *May* in the 27th year of the reign of the L. the now Q. made his testament and last will in writing, and by the same his last will gave and bequeathed to the aforesaid *John* his second son, and his heirs, the afores. 4 acres of pasture, with the appurtenances, in which, &c. amongst other, and afterwards, and before the time in which, &c. the afores. *J. Kent* the father, of such estate of the afores. 4 acres of pasture with the appurt. in which, &c. died seised, after whose death, the afores. *J. Kent* the son, into the afores. 4 acres of pasture with the appurt. entred and was thereof seised of such estate as the law in this case requireth: And after-

Pleadings in Archer's Case. PART I.

wards, and before the aforesaid time in which, &c. the aforesaid *Rob. Archer* died, after whose death the aforesaid *John Archer* the son, and right and next heir of the aforesaid *Rob. Archer*, into the aforesaid 4 acres of pasture with the appurtenances, in which, &c. upon the possession of the said *John Kent* the son, thereof entred, and was thereof seised, as the law in this case requireth. And the said *John Archer* so thereof being seised, the aforesaid 8th day of *Nov.* in the 36th year aforesaid, gave licence to the said *William Baldwin*, to put his Cattle aforesaid into the aforesaid place in which, &c. the grass in the same then growing to eat; by virtue of which licence, the said *William* afterwards, that is to say, the aforesaid 9th day of *Jan.* in the 36th year above-said, put his Cattle aforesaid into the aforesaid place in which, &c. to eat the grass then and there growing, which Cattle were in the same place in which, &c. the grass in the same then eating, until the aforesaid *John Smith* as Bailiff of the aforesaid *John Kent* the son, the aforesaid 9th day of *Jan.* in the 36th year above-said, in the aforesaid place called the Meadow, to the use of the said *John* the Son entred, and took the aforesaid Cattle of the aforesaid *William*, and them detained against gages and pledges, until, &c. as the aforesaid *Will. Baldwin* above against the aforesaid *John Smith* complaineth: And if upon the whole matter aforesaid, by the Jurors aforesaid, in form aforesaid found, it shall seem to the Justices and Court here, that the aforesaid 4 acres of pasture with their appurtenances, in which, &c. the aforesaid time in which, &c. were not the soil and freehold of the aforesaid *John Kent* the son, then the said Jurors say upon their oath, that the aforesaid 4 acres of pasture with the appurtenances, in which, &c. the aforesaid time in which, &c. were not the soil and freehold of the aforesaid *John Kent* the son, as the aforesaid *Will. Baldwin* above hath alledged: And then they assess the damages of the said *Will. Baldwin*, by occasion of the taking and unjust detaining of the aforesaid Cattle, above his costs and charges by him about his suit in this behalf expended to 14 pence, and for his said costs and charges to 2 pence. And if upon the whole matter aforesaid, by the Jurors aforesaid, in form aforesaid found, it shall seem to the Justices and Court here, that the aforesaid 4 acres of pasture with the appurtenances, in which, &c. the aforesaid time in which, &c. were the soil and freehold of the aforesaid *John Kent* the son, as the said *John Smith* above alledged, then they assess the damages of him the said *John Smith*, by the occasion aforesaid, above his costs and charges by him about his suit in this behalf expended, to 12 pence, and for his costs and charges to 2 pence; and because the Justices here will advise themselves of and upon the premises, before they give their Judgment thereof,

day is given to the parties here in the morrow of the *Holy Trin.* to hear their judgment thereof, because the same Justices here thereof not yet, &c. At which day here cometh as well the aforesaid *Will.* as the aforesaid *John*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the premisses, before they give their judgment thereof, day farther is given to the parties here until in 8 days of *St. Michael*, to hear their judgment thereof, because the same Justices here thereof not yet, &c. At which day here cometh as well the aforesaid *William*, as the aforesaid *John*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the Premisses before they give their Judgment thereof, day is given to the parties here in 8 days of *St. Hillary* to hear their judgment thereof, because the same Justices here thereof not yet, &c. At which day cometh as well the aforesaid *William* as the aforesaid *John*, by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the premisses, day further is given to the parties aforesaid here until from *Easter-day* in 15 days, to hear their judgment thereof, because the same Justices here thereof not yet, &c. At which day cometh as well the aforesaid *William*, as the aforesaid *John* by their Attornies aforesaid; And because the Justices here will further advise themselves of and upon the premisses, before they give their judgment thereof, day further is given to the parties aforesaid here until the Morrow of the *Holy Trinity*, to hear their judgment thereof, because the same justices here thereof not yet, &c. At which day here cometh as well the aforesaid *William*, as the aforesaid *John*, by their Attornies aforesaid; And upon this, the premisses being seen, and by the Justices here fully understood, It is (a) granted that the said *William* take nothing by his Writ aforesaid, but be in mercy for his false clamour, and the aforesaid *John* thereof go without day, &c. And that he have return of his Cattle aforesaid, to hold for ever irreplegiabie, &c. and how, &c. And that the Sheriff make it appear here in 8 Days of *St. Michael*, &c. It is also granted, that the aforesaid *John* recover against the said *William*, his damages to 14 pence, by the jurors aforesaid, in form aforesaid assessed. as also 18 pounds, 8 shillings and 10 pence, to him the said *John* at his request, for his costs and charges aforesaid, by the Court here of increase adjudged, which damages amount in the whole to 19 pounds, &c.

(a) 1 Roll. 771,
774. 1 Bullit.
125, 126, 179.
1 Syd. 70. 1 Co.
83 a. 119 b.
22. a. 40. a.
Hob. 17, 19.
327. Latch 78,
82, 188. Noy
77. Poph. 203.
212. Palm. 260.
N. Ben. 184.
pl. 226. Cr. El.
145. Jenk.
Cent. 13 Cr.
Jac. 6. 386,
632. 1 Roll. R.
275, 279. 3
Bullit. 92, 93,
94. Cr. Car.
45, 442. Yelv.
130. Hob. 194.
Sat. 16 & 17
Car. 2. cap. 8.
Stat. 22 & 23
Car. 2. cap. 4.

* Skinner 430,
431 Fitzgib.
12, 15, 16, 24.

* ARCHER'S Case.

Mich. 39 & 40 Eliz. in C. B.

Between Baldwyn and Smith.

Between (a) *Baldwyn* and *Smith* in the Common Pleas, which began *Trin. 39 Eliz. rot. 1676*, in a *Replevin*; upon a special Verdict, the Case was such: *Francis Archer* was seised of Land in a Fee, and held it in Socage, and by his Will in Writing devised the Land to *Robert Archer* the Father for his Life, and afterwards to the next Heir Male of *Robert*, and to the Heirs; (b) Males of the Body of such next Heir Male; *Robert* had Issue *John*, *Francis* died, *Robert* enfeoffed *Kent* with Warranty, upon whom *John* enter'd, and *Kent* re-enter'd, and afterwards *Robert* died, &c. And first it was agreed by *Anderson*, *Walmsley*, & *totam Cur'*, that *Robert* had but an Estate for (c) Life, because *Robert* had an express Estate for (d) Life devis'd to him, and the Remainder is limited to the next (e) Heir Male of *Robert* in the singular Number; and the right Heir Male of *Robert* cannot enter for the Forfeiture in the Life of *Robert*, for he cannot be (f) Heir, as long as *Robert* lives. Secondly, that the Remainder to the right Heir Male of *Robert* is (g) good, altho' he cannot have a right Heir during his Life, but it is sufficient that the Remainder vests *eo instante* that the particular Estate determines. And so it is agreed in 7 *H. 4. 6. b.* and (b) *Crammer's Case 14 Eliz. Dyer 309. a.* Thirdly, (which was the principal Point of the Case,) it was agreed *per totam Cur'*, that by the Feoffment of the Tenant for Life the Remainder was (i) destroyed, for every (k) contingent Remainder ought to vest, either during the (l) particular Estate, or at least *eo instante* that it determines: For if the particular Estate be ended, or determined in Fact, or in Law before the Contingency falls, the Remainder is void. And in this Case, inasmuch as by the Feoffment of *Robert*, his Estate for Life was determined by a Condition in Law annexed to it, and cannot be revived afterwards by any Possibility; for this Reason the contingent Remainder is destroyed against the Opinion of *Gaseigne* in 7 *Henry 4. 25. b. (m)* But if the Tenant for Life had been disseised, and died,

yet

yet the Remainder is good, for there the particular Estate doth remain in Right, and might have been re-vested, as it is said in 32 H. 6. But otherwise is it in the Case at the Bar, for by his Feoffment no Right of the particular Estate doth remain. And it was said it was so agreed by *Popkham*, Chief Justice, and divers Justices in the Argument of the Case between (a) *Dillon* and *Frcin*, and denied by none. See (b) 11 R. 2. *Tit. Detinue* 46. And note the Judgment of the Book, and the Reason thereof, which Case there adjudged is a stronger Case than the Case at the Bar. But note Reader, that after the Feoffment, the Estate for Life to some Purpose had (c) Continuance; for all Leases, Charges, &c. made by the Tenant for Life shall stand during his Life, but the Estate is supposed to continue as to those only who claim by the Tenant for Life before the Forfeiture; but as to all others who do not claim by the Tenant for Life himself, the particular Estate is determined: And by the better Opinion the (d) Warranty shall bind the Remainder, altho' the Warranty was created before the Remainder attached or vested, and altho' the Remainder was in the (e) Consideration of the Law, and he who shall be bound by it, never could have avoided it by Entry, or otherwise; yet forasmuch as the Remainder did commence, and had its Being by Force of the Devise, which was before the Warranty; for this Reason it shall bind the Remainder; but the same was not unanimously agreed: and as the Feoffment of the Tenant for Life shall destroy the Remainder, which was in Consideration of Law, so *Et a fortiori*, the Warranty of his Ancestor (by whom he is intended to be advanced) shall bind him. And in many Cases one shall be bound, and barr'd of his Right by a Warranty, who could never have defeated it by any Means, as in 44 E. 3. 30. and (f) 44 *Aff. p.* 35. Lessee for Life is disseised, to whom a collateral Ancestor of the Lessor releaseth and dieth, he shall be barr'd. *Vide* 5 H. 7. 9. a. and 33 H. 8. *Br. Garanty* 84. A Feme Covert, who cannot enter nor avoid the Warranty, shall be barr'd. So if Tenant for Life, the Remainder to the right Heirs of *J. S.* had been disseised, and the Disseisor had levied a Fine at the Common Law, the right Heir of *J. S.* shall be bound, and yet he could not enter nor make Claim. But the Point adjudg'd was, (g) That by the Feoffment of the Tenant for Life, the Remainder was destroyed.

[See now the late Statute for ousting the Effect of collateral Warranties.]

For. 134, 135.
1 Int. 378. &c
ib. 330, 388.

(a) Pop. 70.
And. 309. 1 Co.
120. a. Jenk.
Cent. 276.

(b) Lit. Rep.
290. Palm. 238.

(c) Pop 40.
Dall. 65. 8 Co.
145. b. 11ow.
198. a. Co. Lit
388. b. 6 Co.
79. a. 3 Keb.
410.

(d) 5 Co. 80. b.
o. Lit. 380 b.
388. b. 1 Jones
210. Palm. 238,
248. Cr. Eliz.

72.
(e) 1 Roll. Rep.
178.

(f) 2 Roll. 740.
1 Jon. 199, 249

(g) Apres 130.
b.
6 Co. 42.
1 Lco. 102.

BREDON'S Case.

Trinity Term, 38 Eliz. Rot. 1831.

In the Common Pleas.

Scott,

Suffolk, ff.

Declaration in
Replevin.Connfance as
Bailliff.

A Fine pleaded.

William Bredon and *John Bredon* were summoned to answer to *Agnes Gardiner* Widow, of a Plea, wherefore they took the Cattle of the said *Agnes*, and them unjustly detained against Gages and Pledges, &c. And whereupon the said *Agnes*, by *Thomas Waller* her Attorney, complaineth, That the aforesaid *William* and *John*, the 18th Day of *March* in the 37th Year of the Reign of the Lady the now Queen, at *Stowmarket*, in a certain Place called the *Parkwood*, Parcel of the Manor of *Columbine-hall*, took Cattle, that is to say, 15 Milch Cows, and 5 Calves, of the said *Agnes*, and them unjustly detained against Gages and Pledges, until, &c. Whereupon she saith, that she is the worse, and hath Damage to the Value of 10 Pounds, and thereof bringeth Suit, &c. And the said *William* and *John*, by *Richard Walker* their Attorney, come and defend the Force and Injury when, &c. And as Bailliffs of *Martha Cary* Widow, do acknowledge the taking of the Cattle aforesaid, in the Place in which, &c. and justly, &c. Because they say, That the same Place, in which it is supposed the taking above to have been made, doth contain, and at the Time of the taking of the Cattle aforesaid, did contain in it self 8 Acres of Land, with the Appurtenances, in *Stow-market* aforesaid, and that long before the aforesaid Time in which, &c. one *John Gardiner* Gent. was seised of and in the Manor of *Collumbine-hall*, otherwise *Thorney Collumbers*, with the Appurtenances in the County aforesaid, whereof the aforesaid 8 Acres of Land, with the Appurtenances, in which, &c. are, and at the aforesaid Time in which, &c. and also from the Time whereof the Memory of Man is not to the contrary were Parcel, in his Demesne as of Fee; and he being thereof so seised, a Fine was levied in the Court of the Lady the now Queen, of the Bench here, that is to say, at *Westminster*, in 8 Days of

St

St. Michael in the 29th Year of the said Lady the now Queen, before *Edmund Anderson, Francis Windbam, Will. Periam,* and *Francis Rodes*, then Justices of the said Lady the Queen of the Bench here, and other the said Queen's faithful People here then present, between *Edmund Cary*, Knt. and *Robert Cary*, Esq; by the Names of *Edm. Cary*, Knt. and *Rob. Cary*, Esq; Plaintiffs, and *Will. Cary*, Esq; the aforesaid *John Gardiner*, and the said *Agnes* now Plaintiff, then the Wife of the said *John*, and *George Totty* Gent. and *Elizabeth* his Wife, by the Names of *Will. Cary*, Esq; *John Gardiner* Gent. and *Agnes* his Wife, and *George Totty* Gent. and *Elizabeth* his Wife Deforceants, of the Manor aforesaid, with the Appurtenances, wherof, &c. And of 10 Messuages, 10 Cottages, 10 Barns, 1 Dove-house, 20 Curtilages, 20 Gardens, 10 Orchards, 300 Acres of Land, 60 Acres of Meadow, 200 Acres of Pasture, 30 Acres of Wood, 60 Acres of Furz and Heath, the Rent of 1 Pound of Wax, and 4 Capons, 30 Shillings of Rent, with the Appurtenances, in *Stow-market, Newton, Gipping,* and *One-house*; as also of the view of Frank Pledge, in *Stow-market, Newton, Gipping,* and *One-house*, by the Names of the Manors of *Collumbine-hall*, otherwise *Thorney Collumbers*, with the Appurtenances, and of 10 Messuages, 10 Cottages, 10 Barns, 1 Dove-house, 20 Curtilages, 20 Gardens, 10 Orchards, 300 Acres of Land, 60 Acres of Meadow, 200 Acres of Pasture, 30 Acres of Wood, 60 Acres of Furz and Heath, 30 Shillings of Rent, and of the Rent of 1 Pound of Wax, and 4 Capons, with the Appurtenances, in *Stow-market, Newton, Gipping,* and *One-house*, as also of the View of Frank Pledge, and whatsoever to View of Frank Pledge doth appertain in *Stow-market, Newton, Gipping,* and *One-house*, whereof a Plea of Covenant was summoned between them in the said Court, that is to say, That the aforesaid *William, John, Agnes, George,* and *Elizabeth*, acknowledge the aforesaid Manor, Tenements, Rents, and View of Frank Pledge, with their Appurtenances, to be the Right of him the said *Edmund*, as those which the said *Edmund* and *Robert* had of the Gift of the aforesaid *William, John, Agnes, George,* and *Elizabeth*, and them released and quitclaim'd from them the said *William, John, Agnes, George,* and *Elizabeth*, and their Heirs to the aforesaid *Edmund* and *Robert*, and to the Heirs of the said *Robert* for ever. And besides, the said *William* granted for him and his Heirs, That they would warrant to the aforesaid *Edmund* and *Robert*, and to the Heirs of the said *Edmund*, the aforesaid Manor, Tenements, Rents and View of Frank Pledge, against him the said *William* and his Heirs for ever. And further, the said *John* and *Agnes* granted for them and the Heirs of him the said *John*, that they would warrant to the aforesaid

Pleadings in Bredon's Case. PART I.

Special Warranty.

Edmund and *Robert*, and to the Heirs of the said *Edmund*, the Manor, Tenements, Rents and View of Frank Pledge, with the Appurtenances, against them the said *John* and *Agnes*, and the Heirs of the said *John* for ever. And moreover the said *George* and *Elizabeth* granted for them, and the Heirs of him the said *George*, that they would warrant to the afores. *Edmund* and *Robert*, and to the Heirs of the said *Edmund*, the Manor, Tenements, Rents and View of Frank Pledge, with the Appurtenances, against them the same *George* and *Elizabeth*, and the Heirs of the said *George* for ever. Which Fine of the Manor, Tenements, Rents and View of Frank Pledge aforesaid, with the Appurtenances, in form afores. levied, was had and levied, to the Use of them the said *John Gardiner*, and *Agnes* then his Wife, for the Term of their Lives, and of the longest liver of them, without Impeachment of Waste, in any the Woods and Underwoods; and after the Decease of the same *John Gardiner* and *Agnes*, to the Use of the aforesaid *Will. Cary*, and the Heirs of his Body lawfully begotten; and for Default of such Issue, to the Use of the afores. *Rob. Cary* then Esq; and now Knt. and the Heirs of his Body lawfully begotten; and for Default of such Issue, to the Use of *Hen. Cary*, Knt. Lord of *Hunston*, and his Heirs for ever. By Virtue of which Fine, and by Force of a certain Act of Parliament of the Lord *Hen.* the 8th late King of *Engl.* made at *Westm.* in the County of *Middlesex*, the 4th Day of *February* in the 27th Year of his Reign, of transferring of Uses into Possession, the said *John Gardiner* and *Agnes* were seised of the Manor afores. with the Appurtenances whereof, &c. in their Demesne as of Freehold, for the Term of the Lives of them the said *John* and *Agnes*, and the longer liver of them, without Impeachment of Waste, the afores. Remainder thereof, after the Death of them the said *John* and *Agnes*, to the afores. *Will. Cary*, and the Heirs of his Body lawfully begotten; the Remainder thereof, for Default of such Issue, to the afores. *Rob. Cary*, and the Heirs of his Body lawfully begotten; and for Default of such Issue, the Remainder thereof to the afores. *Hen. Cary*, Knt. Lord of *Hunston*, and his Heirs for ever. And the afores. *John Gardiner* and *Agnes* his Wife so thereof being seised, another Fine was levied in the said Court of the said Lady the now Queen of the Bench here, at *Westm.* afores. from the Day of *Easter* in 15 Days, in the 32d Year of the Reign of the said Lady the now Q. before *Edmund Anderson*, *Francis Windham*, *Will. Periam*, and *Tbo. Walnesley*, then Justices of the said Lady the Q. of the Bench here, and other the said Lady the Queen's faithful People then there present; between *John Higham*, Knt. and *Tbo. Turner*, Esq; by the Names of *John Higham*, Knt. and *Tbo. Turner*, Esq; Plaintiffs, and the afores. *Will. Cary*, and the afores. *Martha* then his Wife, and the afores. *J. Gardiner*, and the afores. *Agnes* then his Wife

Uses of the Fine.

Another Fine.

Deforceants,

Deforceants, of the aforesaid Manor of *Collumbine-hall*, otherwise *Thorney Collumbers*, with the Appurtenances, whereof, &c. by the Name of the Manor of *Collumbine-hall*, otherwise *Thorney Collumbers*, with the Appurtenances, in *Stow-market*, *Newton*, *Gipping*, and *One-bouse*, whereof a Plea of Covenant was sued between them in the said Court, that is to say, that the aforesaid *Will. Cary* and *Martha*, *John Gardiner* and *Agnes*, acknowledged the aforesaid Manor, with the Appurtenances, whereof, &c. to be the Right of the said *John Higham* and *Tho.* as that which the said *John Higham* *Thomas* had of the Gift of the aforesaid *William Cary* and *Martha*, *John Gardiner* and *Agnes*, and the same released and quit-claimed for them the said *Will. Cary* and *Martha*, *John Gardiner* and *Agnes*, and their Heirs, to the aforesaid *John Higham* and *Thomas*, and the Heirs of the said *John Higham* for ever. And further, the said *Will. Cary* and *Mar-* ^{With a general}
tha, and *John Gardiner* and *Agnes*, granted for them, and ^{Warra..ty.}
the Heirs of the said *Will. Cary*, that they would warrant to the aforesaid *John Higham* and *Thomas*, and to the Heirs of the said *John Higham*, the aforesaid Manor, with the Appurtenances, against all Men for ever. And for the same Ac- ^{And Render of}
knowledgment, Release, Quit-claim, Fine and Concord, the ^{Rent, &c.}
said *John Higham* and *Thomas* granted to the aforesaid *Martha* a certain Annuity or yearly Rent of 40 Pounds of lawful Money of *Engl.* to be issuing out of the aforesaid Manor, with the Appurtenances, and that to her rendred in the same Court of the said Lady the Queen; To have and receive the aforesaid Annuity or yearly Rent of 40 Pounds to the said *Martha* at the Feasts of *St. Michael* the Archangel, and the Annunciation of the Blessed *Mary* the Virgin, by equal Portions yearly to be paid, all the Life-time of the said *Martha*, if the aforesaid *John Gardiner* and *Agnes*, or any of them so long should live; the first Payment thereof to begin at that Feast of the Feasts aforesaid which next after the Decease of the aforesaid *Will. Cary* should happen: And if it should happen the aforesaid Annuity or yearly Rent of 40 Pounds to be behind in Part, or in all, after any Feast of the Feasts aforesaid, in which as before it ought to be paid, and not paid, that then it should be lawful to the said *Martha*, all her Life, if the said *John Gardiner* and *Agnes*, or either of them should so long live, into the aforesaid Manor, with the Appurtenances, to enter and distrain, and the Distresses so ^{Distress, &c.}
there taken and had lawfully to lead away, carry and drive, and with them to keep, until of the aforesaid Annuity or yearly Rent of 40 Pounds, with the Arrearages thereof (if any were) they should be satisfied and paid, as by the Record of the said Fine in the Court of the said Lady the Q. of the Bench aforesaid, here remaining amongst other Things more fully appeareth. And the aforesaid *Will. Cary* afterwards, that is to say, the 24th of *March* in the 35th year of the Reign
of

Pleadings in Bredon's Case. PART I.

of the Lady the now Queen, at *Stow-market* aforesaid died; after whose Death, by Virtue of the Fine aforesaid last recited, the aforesaid *Martha* was, and yet is seised of the aforesaid Annuity or yearly Rent of 40 Pounds, in her Demesne as of Freehold, for the Term of her Life, if the said *John Gardiner* and *Agnes* his Wife, or either of them, should so long live; and because 40 Pounds of the aforesaid yearly Rent, to the said *Martha* at and after the Feast of *St. Michael* the Archangel in the 35th Year of the Reign of the Lady the now Q. as also at the afores. Time, in which, &c. were behind unpaid, the said *Will. Bredon* and *John Bredon*, as Bailiffs of the said *Martha*, acknowledge the taking of the Cattle aforesaid, in the aforesaid Place in which, &c. And justly, &c. for the said 40 Pounds of the Annual Rent aforesaid, to the said *Martha* so being behind, as in the Lands, to the Distress of the said *Martha* of the Rent aforesaid, in form aforesaid charged and bound, &c. With this, that the said *William Bredon* and *John* will aver, that the aforesaid *Martha* is yet living, and is in full Life, that is to say, at *Littlewrating* in the aforesaid County of *Suffolk*, &c. with this also, That the said *William Bredon* and *John Bredon* will aver, that the aforesaid *Agnes* now Plaintiff, and the aforesaid *Agnes* one of the Deforcceants, in the aforesaid several Fines named, are one and the same person, and not others or divers, &c. And the aforesaid *Agnes*, as to 20 Pounds of the yearly Rent aforesaid, at the Feast of the Annunciation of the Blessed *Mary* the Virgin in the 35th Year above said payable, saith, That she cannot deny but that the said 20 Pounds, at the said Feast, were behind to the aforesaid *Martha* not paid, as the aforesaid *William Bredon* and *John* by their Conufance aforesaid suppose. And as to the aforesaid other 20 Pounds of the aforesaid 40 Pounds Residue, which the aforesaid *William* and *John*, by their Conufance aforesaid, suppose to have been behind, not paid to the aforesaid *Martha* at the aforesaid Feast of *St. Michael* in the 35th Year above said, it is said, That the aforesaid *William Bredon* and *John Bredon*, by reason of the aforesaid taking of the Cattle aforesaid, in the aforesaid Place, in which, &c. For the same 20 Pounds ought not acknowledge it to be just, for it is said, that well and true it is, that the said *John Gardiner* was seised of the Manor aforesaid, with the Appurtenances, whereof, &c. in his Demesne as of Fee; and the said *John* so thereof being seised, the said Fine in the Conufance of the said *William Bredon* and *John Bredon* above first mentioned, was levied in the aforesaid Court of the Queen here in the aforesaid 8 Days of *Saint Michael* in the 29th Year of the Reign of the Lady the now Queen

above

above written, before the aforesaid then Justices, and other the Lady the Queen's faithful People then there present, between the aforesaid *Edmund Cary* Knt. and *Robert Cary*, Esq; Plaintiffs, and the aforesaid *William Cary*, Esq; and *John Gardiner*, and the said *Agnes* now Plaintiff, then Wife of the aforesaid *John Gardiner*, and the aforesaid *George Totty*, and *Eliz.* his Wife Deforceants, of the Manor afores. with the Appurtenances, whereof, &c. and of the afores. Tenements and Appurtenances in the Conufance aforesaid abovementioned, and that the said Fine in form afores. levied, was had and levied to the use of the afores. *John Gardiner*, and of her the said *Agnes*, for the Term of their lives, and the longer liver of them; and after the decease of the afores. *John* and *Agnes*, to the use of the aforesaid *Will. Cary*, and the Heirs of his Body lawfully begotten; and for Default of such Issue, to the use of the afores. *Rob. Cary*, Knt. and the Heirs of his Body lawfully begotten; and for default of such Issue, to the use of the afores. *Hen. Cary*, Knt. Lord of *Hunsdon*, and his Heirs for ever. By virtue of which Fine, and by force of the afores. Act made of transferring uses into possession, the aforesaid *John*, and the said *Agnes*, were seized of the Manor aforesaid with the Appurtenances, whereof, &c. in their demesn as of Freehold, for the Term of the lives of them the said *John* and *Agnes*, and the longer liver of them; the Remainder thereof, after the death of them the said *John* and *Agnes*, to the aforesaid *William Cary*, and the Heirs of his Body lawfully begotten; the Remainder thereof for default of such Issue, to the aforesaid *Robert Cary*, and the Heirs of his Body lawfully begotten; the Remainder thereof for Default of such Issue, to the aforesaid *Henry Cary*, Knt. Lord of *Hunsdon*, and his heirs for ever, as the aforesaid *William Bredon*, and *John Bredon*, by their Conufance aforesaid above suppose: But the said *Agnes* further saith, That the aforesaid *John Gardiner* and *Agnes*, so of the Manor aforesaid with the Appurtenances, whereof, &c. for the Term of the lives of them the said *John* and *Agnes*, and the longer liver of them, in form aforesaid being seized; the Remainder thereof, after the death of the aforesaid *John* and *Agnes*, to the aforesaid *William Cary*, and the Heirs of his Body lawfully begotten; the Remainder thereof for Default of such Issue, to the aforesaid *Robert Cary*, and the Heirs of his Body lawfully begotten; the Remainder thereof for Default of such Issue, to the aforesaid *Henry Cary*, Knt. Lord of *Hunsdon*, and his Heirs expectant, before the levying of the aforesaid second Fine in the Conufance of the said *William Bredon* and *John Bredon* abovementioned. Another Fine was levied in the same Court of the said Lady the now Queen of the Bench here, that is to say, at *Westminster* aforesaid, from the day of *Easter* in 15 days, in the 31st Year of the Reign of the said Lady the now Queen, before the aforesaid *Edmund An-*

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derfon, Francis Windham, and William Periam, then Justices of the Lady the Q. of the Bench here, and other of the Queen's faithful People, then and there present, between *David Bulward* and *Rob. Ham*, by the names of *D. Bulward* and *Rob. Ham* Plaintiffs, and the aforesaid *Will. Cary*, by the name of *Will. Cary*, Esq; Deforçant, of the Manor aforesaid with the Appurtenances, whereof, &c. and of 20 Messuages, one Dove-house, 20 Gardens, 300 Acres of Land, 100 Acres of Meadow, 200 Acres of Pasture, 30 Acres of Wood, and 1 Pound, 6 Shillings, 4 Pence Rent, and of the Rent of 4 Capons, and 1 Pound of Wax, with the Appurtenances, in *Stow-market, Newton, Gipping, and One-house*, by the name of the Manor of *Collumbine-hall*, otherwise *Thorney Collumbers*, with the Appurtenances, and 20 Messuages, one Dove-house, 20 Gardens, 300 Acres of Land, 100 Acres of Meadow, 200 Acres of Pasture, 30 Acres of Wood, and 1 Pound, 6 Shillings, 4 Pence Rent, and the Rent of 4 Capons, and one Pound of Wax, with the Appurtenances, in *Stow-market, Newton, Gipping, and One-house*, whereof a Plea of Covenant was sued between them in the said Court, that is to say, that the afores. *Will.* acknowledged the afores. Manor, Tenements, Rents and premisses with the Appurtenances, to be the right of the said *David*, as those which the said *David* and *Robert* had of the gift of the afores. *Will.* and those released and quit-claimed, from him and his Heirs, to the said *David* and his Heirs for ever. And besides, the said *Will.* granted for him and his Heirs, that they warrant to the said *David* and *Robert*, and to the Heirs of the said *David*, the afores. Manor, Tenements, Rents with the Appurtenances, against the afores. *Will.* and his Heirs for ever, as by the Record of the same Fine, in the Court of the said Lady the Q. of the Bench, here remaining more fully appeareth. Which fine, in form afores. levied and had, was levied and had, to the use of the aforesaid *David* and *Robert*, and their Heirs, to the intent, and until a perfect Recovery, by Writ of the Lady the Queen of Entry on a Disseisin in the Post, of the Manor and Tenements aforesaid, with the Appurtenances, were sued against the said *David* and *Robert*, by one *Robert Peirson*, Gent. according to the course of common Recoveries used to be had. And the aforesaid *John Gardiner*, and *Agnes* his Wife, of the Manor aforesaid with the Appurtenances, whereof for the Term of the Lives of them the said *John Gardiner* and *Agnes*, and the longer liver of them, so as before is said, being seized; the Remainder thereof to the aforesaid *David* and *Robert Ham*, and their Heirs in form aforesaid expectant, the said Fine in the Conuſance of the said *William Bredon* and *John Bredon*, above secondly mentioned in form aforesaid, was levied in the aforesaid Court of the Lady the Queen, here from the Day of *Easter* in 15 Days, in the 32d Year afores. before

And Common Recovery.

before the aforesaid then Justices of the said Lady the Queen of the Bench, between the aforesaid *John Higham*, Knt. and *Thomas Turner*, Esq; Plaintiffs, and the aforesaid *William Cary*, and the aforesaid *Martha*, then his Wife, and the said *John Gardiner*, and *Agnes* his then Wife, De-forceants, of the Manor aforesaid with the Appurtenances, whereof, &c. And the aforesaid *John Higham* and *Thomas*, by the same Fine granted unto the said *Martha* the aforesaid Annuity or yearly Rent of 40 Pounds, to be issuing out of the Manor aforesaid with the Appurtenances, and those to her in Form aforesaid rendred, to have and perceive the aforesaid Annuity, or yearly Rent of 40 Pounds, at the aforesaid Feasts of Saint *Michael* the Archangel, and the Annunciation of the blessed *Mary* the Virgin, by equal Portions, yearly to be paid all the life-time of the said *Martha*; if the aforesaid *John* and *Agnes*, or any of them should so long live; the first payment thereof to begin at that Feast of the said Feasts, which next after the Decease of the said *William Cary* should happen to be, with the aforesaid Clause of Distress in the said Fine mentioned, as the aforesaid *William Breden* and *John Breden*, by their Conusance aforesaid, above suppose. By Virtue of the levying of which Fine last mentioned, so had and levied, the aforesaid *John Gardiner* and *Agnes* forfeited their Estate aforesaid, for the Term of their lives, and the life of the longer liver of them in the aforesaid Manor, with the Appurtenances, whereof, &c. And afterwards, that is to say, the aforesaid 24th of *March* in the 35th Year above-said, the aforesaid *William Cary*, at *Stow-market* aforesaid died, without Issue of his Body lawfully begotten; after whose Death, and before the Feast of Saint *Michael* the Archangel, in the 35th Year above-said, the aforesaid *Robert Cary* Knt. by Reason of the aforesaid Forfeiture of the Estates of the aforesaid *John Gardiner* and *Agnes*, of and in the Manor aforesaid, with the Appurtenances, whereof, &c. entred and was thereof seized in Fee-tail, that is to say to him and the Heirs of his Body lawfully begotten; and so thereof being seized, the said *Robert* afterwards, and before the aforesaid Time of the Taking aforesaid made, that is to say, the 17th Day of *March* in the 37th Year of the Reign of the Lady the now Queen above-said, at *Stow-market* aforesaid, gave Licence to the said *Agnes* to put her Cattle into the aforesaid place; in which, &c. to eat the Grass in the same then growing. By Virtue of which License, the said *Agnes* after, and before the aforesaid Time, in which, &c. to put her Cattle aforesaid into the aforesaid place, in which, &c. to eat the Grass in the same, which Cattle were in the aforesaid Place, in which, &c. until the aforesaid

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William Bredon and *John Bredon*, the Day and Year in the Declaration aforesaid above specified, at *Stow-market* aforesaid, in the aforesaid place, in which, called the *Parkwood*, took the aforesaid Cattle of the said *Agnes*, and them unjustly detained against *Gages* and *Pledges*, until, &c. as she above against them complaineth; and this she is ready to aver: Wherefore in as much as the said *William Bredon* and *John Bredon*, the taking of the Cattle aforesaid, in the aforesaid place, in which, &c. above acknowledge, the said *Agnes* demands Judgment and her Damages, by the Occasion of taking and unjustly detaining of her Cattle aforesaid, to be adjudged unto her. And the aforesaid *William Bredon* and *John Bredon*, as to the aforesaid Plea of the said *Agnes*, to the Conuance of the said *William* and *John*, for the aforesaid 20 Pounds, Residue, &c. made, in Bar pleaded, say, That well and true it is, that the aforesaid Fine in the Bar of the aforesaid *Agnes*, secondly specified in the aforesaid Court of the Lady the Queen of the Bench aforesaid, here in the aforesaid 15th Day of *Easter*, in the 31st Year of the Reign of the Lady the now Queen aforesaid, before the said *Edmund Anderson*, *Francis Windham*, and *William Periam*, then Justices of the said Lady the Queen of the Bench aforesaid, here, and other of the said Lady the Queen's then faithful People then here present, between the aforesaid *David Bulward* and *Robert Ham* Plaintiffs, and the aforesaid *William Cary* Deforceant, of the Manor aforesaid, with the Appurtenances, whereof, &c. and of the aforesaid Tenements and Rents with the Appurtenances, in the said Fine in the Bar of the aforesaid *Agnes*, secondly specified and mentioned, in Form aforesaid was levied, as the aforesaid *Agnes* above hath alledged: But the said *William Bredon* and *John Bredon* further say, That the aforesaid Fine in the Bar of the aforesaid *Agnes*, secondly specified in Form aforesaid levied, was had and levied to the Use of the said *David Bulward* and *Robert Ham*, and their Heirs, to the Intent, and until a Recovery by the Writ of the Lady the Queen of Entry sur disseisin in the Post, of the Manor with the Appurtenances, whereof, &c. and of the Tenements and Rents aforesaid, with the Appurtenances, against the said *David* and *Robert* should be had, and afterwards unto the use of *John Gardiner* and the aforesaid *Agnes*, for the Term of their Lives, and the longer Liver of them; and after their Decease, to the use and behoof of the aforesaid *William Cary*, and the Heirs of his Body lawfully begotten; by which afterwards, that is to say, the 9th Day of *April* in the 31st year of the Reign of the said Lady the now Queen, the aforesaid *Roger Pierfon*, in the Court of the *Chancery* of the said Lady the now Queen, the said Court at *Westminster* in the County of *Middlesex* then being, brought and prosecuted a Writ of the said Lady the Queen that now is, of Entry upon Disseisin in the Post, against the aforesaid *David* and *Robert Ham*, of the Manor, Tenements, and Rents aforesaid, with the Appurtenances, to the Sheriff of the aforesaid County of *Suffolk* directed; the said *David* and *Robert*, then being Tenants of the Freehold of the Manor, Tenements, and Rents aforesaid, with the Appurtenances,

by

by Virtue of the Fine in the Bar of the aforesaid *Agnes* secondly specified: By which Writ, the said Lady the now Queen, sent to the said Sheriff, that the said Sheriff command the aforesaid *David* and *Robert Ham*, by the names of *David Bulward* and *Robert Ham*, that they justly, and without delay, render to the aforesaid *Roger Pierfon*, by the Name of *Roger Pierfon*, the Manor, Tenements, and Rents aforesaid with the Appurtenances, by the Names of the Manors of *Cullumbine Hall*, otherwife *Thorny Cullumbers*, with the Appurtenances, and 20 Messuages, one Dove-house, 20 Gardens, 300 Acres of Land, 100 Acres of Meadow, 200 Acres of Pasture, 30 Acres of Wood, and 1 Pound, 6 Shillings, and 4 Pence Rent, and the Rent of 4 Capons, and 1 Pound of Wax with the Appurtenances, in *Stow-market*, *Newton*, *Gipping*, and *One-house*, which he claimeth to be his Right and Inheritance, and in which the said *David* and *Robert* had not Entry, but after a Disseisin which *Hugh Hunt* thereof unjustly, and without Judgment did to the aforesaid *Roger* within 30 Years, then last past, as he said. And whereupon he complained, that the aforesaid *David* and *Robert* him unjustly deforced, and if they did not, &c. And if the aforesaid *Roger* should secure the said Sheriff of the prosecuting of his Claim, then the said Sheriff summon by good summoners the aforesaid *David* and *Robert*, that they should be before the Justices of the said Lady the Queen here, that is to say, at *Westminster*, from the Day of *Easter*, in one Month then following, to shew wherefore they had not done it: And that the said Sheriff should then have here the summoners, and that Writ &c. At which Month of *Easter* here, that is to say, at *Westminster* aforesaid, cometh (here in Court) as well the said *Roger*, as the said *David* and *Robert* in their proper persons, and then the Sheriff of the aforesaid County of *Suffolk*, that is to say, *Philip Tinley*, Esq; then returned here the Writ aforesaid, to him in Form aforesaid directed, served and executed in Form following, that is to say, that the aforesaid *Roger* had found to the said Sheriff Sureties for the prosecuting of his said Writ, that is to say, *John Doe* and *Richard Roe*, &c. And that the aforesaid *David* and *Robert* were summoned to be then here by *John Den* and *Richard Fen*, &c. Upon which the aforesaid *Roger*, declaring against the aforesaid *David* and *Robert*, then Tenants of the Freehold of the Manor, Tenements, and Rents aforesaid with the Appurtenances, in Form aforesaid, upon his Writ aforesaid, in his proper Person aforesaid, demanded against the said *David* and *Robert* the Manor, Tenements, and Rents aforesaid, with the Appurtenances, as his Right and Inheritance; and in which the said *David* and *Robert* had not Entry but after a Disseisin, which *Hugh Hunt* thereof unjustly, and without Judgment did to the aforesaid *Roger*, within 30 Years now last past, &c. And whereupon he said, That he himself was seized of the Manor, Tenements, and Rents aforesaid with the Appurtenances, in his Demesn as of Fee in Time of Peace, in the Time of the Lady the now Q. taking thereof the Profits to the Value, &c. and in which, &c. and thereof then brought Suit, &c. And the aforesaid *David* and *Robert*

Ham

Vouch. Will.
Cary.

Ham then defended their Right when, &c. and vouched thereof to warranty the said *Will. Cary*, by the name of *Will. Cary, Esq;* who then likewise was present in the same Court in his proper person, and willingly the manor, tenements and rents aforesaid, with the appurtenances, to him did warrant, &c. And upon this the aforesaid *Roger* demanded against him the said *Will. Cary*, tenant by his warranty, the manor, tenements and rents aforesaid, with the appurtenances, in form aforesaid, &c. And whereupon he then said, That he himself was seised of the manor, tenements and rents aforesaid, with the appurtenances, in his demesne as of fee in time of peace, in the time of the Lady the now Queen, taking the profits thereof to the value, &c. And the aforesaid *Will. Cary*, tenant by his warranty aforesaid, came and defended his right when, &c. And further thereof vouched to warranty *David Howel*, who then likewise was present in the same court in his proper person, and freely the manor, tenements and rents aforesaid, with the appurtenances, to him did warrant, &c. And upon this the aforesaid *Roger* demanded against the said *David Howel* tenant, by his warranty, the manor, tenements and rents aforesaid, with the appurtenances, in form aforesaid, &c. And whereupon then he said, that he himself was seised of the manor, tenements and rents aforesaid, with the appurtenances, in his demesne as of fee and right in time of peace, in the time of the Lady the now Queen, taking the profits thereof to the value, &c. and in which, &c. and thereof he brought his suit, &c. And the aforesaid *David Howel* tenant by his warranty defended his right when, &c. And then said, that the aforesaid *Hugh* had not disseised the aforesaid *Roger* of the manor, tenements and rents aforesaid, with the appurtenances, as the said *Roger* by his writ and declaration above supposed; and of this put himself upon the Country, &c. And the aforesaid *Roger* then prayeth licence thereof to imparl, and had it, &c. And afterwards the aforesaid *Roger* comes again here into Court the very same term in his proper person; and the aforesaid *David Howel*, altho' he be then solemnly called, doth not come back, but in despite of the Court departeth and maketh default; wherefore (a) then it was granted in the said Court here, that the said *Roger* should recover his seisin against the aforesaid *David Butward* and *Robert Ham* of the manor, tenements and rents aforesaid, with the appurtenances; and that the said *David Butward* and *Rob. Ham* should have of the lands of the aforesaid *Will. Cary* to the value, &c. And that the said *David Howel* should be thereof in mercy, &c. Upon which the aforesaid *Roger* then in the same Court demanded the writ of the lady the Q. to have to him full seisin and possession of the manor, tenements and rents aforesaid, to the Sheriff of the County aforesaid, to be directed, and to him it was granted returnable here in the morrow of the *Holy Trinity* then next following;

(a) Devant
22. a. 40. a.
1 Ro. Rep.
278, 279. 1 Ro.
Abr. 771, 774.
1 Syd. 70.
1 Bulltr. 125,
126, 179.
3 Bulltr. 92,
93, 94.
Yelv. 130.
Apies 83. a.
119. b. Hob. 17.
19, 174, 327.
1 Arch 76, 83,
188. Boy 77.
Poph. 203, 212.
N. Ben. 148.
pl. 226. Cro.
El. 145. Jenk.
Cent. 13.
Ci. Jac. 6.
Stat. 16 & 17
Car. 2. cap. 8.
Stat. 22 & 23
Car. 2. cap. 4.
Cro. Jac. 386,
632. Cr. Car.
442, 443.

Judgment.

Breite de dis-
seisin.

At which day here cometh the aforesaid *Roger* in his proper person, and the then Sheriff of the County of *Suffolk*, the aforesaid *Philip Tilney* Esq; then sent here, that he by virtue of the Writ aforesaid to him directed, the 16th day of *May* then last past, gave to the aforesaid *Roger* seisin of the manor, tenements, and rents afores. with the appurtenances, as by the said writ to him it was commanded, &c. Which Fine in the Bar of the aforesaid *Agnes* above specified in form aforesaid levied, and the recovery aforesaid in form aforesaid had, were levied and had, to the use of the aforesaid *J. Gardiner* and *Agnes*, for the term of their lives, and the longer liver of them; and after the decease of them, the said *J. Gardiner* and *Agnes*, to the use of the said *Will. Cary*, and the heirs of his Body lawfully begotten; By virtue of which fine and recovery in form afores. had, and by force of the afores. Act of transferring of uses in possession, the aforesaid *J. Gardiner* and *Agnes* were seised of the manor aforesaid with the appurtenances whereof, &c. in their demesne as of freehold, for the term of the lives of the said *John* and *Agnes*, and the longer liver of them, the remainder thereof, after the death of the aforesaid *John* and *Agnes*, to the aforesaid *Will. Cary*, and the heirs of his body lawfully begotten expectant; and the said *J. Gardiner* and *Agnes* so thereof being seised, the remainder thereof to the aforesaid *Will. Cary*, in form aforesaid expectant, the aforesaid fine in the consuance of the said *Will. Bredon* and *John Bredon*, above specified in form aforesaid, was levied in the aforesaid court of the said Lady the Queen here, from the aforesaid day of *Easter* in 15 days, in the 32d year aforesaid, before the aforesaid then Justices of the Lady the Queen of the bench aforesaid here, between the afores. *Jo. Higham* and *Tho. Turner* plaintiffs, and the aforesaid *Will. Cary* and *Martha*, and the aforesaid *J. Gardiner* and *Agnes* deforceants of the manor aforesaid with the appurtenances whereof, &c. And the aforesaid *John Higham* and *Thomas*, by the same fine granted to the said *Martha* the aforesaid annuity, or yearly rent of 40*l.* to be issuing of and in the aforesaid manor with the appurtenances, whereof, &c. and the same to her in the said court here in form aforesaid rendred, to have and to hold the same annuity or yearly rent of 40*l.* to the aforesaid *Martha*, at the aforesaid feast of *St. Michael* the Archangel, and the annunciation of the blessed *Mary* the virgin, by even portions yearly to be paid, all the life-time of the said *Martha*, if the afores. *J. Gardiner* and *Agnes*, or either of them should so long live, the first paym. thereof to begin at the feast of the feasts afores. next after the decease of the afores. *W. Cary*, as should first happen to be, with the afores. clause of distress in the fine mention'd; And the afores. *W. Cary* afterw. that is to say, the 24th day of *Mar.* in the 35th year afores. at *Stow-market* afores. died, after whose death, by virtue of the fine afores. the afores. *Martha* was and

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as yet is seized of the aforesaid Annuity or yearly Rent of 40 l. in her Demesne as of Freehold for Term of her Life, if the aforesaid *John Gardiner* and *Agnes*, or either of them shall so long live. And this they are ready to aver; wherefore they demand judgment, and a Return of their Cattle aforesaid, together with their Damages to be to them adjudged, &c. And the aforesaid *Agnes*, as at first saith, that the aforesaid *John Gardiner* was seized of the Manor aforesaid with the Appurtenances, whereof, &c. in his demesne as of Fee; and he the said *John* so thereof being seized; the Fine aforesaid in the Conuifance of the aforesaid *Will. Bredon* and *John Bredon* first abovementioned, was levied in the aforesaid Court of the Queen here, in the aforesaid 8 Days of *St. Michael* in the 29th Year of the said Lady the now Q. abovesaid, before the aforesaid then Justices, and others the said Lady the Queen's faithful People then there present, between the aforesaid *Edmond Cary* Knt. and *Robert Cary* Esq; Plaintiffs, and the aforesaid *William Cary* Esq; *John Gardiner*, and her the said *Agnes* now Plaintiff, then the Wife of the aforesaid *John Gardiner*, and the aforesaid *George Totty* and *Elizabeth* his Wife Deforceants, of the Manor aforesaid with the Appurtenances, whereof, &c. And of the aforesaid Tenements and Rents with the Appurtenances, in the aforesaid Fine in the Conuifance aforesaid first mentioned, and that the said Fine in form aforesaid levied was had and levied to the use of the aforesaid *John Gardiner* and her the said *Agnes*, for the Term of their Lives, and the longer liver of them, and after the decease of the aforesaid *John* and *Agnes*, to the use of the aforesaid *William Cary*, and the Heirs of his Body lawfully begotten, and for default of such Issue to the use of *R. Cary* Knt. and the Heirs of his body lawfully begotten; and for Default of such Issue, to the use of the aforesaid *Henry Cary* Knt. Lord of *Hunfdon*, and his Heirs for ever. By virtue of which Fine, and by force of the aforesaid Statute made of transferring uses into Possession, the aforesaid *John* and *Agnes* were seized of the Manor aforesaid with the Appurtenances, whereof, &c. in their Demesne as of Freehold, for the Term of the lives of them the said *John* and *Agnes*, and the longer Liver of them; the Remainder thereof, after the Death of them the said *John* and *Agnes*, to the aforesaid *Will. Cary*, and the Heirs of his Body lawfully begotten; the Remainder thereof, for default of such Issue, to the aforesaid *Robert Cary*, and the Heirs of his Body lawfully begotten; the Remainder thereof, for default of such Issue, to the aforesaid *Henry Cary* Knt. Lord of *Hunfdon*, and his Heirs for ever. And that the aforesaid *J. Gardiner* and *Agnes*, so of the Manor aforesaid with the Appurtenances, whereof, &c. for the Term of the Lives of the said *John* and *Agnes*, and the longer Liver of them, in Form aforesaid being seized, the Remainder thereof, after the Death of them the said *John* and *Agnes*, to the aforesaid *William Cary*, and the Heirs of his Body lawfully begotten; the Remainder thereof, for the Default of such Issue, to the aforesaid *Rob. Cary*, and the Heirs of his Body lawfully begotten, the Remainder thereof, for Default of such Issue, to the aforesaid *H. Cary* Knt. Ld of *Hunfdon*, and his Heirs expectant. Before the levying of the aforesaid Fine in the Conuifance of the aforesaid *Will. Bredon* and *John Bredon*, above secondly mentioned,

Rejoinder al
replicatio &
har al conu-
fans.

the afores. other fine in the afores. plea of her the said *Agnes* above specified was levied, in the afores. court of the Q. here, from the afores. day of *Easter* in 15 days, in the 3rd year of the Reign of the said L. the now Q. before the afores. then Justices, and other the faithful people of the L. the Q. then there present, between the aforesaid *David Bulward* and *Rob. Ham* plaint. and the afores. *Will. Cary* deforceant, of the manor afores. with the appurtenances, whereof, &c. and of the afores. 20 Messuages, one dove-house, 20 gardens, 300 acres of land, 100 acres of meadow, 200 Acres of pasture, 30 acres of wood, 1 l. 6 s. 4 d. rent, and the rent of four tapons, and one pound of wax with the appurten. in *Stow-market*, *Newton*, *Gipping* and *One-house* : which fine in form aforesaid levied and had was had and levied to the use of the afores. *David* and *Rob. Ham*, and to their heirs for ever, to the intent in the plea of the afores. *Agnes* above mentioned, the afores. *J. Gardiner* and *Agnes*, of the manor afores. with the appurtenances, whereof, &c. for the term of the lives of them the said *J. Gardiner* and *Agnes*, and the longer liver of them, so as before is said, being seised ; the remainder thereof to the afores. *David* and *Rob. Ham*, and their heirs expectant, the afores. recovery in the afores. plea of the afores. *W. Bredon*, and *J. Bredon* abovement. in form afores. was had ; and the afores. *Agnes* further in fact saith, that the afores. *J. Gardiner* and *Agnes*, from the time of levying of the fine in the conuſance of the afores. *Will. Bredon* and *John Bredon*, secondly mentioned in form afores. was levied : Without that, that the afores. *David* and *Rob. Ham*, the aforesaid day of bringing of the writ of the L. the Q. of entry *sur disseisin* in the Post, in the afores. plea of the afores. *Will. Bredon* and *J. Bredon* above mentioned, or ever afterwards were ever tenants of the freehold of the manor, tenements, and rents with the appurtenances, in the recovery afores. above mentioned, as the afores. *Will. Bredon* and *J. Bredon* above have alledged ; and this she is ready to aver ; wherefore she demandeth judgment, and her damages by occasion of the taking and unjust detaining of the Cattle aforesaid, to her to be adjudged. And the aforesaid *William Bredon* and *John Bredon* say,

Demurrer.

That the aforesaid plea of the aforesaid *Agnes*, to the conuſance of them the said *William* and *John*, as to the aforesaid 20 l. residue of the 40 l. at the aforesaid Feast of *St. Michael* the Archangel, payable in the 35th year abovesaid, above by rejoinder pleaded, is insufficient in law, to bar her the said *Agnes* from having her action aforesaid, of the taking of the Cattle aforesaid, in the aforesaid place in which, against them the said *William* and *John*, or to bar the said *William* and *John*, from the taking of the Cattle aforesaid in the aforesaid place in which, &c. And that they to that Plea in manner and form aforesaid pleaded need not, nor by the law of the land are bound to answer,

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for that, that is to say, That the afores. induction of the Plea of the said *Agnes* to the traverse afores. in her Plea aforesaid to the conufance of them the said *Will.* and *John*, above by rejoining pleaded, is not sufficient in Law to induce that traverse, and that the traverse of the aforesaid tenancies of the afores. *David* and *R. Ham*, the day of the bringing of the aforesaid writ of entry upon disseisin in the *Post*, of the aforesaid manor, tenements, rents with the appurtenances, in the same plea pleaded, is not material in law. And this they are ready to aver; wherefore for want of sufficient plea of the said *Agnes* in this behalf, the said *William* and *John*, as at first, demand Judgment, and the return of the Cattle aforesaid, together with the damages, &c. to be to them adjudged. And the aforesaid *Agnes*, for as much as she hath alledged sufficient matter in law, to bar the aforesaid *Will. Bredon* and *John Bredon* from their conufance aforesaid, as to the aforesaid 20 l. of the aforesaid 40 l. residue of the said rent at the aforesaid feast of *St. Michael* the Archangel payable, to have, and the said *Agnes* to have her action aforesaid against the said *Will.* and *John*, above hath alleged; which she is ready to aver; which matter the aforesaid *Will.* and *John* do not deny, nor to the same do any ways answer, but the same averment utter y refuse to admit, as before, demandeth judgment, and her damages by occasion of the taking and unjustly detaining of the Cattle aforesaid, to her to be adjudged. And because the Justices here will advise themselves of and upon the premisses, before they give their judgment thereof, day is given to the parties aforesaid here until in 8 days from *St. Mich.* to hear their judgment thereof, because the same Justices here thereof not yet, &c. At which day here cometh as well the aforesaid *Agnes*, as the aforesaid *Will. Bredon* and *John Bredon*, by their attornies aforesaid; and because the Justices here will further advise themselves of and upon the premisses, before they give their judgment thereof, day further is given to the parties aforesaid here until in 8 days of *St. Hillary*, to hear their judgment thereof, because the same justices here thereof not yet, &c. At which day here cometh as well the aforesaid *Agnes*, as the aforesaid *Will. Bredon* and *John Bredon*, by their Attornies aforesaid. And upon this, the premisses seen, and by the Justices here fully understood, it seemeth to the said Justices here, that the aforesaid plea of the afores. *Agnes*, to the Conufance of the aforesaid *Will.* and *John*, as to the afores. 20 l. residue of the afores. 40 l. at the aforesaid feast of *St. Michael* the Archangel, in the 35th year aforesaid, payable by her rejoinder pretended, is not sufficient in law, for the said *Agnes* to have her Action aforesaid, of the taking of the Cattle aforesaid, against the said *William* and *John*, or to maintain; or them the said *Will.* and *John*, from the taking of the Cattle aforesaid,

Joinder.

in the aforesaid place in which, &c. justly acknowledged, to bar; as the aforesaid *Will.* and *John* above have alledged. Therefore it is (a) granted that the aforesaid *Agnes* take nothing by her writ aforesaid, but be in mercy for her false claim; and the aforesaid *William* and *John* go thereof without day, &c. And that they have return of the Cattle aforesaid, to be holden to them irreplegiabie for ever. And how, &c. the Sheriff make it appear from the day of *Easter* in 15 days, &c. And it is also granted, that the said *Will.* and *John* ought to recover their damages, by the occasion aforesaid, against the aforesaid *Agnes*. But because it is not known what damages the said *Will.* and *John* have sustained by that occasion, It is command to the Sheriff, that by the oaths of good and lawful men of the county aforesaid, he diligently enquire what damages the said *Will.* and *John* have sustained, as well by occasion of the premisses, as their costs and charges by them about their Suit in this behalf expended; and the enquiry which, &c. they send here at the aforesaid term under Seal, &c. and the Seals, &c. At which day here come the aforesaid *Will. Bredon* and *John Bredon*, by their Attorney aforesaid, and the Sheriff thereof did nothing, nor sent the writ thereof; therefore, that another writ be made in form aforesaid, returnable here from the day of *Holy Trinity* in 15 days; At which day here came the aforesaid *Will.* and *John*, by their Attorney aforesaid. And the Sheriff, that is to say, *Tbo. Edon* Esq; now sent, that before the coming of the writ aforesaid, the Cattle aforesaid were esloined out of his Bailiwick, to places to him unknown, by which the Cattle aforesaid to the said *Will.* and *John* he could not return, as to him it was commanded. Also the same Sheriff sent here a certain inquisition taken before him at *Bury St. Edmunds* in the County aforesaid, the 30th day of *May* last past, by the oaths of 12 men, &c. by virtue of the writ aforesaid taken, by which it is found, that the aforesaid *Will.* and *John* sustained damages by the occasion aforesaid, above their costs and charge by them about their suit in this behalf put, unto 5 *l.* and for their costs and charges to 10 *s.* Therefore it is commanded to the Sheriff, that of the other Cattle of the aforesaid *Agnes*, to the value of the Cattle aforesaid first taken, he take in *Witbernam*, and them to the aforesaid *William* and *John* without delay he do deliver, to be detained to them, until the Cattle aforesaid first taken were returned. And how, &c. that he make it appear here in 8 days of *St. Michael*, &c. And also that the aforesaid *Agnes* be attached, that she be here at the aforesaid term, to answer as well to the Lady the *Q.* of her contempt aforesaid, as to the aforesaid *Will.* and *John*, of the damages and injuries to them in this behalf offered, &c. And also it is granted, that the aforesaid *Will.* and *John* recover against the aforesaid *Agnes*

(a) 1 Siderf. 70.
1 Bulltr. 125,
126, 179.
3 Bulltr. 92,
93, 94. Noy 77.
Larch 76, 33,
188. Poph. 203,
212. N. Bendl.
148. pl. 226.
2 alm. 260.
Jenk. Cent. 13.
Hob. 17, 19,
194, 337.
Yelv. 130.
Cro. El. 145.
Cro. Jac. 386,
632, 636.
Cro. Car. 442,
443. Stat. 16
& 17 Car. 2.
cap. 8.
Stat. 22 & 23
Car. 2. cap 4.
1 Ro. Rep.
278, 279
Rol. Abr. 771,
774. Ante
22. a. 34. a.
40 a.
ost 119. b.

Pleadings in Bredon's Case. PART I.

their Damages aforesaid to 5 Pounds and 10 Shillings, by the Enquiry aforesaid in form aforesaid found, as also 21 Pounds 3 Shillings and 4 Pence to them the said *William* and *John*, at their Requests, for their Costs and Charges by the Court here of Increase adjudged; which Damages in the whole do amount to 26 Pounds 13 Shillings and 4 Pence.

BREDON'S

BREDON'S Case.

Mich. 39 & 40 Eliz. in C. B.

Between GARDINER and BREDON.

(a) **B**etween Gardiner and Bredon, in *Replevin in Com-muni Banco, cujus principium Trin. 38 Eliz. Rot.* 1831. The Case was: Tenant for Life of Land, the Remainder in Tail, the Remainder in Tail; Tenant for Life and he in the first Remainder in Tail join'd in a Fine *sur consens de droit come ceo, &c.* to another in Fee, who render'd a Rent-Charge of 40 *l.* to Tenant for Life, he in the first Remainder died without Issue, he in the second Remainder enter'd, Tenant for Life distrain'd for the Rent, the other sued a *Replevin*, and the Tenant for Life avow'd for the Rent; and if the Avowry was maintainable or not, was the Question. And in this Case, first it was agreed by *Anderson, Walmsley, Owen, and Glanvill*, Justices of the Common Pleas, that the said Fine levied by Tenant for Life, and him in the first Remainder was no (b) Discontinuance, either of the first Remainder in Tail, or of the second, because each of them gave but that only which he might (c) lawfully give, *viz.* The Tenant for Life gave his Estate, and he in the Remainder a Fee-simple determinable on his Estate-tail, and the second Remainder is not discontinued or devested thereby. As (d) if Husband and Wife levy a Fine of the Wife's Land, the whole Estate passeth from the Wife, so as each of them giveth that which they may lawfully give; and therefore it was adjudged in the King's Bench, That the Charge of the Husband shall determine by his Death, notwithstanding such Fine levied after the Charge: And that it shall be the Grant of both, of their several Estates: See (e) 27 *H. 8.* (f) 13 *a.* 13 *H. 7.* 14 *b.* 2 *H. 5.* 7. (g) *M. 16 & 17 Eliz. Dy.* 339. & (h) 13 *E. 4.* 4. *a.* and from thence it followeth, that it was not any (i) Forfeiture of the Estate of the Tenant for Life, forasmuch as each gave that which he might lawfully give. And it was said, that it cannot be a Forfeiture; for the Law (which abhorreth Wrong) will construe it, first to be the Grant of him in the Remainder in Tail, and afterwards the Grant of the Tenant for Life, as in many Cases, (k) *ut res magis valeat quam pereat*, the Law will make Construction; and therefore in the Case of a

(a) 2 *And.* 66. *Hob.* 277.
 (b) *Owen* 130. *Hob.* 277. 1 *Siderf.* 83. *Co. Lit.* 302. b. 2 *Sand.* 386. *Cr. El.* 56, 82, 83. *Cr. Jac.* 406. *Raym.* 142, 147. 1 *Jones* 324.
 (c) 1 *Siderf.* 83 *Hutt.* 56. *Owen* 130. 1 *Keble.* 77. 2 *Jones* 99.
 (d) 1 *Roll* 388, 389. 2 *Co.* 77. b. *Cr. El.* 216. 1 *Leon.* 247. 1 *Roll.* Rep. 402. 4 *Leon.* 15. *Cr. Car.* 399. 3 *Bull.* 273.
 (e) *Cr. Car.* 406. *Co. Lit.* 42. a. 45. a. *Br. joinder in Action* 1. *Br. Lease* 2.
 (f) *Br. Discontinuance de possess.* 38.
 (g) 2 *And.* 66. *Hob.* 277. *Cr. El.* 253. 1 *Leon.* 262. 1 *And.* 45. *O. Ben.* 32. *Co. Lit.* 301. b. 351. b. 1 *Roll.* 855. 1 *Keble.* 77. *N. B.* 222. 1 *And.* 285, 287.
 (h) *Br. Entre congeable* 100. *Br. Forfeiture de terre* 63.
 (i) *Raym.* 142, 147. *Hob.* 277. 2 *And.* 66. 3 *Keble.* 87.

Cr. Car. 393. (k) 8 *Co.* 95. b. 3 *Keble.* 288. 2 *Jones* 69. 5 *Co.* 55. b. *Mod. Rep.* 109. 8 *Co.* 95. b. 3 *Keble.* 288. 2 *Jon.* 69. 5 *Co.* 55. b. 1 *Mod.* 109.

Fine, if Tenant in Tail and one *A.* levy a Fine to a Stranger, who grants and renders to *A.* for Years rendring Rent, and by the same Fine grants the Reversion to Tenant in Tail and his Heirs; this is good, and altho' it is all by one and the same Fine at one Instant, yet in Judgment of Law the Lease precedes the Grant of the Reversion, as it is holden in (*a*) 36 *H. 8. Br. Fines* 118. And so it was adjudged on Demurrer between (*b*) *White* and *White*, *M. 41 E. 42 Eliz. in Com' Banco, Rot. 366*. So in the Case at the Bar, the Grant of the Tenant in Tail shall precede, in the Judgment of the Law, the Grant of the Tenant for Life, altho' it is all by one and the same Fine. And *note* the Difference between this Case and the Case in (*c*) 41 *E. 3. 21. a. E. & (d)* 41 *Aff. 2.* for there, inasmuch as the Wife survived, it is upon the Matter a Feoffment made to her, for she is in by her Feoffor, and the second Remainder in Tail was devested thereby; and there he in the first Remainder with his Wife (betwixt whom there are no (*e*) Moieties) accepted a Feoffment of the Tenant for Life; but here in the Case at the Bar, he in the first Remainder doth join with the Tenant for Life in making an Estate, and this joining doth alter the Nature of the *est.* for by this joining, the Estate given passeth from both, so that each giveth his Estate; but in the Case in (*f*) 41 *E. 3. 21.* all the Estate doth pass from the Tenant for Life, and that was a Fee-simple, which of Necessity ought to be a Forfeiture to all the Remainders; for there cannot be a Forfeiture but must give Cause of Entry to each in Remainder for his Time. But the Case in *Mich. 16 E. 17 Eliz. Dy. 339. a.* (*g*) was agreed for good Law, for there both the Feoffors had but an Estate for Life, and therefore their Feoffment did devest the Remainder in Tail, and so a Forfeiture; but here the Tenant for Life, and he in the Remainder in Tail join in the Fine, &c. And it was said, it was adjudg'd in the King's Bench in the Case of one (*b*) *Engliff*, that if there be Tenant for Life, the Remainder in Fee to an Infant, and they both levy a Fine, and afterwards the Fine is revers'd as to the Infant, yet the Conusee shall have the Land for the Life of the Tenant for Life, for each gave that which he might lawfully give. But it was said, if there be Tenant for Life, the Remainder to the (*i*) Queen for Life, the Remainder to another in Fee, if the first Tenant for Life makes a Feoffment, the same is a Forfeiture, and yet nothing passes but his own Estate; but inasmuch as he made a Livery in Fee, it is a Forfeiture, altho' none of the Remainders are devested. See 30 *Aff. pl. 47.* (*k*) if Tenant for Life enfeoffeth him in the Remainder for Life with Warranty, it shall enure by way of Surrender, and is no Forfeiture, *quod nota.* And it seemeth by them, if Tenant for Life, and he in the first Remainder in Tail make a (*l*) Feoffment by Deed, that it is not a Discontinuance, nor a Devesting of the

second

(*a*) Raym. 142. post 174. b.
 (*b*) Ow. 126. Cr. El. 727. 792.
 2 And. 131. post 174. b.
 3 Keb. 321.
 (*c*) Fitz. Entre Congeable 34.
 Br. Entre Congeable 8. post 140. a. Hob. 277.
 1 Roll's 857. Owen 130.
 (*d*) Br. Collusion 31. Br. Entre Congeable 82. Br. Forfeiture de terre 84. Br. Surrender 86. 1 Roll 857. Co. Lit. 335. a.
 (*e*) 3 Co. 5. a. b. 6. a. 14. a. b. 25. a. 39. b. 1 Co. 102. b. 6 (o) 68. a. 8 Co. 71 b. 72. a. Lit. Sect. 291.
 (*f*) Supra.
 (*g*) Ante 76. a.

(*h*) Hob. 277. 278. Cr. El. 115. 124. 2 Leon. 308. Moor 565. 1 Leon. 115. 1 Roll Rep. 11. 2 Roll. Rep. 473. 1 Vent. 160. 2 Jones 182. 2 Siderf. 94.
 (*i*) Jenk. Cent. 267. Co. Lit. 251. b.
 (*k*) Co. Lit. 42. a. 257. a. 2 Roll 486.

(*l*) Styl. 193. 1 Inst. 327. cont. Hob. 278.

second Remainder, for each giveth that which he may lawfully give; and altho' he in the first Remainder dieth without Issue, (a) the Feoffee shall enjoy it during the Life of the Tenant for Life, and no Forfeiture in the Case for the Causes before said. (b) But if a Feoffment be made by Parol, then it is the Surrender of the Tenant for Life, and the Feoffment of him in the Remainder, *ut res magis valeat quam pereat*. Vide 27 Aff. pl. 46. Plow. Com. 541. a. 14 H. 7. 4. a. And afterwards Judgment was given that the Avowant should have Return, and that it was not any Forfeiture, but that the Rent did remain after the Death of the first Tenant in Tail without Issue.

[Where a Forfeiture may be of an Estate, &c. tho' no Tort done. See 9 Co. 106, 107. 22 H. 6. 5. Q. Cro. El. 322.]
See Bredon's Case cited, Skinner 331, 332.

CORBET's Case.

*Pleas before Edmund Anderfon and his
Companions, of Hillary Term, Anno
41 Eliz. Rot. 1049.*

Browker.

Leicester, ff.

Declaration in
Trespafs.

Rowland Corbet late of *Stokefaston* in the County afore-
said Esq; was attached to answer to *Arthur Corbet*,
Gent. of a Plea ; Wherefore with Force and Arms he broke
the Close of the said *Arthur* at *Stokefaston* afore said, and his
Grass there growing to the Value of 10*l.* did there eat up,
tread down and consume, and other Injuries and Harms then
and there did to him the said *Arthur*, to the great Damage of
the said *Arthur*, and against the Peace of the Lady the now
Queen, &c. And whereupon the said *Arthur*, by *Laurence
Lyster* his Attorney, complaineth, That the said *Rowland*
the 20th Day of *June* in the 40th Year of the Reign of the
Lady the now Queen, with Force and Arms, &c. broke the
Close of him the said *Arthur* at *Stokefaston*, and his Grass
then there growing to the Value, &c. with certain Cattle,
that is to say, with Horses, Cows, Hogs and Sheep, did eat
up, tread down and consume, and other harms, &c. to the
great Damage, &c. and against the Peace, &c. Whereupon
he saith, that he is the worse, and hath Damage, &c. to the
Value of 20*l.* and thereof he bringeth Suit, &c. And the
aforef. *Rowland*, by *Will. Evering* his Attorney, cometh and
defendeth the Force and Injury when, &c. and as to the
force and Arms saith, that he is in nothing thereof guilty ;
and as to the rest of the Trespafs afore said supposed to be
done, the said *Rowland* saith, that the afore said *Arthur* his
Action thereof against him ought not to have ; because he
saith, That the Close afore said, as also the Place in which
it is supposed the Trespafs afore said to be done, are and at
the Time afore said, in which it is supposed the same Trespafs
to be done, were 20 Acres of Pasture, with their Appurtenances,
in *Stokefaston* afore said, called *New-Close*, and
that before the Time in which, &c. one *Christopher Corbet*,
Esq; Father of the afore said *Rowland* and *Arthur*, was
seised of the Manor of *Stokefaston*, with the Appurtenances,
in the County afore said, whereof the afore said 20 Acres of
Pasture, with the Appurtenances; in which, &c. are, and at the
afore said

aforesaid time, in which, &c. as also the Time whereof the Memory of Men is not to the contrary, were parcel, in his Demefn as of Fee; and so thereof being seized, the said *Christopher*, before the Time, in which, &c. that is say, the 12th Day of *April* in the 30th Year of the Reign of the said Lady the now Queen at *Stokefaston* aforesaid, by a certain Indenture made between him the said *Christ.* by the name of *Christopher Corbet* of *Stokefaston* in the County of *Leicester*, Esq; of one part, and *Richard Slade*, *Henry Allin*, *Thomas Hunt*, and *George Noon*, Gent. by the Names of, &c. of the other Part, one Part of which, sealed with the Seal of the said *Christopher*, the said *Rowland* brings here in Court, whose Date is the same Day and Year: It is witnessed, that the aforesaid *Christopher Corbet*, for and in Consideration of fartherly Love, Zeal and Affection, which he the said *Christopher Corbet* bore to the aforesaid *Rowland Corbet*, eldest Son of the said *Christ.* and for his Preferment and Advancement, and for the Promotion, Preferment, and Establishment of the living of the said *Rowland*, and the Heirs of his Body lawfully issuing; and for and in Consideration of fatherly Love, Zeal and Affection, which the said *Christopher* bore to the said *Arthur Corbet* his other Son, and for his Preferment and Advancement of Living; and also for and in Consideration of the great Love, and Affection and Favour, which he the said *Christopher* bore to *Francis Corbet*, Son of *Humphry Corbet*, late of *Ratley*, in the County of *Warwick*, Gent. deceased, his near Cousin and Kinsman, and for his Preferment and Advancement, and also for the Establishment, Preservation, and Continuance of all and singular the Manors, Lands, Tenements, Possessions and Hereditaments whatsoever, of him the said *Christopher*, within the Kingdom of *England*, then after in the same Indenture mentioned or contained, in the Name and Blood of the aforesaid *Christopher*, and for other good and just Causes and Considerations him the said *Christopher* moving, by the same Indenture for him and his Heirs, covenanted, granted, condescended and agreed to and with the aforesaid *Robert Slade*, *Henry Allin*, *Thomas Hunt*, and *George Noon*, their Executors and Administrators, and to and with every of them in Manner and Form after in the said Indenture mentioned; that is to say, that he the said *Christopher Corbet*, his Heirs and Assigns, and all and every other person or persons, their Heirs and Assigns, who then stood or were seized, or which from thenceforth for ever should stand and be seized, of and in the aforesaid Manor of *Stokefaston* with the Appurtenances, in the County of *Leicester*, and of and in all other Messuages,
Lands,

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Lands, Tenements, and Hereditaments whatsoever, of the
aforesaid *Christopher Corbet*, in the said County of *Leicester*,
of which he the said *Christopher Corbet* then had any
Estate or Inheritance in Fee-simple, in Possession, Reversion,
or Remainder, from thenceforth afterwards should stand
and be seized of and in the aforesaid Manor of *Stokefaston*,
and all and singular other the Premises, with their Appur-
tenances whatsoever, to the Uses, Behoofs, Intentions, or
Purposes; that is to say, of and in the aforesaid Manor of
Stokefaston, with the Appurtenances, and other the Pre-
mises whatsoever, with their Appurtenances, in the afore-
said County of *Leicester*, unto the Use and Behoof of the
aforesaid *Christopher Corbet*, during his natural life, without
impeachment of any Waste; and after the Decease of the
said *Christ. Corbet*, then of and in the aforesaid Manor of
Stokefaston, with the Appurtenances, in the aforesaid County
of *Leicester*, and of and in all other Messuages, Lands, Te-
nements, Rents, Reversions, Services and Hereditaments, of
the aforesaid *Christopher Corbet* whatsoever, with all and
singular their Appurtenances, in the said County of *Leicester*,
of which, or in which he the said *Christopher Corbet* had
any Estate of Inheritance in Fee-simple, in Possession, Re-
version, or Remainder, to the Use of the aforesaid *Rowland*
Corbet, and the Heirs Males of his Body lawfully begotten;
and for the Default of such Issue Male, to the Use of the
aforesaid *Arthur Corbet*, and the Heirs Males of his Body
lawfully begotten; and for Default of such Issue Male, then
to the Use of the aforesaid *Francis Corbet*, Son of the
aforesaid *Humphry Corbet* deceased, and the Heirs Males
of the Body of the aforesaid *Francis* lawfully begotten;
and for Default of such Heirs, then to the Use of the Heirs
of the Body of the aforesaid *Rowland* lawfully begot-
ten; and for Default of such Heirs, then to the Use of the
Heirs of the Body of the said *Arthur* lawfully begotten;
and for Default of such Heirs, then to the Use and Behoof
of the Right Heirs of said *Christopher Corbet* for ever, as
by the same Indenture amongst other Things more fully
appeareth. By Colour of which, as also of a certain Act
in Parliament of the Lord *Henry* the 8th late King of *Eng-
land*, holden at *Westminster* in the County of *Middlesex*,
the 4th Day of *February* in the 27th Year of his Reign,
of transferring of Uses into Possession, made and pro-
vided, the aforesaid *Christopher Corbet* was seized of the
aforesaid Manor of *Stokefaston*, with the Appurtenances,
amongst other Things, in his Demesne as of Freehold
for the Term of his Life, the Remainder thereof in Form
aforesaid expectant; and the said *Christopher* so thereof be-
ing seized, the said *Christopher* afterwards, and before the
aforesaid

aforefaid time, in which, &c. that is to say, the last Day of *May* in the 30 Year of the Reign of the said Lady the now Queen abovefaid, at *Stokefaston* aforefaid, died of the Manor aforefaid with the Appurtenances, whereof, &c. in Form aforefaid seized; after whose Death, and before the time, in which, &c. the said *Rowland Corbet*, into the Manor aforefaid with the Appurtenances, whereof, &c. entred, and was thereof seized in his demesne as of Fee-tail, that is to say, to him and the Heirs Males of his Body lawfully begotten, the Remainder thereof in Form aforefaid; and the aforefaid *Arthur Corbet* claiming the Manor aforefaid with the Appurtenances, whereof, &c. by Colour of a certain Deed of Demise, to him thereof made for the Term of his Life, by the aforefaid *Christopher* the Father, long before the making of the Indenture aforefaid, between the aforefaid *Christopher* and the aforefaid *Robert Slade, Henry Allin, Thomas Hunt*, and *George Noon*, whereas nothing of the Manor aforefaid with the Appurtenances, whereof, &c. in Possession of the said *Arthur*, by that Deed ever passed, into the the aforefaid 20 Acres of Pasture with the Appurtenances, in which, &c. and before the aforefaid time in which, &c. entred, and was thereof possessed; upon whose Possession thereof of the said *Arthur*, the said *Rowland* afterwards, that is to say, the aforefaid time, in which, &c. into the said 20 Acres of Pasture, with the Appurtenances, re-entred, and the Close aforefaid in the aforefaid 20 Acres of Pasture with the Appurtenances broke, and the Grass there then growing with his Cattle aforefaid did eat, tread down, and consume, as it was lawful for him to do; and this he is ready to aver; whereupon he demandeth Judgment if the aforefaid *Arthur* his Action aforefaid against him ought to have; because he saith, That well and true it is, that the aforefaid *Christopher* was seized of the aforefaid Manor of *Stokefaston* aforefaid with the Appurtenances, whereof the said 20 Acres of Pasture with the Appurtenances, in which, &c. are, and the aforefaid Time, in which, &c. as also from the whole Time aforefaid, were parcel, in his Demesne as of Fee; and so thereof being seized, the afore. 12th Day of *April* in the 30th Year of the Reign of the said Lady the now Q. abovefaid, by the said his Indenture for the Causes and Considerations abovefaid, in the said Indenture specified, for him and his Heirs covenanted, granted, condescended, and agreed, to and with the aforefaid *Robert Slade, Henry Allin, Thomas Hunt*, and *George Noon*, their Executors and Administrators, and to and with every of them, in Manner and Form in the said Indenture mentioned, that is to say, that the said *Christopher Corbet*, his Heirs and Assigns, and all and every other Person and Persons, their Heirs and Assigns, which then stood and were seized, or from then after should stand or be seized, of and in the aforefaid Manor of *Stokefaston* with the Appurtenances, and of and in all the aforefaid

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other Messuages, Lands, Tenements, and Hereditaments whatsoever, of the aforesaid *Ch. Corbet*, in the said County of *Leicester*, of which the said *Ch. Corbet* then had any Estate of Inheritance in Fee-simple, in Possession, Reversion, or Remainder, from thence after should stand and be seized, of and in the aforesaid Manor of *Stokefaston*, and all the aforesaid other Premises with their Appurtenances whatsoever, to the aforesaid Uses, Behoofs, Intentions and Purposes, and upon and under those Provisions, Limitations, and Conditions in such Manner and Form as afterwards in the said Indenture are named, limited, mentioned, or should be directed, and unto none other Use, Uses, Behoofs, Intents or Purposes, that is to say, of and in the aforesaid Manor of *Stokefaston* with the Appurtenances, in the aforesaid County of *Leicester*, to the use and Behoof of the aforesaid *Ch. Corbet* during his natural life, without Impeachment of any manner of Waste, and after the Decease of the said *Ch. Corbet*, of and in the aforesaid Manor of *Stokefaston* with the Appurtenances, and of and in all other the aforesaid Messuages, Lands, Tenements, Rents, Reversions, Services, and Hereditaments, of the aforesaid *Christopher*, whatsoever, with all and singular their Appurtenances, in the said County of *Leicester*, of which, or in which, he the said *Christ.* then had any Estate of Inheritance in Fee-simple, in Possession, Reversion, or Remainder, to the Use of the aforesaid *Rowland Corbet*, and the Heirs Males of his Body lawfully begotten; and for default of such Issue, to the Use of the aforesaid *Arthur Corbet*, and the Heirs Males of his Body lawfully begotten; and for Default of such Issue male, then to the use of the aforesaid *Francis Corbet*, Son of the aforesaid *Humph. Corbet* deceased, and the Heirs Males of the Body of the said *Francis* lawfully begotten; and for default of such Heir, then to the use of the Heirs of the Body of the aforesaid *Rowland* lawfully begotten; and for Default of such Heir, to the Use of the Heirs of the Body of the aforesaid *Arthur Corbet* lawfully begotten; and for Default of such Heir, to the Use and Behoof of the Right Heirs of the aforesaid *Ch. Corbet* for ever, as by the same Indenture amongst other things more fully appeareth. By Colour of which, as also by Force of the Act aforesaid, of transferring of Uses into Possession, the aforesaid *Christ.* was seized of the aforesaid Manor of *Stokefaston* with the Appurtenances, whereof, &c. amongst other things, in his Demesne as of Freehold, for the Term of his Life, the Remainder thereof in Form aforesaid expectant; and the said *Christopher* being thereof so seized, the said *Christopher* afterwards, and before the Time in which, &c. that is to say, the aforesaid last Day of *May* in the 30th Year of the said Lady the now Queen abovesaid, at *Stokefaston* aforesaid, died of the Manor aforesaid with the Appurtenances, whereof, &c. in Form aforesaid seized; after whose Death, and before the
Time

Time in which, &c. the said *Rowland Corbet* into the Manor aforesaid, with the Appurtenances, whereof, &c. entred, and was thereof seised in his Demesne as of Fee-rail, that is to say, to him and the Heirs Males of his Body lawfully begotten; the Remainder thereof in form aforesaid, as the aforesaid *Rowland* above hath alledged. But the said *Arthur* further saith, That by the Indenture aforesaid it was conditioned, covenanted, granted and agreed by and between the parties aforesaid to the said Indenture, that if, when, and so often as the aforesaid *Rowland Corbet*, or any the Heir Males of his Body begotten, or to be begotten; or the aforesaid *Arthur Corbet*, or any the Heirs Males of his Body lawfully begotten, or to be begotten; or the aforesaid *Francis Corbet*, Son of the aforesaid *Humphry Corbet* deceased, or any the Heirs Males of his Body lawfully begotten, or to be begotten, should be fully and finally resolved and determined, and advisedly, determinately, and effectually devised, concluded and agreed, or should enter into any Communication, Promise and Covenant whatsoever, or advisedly, and effectually should attempt, procure, go about, or should assent, to or for any Act or Acts, Thing or Things, for or concerning any Bargain, Sale, Discontinuance, Alienation, Conveyance or Assurance to be had and made, of any of the aforesaid Manors, Lands, Tenements, and Hereditaments, intailed, or intended, or mentioned to be intailed, or of any of them, or of any Part or Parcel of them, whereby any Estate of the Premises aforesaid, recited, intailed, or mentioned to be intailed, or any Part thereof in Use or Possession, mentioned, appointed, limited, or declared by the same Indenture, can, ought, or could, in any Manner or Manners, be undone, discontinued, barred, altered, or determined, and the said Bargain, Sale, Exchange, Alienation, Devise, Conclusion, Agreement, Promise, Communication, Concession, Obligation, Conveyance, or Assurance, or any other open and effectual Matter, Thing, or Act, should attempt, go about, cause, procure, command, or willingly, or wittingly, should assent, practise, or suffer to be attempted, practised in any Act, to put in ure, or to go about, or to be executed, performed, or to be prosecuted, put in use or in ure, by acknowledging of any Note, or Notes, of or for any Fine, or Fines, to be levied or acknowledged, or by giving of any Warrant, or Warrants, of Attorney, or Attornies, for any Recovery or Recoveries, or any Voucher or Vouchers to be had or prosecuted, or by entering into any
Warranty,

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Warranty or Warranties whatsoever, or by acknowledging of any Warrant for the same; or by any Suit, or bringing of any Writ or Writs by him, her, them, or those, or by any of his, her, or their Assent and Agreement, or Assent, by Appearance, or otherwise, to any Writ or Writs; of the aforesaid recited Premises, or of any Part or Parcel thereof, or to any Thing in the same, or any of them, or by acknowledging of any Charter or Charters, Writing or Writings, to be inrolled, or by any other Act or Acts, Thing or Things, whatsoever in Deed or in Law, whereupon, or by which any Bargain, Sale, Discontinuance, Alienation, Exchange or Forfeiture might follow, or by which the Estate, Use or Possession of the aforesaid recited Premises intailed, or mentioned to be intailed, or any Parcel thereof cannot, as it ought or could come, accrue, remain and descend to be in such Manner and Form as by the same Indenture it is limited, appointed, declared and mentioned, and according to the true Intent and Meaning of the aforesaid Indenture; That then, and immediately from and after any such Time and Times of such procuring, attempting, commanding, knowing, assent, practice, promise, or going about in Manner and Form as above is said, and before such Bargain, Sale, Discontinuance, Alienation, Exchange, or Forfeiture, had, made, prosecuted, executed, committed or done, the said Use and Uses, Estate and Estates, limited and declared in the Indenture aforesaid, to him or them who shall so attempt, cause, procure, command, or voluntarily or knowingly assent, practice, or go about any such Act or Acts, Thing or Things, to be prosecuted, or to be executed, or to be performed or done, or put in ure, or shall go about to be executed, or performed, or put in ure, in form aforesaid declared; whereupon or by which any Bargain, Sale, Discontinuance, Alienation, Conveyance, Assurance, Exchange or Forfeiture should be had, done, or ensue thereupon, contrary to the true Intent of the Indenture aforesaid, of and in such and so much of the aforesaid recited Manors, Lands, Tenements and Hereditaments, with the Appurtenances, intailed, or mentioned to be intailed, or intended by the same Indenture, for the which any of the Things or Matters afores. at any Time or Times should be attempted, gone about, caused, procured, commanded, assented or practised; or the Premises to be executed, performed, practised or put in ure, or gone about to be executed, performed,

performed, or put in Ure, contrary to the true Intent of the Indenture aforesaid, from time to time should cease only as in respect, and having regard to such Person or Persons, so attempting, procuring, causing, commanding, or willingly and wittingly assenting, practising, permitting, or going about, any Act or Acts, thing or things, as above it is said, contrary to the Effect, and true Meaning of the Indenture aforesaid, in such Manner, Degree, and Condition; as if such Person or Persons, Heir or Heirs, so attempting, procuring, causing, commanding, or willingly and wittingly assenting, practising, permitting, or going about, any such Act or Acts, Things or Things, as above is said, had naturally been dead, and not otherwise; And then, and in all such cases, the immediate uses of every of such Parcel of the Premises should be immediately to such Person or Persons, by the true Intent and Meaning of the Indenture aforesaid, if any such Person or Persons should so procure or procured, attempt or attempted, cause or caused, command or commanded, should practise or practised, should suffer, or suffer'd, go about, or gone about, should assent or assented, to or for any such Act or Acts, Thing or Things, be, or should be naturally dead, of such Estate, and in such like Manner and Form, and with the Remainder in use over, and with such like Limitations and Conditions, as if the said Uses had come, accrued, and been, if the same Person, who so should procure, attempt, cause, command, practise, suffer, go about, or assent, to or for any Act or Acts, Thing or Things to be done, to or immediately before the Time of such procuring, attempting, causing, commanding, practising, suffering, going about, or assenting, had been naturally dead, and not otherwise, as by the same Indenture amongst other Things more fully appeareth. And the said *Arthur* further saith, That the aforesaid *Rowland* of the Manor aforesaid with the Appurtenances, whereof, &c. amongst other things in Form aforesaid being seised, One *Robert Greenburst* the 23d day of *January* in the 36th Year of the Reign of the said Lady the now Queen, by the Command, Procurement, and consent of the aforesaid *Rowland* sued forth out of the Court of *Chancery* of the same Lady the Queen, the said Court of *Chancery* then being at *Westm.* in the County of *Middlesex*, a certain Writ of the said L. the Q. of Entry Sur Disseisin in the *Post*, against the afores. *Row. Corbet*, of the Manor of *Stokesaston* with the Appurtenances, whereof, &c. amongst other Things, by the Name of the Manor of *Stokesaston* with the Appurt.

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and 5 Messuages, 500 Acres of Land, 100 Acres of Meadow, 200 Acres of Pasture, with the Appurtenances in *Stokesaston*, to the Sheriff of the aforesaid County of *Leicester* directed; by which Writ, the said Lady the now Q. commanded the said then Sheriff of *Leicester*; that he the said Sheriff should cause the aforesaid *Rowland*, that justly, and without delay, he render to the said *Robert Greenburst* the aforesaid Manor of *Stokesaston* with the Appurtenances, and the aforesaid 5 Messuages; 500 Acres of Land, 100 Acres of Meadow, 200 Acres of Pasture, with the Appurtenances in *Stokesaston*, which then he claimed to be his Right and Inheritance, and in which the said *Rowland* had not entry, but after a Disseisin, which *Hugh Hunt* thereof unjustly and without Judgment did to the aforesaid *Rob. Greenburst*, within 30 Years then last past, as the said *Robert* then said; And whereupon he then complained that the aforesaid *Rowland* did him desorce: And if he should not do, &c. and the aforesaid *Rob. Greenburst* should secure him the said Sheriff for the prosecuting of his claim, then he summon by good Summoners the aforesaid *Rowland Corbet*, that he be before the Justices of the said Lady the Queen here, that is to say, at *Westminster* aforesaid, in 8 Days of the Purification of the blessed *Mary* then next following, to shew why he had not done it, and that the then Sheriff should have then there the Summons and that Writ, &c. At which 8 Days, from the Purification of the blessed *Mary*, before *Edm. Anderson* Knt. and his Companions then Justices of the said Lady the Queen of the Bench here, that is to say, at *Westminster* aforesaid, cometh as well the aforesaid *Robert Greenburst*, by *Thomas Lane* his then Attorney, as the aforesaid *Rowland* in his proper person; And *William Turpin* Esq; then Sheriff of the County aforesaid, returned the Writ aforesaid to him in Form aforesaid directed, in all things served and executed, that is to say, that the aforesaid *Robert Greenburst* found Sureties to him the said Sheriff to prosecute his Writ aforesaid, that is to say, *John Doe* and *Richard Roe*, and that the aforesaid *Rowland Corbet* was summoned by *John Den* and *Richard Fen*, upon which, the aforesaid *Robert Greenburst*, by his Attorney aforesaid, in the same Court here, declaring against the aforesaid *Rowland*, upon his Writ aforesaid, demanded against the said *Rowland Corbet* the Manor and Tenements aforesaid with the Appurtenances, in the said Writ of Entry specified, as his Right and Inheritance, and in which the said *Rowland Corbet* had not Entry, but after a Disseisin which *Hugh Hunt* thereof unjustly and without Judgment did to the aforesaid *Robert Greenburst* within 30 Years last past, &c. And whereupon he said, that he himself was seised of the Manor and Tenements aforesaid, in the aforesaid Writ of Entry specified, in his Demesne as of Fee and Right, in Time of Peace, in the Time of the Lady the now Queen, taking thereof the Profits to the Value, &c. And in which, &c. And thereof brought Suit, &c. And the aforesaid *Rowland Corbet* then defended his Right when, &c. And then vouched to Warranty *John Howell*, who likewise was then present here in Court in his proper Person, and freely the said Manor and Tenements aforesaid with the Appurtenances, in the said Writ of Entry specified, to him did warrant; and upon this, the said *Robert Greenburst* then demanded against the said *John*

Howell,

Howell, then tenant by his warranty, the manor and tenem. afores. with the appurt. in the said writ of entry specified in form afores. &c. And whereupon he then said, that he himself was seised of the manor afores. with the appurt. in the afores. writ of entry specified, in his demesne as of fee and right, in time of peace, in the time of the L. the now Q. taking the profits thereof to the value, &c. And in which, &c. And thereof then brought his Suit, &c. And the afores. *John*, tenant by his warranty, then defended his right when, &c. And then said, that the said *Hugh Hunt* did not disseise the afores. *R. Greenh.* of the said manor and tenem. afores. with the appurt. in the afores. writ of entry specified, as the said *Robert*, by his said writ and declarat. afores. above supposeth. And of this puts himself upon the country, &c. And the aforesaid *Rob.* then prayed leave to imparl, &c. And had it, &c. And afterwards, the said *Rob.* returned back here in the court of the bench afores. the self same term by his attorney afores. And the afores. *John*, although he was solemnly called, did not come back, but in contempt of the Court departed and made default; by which then it was granted, that the afores. *R. Greenh.* should recover his seisin against the afores. *Rowl.* of the manor and tenem. afores. with the appurt. in the afores. writ of entry specified; and that the said *R. Corbet* should have of the lands of the afores. *John*, to the value, &c. And that the said *John* should be in mercy, &c. And upon this, the afores. *Rob.* demandeth a writ of the L. the Q. to the Sheriff of the County afores. to be directed, to give him full seisin of the manor and tenem. afores. with the appurt. in the said writ of entry mentioned; and it was granted to him returnable here, that is to say, at *Westm.* afores. from the day of *Easter* in 15 days then next following, &c. At which day here, that is to say, at *Westm.* afores. cometh the afores. *Robert* by his attorney afores. and then the Sher. of the county of *Leicester* afores. that is to say, the afores. *W. Turpin* then here sent, that he by virtue of the writ to him directed, the 25th day of *March* then last past, gave to the said *Rob.* full seisin of the manor and tenem. afores. with the appurten. in the afores. writ of entry specified, as by the writ he was commanded, as by the record and process thereof in the court of the said L. the Q. of the bench here remaining manifestly appeareth; by virtue of which recovery, the afores. *Robert* into the manor aforesaid with the appurt. whereof, &c. entred, and was thereof seised in his demesne as of fee; And further the said *Arthur* saith, that the recovery afores. in form afores. had, was to the use and behoof of the said *Row. Corbet*, and his heirs for ever; and that the said *Rowland*, at the afores. time of the recovery aforesaid, had, or ever after had no issue of his body lawfully begotten; after which recovery, so as before is said had, in and to the disinheriting of the said *Arthur*, of the manor afores. with the appurt. whereof, &c. and before the afores. time in which, that is to say, the 30th day of *June* in the 36th year of the Reign of the said Lady the now Q. the said *Arthur* into the aforesaid manor of *Stokefaston* with the appurt. whereof, &c. entred, and was thereof seised in his demesne as of Fee-tail, that is to say, to him and the heirs males of his Body lawfully begotten; by virtue of the proviso afores. and by Force of the aforesaid Act of transferring uses into possession, the remainder thereof in Form afores. expectant, until the afores. *Rowland*, the afores. time in which, &c.

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Demurrer.

Joinder.

the close afores. in the afores. 20 acres of pasture with the appurt. in which, &c. brake, and the grass afores. then and there growing, with the cattle afores. eat, trod down and consumed, against the peace of the said Lady the now Q. as he above against him complaineth. And this he is ready to aver; Wherefore in as much as the afores. Rowl. the trespass afores. above acknowledged, the said Arthur demandeth judgment and his damages, by occasion of the trespass afores. to him to be adjudged, &c. And the afores. Rowl. saith, that the afores. Plea of the afores. Arthur, in manner and form afores. above by replication pleaded, is not sufficient in Law to maintain the said Arthur to have his action afores. against him, and that he to that replication in form aforesaid pleaded, needeth not, nor is bound by the Law to answer; And this he is ready to aver; Wherefore for want of a sufficient replication in this behalf, the said Rowland demandeth judgment, and that the afores. Arthur, from having his action afores. against him be barred, &c. And the afores. Arthur, in as much as he sufficient matter in Law, to have and maintain his action afores. against the said Rowland, above by replication hath alledged, which matter the afores. Rowland doth not deny, nor to the same any ways answereth, but that averment utterly refuseth to admit, as at first, demandeth judgment, and his damages by occasion of the trespass afores. to him to be adjudged. And because the justices here will advise themselves of and upon the premisses before they give their judgment thereof, day is given to the parties afores. here until in 8 days of the purification of the blessed Mary, to hear their judgment thereof, because the same justices here thereof not yet, &c. At which day here cometh as well the said Arthur, as the aforesaid Rowland, by their attorn. afores. And because the Justices here will further advise themselves of and upon the premisses, before they give their judgment thereof, day is given to the parties here, until from the day of Easter in 15 days, to hear their judgment thereof, because the same justices here thereof not yet, &c. At which day cometh as well the afores. Art. as the afores. Rowland, by their attornies afores. And because the justices here will further advise themselves of and upon the premisses, further day is given to the parties here, until the morrow of Holy Trin. to hear their judgment thereof, because the justices here thereof not yet, &c. At which day here cometh as well the afores. Arthur, as the afores. Rowl. by their attorn. afores. And because the Justices here will further advise themselves of and upon the premisses, before they give their judgment thereof, day further is given to the parties here until in 8 days of St. Hill. to hear their judgment thereof, because the justices here thereof not yet, &c. At which day here cometh as well the said Arthur, as the afores. Rowl. by their Attorn. afores. and upon this, the plea afores. being seen, as also the Plea of the afores. Artb. above by replicat. pleaded, and by the justices here fully understood, it seemeth to the same justices here, that that plea in manner and form afores. pleaded is not sufficient in law for him

the

the said *Arthur* to have and maintain his Action aforesaid, against the aforesaid *Rowland*; Therefore (a) it is granted, that the aforesaid *Arthur* take nothing by his Writ aforesaid, but be in Mercy for his false Clamour, and that the aforesaid *Rowland* thereof go without Day, &c. Afterwards, that is to say, the 30th Day of *April* in the 42d Year of the Reign of the said Lady the now Queen, the Record and Process of the Plaint aforesaid, with all touching the same, by Virtue of a Writ of the said Lady the Queen for correcting Errors, dated at *Westminster* the 12th Day of *April* in the 42d Year aforesaid, to *Edmund Anderson* Knt. directed, and concerning the aforesaid Defendant, before the said Lady the Queen, wheresoever, &c. are sent, &c.

(a) Ante 22. a. 40. a. 57. b. post 119. b. 1 Ro. Rep. 278, 279. 1 Ro. Abr. 771, 774. 1 Bullt. 125, 126, 179. 3 Bullt. 92, 93, 94. Yelv. 130. Hob. 17, 19, 194, 337. Cr. Car. 442, 443. Cro. Jac. 6 386, 632. Cio. El. 145. Stat. 16 & 17 Car. 2. cap 8. Sta. 22 & 23 Car. 2. cap. 4. Jenk.

Cent. 13. Palm. 260. N. Ben. 184. pl. 226. Poph. 203, 212. Noy 77. Latch 76, 83, 188
1 Syd. 70.

CORBET'S Case adjudged

Term. Pasche 42 Eliz. in the Common Pleas.

But the PLEA began

Hill. 41 Eliz. Rot. 1049.

(a) Moor 601,
633.
2 Anderf. 134.
6 Co. 40. a.
10 Co. 42. b.
Cro. Car. 479.
4 Lecn. 246.
Winch 56.
3 Keb. 177.

Christopher (a) Corbet being seised of the Manor of S. had Issue Rowland and Arthur, and 30 Eliz. upon good Considerations, by his Deed indented did covenant with R. S. and others, that he and his Heirs would stand seised of the said Manor of S. to the Use of the said Christopher for his Life, and after his Decease, to the Use of the said Rowland and his Heirs Males of his Body; and for Default of such Issue, to the Use of the said Arthur and his Heirs Males of his Body; and for Default of such Issue, to the Use of divers others of his Blood in Tail, and at last to the Use of the right Heirs of the said Christopher. And it was provided, covenanted, and agreed by the same Indenture between the Parties, That if the said Rowland, &c. or any of his Heirs Males of his Body should be resolved and determine, or advisedly should attempt, or procure any Act or Thing concerning any Alienation, of or for the said Manor, &c. by which any Estate-tail thereof before limited should be undone, barred, or determined, or by which the same should not come, remain, and be in Manner and Form as is limited by the same Indenture; That then after that, and before any such Act done by which, &c. before any such Bargain, Discontinuance, &c. had or executed, &c. the Uses and Estates to him limited who should so do, &c. should cease only in Respect, and having Regard to such Person so attempting in the same Manner, Quality, Degree, and Condition, as if such Person so (b) attempting was naturally dead, and not otherwise. And that then immediately in all such Cases, the Uses of the said Manor should be to such Persons to whom the Uses should come by the Intent

(b) Postea 130.2.

of

of the same Indenture, as if such Person so attempting was naturally dead, of such and the like Estate, and in the same Manner and Form, and with such Remainders over, and under such Limitations, and Conditions, as if such Person so attempting was naturally dead, and not otherwise. The said *Christopher Corbet* died, and afterwards *Rowland* suffered a common Recovery to his Use, &c. and the said *Arthur* entred into the Land, upon whom *Rowland* re-entred, and *Arthur* brought an Action of Trespass; and if the Entry of *Arthur* was congeable or no, was the Question. In this Case divers Matters were moved at the Bar, which were not unanimously agreed by the Justices at the Bench, and divers Matters were moved by the Justices in their Arguments concerning the general Case of **Perpetuities*; (but I shall make a summary Report only of the principal Reasons and Causes of their Judgment, in which all the Justices of the Common Pleas were unanimously agreed.) 1. It was resolved by the Lord *Anderfon*, *Walmesley*, *Glanvill*, and *Kingsmill* Justices, That this *Proviso* to cease an (a) Estate limited to one and his Heirs Males of his Body, as if the Tenant in Tail was dead, was repugnant, impossible, and against Law; for the Death of Tenant in Tail is not a *Cesser* of the Estate-tail, but the Death of the Tenant in Tail without Issue of his Body is the Determination thereof. And therefore if the *Proviso* had been that the Estate-tail should cease, as if he had granted a Rent-Charge, or made a Lease for Years to another, that had been repugnant; for such Acts do not make a Determination of an Estate-tail; and if the Estate-tail should cease as if he was dead, his Issue inheritable to the Estate-tail would have it by Descent in the Life of his Father, or he in the Remainder or Reversion would have it in the Life of the Tenant in Tail, which is not possible; for to every Descent, Reversion or Remainder upon the Determination of an Estate-tail, Death, either civil, as Entry into Religion, or natural, as Dissolution of the Soul from the Body, is requisite. And as to what some have objected, that although it be granted, that when Tenant in Tail hath Issue inheritable to the Estate-tail, that there is a Repugnancy and Impossibility that the Issue should inherit, or the Land remain or revert, for descend it cannot, because the Father is living; and revert or remain over it cannot, because Tenant in Tail hath Issue; yet it was said, that there was not any such Repugnancy or Impossibility at the Time of the Breach of the *Proviso* by the Tenant in Tail in the Case at the Bar, because the Tenant in Tail had not any Issue

* Vide 10 Co. 35.

(a) Lit. sect. 720. Co. Lit. 377. b. Cr. Jac. 697, 698. 1 Co. 130. a. 6 Co. 40. b. Raym. 355.

at the Time of the Breach of the *Proviso*. To that it was answered, that the having of Issue is not material; for when Land is limited to one and the Heirs Males of his Body, with a *Proviso* annexed to it in the same Conveyance, that if he do such Act, his Estate shall cease as if he was dead, this (*Proviso*) is repugnant to the Beginning; for by the express Limitat. he hath an Estate of Inheritance, which by Possibility may continue for ever, and his Estate of Inheritance doth not begin by the having of Issue, but presently before any Issue he hath an Estate of Inheritance. And therefore before Issue, his Feoffment is a Discontinuance, and no Forfeiture, neither shall he in the Reversion be received upon his Default in a *Præcipe*. And therefore if a Man makes a Gift in Tail upon Condition that if he dies, his Estate shall cease, and the Donor re-enter, this Condition is void: And in such Case if Tenant in Tail be disseised, and a Descent is cast, or if Tenant in Tail makes a Discontinuance, and afterwards Tenant in Tail dies without Issue, the Donor shall not enter for this Condition broken; for altho' the Estate in Tail ceased by Accident afterwards by his Death, yet the Condition was repugnant at the Time of the Creation of the Estate-tail: For if a Man makes a Lease for Life, in the Judgment of the Law at the Beginning, Death is the Determination of that Estate by express Limitation; but if a Man gives Lands in Tail, *viz.* to one, to have to him and his Heirs of his Body, there it appears by express Limitation, that in Judgment of Law Death is not a Determination of it, but Death without Issue of his Body. It is likewise repugnant that Land should revert, or remain during the Life of Tenant in Tail himself, as it hath been said.

(a) Co. Lit.
183. a.
2 Anderf. 12.
138. Br. Jointenants 40.

(b) Co. Lit.
178. b.
Plowd. 26. a.
34. b. 487. a.
8 Co. 76. a.
Dyer 209.
pl. 21.
Perk. sect. 729.
1 Anderf. 316.
Cro. Jac. 698.
1 Jones 58, 59.
Godb. 105.
1 Ro. R. 478,
485. 21 H. 7.
11. b.
2 Brownl. 227,
294.
Goldsb. 6.

And *Anderson* Chief Justice put the Case in 8 (a) *Aff. pl. 33.* where a Man gave Lands to one *Mary* and *Joan* her Sister & *hereditibus de corporibus earum legitime procreatis.* (by which they had a joint Estate for Life and several Inheritances, and the Donor intending that neither of them should break the Jointure, but that the Survivor should have all by *jus accrescendi*, added this Clause) *sub hac forma quod illa quæ illarum diutius vixerit tenebit terram illam integram*, but for as much as his Intent is contrary to Law, therefore if the Jointure be severed by a Fine levied, the Survivor shall not have the Part so severed by the said Clause which he hath inserted out of his own Conceit and Imagination repugnant to Law and Reason. So here the Intent of *Christopher* was that the Estate-tail should cease, as if Tenant in Tail was dead, which Intent is repugnant to the Rules of Law, and against Sense and Reason. And he cited also the Case of (b) *Plesington*, 6 R. 2. which see Title, *Quid juris clamat*, pl. 20. A Man makes a Lease upon Condition, that if the Lessor grant the Reversion, that the Lessee shall have Fee; if the Lessor grant the Reversion by Fine, he shall not have Fee, for the Condition is repugnant and void. And further, he held that this *Proviso* was

utterly void for the (a) Incertainty, for Judges ought to know the (b) Intent of the Parties by certain and sensible Words, which are agreeable and consonant to the Rules of Law. And therefore if Land be given by Deed to two, to have and to hold to them & (c) *heredibus*, it is void for the Insensibility and Incertainty, and altho' it hath a Clause (d) of Warranty to them and their Heirs, that will not make the first Words which are uncertain and insensible to be of Force and Effect in Law, although his Intent appeareth, but his Intent ought to be declared by Words certain and consonant to Law. And he cited two Cases adjudged in the Point, one in the Case of a Will, and the other in the Case of an Use. And the Case of the Will was in an Action of Waste between (e) *John Fermin* and *Arthur Arscot* in *Com Banco, Hill. 37 Eliz. Rot. 1758*, and the Case was in Effect thus: *Thomas Cary* was seised in Fee of the Manor or Farm of *Cary* in the Parish of *St. Giles in the Heath* in the County of *Devon*, and held it in Socage, and had Issue six Sons and one Daughter, *viz. Peter, Henry, Fulforde, Richard, Andrew* and *Gregory*, and *Mary*, and 14 *Martii 25 Eliz.* did devise the Manor or Farm aforesaid to the said *Arthur* for 90 Years, if the said *Arthur Arscot* and *Grace Arscot*, or any of them should so long live; and afterwards by his last Will in Writing devised the said Manor or Farm to the said *Peter Cary* and his Heirs Males of his Body, the Remainder in the same Form to his other Sons, the Remainder to the said *Mary*, his Daughter, Wife of *Henry Prust*, and the Heirs of her Body for ever; in which Will were these Provisoes and Clauses, contained in these Words following, *viz. Provided that (f) if the said Peter Cary, his Son, or any of the Sons of the said Thomas, or any of the Heirs Males of their Bodies to be begotten at any Time or Times hereafter, wittingly, willingly, and advisedly should attempt or endeavour by any Act or Acts, Way or Means to sell, alien, bargain, discontinue, &c. and such Attempt, Endeavour, Act or Acts should execute, &c. by any overt or notorious Act or Acts whatsoever, &c. That then immediately after every Time or Times of such Attempt, &c. and before any such Bargain, Sale, Alienation, &c. were had, made or executed, the aforesaid Estate and Estates of every such Person, Son or Heir, doing, attempting, &c. any Act or Thing aforesaid contrary to the Intent and Meaning of this his last Will and Testament, &c. shall cease and determine in such Manner and Form to all Intents, Constructions and Purposes, and as though such Person so attempting, &c. were naturally dead indeed, and not otherwise, and that such Person, &c. to whom the Premises should descend,*

remain,

(a) 6 Co. 42. a. b.
Cro. Jac. 698.
(b) Co. Lit. 314. b.
2 Co. 23. b.
Lit. R. 187.
(c) Hob. 174.
Co. Lit. 8. o.
B. N. C. 156.
Br. Eitate 4, 18, 73.
19 H. 6. 73. b.
20 H. 6. 35. b.
22 H. 6. 15. b.
22 E. 4. 16. b.
Pitz. Recoffment & Fairs 2.
1 lowd. 28. b.
Bridgm. 134.
8 Co. 155. a.
1 Roll. 833.
Perk. sect. 181.
Kelw. 104.
nu. 26.
1 Anderf. 225.
2 Anderf. 141.
142.
3 Bullfr. 126.
4 Leon. 246.
nu. 400.
Godb 121, 220.
(d) 10 Co. 97. a.
Co. Lit. 385. b.
333. b.
(e) Mo. 364.
4 Leon. 83.
1 Anderf. 186.
2 Anderf. 7, 142.
Bridgm. 135.
6 Co. 43. a.
10 Co. 42. b.
1 Jones 59.
(f) Cro. Jac. 697.

remain, or come, if such Person so attempting, &c. were naturally dead indeed, should have and enjoy the Promises, during the Life of such Person so attempting, &c. with like Remainders and Limitations over, &c. as if such Person so attempting, &c. were naturally dead; and after the Decease of such Person so attempting, &c. that then the Premises should remain, descend, come, or be to such Person, &c. unto whom the same ought or should next descend to, accrue, or be by the true Intent and Meaning of his Testament aforesaid, with such Remainders and Limitations of Estate and Estates over, and in (a) such sort to all Intents, Constructions and Purposes in all Things, as though no such Attempt had been committed. And afterwards the said *Tho. Cary* died, and afterwards, viz. *Quindena Pasc. 27 Eliz. Peter Cary* levied a Fine of the said Manor or Farm to *John Germin*, and the said *Henry Cary* came to the said Tenements and claimed the Reversion by Force of the said Devise; and if upon all this Matter *John Germin* the Plaintiff, notwithstanding the said Proviso and Claim aforesaid, had the Reversion continuing in him or not, so that he might maintain the Action of Waste or not, was the Question: And upon solemn Argument it was adjudged by all the Justices of the Common Pleas, that the Action of Waste was maintainable, and that the said Proviso of Restraint was void for two principal Reasons: (b) One, because it was against Law, the other, that it was repugnant and contradictory in it self: Against the Law for two Reasons, for be the said Proviso a Condition or Limitation, the whole Estate ought to be defeated by it, and it cannot determine the Estate in Part, and continue it for the Residue; and an Estate in Land cannot cease for a Time, and revive and revert afterwards: The other, when a Man gives Land to one, and his Heirs Males with Remainders over, he cannot by the Rules of the Law determine this Estate in Tail as to one Person, and dispose the same Estate to another Person. And therefore they agreed the Case in 28, 29 H. 8. fo. 35. a. Dy. (c) that a Man cannot devise an Estate in Fee-simple to one, and if he do not such an Act, that his Estate shall cease, and that another shall have it in Fee-simple; for when he hath disposed the Estate in Fee to one, he hath not Power after in the same Will to devise it to another. And for the Construction of Wills, this Rule was taken by the Justices in their Arguments, That such an Estate which cannot by the Rules of the Common Law be conveyed by Act executed in his Life by Advice of Counsel learned in the Law, such Estate cannot be devised by the Will of a Man, who is intended in Law to be (d) *inops Consilii*. As if a Man by his Will devises Land to one (e) for ever, there he hath a Fee, for such

(a) 3 Co. 27. a.

(b) Mo. 364.
 Poltea 86. b.
 Cro. Jac. 697,
 698. 6 Co. 40. b.
 8 Co. 17. a.
 (c) Cro. Jac. 592
 2 Roll. Rep.
 216. Huron 60.
 2 And. 11,
 142.
 Palm. 49.
 Winch 56.
 Cro. Car. 58.
 Finch. 46. b.
 Bridgm. 135.
 Dyer 33. pl. 12
 2 Leon. 114.
 Cro. El. 525,
 833.
 Vaugh. 271.
 (d) 3 Co. 20. b.
 8 Co. 95. a.
 3 Bullstr. 106.
 (e) Co. L. 9. b.
 522. b.
 Lit. sect. 586.
 3 Keb. 96.
 1 Bullstr. 219,
 222.
 Bridgm. 16 135.
 Kelway 43. b.
 Moor 57.
 1 Vent. 216.

such Estate might be conveyed by Act executed. But if he devises further, that if the Devisee do not such an Act, that another shall have the Land to him and his Heirs, the same is void, as is aforesaid, for such a Limitation, if it was by Act executed, was void, & sic de cæteris.

And it was resolved, that the said (a) Proviso was repugnant for two Reasons, one because when he had devised the Land to one and the Heirs Males of his Body, which is an Estate of Inheritance and determinable on Death without Issue Male of his Body by express Limitation, such Proviso to cease it, as if he was dead, is repugnant, for the Death of Tenant in Tail is not (b) a Determination of it, but Death without Issue. Secondly, It was repugnant, for the first Part of the Proviso was, That if he shall attempt, or go about to discontinue, bar, &c. and shall accomplish and effect the same, then that his Estate shall cease from the Time of Attempt, &c. and before such Alienation; in which it was agreed there was a manifest Repugnancy, for by the first Part the Estate should not cease until an Attempt and Accomplishment, and by the latter Part it should cease after Attempt and before Accomplishment. And these were the Reasons of their Judgment in the said Case between *Germin* and *Arscot*, which being in the Case of a Will which receiveth (c) a benign Interpretation according to the Testator's Intent, is stronger, as the Lord *Anderson* said, than the Case at the Bar.

The other Case which the Lord *Anderson* cited was adjudged *Hil. 37 Eliz.* between (d) *Cholmley* Plaintiff, and *Humble* Defendant in *Com' Banco*, and was such: Sir *Richard Cholmley* seized in Fee of the Manor of *Thornton super Montera*, &c. by his Deed indented, covenanted with *William Bapthorp*, *Philip Constable*, *John Hussy* and others, and their Heirs, That in Consideration that the said Manor should continue in his Name and Posterity, and in Consideration of natural Love and Blood, &c. that he would enfeoff them and their Heirs within one Year following, to the Uses, Intents and Purposes following, and declared in the same Indenture, viz. to the Use of himself for the Term of his Life, and afterwards to the Use of *Francis Cholmley* for Life, and afterwards to the Use of *Henry Cholmley* and the Heirs Males of his Body, with divers Remainders over; and further covenanted by the same Deed, that if he failed to execute the Estate within the said Year, that then he and his Heirs, for the Considerations aforesaid, would stand seized to the Uses and Intents aforesaid, and to no other. And in the same Indenture after the said Covenant was a Proviso, that if the said *Hen. Cholmley*, or any of the Heirs Males of his Body, should attempt or make any Feoffment, &c. that his Estate should cease, as if he was dead, and that then the said *William Bapthorp* and the other

Feoffees

(a) Cro. El. 379.

(b) antea 84. a. Moor 592.

(c) Co. Lit. 112. a. Postea 101. a.

(d) 2 Anderf. 142, 149. 6 Co. 43. a. 10 Co. 42. b. Winch 56 Cro. Eliz. 378. 1 Anderf. 346. Mo. 592, 633.

- Feoffees and their Heirs should stand seised to the Use of such Person to whom it ought to descend, or remain by the said Deed intended, as if he was Dead; with the Remainders over, as aforesaid: And no Feoffment was made within the Year; and afterwards Sir *Rich.* and *Fran.* died, *Hen.* had Issue *Rich.* the Pl. and levied a Fine with Proclamations to *Humble* the Def. the Pl. entred by Colour of the aforesaid Proviso, the Def. entred upon him, and he brought an Action of Trespass. And it was adjudged against the Pl. And the principal Reason of the Judgment, as the L. *Anderson* said, was, because the said (a) Proviso to cease an Estate-tail as if Tenant in Tail was dead, was utterly against Law, impossible and repugnant to the Beginning at the Time of the Delivery of the Indenture. And in the same Case it was also agreed, that if a Man limit an Use in Tail, with a Proviso that if he do such an Act, that his Estate shall (b) cease during his Life, that such Proviso is utterly void. And it was agreed, that if a Man limit an Use in Tail with a Proviso that if he do such an Act, that his Estate shall cease during his natural Life, that this Proviso is repugnant and contrary to Law, for he cannot by Proviso or Condition determine the Estate in the Land to which it is annexed in Part. For now, when the Stat. of 27 *H.* 8. hath transferred the Use into Possession and Estate of the Land, he cannot make a Fraction in that Estate in Case of Limitation of Use, which he cannot do in a Gift in Tail by Livery in Possession, for the Statute hath not transferred the Possession to the Use, but hath (c) transferred and incorporated the Use in the Estate of the Land, which is proved by the usual Form of Pleading, that is to say, *de usibus in possessione transferend'*, and therefore as to this Purpose, since the said Act of 27 *H.* 8. it is as much as if a Man had made a (d) Gift in Tail with Proviso, or upon Condition, that if the Donee do such an Act, that his Estate shall cease during his Life; or if a Feoffment in Fee be made with Proviso, or upon such Condition that his Estate should cease during his Life; these Provisoes or Conditions are utterly void and against Law; for a Condition or Limitation annexed to an Estate of Land, ought to destroy the whole Estate to which it is annexed, and not Part of it; and (e) he who enters for a Condition broke ought to have the same Estate that he had when he made the Estate conditional.

And *Walmesley* Justice said, that when an Estate is given to one, it may be defeated wholly by a Condition or Limitation, but the same Estate or any Part of it cannot be determined as to one, and given in Part or in all to another, for that is repugnant to the Rules of Law. As if a Man makes a Lease for Life upon Condition, that if he do not pay 20 *l.* that another shall have the Land, this future (f) Limitation is void; and in the Case at the Bar the Donor might have annexed a Condition or Limitation to determine his Estate; but in this Case the Donor intended

(a) Moor 592.

(b) Cro. Eliz.
374.
Postea 138. b.
Co. Lit. 27. a.
6 Co. 41. b.
8 Co. 17. a.

(c) 3 Co. 27. a.

(d) Co. Lit.
224. a.
6 Co. 41. a.

(e) Co. Lit.
202. a. b.

(f) Plowd.
Com. fo. 25. a.
Co. Lit. 214. a.
1 Jones 53.

intended to continue the Estate-tail, and to cease it as to one, and in his Life to transfer it to another. If after the Stat. of 1 R. 3. and before the Stat. of 27 H. 8. a Man had made a Feoffment to the Use of one for Life or in Tail, and after to the Use of another for Life, or in Tail, and after to the Use of another in Fee, those in the Remainder could not make a Feoffment or Grant of their Estates by the general Words of the Act of 1 R. 3. for then there would be a Fraction and Division of Estates which the Law will not suffer: And he also said, that the Case in 5 E. 2. tit. *Dower* 143. (*)

of a (a) Rent newly created is not against his Opinion, for there the Condition is, that if the Grantee die, his Heir within Age, that during that Time the Ter-tenant should be quit of the Rent, which he said is Good and Parcel of the Quality of the Inheritance of that new Thing: As in 9 H. 6. 36. a. a Man grants Common newly created (b) *quandocunq; averia sua ierint*, this is *modus donationis*, and the Grantee shall not have Common there, but in that Manner: But if a Man makes a Feoffment in Fee upon Condition, that if the Feoffee die, his Heir within Age, that his Estate shall cease during the Minority of the Heir, that is utterly void, for an Estate of Land cannot so cease for the Reasons aforesaid: And also because, if an Estate of Land should so cease, vest, and re-vest, it would be dangerous to the *Præcipe* of a Stranger, which Inconvenience is not in the Case of the Rent or Common newly created. And *Glanville* Justice said, that the Case of the Rent is not to be resembled to Land, for a Rent newly created may cease, but Land cannot.

But note Reader, and observe well the said Book in (c) 5 E. 2. for there, during the Minority of the Heir, the Writ of Dower was brought against the Ter-tenant, and not against the Heir, which proveth that the Estate of the Rent was not divided, for then the Writ of Dower should be brought against the Heir, altho' the Estate of the Rent during his Minority ceases; but the Writ of Dower was brought against the Ter-tenant, which proveth (as I conceive) that for the Time the Rent newly created *per modum concessionis* ceased: And note in the same Case when the Heir came of full Age, the Demandant had Execution against him. And *Walmesley* Justice said, that if a Man makes a Feoffment in Fee of Land to the Use of A. and his Heirs every *Monday*, and to the Use of B. and his Heirs every *Tuesday*, and to the Use of C. and his Heirs every *Wednesday*, these Limitations are void, for we do not find such Fractions of Estates in Law. And if (d) Coparceners do agree to present by Turns, this is a Partition as to the Possession, but notwithstanding that they shall join in a Writ of Right. So a Partition that one Parcener shall have the Land from (e) *Easter* to the 1st of *Aug.* in Severalty, and that the other shall have it from the first of *Aug.* until *Easter* in Severalty, this is good as to the Possession and Taking of the Profits, but it is no Seve-

Lucas 366.
Plo. Com. 249.
350.

(a) Postea.
130. a. b.
Perk. sect. 327.
Plo. 156. a.
10 H. 7. 13. b.
12 E. 3. Condit.
11. 22 E. 3.
19. a. 4 Leon. 83.
6 Co. 41. a.
8 Co. 17. b.

(b) Cro.
Car. 599.
1 Roll. 403. 404.
Perk. sect. 109.
Br. Common 3.
Br. Grant. 5.
Hob. 40.

(c) 5 E. 2.
Dower 143.

20 E. 3. Qu.
Impedit. Fitz.
63, 65, & Fitz.
N. B. 36.

(d) 2 Rol. 255.
2 Vent. 39.

(e) Co. Lit. 4. a.
167. a. 180 a.
1 Ro. Abr. 829.
Cro. El. 421.
F. N. B. 62. K.

rance

rance of the Estate of Inheritance. And he said, it would be strange and against Reason, that this Estate in the Case at the Bar should end in Regard to one, and continue in Regard to another, and that *Rowland* should be dead when one

(a) Cro El 379.
6 Co. 40. b.
Raym. 355.
13 Co. 64.
18 Eliz.
Dy. 351. b.

law him, and be alive when another saw him. (a) An Act of Parliament, or the Common Law may make an Estate void as to one, and good as to another, but a Man by his Words and the Breath of his Mouth cannot do it. As if Land be given to Husband and Wife, and to the Heirs of their two Bodies begotten, and the Husband levieth a Fine with Proclamations, and hath Issue, and dieth; now this Fine by Force of the Act of Parliament of 32 H. 8. c. 36. shall bar the Issue in Tail, but shall not bind the Wife; and so in Respect to one a good Bar, and in Respect to the other no Bar. So in a *Præcipe*, if one be (c) vouched, now having regard to the Demandant, the Vouchee is Tenant, and a Release to him is good, but having regard to a Stranger, he is not Tenant, and a Release to him by a Stranger is void: So if one hath a Term for Years as Executor, and surrendreth it, now to one Respect the Term is extinct, and to another Respect it is affets. So

(b) 8 Co. 72. b.
9 Co. 139. a.
Dy. 351. pl. 24.
N. Bendl. 225.
Bendl. in.
Ash. 24. Ben.
in Kel. 213. b.
Da. in Kel.
205. a. b.
Dal. in Ash. 7.
Dal. 50. pl. 16.
1 And. 39.

that an Act of Parliament, or an Act of the Law may do it in divers Cases to several Respects, but a Man by his Words cannot do it, viz. make an Estate cease as to one, and continue as to another, to make a Man half alive, and half dead, as he said. If one might limit Estates in Land to cease, during the Minorities of the Heirs, and other Persons to have the Land during that Time, then all Wardships may be defeated, and great Inconveniencies would ensue; and therefore he said this Manner of Ceasing of Estates, and of carrying one and the same Estate or any Part thereof from one to another without Determination, and namely from one alive to another alive is impossible, and against Law and Reason, and inconvenient, and he said, that if a Man before the Statute of 27 H. 8. had bargained his Land for (d) Money generally, without these Words (his Heirs) the Chancellor would oblige him according to Conscience and the Intent of the Parties in Regard of the Value, to have executed an Estate in Fee, and that was so long as Uses were Things merely in Trust and Confidence, but the (e) Uses since the Statute are transferred and made into an Estate in the Land: And therefore he said, that if after the Statute he bargains and sells the Land to one generally for Money, he hath but an Estate for Life.

(c) 3 Co. 29. b.
8 Co. 151. b.
10 Co. 48. b.
Lit. sect. 491.
Co. Lit. 265. b.
9. H. 7. 26. a.
7 R. 4. 13. b.
10 E. 4. 13. a.

(d) Postea
100. b.
1 And. 35.
8 Co. 94. a.
3 Keb. 317.
27 H. 8. 5. b.
Br. Estate 3.
Br. Contract 1.

(e) Raym. 287,
317.

And *Glanville* Justice said, that betwixt the making of the Statute of 13 E. 1. *de Donis conditionalibus*, and 27 H. 8. such Proviso annexed to an Estate-tail, that it should cease as if the Tenant in Tail was dead, was never seen nor heard of; and therefore he concluded that it cannot be done by the Law. And so *Littleton* concludeth *fol. (f) 23.* in the like Case, that if any Action might have been taken

(f) Lit. sect. 108.
Co. Lit. 81. a.
Cro. Car. 142.

or brought upon the Statute of *Merton, cap. 6. de Dominis* ¹ *qui maritaverint illos, &c. si parentes conqueruntur, &c.* it should be intended some Time to have been put in Use, and therefore he said no Action can be brought upon that Statute, for as much as it was never seen nor heard that any Action was brought upon that Statute. And he said, that Uses were not within the Letter of the Statute *de Donis conditionalibus*, which speaketh only of Lands and Tenements, but are taken within the Equity, and therefore ought to follow the Nature of the Land. And before the Statute of 27 *H. 8.* the Chancellor in the Case of an Use, judged by Imitation of the Rules of the Common Law, and according to the Nature and Quality of the Land, as in Case *de (a) possessione fratris*, Borough English, Gavelkind on the Part of the Mother, &c. and so his Judgment was by Way of Imitation; and the Makers of all the Statutes concerning Uses, as *1 R. 3. cap. 5. 4 Hen 7. cap. 17. 9 Hen. 7. cap. 15.* and all other Statutes have made Uses to imitate and resemble Estates in Possession, and to be guided and directed according to the Rules and Reason of the Common Law. And he said, that *(b) Ricbill* who was a Judge in the Time of *R. 2.* and *Tbirning* who was Chief Justice of the Common Pleas in the Time of *H. 4.* intended to have made Perpetuities*, and upon Forfeiture of the Estate-tail of one of their Sons to have given the Remainder and Lentry to another, but such Remainders were utterly void, and against the Law. And for these Reasons it was resolved *per totam Curiam (nullo contradicente)* that Judgment should be given against the Plaintiff, and so it was, as appears before by the Record.

¹ *Inst. 81. b.*
ols for Use
 Ante 48.
⁴ *Co. 22. a.*
(a) ² *And. 146.*
Co. Lit. 23. a.
Hob. 31.
(b) ² *Andderf.*
^{135, 138.}
⁶ *Co. 42. b.*
¹ *Co. 130. a.*
Lit. sect. 720.
¹ *Co. Lit. 377. b.*
¹ *Rol. Rep. 485.*
^{Postea} ^{131. b.}

[* For the Doctrine of Perpetuities, See the Cases of the Duke of Norfolk, &c. in 3 Chanc. Cases.]

SHELLEY'S Case.

Easter Term, Anno 21 Eliz. Rot. 58.

In the King's Bench.

Suffex, ff.

Declaration in
Trespafs in
B. R.

Imparlance.

Plea, Not
Guilty.

*M*emorandum, That at another Time, that is to say, in *Hillary Term* last past, before the Lady the Queen at *Westminster*, came *Nicholas Wolfe*, by *Nicholas Mosley* his Attorney, and brought in the Court of the said Lady the Queen then there his Bill against *Henry Shelley*, Esq; of a Plea of Trespafs, and there are Pledges of Suit, that is to say, *John Doe* and *Richard Roe*, which Bill followeth in these Words; that is to say, *ff. Suffex, ff. Nicholas Wolfe* complaineth of *Henry Shelley*, Esq; in the Custody of the Marshal of the Marshalsea of the Lady the Queen, before the Lady the Queen herself being, of that, that he, the 7th Day of *November* in the 20th Year of the Reign of the said Lady the now Queen of *England*, with Force and Arms, &c. the Close and House of him the said *Nicholas*, called *Bursamwick*, otherwise *Barkamweek*, at *Augmering* in the County aforesaid, broke and entred, and his Grass to the Value of 100 Marks there late growing, with certain Cattle, that is to say, Horses, Oxen, Cows, Hogs and Sheep, fed, trod down and consumed, and other harms to him did, against the Peace of the said Lady the now Queen, to the Damage of the said *Nicholas* 100*l.* and thereof he bringeth Suit, &c. And now at this Day, that is to say, *Wednesday* next, after 18 Days of *Easter* in this Term, until which Day the said *Henry Shelley* had leave to the Bill aforesaid to imparl, and then to Answer, &c. before the Lady the Queen at *Westminster* cometh as well the aforesaid *Nicholas Wolfe*, by his Attorney aforesaid, as the aforesaid *Henry Shelley*, by *Richard Best* his Attorney, and the said *Henry* doth defend the Force and Injury when, &c. and saith, he is not thereof Guilty, and of this puts himself upon the Country, and the said *Nicholas* likewise, &c. Therefore a Jury thereof is to come before the Lady the Q. at *Westmin.* upon *Friday* next after the Morrow of the *Holy Trinity*: And who neither, &c. to recognize, &c. because as well, &c. Afterwards the Procces thereof

is continued between the parties aforesaid, of the plea aforesaid by jurors put thereof between them in respite, before the Lady the Q. at *Westm.* until the *Monday* next after 3 weeks of *Easter* then next following, for default of jurors, &c. At which day, before the Lady the Q. at *Westm.* come the parties aforesaid by their attornies aforesaid, and the jurors of the jury aforesaid being called likewise come, who to say the truth of the premisses, chosen, tried, and sworn, say upon their oath, That long before the time of the trespass supposed to be done, the Lord *Henry* the 8th, late K. of *Engl.* father of the Lady the now Q. amongst other things was seised of the tenem. aforesaid with the appurt. in the declaration aforesaid above specified, in his demesne as of Fee, in the right of his crown of *England*; and the said late King so thereof being seised, before the time in which, &c. By his letters patent with the great seal of *England* sealed, bearing date at *Westm.* the 14th day of *May* in the 32d year of his reign, had given and granted the tenem. aforesaid with the appurt. amongst other things, to *Anne Cobham* widow, to have and to hold the tenements aforesaid with the appurt. amongst other things to the said *Anne Cobham* and her assigns, for the term of the life of the said *Anne*, rendring therefore to the said late King, his heirs and successors 3 l. 2 s. 8 d. sterling, at the court of augmentation and revenue of his crown, at the feast of *St. Mich.* the Archangel, yearly to be paid; and after the decease of the aforesaid *Anne*, the said late King, by his letters patent, willed and granted, That the tenements aforesaid with the appurt. amongst other things should remain to one *Edward Shelly* Esq; and *Johan* his wife, and to the heirs of the bodies of them the said *Edw.* and *Johan*, between them lawfully to be begotten; To be holden of the aforesaid late King, his heirs and successors, by the service of the 20th part of a Knight's fee; and yielding therefore yearly to the said late King, his heirs and successors, 3 l. 2 s. 8 d. sterling, at the court of augmentation and revenue of his crown aforesaid, at the feast of *St. Mich.* the Archangel, every year to be paid, for all services and demands whatsoever, to the said late K. his heirs and successors, any ways to be rendred, payed, or done. And if it should happen the said *Edward*, and *Johan* his wife, to dye without issue of their bodies lawfully by them begotten, then the said late King willed and granted by his said letters patent, that the tenem. aforesaid with the appurt. amongst other things should wholly remain to the right heirs of the said *Edw. Shelly* for ever, to be holden of the aforesaid late K. his heirs and successors by the rent and services aforesaid for all services and demands, as by the said letters patent amongst other things more fully appeareth: By virtue of which gift and grant, the said *Anne Cobham*, into the tenem. aforesaid with their appurt. amongst other entred, and was thereof seised in

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her demesne as of freehold, the remainder thereof in form aforesaid; and the said *Anne* so thereof being seised, afterwards, and before the time in which, &c. that is to say, the day of in the year of the reign of the said late K. *Henry* the 8th, at *Worminghurst* in the said county of *Suffex* died. After the death of which *Anne*, the aforesaid *Edw. Shelley* and *Johan* his wife into the tenements aforesaid, with the appurtenances amongst other things entred, and were thereof seised in demesne as of fee-tail, that is to say, to them, and the heirs of the body of them the said *Edward* and *Johan*; the remainder unto the said *Edward* and his heirs in form aforesaid: And so thereof being seised, the said *Edward* and *Johan* had issue of their bodies *Henry Shelley*, father of the aforesaid *Henry Shelley* now defendant his eldest son, and *Rich. Shelley* his second son; which *Rich. Shelley* is yet living, and in full life, and that the said *Edw.* and *Johan* being thereof so seised, the said *Johan* afterwards, and before the time of the trespass aforesaid died, and the aforesaid *Edward* her overlived, and held himself in the tenements aforesaid with the appurtenances, and was thereof seised in his demesne as of Fee-tail; the remainder thereof to him and his heirs for ever, as before is said: And the said Jurors also say upon their oaths aforesaid, that the said *Henry* father of the aforesaid now defendant had issue of his body, lawfully begotten, *Mary Shelley* his daughter; and that the said *Henry Shelley* died in the life of the said *Edward* his father; One *Anne*, then wife of the said *Henry* being quick and great with child with the aforesaid *Henry Shelley* now defendant in the declaration named; And the said *Edward Shelley* so being thereof seised, afterwards the 25th day of *Septemb.* in the 1st and 2d years of the reigns of *Philip* and *Mary*, late K. and Q. by his indenture sealed with his seal, bearing date the said day and year first delivered the sixth day of *October* then next following, made between him the said *Edward Shelley*, by the name of *Edward Shelley* of *Worminghurst* in the County of *Suffex* Esq; of the one part, and *Rich. Cowper* and *Will. Martin* of the other part, the tenour of which indenture followeth in these words, ff.

This Indenture made the 25th day of Sept. in the 1st and 2d years of the reigns of our sovereign Lord and Lady Philip and Mary, by the grace of God K. and Q. of England, France, Neapolis, Jerutalem and Ireland, defenders of the faith, Princes of Spain and Cicil, Archdukes of Austrich, Dukes of Millain, Burgundy and Brabant, Earls of Harspurg, Flanders and Tirol; Between Edward Shelley of Worminghurst in the C. of Suffex Esq; of the one party, and R. Cowper and Will. Martin of the other party, witnesse, that it is fully covenanted, granted, condescended and agreed between the said parties in manner and form following: That is to say, first the said Ed. Shelley, for and upon divers great and urgent causes and considerar. him moving, doth covenant, grant,

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condescend, promise, and agree, for him, his Heirs and Executors, to and with the said Richard Cowper, and William Martin, and their Executors, by these Presents, that he the said Edward Shelley shall permit, cause, and suffer the said Richard Cowper and William Martin, or the Survivor of them, at the proper Costs and Charges of him the said Edward Shelley, his Heirs, Executors, Administrators or Assigns, on this side the Feast of All Saints, next ensuing the Date of these Presents, to recover against him the said Edward, his Heirs or Assigns, by Writ of Enrie sur disseisin en le Post, the Manors of Worminghurst, Barhamwicke, and Fyndon, with the Appurtenances in the said County of Suffex, and all other his Lands, Tenements, Possessions, and Hereditaments, with the Appurtenances, set, lying, and being in Fyndon, Worminghurst, Barhamwicke, Patching, Eastangmering, Westangmering, Wygenholt, Sterington, Washington, Ashington, Grenested, Ashhurst, Stening, Wiston, Thackham, and Shipley, in the said County, except only the Manors of Sillington and Cobden, with the Appurtenances in the said County, and except also all those Lands, Tenements, and Hereditaments, called or known by the Names of Cobden, Pullets Frises, and Palmershcomb, with all and singular their Appurtenances. And the said Edward Shelley covenanteth, granteth, and promiseth by these Presents to and with the said Richard Cowper and William Martin, that at the time of the said Writ of Entry brought against him of the Premises, and at the time of the said Recovery had, he the said Edward shall be sole Tenant of the Freehold, of all and singular the said Manors and Premises (except before excepted) and that the said Writ shall be brought and pursued against him the said Edward Shelley, of all singular the said Manors and Premises (except before excepted) by the Name of the Manors of Worminghurst, Barhamwicke and Fyndon, with the Appurtenances, and by the Name of 30 Meases, 10 Tofts, one Watermill, two Colverhouses, 30 Gardens, 400 Acres of Land, 60 Acres of Meadow, 400 Acres of Pasture, 120 Acres of Wood, 500 Acres of Furzes and Heath, and 8l. 10 s. of Rent, with the Appurtenances in Fyndon, Worminghurst, Barhamwicke, Patching, Eastangmering, Westangmering, Wigenholt, Sterington, Washington, Ashington, Grenested, Ashhurst, Stening, Wiston, Thackham, and Shipley, and of the Advowson of the Church of Worminghurst, and that the said Recovery had of all and singular the Premises, shall be suffered and had to the Uses, Profits, Behoofs, and Intents hereafter specified and de-

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clared, and to none other Use or Intent, That is to say, of the said Manor of Fyndon, with the Appurtenances, except the Park of Fyndon, and except also all those Lands, Tenements, and Hereditaments in Fyndon aforesaid, called or known by the Name of the Park of Fyndon, the said Recovery thereof shall stand and be to the only Use, Profit, and Beboof of him the said Edward Shelley, and of the Heirs Males of his Body lawfully begotten, and for lack of such Issue, to the Use, Profit, and Beboof of the Heirs Males of the Body of John Shelley Esq; sometime of Michel Grove, deceased, Father to the said Edward Shelley, and of the Heirs Males of the Body of the said Heirs Males lawfully begotten, and for lack of such Issue, to the Use and Beboof of the right Heirs of the said Edward Shelley for ever, and of the said Manors of Worminghurst and Barhamwicke with the Appurtenances, and of the said Park of Fyndon, and of all the said Lands, Tenements, and Hereditaments called or known by the Name of the Park of Fyndon, and of all and singular other the Premisses with the Appurtenances comprised, or to be comprised in the said Writ of Entry, and in the said Recovery. It is granted, conceded, and agreed between the said Parties, and the said Edward Shelley covenanteth and granteth, that the said Recovery thereof shall be suffered and had to the only Use, Profit, and Beboof of him the said Edward Shelley, and of his Assigns, for and during the Term of the Life natural of the said Edward Shelley, without Impeachment of or for any manner of Waste; and after the Decease of the said Edward Shelley, then to the only Use, Profit, and beboof of John Carrel and John Apsley of Thackham Esquires, and Edw. Darkenolde of Slynfold, in the said County of Suffex, Yeoman, and of their Executors and Assigns, for and during the Term of twenty and four Years next ensuing, after the Decease of the said Edw. Shelley, and after the four and twenty Years ended, then to the only Use, Profit and Beboof of the Heirs Males of the Body of the said Edward Shelley lawfully begotten, and of the Heirs Males of the Body of the said Heirs Males lawfully begotten, and for lack of such Issue, then to the Use, Profit, and Beboof of the Heirs Males of the Body of the said John Shelley, sometime of Michel Grove Esq; deceased, Father unto the said Edward Shelley, and to the Heirs Males of the Body of the said Heirs Males last before rehearsed lawfully begotten, and for lack of such Issue, to the Use, Profit, and Beboof of the Right Heirs of the said Edward Shelley for ever. And the said Edward

ward Shelley further covenanteth, promiseth, and granteth, to and with the said Richard Cowper, and William Martin, that he the same Edw. Shelley shall and will from Time to Time do, suffer, procure, make, and knowledge, and cause to be had, done, suffered, procured, made, and knowledged at his own proper Costs and Charges, all and every such Act and Acts, Thing and Things, as shall be devised or advised by the said Richard Cowper and William Martin, or the Survivor of them, as well for the said Recovery to be perfectly, surely, and lawfully had and executed of all and singular the said Manors, Lands, Tenements; and Hereditaments with the Appurtenances by the said Richard Cowper and William Martin, to the Uses, Purposes, and Intentions in these Indentures specified, declared and contained; as also for the further Surety, Establishment, Execution, Perfecting, and Continuance of all and every the said Uses, Estates, and other the Premises, to be and go according to the Covenants, Promises, Articles, and Agreements in these present Indentures contained. In witness whereof the Parties aforesaid to these present Indentures interchangeably have set their Seals, the Day and Year first aforesaid.

And the Jurors aforesaid further say upon their Oath, that the Tenements aforesaid in the Indenture aforesaid excepted, are not the Lands and Tenements in the Declaration aforesaid specified: And that the aforesaid *Edward Shelley* so being thereof seised, the aforesaid *Richard Cowper* and *William Martin* the 20th Day of *Sept.* in the first and second Year of the Reigns of the said late King and Queen aforesaid, out of the Court of the said late King and Queen of their Chancery at *Westminster* in the County of *Middlesex* sued forth a Writ of the said late King and Queen, to the then Sheriff of *Suffex* directed, against the said *Edward Shelley*: By which Writ it was commanded the said Sheriff of *Suffex*, that he command the aforesaid *Edward Shelley* that justly and without Delay he render to the aforesaid *Richard Cowper* and *William Martin*, the Manors of *Wormingburst*, *Barhamwicke*, and *Fyndon* with the Appurtenances, as also 30 Messuages, 10 Tofts, one Water-Mill, two Dove-houses, 30 Gardens, 400 Acres of Land, sixty Acres of Meadow, 400 Acres of Pasture, 120 Acres of Wood, 500 acres of Furzes and Heath; and 8 l. 10 s. Rent, with the Appurtenances in *Fyndon*, *Wormingburst*, *Barhamwicke*, *Parching*, *Estantmering*, *Westangmering*, *Wigbenholt*, *Storington*, *Asbington*, *Greensted*, *Asburst*, *Stening*, *Weston*, *Thackham* and *Shipley*, and also the Advowson of the Church of *Wormingburst*, which he claimeth to be his Right and Inheritance; and in which the said *Edw.* had not Entry, but after a Disseis. which *H. Hunt* thereof un-

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justly and without Judgment did to the aforesaid *Richard* and *William* within 30 Years then last past, as they said; and whereupon they complained, that the aforesaid *Edward* them Deformed, &c. and unless he should do it; and the aforesaid *Richard* and *William* him the said Sheriff secured, for the prosecuting of their Claim; then he summoned the aforesaid *Edward*, that he be before the Justices of them the said late King and Queen at *Westminster*, in 8 Days of *St. Michael* then next ensuing, to shew wherefore he had not done it, and to have there the Summons and the Writ aforesaid; At which 8 Days after *St. Michael*, before the Justices of the said late King and Queen, come the aforesaid *Richard Cowper* and *William Martin*, by *John Bish* their Attorney; and the Sheriff, that is to say, *Thomas Saunders*, Knt. returned that *Richard* and *William* found to the said Sheriff Pledges for Prosecuting, that is to say, *John Doe* and *Richard Roe*, and that the aforesaid *Edward* was summoned by *John Den* and *Richard Fen*. And the said *Edward Shelley*, according to his Summons aforesaid, to him in form aforesaid made, by *Thomas Ingler* his Attorney, came; and upon his the aforesaid *Richard Cowper* and *William Martin*, by their Attorney aforesaid, demanded against the aforesaid *Edward Shelley*, the Manors of *Worminghurst*, *Barhamwicke* and *Fyndon*, with the Appurtenances, as also 30 Messuages, 10 Tofts, one Water-Mill, 2 Dove-houses, 30 Gardens, 400 Acres of Land, 60 Acres of Meadow, 400 Acres of Pasture, 120 Acres of Wood, 500 Acres of Furz and Heath, and 8 Pounds 10 Shillings Rent, with the Appurtenances in *Fyndon*, *Worminghurst*, *Barhamwicke*, *Patching*, *Estantmering Westangmering*, *Wigenholt*, *Stervington*, *Washington*, *Ashington*, *Grenest*, *Ashereft*, *Stening*, *Wiston*, *Thackbam* and *Shipley*, as also the Advowson of the Church of *Worminghurst*, as his Right and Inheritance, and in which the said *Edward* had not Entry, but after a Disseisin which *Hugh Hunt* unjustly and without Judgment did to the aforesaid *Richard* and *William*, within 30 Years then last past, &c. And whereupon they said, that they themselves were seised of the Manors, Tenements and Rents aforesaid, with the Appurtenances, in their Demesne as of Fee and Right, and also of the Advowson of the Church aforesaid, as of Fee and Right in Time of Peace, in the Time of the said late King and Queen, taking the Profits thereof to the Value, &c. and in which, &c. and thereupon brought Suit, &c. And the said *Edward*, by the aforesaid *Thomas Ingler* his Attorney, cometh and defendeth his Right when, &c. and voucheth thereof to Warranty *Henry Siliborn*, who present here in his proper Person in Court, freely the Manors, and Tenements, and Rents aforesaid, to him doth warrant, &c. And upon that the aforesaid *Richard* and *William* demanded against him the said *Henry*, Tenant by his Warranty, the Manors, Tenements and Rents aforesaid, with the Appurtenances, and the Advowson aforesaid in form aforesaid: And whereupon they said, that they themselves were seised of the Manors, Tenements and Rents aforesaid, with their Appurtenances, in their Demesne as of Fee and Right, and also of the Advowson aforesaid, as of Fee and Right in Time of Peace, in the Time of the said late

Recovery.

late *K.* and *Q.* taking thereof the profits to the value, &c. and in which, &c. And thereof brought suit, &c. And the aforesaid *Henry*, tenant by his warranty, defended his right when, &c. and said, That the afores. *Hugh* did not disseise the afores. *Richard* and *William* of the manors, tenements and rents afores. with the appurtenan. and also of the advowson afores. as the said *Richard* and *William* by their writ and declaration above supposed. And of this he put himself upon the country, &c. And the aforesaid *Richard* and *William* prayed leave to imparl, and had it, &c. And afterwards the said *Rich.* and *William* returned back hither into court the same term, by their Attorney afores. and the afores. *Henry*, altho' solemnly called, did not return, but in contempt of the court departed and made default. Therefore it was granted by the court, in the afores. 8 days of *St. Michael*, That the said *Richard* and *William* should recover their seisin against the afores. *Edward*, of the manors, tenements and rents afores. with the appurtenances, and also of the advowson afores. And that the said *Edward* should have of the lands of the said *Henry*, to the value, &c. and the said *Henry* should be in mercy, &c. And upon this, immediately the afores. *Rich. Cowper* and *Will. Martin*, in the aforesaid court, prayed the writ of the lord and lady the Queen, to the then Sheriff of *Sussex* to be directed, to give them full seisin of the manors, tenements and rents afores. with the appurtenances, and also of the advowson afores. and the writ was granted unto them, bearing date the 9th day of *October*, in the first and second Years of the Reigns of the afores. late King and Queen *Philip* and *Mary* abovesaid, returnable here from the day of *St. Michael* in one month then next following: And further the said Jurors say upon their oath aforesaid, that the tenements afores. called *Barhamwicke*, in the declaration afores. specified, and the tenement aforesaid called *Barhamwick*, in the record of the recovery aforesaid above mentioned, are one and the same tenements, and not others, nor divers; and that the recovery aforesaid was for the uses and intentions in the aforesaid Indenture specified; And that the said *Edward Shelley* died the 9th day of *October*, in the first and second years of the Reign of the said late King and Queen, between the hours of 5 and 6 in the afternoon of the same day; and that afterwards, that is to say, the 19th day of *October* then next following, the then Sheriff of the said county of *Sussex*, that is to say, *Thomas Saunders*, Knt. by virtue of the writ aforesaid, gave full seisin to the aforesaid *Richard Cowper* and *William Martin*, of the manors, tenements and rents aforesaid, with the appurtenances, and also of the advowson aforesaid. And further, the aforesaid Jurors say upon their oath aforesaid, That one *Rich. Belchamber*, at the afores. time of the death of the afores. *Edward*, and at the time of the recovery afores. and the execution thereof, and long before the bringing of the aforesaid writ of entry sur disseisin in the *Post*, was tenant of the tenements aforesaid, and possessed of the tenements aforesaid in the declaration aforesaid specified, for the term of divers years then to come, by reason of a demise thereof made to the aforesaid *Richard Belchamber*, by the aforesaid *Edward Shelley*, long before the bringing of the aforesaid writ of entry sur disseisin in the *Post*. And afterwards, that is to say, the 4th day of *Decemb.* in the first and second years of the Reigns of the said

Writ of Seisin.

Pleadings in Shelley's Case. PART I.

late King and Queen, the aforesaid *Henry Shelley*, the now Defendant, was born of the said *Anne* his Mother, late the Wife of the afores. *Henry Shelley*, Father of the said *Henry* Defendant, which said *Henry* the Father was the eldest Son of the aforesaid *Edw. Shelley*. And that the aforesaid *Mary Shelley* was then alive, and in full Life. And that the afores. *Richard Shelley* afterwards, after the Expiration of the said Term of Years, demised to the afores. *Rich. Belchamber*, by the afores. *Edw. Shelley*, as before is said, that is to say, the 9th Day of *Octob.* in the 20th Year of the Reign of the said Lady the now Queen, at *Augmering* afores. into the Tenements afores. in the Declaration afores. specified entred, and then and there demised the Tenements afores. in the Declaration mentioned, to the afores. *Nicholas Wolfe*; To have and to hold to the said *Nicholas* and his Assigns, from the Feast of *St. Michael* the Archangel then last past, until the End and Term of 21 Years from thence next following fully to be completed. By Virtue of which Demise, the said *Nicholas* into the Tenements afores. with the Appurtenances entred, and was thereof possessed, until the afores. *Hen. Shelley* now Defendant, the aforesaid 7th Day of *Novemb.* in the said 20th Year of the Reign of the said Lady the now Queen afores. with Force and Arms, &c. the Close and House afores. brake and entred, and the Grass afores. with his Cattle was caten, trodden down, and consumed, in Manner and Form as the afores. *Nicholas* above against him hath declared. And they pray the advice of the Court of the Lady the Queen here; and if upon the whole Matter aforesaid found, it shall seem to the Court of the Lady the Queen here, that the Entry of the afores. *Henry*, into the Tenements afores. with the Appurtenances, upon the possession of the said *Nicholas*, be a good and lawful Entry in Law, then the said Jurors say upon their Oath, that the afores. *Henry* is not guilty of the Trespass aforesaid, in Manner and Form as the said *Nicholas Wolfe*, now Plaintiff, above in Pleading hath alledged; and if upon the whole Matter afores. it shall seem to the Court of the Queen here, that the Entry of the aforesaid *Henry Shelley* now Defendant, into the Tenements afores. with the Appurtenances, upon the Possession of the afores. *Nicholas* be not a good and lawfully Entry in Law, then the Jurors say upon their Oath, That the afores. *Hen. Shelley* now Defendant, is guilty of the Trespass afores. in Manner and Form as the afores. *Nicholas Wolfe* above against him complaineth; and they assess the Damages of the said *Nicholas*, by occasion of that Trespass, above his Costs and Charges by him about his Suit in this part expended to 20 Shillings, and for his Costs and Charges to 40 Shillings. And because the Court of the Lady the Q. here, of giving their Judgment thereof is not yet advised, Day is given to the Parties aforesaid until the Morrow of the *Holy Trinity*, to hear their Judgment thereof, because the Court of the L. the Q. here thereof not yet, &c.

At which Day before the Lady the Queen at *Westminster* come the Parties aforesaid, by their Attornies aforesaid; And because the Court of the Lady the Queen here of giving their Judgment is not yet advised of and upon the Premisses, Day is given to the Parties aforesaid, before the Lady the Queen at *Westminster*, until *Monday* next after 8 Days of *St. Michael*, to hear their Judgment thereof, because the Court of the Lady the Queen here thereof not yet, &c. At which Day before the Lady the Queen at *Westminster*, come the Parties aforesaid, by their Attornies aforesaid; And because the Court of the Lady the Queen here is not yet advised of giving their Judgment of and upon the Premisses, Day thereof is given to the Parties aforesaid, before the Lady the Queen at *Westminster*, until *Monday* next after 15 Days of *St. Hillary*, to hear their Judgment thereof, &c. because the Court of the Lady the Queen here thereof not yet, &c. At which Day before the Lady the Queen at *Westminster*, come the Parties aforesaid, by their Attornies aforesaid; And because the Court of the Lady the Queen here of giving their Judgment of and upon the Premisses is not yet advised, Day is given to the Parties aforesaid, before the Lady the Queen at *Westminster*, until *Wednesday* next after 15 Days of *Easter*, to hear their Judgment thereof, &c. because the Court of the Lady the Queen here thereof not yet, &c. At which Day before the Lady the Queen at *Westminster*, come the Parties aforesaid, by their Attornies aforesaid; And because the Court of the Lady the Queen of giving their Judgment of and upon the Premisses is not yet advised, Day is given to the Parties aforesaid, before the Lady the Queen at *Westminster*, until *Friday* next after the *Morrow* of the *Holy Trinity*, to hear their Judgment thereof, because the Court of the Lady the Queen here thereof not yet, &c. At which Day before the Lady the Queen at *Westminster*, come the Parties aforesaid, by their Attornies aforesaid. (a) Upon which being seen, and by the Court of the Lady the Queen here, all and singular the Premisses fully understood, and mature Deliberation thereof being had, for that it seemeth to the Court of the said Lady the Queen here upon the whole Matter aforesaid, in form aforesaid found, that the aforesaid Entry of the aforesaid *Hen. Shelley* now Defendant, into the Tenements aforesaid, with the Appurtenances, upon the Possession of the said *Nicholas*, is a good and lawful Entry in Law; therefore it is granted, that the aforesaid *Nicholas Wolfe* take nothing by his Bill aforesaid, but for his false Clamour be in Mercy; and the aforesaid *Henry Shelley* go thereof without Day, &c.

(a) 1 Siderf. 70.
 1 Bullfr. 125,
 126, 179.
 3 Bullfr. 92,
 93, 94.
 Noy 77.
 Latch 33,
 76, 188.
 Poph. 203, 312.
 N. Ben. 148.
 pl. 226.
 Palm. 260.
 Jenk. Cent. 13.
 Hob. 17, 19.
 194, 637.
 Yelv. 130.
 Cr. Eliz. 145.
 Cr. Jac. 386,
 632, 636.
 Cr. Car. 442,
 443.
 Post 119. 6.
 Stat. 16 & 17.
 Car. 2. c. 8.
 Stat. 22 & 23.
 Car. 2. cap. 4.
 1 Rolls Rep.
 278, 279.
 Antea 22. a.
 34. a. 40. a.
 75. a.
 1 Rolls Ab.
 771, 774.
 Misericordia
 sine die.

SHELLEY'S Case.

Trin. Term. 23 Eliz. in C. B.

1 And. 69.
Moor 136.
Jenk. Cent. 249.
Dyer 373.
pl. 15

Nicholas Wolfe brought an *Ejectiōne firmæ* of certain Land in *B.* in the County of *Suffex*, against *Henry Shelley*, Esq; Defendant, and declared on a Lease by *Richard Shelley*, Esq; to which the Defendant pleaded, Not guilty. And a special Verdict was found to the Effect following, *viz.* That *Edward Shelley* and *Joan* his Wife were seised of the Manor of *Barhamwick*, whereof the said Land, wherein the said Ejectment was supposed, was and is Parrel, in special Tail, that is to say, to them and to the Heirs of their two Bodies lawfully begotten, and shews how, the Remainder to the said *Edward* and his Heirs; and it was further found that the said *Edward* and *Joan* had Issue *Henry* their eldest Son, and the said *Richard* their younger Son, and afterwards the said *Joan* died, and the said *Henry*, having Issue *Mary* yet living, died in the Life of the said *Edward*, his Wife then big with Child of the said *Henry* the now Defendant. And afterwards the said *Edward Shelley* by Indenture bearing Date the 25th of *September* in the first and second Year of the late King and Queen *Philip* and *Mary*, and first delivered the sixth Day of *October* following, did covenant with *Cowper* and *Martin* to suffer a Recovery of the said Manor amongst other Things; and that the said Recovery should be to the Use of the said *Edw. Shelley* for the Term of his Life, without Impeachment of Waste; and after his Decease to the Use of *Mr. Carill* and others for 24 Years, and after the said 24 Years ended, then to the Use of the Heirs Males of the Body of the said *Edw. Shelley* lawfully begotten, and of the Heirs Males of the Body of such Heirs Males lawfully begotten; and for Default of such Issue, to the Use of the Heirs Males of the Body of *John Shelley* of *Michelgrove*, &c. It was also found that the said *Edw. Shelley* the 9th Day of *October*,

October, being the first Day of the Term, between the Hours of (a) Five and Six in the Morning died, and afterwards the Recovery passed the same Day with a Voucher over, and immediately after Judgment given, an *Habere facias seisinam* was awarded, the Wife of the said *Henry Shelley* being at that Time great with Child with the Defendant. And afterwards, that is to say, the 19th Day of *October* next following the Recovery was executed; and afterwards, the Fourth Day of *December* then next following, the Wife of the said *Henry* was delivered of the said *Henry* now Defendant. And it was likewise found that the said Manor was in Lease for Years at the Time of the said Judgment and Recovery, by Force of a Lease made long before the Original Writ purchased, upon which the said Recovery was had: And that the said *Richard Shelley*, second Son of the said *Edward Shelley*, and uncle to the said Defendant, entered, and made a Lease to the said *Nicholas Wolfe* now Pl. in the *Ejectione firmæ*; and that the said *Henry Shelley* the Defendant entred upon the said *Nicholas Wolfe* and did eject him. And upon the whole Matter aforesaid the Jurors pray the Advice and Judgment of the Court, if the Entry of the said *Henry* the Defendant was lawful or not; and if by the Judgment of the Court, the Entry of the said *Henry* should be deemed unlawful, then the Jury found that the Defendant was guilty, and assessed Damages: And if the Entry of the Defendant should be deemed by the Court to be lawful, then they found for the Defendant that he was not guilty, &c.

(a) 1 And. 169.
Moor 137, 138.
Palm. 312.
1 Syd. 229.
Jenk. Cent.
249.

This Case was divided into four principal Questions: Of which,

1. The first was, If (b) Tenant in Tail suffers a common Recovery with a Voucher over, and dies before Execution, if Execution may be sued against the Issue in Tail.

(b) Moor 137.
Co. Lit. 361. b.
Postea 106. a.

2. The second, if Tenant in Tail makes a Lease for Years, and afterwards suffers a common Recovery, if the Reversion be presently by Judgment of Law in the Recoveror before any Execution sued.

3. The third, If Tenant in Tail having Issue two Sons, and the elder dies in the Life-Time of his Father, his Wife *privement enseint* with a Son, and then Tenant in Tail suffers a common Recovery to the Use of himself for Term of his Life, and after his Death to the Use of *A.* and *C.* for 24 Years, and after to the Use of the Heirs Males of his Body lawfully begotten, and of the Heirs Males of the Body of such Heirs Males lawfully begotten, and presently after Judgment an *Habere facias seisinam* is awarded, and before the Execution, that is to say, between five and six in the Morning of the same Day, in which

which the Recovery was suffered, Tenant in Tail dies, and after his Death and before the Birth of the Son of the elder Son, the Recovery is executed, by Force whereof *Richard* the Uncle enters, and after the Son of the elder Son is born, if his Entry upon the Uncle be lawful or not.

(c) *Anderf.* 70. Moor 137, 139. 4. The fourth and last Point, If the Uncle in this Case may take as a (a) Purchaser, for as much as the elder Son had a Daughter which was Heir general and right Heir of *Edward Shelley*, at the Time of the Execution of the Recovery.

(b) Moor 137. And this Case was argued by (b) *Anderf.* the Queen's Serjeant, and *Gawdy* and *Fenner* Serjeants, for the Pl. and by *Popham* Solicitor General, *Cowper* and *Coke* for the Def.

1 Point.

(c) Moor 137, 140. *Postea* 96. a. 106. a. Co. Lit. 361. b.

And as to the first Point, the Plaintiff's Counsel argued, that (c) Execution might be sued against the Issue in Tail, and their principal Reason was, because the Judgment given against the Tenant in Tail, and the Judgment for the Tenant in Tail to have in Value against the Vouchee, bound the Right of the Estate-tail, and the Issue in Tail shall not avoid it by the Statute *de Donis conditionalibus*, because the Law adjudgeth that in Respect of the intended Recompence the Issue in Tail was not prejudiced: As if Tenant in Tail grant a Rent for the Release of one who hath a Right to the Land, it shall bind the Issue in Tail, because it is for the Benefit of the Issue, and so not restrained by the said Act, as it is agreed in (d) 44 E. 3. 21. b. *Octavian Lumbard's* Case. And if the Recovery, upon which Execution is had in the Life of the Tenant in Tail, shall not be a Bar to the Issue, it would be mischievous and a great Impeachment to common Assurances of Lands. And further it was said, that the Right of the Estate-tail was bound by the Judgment and not by the Execution; for if the Right of the Estate-tail was not bound by the (e) Judgment, it could not be bound or barred by the Execution had afterwards.

2, *Postea* 96. b.
 10. *Postea* 436. d.
 466. a. Co.
 Lit. 343. b.
 10 Co. 37. b.
 1 Roll. 842.
 Br. Charge 4
 Br. Tail 6.
 Dr. & Stud. 49. a.
Manxel's Case
 14. b.
 2 *Brownl.* 67.

(e) 7 Co. 39. a.
 10 Co. 38. a.

2 Point.
 2 *Bulstr.* 43.
Raym. 349.
Hard 209, 384.
 3 *Ke.* 287.
 (f) *Postea* 96. b.
 1 *Roll.* 270.
 Moor 141.
Dv. 376. pl. 26.
 3 *Ke.* 699.

(g) Co. Lit.
 218. a
 2 Co. 53. b.

3 Point.

(b) *Post.* 97. b.
 306. b.

As to the second Point, they conceived, that it was not any Question, but that the Recoverors had not the Reversion presently by the (f) Judgment, notwithstanding the Lands were in Lease for Years; for they said that the Judgment was, that the Demandant should recover Seisin of the Land which was but executory, and could not be executed until Execution, Entry, or Claim. As if a Common or Reversion, or any other Thing which lieth in Grant be granted upon Condition, if the Condition be broken, the Thing granted is not in the Grantor before Claim, for it was said, that when a Man may enter, or claim, the Law will not adjudge him in Possession until (g) Entry or Claim.

As to (b) the third Point, which was the great Doubt of the Case, they argued, that the said *Richard* the Uncle was in by Purchase, & *ex consequenti* the Entry of the Defendant upon him was not lawful; and this in Effect was their principal Reason:

Argument,

Argument, That which originally vests in the Heir, and was not in the Ancestor, vests in the Heir by Purchase.

But this Use (a) originally vested in *Richard Shelley*, (a) Moor 137. and never was vested in *Edward Shelley*.

And therefore the Use vested in *Richard Shelley* by Purchase.

That the Use never vested in *Edward Shelley* they said was manifest, for before the Recovery executed no (b) Use could (b) Anderson. be raised, for the Use ought to be raised out of the Estate of the Recoverors, but the Recovery was not executed in the Life of *Edward Shelley*, and therefore no Use could rise during his Life. And *Anderson* Serjeant said, it was impossible that *Richard Shelley* should be in by Descent, because no Right, Title, Action, Use, or other Thing touching the Uses limited by the said Indentures did descend to *Richard*, but only a Thing intended to him, which Intent in his Life received no Perfection; and therefore this Case was not like any Case where a Right, Title, Action, Use, or other Thing descendeth from the Ancestor to the Heir, but is like the Case in (c) 5 E. 4. 6. a. where the Wife consents to a Ravisher, having Issue a Daughter, the Daughter enters by the Statute of (d) 6 R. 2. a Son is afterwards born, he shall never devest it, for it vested in the Daughter by Purchase; so is the Case agreed in 9 H. 7. 25. a. If a Lease be made to one for Life, the Remainder to the Right Heirs of *J. S.* if *J. S.* dies having a Daughter, his Wife with Child with a Son, the Daughter claims it by Purchase, and therefore the Son born after shall never devest it; but they relied principally upon the Case (e) in 9 H. 7. 25. a. that if a Condition descends to the Daughter, and she enters for the Condition broken, the Son born afterwards shall never enter upon her, and yet there she is in by Descent, and the Title of her Entry, that is to say, the Condition she hath as Heir: And yet because she was the first in whom it vested, the Son born after shall not devest it, which is a stronger Case than our Case at the Bar.

And further it was said by the Plaintiff's Counsel, that although the Recovery had been executed in the Life of *Edward Shelley*, yet ought the Heir Male to take by Purchase; for they said, that the Manner of the Limitation of the Uses is to be observed in this Case, which is first to *Edward Shelley* for the Term of his Life, and after his Death to the Use of others for the Term of 24 Years, and after the 24 Years ended, then to the Use of the Heirs Males of the Body of the said *Edward Shelley* lawfully

(c) 3 Co. 39. b.
61. b. Fitz.
Affize 27.
Plowd. 43. a.
56. b.
Br. Done 28.
Br. Entre
cong. 94.
9 H. 7. 25. b.
Postea 98. b.
137. b.
(d) Br. Entre
congeable 94.
Plowd. 42. b.
45. b.
2 Inst. 434.
Long quinto
E. 4. 58. a.
1 H. 6. 1. a.
Fitz. Corone 1.
Bro. Rape 4.
Br. Appeal 48.
Br. Parliamear
89. Stamf.
Coron. 82.
6 R. 2. cap. 6.
(e) Moor 150.
Postea 99. a.
8 Co. 76. a.
Hob. 3.
Cro. Car. 87.

(a) 1 Au-
derf. 70.
Moor 138, 140.
Cro. Car. 24.
1 ottea 104. a.

lawfully begotten, and of the Heirs (a) Males of the Body of the said Heirs Males lawfully begotten; in which Case they said, that if the Heirs Males of the Body of *Edward Shelley* should be Words of Limitation, then the subsequent Words, viz. and of the Heirs Males of the Body of the said Heirs Males lawfully begotten, would be void: For Words of Limitation cannot be added and joined to Words of Limitation, but to Words of Purchase. And they said, that so far as those Words, Heirs Males of the Body of *Edward Shelley* might be Words of Purchase, that in this Case the Law will construe and take them as Words of Purchase, for otherwise the said subsequent Words, (and of the Heirs

(b) Moor 138.
Co. Lit. 313. a.
6 Co. 64. b.
Cro. Eliz. 208.

Males of their Bodies) would be void. And such (b) Construction is always to be made. (of a Deed) that all the Words (if possible) agreeable to Reason and conformable to Law, may take Effect according to the Intent of the Parties without rejecting of any, or by any Construction to make them void. And therefore *Anderfson* put this Case, if a Man makes a Feoffment in Fee, to the Use of himself for Life, and after his Decease to the Use of his heirs, in this Case the Fee simple is executed; but in the same Case, if the Limitation be to the Use of himself for Life, and after his Decease to the Use of his Heirs, and of their Heirs Females of their Bodies, in this Case these Words (his Heirs) are Words of Purchase, and not of Limitation, for then the subsequent Words (and of their Heirs Females of their Bodies) would be void. So they concluded this Point, first that no Use could rise until Execution sued, no Execution was sued in the Life of *Edward Shelley*, and then it first vested in *Richard* as a Purchaser before the Son of the elder Son was born: And for the latter Reason, admitting the Recovery had been executed, notwithstanding the Heirs Males of the Body of *Edward Shelley* should take by Purchase, and so *quacunqve via data*, they concluded, that the Use first settled in *Richard Shelley* as a meer Purchaser. And (c) as

(c) Postea
106. b.

to the latter Point, which in Effect (admitting, as hath been said, that the said Words were Words of Purchase) was, that a Lease for Life is made to *A.* the Remainder to the Heirs Males of the Body of *Edward Shelley*, if in this Case *Richard* may take this Estate-tail by Purchase as Heir Male, notwithstanding his elder Brother had Issue a Daughter which is living, and who was his Heir general; they said there was no Difference as to that, where an Estate-tail is limited by Gift executed, and when by Way of Remainder, nor when the Heir Male of the Body claims by Descent, nor when by Purchase; for if an Estate had been made to *Edward Shelley*, and to the Heirs Males of his Body, in that

Case

Case *Richard Shelley* without Doubt should have had the Land by Descent, and that by a Construction on the Statute *de Donis Conditionalibus* to fulfil the Mind and Intent of the Donor.

And so it is, if I give Lands to a Man and to his Heirs Females, and the Donee hath Issue Male and Female, altho' the Female be not Heir general, yet she is Heir special to claim *per formam doni*. And this was in Effect the Substance of the three Arguments publish'd and deliver'd at large on the Plaintiff's Part before the Justices of the Queen's Bench in *Hill. and East. Terms*, in the 23d Year of the Reign of *Q. Eliz.* And on the Defendant's Part it was argued contrary. As to the (a) first Point, it was argued, that Execution could not be sued against the Issue in Tail; and therefore as it hath been agreed, that the Judgment only against the Tenant in Tail did not bind, but the Judgment to have in Recompence, *sequitur a concessis*, that the Issue in Tail cannot be barred: And for Proof that in this Case the Issue in Tail could not have any Recompence: First it was said, that if Execution could not be sued against the Issue in Tail, then the Issue could not take any Benefit of the Recompence. For it is agreed in (b) 17 E. 2. Title *Recovery in Value, Fitz. 33.* (c) 1 E. 3. fo. 12. That he who vouches shall never have Execution against the Vouchee before Execution sued against himself; so that the Judgment to recover over in Value is not material (as this Case is) unless Execution may be sued against the Issue, which cannot be in this Case. For he, who is in of an Estate in Possession by Title Paramount a Recovery, shall not be bound by the same Recovery; but the Issue in Tail in our Case is in of an Estate in Possession which he had by Title Paramount the Recovery, and therefore the Issue in Tail shall not be bound by the Recovery. In Proof of the first Proposition, it hath been adjudg'd in (d) 28 H. 8. reported by Serjeant *Bendloes*, which Case began 26 H. 8. in the Book at large, where the Case was, that an Executor having Judgment to recover a Debt due to the Testator, and dying Intestate before Execution, and the Ordinary committing the Administration of the first Testator to one, that the Administrator could not sue Execution upon that Recovery, because he deriveth his Interest from, and represents the Person of the Testator, and so before the Recovery. (e) So it is if there be two Jointenants, and one makes a Lease for Years rendring Rent, the Lessor dies, the other shall not have the Rent, because he claims by the first Feoffor which is Paramount the Lease and the Reservation: (f) So if Tenant for Life makes a Lease for Years reserving Rent, and afterwards surrenders to him in the Reversion, not being in by Force of his ancient Reversion, he can't have the Rent newly reserv'd: And in Proof that the Issue in Tail was in by a Title paramount

Argument pro Defend.

(a) Co. Lit. 36 f. b. Antea 93. b. 1 And. 70. Moor 137, 139. Postea 136. a.

(b) Co. Lit. 376 b.

(c) Co. Lit. 376. b.

(d) Wentw.

148, 149. Yelv. 33, 83. 1 Jones 214, 248. Moor 4. 139, 680.

O. Bc. dl. 2 pl. 5. N. Bendl. 18.

pl. 24. 5 Co. 9. b. Cro Jac. 4.

394. Cro. Car. 167, 227, 451.

2 Sand. 149. 1 Roll 890, 907. 1 Syd. 29.

March 9. 1 And. 23.

Finch 4. b. 5. a. 17 Car. 2.

c. 8. Swinb. 323. Cro. El.

435. (e) Mo. 139.

Finch 4. b. Co. Lit. 185. a.

318. a. Poph. 145.

Dyer 187. pl. 5. 1 Roll Rep.

309. Cr. Jac. 417.

(f) Moor 94, 139. 11 Co. 18.

a. Co. Lit. 185. a.

the.

the Recovery, he said, That the Issue in Tail shall avoid all Charges, Leases, and other Incumbrances made by his Ancestor, because he claims *per formam doni*. And if Tenant in Fee simple makes a Lease for Life, and suffers a Recovery, he and his Heirs are for ever concluded; but he said, If Tenant in Tail be of a Reversion expectant on an Estate for Life, and he suffers a Recovery, and hath Judgm. to recover over in Value, yet his Issue shall avoid the Recovery, for he shall not be estopp'd, because he claims in *per formam doni*: But if Execution had been sued in the Life of Tenant in Tail, then forasmuch as the Estate-tail doth not descend to the Issue; and forasmuch as then he may sue Execution over, it is good Reason to bar the Estate-tail; but if the Issue in Tail be in by lawful Descent in Possession of the Estate-tail before the Recovery executed, then the Law seems to be otherwise. (a) *Ottavian Lumbard's Case* in 44 E. 3. which hath been cited on the other side, was not against this Opinion, for there the Issue in Tail reaped the Benefit of the Release made to his Ancestor; but in our Case, the Issue in Tail being in of an Estate-tail paramount the Recovery, cannot take Benefit of the Recompence over. And wherefore should not the Issue in Tail in this Case be at Liberty, to choose whether he will take the Estate-tail, or otherwise to admit Execution to be sued against him, and to sue Execution over in Value, as well as in 14 H. 6. fol. 2. in the Case of Exchange, in which Case altho' Assets of greater Value descend to him than the Land in Tail, yet he may choose to have the one or the other at his Election.

And if Tenant in Tail be disseised, and levies a Fine to the Disseisor without Warranty and dies, if the Issue in Tail enters and is seised by Force of the Tail before all the Proclamations are made, altho' the Proclamations be afterwards made, yet that does not bar the Issue: So if Tenant in Tail levies a Fine and disseises the Conusee, and (b) dies before all the Proclamations are made, and after the Proclamations in the Time of the Issue in Tail pass, yet the Issue is not bound thereby, by the Statute of (c) 32 H. 8. and yet the Words of the Act are, That all Fines after Proclamations, &c. shall bar, &c. But it hath always been held, if the Issue in Tail be remitted and seised by Force of the Tail before the Bar be compleat, that is to say, before the proclamation be pass'd, the Issue is not bound; so in this Case, before Execution sued, the Issue in Tail is seised by Force of the Tail, and in *per formam doni* before the Bar is compleat, and therefore the Execution cannot be sued against him, nor can any Bar after the Death of his Father be made to the Estate-tail which is descended to him in Possession. And it is agreed in (d) 7 E. 3. 335. that if a Disseisor at the Common Law before the Statute

(a) 44 E. 3. 21.
b. 3 Keb. 287.
Hard 207. 384.
How. 436. b.
466. a. How
Manvel's Case
14. b. 15. a.
Styl 320.
Antea 94. a.
Co. Lit. 343. b.
Br. Ch'ge 4.
Br. Tail 6.
1 Rol. 812. 10
Co. 37. b. Dr.
& Stud. 49. a.
2 Brownl. 67.
2 Bulltr. 43.
Raym. 349.

(b) Poph. 63.
1 And. 43.
2 And. 177.
Owen 75.
(c) 32 H. 8. cap
36. Co. Lit.
262. a. 3 Co.
51 a. 87. a.
10 Co. 50. a.

(d) Plowd. 357.
Fitz. Contin.
claim. 7.

of Nonclaim had levied a Fine, or suffer'd Judgment in a Writ of Right, until Execution sued, they were not Bars, for the Year shall be accounted after the Transmutation of the Possession by Execut. of the Fine or Recovery; and so it is said in *Stowel's Case*, *Plow. Com.* 357. *b.* and the Books in (a) 28 *Aff. pl.* 32. (b) 7 *H.* 4. fol. 17. *b.* *Plow. Com.* 55. *b.* 12 *E.* 4. fol. 20. *a.* were cited, that (c) Execut. upon a feigned Recovery against the Father, can't be sued against the Issue in Tail.

To the (d) second Point they argued, That forasmuch as the Land was in (e) Lease for Years, that the recovery was executed by Judgment of Law presently after the Judgment. And a Difference was taken when Lands were in the Possession of the Tenant at the Time of the Judgment, and when the Lands were in Lease for Years. And their Reason of the Difference was, because the Recoverers in the one Case may sue Execution, and in the other Case may not; and because the Recoverers can't sue Execution, the Law will therefore adjudge him in Execution presently; the Reason thereof is, that otherwise the Lessee during the Term might commit Waste, and would be (f) punishable by the Recoverer, but if the Recoverer may enter or sue Execution, then he may prevent it. And therefore if a Fine *sur cognisance de droit tantum* be levied of Land in Possession, the Cognisee hath nothing before Entry, as it is agreed 48 *E.* 3. fo. 15. *b.* (g) 10 *H.* 6. fo. 16. *b.* and *Littl.* in his Chap. of Attornment (b) fo. 131. *b.* But if a Fine *sur cognisance de droit tantum* be levied of a Reversion upon an Estate for Life or Years, or of a Seignory, or any other thing which lieth in Grant, there the Reversion, or thing which lieth in Grant passeth presently. And it was said, that a common Recovery is in Nature of a common Conveyance, and so it appears, that a Reversion or Thing which lieth in Grant is more easily transferr'd from one Person to another, than an Estate of Freehold in Possession. A Condition is Executory as well as a Judgment, but if the Feoffor cannot enter, there the Law will adjudge him in Possession presently. And therefore it is holden in (i) 20 *H.* 7. fo. 4. *b.* 20 *E.* 4. fo. 19. *a.* & 22 *E.* 4. that if the Condition be collateral, and the Feoffee makes a Lease back again for Years to the Feoffor, and then the Condition is broke, the Law will adjudge the Feoffor in of Fee-simple immediately, because he can't enter; and yet in that Case he may say, that forasmuch as he can't enter, therefore he ought to make a Claim; yet the Law in that Case requires no Claim to be made; but in the Case before it is otherwise, where no Lease for Years had been made back again, and the Reason may be for the Mischief before-mentioned.

The Case of *Littleton* (k) fol. 84. was likewise cited, where *Littleton* is of Opinion, that in the Case of a Condition the Fee-simple shall be re-vested again in the Lessor, because he cannot enter, and the Law will adjudge

Co. Lit. 262.

(a) Br. Fauxi-
nier de Reco-
very 19 Fitz.
Affize 271.(b) Br. Fauxi-
er de Recove-
ry 10. Br. Re-
mitter 9.(c) Co. Lit. 361.
b. Dyer 35. pl.
28. Dyer 376.
pl. 26. 10 Co.
38. a. 12 E. 4.'5. a.
(d) Antea 24.a. b. Poitea 106.
b.(e) Palm. 256.
Moor 139.

(f) Moor 139.

Co. Lit. 266. b.

(g) Br. At-
tornm. 42.
Fitz. Attornm.(h) Lit. sect.
579, 580. Co.
Lit. 319. b. 320.
a. Vaugh. 39.(i) Poitea 174.
a. Br. Condi-
on 167. 8 F. 7.
8. a. 4 Co. 53.
a. Co. Lit. 218.
a. b. 1 Roll.
939. 11 H. 7.
21. b.(k) Lit. 81. b.
sect. 350 Co.
Lit. 216. b.

judge him in Possession without Entry or Claim. It was likewise said, that those Things which lie in Grant, as in the Case before remember'd of the Fine, they pass to the Conu-see immediately, by the Fine levied: So in the Case of a common Recovery (which is now become a common Assurance and Conveyance) such Things which lie in Grant are in the Recoverer by the Judgment. And therefore there are some Opinions in the Books in (a) 22 *Aff. pl.* 84. (b) 45 *E. 3. fo.* 26. b. & 30 *E. 3. fo.* 33. that if a Man hath Judgment to recover a (c) Rent, or Common, or any Thing which lieth in Grant, there the Thing so recovered is in the Recoverer by the Judgment, for the Books say, that the Demandant is in Seisin immediately by the Judgment. And they cited the Case in (d) 27 *H. 8. fo.* 7. a. which is direct in the Point, that the Recovery is executed immediately by the Judgment; the Land being in Lease for Years; so they said, first, that Execution could not be sued against Issue in Tail: Secondly, if it was necessary that Execut. should be had in the Life of *Edward Shelley*, that it was executed by the Judgment of the Law: And if the Judgment was executed by Operation of the Law, then the Estate-tail to his Heirs Males of his Body was in *Edward Shelley*, and consequently the Entry of the Defendant was without Doubt lawful.

But for the Argument of the (e) third Point, which was the great Doubt in the Case, admitting the Law in both the said Points to be against the Defendant, that is to say, that Execution might be sued against the Issue in Tail; and that the Recovery was not executed in the Life of *Edw. Shelley*, but after his Death, and before the Defendant was born: yet the Defendant's Counsel argued that the Defendant's Entry was lawful. The first Reason in Effect was as followeth: When the Law prescribes a Means to perfect or settle any Right or Estate, if by the Act of God this Means in some Circumstance (as in our Case in Time) becomes impossible, yet no Party who was to have received Benefit, if the Means had been with all Circumstances executed, shall receive any Prejudice for not executing it in such Circumstance which became impossible by the Act of God, if every thing be performed without Laches that the Parties might perform; for it would be unreasonable that those Things which are inevitable by the Act of God, which no Industry can avoid, nor Policy prevent, should be construed to the Prejudice of any Person in whom there was no Laches. And therefore the (*prescript*) general Rule of Law is, that altho' a Man shall not be (f) Tenant by the Curtesy without actual Seisin; yet of a Rent, or of an Advowson, if the Wife dies before the Rent-Day, or before the Avoidance, he shall be Tenant by the Curtesy, as it is agreed in 7 *E. 3.*

(a) Fitz. Affize 228. Br. seisin. 36.

(b) Co. Lit. 34. b. Antea 94. b.

(c) 1 Roll. 681

(d) Br. Affize 1. Br. Resceit 1.

(e) Antea 94. a. b. 95. a. b. Poitea 106. b.

(f) 6 Co. 68. 2. Co. Lit. 29. a. F. N. B. 149. a. Fitz. Descend 3. Fitz. Bar. 293. Peik. sect. 468. 469. Dr. & Stud. 84. a. Br. Tenant per le Courtsey 4.

66. a. b. § 3 H. 7. 5. a. for by the Act of God it is become impossible for him to have actual Possession. Also if Lessee for the Term of another Man's Life be disseised of certain Lands, and the Disseisor takes the Profits of them, now if the Disseisee will recover the mean Profits, the Means which the Law prescribes for it, is, That the Tenant for the other Man's Life shall re-enter, and then he shall recover all the mean Profits in an (a) Action of Trespass; but if the Means become impossible by the Act of God by the Death of the *Cestuy que vie*, so that he cannot re-enter, then he shall have an Action of Trespass without any Re-entry, because the Means is become impossible by the Act of God, viz. the Re-entry, as it is held in (b) 38 H. 6. fo. 28. a. Also if a (c) Lessee covenants to leave a Wood in as good Blight as the Wood was at the Time of the Lease, and afterwards the Trees are blown down by Tempest, he is discharg'd of his Covenant *quia (d) impotent' excusat legem*, as it is held in 40 E. 3. 6. a. So if the (e) Father be enfeoffed with Warranty to him and to his Heirs, and afterwards the Father enfeoff his Son and Heir apparent with Warranty, and afterwards dies; now in Regard the Act of God hath destroy'd the Warranty between the Father and the Son, the Son shall vouch as Heir, altho' he is in by Purchase, because the Act of God hath determin'd the Warranty between the Father and the Son, as it is adjudg'd in (f) 43 E. 3. 23. b. § 30 E. 3. 22. So in this Case, when *Ed. Shelley* died the Morning of the same Day that Judgment was given, immediately upon the Judgment the Recoverers sued forth an *Habere fac' seisinam*, so that no *Lackess* was in any Party, but it became impossible by the Act of God that Execution cou'd be had in the Life of *Edw. Shelley*; and therefore Execution being had after his Decease, shall not prejudice the Son born after, who at that Time was *in utero matris*. The 2d Reason was, because the Use vested in *R. S.* altho' not directly by Descent as to have his Age, or to toll an Entry, &c. yet in the Nature and Degree of a Descent by Reason of the original Act begun in the Life of the Ancestor; and their Reason in Substance was to this Purpose. Where the Heir takes any thing which might have vested in the Ancestor, the Heir shou'd be in by Descent; then altho' it first vested in the Heir and never in the Ancestor, yet the Heir shall take it in the Nature and Course of a Descent; but in the Case here the Use might have vested in *E. S.* and if it had vested in *E.* then *R. S.* would have taken it by Descent, and therefore *R.* in this Case ought to take this Use in the Nature and Course of a Descent. And therefore if a Fine had been levied *sur cognisance de droit tantum* to *E. Shelley* in Fee, and after, and before Execution, *E.* had died; and *R.* had entern'd before *H.* was born; now altho' *R.* be the first who entreteth, yet forasmuch as this Fine was levied to his Ancestor and his

(a) Co. Lit. 257.
a. 13 H. 7. 15. b.

(b) 1 Roll Rep.
147.

(c) Palm. 549.
Hardr. 387.

Allen 27.
(d) Hard 387.

4 Co. 11. a.
5 Co. 22. a.

6 Co. 21. b. 68.
a. 9 Co. 73. a.

10 Co. 139. b.
Co. Lit 29 a.

(e) 11 Co. 81.
a. Co. Lit.

384 b 2 Roll,
742. 1 Roll.
Rep. 180.

(f) Starham
Age 2.

Lucas R. 421.

Heirs, so that he claimeth by Words of Limitation; and forasmuch as the first and original Act was done in the Life of the Father, and because it might have vested in the Ancestor, and if it had vested in the Ancestor, it had descended, for this Cause *Richard* had taken it in Course and Degree of a Descent, and the Entry of the Defendant had been lawful upon him. And yet in that Case *R.* should not have been in-

(a) Co. Lit. 76. directly by Descent, either to be in (a) Ward, or to have had his Age, or to have tolled the Entry of one who had Right; but otherwise it is when the Remainder is limited to the right Heirs of *J. S. &c.* for there it beginneth in the Son by Name of Purchase, and never could have vested in the Brother, as the Book in (b) 9 *H.* 7. 24. cited by the other side is agreed. So in the Case of Ravishment (c) 5 *E.* 4. fo. 6. which was cited on the other side; for in these Cases and all the others which have been put by the other side, the Estate vested originally by Purchase, and no Beginning was in the Life of the Ancestor, which could ever have vested in the Ancestor. And 16 *E.* 3. *Tit. Age Br.* 51. if *R. S.* had a Seigniorship by Descent, and afterwards the Tenancy had escheated, and after the Son is born, in that Case the Son shall enter upon him; for altho' the Tenancy first vested in him, and never was in the Father, yet because the original Cause, viz. the Seigniorship, was in the Father, therefore the Son shall enter upon the Uncle. And *Chapman's Case* in *Plowden's* new Reports, fo. 284, 290, &c. a. was cited, for there it appears, that (e) Covenant was made with *Chapman*, that he would make a Lease for Years to *Chapman*, &c. and before the Lease was made *Chapman* died, and then the Lease was made to his Executors, so that the Term did first commence in the Executors; yet forasmuch as the Covenant made to the Testator was the Cause of the making of the Estate to the Executors, for that Reason the Term was Affests in the Executors Hands, as well as if it had been made to the Testator himself. So in our Case, altho' the Land first vested in *R.* yet it vested by Reason of the Recovery had against *E. S.* and the Indenture made by him, and therefore *R.* shall be in Course of Descent as well as the Executors in the Course of Executors.

(f) Postea 105. More over admitting that *E. S.* had (f) exchange'd certain Land with another, and the other had enter'd into the Land of *E. S.* but *E. S.* had died before Entry, the Law is clear that the Heir of *E. S.* may enter into the Land taken in Exchange if he will. And so *Perkins* clearly takes it fol. 57. a. Then admitting that *R. S.* had enter'd into the Land taken in Exchange, now he is the first in whom the Land vests, but because it might have vested in *E. S.* and because he came to it by Words of Limitation, the Son of the elder Son born afterwards shall enter upon him: And yet

no Right, Title, Use, nor Action descends in this Case; for at his Election the Exchange might have been avoided: And so it is, if a Man seised of the Manor of *S.* covenants with another that when *J. S.* shall enfeoff him of the Manor of *D.* then he will stand seised of the Manor of *S.* to the Use of the Covenantee and his Heirs; the Covenantee dies his Heir within Age, *J. S.* enfeoffeth the Covenantor, in this Case it was holden in *(a)* *Wood's Case* 3 *Eliz.* in the Court *(a)* 2 Roll. 794. of *Wards*, that the Heir shall be adjudg'd in, in Course and 2 Roll. Rep. 13. Nature of a Descent; and yet it was neither a Right, Title, Hob. 136. Cro. Use, nor Action that descended, but only a Possibility of an Use, which could neither be released nor discharged; yet it Jac. 409, 512. might, if the Condition had been perform'd, have vested in 1 Vent. 373. the Ancestor, and then the Heir had claimed it by Descent. Winch 55. And therefore in that Case the Heir was not in by Purchase, Lucas 421, & but in by Course of Descent. And admitting that in all the 425. Cases which have been put, as in the Case of Ravishment, and in the Case of the Remainder, &c. he who might first enter dies before Entry, and the younger Son enters, and afterwards the Son of the elder Son *(b)* is born, now it is clear, *(b)* Postea 100. that the Son of the elder Son shall devert the Land from the a. Co. Lit. 11. Uncle, for it might have vested in the Ancestor; and as to b. the Case which hath been urged by the Plaintiff's Counsel in *(c)* 9 *H. 7.* 25. of the Condition: The Solicitor and *Coke* said, *(c)* Anrea 95. that it might be allowed for Law, if the true Sense there a. 98. b. of be apprehended. And therefore if the Condition be, that the Feoffor or his Heirs pay the Sum of 20 *l.* or do any Act before a Day certain that they shall re-enter, in that Case if the Father dies before the Day of Payment, and the Daughter to save the Inheritance pays the Money, or satisfies the *(d)* Cro Car. 87. Condition; in these Cases peradventure the Son shall not Kirton's Case. devert it, for if the Daughter had not perform'd the Con- Hub 3. dition, the Land had been utterly lost. And therefore, in that Case a good Argument may be made, that the Daughter may detain the Land, for *(d)* *qui sentit onus, sentire debet & commodum.* But if the Condition was to be perform'd on the Part of the Feoffee, or broken in the Life of the Feoffor, then they said the Law was clearly otherwise, for the Heir entring for such Condition broke shall be in *(e)* Ward, and have his Age, and no such special Reason as in the Case next before. *(e)* F. N. B. 143. q. Co. Lit. 76. b.

It was also asked, out of what Fountain this Use should rise, and who was the Mother that conceiv'd this Use? And the Indenture answers, The Recovery. For the Indentures say, that the Recovery shall be to the Uses, &c. Then it was said, If the Recovery be the Mother which conceiv'd this Use, and the Fountain out of which it rose, so far as this Recovery was had in the Life of *E. S.* altho' the Use slept, and was as *embrio in utero matris* until Execution sued: Yet the Execution

being once had, the Execution shall respect the Recovery and raise the Use, which slept before, which Use being once awaked, or raised, takes its Life and Essence from the Recovery which was had in the Life of *E. S.* And thereupon some of the Defendant's Counsel argued in this Manner, the Execution of every Thing which is executory always respects the (a) original Act or Cause executory, and when the Execution is done, it hath Relation to the Thing executory, and all makes but one Act or Record, altho' it be performed at several Times: And therefore if *A.* by Deed indented covenants with *B.* that *B.* shall recover against him the Manor of *D.* within a Year next following; and that the Recovery and Execution thereupon to be had within the said Year, shall be had to the Use of the Recoveror in Tail, &c. and after the Recovery is had within the Year, and the Execution is sued after the Year, in this Case it is clear, that altho' the Covenant is not pursued in Time according to the precise Form of it, yet the Use shall be guided by the said Indentures; so in the same Case, if the same Recovery betwixt the same Parties of the same Land was suffered after the Year, yet if no other intervenient Agreement were between the Parties, the Recovery shall be intended to be to the Uses of the Indentures. For variance in Time in such Case shall not subvert the original Agreement and Contract of the Parties. And it is held in 6 *E.* 3. 44. *b.* that if the (b) Presentment to a Church by an Usurper be in Time of War, and the Institution and Induction, which are but as Executions of the Presentment be in Time of Peace, yet it shall be avoided, for the Law regards the original Act, & *causa* & *origo est materia negotii.* If a Man (c) who is *Non compos mentis* gives himself a mortal Wound, and before he dies, he becomes of sound Memory, and afterwards dies of the same Wound; in this Case, altho' he dies of sound Memory by Reason of his own proper Wound, yet because the original Cause of his Death, *viz.* the Wound was when he was *Non compos mentis*, he shall not be *Felo de se*, because the Death, &c. hath Relation to the original Act which was the Stroke or Wound; which see 22 *E.* 3. *Titulo Corone* 244. And so it is 33 *Aff. Corone* 210. If a Servant hath an (d) Intent to kill his Master, and before Execution of his Intent goes out of Service, and being out of Service, executes his Purpose, and kills him who was his Master, this is Petit Treason, for the Execution doth respect the original Cause, which was the Malice conceived when he was Servant; and yet if the Law should adjudge and make Construction according to the several Times, then it would be plain, it would be no Petit Treason. So in our Case, the Execution of the Use relates to the Indentures and Recovery.

(a) Cro. Jac.
512.
3 Bullstr. 257.
7 Co. 38. a.

(b) 2 Roll. 351.
Mod. Rep. 230.
6 E. 3. 41.
2 Co. 93. a.
6 Co. 30. a.
F. N. B. 31. i.
Dairein Presentment 4.
7 E. 3. Dairein Presentment 2.
18 E. 2. Qu. Impedit 175.
Co. Lit. 249. b.
1 Jones 428.
(c) 3 Inst. 54.
Plowd. 260. a.
Moor 140. Fitz.
Corone 244.
Stamf. Coron. 19. b.
8 E. 2. Coron. 112.
3 E. 3. Coron. 324.
(d) 3 Bullstr. 257. 33 Aff. pl. 7. Br. Treasf. 15.
Br. Corone 116
Stamf. Coron. 10. b.
19 H. 6. 47. b.
Hale's pl. Cor. 23.
Dalt. Just. 337.
2 Inst. 20
Plowd. 250. a

It was also asked, when after that the Execution was had, so that now the Use, which before slept, is raised, what is it that governs and directs this Use? And the Answer is, The Indentures. And what is their Direction? That the said *E. S.* shall have it, and after his Death the Heirs Males of his Body, so that the Indentures direct the Use to the Heirs Males of his Body by Way of Limitation of Estate, and not by Way of Purchase. And from thence this Reason was collected; the Indentures direct and govern the Manner and Quality of the Use, but the Indentures direct that the Heirs Males of the Body of *Edw. Shelley* shall take it by Limitation of Estate, and not by Name of Purchase; and therefore *R.* ought to have it as Heir by Limitation of Estate, and not by Name of Purchase; for when the Execution was had, the Indentures immediately guided the Use to *R.* because he was at that Time Heir Male of the Body of *Edw. Shelley*, which *R.* is not Heir after the (a) Birth of the Son of the elder Son. Further it was said, admitting all the Matter before would not serve for the Defendant (which the Defendant's Counsel held strongly it would) yet it is to be considered, in this Case, that the Estate vests in *R.* by way of Limitation of Use, and not by any Conveyance by the Common Law in Possession: And therefore admit our Case had been before the making of the Stat. of (b) 27 H. 8. and that the Recoverors had sued Execution after the Death of *Edward*, and before the Son of the elder Son was born, and then the Son of the elder Son had been born; in that Case it was asked, Which of them should have the Subpœna? And the Defendant's Counsel conceived that the Son of the elder Son, altho' the Use did first attach in the Uncle, should have the Subpœna. For if the Intent of *Edw. Shelley* may appear to the Court, that the Son of the elder Son should have this Use, then that is the Rule by which the Use is to be guided and directed. For at the Common Law the Intent of the Parties was the Direction of the Uses, for they were only determinable, and to be adjudged by the Chancellor who is Judge of Equity, and that in Chancery, which is a Court of Conscience: And as *Braſton* saith, fo. 18. *Nihil tam (c) conveniens est naturali æquitati quam voluntatem domini volentis rem suam in alium transferre ratam haberi.* And therefore in Proof, that Uses are directed by the Intent and Meaning of the Parties, divers Cases were cited, 31 H. 6. *Titulo (d) Subpœna Fitzherbert* 23. *Statham Conscience* 1. A Man being *Cestuy que use*, and having an only Daughter, declared his Intent and Meaning to the Feoffees, that after his Decease his Daughter should have his Land. And therefore a Question

Rep. Q. A.
182, 183, &c.

(a) Antea 29.a.
Co. Lit. 11. b.

(b) 27 H. 8.
cap. 10.
Co. Lit. 272. b.
237. a.

(c) Co. Lit.
36. a.
6 Co. 64. b.

(d) Dyer 32.
pl. 37.

arose in Chancery, whether he might revoke this Limitation of the Use made to his Daughter; and in arguing this Case, *Fortescue* held, That if *Cestuy que use* hath Issue a Daughter, and being sick declares his Intent to his Feoffee, that his Daughter shall have his Land after his Decease; and after he recovers his Health, and hath Issue a Son, now he said it is good Conscience that the Son should have the *Subpœna*, for he is his Heir. Note the Reason of *Fortescue*, because he is his Heir. And there *Fortescue* said, that (a) *Conscientia dicitur a con & scio, quasi simul scire cum Deo*, that is to say, the Will of God as near as Reason wills. We find likewise in divers other Cases in our Books, that (b) the Intent of the Parties is the Direction of Uses, by a conscionable and favourable Construction. And therefore it is held in 7 H. 6. fol. 4. b. if a Man be seised of Land on the Part of his (c) Mother, and makes a Feoffment in Fee reserving Rent to him and (his) Heirs, in that Case, by the Rule of Com. Law, as *Littleton* says, the Rent shall go to the Heir on the Part of the Father; but if a Man be seised of Lands on the Part of the Mother, and makes a Feoffment in Fee to the Use of him and his Heirs, the Book is directly agreed in 5 E. 4. fol. 7. b. that this Use shall not go to the (d) Heir at the Common Law, but forasmuch as the Land and Living move from the Part of the Mother, therefore in Equity the Use which is nothing but a Trust and Confidence, should go also to the Heirs on the Part of the Mother. *Littleton* likewise says, that a Man shall not have a Fee-simple by a Feoffment or Grant without these Words (his Heirs.) And yet the Law is plain, that if a Man had before the Statut. of (e) 27 H. 8. bargain'd and sold his Land for Money without these Words (his Heirs) the Bargainee hath a Fee-simple. And the Reason is, because by the Common Law nothing passeth from the Bargainor but an Use, which is guided by the Intent of the Parties, which was to convey the Land wholly to the Bargainee; and forasmuch as the Law intends that the Bargainee paid the very Value of the Land, therefore in Equity, and according to the Meaning of the Parties, the Bargainee had the Fee-simple without these Words (his Heirs) as it is held in 27 H. 8. fol. 5. 4 E. 6. Br. *Estates* 78. 6 E. 6. and in the Time of H. 8. Br. *Conscience* 25. so in our Case, altho' the Use first vested in the Uncle, admitting the Case to be before the Stat. of 27 H. 8. yet seeing that the Intent of E. S. was to advance the Son of his elder Son, and since in Equity the general Heir is to be favoured, therefore the Son after born shall have the *Subpœna*.

Moreover the Rule in Law is, that if an (f) Estate be limited to two, the one capable, and the other not capable, he who is capable shall take the whole, as the Cases are agreed in 17 E. 3. fol. 29. & 18 E. 3. 59. If a (g) Man gives Lands to one & *primogenito filio*, if he hath no Son the

(a) Statham
Conscience 1.
Fitz. Subpœna.
23.

(b) Co. Lit. 49
a.

(c) Co. Lit. 11.
b. Br. discnt.
11. 14 H. 8. 8.
b. Plow. 132. b.
8 Co. 54. b.

(d) 1 Co. 122.
b 127. b.
2 Rolls 780.
Dy. 134. pl. 9.
Co. Lit. 13. a.
23. a. Hob. 31.
2 Co. 58. a.
Dall. 61. pl. 14.

(e) Co. Lit. 9.
b. 1 And 35. ca.
87. Antea 87 a.

(f) Carr. 5.
(g) Plow. 29 b.
Cr. Eliz. 58,
334, 121.
2 Roll. 417.
1 Roll. Rep.
325.

the Father takes the whole: And so it is *1 lib. Ass. 11. §*
tempore E. 1. taile 24. if a (*a*) Man gives Lands to a Man,
 and to such a Woman as shall be his Wife, the Man takes
 the whole; but if a Man makes a Feoffment in Fee, to the
 Use of (*b*) himself and his Wife that shall be, and afterwards
 he marries, his Wife shall take jointly with him, as it was
 held in the Lord *Pawlet's Case 17 Eliz. (c) Dyer 340.* not-
 withstanding the Whole vested at first in the Husband. Also
 the Rule of Law is, that a (*d*) Remainder cannot stand
 without a particular Estate, and yet the Book is agreed in
 (*e*) *37 H. 6. fol. 36. a.* that if a (*f*) Man makes a Feoffment
 in Fee to the Use of one for Life, and after to the Use of
 another in Fee, altho' the particular Tenant refuses, yet the
 Remainder is good. And so it is said in the Book in the
 Case of a (*g*) Devise. As if a Man Devises Lands for Life,
 the Remainder in Fee, and the Tenant for Life refuses, yet
 the Remainder is good: And so note, that the Limitation
 in Uses and Estates given by Devises resemble one another.
 So the Judges there took the Construction of Devises, and
 of Estates conveyed in Use to be all one, *viz.* according to
 the Meaning of the Parties: (*b*) And admitting in the Case
 here, the Land had been of the Custom of Gavelkind, and
 upon that it had been asked, if *E. S.* had had sundry other
 Sons, should the elder Son only have had the whole Use?
 Surely he only should not have it, but all equally, and yet
 if he had taken it by Purchase, then the elder Son only
 ought to have it. Now the Intent of *E. S.* is to be proved
 by divers Circumstances apparent in the Record; 1. If *E. S.*
 had intended to have given it to the Uncle, he never would
 have given it him by so general a Name as (Heir Male) for
 if the Recovery had been executed in the Life of *E. S.* as
 was fully intended, then it had been in Manner agreed, that
R. S. could not have had the Land, for the Heirs Males are
 Words of Limitation; or if the Son of the elder Son had been
 born in the Life of *E. S.* which was impossible for *E. S.* to
 have known the contrary, for the Defendant was born within
 1 Month after his Death, then out of all Question the Uncle
 could never have had it; and therefore except you will
 ground upon two Absurdities, the one, that *E. S.* knew that
 he should die before the Recovery executed; the other, that
 he should die before the Birth of the Son of his elder Son,
 which none could know but God; it must be granted, that the
 Intent of *E. S.* was to advance his elder Son, and by no means
 to disinherit him. Also at the Time of his Death *R. S.* was
 18 Years old: And therefore, if he intended to advance *R.*
 he would not have given his Lands to his trusty Friends
 Mr. *Carill* and others for twenty-four Years; but without
 Doubt he intended that the Son of his elder Son should
 have it; and that moved him to devise such a Term which
 might be ended when the Defendant should be of fit Age

(a) Postea 123. a. b. 131. b. 1 R. 3. cap. 1. 1 And. 86, 320. 331, 333, 334. 1 Co. 87. a. 88. a. 123. a. b. 128. b. 129. a. 131. b. 132. a. 133. b. 135. a. 147. b. 2 And. 74, 87, 136. Dyer 143. pl. 54, 57. pl. 74. pl. 14. 143. pl. 54, 283. pl. 30, 291. pl. 65, 330. pl. 17, 369. pl. 50. Raftal. uses 4. Godb. 306. 10 Co. 49. a. Palm. 352. 1 Roll's Rep. 155, 333. 2 Roll. Rep. 314, 316, 320, 334, 335, 336, 418, 429. Cr. Eliz. 187. 1 Leon. 299. 2 Leon. 153. 15 H. 8. 12. b. 29. b. 17 H. 7. Kel. 41. b. 42. a. Perk. fest. 544. Dr. Stud. 53. b. 7 Co. 14. a. Howd. 349. b. 351. b. 6 H. 7. 3. a. 19 H. 8. 13. a. 27 H. 8. 29. b. 24 H. 8. 4. b. 4 H. 8. 29. b. Br. Feoffment al Uses 2, 3, 10, 18, 21, 22, 25, 40, 43, 56, 64 Br. enter conceable 12; Br. Fines Levies de terres 107. 7 H. 7. 6. b. Poph. 80. B. N. C. 307. (b) V. post. 130. b. & 123. a. 2 Roll. Abr. 207. Wigg & Villers.

to receive and govern his Living. The Reason why the said *E. S.* suffered the said Recovery was (as it seems) because *Mary* Daughter of his elder Son named in the special Verdict would have inherited: And if the Wife of his elder Son had been delivered of a Daughter, then had the Land gone out of his Name, and therefore for the Continuance of the Land in his Name and Family he suffered the said Recovery; and therefore it being by Way of Limitation of Use, the Son of the elder Son ought to have it, and especially in as much as no Rule in Law in our Case is impugned, but it stands well as hath been proved before with the Rule of the Common Law. And one of the Def. Counsel said, that at the Common Law an Use being but a Trust and Confidence, and as is said in 14 *H. 8.* resting only in Privy betwixt those who had Notice thereof; and for as much as the Consciences of the Feoffees and others who were trusted became too large, and would not perform the Confidence reposed in them, but made Feoffments upon divers Considerations to Strangers not having Notice of the Uses, and by divers other fraudulent Devices did deceive and defraud those to whose Uses they were seized; therefore first was the Stat. of (a) 1 R. 3. made by which Authority was given to *Cestuy que use* to enter and make a Feoffment; but after that Stat. the Feoffees oftentimes did prevent the Feoffment of *Cestuy que use* by subtil and cunning Practices, yet defrauding the *Cestuy que use*, and not discharging the Trust reposed in them; and therefore to take away all the Power and Means of deceiving by the Feoffees, the Stat. of 27 *H. 8.* was made. And therefore it is holden for the better Opinion at this Day, that for the Raising of future Uses after the Stat. the (b) Regrefs of the Feoffees is not requisite, and that they have not Power to bar these future Uses, for the Stat. hath transferred all the Estate out of them. But he said, in our Case, if the suing of the Execution after the Death of *E. S.* and before the Birth of the Son of the elder Son, should make the Uncle have the Land, then it would rest in the Disposition and Pleasure of the Recoverors, whom they would make to inherit, for then it would follow, that if they enter and execute the Recovery before the Birth of the Son of the elder Son, then the Uncle should have it, and if they would not enter until after the Birth of the Son of the elder Son, then without all Question the Son of the elder Son should have the Land, so that by this Construction, the Matter would lie in the Breast (*Hands*) of the Recoverors who were but Instruments, and not Persons in any Manner trusted to settle the Inheritance in whom they pleased, which was never any Part of the Meaning of *E. S.* and which is very absurd in Reason, and would be mischievous that the Inheritance of any Man should be at the Appointment and Discretion of two Strangers, who were named only as Instruments, and never in any Manner trusted, and it would be a greater

greater Mischief than any was at the Common Law. Also as this Case is, if the Sheriff had executed the Recovery upon the Day on which the Writ of Execution was sued forth, then it had been evident that the Son of the elder Son should have had the Land, for then had Execution in Judgment of Law been in the Life of *E. S.* But by the Construction which hath been made, it would likewise be in the Power of the Sheriff to settle the Inheritance in whom he pleased, for if he had executed the Recovery the same Day, as might have been done, or after the Birth of the Son of the elder Son, then the Son of the elder Son should have had the Land; but *uno absurdo dato infinita sequuntur*. And therefore for the Avoidance of these Mischiefs and Absurdities, the Law will adjudge *R.* in the Land in Course and Nature of a Descent, and then all the Mischiefs and Absurdities are avoided, and no Ground or Rule in the Law is thwarted.

And note, the Stat. of (a) 27 H. 8. is, that *Cestuy que use* (a) Co. Lit. shall have the Possession to all Intents, Constructions, and Pur- 127. b. poses in Law, and of and in such like Estates as they had or 4. Liton. 198. ought to have in the Use; and that he shall have the Posses- Dyer. 149. sion after such Quality, Manner, Form and Condition, as they had before had, or have had the Use, Trust, or Confidence;

so if the Uncle before the Stat. had had the Use, Trust or Confidence in Nature and Course of a Descent, yet the Son of the elder Son shall devest the Use, and have the Subpœna; and because the Stat. executes the Possession after such Quality, Manner, Form, and Condition, as the Use, Trust, or Confidence was in them; for these Causes the Possession executed by the Stat. ought to be subject to the Entry of the Son of the elder Son. And therefore, if *Cestuy que use* had Issue a Daughter, and died before the Stat. of 27 H. 8. his Wife being great with Child with a Son, and before the Birth of the Son the Stat. had been made, so that the Possession had first vested by Force of the Stat. in the Daughter, yet the Son born after might enter upon her, for the Daughter had the Possession in the same Quality and Condition as she had the Use, but she had the Use by Descent, and subject to be devested by the Birth of the Son, and therefore he ought to have the Possession by the Stat. in the same Quality and Degree, and that is in the Nature and Course of Descent. But in the Case of Descent, the Son after born shall enter upon the Daughter, and therefore the Son in this Case shall enter upon the Daughter; and the like Construction upon the like Case hath been made before this Time. And therefore *Mountagu* in *Wimbishe's Case*, and *Ploved.* in *Ploveden's Comm. fol. 56. b.* held that if a (b) Woman hath a Jointure made her by her Husband in Tail, and hath Issue a Daughter being great with Child with a Son, and before the Birth of the Son she discontinues with Warranty; now the Stat. of 11 H. 7. saith, that such Person to whom the Title after the Death of such Wife doth

(b) V. 3. Co.
50. b. 61. b.
62. a.
Co. Lit. 326. b.
365. b.

doth appertain shall enter into the Lands, and shall possess and enjoy the same according to their Title to the same, as if no such Discontinuance had been made; and therefore he held clearly, that altho' the Daughter after such Discontinuance first entred, yet the Son born after shall enter upon her by Reason of the Words of the Stat. of (a) 11 H. 7. for the Words are, that she ought to enjoy the same according to her Title; but her Title is in Tail, and therefore after the Birth of the Son he being next Heir in Tail, the Title of the Tail shall be devolved from her to the Son.

(a) 11 H. 7.
c. 20.

27 H. 8.
cap. 10.

So in our Case the Stat. of 27 H. 8. saith that *Cestuy que use* shall have the Possession in the same Quality, Manner, Form, and Condition as he had the Use. And therefore if an Use were limited before the Stat. to *John S.* and *Jane* at *Gappe*, and to their Heirs, and afterwards they intermarry, and after the Stat. is made, by which the Possession is executed to them and their Heirs during the Converture; yet they shall not have a divided Estate, but the like (b) Moieties as they had in the Use. So if *Cestuy que use* be of certain Lands held by Priority and of other Land by (c) Posteriority, and after the Stat. is made, by which Execution is made of the Possession of both at the same Time, yet he shall have the Possession of both in the same Quality as he had the Use, and all that by the express Words of the Stat. And it is to be noted, that the Stat. of 27 H. 8. doth not speak only of Uses, but also of Trusts and Confidence, so that altho' no Use rose in the Time of the Life of *E. S.* yet there was a Trust and Confidence expressed in his Life. And therefore when the Use is once raised, it ought to be vested according to the Trust and Confidence which *E. S.* intended and declared by the Indentures.

(b) Mo. 92.
Co. Lit. 187. b.
4 Leon. 198.
Dyer 159. pl. 82.
(c) Co. Lit.
23. a.
2 Inst. 392.
2 Rol. 37.
Hob. 27.
28 H. 8.
Dyer 11, 12.

Lastly, the Def. Counsel argued, That the Uncle could not have the Land as a Purchaser, admitting the Remainder had been limited to the right Heirs Males of the Body of *E. S.* in Regard the elder Son of *E. S.* had issue *Mary* his Daughter, who is yet alive, as appears by the Record, and who is Heir to *E. S.* It hath been said, that altho' *Mary* at the Time of the Death of *E. S.* was Heir general, yet the said *R.* was at that Time Heir Male of the Body of *E. S.* And therefore he might as special Heir Male of the Body of *E. S.* take the Remainder, altho' *Mary* is Heir general; and therefore it hath been said that if Lands had been given to *E. S.* and to the Heirs Males of his Body lawfully begotten, that in that Case, after his Death, *R. S.* as Heir Male *per formam doni* shall inherit, altho' the Daughter of the elder Son was general Heir to *E. S.* To that they answered, and took a Difference when the Heir Male of the Body claims by Descent, and when he claims by Purchase; for in Descents the Law is as hath been alledged, but it is otherwise in Cases of Purchase. This

Difference

Difference was proved by the Case in 37 H. 8. *Br. done* 42. (a) 11 H. 7. 25. b. Dy. 179. pl. 45. 133. pl. 5. Co. Lit. 10. a. 23. a. Antea 101. a. B. N. C. 302. Br. difcent 59. Br. nosm. 6. 26 H. 8. 4. b. Br. custom. 1. Hob. 31. Noy 106. Dav. 31. a. 36. b. Jenk. Cent. 220. Antea 101. a. (b) 2 Roll. 416. Co. Lit. 24. b. 164. Hob. 31. Mod. Rep. 161. (c) Br. N. C. 303. Hob. 31. B. Nusme 1. 40. (d) 26 H. 8. cap. 13. Co. Lit. 372. b. 9 Co. 140. a. 3 Inst. 19. 3 Co. 10. a. b. 7 Co. 33. a. 34. a. b. 4 Inst. 42. Palm. 439. 12 Co. 6. Heil. 151, 157. 1 Leon. 21. Godb. 300, 303. 307, 308, 309, 311, 313, 315, 321, 322, 324, 324. Co. Lit. 392. b. Plowd. 552. b. Hob. 334, 339, 340, 341, 343, 344, 346, 347, 348. Dyer 332. pl. 27, 343. pl. 56. Co. Ent. 442. a. 1 Rol. Rep. 162. Cr. Car. 428. 2 Rol. Rep. 314, 315, 318, 319, 320, 321, 323, 324, 325, 340, 374, 416, 418, 420, 501, 503, 507, 508. 1 Jones 70, 71, 75, 76, 77, 80. 1 Co. 42. a.

And so is *Ellerker's* Opinion expressly in 9 H. 6. fol. 24. a. If a Man makes a Lease for Life, the Remainder to the right Heirs Females of the Body of *J. S.* and *J. S.* hath Issue a Son and a Daughter and dieth, in this Case the Daughter shall not take the Remainder, for she is not Heir Female to take by (b) Purchase. And yet it is plain, that if a Gift in Tail had been made to *J. S.* himself, and to the Heirs Females of his Body, and *J. S.* dieth, having Issue a Son and Daughter, the Daughter should have had the Land by Descent. Also in 37 H. 8. *Br. done* 61. it appears, that the *L. (c) Hufsey* made a Feoffment in Fee to the Use of *Anne* his Wife for Life, and after to the Use of the Heirs of his Body, and after the Lord *Hufsey* was attainted of Treason, and although *Brook* hath not expressed the Judgment, yet it was said, it was adjudged, that the right Heirs of his Body could not as Purchaser take the Remainder, because he was not Heir of his Body to take it by Purchase, by Reason of the Attainder of his Father. And yet before the Statute of (d) 26 H. 8. if Tenant in Tail had committed High Treason the Land had descended. And in *Brook's* Report aforesaid it appears, that *Hare* the Master of the Rolls took the Difference between a Gift in Possession to a Man and to his Heirs Females of his Body, and a Lease for his Life, the Remainder to the right Heirs Females of his Body; for in Case of a Remainder (as he said) she ought to be Heir indeed, or else she can never claim it by Purchase. So it appears by these Authorities, that in Case of Purchase the Heir Male of the Body ought to be Heir indeed. And for as much as in our Case, the Uncle was not Heir Male, for a Man cannot have two Heirs to claim by Purchase, therefore as Purchaser the Uncle cannot claim it. But it hath been said, that the Statute *de Donis conditionalibus* aids and helps the Heir Male of the Body to take, for that the Will of the Donor appears, that the Heir Male of his Body should have the Land; and the Stat. saith, *Quod voluntas donatoris secundum formam in Charta doni sui manifeste expressa, de cætero observetur.* In answering which, one of the Defendant's Counsel declared

the

(a) Lit. Sect. 13.
Co. Li. 18. b.
19. a.

(b) Co. Lit. 9.
b. 20 a Bridg.
135. 6 Co. 16.
17. a. D.

(c) 1 And. 132.
Raym. 284.
2 Leon. 35.
Mo. 371. Cr.
Elis 40. Sav.
75.
(d) Dyer 330.
pl. 20. Hard.
149. Vaugh.
267, 271. 1 Keb.
30, 531. 1 Bullf.
180, 273. Palm.
131. 2 Rol. 196.
218. 3 Bufr.
195. Cr. Jac.
656 2 Keb. 193.
196, 262. 2 Le-
on. 42. 3 Leon.
117. 167. 1 Si-
derf. 148. 1 Rol.
825. Mo. 362.
2 Bullf. 102.
(e) Palm. 5.
Dyer 374. pl.
15 B.N.C. 303.

the Reason of the other Cases and Authorities which had been cited, and of the Difference which was taken before; and therefore he said that the Statute *de Donis conditionalibus* did not help this Case. Mr. (a) *Littleton* in his Chapter of Estate-tail saith, That every Gift in Tail within the Statute *de Donis oonditionalibus*, before the Making of that Statute was a Fee-simple at the Common Law; and therefore he put the Case before the Statute *de Donis conditionalibus*, and examined if the same had been a Fee-simple conditional before the said Statute, for otherwise it cannot be an Estate in Fee-tail by the Statute. For he said that the Statute *de Donis conditionalibus* was a Nurse, and no Mother of Estates of Inheritances Tail, and that it preserved the Estates of Inheritances in Fee-tail, but did not beget or procreate any Estates-tail, which were not Fee-simple conditional before. And therefore he took the Law to be clear, that if a Man gives Land to a Man (b) *Et femini suo*, or to a Man *Et liberis suis de corpore*, or *prolibus suis*, or *exitibus suis*, or *pueris suis de corpore*, in these Cases the Donee hath no Estate in Fee-tail, but only an Estate for Term of Life; for if such Gifts had been made before the Stat. they had been no Fee-simples conditional; and therefore, by Mr. *Littleton's* Rule, no Estate-tail by the Stat. *de Donis conditionalibus*. For the Stat. creates no new Inheritances, which were no Inheritances at the Common Law, but only nurses and preserves those which were Estates of Inheritance at the Common Law. And therefore the Law was taken in the Case of *Martin Hastings* of *Norfolk* for the Manor of *Elstinge*, that where an Estate was made to one of his Ancestors, and to the (c) Issue Male of his Body, that in that Case he had but an Estate for Life. And so it was held by Sir *Roger Manwood*, then one of the Justices of the Common Pleas, clearly in the Argument of (d) *Clatch's* Case anno 16 *Eliz.* and therefore he examined the Case here before the said Statute; and he took it without Question, that if a Lease had been made for Life, the Remainder to the Heirs Males of the Body of *J. S.* that in that Case, if *J. S.* had Issue two Sons, and the elder Son having Issue a Daughter died in the Life of *J. S.* and then *J. S.* had died; that in that Case the younger Son of *J. S.* after his Death cannot take this Fee-simple conditional by the Common Law, for he was not Heir Male of the Body to take this Fee-simple by (e) Purchase; for first he ought to be Heir, and secondly he ought to be Heir Male. And in that Case if *J. S.* had been attainted of Treason or Felony, the Heir Male of his Body could never have taken the Remainder, for he was not Heir, which might be the Reason of the Lord *Huffey's* Case before cited. And it is holden in 12 *E. 3.*

Titulo Variance 77, that where a Man makes a Gift to the Husband and Wife, and to the Heirs of the Body of the Husband, and if the Husband and Wife die without Issue of their two Bodies, that then it shall remain over; in that Case altho' the Will of the Donor appears, that the Wife shall be also Donce in special Tail, yet forasmuch as by the Order of the Common Law she could not have an Estate of Fee simple conditional, for that Cause she could not have an Estate-tail by the Statute. But in the said Case where Lands are given to a Man and the Heirs Females of his Body, here is an Estate of Inheritance vested in the Donce, which Estate of Inheritance the Statute *de Donis conditionalibus* directs to the Heir Female by Descent, although there be an Issue Male.

And as to what hath been objected, that forasmuch as the Limitation was to the Heirs (a) Males of the Body of *Edward Shelley*, and of the Heirs Males of the Body of the Heirs Males lawfully begotten, that the Heirs Males of the Body of *Edward Shelley* should be purchasers, for otherwise the subsequent Words would be void; the Defendants Counsel answered, That it is a Rule in Law, when the (b) Ancestor by any Gift or Conveyance takes an Estate of Freehold, and in the same Gift or Conveyance an Estate is limited either mediately or immediately to his Heirs in Fee or in Tail; that always in such Cases (the (c) Heirs) are Words of Limitation of the Estate, and not Words of Purchase. And that appears in (d) 40 E. 3. fol. 9. a. b. in the Provoost of *Beverley's Case*, in 38 E. 3. fol. 31. b. 24 E. 3. 36. b. 27 E. 3. fol. 87. a. and in divers other Books. So inasmuch as in this Case *Ed. Shelley* took an Estate of Freehold, and after an Estate is limited to his Heirs Males of his Body, the Heirs Males of his Body must of Necessity take by Descent, and cannot be Purchasers; otherwise is it where an Estate for Years is limited to the Ancestor, the Remainder to another for Life, the Remainder to the right Heirs of the Lessee for Years; there his Heirs are Purchasers. Or if the Remainder be limited to the (e) Heir in the singular Number upon a Lease for Life, there the Heir takes an Estate for Term of Life by Purchase. And if it should be admitted, that in Regard of the said subsequent Words, the right Heirs Males should have by Purchase to them and the Heirs Males of their Bodies, then a Violence would be offered as well to the Words as to the Meaning of the Party, for if the Heir Male of the Body of *Edward Shelley* should take as Purchaser, then all the other Issue Males of the Body of *Ed. Shelley* would be excluded to take any Thing by the Limitation; and it would be against the express

Co. Lit. 24. b.
Hob. 31.

(a) Cr. Car. 24.

(b) 1 RoL. 627.

2 RoL. 417. 118.

Moor 720. Cro.

El. 355. Co.

Lit. 22. b. 376.

b. 1 Vent. 374.

Raym. 284.

317. 2 Keb. 122.

340. Palm. 224.

11. Rep. 261.

286.

(c) Post. 105. a.

(d) 11 H. 4. 74.

b. Br. Estate 6.

Br. Descent 6.

Br. Relief 2.

(e) Antea 66. b.

Raym. 333. 3

Keb. 18, 99,

176. Godb. 157.

2 Siderf. 51.

2 Rol. Rep.

256. Plow. 29.

b. Palm. 404.

Hetl. 76. Sty.

250. 1 Rol. 832.

2 Roll. 253. 17.

1 Bulstr. 222.

223. Moor 583.

Cr. Eliz. 313.

Owen 148.

Lim-
Co. Lit. 8. Cr.

Jac. 145.

Limitation of the Party. For the said Limitation is to the Use of the Heirs Males of the Body of *Edward Shelley*, and of the Heir Males of their Bodies begotten, and for Default of such Issue, to divers other Persons in Remainder; so if *Richard Shelley* being the Heir Male of the Body of *Edward Shelley* at the Time of his Death should take by Purchase, then the Heirs Males of the Body of *Richard Shelley* only would be inheritable, and no other of the Sons of *Edward Shelley* nor their Heir Males, and consequently if *Richard Shelley* should die without Issue Male, the Land would remain over to Strangers, and all the other Sons of *Edw. Shelley* which he then had and might afterwards have, and their Issues, would be utterly disinherited, because the Words were in the plural Number, Heirs Males of the Body of *Edw. Shelley*, the former Construction will be against the very Letter of the Indentures, for by that Means the plural Number will be reduced to the singular Number, that is to say, to one Heir Male of the Body of *Edward Shelley* only: And forasmuch as the first Words, *viz.* (Heirs Males of the Body of *Edw. Shelley* include the subsequent Words, *viz.* the Heirs Males of their Bodies) for every Heir Male begotten of the Body of the Heir Male of *Edward Shelley* is in Construction of Law an Heir Male of the Body of *Edw. Shelley* himself; for this Reason the subsequent Words are Words declaratory, and do not restrain the former Words. As in the Case of (a) *Littleton*, if a Man makes a Feoffment in Fee, *ita quod* the Feoffee shall do such an Act, in that Case *Littleton* said it is commonly used in such Cases to have also these Words, (and if the Act be not done, it shall be lawful for the Feoffor to re-enter) which he said was more than was necessary, for the first Words are sufficient in Law, and include them, yet he said they are well put in, to declare and express the Law to Lay-People.

(a) I. it. sect
331. Co. Lit.
204. b.

And lastly in this Case, if *Rich. Shelley* should not be in in Course and Nature of a Descent, then he could not take at all; for when an Estate is made to a Man, and after in the same Deed (to limit the Quality of the Estate) a further Limitation is made to his Heirs, or to the Heirs of his Body; in all these Cases his Heirs or the Heirs of his Body shall never take as Purchasers; but in this Case these Words, Heirs Males of the Body of *Edward Shelley*, were Words of Limitation; and therefore the Heir Male of the Body cannot take as a Purchaser. And in Proof of the first Proposition it was said, that this is the Reason of the Book in (b) 40 *Aff. pl.* 19. and of Mr. *Littleton's* Case, *fol.* 128. That if a Man grants a Reversion or a Seigniority by Deed to *J. S.* and his Heirs, if the Grantee dies before (c) Attornment, the Attornment to the Heir is void, for if the Attornment should be good, then the Heir

(b) Br. Attorn
ment 55. Br.
Disseisin &
Disseisor 61.
(c) Co. Lit. 309.
a. Poltea 155. b.

Heir would be in as a Purchaser, where by the Grant and Meaning of the Parties these Words, his (a) Heirs, were Words of Limitation to limit the Estate of the Grantee himself; and so it was held in *Nichol's Case* in (b) *Plow. Com. fo. 483.* that if a Man leases Lands to a Man for Life, and if the Lessor dies without Heir of his Body, that then the Lessee shall have the Land to him and to his Heirs; in that Case if Lessee for Life dies, and then the Lessor dies without Heir of his Body, the Heir of the Lessee shall not have the Land, as it was held clearly *causa qua supra.*

And so the Law is clear, as it is commonly agreed in our Books, if two Men (c) exchange Lands in Fee-simple, or Fee-tail, if both the Parties die before the Exchange be executed of each Part, the Exchange is void, for if the Heirs should enter, they would be in as Purchasers by Force of the Words, which were Words of Limitation of the Estate, and not of Purchase. And upon the same Reason is *Brett's and Rigden's Case* adjudged in *Plow. Com. fol. 342.* a stronger Case than this

Case is. For a (d) Man devised Lands to another and to his Heirs, and the Devisee died in the Life of the Devisor, and then the Devisor died, and it was adjudged, that the Heir should not take by the Devise, for in that Case the Heirs are not named as Words of Purchase, but only to express and limit the Estate which the Devisee should have, for without the Word Heirs, the Devisee could not have the Fee-simple and the Heirs are named only to convey the Land in Fee-simple, and not to make any other to be Purchaser than the first Devisee. So in our Case the Heirs Males of the Body of *E. S.* are named only to give *E. S.* an Estate-tail, and not to make any other Purchaser than *E. S.* only, and without those Words he could not have had an Estate-tail; and therefore the Uncle in our Case cannot claim the Land as a mere Purchaser, but if he takes it in any Sort, he shall take it in Nature and Course of a Descent, and therefore *quacunq; via data* the Uncle cannot have the Land; and if he take it in Nature and Course of a Descent, (for as a Purchaser he cannot take) then the elder Son shall enter upon him, and so *quacunq; via data* the Son of the elder Son ought to have the Land. And therefore to conclude: First, no Execution could be sued against the Issue in Tail, because no Execution was sued in the Life of *Ed. Shelley.* Secondly, admitting Execution might have been sued against the Issue in Tail, and that Execution was requisite to be had in the Life of *E. Shelley,* in as much as the Lands were in Lease for Years, that the Reversion was immediately vested in the Recoveror by the Judgment: Thirdly, admitting Execution might be sued against the Issue in Tail, and that the Recovery was not executed till after the Death of *Edward Shelley;* yet *First,*

forasmuch as it was impossible by the Act of God that Execution should be sued in the Life of *E. S.* Secondly, that the Indentures guide the Use, and direct it to the Heirs Males of the Body of *E. S.* by Words of Limitation: Thirdly, that the Use and Estate do not commence originally in the Uncle as a mere Purchaser, but first vested in the Uncle by Force of the Indentures made by *E. S.* and the Recovery had against him, and might have vested in *E. S.* and if it had been vested in *E. S.* then without doubt *Rich. Shelley* had taken by Descent: Fourthly, that the Estate is conveyed by Way of Limitation of Use, which is always directed by the Intent of the Parties: Fifthly, that it would be absurd and mischievous to adjudge the whole Inheritance to be at the Disposal of the Recoverors, or of the Sheriff who never were trusted; and lastly, (a) that *Richard* the Uncle ought either to claim in Nature or Course of Descent; and then no Question but the Entry of the Defendant was lawful, or otherwise merely by Purchase, which by the Rules of Law, and for the Reasons aforesaid he cannot; and therefore they concluded, that the Entry of *Henry Shelley* the Defendant was lawful, and that Judgment ought to be given against the Plaintiff, that he should take nothing by his Bill.

(a) Post. 106. b.
Antea 95. a.

After the said Case had been openly and at large argued at three several Days by the Counsel of each Side in the King's Bench, the Queen hearing of it (for such was the Rareness and Difficulty of the Case being of Importance that it was generally known) of her gracious Disposition, to prevent long, tedious, and chargeable Suits between Parties so near in Blood, which would be the Ruin of both, being Gentlemen of a good and ancient Family, directed her gracious Letters to Sir *Tho. Bromley* Knt. Lord Chancellor of *England*, who was of great and profound Knowledge and Judgment in the Law, thereby requiring him to assemble all the Justices of *England* before him, and upon Conference had between themselves touching the said Questions, to give their Resolutions and Judgments thereof; and thereupon the Lord Chancellor in *Easter Term* in the 23d Year of her Reign called before him at his House called *York-house*, Sir *Chris. Wray* Knt. Lord Chief Justice of *England*, and all his Companions Justices of the Queen's Bench, Sir *Ja. Dyer* Knt. Lord Chief Justice of the Court of Common Pleas, and all his Companions Justices of the same Court; and Sir *Roger Manwood* Knt. Lord Chief Baron of the Excheq. and the Barons of the Excheq. before whom the Questions aforesaid were moved and shortly argued by *Fenner* Serjeant on the Plaintiff's Part, and by one on the Defendant's Part. At which Time the Ld Chancellor

Chancellor was of Opinion for the Defendant, and openly declared his Opinion before all the Justices, That upon the third Question the Law was for the Defendant, and therefore the Defendant's Entry upon the Uncle was lawful, but the said Questions were not resolved at that Time, the said Justices desiring Time to consider of the Questions. And 8 or 9 Days after in the same Term, all the said Justices and Barons met together in Serjeants Inn in *Fleetstreet*, for the Resolution of the said Case, and there the Case was again shortly argued by them; after which Arguments the Justices at that Time did confer among themselves, and took further Time to consider of the said Questions in the next Vacation till the Beginning of *Trinity* Term then next following; and accordingly in the Beginning of *Trinity* Term, after great Study and Consideration of the said Record of the special Verdict, all the said Justices and Barons met again in Serjeants Inn in *Fleetstreet*, at which Time, upon Conference amongst themselves, all the Justices of *England*, the Lord Chief Baron, and the Barons of the Exchequer, except one of the puisne Justices of the Court of Common Pleas, agreed that the Defendant's Entry upon the said *Richard* the Uncle was lawful; and four or five Days after their last Meeting, one of the Defendant's Counsel came to the Bar in the Queen's Bench, and moved the Justices to know their Resolutions in the said Case; for their Resolution was not before known to the Defendant nor to his Counsel. And Sir *Christopher Wray* Knt. Lord Chief Justice, answered, that they were resolved, and thereupon asked the Plaintiff's Counsel being then at the Bar, if they could say any more on the Plaintiff's Part, who answered, that they had said as much as they could: And likewise asked the Defendant's Counsel if they had any new Matter to say for the Defendant, who said, No. And then the said Chief Justice gave Judgment, that the Plaintiff should take nothing by his Bill: And because the Counsel of both Sides who were present, were desirous to know upon which of the said Points their Resolution did depend, the said Chief Justice openly declared, That as to the first Point, the better and greater Part of all the Justices and Barons held that (a) Execution might be sued against the Issue in Tail, because the Right of the Estate-tail was bound by the Judgment against the Tenant in Tail, and the Judgment over to have in Value, and that in Favour of common

(a) Co. Lit. 361.
Moor 141.
Anrea 94. a. b.
Dyer 374. pl.
15, 376. pl. 26.
3 Keb. 699.
10 Co. 38. a.
2 Sidert. 99.
2 Roll. 396.
Flow. 55. b.
1 Anderf. 70.
1 Jones 10.
Jenk. Cent.
249.

SHELLEY'S Case. PART I.

Recoveries which are the common Assurances of the Land.

(a) Antea 94. a. As to the (a) second Point, they were all agreed, that
 b. 97. a. Moor the Reversion was not in the Recoverors immediately by
 141. 1 Roll. the Judgment: But he said, that all the Justices of Eng-
 270. Jenk. Cent. land and Barons of the Exchequer, except one of the Ju-
 249. Kelw. stices of the Common Pleas, were agreed as to the third
 108. b. 2 Inst. Point. That the Uncle was in, in Course and Nature of a (b)
 323. (b) Moor 140, Descent, although he should not have his Age, nor be in
 141. Antea 94. Ward, &c. First, because the original Act, viz. the Re-
 b. 2 Co. 93. a. covery, out of which all the Uses and Estates had their
 3 Co. 62. a. Essence, was had in the Life of *Edw. Shelley*, to which
 8 Co. 76. a. the Execution after had a (c) Retrospect: Secondly, be-
 Postea 155. b. cause the Use and Possession might have vested in *Edward*
 156. a. 2 Leon. *Shelley*, if Execution had been sued in his Life: Thirdly,
 21. 1 Jones 59. the Recoverors by their Entry, nor the Sheriff by doing
 1 Anderf. 70. of Execution, could not make whom they pleased inherit.
 Jenk. Cent. 249. Fourthly, because the Uncle claimed the Use by Force of
 (c) 7 Co. 38. a. the Recovery, and of the Indentures by Words of Limita-
 tion, and not of Purchase. These were, as the Chief Justice
 said, the principal Reasons of their Judgment. And it was
 resolved by them all, that the Recovery, notwithstanding
 the Death of *Edward Shelley* in the Morning between the
 Hours of five and six on the same (d) Day, was good enough.
 And so this Case was resolved by Sir *Thomas Bromley* Knt.
 Lord Chancellor of *England*, Sir *Christopher Wray* Knt.
 Lord Chief Justice of *England*, Sir *James Dyer* Knt. Lord
 Chief Justice of the Court of Common pleas, Sir *Roger*
Manwood Knt. Lord Chief Baron of the Exchequer, Sir
Thomas Gawdy Knt. one of the Justices of her Highness's
 Bench, and by all the Justices of the Queen's Bench, and
 by all the Justices, except one, of the Common Pleas, and
 by all the Barons of the Exchequer, that the Defendant's
 Right was good, and his Entry lawful, and Judgment was
 given accordingly.

d) Cro. El. 168.
 1 Siderf. 229.
 Palm. 312.
 Dail. 17. pl. 3.

See this Case cited Rep. Q. A. 183. Lucas 120, 421, 425.

ALBANY'S Case.

Michaelmas Term Anno 27 and 28
Eliz. in the *King's Bench*, Rot. 58.

Memorandum, That upon *Saturday* next after 8 Days of *St. Michael* in this Term, before the Lady the *Q.* at *Westminster*, came *John Grendon* Gent. by *Will. Goldsmith* his Attorney, and brought here in the Court of the said Lady the now Queen there, his Bill against *Thomas Albany*, in the Custody of the Marshal, &c. of a Plea of *Trespas*, and there are Pledges of Suit, that is to say, *John Doe* and *Richard Roe*, which Bill followeth in these Words; *J. Middlesex, J. John Grendon* Gent. complaineth of *Tho. Albany*, in the Custody of the Marshal of the Marshalsey, before the Queen her self being, For that, That he the 1st Day of *June* in the 27th Year of the Reign of the said Lady the now *Q.* with Force and Arms, &c. the Close of him the said *John*, at *Willesdon*, broke and entred, and his Grass to the value of 10 *l.* there then growing, with certain Cattle, that is to say, Horses, Oxen, Cows and Sheep, fed, trod down and consumed, and other Harms to him did, to the great Damage of the said *John*, and against the Peace of the Lady the now Queen; whereupon he saith, that he is the worse, and hath Damage to the value of 20 *l.* and thereof bringeth Suit, &c. And the aforesaid *Tho. Albany* cometh by *Anthony Felton* his Attorney, and defendeth the Force and Injury, when, &c. And as to the coming with Force and Arms, and whatsoever is against the Peace of the said Lady the now Queen, saith, That he is not thereof guilty; and of this puts himself upon the Country; And the said *John* likewise, &c. And as to the rest of the *Trespas* supposed to be done, the said *Tho.* saith, that the said *John* ought not to have or maintain his Action against him, because he saith, that the Place in which

Middlesex. ff.
 Declaration in
 Trespas in
 B. R.

Co. Lit. 237. a.

Co. Lit. 126. a.

Pleadings in Albany's Case. PART I.

it is supposed the Trespass aforesaid to be done, containeth, and at the Time in which, &c. did contain in it self 20 Acres of Pasture, with the Appurtenances, in *Willesdon* aforesaid; and as to any Trespass in five Acres, Parcel of the said 20 Acres, the said *Thomas* saith, That long before the time in which it is supposed the Trespass aforesaid to be done, one *Francis Bunny* was seised of the aforesaid 20 Acres of Pasture, in which, &c. in his Demesne as of Fee, and so thereof being seised before the aforesaid Time in which, &c. that is to say, the first Day of *May* in the 20th Year of the Reign of the Lady the now Queen, by his Deed of Feoffment here into Court brought, bearing Date the same Day and Year, enfeoffed one *Miles Hitchcock* of the aforesaid 20 Acres of Pasture, with the Appurtenances, in which, &c. To have and to hold to the said *Miles* and his Heirs for ever, to the Use of the said *Francis* for the Term of the Life of the said *Francis*, and after the Death of the said *Francis*, to the Use of one *David Bunny* and the Heirs of his Body lawfully begotten; and for lack of such Issue, to the Use of *Nicholas Bunny* and the Heirs of his Body lawfully begotten; and for lack of such Issue, to the Use of *Walter Bunny* and the Heirs of his Body lawfully begotten; and for lack of such Issue, to the Use of *Stephen Bunny* and his Heirs for ever; By Virtue of which Feoffment, and by Force of a certain Act made in a Parliament of the Lord *Henry* the 8th, late King of *England*, held at *Westminster* in the County of *Middlesex* the 4th Day of *February* in the 27th Year of his Reign, of transferring Uses in Possession, the aforesaid *Francis* was of the aforesaid 20 Acres of Pasture, with the Appurtenances, seised in his Demesne as of Freehold; the Remainder thereof, after the Death of the aforesaid *Francis*, to the aforesaid *David* and the Heirs of his Body lawfully begotten; the Remainder thereof to the aforesaid *Nicholas* and the Heirs of his Body lawfully begotten; the Remainder thereof to the aforesaid *Walter* and the Heirs of his Body lawfully begotten; the Remainder thereof to the aforesaid *Stephen* and his Heirs for ever expectant: And the aforesaid *Francis* so of the aforesaid 20 Acres, with the Appurtenances, in form aforesaid being seised, the Remainder thereof to the aforesaid *David* in form aforesaid expectant: The said *Francis* afterwards, and before the Time in which, &c. that is to say, the first Day of *May* in the 21st Year of the Reign of the Lady the now Queen, enfeoffed one *Richard Tomson* of the aforesaid 20 Acres of Pasture, with the Appurtenances, to have and to hold to the said *Richard* his Heirs and Assigns for ever. By Virtue of which the said *Richard* was of the said 20 Acres of Pasture, with their Appurtenances, seised in his Demesne as of Fee, by colour whereof, and for that the said Feoffment was made to the disinheriting of the said *David*, the said *David* into the aforesaid 20 Acres of Pasture, with the Appurtenances, entred, and was thereof seised in his Demesne as of Fee-tail; the Remainder thereof to the aforesaid *Nicholas* and the Heirs of his Body lawfully begotten; the Remainder thereof to the said *Walter* and the Heirs of his Body lawfully begotten; the Remainder thereof to the aforesaid *Stephen* and his Heirs for ever. And the aforesaid *David* so thereof being seised, the Remainder thereof

in form afores. expectant, the said *David* afterwards, and before the time in which, &c. that is to say, the first day of *May* in the 22d year of the reign of the L. the now Q. at *Willefdon* afores. demised the afores. five acres of pasture of the afores. 20 acres of pasture, with the appurtenan. in which, &c. parcel, to one *Ad. Blunt*; To have and to hold to the said *Adam* from the feast of *St. Michael* the Archangel then last past, until the end and term of 21 years from thence next following and fully to be compleat. By virtue of which the said *Ad. Blunt* into the said 5 acres of pasture, with the appurtenan. entred, and was thereof possessed; and the said *Adam* so being thereof possessed, afterwards and before the time in which, &c. enclosed the afores. *Tho. Albany* of the said five acres of pasture, with the appurtenances; To have and to hold to the said *Thomas*, his heirs and assigns, to the proper use and behoof of him the said *Thomas*, his heirs and assigns for ever. By colour of which the said *Thomas* was of the said five acres of pasture, with the appurtenances, seised in his demesne as of fee; and the aforesaid *John Grendon* claiming the said fives acres of pasture, with the appurtenances, by colour of a certain deed of demise to him thereof made for the term of his life by the afores. *Miles Hitchcock*; whereas nothing of the said five acres of pasture, in the possession of the afores. *John Grendon*, by the said deed, ever passed, in the afores. five acres of pasture, with the appurtenan. before the time in which, &c. entred; upon whose possession of the said *John* thereof, the said *Tho. Albany* afterwards, that is to say, the afores. time, in which, &c. into the afores. five acres of pasture, with the appurtenances, entred, and the grass there then growing, with the cattle aforesaid fed, trod down and consumed, as it was lawful for him to do; and this he is ready to aver; whereupon he prayeth Judgment, if the afores. *John Grendon* his action afores. against him ought to have or maintain, &c. And as to any trespass in the afores. 15 acres of pasture, residue, the said *Tho. Albany* saith, that the afores. *John Grendon* his action afores. thereof against him ought not to have or maintain, because he saith, That the afores. *David* long before the trespass afores. supposed to be done, being seised of the aforesaid 15 acres of pasture in his demesne as of fee-tail, as before is said, before the time in which, &c. that is to say, the 2d day of *May* in the 22d year of the reign of the L. the now Q. afores. at *Westm.* afores. by a certain Indenture between the said *David* and the afores. *Tho. Albany* made, bearing date the same day and year, and in the court of the Chancery of the said L. the Q. at *Westm.* afores. within six months then next following, in due manner of record inrolled, according to the form of the Stat. in such case made and provided, one part of which sealed with the seal of the said *David*, the said *Thomas Albany* brings into court, bargained and sold to the said *Thomas* the aforesaid 15 acres of pasture residue of the said 20 acres; To have and to hold to the said *Thomas*

Pleadings in Albany's Case. PART I.

Albany and his Heirs for ever, by Colour of which Bargain, Sale and Irolment, the said *Tho. Albany* of the aforesaid 15 Acres of Pasture was seised in his Demesne as of Fee; and the afores. *John Grendon* claiming the said 15 Acres of Pasture, with the Appurtenances, by Colour of the said Deed of Demise to him thereof made for the Term of his Life by the aforesaid *Miles Hitchcock*, where nothing of the said 15 Acres of Pasture in the Possession of the said *John* by that Deed ever passed, into the said 15 Acres of Pasture, with the Appurtenances, before the Time in which, &c. entred, upon the Possession of which said *John* thereof, he the said *Tho. Albany* afterwards, to wit, at the said Time wherein, &c. into the afores. 15 Acres of Land, with the Appurtenances, re-entred, and the grafs there then growing with the Cattle afores. fed, trod down, and consumed, as it was lawful for him to do; and this he is ready to aver: Whereupon he demandeth Judgment if the said *John Grendon* his Action afores. against him ought to have or maintain, &c. And the afores. *John Grendon*, as well unto the afores. first Plea, as to the afores. second Plea of the said *Tho. Albany* above in Bar pleaded, saith, That he for any Thing in the said Pleas before alledged, ought not to be barred from having his Action against the said *Thomas*, because he saith, That in the aforesaid Deed of Feoffment of the aforesaid *Francis Bunny*, in the Bar aforesaid above specified, it was provided, that if it should happen one *Peter Penruddock* to die without Issue Male of his Body lawfully begotten, not leaving his Wife with Child by him in the Life of the said *Francis*, that then and from thenceforth it should be lawful for the said *Francis* at all Times at his Will during his natural Life, by his Writing indented by him the said *Francis* to that Intent made, sealed and subscribed in the Presence of four credible and honest Witnessses, at the least, to alter, change, determine, diminish, or to amplify any Use or Uses, Limitations, Intentions or Purposes, limited, mentioned, or appointed in and by the aforesaid Deed of Feoffment, made by the aforesaid *Francis Bunny*, as before is said, or any Use or Uses of every or any Part or Parcel of the Premisses, Remainder, or Remainders, Reversion, or Reversions, to any Person or Persons after the Death of the said *Francis*, as by the said Deed of Feoffment aforesaid it more fully appeareth. And that afterwards, and before the Time in which, &c. that is to say, the first Day of *May* in the 23d Year of the Reign of the Lady the now Queen, at *Willesdon* afores. the aforesaid *Peter* died without Issue Male of his Body lawfully begotten, and at the Time of his Death had not any Wife; by which the aforesaid *Francis* afterwards, and before the Time in which, &c. that is to say, the 20th Day of *May* in the 24th Year of the Reign of the Lady the now Queen, at *Willesdon* afores. by his Indenture made between
the

the afores. *Francis* of the one Part, and the afores. *David Bunny* of the other Part, sealed, subscribed, and delivered by him the said *Francis* to the afores. *David Bunny* in the Presence of *John Frome*, *Will. Guersie*, *Tho. Wallbam*, and *John Gostles*, four credible and honest Witnesses, which Indenture the afores. *John Grendon*, with the Seal of the afores. *Francis* sealed, and with his Hand underwritten here into Court brings, whose Date is the same 20th Day of *May* in the 24th Year of the Reign of the said Lady the now Queen aforesaid, changed the Uses in the afores. Deed of Feoffment above expressed. And by the same Indenture, the said *Francis* covenanted and agreed with the aforesaid *David Bunny*, that from thenceforth the said *Miles Hitchcock*, in the afores. Deed of Feoffment named, and his Heirs, and all others who then were, or should be seised of the afores. 21 Acres of Pasture, with the Appurtenances, in which, &c. should be seised to the Use of the said *John Grendon* and his Heirs for ever, as by the same Indenture more fully appeareth. By Colour whereof, and by Virtue of the Statute made of transferring of Uses into Possession, the afores. *John Grendon* in the afores. 20 Acres of Pasture, with the Appurtenances, in which, &c. entred, and was thereof possessed in his Demesne as of Fee, until the said *Tho. Albany*, the Day and Year aforesaid in the Bill aforesaid above specified, the Close of the said *John Grendon* in the aforesaid 20 Acres of Pasture broke, and his Grass to the Value, &c. then there growing, with his Cattle aforesaid fed, trod down, and consumed, as he above against him complaineth; and this he is ready to aver: Whereupon, in as much as the afores. *Tho. Albany* doth acknowledge the Trespass afores. in the afores. 20 Acres of Pasture, with the Appurtenances, to be done, the afores. *John* demandeth Judgment, and his Damages, by occasion of the Trespass afores. to be to him adjudged, &c. And the afores. *Tho. Albany* saith, that well and true it is, that in the aforesaid Deed of Feoffment of the aforesaid *Francis Bunny*, it was provided, that if it should happen the said *Peter Penruddock* to die without Issue Male of his Body lawfully begotten, not leaving his Wife with Child of a Son, in the Life of the said *Francis*, that then, and from thenceforth it should be lawful to the aforesaid *Francis*, at all Times at his Will, during his natural Life, by his Writing by him the said *Francis*, to that Intent made in the Presence of four credible and honest Witnesses, at the least, to alter, change, determine, or amplify any Use or Uses, Limitations, Intentions or Purposes, limited or appointed by the afores. Deed of Feoffment, by the said *Francis Bunny* made, as before is said, or the Use or Uses of any Part or Parcel of the Premises, Remainder or Remainders, Reversion or Reversions, limited to any Person or Persons, after the Death of the said *Francis*; and that afterwards,

and

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and before the Time in which, &c. the aforef. *Peter* died without Issue Male of his Body lawfully begotten, the aforef. *Francis*, at the Time of the Death of the aforef. *Peter*, being in full Life; but the faid *Tho. Albany* further faith, that the faid *Francis* in the Life-time of the faid *Peter Penruddock*, that is to fay, the first Day of *April* in the 23d Year of the Reign of the Lady the now Queen, at *Willefdon* aforef. by a certain Writing indented, made between him the faid *Francis* of the one Part, and the aforefaid *Miles Hitchcock* and *Tho. Albany* of the other Part, one Part of which the faid *Tho. Albany*, sealed with the Seal of the faid *Francis*, brings here into Court, whose Date is the same Day and Year, renounced, relinquished, and surrendered all Manner of such Liberty, Power, and Authority, which he the faid *Francis*, by Force and Virtue of the aforef. Proviso above recited, or any Liberty in the aforef. Deed of Feoffment mentioned and expressed, which he of and from the Death of the aforef. *Peter Penruddock* then had or ought to have, of, touching and concerning the Alteration, Changing, Determination, Diminishing, or Amplifying of such Use or Uses, Intentions and Limitations, as are in the faid Indenture limited, expressed and declared. And further the faid *Francis*, by the faid Writing, remised, released, and quit-claimed to the aforef. *Miles Hitchcock* and *Thomas Albany* all the aforef. Condition, Provisoes, Covenants and Agreements before mentioned, and all and all Manner of such Power, Liberty, Authority, Right, Titie or Demand, which the faid *Francis*, after the Death of the faid *Peter*, had or could have, claim or challenge or demand, by Force and Virtue of the same Condition and Proviso in the aforef. Deed of Feoffment above mentioned, of or for the altering, changing or determining of any Use or Uses in the faid Deed of Feoffment contained; so that the faid *Francis*, of and from the Death of the aforef. *Peter Penruddock*, should not claim, challenge, demand, exercise, use, or have any power, liberty, or authority, to alter, change, determine, diminish or amplify any Use or Uses, Limitations, or Declarations, in the aforef. Deed of Feoffment contained, expressed, limited or appointed, but that the faid *Francis*, from the Death of the faid *Peter*, of and from all such Liberty, Power, and Authority, as before is said, should stand and remain, utterly barred, excluded and discharged for ever. And further, the faid *Francis*, by that Writing granted to the aforefaid *Miles* and *Thomas*, and their Heirs, that from thenceforth the aforefaid Condition, Proviso, Covenant and Agreement, and the aforefaid Power, Liberty, and Authority, should cease and be utterly void, to all Intents, Constructions and Purposes; and this he is ready to aver: Whereupon as at first he demandeth Judgment, and that the aforefaid *John Grendon* from having his Action aforefaid
against

against him the said *Thomas Albany*, be barred, &c. And the aforesaid *John Grendon* saith, that the Plea aforesaid, by the aforesaid *Thomas Albany*, in Form aforesaid above by Rejoinder pleaded, and the Matter in the same contained, is not sufficient in Law, to bar him the said *John Grendon*, from having his Action aforesaid against the said *Thomas Albany*; to which the said *John Grendon* needeth not, nor is bound any Ways by the Law of the Land to answer; wherefore for want of a sufficient Rejoinder in this Particular, the said *John Grendon* demandeth Judgment and his Damages, by the Occasion aforesaid to be adjudged unto him, &c. And the aforesaid *Thomas Albany* saith that the Plea of him the said *Thomas*, in Manner and Form aforesaid, above by Rejoinder pleaded, and the Matter in the same contained, is good and sufficient Law, to bar the said *John Grendon* from having his Action aforesaid against him the aforesaid *Thomas Albany*; which Plea, and the Matter in the same contained, the said *Thomas* is ready to aver and prove, as the Court, &c. And because the said *John Grendon* to that Plea doth not answer, nor doth the same any ways deny, the said *Thomas Albany*, as at first, prayeth Judgment, and that the said *John Grendon* be barred from having his Action aforesaid against the said *Thomas Albany*, &c. And because the Court of the Lady the Queen, here, of giving their Judgment of and upon the Premises is not yet advised, Day is given to the Parties aforesaid, here before the Lady the Queen at *Westminster*, until *Thursday* next after the Morrow of the Purification of the Blessed *Mary*, to hear their Judgment of and upon the Premises, because the Court of the Lady the Queen here is not yet, &c.

ALBANY'S Case

Hill. Term. ann. 28 Eliz.

Between Grendon and Albany in the
King's Bench.

4 Leon. 133,
219. Winch 57.
2 Roll. Rep.
323. 3. Keb.
510, 536.
Moor 605.

IN Trespafs brought by *John Grendon* Plaintiff, against *Thomas Albany* Defendant, for a Trespafs committed in twenty Acres of Land in *W.* in the County of *Middlesex.* The Defendant as to five Acres pleaded, that *Francis Bunny* 1 *Maii* 20 *Eliz.* by Deed indented did infeoff *Miles Hitchcock* to the Use of the said *Francis* for Life, and after to the Use of one *David Bunny* in Tail, and after to the Use of one *Walter Bunny* in Tail, and after to the Use of one *Stephen Bunny* in Fee. And afterwards, viz. 1 *Maii* 21 *Eliz.* the said *Francis* of the said five Acres, in which, &c. did infeoff one *Richard Tompson* in Fee, upon whom the said *David* entered for the Forfeiture. And afterwards, viz. 1 *Maii* 22 *Eliz.* demised the said five Acres to *Adam Blunt* for twenty-one Years, who infeoffed the said *Thomas Albany* the now Defendant, and justified the Trespafs, and gave Colour to the Plaintiff. And as to the said fifteen Acres Residue, the Defendant pleaded, that the said *David* so seised as aforesaid in Tail, 2 *Maii* 22 *Eliz.* by Deed indented and inrolled in Chancery according to the Statute, did bargain and sell the said fifteen Acres to the said Defendant in Fee, and justified the Trespafs, and gave Colour to the Plaintiff. The Plaintiff replied and said, that in the said Deed of Feoffment of the said *Francis Bunny*, it was provided, that if it should happen that one *Peter Penruddock* should die without Issue Male of his Body, that it should be lawful for the said *Francis* at all Times at his pleasure, during his Life, by his Deed indented to be sealed and delivered in the Presence of four honest and credible Witnesses at the least, to alter, change, determine, diminish, or amplify any Use or Uses, Limitations, Intents, or Purposes limited or appointed in or by the said Deed of Feoffment, or the Use of any Parcel of the Premises. And afterwards, 1 *Maii* anno 23, the said *Peter Penruddock* died without Issue Male, and after, that is to say, 20 *Martii* 24 *Eliz.* the said *Francis* by Indenture between

Postea 173. a.

between him and the said *David Bunny*, and sealed and delivered in the Presence of four honest and credible Witnesses (naming their (a) Names as he ought) did alter the Uses in the said Deed contained; and further covenanted and agreed with the said *Dav.* that for ever after the said *M. Hitchcock* and his Heirs, &c. should stand seized of the said twenty Acres to the Use of the Plaintiff in Fee, as by the said Indenture more fully appears, by Force whereof he was seized until the Defendant did the Trespass, *prout*, &c. The Defendant rejoined and confessed, that in the said Deed of Feoffment there was such a *Proviso* as the Plaintiff in his Replication hath alleged. But he said, that the said *F. Bunny* in the Life-time of the said *P. Penrud.* *sc.* 1 *Apr.* 23 *Eliz.* by his Deed did renounce, relinquish and surrender to the said *Miles, David, Nicholas, Walter* and *Stephen*, all such Liberty, Power, and Authority of Revocation, &c. which he had after the Death of the said *Peter* without Issue as aforesaid. And further the said *Fr.* by the said Deed did remise, (b) release and quit-claim to them the said Condition, Proviso, Covenant and Agreement aforesaid, and all his Power, Liberty and Authority aforesaid. And further the said *Fran.* by the same Deed granted to them and their Heirs, that for ever after, as well the said Condition, *Proviso*, Covenant and Agreement, as the said Power, Liberty and Authority should cease, and be to all Intents void, &c. Upon which Rejoinder the Plaintiff did demur in Law. And *Atbam* and others of Counsel with the Plaintiff did argue, that a Fine or Feoffment could not extinguish such Liberty or Power; *a fortiori* a Release could not extinguish it; for a Fine or Feoffment hath Power and Force to exclude the Party from all Rights and Titles to the Land, as well present as future; but an Authority or Power, which is (c) collateral to the Right and Title of the Land, can't be given or extinguished by Fine or Feoffment, neither can he thereby disable himself to make an Estate according to his Authority and Power, when it comes *in esse*. As in (d) 15 *H. 7. fol. 1. b.* where *Cestuy que use* devised, that his Feoffees should sell his Land, and died, and afterwards his Feoffees made a Feoffment over, yet the Feoffees might sell against their own Feoffment, because the Power to sell was mere collateral to the Right of the Land.

And so if (e) Executors have Power to sell Land to *J. S.* and they enter and disseise the Heir, and infeoff a Stranger, yet they may sell to *J. S.* for the Reason before. And it was resembled to the Case of Tithes in (f) 42 *E. 3. 13. a.* where it is held, that a prior Parson imparsoned shall have Tithes against his own Feoffment, because he doth not claim them in Respect of the ownership of the Land, or any Right or Title therein, but as Tithes in Respect that he is Parson by collateral Means. And (g) 12 (2) *Aff. plac. 41.* pending a *Præ-*

cipe

- (a) Antea 109. a.
 (b) Winch 31.
 Co. Lit. 327. a.
 Moor 605.
 2 Roll. Rep.
 337. Hob. 337.
 338. Postea
 174. a.
 (c) Hard. 415.
 (d) Br. Teltam.
 & volunr. 6, 7.
 Br. Feoffm.
 al use 12. 15
 H. 7. 11. b.
 Postea 112. a.
 173. b. 4 Leon:
 134, 135, 220,
 221. Co. Lit.
 265. b. Moor
 605. Kelw. 44.
 Hardi. 414.
 Latch 10.
 14 H. 7. Casu
 ult. Poph. 194.
 (e) Latch 10,
 43. Kelw. 40. b.
 44. b. Co. Lit.
 265. b. 9 Co.
 77. a. Postea
 173. b. 1 Roll.
 Rep. 197.
 (f) 2 Co. 49. a.
 11 Co. 13. b.
 Cro. Jac. 362.
 452. Cro. El.
 161. 1 Roll.
 655. 2 Roll. 57.
 2 Bulstr. 183,
 184. Styl. 279.
 Owen 39.
 Moor 47, 50.
 219, 532. Dall.
 50. Dav. 6. a.
 Noy 35, 132. J.
 B. N. C. 178.
 Dyer 43. pl. 21.
 (g) Post. 112.
 a. 4 Leon. 135.
 221. Co. Lit.
 266. a. 1 Roll.
 788. Palm. 254.
 Br. Error 111.
 3 Co. 29. b.

cipe, the Tenant makes a Feoffment, and afterwards an erroneous Judgment is given against him, yet he shall have a Writ of Error against his own Feoffment, for the Error is collateral to the Right of the Land; *a fortiori*, in Case of a Release, for that which should be released is but a Possibility, which cannot be released. And a (a) Diversity was taken between a Condition precedent and a Condition subsequent; for a Condition subsequent before the Breach thereof may be released, for there the Estate passeth, and the Condition is annexed to that which may be released. But in the Case of a Condition precedent, there it is but a Possibility; as if I grant to you, that if you do such an Act you shall have an Annuity of 20 l. *per ann.* during your Life, and before the Performance of the Condition you release the Annuity to me, the Release is void, because the Release cannot extinguish a Possibility. The Case of *Littleton*, Chapter (b) *Release* 105. where the Son releaseth in the Life of his Father, the Release is void. And 40 E. 3. 22. a future Duty as a Relief, &c. is not released by this Word Demand, (c) 18 E. 3. fol. 26. a. & *Titulo Avowry* 99.

And on the other Side it was argued by one of the Inner Temple; and as to the first Point he said, That a Fine or (d)

Feoffment may utterly extinguish the said Power and Authority, so that the Feoffor had disabled himself to execute it when it came in *esse*. And therefore the Case by Way of Admittance is no other in Effect, but that *A.* enfeoffs *B.* to the Use of *A.* himself for Life, and after to the Use of *B.* in Tail, and after to the Use of *C.* in Fee, with *Proviso* and Liberty to revoke the Uses, and to limit new Uses, if *A.* survive *B.* and afterwards *A.* makes a Feoffment, and after *B.* dies; whether *A.* may limit new Uses against his own Feoffment is the Question; and he conceived, he could not. And first he said, that a Livery is of such Force that it gives and excludes the Feoffor not only from all present Rights, but from all future Rights and Titles. Also as the Books are, in the Case of Tenant by the Curtesy in (e) 9 H. 7. fol. 1. b. and in the Case of Intruder, and Recovery in a Writ of Disceit, in 9 H. 7. 24. b. and in the Case where the Son disseised the Father, and made a Feoffment, in (f) 39 H. 6. 43. a. And in all Actions which are in a Manner collateral to the Land, as

(g) 34 H. 6. 44. a. the Case of Attaint, (b) 38 E. 3. 16. b. the Case of Disceit, in those Cases those Actions are extinguished by a Feoffment of the Land, and yet they are collateral to the Right of the Land, by which no Land is demanded, but are only to reform the erroneous Proceeding, the false Oath, and false Return of the Sheriff, &c. but because by a Mean the Possession and Inheritance of the Land would be also removed and divested by them, for that Reason by a Feoffment of the Land, those Actions are gone.

So

(a)

(a) 5 Co. 70. b.
Co. Lit. 274. b.(b) Lit. sect. 446.
Co. Lit. 265. a.
10 Co. 47. b.
4 Leon. 134.
220.

(c) Owen 40.

(d) Post. 174. a.
Co. Lit. 237. a.
Hob. 337, 338.
Moor 605.
2 Roll. Rep.
337.(e) Godb. 301.
Co. Lit. 30. b.
Br. Tenant per
le Curtenie 6.
4 Leon.
135, 221.
Hob. 338.
Perk. sect. 474.
2 Roll. Rep. 337.
(f) 4 Leon.
134, 220.
Co. Lit. 265. a. b.
247. b.(g) 4 Leon.
135, 221.
Br. Attaint 11.
Br. Bar. 9. Br.
Entre congeable 4.
Fitz. Bar. 70.(b) 4 Leon.
135, 221.
2 Roll. Rep.
337.

So in the Case at Bar, altho' this Power to revoke the former Uses and Estates, and to limit a new Use is not properly any Interest or Right in the Land, yet it is a Mean by which the Possession and Right of the Land shall be alter'd and de-

vested out of a third Person. Also it is clear, that a future Use shall be given inclusively in the Livery, as (a) 27 H. 8. 29. b. (a) 4 Leon. and in *Delamer's Case Plow.Com.* and then if a future Right, a future Action, which is collateral to the Right of the Land, and a future Use shall be given and extinguished in the Livery of the Land; so it was said, shall it be in the Case at the Bar; for let us examine the Case by Parcels, and suppose that in the Case above, the *Proviso* had been only, That if *A.* survive *B.* that then he might revoke the former Uses, without more it was clear, that after the said Feoffment he could not revoke, for then he would have the Land again (*b*) against his own Feoffment, which would be against all Reason, and against all the Books aforesaid. (b) Co. Lit. 265. b.

Then in the Case at Bar the *Proviso* goes further, *scil.* That he may alter, change, &c. Suppose then that he had Power to revoke the ancient Uses, and Power to limit new Uses to a Stranger, how should the Stranger have this new Use? Certainly by Force of the first Feoffment made by the said *A.* for out of that all the present and future Uses also arise. And so the Stranger shall have this Use in a Manner by the said *A.* against his own later Feoffment and Livery, which for the Reasons aforesaid cannot be. And it was said that the Book in (c) 15 H. 7. 11. b. which hath been cited on the other Side, is not to be compared to this Case, for two Reasons: One, because there the Feoffees having Pow'r to sell, as is aforesaid, made a Feoffment over to the first Uses, for so is the Book, and then notwithstanding their Feoffment they might sell as much as the Testator could devise, and that was the Use. The second Reason is, because when the Feoffees sell the Use, the *Vendee* is in by the Devise of *Cestuy que use*; as in the Case of Executors who have Power to sell, their *Vendee* shall be in by the Testator and not by them; but in the Case at Bar, the new *Cestuy que use*, as hath been said before, would be in in a Manner by the Feoffor; for the Feoffor in Case of an Estate-tail limited in Use shall be supposed Donor. And as to the Case in (d) 12 *Aff.* 41. of *Error*, he said, That the Feoffment cannot bar him of the Writ of Error, because notwithstanding his Feoffment he remains Tenant as to the Demandant, and shall plead all Pleas which the Tenant might plead, and notwithstanding that shall be received, &c. and Judgm. given against him as Tenant; wherefore upon such Judgm. given against him after his Feoffment he shall have a Writ of Error; but (e) if after the Judgm. given he makes a Feoffment, he shall never have a Writ of Error, nor an Attaint; and therefore the Reason is not in the Case of (f) 12 *Aff.* as hath been urged, that

Skinner 185.
221, 135.
Br. Feoffment
al Use 8.
Plow. 352. a.

(b) Co. Lit.
265. b.

(c) Antea 111. a.
Pop. 194.
14 H. 7. casu
ultimo.
Larch 10.
Hard. 414.
Kel. 44. b.
Moor 605.
Postea 173. b.
Co. Lit. 265. b.
4 Leon. 220.
221, 134, 135.
Antea 111. a.
Br. Testament
& Volunt. 6, 7.
Br. Feoffment
al Use 12.

(d) 4 Leon.
135, 221.
Co. Lit. 266. a.
1 Rol. 788.
Palm. 254.
Br. Error 111.
Antea 111. a.
3 Co. 29. b.

(e) Co. Lit.
289. a.

(f) Antea
111. a.

(a)

that the Feoffment doth not extinguish it, because it is collateral to the Right of the Land, for then by the same Reason his Feoffment after Judgment given should not extinguish it; wherefore it seemed to him, that a Fine or Feoffment may extinguish the said future Power. And of such Opinion, upon Conference had with the Ld. *Anderson* and other Justices, was *Wray* Ch. Justice of *England*, and all the Court of K.'s Bench,

(a) Postea 174. a. that is to say, that (a) the said Power as well to revoke, as to
 Co. Lit. 237. a. limit new Uses, may be utterly gone and extinguished either
 Hob. 337, 338. by a Fine or a Feoffment. And as to the second Point, he conceiv-
 Mo. 605 2 Roll. ed, that the said future Power might be released, for it
 Rep. 337. may be resembled to a Condition subsequent, altho' the Per-
 3 Co. 83. a. formance or Breach thereof cannot be done without an Act
 precedent; as if *A.* enfeoff *B.* and his Heirs upon Condition,
 that if *B.* survive *C.* if then *A.* or his Heirs pay to *B.* his Heirs
 or Assigns 40 s. that then he and his Heirs shall re-enter;
 in that Case, it is a Condition subsequent, and altho' it cannot
 be performed but upon a Contingency, yet is the Inheritance
 in him, and shall descend to his Heir, and therefore may be
 released, and his Heir by his Release may be barred. And
 therefore if a Man makes a Feoffment in Fee with Warranty,
 in that Case before he can vouch, he ought to be impleaded,
 so that the Voucher depends upon an Act uncertain, that is
 to say, that he shall be impleaded in a real Action by a
 Stranger; yet by a Release of all Demands, (b) *Littleton* in
 (b) Lit. sect. 748. his Chapter of Warranty, fol. 171. saith, That the Warranty is
 Co. Lit. 392. b. extinguished, for it is an Inheritance in Law, and may desc-
 8 Co. 154. a. end to the Heir, and by Consequence may be released.
 5 Co. 71. a.

Also if a Man covenants to do a collateral Act, in that Case
 before the Breach of it, a Release of all Actions, Suits, and
 Quarrels, is nothing worth, for before the Breach of it there
 is not any Duty, nor Cause of Action, but the Breach ought
 to precede as it was adjudged *Tr. 4 Eliz. Rot. 1027. in Com-*
muni Banco. But in the same Case a Release of all Covenants
 will bar it, as it is said in 35 *H. 8. 56, 57. (c) Dyer.* For by
 his Death the Law transfers it to his Executor, and by Con-
 sequence he may release it. And 16 *E. 3. Fitz. Barre 245. (d)*
 (c) 5 Co. 71. a. A Woman hath Title of Dower of Land, whereof one is Ten-
 H. 11. H. 17. ant for Life, the Reversion to another in Fee, and the Wo-
 10 Co. 51. b. man releases to him in the Reversion, it is a good Bar in a
 (d) Co. Lit. Writ of Dower against Tenant for Life; and yet at the same
 265. a. Time she had no present Cause of Action against him, but
 5 Co. 71. a. in futuro after the Death of Tenant for Life. So 21 *H. 7.*
 8 Co. 151. b. 41. a. (e) A Release of an Annuity to the Patron in Time
 Doctr. plac. of Vacation is good, yet no Action lies against him, nor
 149. against any other till a Successor be made; and yet a Re-
 (e) 5 Co. 71. a. lease will extinguish it. And suppose in the Case at Bar,
 81. b. that the Power of Revocation upon the said Contingency
 2 Rol 340. had
 Co. Litt. 266. a.
 Fitz. Release
 57 Br. Release
 33. Br. Dean
 Chapter 11.

had been reserved to the Feoffor and his Heirs, without Doubt it was an Inheritance in him, and should descend to his Heir, and by Consequence his Release shall extinguish it; but as to that Point, the Court gave no Resolution: But it was agreed *per totam Curiam*, that if the Power of Revocation had been present, as the usual Proviso of Revocation are, that it might be extinguished by (a) Release, made by him who had such Power, to any who had an Estate of Freehold in the Land in Possession, Reversion, or Remainder, and thereby the Estates which were before defeasible by the *Proviso*, are by such Release made absolute.

And he moved another Point, that if it was admitted, that the said future Power could not be released, yet as well the Power as the *Proviso* and Covenant might by the said Words of Defeasance be defeated, for both are (b) executory, *scil.* the Power it self, which was created by the said Covenant and *Proviso*, which, &c. and as the *Proviso* and Covenant it self commenced by Deed, so by Deed they may be adnulled and defeated. And it was said, that in all Cases, when any Thing executory is created by a Deed, that the same Thing by Consent of all Persons who were Parties to the Creation of it, might by their Deed be defeated and adnulled: And therefore it was said, that Warranties, (c) Recognizances, Rents, Charges, Annuities, Covenants, Leases for Years, Uses at the Common Law, and such like, may by a Defeasance made with the mutual Consent of all those who were Parties to the Creation of them, be by Deed annulled, discharged, and defeated; for it was said, it would be strange and unreasonable, that a Thing which is created by the Act of the Parties, should not by their Act with their mutual Consent be dissolved again. And of such Opinion also was *Wray* Chief Justice, and the whole Court, *scil.* That by the said Defeasance as well the said Covenant which created the said Power, as the Power it self created thereby, was utterly defeated and annulled; and according to their Resolution Judgment for the Causes aforesaid was given, *quod Querens nil capiat per villam.*

(a) Postea
174 a.
Co. Lit. 265. b.

not annulled

not annulled

(b) Jones 411.
Co. Lit. 237. a

(c) Co. Lit.
237. a.

1 Rol. 472.

2 Sand. 48.

9 Co. 79. b.

Cr. Eliz. 623.

755.

Moor 37.

Plow. 137. a.

[See Skinner 53, 185, 186.]

CHUDLEIGH'S Case.

*Hillary Term, Anno 31 Eliz. Rot. 65.
in the King's Bench.*

Devon, ff.
Declaration
in Trespafs.

Memorandum, That at another time, that is to say, in *Hillary Term* last past, before the Lady the Queen at *Westminster*, came *William Dillon* Esq; by *Edward Hall* his Attorney, and brought here in the Court of the said Lady the Queen, then there his Bill against *John Freine*, in the Custody of the Marshal of a Plea of a Trespafs, and there are Pledges of Suit, to wit, *John Doe* and *Richard Roe*, which Bill followeth in these words; *J. Will. Dillon* Esq; complaineth of *John Freine*, in the Custody of the Marshal of the Marshalsey of the Lady the Queen, before the Queen her self being; for that, that he the 16th day of *November* in the 29th Year of the Reign of the said Lady the now Queen, with Force and Arms, &c. the Close of him the said *William*, called *Seden Close*, at *Tavestock*, in the County as aforesaid, brake and entred, and his Grasse there to the Value of 5 *l.* then and there growing, with his Cattle, that is to say, with Horses, Oxen, Cows, Hogs and Sheep, fed, trod down and consumed, continuing the Trespafs aforesaid, as to the treading down and consuming the Grasse from the aforesaid 16th Day of *Novemb.* in the 29th Year aforesaid, until the bringing of this Bill, that is to say, the 8th Day of *February* in the 30th Year of the Reign of the Lady the now Queen, divers Days continuing, and divers other Harms to him did, against the Peace of the said Lady the now Queen, to the Damage of the said *William* 40 Marks; and thereof he bringeth Suit, &c. And now at this Day, that is to say, *Thursday* next after 8 Days of *St. Hill.* in this Term, (until which Day the said *John Frayne* had licence to imparl to the said Bill, and then to answer,) &c. before the L. the Q. at *Westm.* cometh as well the said *William Dillon* by his Attorney aforesaid, as the aforesaid *J. Freine* by *John Halstaf* his Attorn. and the said *J. Freine* defendeth the Force and Injury, when, &c. And

And saith that he is not thereof guilty; and of this puts himself upon the Country, and the said *William Dillon* likewise, &c. Therefore a Jury was to come before the Lady the Queen at *Westminster* upon *Tuesday* next, after eight Days of the Purification of the blessed *Mary*; and who neither, &c. to recognize, &c. because as well, &c. The same Day is given to the Parties aforesaid here, &c. Afterwards the Process thereof was continued between the Parties aforesaid, of the Plea aforesaid by Jurors put thereof, between them in respice before the Lady the Queen at *Westminster*, until *Thursday* next after 8 Days of *S. Michael* then next following, (a) unless the Justices of the (a) 13 Ed. 17 Lady the Queen to Assizes in the County aforesaid to be taken assigned, first upon *Monday* the 7th Day of *July*, at the Castle of *Exeter* in the County aforesaid, by the Form of the Statute, &c. came, for Default of Jurors, &c. At which *Thursday* next after eight days of *S. Michael*, before the Lady the Queen at *Westminster*, come the Parties aforesaid, by their Attornies aforesaid. And the aforesaid Justices to Assizes, before whom, &c. sent here their Record before them had in these Words: ff. Afterwards the Day and Place within contained before *Edmund Anderson* Knt. Chief Justice of the Lady the Queen of the Bench, and *Thomas Gent*, one of the Barons of the Exchequer of the Lady the Queen, Justices of the said Lady the Queen to Assizes, in the County of *Devon*, assigned by the Form of the Statute, &c. came as well the within named *William Dillon*, by *Morrice Evans* his Attorney, as the aforesaid *John Freine*, by *Thomas Felton* his Attorney; And the Jurors of the Jury, whereof within mention is made, being called, some of them, that is to say, *John Forse* of *Crediton* Gent. *John Saltorn* of *Hunslow*, *Nicholas Poynes* of *Thornbury*, and *Robert Gunter* of *Lapford*, come and were sworn in the Jury aforesaid; And because the Residue of the Jurors of that Jury did not appear, therefore others of the (b) Stranders-by, by the Sheriff of (b) 1 Co. 4. a. the County aforesaid, thereto chosen at the Request of the 35 H. 8. cap. 6. aforesaid *William Dillon*, and by the Command of the Justices 1 Rol. Rep. 52. aforesaid, were new put to, whose Names to the Panel within Pop. 35. written are filed, according to the Form of the Statute in that 2 Rol. Rep. 76. Case late made and provided; And the Jurors so of new put 183, 394, 437. to, that is to say, *Anthony Moring*, *Robert Luxton*, *Robert Letheren*, 1 Bulltr. 121. *Edward Webber*, *Thomas Parmiter*, *Ralph Moore*, *William Stowell*, Cr. Jac. 677. and *Vincent Spark*, likewise being called come; who to say the Dyer 200. Truth of the Matters within contained, with the other Jurors pl 61, 376. within first impanelled, and sworn to say, chosen, tryed, and pl. 24. sworn, say upon their Oath, That before the within written Time East jurors 17. in which it is supposed the Trespas within written was done, 10 Co. 102. b. that is to say, the 26th Day of *April* in the 3d and 4th Years Dyer 245 pl 64. of the Reign of the Lord *Philip* and the Lady *Mary*, late King Stam. Cor. and Queen of *England*, and before, one *Richard Chudleigh* Knt. 155. a. b. was seised of the Mannor of *Hescot* with the Appurtenances in Special Verdict in the County aforesaid, whereof the Close within written with the Appurt. in which it is supposed the Trespas within written to be done is, and within the Time in which, &c. as also Time where- of the Memory of Men is not to the contrary, were Parcel in his

Pleadings in Chudleigh's Case. PART I.

Demefn as of Fee ; and that the aforefaid *Richard Chudleigh* before the aforefaid 26th Day of *April* in the 3d and 4th Years of the Reigns of the aforefaid late K. and Q. *Philip* and *Mary* abovefaid, had Iffue of his Body lawfully begotten, *Chriftopher Chudleigh* his eldeft Son, *Thomas Chudleigh* his fecond Son *Oliver Chudleigh* his third Son, and *Nicholas Chudleigh* his fourth Son : And the faid *Richard Chudleigh* of the Manor aforefaid, with the Appurtenances whereof, &c. in Form aforefaid feized, the faid *Richard Chudleigh* before the within written Time in which, &c. that is to fay, the aforefaid 26th Day of *April* in the third and fourth Years of the Reign of the aforefaid late King and Queen *Philip* and *Mary* abovefaid, by his Indenture Quadripartite fealed with the Seal of the faid *Richard Chudleigh*, and to the Jurors fhewed in evidence, whofe Date is the fame Day and Year of the Manor aforefaid, with the Appurtenances thereof (amongft other things) encoffed, *John Sentleger* Knt. *Giles Strangeways* Knt. *John Wadham* Efq; *John Gilbert* Efq; *Thomas Carew* Efq; *Richard Bampffield* Efq; *John Ridgeway* Efq; *Robert Fulford* Efq; *Thomas Williams*, *John Eveleigh* Gent. and *William Hole* Gent. To have and to hold the aforefaid Manner with the Appurtenances whereof, &c. amongft other Things, to the fame *John Sentleger*, *Giles Strangeways*, *John Wadham*, *John Gilbert*, *Thomas Carew*, *Richard Bampffield*, *John Ridgeway*, *Robert Fulford*, *Thomas Williams*, *John Eveleigh* and *William Hole*, their Heirs and Affigns for ever, only to fuch Ufes and Intents, as in the faid Indenture Quadripartite are declared and fpecified; that is to fay, to the Ufe and Behoof of the faid *R. Chudleigh*, and his Heirs of the Body of *Mary*, then the Wife of the aforefaid *Thomas Carew* lawfully to be begotten; and for Default of fuch Iffue, to the Ufe of the aforefaid *Richard Chudleigh* and his Heirs of the Body of *Elizabeth*, then the Wife of the faid *Richard Bampffield* lawfully to be begotten; and for Default of fuch Iffue, to the Ufe of the aforef. *R. Chudleigh* and his Heirs on the Body of *Lawrenzia*, then the Wife of the aforefaid *Robert Fulford*, lawfully to be begotten; and for Default of fuch Iffue, to the Ufe of the Heirs of the faid *Richard Chudleigh*, on the Body of *Emlen*, then the Wife of the faid *Thomas Williams* lawfully to be begotten; and for Default of fuch Iffue, to the Ufe of the aforefaid *Richard Chudleigh* and his Heirs on the Body of *Johan*, then the Wife of the faid *John Eveleigh* lawfully to be begotten; and for Default of fuch Iffue, to the Ufe of the aforef. *R. Chudleigh* and his Heirs on the Body of *Johan*, then the Wife of the aforefaid *Giles Strangeways* lawfully to be begotten; and if it fhould happen
the

the said *R. Chudleigh* should die without Issue on the Bodies of the said *Mary, Elizabeth, Laurentia, Emlen, Johan and Joan*, lawfully begotten, then the aforesaid *John Sentleger*, and other his Feoffees, and their Heirs should be seized of and in the Manor aforesaid, with the Appurtenances, whereof, &c. amongst other Things, for and during the Term of 10 Years after the Death of him the said *Richard Chudleigh* then next following, to the Use and Performance of the last Will of the aforesaid *Richard Chudleigh*; and after the aforesaid Term of 10 Years compleated and ended, then the aforesaid *John Sentleger, Giles Strangeways, John Wadham, John Gilbert, Thomas Carew, Richard Bamfield, John Ridgway, Robert Fulford, Thomas Williams, John Eveleigh*, and *William Hole*, their Heirs and Assigns, should stand and be seized of and in the Manor aforesaid, with the Appurtenances, whereof, &c. amongst other Things, to the only Use and Behoof of the aforesaid *John Sentleger, Giles Strangeways, John Wadham, John Gilbert, Thomas Carew, Richard Bamfield, John Ridgeway, Robert Fulford, Thomas Williams, John Eveleigh*, and *William Hole*, their Heirs and Assigns for ever, for and during the natural Life of the aforesaid *Christopher Chudleigh* his eldest Son, and after the Death of the said *Christopher* his Son, the aforesaid Feoffees, their Heirs and Assigns should stand and be seized of and in the Manor aforesaid with the Appurtenances, whereof, &c. amongst other Things to the Use and Behoof of the first Issue Male of the Body of the aforesaid *Christopher* lawfully begotten, and the Heirs of the Body of such first Issue lawfully to be begotten; and for Default of such Issue, to the Use of the second Issue Male, by the said *Christopher* lawfully to be begotten, and the Heirs of the Body of such second Issue Male lawfully begotten; and for Default of such Issue, to the Use of the third Issue Male, by the aforesaid *Christopher* lawfully to be begotten, and the Heirs of the Body of such third Issue Male lawfully to be begotten; and for Default of such Issue, to the Use of the 4th Issue Male, and the Heirs of the Body of such fourth Issue Male, by the aforesaid *Chris.* lawfully to be begotten; and for Default of such Issue, to the Use of the fifth Issue Male by the aforesaid *Chris.* lawfully to be begotten, and the Heirs of the Body of the aforesaid 5th Issue Male lawfully to be begotten; and for Default of such Issue, to the Use of the 6th Issue male, by the aforesaid *Chris.* lawfully to be begotten, and the heirs of the body of the aforesaid 6th Issue male lawfully to be begotten; and for default of such Issue, to the use of the 7th issue male by the aforesaid *C. Chudl.* lawfully to be begotten, and the heirs of the body of the aforesaid 7th Issue male lawfully to be begotten; and for default of such Issue, to the use of the 8th Issue male by the aforesaid *C. Chudl.* lawfully to be begotten, and the heirs of the

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(a) Co. Lit. 36. b. 187. b. 1 And. 29, 37, 42, 52, 75. 47. b. 54. b. 68. b. 78. b. 115. b. Hob. 338. 1 Leon. 14, 259. 2 Leon. 6, 7, 15, 16, 17, 18. 2 Anderf. 71, 74, 77, 81, 82. Plow. 44. a. 45. a. 58. b. 59. b. Dyer 23. pl. 148, 28. pl. 182, 30. pl. 3. 10 Co. 49. a. 85. a. Co. Ent. 172. b. 382. a. 389. g. 589. b. 2 Co. 36. a. 53. b. 71. b. 78. a. 3 Co. 27. a. 62. a. 4 Co. 2. a. 5 Co. 112. b. 113. a. 6 Co. 28. a. 7 Co. 9. a. 13 b. 19. b. 38 a 8 Co. 94. a. 9 Co. 26. a. 10 Co. 49. a. 1 Bullstr. 153. 3 Bullstr. 185, 186, 252. Godb. 299. Cr. Eliz. 46, 721, 908. Cr. Jac. 401, 608. Cr. Car. 44, 218. Pop. 71, 72, 76, 77, 78. Dyer 283. pl. 30. Cr. Eliz. 1 Roll. Rep. 260, 385. 2 Rol. Rep. 105, 245. Mo. 92, 102, 196. 1 Jones 179. 2 Bullstr. 44. Bridgm. 27. Dyer 11. i. pl. 45, 56. Lit. Rep. 261. Co. Lit. 326. b. 365. b. 381. a. 1 Roll's 878. 5 Co. 50. b. 51. a. 58. b. Cr. Eliz. 2, 14, 131, 514, 524. Mo. 455, 93. 2 And. 31, 44, 57. Cr. Jac. 639, 174. 1 Jones 13, 254. Cr. Car. 244. 5 Co. 80. a. 9 Co. 141. a. 10 Co. 37. a. Plow. 50. b. 1 Hob. 299. 1 Leon. 261. 2 Leon. 168. Godb. 6. Mo. 250. 3 Leon. 78. Bridgman 27, 28, 136. 27 H. 8. 22. b. 4 Co. 3. b. Dyer 89. pl. 2, 146. pl. 68, 147. pl. 74, 148. Hob. 166, 341. 10 Co. 39. b. a.

Body of the afores. 8th Issue Male lawfully to be begotten; and for Default of such Issue, to the Use of the 9th Issue Male, by the afores. *Christopher* lawfully to be begotten, and the Heirs of the Body of the afores. 9th Issue Male lawfully to be begotten; and for Default of such Issue, to the Use of the 10th Issue Male lawfully to be begotten, and the Heirs of the Body of the afores. 10th Issue Male lawfully to be begotten; and if it should happen the afores. *Christopher* to die without Issue Male of his Body lawfully to be begotten, then the afores. Feoffees and every of them their Heirs and Assigns should stand and be seised of and in the Manor afores. with the Appurtenances whereof, &c. amongst other Things, to the Use and Behoof of the afores. *Tho. Chudleigh*, another Son of the afores. *Rich. Chudleigh*, and the Heirs of his Body lawfully to be begotten; and for Default of such Issue, to the Use and Behoof of the afores. *Oliver Chudleigh*, another Son of the afores. *Rich. Chudleigh*, and the Heirs of his Body lawfully to be begotten, with a like Limitation to *Nicholas* another Son, and the Heirs of his Body, &c. and for Default of such Issue, to the Use and Behoof of the right Heirs of the said *Rich. Chudleigh*, Knt. for ever, as by the said Indenture *Quadripartite*, amongst other Things, more fully it appeareth. By Colour of which Feoffment, and by Force of a certain Act of Parliament of the Lord *Henry* the 8th late K. of *Engl.* made the 4th Day of *Feb.* in the 27th Year of his Reign held at *Westmin.* in the County of *Middlesex*, of transferring (a) Uses in Possession there, the afores. *Richard Chudleigh* was seised of the Manor afores. with the Appurtenances whereof, amongst other Things, as the Law requireth. And the afores. *Rich. Chudleigh* of the Manor afores. with the Appurtenances whereof, &c. so being seised, the same *Richard* before the within written Time in which, &c. that is to say, the 17th Day of *Novemb.* in the 5th and 6th Years of the Reigns of the afores. late King and Queen *Philip* and *Mary* died, and that neither at the Time of the Death of him the said *Rich. Chudleigh*, and before the Day of the bringing of the Bill within written, there was any Heir of the afores. *Rich. Chudleigh* of the Bodies of any the afores. *Mary*, *Elizabeth*, *Laurentia*, *Emlen*, *Johan* and *Joan*, lawfully begotten: And that after the Death of the afores. *Rich. Chudleigh*, and before the Time in which, &c. the afores. *John Sentleger*, *Giles Stangewaios*, *John Wadham*, *John Gilbert*, *Tho. Carew*, *Rich. Bamphfield*, *John Ridgway*, *Rob. Fulford*, *Th. Williams*, *John Eveleigh*, and *Wil. Hole*, into the Manors afores. with the Appurt. whereof, &c. amongst other things entred,

and were thereof possessed or seised, as upon the whole Matter aforesaid the Law requireth; and so thereof being possessed or seised, *Christopher Chudleigh*, after the Death of the afores. *Richard*, before the within written Time in which, &c. took to Wife *Christian Strachley*; and that the aforesaid *John Sentleger*, *Giles Strangerwaies*, *John Wadhon*, *John Gilbert*, *Tho. Carew*, *Rich. Bampffield*, *John Ridgeway*, *Rob. Fulford*, *Tho. Williams*, *John Eveleigh*, and *Will. Hole*, of the aforesaid Manor, with the Appurtenances, whereof, &c. amongst other Things, in form afores. possessed or being seised, before the within written Time in which, &c. that is to say, the 14th Day of *August* in the 1st Year of the Reign of the Lady the now Queen, the said *Oliver Chudleigh* then living, and being in full Life, by their Writing sealed with their Seals, and to the Jurors aforesaid shewed in Evidence, whose Date is the same Day and Year, freely and without any Consideration, amongst other Things, enfeoffed the afores. *Christ. Chudleigh*, then and before having Notice of the making of the afores. *Quadrupartite* Indenture, and of the Uses in the same contained; To have and to hold the Manor afores. with the Appurtenances, whereof, &c. amongst other Things, to the said *Christopher*, his Heirs and Assigns for ever, to the only Use and Behoof of the said *Christopher*, his Heirs and Assigns for ever. By Virtue of which Feoffment, the said *Christopher Chudleigh* was seised of the Manor afores. with the Appurtenances, whereof, &c. amongst other Things, as the Law requireth. And so thereof being seised, the said *Christopher Chudleigh*, before the within written Time in which, &c. that is to say, the 20th Day of *Septemb.* in the 3d Year of the Reign of the Lady the now Queen, had Issue of his Body lawfully begotten, one *Strachley Chudleigh* his first Son; and that the said *Christopher Chudleigh* afterwards, and before the Time in which, &c. that is to say, the 30th Day of *May* in the 5th Year of the Reign of the Lady the now Queen, had another Issue of his Body lawfully begotten, that is to say, one *John Chudleigh* his second Son; and the afores. *Christo. Chudleigh*, of the Manor afores. with the Appurtenances, whereof, &c. in form aforesaid being seised, the said *Christopher* afterwards and before the within written Time in which, &c. that is to say, the first Day of *July* in the 6th Year of the Reign of the Lady the now Queen, by his Writing indented, sealed with his Seal, and to the Jurors aforesaid shewed in Evidence, whose Date is the said first Day of *July* in the sixth Year aforesaid; and afterwards, that is to say, the 4th Day of *October* in the

Bargain and
Sale inrolled in
the County.

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of the said County, to be kept assigned, as the Deed of the said *Christopher* acknowledged, and according to the form of the Stat. in such case made and provided inrolled, in Consideration of 220*l.* to him by one *John Chichester*, Knt. before then paid, bargained and sold to the said *John Chichester*, the Manor afores. with the Appurtenances, whereof, &c. To have and to hold to the said *John Chichester*, his Heirs and Assigns for ever, to the only Use and Behoof of the said *John Chichester*, his Heirs and Assigns for ever. And that the afores. *Christo. Chudleigh* moreover, before the within written Time in which, &c. that is to say, the 6th Day of *July* in the 6th Year of the Reign of the said Lady the now Queen aforesaid, by his Deed sealed with his Seal, and to the Jurors afores. shewed in Evidence, whose Date is the said 6th Day of *July* afores. of the Manor afores. with the Appurtenances, whereof, &c. enfeoffed the afores. *John Chichester*; To have and to hold the said Manor, with the Appurtenances, whereof, &c. to the said *John Chichester*, his Heirs and Assigns for ever, to the only Use and Behoof of the said *John Chichester*, his Heirs and Assigns for ever. And by the said Deed afores. the said *Christopher* granted for him and his Heirs, That he and his Heirs, the Manor afores. with the Appurtenances, whereof, &c. to the afores. *John Chichester*, his Heirs and Assigns, to the only Use and Behoof of the said *John Chichester*, his Heirs and Assigns, against all Men would warrant and defend by the said Deed, as by the said Deed more fully appeareth. By Virtue of which Feoffment, and of which afores. Bargain and Sale, the afores. *John Chichester* was seised of the Manor afores. with the Appurtenan. whereof, &c. as the Law requireth; and so being thereof seised, the afores. *Christo. Chudleigh* afterwards, and before the within written Time in which, &c. that is to say, the first Day of *Octob.* in the 12th Year of the Reign of the Lady the now Queen died, then living the afores. *Strachley Chudleigh*, eldest Son and Heir of the said *Christopher*, and *John Chudleigh* his second Son. And afterwards, and before the Time in which, &c. that is to say, the 7th Day of *Novemb.* in the 13th Year of the Reign of the said Lady the now Queen, the said *Strachley Chudleigh* died without Issue of his Body begotten, the said *John Chudleigh*, Brother and Heir of the said *Strachley* then living, and in full Life being, that is to say, at *Tavistock* afores. in the County afores. And that the afores. *John Chudleigh*, after the Death of the afores. *Strachley* his Brother, was and yet is Heir of the afores. *Christopher Chudleigh* his Father. And the said *John Chudleigh* of the Manor afores. with the Appurtenances, whereof, &c. in form afores. being seised, the said *J. Chichester*, before the within written Time in which, &c. that is to say, the 6th Day of *Septemb.*

in the 7th Year of the Reign of the said Lady the now Queen, of the Manor aforesaid, with the Appurtenances, whereof, &c. enfeoffed one *Philip Chichester*, Gent. To have and to hold the said Manor, with the Appurtenances, whereof, &c. to the said *Philip Chichester*, his Heirs and Assigns for ever, to the only Use of him the said *Philip Chichester*, his Heirs and Assigns for ever. By Virtue of which Feoffment, the said *Philip Chichester* was seised of the Manor aforesaid, with the Appurtenances, whereof, &c. as the Law requireth; and that the Close aforesaid, with the Appurtenances, in which, &c. is, and at the within written Time in which, &c. as also from the whole Time aforesaid, was customary Land of the Manor aforesaid, and demised, and demisable by Copy of Court-Roll, of the Manor aforesaid, by the Lord or his Steward of the Manor aforesaid for the Time being, to any Person or Persons who were willing to take the same for Term of Life or Lives, at the Will of the Lord, according to the Custom of the Manor aforesaid; And the aforesaid *Philip Chichester*, of the Manor aforesaid, with the Appurtenances, whereof, &c. as the Law requireth, &c. being seised, before the Time within which, &c. that is to say, the 8th Day of *October* in the 15th Year of the Reign of the said Lady the now Queen, at the Court of his Manor aforesaid, then holden at the said Manor of *Hescot* aforesaid, of his own Delivery, the Close aforesaid, with the Appurtenances, amongst other Things, to the aforesaid *John Freine*, granted by Copy of Court-Roll of the said Manor; To have and to hold the same Close of Land, with the Appurtenances, wherein, &c. to the same *John Freine*, for the Term of his Life, at the Will of the Lord, according to the Custom of the Manor aforesaid. By Virtue of which Grant the said *John Freine*, before the Time in which, &c. entred, and was thereof seised, as the Law requireth, &c. And so thereof being seised, the said *John Chudleigh* being Heir, as before is said, of the aforesaid *Christopher Chudleigh*, before the within written Time in which, &c. that is to say, the 11th Day of *March* in the 28th Year of the Reign of the Lady the now Queen, in the Manor aforesaid with the Appurtenances, whereof, &c. in and upon the Possession of the aforesaid *Philip Chichester* thereof entred, and was thereof possessed, as the Law requireth, &c. And so being possessed, before the within written Time in which, &c. that is to say, the 11th Day of *March* in the said 28th Year of the Reign of the said Lady the now Queen, of the Manor aforesaid, with the Appurtenances, whereof, &c. entred in and upon the Possession thereof of the said *Philip Chichester*, and he the said *Philip* from his Possession thereof expelled and removed, and was thereof seised as the Law requires; and being so seised thereof on the said 11th Day of *March* in the same Year, enfeoffed the aforesaid *William Dillon*; To have and to hold that Manor, with the Appurtenances, whereof, &c. to the said *William Dillon*, his Heirs and Assigns for ever. By Virtue of which Feoffment, before the Time in which, &c. the said *William Dillon* into the Close aforesaid, with the Appurtenances, in which, &c. in and upon the Possession of the said *John Freine* thereof

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thereof entred, and him the said *John Freine* from his Possession thereof expelled and amoved, and was thereof seised, as the Law requireth, until the afores. *John Freine*, the within written 16th Day of *November*, into the Close within written, with the Appurtenances, in which, &c. in and upon the Possession of the said *Will. Dillon* thereof entred, and the Grass then and there growing, with the Cattle within written fed, trod down and consumed, and continued the same from the afores. 16th Day of *Novemb.* in the 29th Year afores. until the within written 8th Day of *Feb.* the 30th Year within written; but whether upon the whole Matter afores. in form afores. found, the afores. *John Freine* be guilty of the Trespass within written or not, the Jurors afores. are ignorant; and thereupon pray the Advice and Discretion of the Court, &c. And if upon the whole Matter afores. in form afores. found, it shall seem to the Justices here, That the afores. Entry of the afores. *John Freine*, into the Close within written, with the Appurtenances, in and upon the Possession of the afores. *Will. Dillon* thereof, be not a good and lawful Entry in Law, then the said Jurors say upon their Oath afores. That the said *Freine* is guilty of the Trespass within written, as the afores. *Will. Dillon* above against him complaineth; and then they assess the Damages of the said *William*, by occasion of that Trespass, above his Costs and Charges by him about his Suit in this Part expended to 4 Pence, and for his Costs and Charges to 20 Shillings. And if upon the whole Matter aforesaid, in form aforesaid found, it shall seem to the Justices and Court here, that the afores. Entry of the afores. *John Freine* into the Close within written, with the Appurtenances, in which, &c. in and upon the Possession of the aforesaid *Will. Dillon* thereof be a good and lawful Entry in Law, then the said Jurors say upon their Oath aforesaid, That the afores. *John Freine* is not guilty of the Trespass within written, as the aforesaid *Will. Dillon* against him within hath alledged.

And because the Court of the Lady the Queen here of giving their Judgment of and upon the Premises is not yet advised, Day is given to the Parties aforesaid, in state as now, before the Lady the Queen at *Westmin.* until *Friday* next after 8 Days of *St. Hillary*, to hear their Judgment of and upon the Premises, because the Court of the Lady the Queen here thereof not yet, &c. At which Day before the Lady the Queen at *Westminster* come the Parties aforesaid, by their Attornies afores. And because the Court of the Lady the Queen here of giving their Judgment of and upon the Premises is not yet advised, Day thereof is further given to the Parties aforesaid in state as now, before the Lady the Queen at *Westminster*, until *Monday* next after one Month of *Easter*, to hear their Judgment of and upon the Premises, because

Cur' avifar' vult.

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because the Court of the Lady the Q. here thereof not yet, &c. At which Day before the Lady the Q. at *Westm.* come the parties afores. by their Attornies afores. And because the Court of the Lady the Q. here of giving their Judgment of and upon the Premisses is not yet advised, Day thereof further is given to the Parties aforesaid here, in state as now, before the Lady the Q. at *Westm.* until *Friday* next after the Morrow of the *Holy Trinity*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the Q. here of their Judgment thereof not yet, &c. At which Day before the Lady the Q. at *Westm.* come the Parties afores. by their Attornies afores. And because the Court of the Lady the Q. here of giving their Judgment of and upon the Premisses is not yet advised, Day is further given to the Parties afores. in state as now, before the Lady the Q. at *Westm.* until *Monday* next after three Weeks of *St. Michael*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the Q. here thereof not yet, &c. At which Day, before the Lady the Q. at *Westm.* come the Parties afores. by their Attornies afores. And because the Court of the Lady the Q. here of giving their Judgment of and upon the Premisses is not yet advised, Day thereof is further given to the Parties afores. in State as now, before the Lady the Q. at *Westm.* until *Saturday* next after 8 Days of *St. Hillary*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the Q. here thereof not yet, &c. At which Day before the Lady the Q. at *Westm.* come the Parties by their Attornies afores. And because the Court of the Lady the Q. here, of giving their Judgment of and upon the Premisses is not yet advised, Day thereof is further given to the Parties, in State as now, before the Lady the Q. at *Westm.* until *Saturday* next after 15 Days of *Easter*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the Q. here, thereof not yet, &c. At which Day before the Lady the Q. at *Westm.* come the Parties aforesaid, by their Attornies afores. And because the Court of the Lady the Q. here of giving their Judgment of and upon the Premisses is not yet advised, Day is given to the Parties, in State as now, before the Lady the Q. at *Westm.* until *Saturday* next after 8 Days of the *Holy Trinity*, to hear their Judgment of and upon the Premisses; because the Court of the Lady the Q. here thereof not yet, &c. At which Day before the Lady the Queen at *Westminster*, come the Parties aforesaid, by their Attornies aforesaid; And because the Court of the Lady the Queen here of giving their judgment of and upon the Premisses is not yet advised, Day thereof further is given to the Parties aforesaid, in State as now, before the Lady the Q. at *Westm.* until *Thursday* in the Feast of *St. Martin*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the Queen here thereof not yet,

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yet, &c. At which Day before the Lady the Q. at *Westm.* come the Parties aforesaid, by their Attornies afores. And because the Court of the Lady the Q. here of giving their Judgment of and upon the Premisses is not yet advised, further Day is given to the Parties afores. in State as now, before the Lady the Q. at *Westm.* until *Tuesday* next after the Morrow of the Purification of the blessed *Mary*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the Q. here thereof not yet, &c. At which Day before the Lady the Q. at *Westm.* come the Parties afores. by their Attornies afores. And because the Court of the Lady the Q. here of giving their Judgment of and upon the Premisses is not yet advised, further Day is given to the Parties afores. in State as now, before the Lady the Q. at *West.* until *Wednes.* next after 15 Days of *Easter*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the Q. here thereof not yet, &c. At which Day before the Lady the Q. at *Westm.* come the Parties afores. by their Attornies afores. And because the Court of the Lady the Q. here of giving their Judgment of and upon the Premisses is not yet advised, Day thereof is further given to the Parties afores. in state as now, before the Lady the Q. at *Westm.* until *Friday* next after the *Holy Trinity*, to hear their Judgment of and upon the Premisses; because the Court of the Lady the Q. here, thereof not yet, &c. At which Day before the Lady the Q. at *Westm.* come the Parties afores. by their Attornies afores. And because the Court of the Lady the Q. of giving their Judgments of and upon the Premisses is not yet advised, Day is given to the Parties afores. in State as now, before the Lady the Q. at *Westm.* until *Monday* next after 8 days of St. *Michael*, to hear their Judgment thereof; because the Court of the Lady the Queen here thereof not yet, &c. Before which Day, the Plea afores. was adjourned, by the Writ of the said Lady the Q. of Common Adjournment, before the Lady the Q. until from the Day of St. *Michael*, in one Month then next following, wheresoever, &c. At which Day the Plea aforesaid was further adjourned by another Writ of the said Lady the Q. of Common Adjournment, before the said Lady the Q. until the Morrow of *All Souls* then next following, at the Castle of *Hertford*; At which Day, before the Lady the Q. at the Castle of *Hertford*, come the Parties afores. by their Attornies afores. And because the Court of the Lady the Q. of giving their Judgment of and upon the Premisses is not yet advised, Day thereof is further given to the Parties aforesaid, in state as now, before the Lady the Q. at the Castle of *Hertford*, until *Tuesday* next after 8 Days of St. *Hillary*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the Q. here thereof, not yet, &c. Before which Day, the Plea of the afores. was adjourned by the Writ of the Lady the Q. of Common Adjournment, before the Lady the Q.

until

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Trinit.

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until in 8 Days of *St. Hillary* at *Westm.* At which Day before the Lady the *Q.* at *Westm.* come the Parties afores. by their Attornies afores. And because the Court of the Lady the *Q.* here of giving their Judgment of and upon the Premisses is not yet advised, further Day is given to the Parties, in State as now, before the Lady the *Q.* at *Westm.* until *Wednesday* next after 15 days of *Easter*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the *Q.* here thereof not yet, &c. At which Day before the Lady the *Q.* at *Westm.* come the Parties afores. by their Attornies afores. And because the Court of the Lady the *Q.* here of giving their Judgment of and upon the Premisses is not yet advised, further Day is given to the Parties afores. in State as now, before the Lady the *Q.* at *Westm.* until *Friday* next after the Morrow of *Holy Trinity*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the *Q.* here thereof not yet, &c. At which Day before the Lady the *Q.* at *Westm.* come the Parties afores. by their Attornies afores. And because the Court of the Lady the *Q.* here, of giving their Judgment of and upon the Premisses is not yet advised, further Day is given to the Parties afores. in State as now, before the Lady the *Q.* at *Westm.* until *Tuesday* next after 8 Days of *St. Michael*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the *Q.* here thereof not yet, &c. Before which day, the Plea afores. was adjourned by the Writ of the Lady the *Q.* of Common Adjournment, before the Lady the *Q.* until the Day from *St. Michael*, in one Month then next following, at the Town of *Saint Alban*, in the County of *Hertford*; at which Day the Plea aforesaid, by another Writ of the said Lady the *Q.* of Common Adjournment, was adjourned before the said Lady the *Q.* until the Morrow of *All Souls* then next following, at the afores. Town of *St. Alban*; At which Day before the Lady the *Q.* at the aforesaid Town of *St. Alban*, come the Parties afores. by their Attornies afores. And because the Court of the Lady the *Q.* here of giving their Judgment of and upon the Premisses is not advised, further Day is given to the Parties afores. in State as now, before the Lady the *Q.* at the afores. Town of *St. Alban*, until *Wednesday* next after 8 Days of *St. Hillary*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the *Q.* here thereof not yet, &c. Before which Day, the Plea afores. was adjourned by another Writ of Common Adjournment, before the Lady the *Q.* from the afores. Town of *St. Alban*, until the said 8 Days of *St. Hillary*, at *Westm.* afores. At which Day before the Lady the Queen at *Westminster* come the Parties aforesaid, by their Attornies aforesaid; And because the Court of the Lady the *Q.* here of giving their Judgment of and upon the Premisses is not yet advised, further Day thereof is given to the Parties afores. in State as now, before the
Lady

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Trinit.

Mich.

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Pasfc.
 Lady the Queen at *Westminster*, until *Wednesday* next after 15 Days of *Easter*, to hear their Judgment of and upon the Premisses because the Court of the Lady the Q. here thereof not yet, &c. At which Day, before the Lady the Queen at *Westminster*, come the Parties aforesaid, by their Attornies aforesaid; And because the Court of the Lady the Queen here of giving Judgment of and upon the Premisses is not yet advised, Day further is given to the Parties aforesaid,

Trinit.
 in State as now, before the Lady the Queen at *Westminster*, until *Friday* next after the Morrow of *Holy Trinity*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the Queen here thereof not yet, &c. At which Day, before the Lady the Queen at *Westminster*, come the Parties aforesaid by their Attornies aforesaid; And because the Court of the Lady the Queen here of giving their Judgment of and upon the Premisses is not yet advised, further Day is given to the Parties aforesaid, in State as now,

Mich.
 before the said Lady the Queen at *Westminster*, until *Tuesday* next after 8 Days after *St. Michael*, to hear their Judgment of and upon the Premisses, because the Court of the Lady the Queen here thereof not yet, &c. At which Day, before the Lady the Queen at *Westminster*, come the Parties aforesaid, by their Attornies aforesaid; And because the Court of the Lady the Queen here of giving their Judgment of and upon the Premisses is not advised, Day thereof is further given to the Parties aforesaid, before the

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 Lady the Queen at *Westminster*, until *Thursday* next after 8 Days of *St. Hillary*, to hear their Judgment thereof, &c. because the Court of the Lady the Queen here thereof not yet, &c. At which Day before the Lady the Queen at *Westminster*, come the Parties aforesaid, by their afores. Attornies. Upon which all and singular the Premisses being seen (*i. e.* opened) and by the Court of the said Lady the Queen here well understood and diligently look'd into, and mature Deliberation being thereof had; because it seemeth to the Court of the Lady the now Queen here, that the afores. entry of the aforesaid *John Friene* into the Close within written, with the Appurtenances, in which, &c. in and upon the Possession of the said *William Dillon*, thereof is a good and lawful Entry, (*a*) It is considered, that the aforesaid *Will. Dillon* take nothing by his aforesaid Bill, but for his false Clamour be in Mercy, &c. And that the aforesaid *John Friene* do thereof go without Day, &c.

Judicium pro defend.
 (a) Angra fo. 22. a.
Misericordia sine die.

CHUDLEIGH'S Case.

The Case between Dillon and Freine,
commonly called, The Case of Per-
petuities.

William (a) Dillon, Esquire, brought an Action of Tref-
pass against John Freine, in the King's Bench, for
breaking his Close called Sedon, in the Parish of Tavestock,
in the County of Devon: The Defendant pleaded not
guilty, and the Jury found a special Verdict to this Effect;
Sir Richard Chudleigh, Knight, was seised of the Manor of
Hescot, whereof the Place where, &c. was Parcel in his
Demefn as of Fee, and had Issue Christopher Chudleigh his
eldest Son, Thomas his second Son, Oliver his third Son,
and Nicholes his fourth Son. Sir Richard Chudleigh 26 A-
prilis annis 3 & 4 Phil. & Mar. by his Deed indented
Quadripartite (whereof one Part sealed with his Seal was
shewed forth to the Jurors in Evidence) of the said Manor
did enfeoff Sir John Sentleger, Knight, Sir Giles Strang-
waies, Knight, and divers others, to have and to hold to
them and their Heirs, to the Use of the said Sir Richard
and (b) his Heirs, on the Body of Mary then Wife of Tho.
Carew lawfully begotten; and for Default of such Issue
to the Use of the said Sir Richard, and to his Heirs on
the Body of Elizabeth then Wife of Richard Brampsfield
lawfully begotten; and for Default of such Issue, to the Use
and Performance of his Will for ten Years immediately af-
ter his Death; and after the said Term ended, to the Use
of the said Feoffees and their Heirs, during the Life of the
said Christopher Chudleigh the Son, and after his Death to
the Use of the first Issue Male of the Body of the said
Christopher lawfully to be begotten, and to the Heirs of the
Body of such first Issue Male lawfully begotten; and for
Default of such Issue, to the Use of the second Issue Male
of the Body of the said Christopher the Son, lawfully to be
begotten, and to the Heirs of the Body of such second Is-
sue lawfully begotten; and so with like Remainders unto
the tenth Issue Male; and for Default of Heirs Males
of the Body of the said Christopher the Son, to the
Use of Thomas Son of the said Sir Richard, and to
the Heirs of his Body lawfully begotten; and for De-
fault of such Issue, to the Use of the said Oliver,
and

(a) Poph. 70.
1 Anderf. 309.
Jenk. Cent.
276. 6 Co. 43. a.
10 Co. 42. b.
11 Co. 80. a.
Moor 546.
4 1 con. 252.
2 Roll. Rep.
335. Hardf.
+14. Siderf.
99, 129. 3 Keb.
115. Hob. 259.
Lit. Rep. 254.
258, 315, 317,
318, 321, 347.

(b) Poph. 76.
Co. Lit. 20. b.
25. b. 184. a.
Plow. 35. a.
Bro. Tail 16.
Bro. Estare 22.
Bro. Condition
119, 10 Co. 50.
b. 35 H. 7. 10.
b. F. N. B.
205. h.

and to the Heirs of his Body lawfully begotten ; and for Default of such Issue, to the Use of the said *Nicholas*, and to the Heirs of his Body lawfully begotten ; and for Default of such Issue, to the Use of the right Heirs of the said *Sir Rich. Chudleigh* for ever. And afterwards, that is to say, 17 Nov. 5 & 6 *Phil' & Mar'* the said *Sir Rich. Chudleigh* died without Issue of the Body of the said *Mary* and *Eliz.* or either of them, and after his Death, that is to say, 14 Aug. 1 *Eliz.* the said Feoffees (the said *Oliv. Chudleigh* then being alive) by their Deed sealed with their Seal, bearing Date the same Day and Year, did infeoff the said *Christ. Chudleigh* in Fee to the Use of him and his Heirs, which Feoffment was made without any Consideration. And the said *Christ.* then had Notice of the said Uses in the said *Quadripartite* Indenture specified and declared. And afterwards, that is to say, 20 Sept. 3 *Eliz.* the said *Christ.* had Issue *Strackley Chudleigh* his eldest Son. And after, that is to say, 3 Martii 5 *Eliz.* the said *Christ.* had Issue *John Chudleigh* his second Son ; and afterwards, 1 Julii 6 *Eliz.* by Deed indented and inrolled the 4th Day of *October* next ensuing, before the Clerk of the Peace and one Justice of Peace within the said County, according to the Stat. of 27 *H. 8.* did bargain and sell the said Manor to *Sir John Chichester* Knt. and his Heirs, to the Use of him and his Heirs : But it was found, that between the Date of the said Indenture, and before the Inrolment, that is to say, 6 Julii anno sexto supradicto, the said *Christ.* by his Deed, sealed with his Seal, bearing Date the same Day and Year, of the said Manor did infeoff the said *Sir John Chichester* and his Heirs, to the Use of him and his Heirs with a (a) general Warranty against all Persons : And afterwards the said *Strackley*, anno 12 *Eliz.* died without Issue : And the Jury further found, that *Sir John Chichester*, 6 Sept. 7 *Eliz.* of the said Manor did infeoff *Philip Chichester* in Fee. And that the said *Philip* at the Court of the said Manor held 8 *Octob.* in the fifteenth Year of the said Queen, did grant the Place where, &c. being customary Land by Copy to the said *John Freine* for his Life according to the Custom of the Manor, by Force whereof he entered, upon whom the said *J. Chudleigh* 11 Martii 28 *Eliz.* did enter into the said Manor, and the same Day and Year did thereof infeoff the said *William Dillon* now Plaintiff in Fee, who entered in the Place where, &c. upon the Possession of the Defendant, upon whom he re-enter'd ; and whether upon the whole Matter the said *John Freine* be guilty or not, the Jurors pray the Discretion of the Justices, &c.

(a) 10 Co. 27. b.

And this Case as to the principal Point was such :
Sir Rich. Chudleigh having Issue *Christ. Thomas, Oliver,*
 and

and *Nich.* after the Stat. of (a) 27 H. 8. did infeoff divers of the Manor of *Heskor*, in Fee to the Use of his Feoffees and their Heirs, for the (b) Life of *Christ.* his eldest Son, and after to the Use of the first Son which *Christ.* his Son should beget in Tail; and so to the tenth Son; and after to the Use of *Thomas* his second Son in Tail; and after to the Use of *Oliver* his third Son in Tail; and after to the Use of *Nich.* his fourth Son in Tail; and after to the Use of the right Heirs of Sir *Richard*: Sir *Rich.* died, and before any Issue born of the Body of *Christ.* his eldest Son, the Feoffees infeoff *Christ.* having Notice of the former Uses, and afterwards *Christ.* hath Issue *Strachley* and *John.* If the Use, which before was in Contingency, shall vest in the said Sons of *Christ.* and shall be executed by the Stat. of 27 H. 8. was the Question, and great Doubt of the Case. And in this Case the Point is no other, but whether these contingent Uses before their Essence by the said Feoffment of the Feoffees be destroyed and subverted, so that they shall never rise out of the Estate of the Feoffees after the Birth of the Issues. And this Case was argued many Times at the Bar in the K.'s Bench on both Sides; and because the Case was difficult and of great Consequence and Importance, it was thought necessary that all the Justices of *Engl.* should openly, in the Exchequer Chamber upon solemn Argument, shew their Opinion in this Case. And afterwards, *Ter. Hill.* 36 *Eliz.* the Case was argued in the Exchequer-Chamber before all the Justices of *England*, by *Hugh Wiat ex parte Querent.* and by *Cook* the Queen's Solicitor General *ex parte Defend.* And after in *Easter Term* following, by *Rob. Atkinson ex parte Quer.* and by *Francis Bacon ex part' Def.*; but I did not hear their Arguments. And yet it is necessary to report what Matters were moved at the Bar, to the Intent the State of the Question should be better understood, and the Arguments and Reasons of the Judges at the Bench better apprehended.

For the Argument of the principal Point, four Things are to be consider'd.

1. What an Use is, and the several Natures of Uses, and of what Esteem and Account all Manner of Uses are in Judgm. of Law.

2. If contingent Uses (as well as Uses in *esse*) might have been discontinued or tolled at the Common Law before the Stat. of 27 H. 8. *cap.* 10.

3. If our contingent Use had been discontinued or destroyed, if the said Statute of 27 H. 8. had not been made, inasmuch as the Feoffee had Notice of the Uses.

4. If the said Stat. of 27 H. 8. preserves any contingent Use, which had been destroy'd by the Common Law, and in that to consider the Mischiefs which were before the said Act, and the Remedy which the Makers of the Act have provided by the Purview thereof. 1st, What an Use is, and the several Natures of Uses, and of what Estimation all Uses are in Law. An (c) Use is a Trust or Confidence which is not issuing out of Land,

(c) Co. Lit. 272.
b. 1 Mod. Rep.
39 7 Co 13.
b. 1 Anderf 318.
Plow. 352. b.
Poph. 71.

but as a Thing collateral annexed in Privy to the Estate, and to the Person, touching the Land, *scil.* That *Cestuy que use* shall take the Profits, and that the Tertenant shall make Estates according to his Direction. So that, he who hath an Use hath not (a) *jus neque in re, neque ad rem*, but only a (b) Confidence and Trust, for which he hath no Remedy by the Common Law, but his Remedy was only by *Subpœna* in Chancery: If the Feoffees would not perform the Order of the Chancery, then their Persons for the Breach of the Confidence were to be imprisoned till they did perform it; and therefore the Case of an Use is not like unto Commons, Rents, Conditions, &c. which are Hereditaments in Judgment of Law, and which cannot be taken away or discontinued by the Alienation of the Tertenant, or by Disseins, or by Escheats, &c. as Uses may, as shall after be said. There were two Inventors of (c) Uses, Fear and Fraud; Fear in Times of Troubles and civil Wars to save their Inheritances from being forfeited; and Fraud to defeat due Debts, lawful Actions, Wards, Escheats, Mortmains, &c.

There are two Manners of Uses; 1. in *esse*, in Possession, Reversion, Remainder: 2. in Contingency, which by Possibility may fall into Possession, Reversion, or Remainder. To every of these Uses there are two inseparable Incidents, Confidence in the Person, and Privy in Estate, as appears in 14 H. 8. 6. a. And this Confidence in the Person is either expressed by the Party, or implied by the Law; and so is Privy in Estate either expressed or implied, as shall be after shewed: These Uses and Confidences to some respect were reputed as Chattels, and therefore were devisable; and to other Respects they were esteemed as (d) Hereditaments of which there should be (e) *possessio fratris*, &c. as 5 E. 4. 7. b. is; but yet in Law, neither (f) Chattel, nor Hereditament, for they were not Assets to Executors, nor Assets to the Heir. 2. Whether a contingent Use might be discontinued before the Statute; and it seems clearly, that before the Statute, Uses in Contingency might have been taken away and destroyed as well as Uses in *esse*. And therefore if there be Feoffee at the Com. Law to the Use of me for Life, and after to the Use of him who shall be my first Son in Tail, &c. and such Feoffee before the Birth of my Son had been disseised or made a Feoffment upon good Consideration to him who had (g) no Notice of the Use; the contingent Use in the one Case was suspended, and in the other Case utterly destroyed. For if Uses in *esse* which were of greater Value and Estimation than Uses in Contingency (which were but Possibilities of an Use) might be discontinued or destroyed as above, as the Books are (h) 24 H. 8. *feoffm. al uses*. 14 Hen. 8. 6, 7, 24. & 28 Hen. 8. fol. 8, 9, 10. *a multo fortiori* Uses in Contingency and future might be

(a) 1 Anderf. 320, 343. Co. Lit. 272. b.
(b) Foff. 127. a. 2 Co. 58. b. 6 Co. 64. b. Bac. Red. upon 27 H. 8. 5, 6, 7, &c.

(c) Dr. & Stud. lib. 2. cap. 22. Lane 45. Foff. 131. a. Dyer 12. pl. 51.

(d) 1 Anderf. 316. a. 3 Co. 2. b. 4 Co. 22. a

(e) Br. Discent 36. Plow. 58. a. Bac. Red fur Stat. 27 H. 8. p. 9. Fitz. Sub pœna 3 Dy. 11. pl. 40.

(f) Hardr. 492. Co. Lit. 14. b. R. ym. 317.

Dy. 272. pl. 43.

(g) Foff. 124. b.

(h) 1 Anderf. 313. 24 H. 8. Br. Feoffment al use 40. Co. Lit. 19. b.

2 Co. 78. a.

Polit. 122. a.

3 Bulltr. 185.

Cro. Jac. 401. 1 Roll. Rep. 322, 333, 337.

be discontinued and taken away. Also a contingent Use was but a Trust and Confidence; and therefore, if Confidence in the Person or Privy in Estate fail, the Use was also either suspended or destroyed; and therefore without Question a Feoffee upon good Consideration without Notice, Disseisor, or Lord by Escheat, Lord of a Villain, Corporation, an Alien born, a Person (a) attainted shall not stand seised to a contingent Use, no more than to an Use in esse before the Statute of 27 H. 8. And therefore it is agreed in (b) 33 H. 6. 14. b. (c) & 31 E. 3. tit. Collusion 29. if the Father makes a Feoffment to his eldest Son upon Collusion, now by the Statute of (d) *Marlebridge* the Lord had a Possibility to have the Ward, if the Father died, his Heir within Age, but if the Feoffee made a Feoffment over *bona fide*, and afterwards the Father died, his Son within Age, then that Possibility was destroyed, because the Stranger who had no Notice hath gotten the Land *bona fide*: So if A. grants a Reversion or Seigniority to B. now he hath a Possibility to have the Seigniority or Reversion; but if A. grants the Reversion or Seigniority to another, and he gets Attornment, now the first Possibility to B. is destroyed, as (e) *Littleton* saith fol. 126. a. but more shall be said to this Point after, in Answer to certain Objections of the other Side. And altho' in our Case the Feoffee had Notice, yet because he was in of another Estate, so that the Privy of Estate failed, for that Reason he shall not stand seised to the Use, for the Use is a Confidence annexed in Privy to the Estate of the Land. And therefore there is a Difference between Things annexed in Privy to the Estate of the Land, and Things annexed to the Possession of the Land without Respect of any Privy: And therefore (g) Disseisor, Abator, or Intruder shall not be seised to an Use; altho' he hath Notice, for the Use was not annexed to the Possession of the Land which each of them hath, but to the Privy of the Estate which is denied to them all, for they are not in in Privy of the Estate to which the Use was annexed, but in the *Post*. Also forasmuch as *Cest que use* had no (h) Remedy but in Chancery, and the Chancellor (b) hath no Power to determine the Right of Inheritances, for that Reason they can stand seised to no Use. The Lord by Escheat, or Lord of a Villain, or who enters for Mortmain, or who recovers in a *Cessavit*, &c. shall not stand seised to an Use, because he is in by Title paramount to the Use, *sc.* by Force of a Condition in Law tacitly annexed to the Land at the Time of the Creation of the Seigniority, and the Tenancy came in lieu of his Seigniority which he hath to his own Use; and the Writ of Escheat saith, and which *ad ipsam reverti debet tanquam escaeta sua*. And also they are not in in the *Per*, that is to say, in Privy of the Estate to which the Use was annexed, but in the *Post*. The Lord (i) by Escheat, &c. loseth his Seigniority; so Tenant by Curtesy, (k) and Tenant in Dower shall not be seised to an Use, for the Law gives them their Estates in Consideration of Marriage, and they are not in in Privy of Estate, for which see 14 H. 8. 6, 7. & 24 H. 8. Br. *Feoffments al Uses* 40.

So if there be Privy in Estate, yet if Confidence either expres-

(a) Jenk Cent.
195 Co. Lit. 19.
b Dyer 283.
pl. 31. 2 Co.
78. a. 3 Bulstr.
185. Moor 390,
848. Cro. Jac.
401. 1 Roll.
Rep. 332, 384.
Roll. 780.
Godb. 269.
(b) Firz. Colluf.
36. Br. Colluf.
5. Br. Garde 5,
11. c. 2. Co. 94. a.
(c) 6 Co. 76. a.
(d) Maribr.
cap. 6. 2 Inst.
109, 110. 2 Co.
78. a. 8 Co.
164. b.
(e) Lit. fet. 572.
Co. Lit. 310. a.
(f) 1 Anderf.
312. Ant. 120. b.

(g) Post. 139. b.

(h) Co. Lit.
272. b.

(i) Jenk. Cent.
195.
(k) 1 Roll Rep.
332, 333, 385.
1 Anderf. 313.
Co. Lit. 19. b.
2 Co 78. a.
Antea 121. b.
3 Bulstr. 185.
Cro. Jac. 401.

fed or implied fail in the Person, the Use is suspended or destroyed. If the Feoffee to an Use upon good Considerat. infeoffeth another who hath no Notice, here is Privy in Estate, but here is no confidence in the Person either expressed or implied, and therefore the Use is gone; but if a Feoffm. be made without Considerat. to one who hath no Notice, there is Privy in Estate, and the Law implies Notice of the Trust, and therefore there the Use remains, but not as a Thing annexed to the Land, but to the Privy of the Estate, 5 E. 4. 7. b. If the Husband makes a Feoffment in Fee of the Land of his Wife upon Consideration, and without expressing any Use, the Wife shall not have the *Subpana*; for the Feoffm. doth disaffirm the Wife's Right, and the Feoffee is not in Privy of the Estate of the Wife. So in the Case at Bar, Tenant for Life, the Remainder in Fee to the Use of another; Tenant for Life makes a Feoffment in Fee to one who hath Notice; he cannot stand seised to the first Use, because the Use is annexed to one estate, and the feoffee is in of another estate. It is agreed in 45 E. 3. 18. b. that if (a) Donee in Tail with Warranty makes a Lease for Life, and afterwards in a *Præcipe* brought against the Lessee for Life, he is received upon the Default of the Lessee, he shall not vouch by Force of the Warranty, for the Warranty is annexed to one, and he is in of another Estate, and always the Warranty as to Voucher requires Privy of Estate to which it was annexed. And the same Law of an Use. So it is held in 10 Eliz. *Plow. Com.* 351. that *Cestuy que use* for Life or in Tail, Remaind. in Tail, with divers Remaind. over in Use, makes a Feoffm. to one who hath Notice, he shall not stand seised to the first Uses, *causa qua supra*. But of Things annexed to Land it is otherwise, as of Commons, Advowsons, and the like Appendants or Appurt. And therefore if Tenant in Tail, or the Husband, seised in the Right of his Wife, makes a Feoffm. of a Manor, or Part thereof with the Advowson, the Advowson at least after Presentm. shall pass as Appendant to the Manor, or to Part of the Manor, as the Books are in 23 Aff. 8. 34 E. 1. tit. *Qui Imped.* 179. 43 E. 3. 25, 26. 17 E. 3. 5. a. 19. b. and not to the Estate of the Land, for the Estate of the Land is discontinued by the Feoffm.: So Disseisor, Abator, Intruder, or the Lord by Escheat, &c. shall have them as Things annexed to the Land. So note a Diversity between an Use or Warranty, and the like Things annexed to the Estate of the Land in Privy, and Commons, Advowsons, and other Hereditam. annexed to the Possess. of the Land: Then 3. forasmuch as if the Stat. of 27 H. 8. had not been made, the contingent Use in the Case at Bar had been taken away. Let us now see whether the Stat. of 27 H. 8. hath provided for the Preservation and Maintenance of contingent Uses against the Rule of Law before; for if the Stat. doth not support the contingent Use in the Case at Bar, without Doubt the same is taken away. And therefore two things are necessary to be considered for the better Discussion of this Point. First,

Hob. 349, 350.
2 Roli 781. (E)
2 Sid. 149, 157.
Cary's Rep.
10, 11, &c.

(a) 1 Doct pla.
24. Fitz. Gar.
ranty 17. Br.
Scire fac. 206
Br. Barre 13:
Hob. 25, 26.
3 Co. 5. b. 6.
2 Roll. 742.
Co. Lit. 385.

Dyer 12. pl. 58.

First, The Mischiefs which were before this Act, and which the Makers of the Act did intend to remedy, and

Secondly, What Manner of Remedy they have provided for it, and from thence will arise the true Interpretat. of the Letter and Meaning of the Act. And for the better Apprehension of the Mischiefs which were before this Act, certain former Statutes made against the Abuses of Uses in particular Cases (for the Treaty shall be only of Uses) are to be considered. And thereby the Abuses of such Uses will fully appear, and that Fraud was the principal Cause of the Invention of them in Subversion of Law and Justice. By the Stat. of (a) 1 R. 2.

c. 9. it is provided, That because Disseisors make Feoffments to great Men and others, for Maintenance, and to other Men unknown, to the Intent to delay or defraud the Disseisees, in such Cases the Disseisee shall have his Action against the Pernor of the Profits (which was *Cestuy que use*) notwithstanding such Feoffm. by Fraud and Collusion within the Year: The Stat. of (b) 4 H. 4. c. 7. enlarges the Stat. of 1 R. 2. in the Time

and in the Actions also, The Stat. of (c) 11 H. 6. c. 4. explains it. The Stat. of (d) 1 H. 7. c. 1. gives a *Formedon* against *Cestuy que use* who is called Pernor of the Profits; and by those Acts it appears, that Fraud and Deceit to defeat him, who had good Title and Right to the Land, of his lawful Remedy, was the (e) Inventor of these Feoffm. to Uses. It was provided by the Stat. de (f) *religiosis* 7 E. 1. in Inlargement of the Stat. of (g) *Magna Charta*, cap. 36. which had provided, *quod non liceat alicui dare terram alicui domui religioſe*, that they should not acquire to them Lands or Tenements *arte vel ingenio*, &c. but to defraud both those Laws it was invented, that a Feoffm. should be made to the Use of religious Men, or Commonalties, and therefore was the Stat. of (b) 15 R. 2.

cap. 5. made to remedy that Fraud. By Feoffment to Uses, Lords were defrauded of their Wards, until the Stat. of (i) 4 H. 7. c. 17. The Stat. of (k) 19 H. 7. c. 15. recites, that Men were defrauded of their Executions, the Lords of their Reliefs and Heriots, and the Lords of Villeins of the Purchases of their Villeins by Feoffments to their Uses, and that Statute doth remedy those Mischiefs.

The Statute of (l) 1 R. 3. c. 1. which is more general than the other Statutes, intends to remedy four great Mischiefs by Reason of secret Feoffments to Uses; 1. Danger to Purchasers and other the King's Subjects: 2. Trouble; 3. Costs; 4. Grievous Vexations: So that it was not only Danger, but Danger with Trouble; and not Danger with Trouble only, but Danger with Trouble and Costs; and not Danger with Trouble and Costs only, but with great Vexation. Also Examples thereof are expressed in the Preamble of the Act, no Purchaser of Lands in perfect Surety, no Wife of (m) Dower, no Lessee of his Lease, no

3 Co. 7. b. 26.
post. 126.

(a) Co. Lit.
a. Dyer 295. pl.
11. 2 Inst. 445.
Post. 131. a.
14 H. 7. 17. b.

(b) 12 H. 4. 21. b.
2 Inst. 445.

(c) 2 Inst. 445.
(d) Plow. 178.

a. Kelw. 101. b.
11 Co. 62. b.

2 Bullfr. 63.
F. N. B. fo. 212. a.

Post. 131. b.
(e) Antea 121. b.

(f) 3 Bullfr. 45.
Co. Lit. 2. b.

2 Inst. 429.
(g) 2 Inst. 74, 75.
Vet. N. B. 160. b.

(b) 8 H. 4. 14 b

(i) Rast. Wards
20. l. r. sect. 115.

F. N. B. 59. a.
122. k. Ver.

N. B. 94. a.
Kelw. 86. a.

13 H. 7. 11. a. 12.
H. 7. 19. a. Co.

l. it. 84. b.

(k) Dr. & Stud.
14. 2. a. Lit. sect.

126, 173. Co.
Lit. 91. a. 117.

2. Vet. N. B. 94. a.
(l) Ant. 101. b.

(m) Perk. 349.
4 Co. 1. b.

CHUDLEIGH'S Case. PART I.

Servant of any Annuity granted to him for his Service, &c. by Reason of these privy and unknown Uses; this Stat. intended to provide for these Mischiefs in establishing all Feoffments, Grants, &c. made by *Cestuy que use*, &c. But so mischievous and sinister is the Invention and Continuance of Uses, that they also over-reached the Policy and Providence of the Makers of this Act also: For, for Example, the Purchaser was not in a better Case than he was before, for if the Feoffor limit to himself but an Estate for Life or in Tail, or to his Wife, or to his Son, &c. Or if the Feoffees made secret Leases or Estates, the Purchaser could not have a sure Estate, by any Estate that *Cestuy que use* could make, so that Danger, Trouble, Costs, and great Vexation remained in the Realm by these covenous and fraudulent Uses, notwithstanding the said Stat. of (a) 1 R. 3. For the Remedy of which and many other Mischiefs, was the Stat. of 27 H. 8. cap. 10. made, for the general Remedy of all Mischiefs and Abuses of Uses, which Act was divided into two general Branches, viz. the Preamble which expresses the Mischiefs, and the Body of the Act which provides the Remedy.

(a) 1 R. 3. c. 1.
Ant. 101. b.

The Preamble contains these Mischiefs:

1. By Common Law, Lands or Tenements cannot pass but by solemn (b) Livery or Matter of Record, or by sufficient Writing, if the Thing lies in Grant. Now by divers and sundry Imaginations, subtle Inventions, and Practices by fraudulent Feoffments, Fines, Recoveries, and other Assurances, craftily made to secret Uses, Intents and Purposes (so that the Feoffment, Fine, and Recovery are called fraudulent, because they were suffer'd and made to fraudulent Uses) the Hereditaments of this Realm were conveyed from one to another upon (without) solemn Livery, &c.
2. By last (c) Wills, sometimes by bare Words, sometimes by Signs in great Extremities.
3. (d) By these fraudulent Uses many Heirs have been unjustly disinherited.
4. (e) Lords have lost Wards, Marriages, Reliefs, and in Effect all the Fruit and Benefit of their Seigniories notwithstanding the said Statutes of (f) 4 H. 7. & (g) 19 H. 7. which intended to remedy Part of this Mischief.
5. (h) No Purch. could be assured of any Lands, notwithstanding the said Act of (i) 1 R. 3. which intended to remedy it.
6. (k) Nor could any Man know against whom he should bring his Action, or have his Execution, &c. notwithstanding the said Stat. of (l) 1 R. 2. (m) 4 H. 4. (n) 11 H. 6. 1 H. 7. & (o) 19 H. 7. which were made one after the other, to provide a Remedy against this Mischief.
7. (p) Estates created by Law in Consideration of Marriage, were defeated, *scil.* Tenancy in Dower, and by the Curtesy, notwithstanding the Stat. of (q) 1 R. 3. which intended to remedy the same in Part.

(b) 1 Andersf.
322. Co. Lit. 48
a. Lit. sect. 55.

(c) 1 And. 324.

(d) 1 And. 323.

(e) 1 And. 323.

(f) 4 H. 7. c. 17.

(g) 19 H. 7. c. 15.

(h) 1 And. 323.

(i) 1 R. 3. c. 1.

(k) 1 And. 323.

(l) 1 R. 2. c. 9.

(m) 4 H. 4. c. 7.

(n) 11 H. 6. c. 4.

(o) 19 H. 7. c. 15.

(p) 1 And. 323.

(q) 1 R. 3. c. 1.

8. Perjuries for Trial of secret Uses were committed, and daily increased.

9. The King had lost the Benefit of Escheats by Attainder, purchases by Aliens, Wards, *annum, diem, & vastum, &c.* 1 And. 320.

10. And the Lords had lost their Escheats also.

11. The Stat. saith, That many other Inconveniencies have happened, and daily increase amongst the King's Subjects, to their great Trouble and Inquietness, and the utter Subversion of the ancient common Laws. These were the Mischiefs; but what Remedy did the Makers of the Act intend to provide for all these and infinite other Mischiefs, which subtle and fraudulent Uses had introduced, surely to extirpate and extinguish for so speaks the Stat.) these subtle practised fraudulent Feoffments, Fines and Recoveries, Abuses and Errors, and to make a plain and perfect Restitution of the ancient Common Law, which was in a Manner subverted by them; and to the Intent that the King or any of his Subjects (as the Stat. speaks) should not be by any Means or Inventions deceived, damaged, or hurted by Reason of such secret, subtle and fraudulent Uses, Trusts and Confidences: So that the full Intent of the Makers of the Act of 27 H. 8. was for a Remedy of all the said Mischiefs (which no Stat. before nor all of them together had made a sufficient Provision for) to extirpate and extinguish all Uses in such Manner as the Stat. hath limited. For the Makers of the Stat. of 27 H. 8. having maturely examined the said former Statutes and Provisions by Parliam. to reform the great Abuses of Uses in many particular Cases; at last resolving, that Uses were so subtle and perverse, that they could by no Policy or Provision be governed or reformed; and therefore as a skilful Gardener will not cut away the Leaves of the Weeds, but extirpate them by the Roots, and as a wise Housholder will not cover or stir up the Fire which is secretly kindled in his House, but utterly put it out. So the Makers of the said Stat. of 27 H. 8. did not intend to provide a Remedy and Reformat. by the Continuance or Preservation, but by the Extinction and Extirpation of Uses; and because Uses were so subtle and ungovernable, as hath been said, they have with an undissoluble Knot coupled and married them to the Land, which of all the Elements is the most ponderous and immoveable. It would be then against the express Intent of the Makers of the Act to preserve Uses otherwise than they were by the Common Law, for they intended *sub modo* to extirpate and extinguish them. And if by any Construct. out of this Act contingent Uses should be preserved,

1. Greater Inconveniencies would follow than were before.
2. Great Absurdities would from thence likewise ensue.

For 1. Land would pass against the Rule of the Common Law from one to another so easily, and upon such secret Conditions and Limitations, that no Person could know in whom the Estate of the Land did remain.

2. Land would pass and be transferred by nuncupative Will from one to another; as if a Feoffment in Fee be made to such Persons as he shall name by his last Will, &c. he might limit the Uses by Will nuncupative.

1 And. 321.

3. Heirs would thereby be disinherited; for if these Perpetuities should be adjudged of Force, it is impossible (if they be not wrote on the Walls of their Houses, and if the Parties which are bound by them have not Counsel learned in the Law always with them) for them to observe the nice and precise Points of the usual Provisoos, and Clauses of Restraint contained in Perpetuities.

1 And. 321.

4. Lords would lose their Wards and the Fruits of their Seignories.

5. No Purchaser would be assured of his Purchase, and where the Stat. intends to provide that the King nor none of his Subjects shall be deceived by these Uses; now the Purchaser will be in worse Case than he was before, for before the Stat. if he had purchased it *bona fide* without Notice, as hath been said, he should not stand seized to the Use; now it is said, that the Land shall be bound with the Use in whose Hands soever it shall come, so that where the Preamble says, That the Subject shall not be damaged by these Uses, he by such Construction will be more damnified than he was before.

6. Greater Mischiefe would follow for strangers Actions than was before, for upon a secret Limitation of Uses the Land it self would be transferred from one to the other, so that no Man in the World can know in whom the Estate of the Land is. But before this Statute, altho' they might change the Use, yet they could not convey the Land upon (without) Livery, Fine, or Recovery; but now the Land it self would pass by Performance of a secret Condition in his Chamber.

1 And. 321.

7. No Person shall be Tenant by the Curtesy, nor Tenant in Dower, for they do not know in whom the Estate of the Land remaineth.

8. Of Necessity Perjuries by Reason of them will abound, for now the secret Imagination and Intent of Men, and Attempts and Goings about shall be put in Trial upon these Clauses of Restraint.

1 And. 321.

9. The King and Lords shall lose their Wards and Escheats, for such Devise may be made if the Stat. shall be construed for the Preservation of contingent Uses, that neither the King nor any other Lord shall ever have Escheats, or Wards, or in Effect any Profit or Fruit of their Seignories.

10. It would be absurd to say, that the Makers of this Act intended to preserve Uses, when they expressly say, that they intended to extirpate and extinguish Uses. Altho' it is absurd to think, that the Makers of the Act intended to preserve & *quodam modo* to revive the ancient Common Law, and yet intended

intended to preserve or continue any such Abuse and Fraud which tendeth to the Overthrowing of the Common Law. For they have declared, that the Invention of these Uses was subtle, fraudulent and crafty in Disinheriton of Heirs, in defrauding of Lords, of those who had Right of their lawful Actions, of Purchasers, of Tenant in Dower, of Tenant by the Curtesy, Causes of manifest Perjury in defrauding the King and Lords of their Escheats, &c. in Subversion of the ancient Common Laws, and the Cause of many other Inconveniencies, and the Occasion of great Trouble and Disturbance in the Commonwealth. I say, it would be absurd to think that the Makers of the Act intended not only to continue, but to increase and preserve such Wickedness, Mischiefs, and Inconveniencies. It appears also by divers Branches of the Body of the Act, that the Makers of the Act did not expect, that any Land after the Statute should pass by Limitation of Uses, unless only Uses upon Bargain and Sale which they thought convenient to continue. And therefore they did at the same Parliament add to this Inrolment of Record, which is agreeable to the Preamble, *scil.* Matter of Record, but other Uses they did not expect would after the Act have been put in Use, but that Land should pass by solemn Livery, Record, &c. as is contained in the Preamble. And they thought also, that little Land would pass by Bargain and Sale inrolled, because such Bargainee being in in the *Past*, shall never (a) vouch by Force of any Warranty annexed to the Estate of the Land. And therefore it is to be observed, that there is not in the whole Body of the Act any Saving for any *Cestuy que use*, or of any Use. Observe also, the Act doth not give any Benefit of Warranty to *Cestuy que use*, unless the Use was executed before 1 *Maii* 1536, which was 28 *H.* 8. as fully appeareth by an exprels Clause towards the End of the said Act of 27 *H.* 8. Provision also is made by another Clause of the Act for Actions then depending that they shall not abate by Execution of the Use. And if they had expected that Uses should continue, they would have provided for future Actions also. Also there is another Clause in this very Act for the Provision of the King's Wards (now being within Age, &c.) And the last Clause of the Act concerning *Wales*, *scil.* (now stand or be seised) prove the same also, that they did not expect that any Uses should continue, unless in the Case of Bargain and Sale, and in Case of Entry by Feoffees before the Stat. to revive the former Use. And these Words in the Beginning of the Purview of the Act, and in several other Parts of this Act, *scil.* (Where any Person or Persons stand or be seised, or at any Time hereafter shall happen to be seised,) do not prove that the Makers of the Act expected that Uses would be as common and usual after the Act as they were before, but by these Words (hereafter seised) that they intended by Entry of the Feoffees to revive an Use created

Mod. 193.

2 Roll. 783.

Co. Lit. 271. b.

(a) Cr. Car. 370.

3 Co. 62, 63.

Hob. 27.

Mod. 193.

1 Mod. 193.

created before the Act; and that is notably expounded by the first Saving of this Act, for there is saved to all Persons, &c. all such Right, &c. as they or any of them had or might have had before the Making of this Act; so that such Rights, &c. which precede this Act, and were in *esse* before 27 H. 8. are only saved by the Act of 27 H. 8. for they did not intend that Lands should pass by Limitation of Use, but by solemn Livery, Matter of Record, &c. as is expressed in the Preamble. And therefore if after the Statute *A.* had disseised *B.* and enfeoffed *C.* to the Use of *D.* in Fee, the Right of *B.* is not saved by the express Letter of the Act, for the Right was not former or precedent to the Act, so that for Maintenance and Continuance of Conveyances by Uses after the Act, there ought to be a Construction by Equity, for the Makers of the Act intended to extirpate and extinguish all Uses, unless in the Case of Bargain and Sale as aforesaid. The which is said to this Intent only to shew the Expectation of the Makers of the Act, and by that to collect their Intent and Meaning concerning the Preservation of any Use, and not to draw in Question such Uses in *esse*, which are raised upon good Consideration after this Act, and lawfully executed by the Letter of this Act, for it is not intended to destroy any Use either in *esse* or in contingency, but by the said Rule of Law before the Statute of 27 H. 8. Now in as much as the Mischiefs before the Act, and the Remedy which the Makers of the Act intended to apply, are understood; the Purview, and the Words of the Act by which the Remedy is provided is to be considered; and it is to be known that these Words of the Purview, It may please the King's Highness that it may be enacted, &c. depend upon two Sentences of the Preamble before, *scil.* for the better extirpating and extinguishing of all such subtilie practised Feoffments, &c. and to the Intent that the King's Highness, nor any of his Subjects may be deceived by Reason of such Trust, Uses, or Confidence. It may please the King's Highness. So that the Way to extirpate the Uses, and to avoid the Deceit of them provided by the Act, is now to be seen, and that is, That where any Person stand or be seised of any Lands, Tenements, &c. That in every such Case, all and every such Person, &c. that have, or hereafter shall have any such Use, &c. shall from henceforth stand and be seised, and adjudged in lawful Seisin, Estate, and Possession of and in the same Lands and Tenements of and in such Estates as they had in the Use; and that the Estate, Right, and Possession that was in such Persons as were, or hereafter shall be seised to the Use of any such Person or Persons, be from henceforth clearly deemed in *Cestuy que use*, after such Quality, Manner, Form, and Condition, as they had in the Use,

And

And that is the Remedy which the Makers of the Act have provided to salve all the said Mischiefs; by which Words of the Purview of the Act it clearly appeareth, that every Use in *esse, scil.* in Possession, Reversion, or Remainder is executed by the Stat. and that no contingent Use or Right of an Use shall be executed within this Stat. until they come in *esse*. For to every Execution of an Use by Force of this Stat. four Things are requisite. 1st, There ought to be a Person seised, for the Words of the Act are, Any Person stand or be seised, &c. 2dly, There ought to be a *Cestuy que use* in *esse*, for the Words of the Act are, Stand seised to the Use of any Person or Persons, &c. 3dly, There ought to be an Use in *esse, scil.* in Possession, Reversion, or Remainder. 4thly, The Estate out of which the Uses rise ought to be vested in *Cestuy que use*, for the Words are, And that the State of such Person seised to the Use, shall be adjudged in *Cestuy que use*, &c. so that when these four concur, *scil.* Seisin in Feoffees, *Cestuy que use in rer' natura*, an Use in *esse*, and that the Estate of the Feoffees may vest in *Cestuy que use*, there is Execution of the Use within this Statute; but if any of them fail, there is no Execution of the Use within this Statute; and therefore it is agreed in 10 *Eliz. Plowd. Com. Dalamer's Case* 351. *b.* that the Stat. of (a) 27 *H. 8.* doth not execute any Use, but only Uses in *esse*, so a Right of a present Use, or a future, or a contingent Use are excluded until they come in *esse*. It is held in 36 *H. 8.* (b) *Dyer* 58. *a.* that if *Cestuy que use* in Tail with divers Uses in Remainder makes a Feoffment and dies, and the Stat of 27 *H. 8.* is made, now the Issue in Tail hath the Right of an Use in *esse*, as the Just. term'd it, 10 *Eliz.* in *Dalamer's Case*, but no Execution thereof until Entry by the Feoffees. And therewith agree the Cases in (c) 7 *E. 6.* *Stephen Davies's Case*, *Dy.* 88. *b.* & 15 & 16 *Eliz.* (d) *Dame Baskervil's Case*, *Dyer* 530. *a.* that if *Cestuy que use* in Possession make a Feoffment before the Stat. no Right of an Use, neither in Possession nor in Remainder shall be executed by the Stat. of 27 *H. 8.* till Regress by the Feoffees. *Quid ita?* There ought to be Seisin in the Feoffees, *Cestuy que use in rerum natura*, an Use in *esse*, and the Estate of the Feoffees ought to be transferred to *Cestuy que use*; and therefore admitting our Case had been before the Stat. of 27 *H. 8.* and that our Feoffment was before the Stat. and after the Stat. was made, without Question this Use could never be recontinued, or the Repossession of the Land executed to it by the Statute; Then if the Stat. doth execute only Uses in *esse*, and neither the Right of an Use in *esse*, nor an Use in contingency, *Ex hoc sequitur*, that the Right of an Use, and Uses in contingency remain at the Com. Law, until they come in *esse*, and therefore if the Estate of the Feoffees be devested by disseisin, or if the Queen or a Corporation,

Vide ante 26.

(a) Rastal.
ules 9.
2 Syd. 65.(b) *Dyer* 58.
pl. 5.(c) *Postear* 135. *a.*
(d) *Post.* 128. *b.*
1 *And.* 330.
Dyer 329. pl. 17.
Hob. 256, 345.

or

2 Leon. 18.
2 Sid. 129.
2 Roll 797.
Poffca 128.

or an Alien, or a Person attainted, &c. be enfeoffed before the Use come in *esse*, or if the Land be aliened *bona fide*, upon Consideration to one who hath no Notice, the Use shall never be executed, unless these Possessions be removed by lawful Entry or Action of the Feoffees. And if their Entry and Right be barred, the Use is gone for ever, as it was at the Common Law before this Stat. And therefore if *Cestuy que use* in Tail, Remainder in Tail, restrained with Clause of Perpetuity, be disseised, no Use in Contingency can be executed of this Estate, for a Disseisor cannot be seised to an Use, and then there wants Seisin in the Feoffees; and there wants an Use in *esse*, for there is but a Right of an Use; and it is impossible that the Estate of the Feoffees can be vested in *Cestuy que use* by the Act of 27 H. 8. when they have not any Estate in them when the Use shall be executed. And there is no Difference as to the Execution of an Use by Force of this Stat. when the Use is discontinued before the Stat. and when the Estate of the Land is altered after the Act, and before the contingent Use come in *esse*. And yet a more colourable Argument may be made for the Execution of the Right of a present Use by Force of this Act (as where Feoffees were disseised before the Stat.) than for the Execution of a contingent Use after the Act being devised by Disseisin before they come in *esse*, for the Words of the Act are, And the Estate, Right, and Possession that was or hereafter shall be in such Person seised to any such Use, shall be in *Cestuy que use*, &c. So that when the Feoffees are disseised before the Stat. and after the Stat. is made, now the Feoffees have a Right to the Land, and *Cestuy que use*, a Right to the Use, and the Stat. saith, That the Estate, Right and Possession that was in the Feoffees shall be in *Cestuy que use*, and they before the Disseisin had the Estate, and after the Disseisin had a Right; but this Clause is to be conjoined with the first Branches of the Act, and because Seisin fails in the Feoffees, an Use in *esse*, in *Cestuy que use*, and the Estate continued, all concurring at the Time of the Execution, there cannot be any Execution within this Stat. And yet at several Times was there Seisin in the Feoffees, an Use in *Cestuy que use*, and Seisin for a Time, but they do not meet together when the Use should be executed, and for this Reason in the said Case, the Use cannot be executed within this Statute, but the Case at the Bar is stronger, for in this Case there was never an Use in *esse* in the Son of *Christo*. before the Discontinuance and Devesting of the Estates. And suppose before the Stat. a Feoffment in Fee had been made to the Use of *J. S.* for Life, and after to the Use of the right Heirs of *J. N.* and the Feoffees had been disseised, and after the Stat. was made, and then *J. N.* died, and after his Death *J. S.* died, shall this Use be executed in the right Heir of *J. N.*? No truly, for the Reasons before rehearsed:

Then

Then by the same Reason, if the Disseisin had been in the same Case after the Statute, and before the Death of *J. S.* (for no Execution can be during his Life) no Possession shall be executed in the right Heir of *J. S.* within this Statute. By this it appeareth of what Moment their Objection is, who say, That after the Statute of 27 *H. 8.* the Land is bound with the contingent Use in whose Hand soever it shall come, for that Objection is grounded upon five Absurdities.

1. The Use shall be annexed to the Land, and not to the Estate of the Land, and by the same Reason, a Person attainted, an Alien, the King, ^(a) Corporation, the Lord by Escheat, &c. might after the Stat. be enfeoffed or seised to the Use of another, if the Land only was bound with the Use, for they shall have Commons, Advowsons, Estovers, &c. as Things annexed and appurtenant to the Land; and what Reason shall it be, that a Person attainted, Corporation, &c. could not originally be as well enfeoffed to the Use, as they shall stand seised to former contingent Uses, but *eadem est ratio* of the Creation of an Use, and of the Continuance of an Use.

2. The Stat. requires (as hath been said) that there be an Use in *esse*, and an Use is but a Confidence and Trust, for so the Words of the Stat. expound it in joining those Words together, that is to say (Use, Confidence and Trust) but it is absurd to say, that Confidence and Trust can be reposed in Land which wants Sense, and which in Regard of Sense is inferiour to brute beasts, and it would be less absurd to say, that Beasts may be trusted who have Sense and want Reason, than Land which wants Sense and Reason also should be trusted.

3. If the Land shall be bound and charged therewith, as with a Rent, Common or Interest, in the Judgment of Law, then that in Effect would overthrow all Uses, for then how can one by the Law, by Deed indented made between two, covenant to stand seised to the Use a Stranger to the Deed; for if it shall be as a Charge out of the Land, it shall be void, for he is a Stranger to the Deed; and how can a Man after the Stat. covenant to stand seised to the Use of himself for Life, or in Tail, the Remainder over? For a Man by the Rule of the Law cannot create in himself a particular Estate, nor give himself any Estate in Possession, or Remainder (unless peradventure in some Cases by Conclusion) but in as much as Uses after the Statute are but Trusts and Confidences, the Law tolerates them so long as they agree in the Declaration and Limitation of their Estates with the Rule of the Law.

4. If the Nature of an Use be changed, and a new Hereditament made by Construction upon this Stat. then if ^(c) a Man makes a Feoffment of Land on the Part of the Mother without Consideration, his Heir on the Part of the Father shall have it; but it was agreed of late in the Case between ^(d)

^(a) Jenk. Cent. 195.

^(b) Antea 121. b. Co. Lit. 272. b. 2 Co. 58. b.

^(c) Co. Lit. 13. a. 23. a. 2 Roll. 708. Dyer 134. pl. 9. Antea 88. a. 100. b. Hob. 31. 13 Co. 56. 8 Co. 54. b. 5 Ed. 4. 7. b. Fitz. Subpccna. 2. Br. Discent 11. 7 H. 6. 4. b. Br. Feoffment al use 32. Dall. 61. pl. 14. 2 Co. 58. a. ^(d) 9 Co. 126. b.

Colgat and Bbythe in Communi Banco, M. 29 & 30 Eliz. that the Heir on the Part of the Mother shall have in after the Stat. as he should have before the Stat. as 5 E. 4. 7. b. is.

5. If the Law shall be taken, that the Land shall be bound with the contingent Use in whose Hands soever it shall come, this Absurdity and Confusion would be. Suppose there is Tenant in Tail, the Remainder or Reversion over in Fee, and he in the Remainder or Reversion covenants by Deed upon good Consideration, that if Tenant in Tail dies without Issue within four Years, that he will stand seised to the Use of B. in Fee, and afterwards Tenant in Tail makes a Feoffment in Fee, and the Feoffee covenants by Deed with C. that if Tenant in Tail dies without Issue within the said four Years, he will stand seised to the Use of C. in Fee, Tenant in Tail dies within the four Years, who shall have the Use in this Case? Certainly, there cannot be two several Uses in Possession in two several Persons at one and the same Time in one and the same Land, for then it will follow that there will be two several Estates in Possession in two several Persons at one and the same Time; for if the Feoffee to an Use before the Stat. had bargained and sold the Land upon good Consideration to one in Fee who had no Notice, and execute no Estate, the Bargainee shall not have any Use, but the ancient Use continues, for there (a) remains Privy of Estate and Confidence also. And there cannot be two several Uses of one and the same Land in one and the same Degree; and therefore it seems in the Case which hath been put, the Use of the Feoffee shall be executed, and not the Use of the Remainder or Reversion, for both Uses cannot meet in esse together of one and the same Land, and therefore they are compelled to confess that the future Use in this Case may be taken away. And if it be so in the Case of Tenant in Tail, the Remainder over, so is it in the Case of Lessee for Life. And therefore if Lessee for Life be, the Remainder over in Fee, and he in the Remainder covenants with B. by Deed upon good Consideration, that if Lessee for Life dies within four Years, that then he will stand seised to the Use of B. in Fee: And afterwards Lessee for Life makes a Feoffment in Fee, and the Feoffee makes the like Covenant with C. as is aforesaid, and afterwards the Lessee dies within the four Years, none can deny but that the Use of the Feoffee shall be executed, and not the contingent Use limited to B. for otherwise Confusion would follow. And that is all one with the Case at the Bar in Effect, for in that before the contingent Use came in esse, the Lessee for Life made a Feoffment in Fee, so that the contingent Use which should rise out of the Reversion or Remainder could not rise until the Estate was recontinued, and revested; and for the Reason thereof a notable Case between (b) *John Hunt and Thomas Gatley* was adjudged by all the Justices of *Eng. M. 34 & 35 Eliz.* at *Hertford Term*, which Case began *Pasch. 23 Eliz.* And it was in Effect, that there

(a) Co. Lit.
271. b.
Postea 136. b.

(b) 1 Co. 62. b.
Pop. 5.
Jenk. Cent. 250.
4 Leon. 150.
Moor 154.
1 And. 282.
Goldsb. 5.
2 Co. 52. b.
10 Co. 42. b.
2 Rol. Rep.
211.

there was Ten't in Tail, the Remainder over in Tail, he in the Remainder chargeth it with a Rent-Charge or Lease, and afterwards Tenant in Tail suffered a common Recovery, and dieth without Issue, the Possession of the Recoveror shall not be (a) charged with the Lease or Rent, for the Possession and the new Estate of the Recoveror, which he hath gained from the Tenant in Tail, is subject to the Charges and Leases of the Recoveror, and cannot be subject to the Leases and Charges of him in the Remainder also (b) *simul & semel*; so in the same Case it was agreed, that if Tenant in Tail had made a Feoffment, the Estate and Possession of the Feoffee so long as the same continues is not subject to the Charges and Leases of him in the Remainder, but during the Continuance thereof remains subject only to the Charges and Leases of the Feoffee; for there it was held that until the Estate, out of which the Charge or Lease is derived, be recontinued, the Lessee cannot enter, nor the Grantee distrain, *ex quo nota*, that although the Use shall be (as is imagined as a Charge out of the Land) yet it cannot begin until the Estate out of which it issues be recontinued. Then it will be demanded when the Entry of the Feoffees is requisite and lawful after the Stat. of 27 H. 8. and when not. And as to that there are divers opinions. Some think that the Entry of the Feoffees is not requisite after the Stat. to the Execution of a future Use, but when the Estate out of which the Use riseth is disturbed or altered by Disseisin, or aliened to one who hath no Notice, but if the Estate continues without such Alteration, then the Entry of the Feoffees is not necessary; and with this Diversity agree the L. *Dyer* and *Manwood* in 17 *Eliz.* (c) *Dy.* 340. where they both took the same Difference when the Feoffees ought to enter into the Lands to awake the sleeping Use, and when not; and their Reason is because there ought to be an Use in *esse*, and not a Right of an Use, and the Estate of the Feoffees ought to be transferred to *Cestuy que use*, and this seems clear and without Question. And others have taken this Difference when the Feoffees by their Entry may gain their antient Fee-simple out of which the Uses rise, there Entry is congeable, otherwise not, for the Law (as they affirm) will not suffer Fractions of Estates, and particular Estates to be created without Donors or Lessors; and to prove this Difference, first they cite *Dalamer's Case* *Plow. Com.* 340. (d) which was thus in Effect: *R. Dalamer* and *Beatrice* his Wife being *Cestuy que use*, in special Tail, the Remainder of the Use to *R. Dalamer* in general Tail, the Remainder of the Use to *S. Dalamer* in Fee; *R. Dalamer* 26 H. 8. did enfeoff *Dial*, who before the Stat. enfeoffed *Lyster*, who enfeoffed *S. Dalamer*, who 3 E. 6. enfeoffed *Barnard* in Fee, *R. Dalamer* died, and *Jannings* the surviving Feoffee entred for the reviving of the Uses; and it was adjudged that his Entry was lawful, for there he gained his ancient Fee-simple, for it was agreed by all, that the Feoffment of *S. Dalamer*

(a) Noy 10.
3 Keb. 288,
289.
2 Co. 52. b.
6 Co. 42. a.
Cr. Jac. 592.
Cr. Car. 103.
Poph. 5.
Palm. 139.
Winch 41.
2 Roll's Rep.
221.
Antea 62. a.
(b) Antea 62. b.
Goldsb. 8.
Poph. 6.

(c) *Dyer* 340.
pl. 48.
Antea 101. a.
2 And. 198,
199.
2 Leon. 14.
Postea 134. b.
136. a.
1 And. 316.
Lit. Rep. 290,
321.
Moor 391.
Poph. 73.
2 Roll 797.
2 Syd. 157.

(d) 1 And. 330.
pl. 350.

was not within the Stat. of 1 R. 3. because he had only an use in remainder, and he who hath but an estate in use in remainder or in reversion (as it is there agreed) cannot make an estate over by the Stat. of 1 R. 3. * altho' the words of the Stat. are general, every feoffm. gift. grant, &c. for he cannot make a Feoffment, and a Grant of the Fee-simple of the Land he cannot make, for then would follow fraction of the Estates of the feoffees, and particular Estates without Donor or Lessor.

And if *A.* be *Cestuy que use* for Life, the Remainder of the Use to *B.* in Fee, if *B.* may grant the like Estate of the Land as he had in the Use by the Stat. of (a) 1 R. 3. then it would follow that the Grantee of *B.* should have the Fee-simple of the Land, and the Feoffees who before had Fee-simple should have now but an Estate for the Life of *A.* which would be absurd and inconvenient. Also some say, that if there be Tenant for Life, Remainder in Fee to the Use of *B.* and before the Stat. he in the Remaind. disseised Lessee for Life, and after the Stat. is made, the Stat. shall not execute the Use of the Remaind. for the Use riseth intirely out of both the Estates, and there shall not be a Fraction neither of the Use nor of Estate, for then he in the Remainder would be a Disseisor for Life only, and the Remainder executed to another which would be against the Rule of the Law; and such Construction is to be made that the Rules of Law be not broken. So if there be two joint Feoffees to the Use of another, and one disseiseth the other before the Stat. and after the Stat. is made, there shall not be a Fraction of the Estate of the Feoffee for one Moie-ty, nor a Breach of the Jointure, for the Stat. of 27 H. 8. saves the Warranty, which by such Fraction of the Estate would be lost. And also the Stat. saith, that the Estate which was in the Feoffee shall be deemed in *Cestuy que use*, and that cannot be if there shall be such Fraction of the Estate of the Feoffee. And they cite the Case in *M. 15 & 16 Eliz.*

(b) Anrea 126. a
1 And 330.
Dyer 329 pl 17.
Hob. 256, 345.

(b) *Dy.* 329, & 330. which was cited for the Opinions of *Carlyn* and *Dyer* Ch. Just. *Saunders* Ch. Baron, and *Manwood* Justice without any open Argument upon a Case referred to them out of the Chancery, where the Case in Effect was such *A. Cestuy que use* in Tail, the Remainder of the Use to *B.* in Tail, the Remainder of the Use to *A.* in Fee. *A.* before the Statute makes a Feoffment to the Use of himself for Life, and after to the Use of his eldest Son and his Wife, and to the Heirs of the Body of the Son, &c. and afterwards the Stat. is made, the Father dieth, the first Feoffees enter intending to have revived the first Use in Tail, and so to have excluded the Son's Wife, which was the Lady *Baskerville*, of the Use limited upon the second Feoffment. But it was resolved, that their Entry was not lawful, because by the Feoffment of *A.* who was *Cestuy que use* in Tail in Possession (and also had the Fee-simple of the Use.) The Fee-simple of the Use was lawfully departed with, and as to that, the Right of the Feoffees bound by the Statute of 1

R. 3. then the Feoffees by their Entry could not have their former Estate, *scil.* the Fee-simple, but should have a particular Estate without Donor or Lessor, for which Reason their Entry was not lawful, for the said Justice took it, that when *Cestuy que use* in Possession makes a Feoffment, the same by the express Letter of the Statute of 1 R. 3. bars the Entry of the Feoffees for the Fee-simple, and by Consequence the Law will not suffer any Division or Fraction of the Estate of the Feoffees, 1 And. 330. for this Reason their Entry was not lawful. But see *Dalamer's Case*; 10 *Eliz. Plow. Com.* 350. upon solemn Argument and great Deliberation adjudged contrary. But others think it is not impertinent to say, That by the Act of Parliament the Estate of the Feoffees shall be divided, and it is not to be resembled to Cases at the Common Law: And if other Construction should be made, it would be against Reason and common Allowance, and great Absurdity would, as they conceived, from thence ensue, for they said, That if a Man (a) covenants by Deed with another, that after his Death his Son shall have his Land in Tail, that in this Case the Stat. of 27 H. 8. shall make a Fraction of his Estate, for he shall have an Estate for Life, as Parcel of his ancient Estate, and his Son shall have the Use and Estate executed by the Statute of 27 Hen. 8.

And if the Feoffees shall never enter but when they shall have their ancient Fee-simple; *ex hoc* it would follow, that if a Man who hath no Son makes a Feoffment to the Use of himself for Life, and after to the Use of his 1, 2, 3, 4, &c. Sons in Tail; and for Default of such Issue to the Use of A. in Tail, the Remainder over to other Persons *in rerum natura*; there all the Uses *in esse* limited after the contingent Uses are executed by the Statute of 27 H. 8. And in such Case, if by Disseisin or other Alteration of the Estate before the Being of the future Uses, the Entry of the Feoffees should be taken away, because they cannot have their ancient and former Fee-simple, that would be as they conceived inconvenient and dangerous, and that would in Effect take away the Entry of all Feoffees at this Day; for almost in all such Conveyances by Limitation of Uses, some of the later Remainders are limited and executed by the Statute in Persons *in rerum natura*, which cannot be devested by the Entry of the Feoffees. On the other Side great Absurdity and Inconvenience will follow, to say the Estate remaineth in the Feoffees to serve the future Use when it shall happen: For suppose a Man makes a Feoffment to the use of the Feoffor for Life, and after to the Use of his eldest Son in Tail; (he having no Son at the Time) and after to the Use of A. in Tail, and after to the Use of B. in Fee, in this Case, if any Estate shall be left in the Feoffee to serve the future Use, he ought to have an Estate in Fee-simple determinable in the mean Time, and then the Feoffor shall have Estate for Life, and the Feoffee shall have an Estate to him and his Heirs as long as he who is not *in esse* (and who peradventure never will) shall have Heir of his Body, and yet an Estate tail shall be

(a) Siderf. 26.
Raym. 229. 1
O. Ben. 69.
March 50.
1 Leon 195.
Winch 60, 61.
1 Mod. 98, 160.
237.
1 Vent. 372.
377.

vested and executed in *A.* and the Remainder in Fee in *B.* which will be absurd and inconvenient, as before is said. And it will be also inconvenient and dangerous, for then the Feoffees should punish Waste and enter for the Forfeiture, &c. and yet peradventure the future Use will never happen; and thereof they conceived, that all the Uses in *esse* were presently executed, and no Estate should be left in the Feoffee in the mean Time till the future Use come in *esse*. But they conceived a Possibility of Entry should remain in the Feoffee, which the *Ld. Dyer* in 17 *Eliz* 340. *b.* termeth *(a) Scintilla juris*; for if the Feoffor hath Issue a Son, then presently by the Operation of the Act of 27 *H. 8.* the Feoffees should have an Estate to preserve this Use, for the Stat. saith, That the Estate, &c. that was in such Person or Persons, that were, or hereafter should be seized of any Lands to the Use of any Person or Persons, shall be deemed or adjudged in him or them that have or hereafter shall have such Use: So that when the Son is born, or when the future Use cometh in *esse*, they say that the Stat. giveth the Estate from the Feoffee to *Cestuy que use*, and therefore by Necessity of Reason the Estate after the contingent Use cometh in *esse* shall be in the Feoffee to preserve this future Use, which by Force of the Stat. might be deemed and adjudged out of the Feoffee to *Cestuy que use*; but the Feoffees in the Case before put have but a Possibility, because if the future Use do not come in *esse* during the particular Estate, then it shall never take Effect; for in as much as it is in the Nature of *(b)* a Remainder, it ought to take Effect and vest, during the particular Estate, or at least at the Time of the Determination of the particular Estate. And it was said, at the Bar by the Counsel of the Defendant, that this seems to be the better Opinion.

And it was said, that no Uses shall be executed by the Stat. of 27 *H. 8.* which are limited against the Rules of the Common Law, and the Reason thereof is manifest; for it appears by the Preamble of the Stat. of 27 *H. 8.* that it was the Intent of the Makers of the Act, to restore the antient Common Law of the Land, and to extirpate and extinguish such subtle practised Feoffments, Fines, Recoveries, Abuses and Errors, tending to the Subversion of the good and antient Common Laws of the Land; so that it fully appears, that this Act of 27 *H. 8.* shall not execute any Use which is limited against the Rule of the Com. Law, for the Intent of the Act was to extinguish and extirpate not the Feoffm. Fine, or Recovery, for these were laudable and good Conveyances of Lands and Tenements by the Com. Law, as is in Effect recited in the Beginning of the Preamble; but such Uses which are Abuses and Errors, and therefore erroneous because they are against the Rule of the Com. Law, and therefore this Law of 27 *H. 8.*

(a) Dyer 340.
pl. 49.
Poltea 132. b.
2 Siderf. 99,
129.
Poph. 73.
2 Roll. k. 337.
1 And. 315,
328.

(b) Antea 66. b.
Plowd. 29.
a. b. 25. b.
2 Co. 51. a.
3 Co. 21. a.
Raym. 54.
2 And 37.
Poltea 130. a.
134. b.
Perk. 12.
Raym. 413.
Poph. 82.
Vide ante 26.
3 Salk. 334, 384

is a Law of Restitution, *scil.* to restore the good and antient Common Law which was in a Manner subverted by abusive and erroneous Uses. And therefore if a Man at this Day makes a Feoffment in Fee to the Use of *A.* for (a) Years, and after to the Use of the right Heirs of *B.* or to the Use of the Wife of *B.* which shall be; this Limitation to the right Heirs and to the Wife is void, because it had been void, if it had been limited in Possession, *ut patet M. 2 & 3 Eliz. Dy. (b)* 190, 191. So in the same Case if the Use be limited to *A.* for Life, and after to the Use of the right Heirs of *B.* or to the Wife of *B.* which shall be, if *A.* dies, and after *B.* dies, or takes Wife, this Remainder limited to the right Heirs or to the Wife of *B.* is void, for it would be void, if it had been limited in Possession. And the Statute of 27 *H. 8.* intended to restore the good and ancient Common Law, and not to give more Privilege to the Execution of Uses than to Estates, which are executed by the antient Common Law. And in Proof thereof, it was resolved by all the Justices of England, *Pasch. 35 Eliz.* in the Case of the Earl of (d) *Bedford*, referred to Francis Earl of *Bedford* made a Feoffment in Fee of divers Manors to the Use of himself for Years, and after to the Use of *John* Lord *Russel* his Son and Heir apparent, and to the Heirs Males of his Body begotten, and for want of such Issue to the Use of the right Heirs of the said Earl; and afterwards the said *John* Lord *Russel* died without Issue Male in the Life of the said Earl; and it was resolved, that the Use and Estate limited by Way of Remainder to the right Heirs of the Earl was void, for it had been void, if it had been limited by Estate executed at the Common Law, for the (e) Remainder ought to vest during the particular Estate.

And if a Man makes a Feoffment in Fee to the Use of himself for Life, and after to the Use of his eldest Son and his Heirs Males of his Body, and for want of such Issue to the Use of his second Son in Tail, &c. provided that if his eldest Son (f) attempt to suffer a Recovery, or levy a Fine, &c. that then his Estate shall cease, as if he had been naturally dead, and not otherwise, and that then the Land shall descend or remain, as if he had been naturally dead, without any Forfeiture; the eldest Son hath Issue a Son, and attempts to alien, in this Case the *Proviso* is repugnant and void, for if it had been limited by Conveyance at the Common Law in Possession without doubt it had been void; And in such Case, if it should be good, I demand in whom the Estate-tail shall be after such Attempt, and who shall have the Writ of Waste, and shall enter for the Forfeiture, during the natural Life of Tenant in Tail. And if a Man by Deed with Livery of Seisin gives Land in Tail, the Remainder in Tail, the Remainder in Fee: Provided always, (as above) such *Proviso* is repugnant and void, as is directly proved by (g) *Richil's Case* in *Lit.* 163. and by (b) 21 *Hen. 7.* 11. and (i) 21 *Hen. 6.* 33. b. And this Case of an Use is not to be resembled to a Rent (k) newly created, or any other

(a) Moor 488.
 (b) Postea 134 b.
 (c) Raym. 47.
 (d) Moor 371; 718 Jenk. Cent. 248.
 (e) Poph. 3, 32. 2 Anderf. 197. 2 Co. 91. b. 2 Roll 418, 791. Skin. 351; Raym. 83.
 (f) - low. 29. a. b. 25. b. Antea 66 b. 2 Co. 51. a. 2 Co. 21. a. Raym. 54. 413. 2 And. 37. Perk. 12. Postea 134. b. Poph. 82.
 (g) Antea 83. b. 84. a. 6 Co. 42. a. (g) Lit. sect. 720. Co. Lit. 377. b. Antea 88. a. 2 And 135, 138. 1 Ro. Rep. 485. Postea 131. b. Condition 83.
 (h) Fitz. Condition 4. Br. Condition 57.
 (k) Perk. sect. 327. Plow. 156. a. 10 H. 7. 13. 1. 5 E. 2. Dowe. 143. 12 E. 3. Condition 11. 22 E. 3. 19. a. 4 Leon. 83. 6 Co. 41. a. 8 Co. 17. b. Antea 87. a.

thing out of the land, but only to land it self, for now the Stat. hath with an indissoluble marriage united the land and use together, and it will be consonant to the intent of the makers of the Act of 27 H. 8. to restore the ancient com. law in the construct. of the execution of the possess. to the use. Then it will be objected, that in as much as the Stat. in the mean time executes all the uses in *esse*, and *Cestuy que use* is *quod modo* in the *Pest*, and not in the privity of the estate out of which the future use rises, that for this reason the future use shall not rise at all, which will be mischievous and inconvenient.

The answer to this objection will be plainer, if a case be put of an Use in *esse*, and in *futuro*, and upon that the manner how future uses shall be vested by the Stat. of 27 H. 8. will be shewn, as by way of demonstration. *A.* makes a feoffment in fee to the use of himself for life, and after to the use of him who shall be his 1st son in tail, and for default of such issue to the use of *B.* in tail, and for default of such issue to the use of *C.* in fee; in this case immediately by the feoffment *A.* hath an estate for life, the remainder to *B.* in tail, the remainder to *C.* in fee, and no estate is put in abeyance, or left in the feoffees; but if after *A.* hath issue a son, then the possibility which the feoffee had becomes an estate in law, and the statute immediately executes the possession according to the limitation of the use; but if tenant for life be diseised before the birth of the Son, and after he hath issue a son, now nothing vests in the son, because there ought to be an use in *esse* before the statute can execute the possession; but who shall enter to remove the impediment, and to restore the privity of the estates? Certainly, if the tenant for life re-enters, he shall revive all the former estates which the statute of 27 Hen. 8. hath executed to the former uses in *esse*, and therefore also the statute doth transfer the estate of the land to the son in tail, for that is the privity which the statute requireth, *scil.* privity of estates which the same statute hath executed upon the limitation of the uses in the same conveyance before, and after the death of tenant for life the feoffees may enter and revive the use. And as lessee for years or for life, upon condition to have fee, cannot have an (a) increase and enlargement of his estate, but upon the privity of estate of the lessee; so no remainder of a future use can be transferred into estate by force of this act, before the particular estates executed by the statute upon the limitation of the uses in the same conveyance are recontinued. But if tenant for life makes a feoffment in fee, or dies before the birth of the son, his remainder is destroyed. As (b) if a lease be made for life, the remainder to the right heirs of *J. S.* if lessee for life makes a feoffment, or dies during the life of *J. S.* the remainder to the right heirs is destroyed, and that as it seems is the best construction of the stat. of 27 H. 8. for other construction would

V. Co. Lit.
28. a.
11 Co. 80.
2 Sand. 383,
387.

(a) 8 Co. 75. a.

(b) Polleat 135. b.

would overthrow the Estates of an infinite Number of Persons, which would be inconvenient, and against the practise and common Opinion ever since the Making of the said Act to this Day.

Another Objection hath been made that an Use in Contingency is in the Custody of the Law, and therefore cannot be discontinued or taken away; but from thence will follow great Absurdities. 1st, It would be absurd that a future or contingent Use might be discontinued or taken away by a Feoffm. *bona fide* upon Notice or Disseisin, &c. before the Stat. and shall not be thereby taken away or discontinued after the Stat. when the Stat. doth not extend to it until it comes in *esse*: 2^{dly}, It would be absurd, that the Law, which by its Definition is *sanctio sancta iubens honesta, & prohibens contraria*, should be the Conservator or Preserver of a Thing impious and fraudulent, for by the Judgm. of the whole Parliament of 27 H. 8. (a) Uses are subtil and crafty, invented by frauds (a) Antea 121. b to disinherit Heirs, to defraud the K. and all other Lords of their Escheats, Wards, and other Profits of their Seignories, to deceive Purchasers, &c. and as it is in the Preamble to introduce many other Inconveniencies, and to raise Trouble and Unquietness between the Subjects, will this be *iubere honesta, & prohibere contraria*? No truly, but will be *iubere iniqua, & prohibere contraria*; and therefore Fitzh. in *Bokenham's Case*, 28 H. 8. Dy. 12. a. saith truly, that Uses are odious in the Law. 3^{dly}, The Com. Law will not keep and nourish these subtil and fraudulent Uses *tanqu' in gremio legis*, because, as appears by the Judgm. of all the Parliam. in 27 H. 8. they were invented and practised in Subversion of the ancient Com. Law; but the Law will not preserve a Subverter and Destroyer in its Bosom; and these Uses are termed Abuses and Errors by the whole Parliam. in 27 H. 8. and therefore cannot remain *in gremio legis*. So the Intent of Parliam. was to extirpate and extinguish subtil and fraudulent Uses as Things tending to the Subversion of the ancient Com. Law, and as Authors of Fraud, Subtilty, Deceit, Trouble, Inquietness, Errors, and Abuses, besides many and great Mischiefs and Inconveniencies; and the Letter also of the Purview of the Act was clearly against them, and therefore it would be against all Reason to make a Construction against the exprefs Intent and Meaning of the Act of Parliament, but herein to imitate the Example of the reverend Judges in Times past, who always construed all Acts made against the Fraud of Uses (for of those only it was spoken) (b) (b) 3 Co. 82. a. liberally and by Equity, against the Letter for suppressing the Fraud and Inconveniencies of Uses; and therefore where the Statutes of (c) 1 R. 2. & (d) 4 H. 4. aforesaid, (c) 1 R. 2. cap. 9. Dyer 295. pl. 11. Antea 123. a. which gave an Action to *Cestuy que use* (calling him Pernor of the Profits) and that the Writ should not abate for Non- (d) 4 H. 4. cap. 7. tenure,

(a) 5 Co. 77. b. Fitz. Maintenance de Brief 35. Br. Parnor de Profits 25. (b) Long quinto E. 45. a. Br. Parnor de Profits, &c. 20. (c) Br. Parnor de Profits, &c. 34. Fitz. Maintenance de Brief 9. (d) Fitz. Maint. de Brief 29. Br. Parnor de Profits 14. (e) Br. Parnor de Profits 19. (f) Maint. de Brief 60. Plowd. 59. b. 178. a. Br. Parnor de Profits 10. (g) Br. Feoffment al use 25. Fitz. Execution 19. Br. Execution 90. Br. Recogniz. 13. in fine. (h) Br. Feoffment al use 8. (i) Br. Feoffment al use 23. (k) Co. Lit. 361. b. 6 Co. 40. b. 20 Co. 37. b. 1 Bullbr. 159, 160. Godb. 308. Hardr. 209. (l) 2 And. 135, 138. Lit. sect. 720. Co. Lit. 377. b. 1 Roll. Rep. 485. Antea 83. a. 130. a. 6 Co. 42. b.

tenure, yet the Judges, *M. (a)* 4 *E. 4.* 38. *b.* by Equity to meet with the Fraud of Uses, did extend it to Jointenancy as it is there held, and also in *(b)* 5 *E. 4.* 44. *b.* & 45. & *(c)* 7 *H. 6.* 10. *a.* and the Judges in *(d)* 36 *H. 6.* 34. *a. b.* extend the said Stat. by like Equity to Disclaimer. Also the Stat. of 1 *H. 7. c. 1.* gave a *Formedon* only by express Name against *Cest que use*, but the Judges, *Mich. (e)* 14 *H. 7.* 17. 31. & *(f)* 15 *H. 7.* 8. upon long Debate extended it to a *Scire facias* to execute an Estate-tail in Remainder by Equity; so the Stat. of 1 *R. 3. c. 1.* which speaks of Leafes, &c. made by *Cestuy que use* is extended by the Judges in *(g)* 7 *H. 7.* 6. *a. b.* to Executions by *Elegit*, &c. by *Cestuy que use*, and where the Stat. of 1 *R. 3.* saith, All Grants, &c. shall be good against him and his Feoffees, yet it was agreed 4 *H. 7.* 8. *b.* that the Grant of a Rent-Charge should be good against the Disseisors of the Feoffees. And if *Cestuy que use* be enfeoffed by the Disseisor of the Feoffees, and he makes a Feoffment over, if the Letter of the Act of 1 *R. 3.* be only considered, that is not according to his Authority, given by the precise Words of the said Act, for it is said in 8 *H. 7.* fol. 9. *a.* that he ought to do it as Servant and in the Right of the Feoffees; and yet *(b)* 27 *H. 8.* 29. *b.* it is good to a Purchaser by the Equity of the Stat. For as it is said in *(i)* 5 *H. 7.* 5. *b.* the same Act was made for Advantage of the Grantees, and not for the Advantage of *Cestuy que use*. But in the Case at Bar, the Meaning of the Makers of the Act is apparent, and the Letter of the Act is expressly with us, and greater Mischiefs otherwise would follow than were before the Act, if these future Uses should be preserved in the Case at the Bar. The Stat. made 13 *E. 1. de donis conditionalibus* in a Manner created Perpetuities, and it continued about 200 Years, but in *(k)* 12 *E. 4.* 19. by the Resolution of the Judges it was resolved, That by a common Recovery the Estate-tail should be barred, for the Mischiefs which were introduced in the Commonwealth thereby. In the Time of *R. 2. Just. (l) Richil* attempted to make a Perpetuity, as it appears by *Litt.* in his Chapter of Warranty, fol. 263. & 21 *H. 6.* 33. *b.* which was such in Effect, *Just. Richil* having divers Sons, and intending that none of his Sons should alien those Lands, or make a Warranty to bar or hurt the others, made a Deed indented to such Effect, *scil.* That the Lands and Tenements were given to his eldest Son in Tail upon condition, that if his eldest Son should alien in Fee or in Tail, &c. or if any of his Sons should alien, &c. that then their Estate should cease, and be void, and that then the Lands should remain to his second Son in Tail, &c. & *sic ultra*, the Remainder to his other Sons, and Livery and Seisin was made accordingly. But all such Remainders were void, because the Limitations of them were against the Rule of the Law, as appears there by *Litt.* And it appears in 21 *H. 6.* 33. that *Tbirning* Chief Justice of the Com. Pleas made the like Perpetuity for the Continuance of his Land in his Blood without Alienation; but the Judge;

held that it was against the Law. And if after the Stat of 27 H. 8. which hath made an inseparable Unity and Conjunction between the Use and the Possess. the like Construction shall be made of Estates limited in Use and executed by the Stat. as of Estates executed in Possess. and by the com. Law, it will be hard in my Opinion to maintain such Provisoos, or Condit. to make Estates of Freehold and Inheritance lawfully vested to cease in one, and to vest and re-vest in others, against the Rule of the Common Law. And so I conceive upon the whole Matter, that the future Uses in the Case at the Bar by the said Feoffment of the Feoffees were utterly destroyed, and by Consequence Judgment ought to be given for the Defendant.

And afterwards this Case was openly argued by all the Just. of Engl. and the Barons of the Exchequer, in the Exchequer-Chamber, at six several Days: 1. By Baron *Exvens* and Just. *Owen*; 2. By Just. *Beaumont* and Just. *Fenner*; 3. By Just. *Walmesley* and Just. *Gawdy*; 4. By Baron *Clark* and Justice *Clench*; 5. By Sir *W. Periam* Chief Baron of the Exchequer, and by Sir *Ed. Audersf.* Ch. Just. of the Com. Pleas; and 6. by Sir *J. Popham* Ch. Just. of Engl. All which Arguments of the Judges and Barons I heard, except only that of Just. *Beaumont*, and therefore what I shall say of that, I shall say by credible Relation of others; but my Intent is not to report any of their Arguments at large, and in the same Form as they were delivered by them, but to make such a summary Collection of the Effect and Substance of them all, as the Matter (it being the first Case which was adjudged, and being of great Importance) will permit. And because Just. *Walmesley* and the Chief Baron only argued that Judgm. should be given for the Plaintiff, and all the other Judges and Barons concluded against the Plaintiff, I begin with the Effect of their two Arguments, *viz.*

Before the Stat. of 1 R. 3. the Feoffees had not only the whole Estate in the Land, but also the whole Power to give and dispose of it, for *Cest' que use* was a Trespasser, if he enter'd upon the Land against their Will. And after the Stat. of 1 R. 3. *Cest' que use* had Power to make a Disposition of the Land it self, and yet notwithstanding that, the whole Estate of the Land did remain in the Feoffee until *Cest' que use* had made such a Disposition, for which Reason the said Act intending to provide for *Cest' que use* had not made a sufficient Provision for him. For the Estate of the Land remaining in the Feoffees, they many Times contrary to the Trust reposed in them, by secret Feoffm. Estates, and other covenous Acts had defrauded *Cest' que use*, and had prevented such Disposit. of the Land which the said Act of 1 R. 3. gave him; and as *Walmesley* said, there was sometimes Fraud in both, for when *Cest' que use* by himself without the Feoffees, by Force of the Stat. of 1 R. 3. and the Feoffees by themselves without *Cest' que use*, by the Common Law, had both severally absolute Power to make Disposition of one and the same Land; sometimes *Cestuy que use* by his secret Estates prevented the Feoffees, and sometimes the Feoffees by the like

Dyer 9. pl. 26.

secret Estates prevented *Cestuy que use*, so that as he said, they played at double Hand, and thereby frustrated the true Intent of the Act. And the Chief Baron and *Walmesley* said, that the Stat. of 27 H. 8. was not made to extinguish or eradicate any Uses, but the Stat. of 27 H. 8. hath advanced Uses, and hath now establish'd Safety and Assurance for *Cestuy que use* against his Feoffees; for before the Stat. the Feoffees were Owners of the Land, and now the Stat. hath made *Cestuy que use* Owner of the Land; before the Stat. the Possession governed and ruled the Use, but now since the Stat. the Use governs and rules the Possession; for by the said Act of 27 H. 8. the Possession is a Subject and Follower of the Use. And no Word in the Preamble doth condemn Uses, but for the extirpating and extinguishing of all such subtle practised Feoffments, Fines, Recoveries, Abuses, &c. so that the Uses are not guilty of the Inconveniencies mentioned in the Preamble, but the Feoffments, Fines, and Recoveries subtilly and craftily practised, so that the Intent of the Act was to extirpate and extinguish (which are both significant Words) all such Feoffments, Fines, Recoveries, but how? By destroying of Uses; no truly, but by divesting the whole Estate out of the Feoffees, Conusees, and Recoverers, and vesting it in *Cestuy que use*, so that it would be against the Meaning and the Letter of the Law also, to say that any Estate or Right, or *scintilla juris*, should remain in the Feoffees after the Stat. of 27 H. 8. for it appears by the Preamble, that the Makers of the Act intended to extirpate and eradicate the whole Estate of the Feoffees, and the Letter of the Body of the Act is, that the Estate, Right, Title, and Possession that was in such Person or Persons that were or hereafter shall be seised of any Lands to the Use of such Person be from thenceforth clearly adjudged and deemed in him or them, &c. so that by a Judgment given by the whole Parliament the Estate shall be out of the Feoffees; (a) and the Chief Baron said, that *scintilla juris*, which is mentioned in 17 El. is like Sir *Thomas Moore's Europa*; and they said, that since this Stat. no Trust or Confidence was reposed in the Feoffees. For now, as *Walmesley* said, the Feoffees *non possunt agere aut permittere aliquid* in Prejudice of *Cestuy que use*.

Before the Stat. the Office of the Feoffee was to execute the Estate according to the Use, but now the Stat. hath taken away all the Office of the Feoffees, and now the Act executes the Possess. to the Use, and takes away all the Trust and Power out of the Feoffees. And the Letter of the Stat. of 27 H. 8. is, where any Person or Persons stand or be seised, or at any Time hereafter shall happen to be seised, and they relied much upon these Words (at any Time); for it seemed to them by these Words, that the Seisin, which the Feoffees had at the Beginning by the Feoffment, would be sufficient within this

Vide Dyer 112.
b. in Marg.
bone divers.
per Boy.

(a) Dyer 340.
pl. 49 Ant. 129
b. 2 Syd. 99, 129
1st ph. 73.
2 Rol Rep. 337.
1 And. 315.
328.

this Act, to serve all the Uses as well future, when they come in *esse*, as present, for there need not many Seifins, nor a continued Seifin, but a Seifin at any Time; so a Seifin at one Time would suffice, for the Stat. saith, seifed at any Time; and it would be hard when the Stat. requires but one Seifin at one Time only, that many Seifins, and at several Times, against the Intent and Letter of the Act, should be required. The Stat. of 27 H. 8. extends to all lawful and good Uses as well future as in *esse*, and no such Use is destroyed but advanced and extolled, as hath been said before. And *Walmsley* said, that if such Construction should be made to destroy these future Uses, the usual Pleading in Practice ever since the Statute ought to be altered; for the Pleading of a Feoffment in Fee to future Uses after that they come in *esse*, is (a) *virtute cuius & vigore actus Parliamentari, &c. de usibus in possessionem transferend' Cestuy que use* was seifed, &c. so that one Seifin is sufficient, as is proved by the usual Form of Pleading, but now the Pleading of it must be altered, if many Seifins should be requisite, and then more Seifins than one ought to be alledged. And he said, as a Fountain gives to every one which comes in his Turn to it his just Measure of Water, so the first Seifin and Estate in Fee, given by the first Feoffment to the Feoffees, is sufficient to yield to all Persons, to whom any Use present or future is limited, a competent Measure of Estate in their Time, proportionable to their Estates which they shall have in the Use; so that it seems to them, that the first Seifin by Force of the Feoffment by which the Fee-simple is given to the Feoffees would be sufficient to serve all the particular Uses as well future as present in their several Times, and nothing should remain in the Feoffees. But *Walmsley* said, that the whole Estate shall be first vested in those who are *in rerum natura*, and the Possession shall be vested in him who hath the future Use, when it comes in *esse* by Force of the first Livery, and shall divide the Estates which were conjoined before. And he agreed that an (b) Alien, or a Person attainted, or a Corporation, could not at this Day be originally infeoffed to the Use of another, for no Use can be created out of their Seifin, *J. S.* makes a Feoffment in Fee to divers natural Persons to certain Uses, some present, and some future, so that the Uses are well created and raised, altho' a Corporation be afterwards infeoffed of the Land, yet the future Uses when they come in *esse*, shall be raised and executed by Force of the first Livery, and the first Seifin of the Feoffees, and by Force of the Act, as he conceived. And *Walmsley* further said, that the future Uses in our Case cannot be suspended, for a Thing which never was in *esse* cannot be suspended, but the whole Estate vests first in them who have the present Uses

(a) Doct. pl. 292.

See ante 26.

129.

3 Salk. 334.

(b) 122. a.

Skinner 351.

352.

Uses, or the Uses in *esse*, and when the future Uses come in *esse*, then they shall come in between the other Estates which were conjoined before; and in Proof thereof they cited the Case of (a) *Cranmer* in 14 *El.* reported by the Lord *Dy.* fo. 309, and the Case (b) *de seniori puero* in 16 *El.* reported also by the Lord *Dy.* fo. 337, and the Case in (c) 5 *H.* 7. 6. a. If *Cestuy que use* by Force of the Stat. of 1 *R.* 3. makes a Feoffment in Fee upon Condition, and after enters for the Condition broken, the Feoffees should never have the Land again, because all the Interest and Privy of the Feoffees was once by the Feoffment taken out of them; so the Case in 19 *H.* 6. fo. 76. & 2 *E.* 4. 2. if a Man makes a Feoffment in Fee upon Condition that he shall make a Feoffment over in Fee, in that Case, if the second Feoffee refuses, the Feoffor shall enter, for it was the Intent of both Parties, that the Feoffee should depart with his whole Estate, and nothing should remain in him: Otherwise it is, if the Condition was that he should make a Gift in Tail; and he said, if a Feoffment be made of Land to the Use of *A.* and there is also a Rent issuing out of the same Land to the Use of *B.* altho' the Possession of the Land be disturbed by Disseisin, yet the Use of the Rent is not disturbed thereby, because the Disturbance is done to another Seisin, that is to say, to the Land, and not to the Seisin of the Rent out of which the Use is limited. So in the Case at Bar, the Disturbance is not to the first Seisin given by the Feoffment, out of which all the Uses, as out of a Fountain flow, but the Disturbance is done to other Seisins, *scil.* to Seisins executed by the Stat. of 27 *H.* 8. and not to the first Seisin, which by no Means can be tolled or divested, for it hath not any Essence until the future Use hath Essence, which by Force of the Stat. shall draw a sufficient Estate to it, but when the future Use is come in *esse*, now by Reference and Relation to the first Seisin there is Seisin and Use within the Stat. of 27 *H.* 8. And in Proof thereof he cited (d) *Bracebridge's* Case 15 *El.* which in Effect was: A Man made a Feoffment of a Manor to several Persons, to certain Uses, upon Condition that if certain Money was not paid within a certain Time, that then they should stand seised to other Uses; the Money was not paid, and after Attornment was had to the Feoffees when the Possession of the Demesnes was executed before by the Statute; in that Case after the Condition broken *Cestuy que use* had Possession of the Land by Force of the first Livery; and yet there was not any Continuance of Seisin in the Feoffees, neither were the Feoffees seised of the Land at the Time of the Execution of the Possession to the Use.

And the Case of 13 *El.* (e) *Dy.* fo. 298. b. 22 (f) *El.* 369. a. Ten't in *Capite* infeoffs one and his Heirs, provided that when the Feoffor shall pay 100*l.* to him or h's Heirs, that then it shall be to the Use of the Feoffor and his Heirs; the Feoffee dies, his Heir within Age, the 100*l.* is paid, Office is found, the Feoffor shall have the Use by Force of the first Livery, and by Relation to that, shall defeat the Wardship of the Body and Land,

(a) O. Ben. 43.
69. Yelv. 9.
Moor 110.
2 Leon. 5.
3 Leon. 20.
1 And. 19, 196,
316. 2 And. 37.
Dyer 309, 310.
Wentw. 118,
119. Lit. Rep.
289. Poph. 82.
Goldf. 20.
Antea 66. b.
(b) Dav. 35. a.
Dyer 133. pl. 5.
Moor 103, 104.
2 Leon. 216,
217. 3 Leon.
158. Sty 293.
Ow. 64. 1 And.
40, 316. O. Ben.
29. 2 Roll. 789.
Lit. Rep. 321.
(c) Perk. Sect.
842. Br. Con-
dition 225.

(d) 1 And. 113,
316. 4 Leon. 5.
264. Plowd.
417. b. Moor
99, 612.
B. N. C. 423.

(e) Dyer 298.
pl. 30. 1 Keb.
800. 2 Keb.
145. Co. Lit.
76. b. 248. a.
2 Roll. 39.
2 Roll Rep. 463.
10 Co. 85. a.
(f) Dyer 369.
pl. 51.

And he said, if a Man makes a Feoff. in Fee to the Use of him-⁶ Co. 33. a. self for Life, and after to the Use of another in Tail, with divers Remainders over with Power to the Lessee for Life to make Leases for 21 Years, or 3 Lives, in that Case, if the Tenant for Life makes a Lease for 21 Years or 3 Lives, it ought to be derived and take its Essence out of the first Feoffment, or otherwise all Leases would be determined by the Death of the Lessee for Life, and in the same Case there is not any Seisin continuing in the Feoffees, but the first Seisin is sufficient, and this is consonant to the Words of the Act of 27 H. 8. for it saith, that the Estate that was in the Feoffee shall be adjudged in *Cest. que use*; but *Periam* chief Baron conceived, that these future Uses before their Births are not preserved in the Bowels and Belly of the Land; but that they were *in nubibus*, and in the Preservation of the Law; for he well agreed with *Walmesley*, that by Force of the Act the whole Estate shall be out of the Feoffees, and then of Necessity he said it ought to be in some Person, or in Abeyance and Considerat. of the Law. And it would be absurd to say that the Feoff. should have a less Estate than they took by the first Livery. And therefore because nothing remains in the Feoffees, and this future Use, cannot be executed until the Person who should take it comes in *esse*, it must of Necessity be in the mean Time in the Preserv. of the Law. And if any Case be doubtful upon a Stat. it is good to construe it according to the Reason of the Common Law, as it is said in *Dalamer's Case* in *Plow. Com.* 351.

1 And 330.
Lit. Rep. 662.

And if the Estate in our Case had been limited in Possession by Livery and Seisin, the Remainder to the eldest Son, &c. till his Birth it would be by the Rule of the com. Law in the Consideration of the Law; and by the same Reason the Use shall be in our Case; and as the Use shall be, so shall be the Possession by Force of the Stat. for be the Use in *esse*, or in the Considerat. of the Law, the Possess. shall be transferred to it by Force of the Stat. And he took a Difference between Feoffees before the Stat. and Feoffees since the Stat. for if Feoffees to an Use were disseised before the Stat. no Use could be executed after the Stat. without Regress of the Feoffees, for the Stat. saith, which be or at any Time hereafter shall be seised, &c. And those who were disseised before the Stat. were not seised at the Time of the Act, nor at any Time after until Regress; otherwise it is when the Feoffment is made after the Stat. *causa qua supra*. And where the Stat. saith, to the Use of any Person or Persons the Stat. doth not say, to the Use of any Person or Persons in *esse*, but to the Use of another Person, and that shall be intended when his Time shall come; and it would be a hard Construction to destroy these future Uses in our Case which were limited upon good Cause and Consideration, and especially when the Sons, who then were not in *esse*, were not Parties to any Wrong, Covin or Practice; but he said, that the Use by the Common Law was in Abeyance and Custody

Custody of the Law. And the Possess. accordingly by Force of the Stat. for no other Person can take it, and a Thing which is committed to the Custody of the Law, the Law will lawfully preserve without any Violence or Destruction. And therefore (a) 32 H. 6. if there be Tenant for Life the Remainder to the right Heirs of J. S. and Tenant for Life is devised, and a Descent cast, and after J. S. dies, and then the Lessee for Life dies, the Entry of the right Heir of J. S. is lawful, and he put also the Case of the Parson as to this Purpose. And to prove that as well the Possess. as the Use are in the Custody of the Law, he cited (b) *Cranmer's Case* 14 *El. Dyer* 309, that the Remainder limited to the Executors was in Abeyance; and the Earl of *Bedford's* (c) Case, in which Case he said it was agreed, that the Remainder to his right Heirs was in the Custody of the Law until the Death of *J. bn Lord Russel*. And 17 *El. Dyer* (d) *Brent's Case*, fol. 340. that the Remainder limited to the Wife that shall be, was in Abeyance, and the L. (e) *Bray's Case*, 2 *El. Dy. fol.* 190, 191, where it was held, that the Remainder limited to the Wife that shall be, should be in Abeyance, if the particular Estate had not been but a Term, which cannot by the Rule of Law support a Remainder in Abeyance. And he cited the Cases in *Brook's Abridgm. Tit. Feoffments al Uses* 30 H. 8. § 50 pl. 3. M. pl. 59. when *Brook* was Ch. Just. and he said, that these Uses have extended themselves into many Branches and are to be resembled to *Nebuchadnezzar's Tree*, for in this Tree the Fowls of the Air build their Nests, and the Nobles of this Realm erect and establish their Houses, and under this Tree lie *infinita pecora campi*, and great Part of the Copyholders and Farmers of the Land for Shelter and safety, and he said, if this Tree should be fell'd or subverted, it would make a great Print and impression in the Land. And therefore it was convenient to repress the Mischief after by Parliament, and not to have any Retrospect to Cases before. And he and *Walmesley* also agreed in their Argument, that the Uses in this Case should follow the Rules of Estates at the com. Law. And therefore in this Case if Tenant for Life dies before the Birth of the Son, the Remainder in Use shall be void, for such Remainder would be void by the Rule of the com. Law, if it had been made in Possession, if the (f) Remainder do not vest during the particular Estate, or at least when the particul. Estate determines, and no Difference between Uses and Estates made in Possess. as to this Purpose. And so they concluded, that Judgment ought to be given for the Plaintiff. And on the other side it was argued by Bar. *Ewens*, Just. *Owen*, Just. *Beamond*, Just. *Fenner*, Just. *Garwdy*, Bar. *Clark*, Just. *Clench* the Lord *Anderson*, and *Popham* Lord Ch. Just. to the contrary. And it was agreed by them all that the (g) Feoffm. made by the said Feoffees who had an Estate for Life by Limit. of the Use devested all the Estates, and the future Uses also. And altho'

(a) Antea 67. a
Polita 135. b.

(b) O. Benl. 43.
69. Yelv. 9.
Mo. 100. 2 Leon.
on. 5. 3 Leon.
20. 1. And. 19
196. 317. 2 And.
37. Dyer 309,
310. Wentw.
118, 119.
Goldsb. 20.
Lit. Rep. 289.
Poph. 82. Ant.
66. b. 133. b.

(c) Mo. 371,
718, 719. Poph.
3, 82. Jenk.
Cent. 248.
2 And. 197.
2 Co. 91. b.
2 Roll 418, 791.
Raym. 83.

(d) Post. 136.
a. 1 And. 316.
2 And. 198.
Poph. 73, 76.
Ant. 101. a.
128. a. Lit.
Rep. 290, 321.
2 Leon. 14.
(e) 1 And. 5.
2 Roll. Rep. 101.
Ant. 130. a.
Post. 135. b.

(f) Plowd. 25.
b. 29. a. b. 35. a.
1 Co 129. b.
130. a. 2 Co.
51. a. 3 Co. 21.
a Raym. 34.
413. 2 And.
37. Mo. 104.
Perk. 12. Palm.
139. Poph. 82.
(g) Cro. Car.
102. Cro. El.
630. Moor 339,
546. 2 Roll 754.
2 Roll. Rep. 216

altho' *Rich. Chudleigh* their Feoffee had Notice of the first Use, yet it is not material, because all the antient Estates were devested by the said Feoffm. and this new Estate cannot be subject to the antient Uses which rise out of the antient Estate which was devested by the Feoffm. And *Garwdy* Justices conceived, that the Uses limited to the eldest Son, &c. were in Abeyance, and he said, that the Estates of the Land sufficient to serve these future Uses were in Abeyance also; but he agreed it was not by the Letter of the Stat. of 27 H. 8. but should be taken by Equity of the said Stat. For he said, the Letter of the Stat. is, To the Use of any Person or Persons, and here wanteth Person; also in every Case such Person shall be adjudged in lawful Seisin, &c. also, that the Estate, &c. shall be adjudged in him or them that shall have such Use, and therefore he said, the Uses in Abeyance by the Equity of the Stat. did draw sufficient Estate to serve them in Abeyance also, and that for the Saving and Maintenance of future Uses, and that they should not be defeated and destroyed; and he agreed also that all the present Uses as well precedent as subsequent were executed immediately; and he agreed with the other Justices, that the Stat. of 27 H. 8. did not extend to subvert and destroy Uses in other Manner than by the executing and transferring of the Possession of the Land to them. And *Garwdy* cited the Opinion of *Fitzb.* in 28 H. 8. fol. 12. a. that it was an Inconvenience and Impossibility in the Law before the Stat. of 27 H. 8. that two Men should have several Powers to make a Disposition of the same Land, *scil.* the Feoffees by the com. Law, and *Cest' que use* by the Stat. of 1 R. 3. and that Inconvenience was intended to be remedied by this Act of 27 H. 8. and he conceived that the whole Estate should be out of the Feoffees, for no Right of the Feoffees is saved which they have to another Use, as it is said 7 E. 6. in *Stephen (a) Davies's Case, Dyer fo. 88. b.*

(a) Ant. 126. a.

And if a Feoffment in Fee be made to the Use of one for Life and after to the Use of the right Heirs of J. S. the Feoffmple of the Land shall be in Abeyance; and before the Stat. if a Man had made a Feoffment to the Use of one for Years, and after to the Use of the right Heirs of J. S. this Limitation had been good, for the Feoffees remain Tenants of the Freehold, but such Limitation after the Stat. is void, for then the Freehold would be in suspence, for nothing can remain in the Feoffees; but he said that these Remainders in future were devested and destroyed by the (b) Feoffment of the Tenants for Life; and although the Remainders be in Custody of the Law, yet they ought to be subject to the Rules of the Law, for the Law will never preserve any Thing against the Rule of Law: And because the Rule of Law is, that he in the (c) Remainder must take the Land when the particular Estate determines, or else the Remainder shall

(b) 2 Roll. Rep. 216.

(c) Ant. 66. b.

Eoph. 82. Palm.

139. Raym. 54.

+ 13. Flow. 25. b.

29. a. b. 35. a.

1 Co. 130. a.

129. b. 2 Co.

51. a. 3 Co. 21. a.

2 And. 37. Moor

104. Ferk. 12.

See Skin. 351.
352.

2 Roll. 796.

(a) Plow. 25. b.
29. a. b. 35. a.
1 Co. 66. b.
129. b. 130. a.
2 Co. 51. a.
3 Co. 21. a.
Raym. 54. 413.
2 And. 37.
Moor 104.
Perk. 12. falm.
139. Poph. 82.
Lit. R. 262.

(b) Ant. 130. b.
(c) Ant. 130. a.
134. b. 1 And.
5. 2 Roll. Rep.
101.

(d) Ant. 66. b.

(e) Ant. 67. a.
Lit. R. 290.
Palm. 238.

(f) Ant. 67. a.
134. b.

(g) Lit. R. 262.

(h) Lit. sect. 649.
Co. Lit. 345. a.

shall be void; and in this Case forasmuch as by the Feoffm. of the Tenant for Life, their Estate was determined, and Title of Entry given for the Forfeiture, and then those in the future Remainder were not in *esse* to take it, for this Reason these Remainders *in futuro* by this Matter, *ex post facto* were utterly destroyed and made void, and there is no Difference when the Estate of the Ten't for Life determines by the Death of the Ten't for Life, and when it determines in Right by his Forfeiture, for in both Cases Entry is given to him in the next Remainder, and then if he cannot take the Land when the particular Estate determines, the (a) Remainder is void. And if *Strackley Chudleigh* at the Time of the Forfeiture had been born, he might have entered for the Forfeiture.

If there be (b) Ten't for Life, the Remainder to the right Heirs of *J. S.* if in that Case Ten't for Life makes a Feoffm. in Fee during the Life of *J. S.* the Remainder is destroyed, for otherwise there would be a Remainder without a particular Estate which cannot be, no more in the Case of an Use than in the Case of an Estate made in Possession. And upon that he cited the Case 3 *El. (c) Brays Case*. And of the same Opinion was *Popham* Chief Justice, *Baron Clarke* and *Owen*, as to the said Point of Forfeiture, admitting that no Disturbance or Alteration of the Estate had been made. And the Ch. Just. denied the Opinion of *Gascoigne* in (d) 7 *H. 4. 23. b.* who thought that such Remainder should not be defeated by the Feoffm. of Ten't for Life. And *Baron Clark* put the Case in (e) 11 *R. 2. Fitz. Detinue 46*. A Gift in Tail was made to *A. C.* the Remainder to the right Heirs of *A. S.* the Donee made a Feoffm. to *B.* in Fee, and afterwards *A. S.* died; his right Heir shall never have the Remainder nor any Charter that concerns it, for the Estate of the Land was by the Feoffm. of the Tenant in Tail vested and discontinued, and all Estates vested in the Feoffee, and there was not any particular Estate neither in *esse*, nor in Right to support the Remainder when it should fall, for by the Feoffment of the Tenant in Tail his Right was utterly gone, as *Littleton* says, and then at the Time the Remainder fell, *scil.* at the Time of the Death of *A. S.* there was not any particular Estate to support the Remainder, neither in *esse* nor in Right. And in the same Case *nota dictum* by *Charleton* Ch. Just. *Et judicium*: But if (f) Ten't in Tail was disseised and died, that will not toll the Rem'r, for there a Right of the particular Estate remains to support the Right of the Rem'r, but when the Ten't in Tail makes a Feoffm. no Right remains in him. And *Owen* Justice said, If Ten't for Life had made a Feoffm. in our Case before the Birth of the Son, he in the next (g) Remainder in *esse* should enter for the Forfeiture. And *Gawdy* Just. said, that in divers Cases a Thing in Abeyance may be barred and destroyed; as if Ten't in Tail be disseised, and releases to the Disseisor, now (h) *Littleton* says,

says, the Estate-tail is in Abeyance, yet it may be barred by a (a) common Recovery in which the Tenant in Tail is (a) 6 Co. 42.a. vouched: So if there be Tenant in Tail, the Remainder to the Right Heirs of *J. S.* if Tenant in Tail suffers a common Recovery, the Remainder is barred. So he said upon the Case in 17 *Eliz. Dyer fol. 34.* (b) If the Husband makes (b) Ante 101.a. a Feoffment in Fee before the Taking Wife, the Wife shall 128. a. 134. b. never take, for the Possession and Estate of the Land is al- 1 And. 316. Poph. 73, 76. 2 Leon. 14. 2 And. 198. 2. never take, for the Possession and Estate of the Land is al- 2. ther before the Title of the Wife doth accrue; but if no 2. Lit. Rep. 290, 321. Vesting or Alteration had been, then the Use shall vest in 321. the Wife, and he resembled it to the Case 22 (c) *Aff. pla. 37.* (c) Co. Lit. 117. 26 *Aff. pla. 8.* & 29 (d) *Aff. pla. 34.* If a Warranty be made a. Br. chosein Action 8. Br. to the Possession of a Villein, if the Ancestor dieth, so long garranty 45. Br. Villenage as it continues in his Possession it shall bind, but if the Lord 36. 3 Co 62. a. of the Villein enters before the Warranty doth (e) attach, 63. a Br. then the Warranty shall not bind, for the Lord of the Vil- voucher 132. lein is in by Force of his Title of Villeinage, and the Estate P b. 27 and the Possession of the Land doth not continue, but by the (d) 3 Co. 62. a. Entry of the Lord is altered and changed. And it was held 53. a. by Baron *Excens, Owen, Beaumont, Fenner, Clark, Clench,* (e) Co. Lit. the Lord *Anderson,* and *Popham* Lord Chief Justice, that 340. b. at the Common Law, by Disseisin or by such (f) Feoffment (f) Post 174. b. as in the Case at Bar, as well all future Uses or Uses in Contingency are devised and discontinued, as Uses in *esse* till the first Estate out of which the Uses rise be recontinued. And the Statute of 27 *H. 8.* doth not transfer any Possession to any Use but only to Uses in *esse*, and not to any Use in future or in Contingency till they come in *esse*; and this appears by the express Letter of the Act, for as there ought to be a Person in *esse* seised to the Use, so there ought to be an Use in *esse* which should rise out of the Estate, and there ought to be a Person in *esse* who should take the Use, before any Possession can be transferred and executed to the Use; for if the Person who should take the Use be not in *esse*, or if the Person be in *esse*, and no Use be in *esse*, but only a Possibility (as the Lord *Anderson* said) of an Use, there can be no Execution of the Possession to the Use. And as at the Common Law there can be no Use in *esse*, if there be no Seisin out of which such Use shall rise; so no Use can be executed by the Statute of 27 *H. 8.* unless there be Seisin in some Person subject to such Use at the Time of the Execution thereof, for the express Letter of the Act is, Where any Person or Persons stand or be seised, or hereafter, &c. shall stand or be seised, &c. to the Use of any other Person or Persons, so that there ought to be a Person in *esse* on both Parts, *sc.* who shall be seised to the Use, and who shall take the Use, so that it is necessary not only to have an Use

an Use limited, but a Person capable of the Use when the Statute transfers the Possession to it, and therefore if the Person fail, it is not possible to have the Possession executed by this Statute to one who is not *in rerum natura*, for the Statute says, To the Use of any Person or Persons: In every such Case, all and every such Person and Persons that have any such Use in Fee-simple, Fee tail, for Term of Life or Years, or otherwise, or any Use in Reversion or Remainder, &c. in which Words note the Word [such] is iterated three Times; so that Uses in *esse*, that is to say, in Possession, Reversion, or Remainder, for there is no Word of any Possibility or Contingency, and Persons in *esse* are only within this Act; shall from henceforth be deemed and adjudged in lawful Seisin, Estate, and Possession, and that cannot be any Person who is not in *esse*, or any Person who is in *esse*, and who hath but a Possibility of an Use, who perhaps will never have an Use in *esse*. And by these Words it fully appears, that no Estate by this Statute can be transferred to the Possibility of an Use. And that the Estate, that was in such Person or Persons that were or hereafter shall be seized to the Use of any such Person or Persons, be from henceforth clearly deemed and adjudged to be in him or them, that have or hereafter shall have such Use: So that this Clause doth not devert any Estate out of the Feoffees, but when it can be executed in the *Cest' que use*, (that is to say) in him or them that have or hereafter shall have such Use, which one can't have who is not in *esse*; for he is not a Person who can have an Use, and by Consequence cannot have any Possession by this Act.

And it was further held by the two Chief Justices, *Clench, Clarke, Fenner, Beaumont, Owen and Evans*, that those who had argued on the other Side had taken but the first Part of the Sentence, that is to say, that the Estate shall be out of the Feoffees, but they had forgot the later Part of the Sentence, *scil.* that the Estate shall be in such Person who hath the Use, and that cannot be till the Person and the Use also be in *esse*. And by this Clause it also appears, that no Estate of the Feoffees shall be transferred in Abeyance out of the Feoffees, and vested in no Body, or be transferred to a Possibility of an Use which hath not any Being, for then an Estate in *esse* would be transferred to the Possibility of an Use which hath not any Being, which would be against Reason, and against the Letter and Meaning of the Act; for the Words are, And shall be adjudg'd in him or them that shall have such Use, *ergo*, the Estate of the Feoffees shall not be in Abeyance. And the two chief Just. *Fenner, Beaumont, Owen and Evans* said, That if the Estate should be utterly out of the Feoffees, and all vested in those who have the present Uses, (as some have held before) then the future Use would never rise, for it is not possible that it should be raised out of the Possess. of *Cest' que use*, for an Use can't be raised out of an Use,

(a) 1 Siderf. 26.
Ant. 127. b.
Co. Lit. 271. b.

as is 36 H. 8. Tit. *Feoffm. al uses*, (a) *Br.* 54. 5 *Mar.* (b) *Dyer* (a) *Br. N. C.* 284. Poph 8r. 155. And if *A.* enfeoff *B.* in Fee to the Use of *C.* and his Heirs, with *Proviso*, that if *D.* pay *C.* 100 *l.* that *C.* and his Heirs shall stand seised to the Use of *D.* and his Heirs, this is utterly void, for the future Use ought to be raised out of the Estate of the Feoffee, and not out of the Estate of *Cest' que use*. And it was held by them, that the Feoffees since the Statute had a Possibility to serve the future Use when it came in *esse*, and that in the mean Time all the Uses in *esse* shall be vested, and when the future Use comes in *esse*, then the Feoffees (if the Possess. be not disturbed by Disseisin or other Means) shall have sufficient Estate and Seisin to serve the future Use when it comes in *esse* to be executed by Force of the Stat. and that Seisin and Execution by Force of the Stat. ought to concur at one and the same Time.

And this Case is not to be resembled to Cases at the com. Law, for an Act of Parliament may make Division of Estates, and forasmuch as this Division is made by Act of Parliament, it is not necessary that the Feoffees should have their ancient Estates. And they said that this Construction was just, and consonant to Reason and Equity, for by this Construction the Interest and Power that every one hath, will be preserved by the Act, for if the Possess. be disturbed by Disseisin or otherwise, the Feoffees will have Power to enter to revive the future Uses according to the Trust reposed in them; and if they by any Act bar themselves of their Entry, then this Case (not being remedied by the Act) doth remain as it was at the com. Law. And the Chief Just. and *Fenner* said, That if a Man makes a Feoffment in Fee to the Use of one for Life, and after to the Use of the Feoffee (Feoffor) in Tail upon Contingency, and after the Contingency happens, in that Case the Feoffee is the Donor as it is proved by 2 *E. 6. Br. Formedon* 41. (c) 7 *E. 6. ib.* 46. (d) *Plow. Com.* 59. 20 *El.* (e) *Dyer* 362. but it would be absurd, that the Feoffee should be Donor, and yet should have nothing, but be only as an Instrument, or as the Wind out of an Organ-pipe. And *Fenner* put the Cases in 7 *H. 6. 3. a.* 13 *R. 2.* Tit. *Dower* 55. 29 *Aff. pl.* 64. If Tenant for Life makes a Lease to him in Reversion for the Life of him in the Reversion, although the Lessee had but a Freehold and departed with a Freehold, yet the Lessee hath a Possibility which by the Death of him in the Reversion may come in Estate. So altho' the Estate of the Feoffees be transferred to the Uses in *esse*, yet a Possibility doth remain in the Feoffees, which may be reduced to an Estate sufficient to serve the future Uses. And he said, it was not strange that an Act in Law should alter the original Estate, but then the new Estate ought to be as near the ancient Estate as may be, so that all Interests may be served and saved according to the Intent and Meaning of the Parties; as in the Case of *Littleton, &*

CHUDLEIGH'S Case. PART I.

(a) Br. condit.
33 Fitz con-
dition 5. 11 Co.
83. b. 2 Co 81.
a. b.
(b) Lit. fe 9. 252.
Co. Lit. 218. b.
219. a. b.

(a) 2 H. 4. 5. b. If a Man makes a Feoffm. in Fee upon (b) Condition to make an Estate to Husband and Wife in special Tail, and before any Gift made the Husband dies without Issue; now by this Act in Law, the Estate shall be made to the Wife for her Life without Impeachment of Waste, &c. and so by an Act in Law the original Estate was altered.

And Bar. Clarke said, some have supposed these future Uses were preserved in the Bowels of the Land, and that the Land should be charged with them in whose Hands soever it should come; and some have supposed they were preserv'd *in nubibus*, and in the Custody of the Law, but he said in our Case be they below in the Land, there they should be perpetually buried, and should never rise again, and be they above *in nubibus*, in the Clouds, there they should always remain, and should never descend; for he said that the Sons of *Cb. Chudleigh* in our Case were not born in due Time, and as this Case is, they should never take the future Use. And he put many good Cases, when a Son born out of fit and due Time should not take, and upon that he put the Case of Ravishm. in (c) 5 E. 4. 6. a. when the Son is born after the Entry of the Daughter, and (d) 9 H. 7. 25. a. & (e) 30 Ass. pl. 47. when the Remainder limited to the right Heirs of *J. S.* first vests in the Daughter, and after the Son is born; and many good Cases were put by him to the same purpose. And further he said, as in the Case of (f) *Kidwelly*, *Plow. Com.*

(c) Ant. 95. a.
3. Co. 36. b. 61. b.
Fitz. Assize 27.
Plow. 43. a.
56. b. Br.
Done 28. Br.
entry congeable 94.
(d) Cr. Car. 87.
Hob. 3. 8 Co
76. a. Mo. 140.
Ant. 95. a. 99. a.
(e) Dav. 30. a.
Br. Discent 24.
Br. Done 21.
1 Co 76. b.
(f) Plow. 69. b.

the Lessor by the original Agreement of the Parties may come upon the Land, to demand his Rent, altho' the Estate of the Land be transferred to another; so by the original Agreement of all Parties the Feoffee may re-enter and revive such future Uses, which by the Law may be revived; and in such Cases he said, that when the future Uses shall come in *esse*, the Feoffees shall have by Force of the Act a qualified Estate sufficient to serve the future Uses, and resembled it to the Case in 21 E. 3. 41. b. King *E. 5.* gave Lands to the (g) Black Prince and to his Heirs Kings of *England*, in that Case the Grantee had a qualified Inheritance, for inasmuch as the Black Prince died in the Life of his Father, and his Son *Rich.* was not then K. the Land did revert. So all the Just. and Barons of the Excheq. except *Periam*, *Walm.* and *Gawdy* did conclude, that forasmuch as the Stat. of 27 H. 8. doth not extend but to Uses in *esse*, and to Persons in *esse*, and not to any Uses which depend only in Possibility; for that Reason the contingent Uses in the Case at Bar remain so long as they depend in Possibility, only at the Com. Law, and by Consequence they might be destroyed or discontinued before they came in *esse*, by all such Means as Uses might have been discontinued or destroyed by the com. Law.

(g) Co. Lit. 27. a.
Cotton's Records 67. l.
8 Co. 16. b.
25. b. Raym.
355. Palm. 89.
1 Roll. Rep. 198.
Ant. 43. b.
Dy. 94. pl. 30.

And all the Just. and Barons of the Exchequer did agree with the Chief Baron and *Walmesley* in this Point, *scil.* that these Remainders limited (b) in Use in the Case at Bar should

(h) Co. Lit. 23.
a. 6 Co. 34. a.
Ant. 102. b.
2 Co. 53. b. 54. a.

should follow the Rule and Reason of Estates executed in Possess. by the com. Law, and therefore they all unanimously agreed, that if the Estate for Life in the Case at Bar had been determined by the Death of the Feoffees before the Birth of the eldest Son, that the said Remainders *in futuro* were void, and should never take Effect altho' the Sons were born after, for (a) a Remainder in Use ought to vest during the particular Estate, or at least *eo instante* when the particular Estate ends, as well as an Estate in Possess. And it was held by all the Just. that if the contingent Use in the Case at Bar had come in *esse* without any Alteration of the Estate of the Land that it should be executed by the Stat. of 27 H. 8. but the Alteration of the Estate before it came in *esse* had destroy'd it, as it hath been said; but if any such Alteration of Estate be before the Essence of the future Use, then the Use should not be transferred into Possession before the Impediment removed, and the Estate recontinued.

It was also held by the 8 Just. and Barons who argued against the contingent Use, that the Stat. of 27 H. 8. should not (against the express Letter of it) be construed by Equity for the Maintenance and Preservation of these contingent Uses, forasmuch as by such Construction, the Mischiefs which were intended to be prevented by the Makers of the Act would be continued, or greater introduced, as after by the Argument of *Popham* Ch. Just. as to this Point appears. And *Popham* Ch. Just. in his Argument said, that by Force of the Act of 27 H. 8. some Uses are executed immediately, some Uses are executed by Matter *ex post facto*, and some Uses are extirpated and extinguished by the Act; Uses in *esse* draw the Possess. immediately by Force of the Act; Uses *in futuro*, limited agreeable to the Rule of the com. Law, are also, if they come in *esse* in due Time, within the Purview of this Stat. but Uses invented and limited in a new Manner not agreeable to the ancient com. Laws of the Land, such Uses are utterly extirpated and extinguished by this Act: For it appears by the express Letter of the Act, that it was the Intent of the Parliament to extirpate and extinguish them, and to restore the ancient com. Law of the Land. And therefore he said if a Feoffm. be made to the Use of *A.* for Life, and after to the Use of every Person who should be his Heir, one after another, for the Term of the Life of every such Heir only; in this Case, if this Limitation should be good, the Inheritance would be in no Body, but this Limitation is merely void, for the Limitat. of an Use to have a perpetual Freehold is not agreeable with the Rule of Law in Estates in Possess. So if a Man makes a Feoffm. to the Use of one in Tail with divers Remainders over, with a Proviso that if any shall attempt to purchase any *Præcipe* against any Ten't of the Freehold, &c.

(a) Plow. 25. b:
29. a. b. 35. a.
2 Co. 51. a.
3 Co. 21. a.
Raym. 54, 413.
2 And. 37. 1 Co.
129. b. 130. a.
134. b. Mo. 104.
Pe. k. 12.
Palm. 139.
Poph. 82.

that his Estate shall cease, and that then the Feoffees shall stand seised to the Use of another, &c. such *Proviso* or Limitation is against the Rule of the Law, if it had been conveyed in Possession, for he cannot limit new Remainders upon such Conditions; and at this Day, an Estate-tail in Land cannot cease till Entry, and no Entry or Re-entry is given to any but only to the Feoffor or his Heirs, and not to any in Remainder. And he agreed the Case which was put before with the *Proviso*, that the Estate in Tail by Limitation of an Use shall cease, as if Tenant in Tail was naturally dead, and not otherwise, for he said, that such Limitation would be void, if it was limited in Possession: And he said, there was no Difference at this Day between Estates conveyed in Use and Estates conveyed in Possess. for the Estate and Limitation of an Use ought to be known to the com. Law, and governed and directed by the Rules thereof. But he said, the Limitation of the Uses in this Case, as well future as in *esse*, were good and lawful, for such Estates executed in Possess. were good; but the future Uses were destroyed by subsequent Matter, as hath been said: And he said, if such a Construction upon the Stat. of 27 H. 8. by Equity or otherwise should be made for the Maintenance and Preservation of future Uses, as hath been made by those who have argued on the other Side, greater Inconveniencies would be introduced than were before the Making of the Stat. of 27 H. 8. for he said, the said Construction did tend to the Subversion of noble and great Families, and to the Disinheritance of their Heirs, so that no Land subject to such Perpetuities could continue four Descents; for if he, who is so restrained and bound with the Provisoes of Perpetuities, should sell any Part of the Land for Payment of any Debts or Legacies, or if he be taken Prisoner in the War for his Ransom, or for the Preferment of his younger Sons, or for Advancement of his Daughters in Marriage, or for any Cause, or upon any Necessity whatsoever, he would forfeit his Estate: Also when the eldest Son knows he shall have the Lands and Possessions of his Father, whether he will or no, it makes the Son become dissolute and disobedient, so that he will not depend upon the Government of his Father, but refuse to be ruled and directed by him. It would likewise occasion Variance and Discord in the same Blood, and in Effect tear the Bowels of Nature, for it would stir up the Son, (upon every Supposition of Breach of the Provisoes) to put his Father out of the Land; from whence great Suits and Troubles would arise, to the Wasting and Subversion of the Families, and so of the Brother and Brother, and of the Cousin and Cousin; and he who hath such Perpetuity ought always to have a Counsellor at Law at his Elbow, for he cannot do any Act concerning his Land, but his Son, or he who is next to the Land watches for a Forfeiture:

Note.

feiture: Also he who hath an Estate subject to such Perpetuity, if he hath (a) two several Farms, out of which two several Rents have been reserved, and peradventure where the several usual Rents amount but to 40 s. *per ann.* and he joins both in one Lease for Life, and reserves one Rent of 4 Marks *per ann.* it is a Forfeiture of his Estate. For upon this Lease the usual and (b) accustomed Rent is not reserved; so in many other Cases if he do not observe the precise Form of Power which is given him, it will amount to a Forfeiture of his Estate, and within two or three Descents the Provisoes and Limitations will not be so fresh in Memory, that every Gentleman can, in every Lease which he shall make, follow the precise Form of the Provisoes. Also if the Wives of such Persons become incontinent, and have Issue by other Men than by their Husbands, this adulterous Generation shall inherit the Husbands Lands, whether they will or no. And this would be a great Occasion for Women to offend, when they know their Issues shall inherit, and many other Inconveniences would ensue upon such a Construction in Maintenance of these Perpetuities: And so Men who intend to over-reach the Providence of God, and covet to establish their Lands in their Blood by these Ways, are in Truth thereby the Cause of the Wasting and Subversion of their Houses. Also no Purchaser would be sure of his Purchase without an Act of Parliament, and where at the com. Law, if he had purchased the Land *bona fide* without Notice of the Use, he had been free of the Use, he will be now in a worse Case, for by the Construction which hath been made, his Lands shall be subject to these future Uses.

Also Farmers and Lessees can't have any certain and full Assurance; for suppose a (c) Feoffment in Fee be made to the Use of one for Life, and after to the Use of another in Tail, with Remainder over, with Power to the Lessee for Life to make Leases, so that he reserves the accustomed Rent payable to all those who shall have the Reversion: If Tenant for Life makes Leases according to his Power, the Lessees derive their Interest out of the first Feoffment, how then can the Reservation of the Rent be good, and how can his Heir, or he in the Remainder come at it? And if a Proviso be added in the original Assurance, that the Lessees shall pay the Rent, or that they shall enjoy it so long as they pay the Rent, then so far as it is (d) no Rent, it ought to be paid without any Demand, and if he do not pay it, his Interest shall immediately cease by the Limitation of the Use.

Also those who have Cause of Action, will be in a worse Case than they were before, for before this Stat. they might have an Action against the Pernor of the Profits, but now all Pernancies of the Profits are taken away, as appears 28 H.8. (e) *Dy.* 32. a. (e) *Dy.* 32. pl. 3. *Pl. Com.* in *Manxel's Case*, and then by such subtle Devices

(a) 5 Co. 6. a.

(b) Co. Lit. 44. b. 5 Co. 6. a. Cr. Eliz. 708.

(c) 1 And. 273, 274.

(d) 2 Jones 35.

(e) *Dy.* 32. pl. 3. Co. Lit. 287. a.

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as in the Case before put, he who hath Cause of Action will never find one who shall be Tenant to his *Præcipe*, and so by such Construction he will be without Remedy.

Also Perjury will be increased in respect of the Secrecy more than it was before the Stat. for no Use could have been raised before this Act but upon a (a) Transmutation of Possess. or upon a Covenant or full Contract by apt Words upon good Consideration concluded between the Parties; but now Uses will be determined and raised by Words without any Consideration upon a bare Imagination and Intention only without any Conclusion, Covenant, or Contract. For if one intends, goes about or attempts, &c. he will lose his Land, altho' he does nothing, or concludes nothing.

Also the King and other Lords will lose their Wards, Escheats, and other Profits of their Seigniories; for if the said Case before put of a perpetual Freehold should be maintained, that no Heir shall have but an Estate for Life, and that the Inheritance shall be in no Body, what Escheat, or Ward, or Heriot, or other Profit will accrue to the King or other Lords? And he said, it was not the Intent of him and the other Justices, to overthrow the Tree of (b) Uses, but to lop the rotten and unprofitable Boughs and Branches dangerous to the Estate of the Commonwealth and Mens Assurances, so that the Rest of the Tree, which is profitable for the Use of Men, might the better prosper. And he said, the Reason why the (c) Lord by Escheat, or the Lord of a Villain should not stand seised to an Use, is, because the Title of the Lord is by Reason of his elder Title, and that grows, either by Reason of the Seigniorie of the Land, or of the Villein, which Title is higher and elder than the Use or Confidence is, and therefore should not be subject to it. And the Reason why a Disseisor should not stand seised to an Use was, because *Cestuy que use* had no Remedy by the Common Law for any Use, but his Remedy was only in Chancery: And because the Right of a Freehold or Inheritance could not be determined in Chancery, his Title should not be drawn into Examination there; and for this Reason a Disseisor shall not be compelled in the Chancery to execute an Estate to *Cestuy que use*, but *Cestuy que use* shall compel his Feoffees in the Court of Chancery to enter upon the Disseisor, or to recover the Land against him at the Common Law, and then the Chancery will compel the Feoffees to execute the Estate according to the Use, and the Chancellor ought to direct Uses according to the Rules of the Common Law. And he said, before *Richard* the second's Time, no Act of Parliament or other Record, nor no Book, nor any Writing made any Mention of Uses of Lands, having Regard to the very Words of the Statute. And therefore he said, that (d) Uses in such Sense as we now take them, were not at the Com. Law, but were invented in Times of Trouble for Fear, or in Times of Peace by Fraud; but he said, that Consi-

(a) Co. Lit. 371. b.

(b) Pop. 83.

(c) Antea 122. a. Jenk. Cent. 195.

(d) Antea 121. b. 131. a. Perk. Sect. 528. 2 Leon. 15, 16, 17. Bacon's Laws and Government of England 67. Co. Lit. 272. Use al. com. ley Lane 45. Dr. Stud. lib. 2. c. 22.

dence was at the Com. Law, but not that which we now call Use.

Periam Ch. Baron held, Uses were at the Com. Law, but the L. *Anderſon* ſaid, Uses were neither by the Com. Law, nor by any Stat. for he ſaid, Uses were but Imaginations, and nothing in the Conſideration of Law, or for which the Law hath given any Remedy, and that *Ceſtuy que uſe* had nothing in the Land, for if he came upon the Land, he was by the Law of the Land a Trefpaſſer to the Feoffees. And afterwards the ſame *Michaelmas* Term Judgment was given for the Defendant. And note Reader, that in the Argument of this Caſe five Things were reſolved by the Juſtices for Law beſides the ſaid principal Matter in Law.

1ſt, It was adjudged in this Caſe, that when there is (a) (a) 1 Roll. 857. Tenant for Life, the Remainder in Tail, the Reverſion in Fee, and the Tenant for Life enfeoffs him in the Reverſion in Fee, it is a Forfeiture of his Eſtate, and ſhall deſtroy the Eſtate-tail in Remainder. (b) So if there be Tenant in Tail, the Re- (b) 1 Roll. 634. mainder in Tail; and the Tenant in Tail enfeoffs him in the Reverſion in Fee, it is a Diſcontinuance; and the Difference was taken and agreed when the Eſtate or Privy is ſole or immediate, and when not, for which ſee (c) *Littleton* 141. (c) Lit. ſect. 625. 9 E. 4. 24. b: F. N. B. 142. a. (d) 41 E. 3. 21. & 41 Aff. 2. Co. Lit. 334. b.

2dly, That altho' the Warranty of *Chriſtopher* was collateral, yet in as much as it appears by Computation of Time, that the eldeſt Son of *C. Chudleigh* was within Age, and at the Time of the Death of the eldeſt Son the youngeſt was alſo within Age; and altho' the youngeſt Son could not enter before the Warranty deſcended upon him to defeat the Warranty, and that he could not take Advantage of the Nonage of his Brother, and altho' he did not enter in convenient Time after his full Age; yet this collateral Warranty ſhould not bind him, and as to that the Caſe in Effect is ſuch; *A.* hath Iſſue *B.* and *C.* Infants within Age, a Leaſe is made to *A.* for Life, the Remainder to *B.* in Tail, the Remainder to *C.* in Tail, *A.* Tenant for Life is diſſeiſed, and afterwards releaſes to the Diſſeiſor with Warranty and dies, and it deſcends upon *B.* being within Age, afterwards *B.* dies being within Age, *C.* being then his Brother and Heir and within Age, upon whom the ſaid Warranty deſcends, and afterwards *C.* comes to full Age, and 3 Years after his full Age enters, his Entry is lawful. For it was reſolved, that if the Entry of an Infant be lawful, and he may enter in the Life-time of his Anceſtor, and doth not enter, the Warranty ſhall not bind in ſuch Caſe; *a fortiori* when the Warranty deſcends upon him, his Entry being lawful, and no Laches to be attributed to him; but if his Entry was not lawful, ſo that he was put to his Action, there the Warranty ſhall bind; and the ſame Law ſhall be in the Caſe of a Feme-covert when ſhe is put to her Action. And if a Warranty doth deſcend upon an Infant, he may enter when he will at his

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full Age, and need not enter hastily, or in convenient Time after his full Age, but let him take Care that he doth not suffer a Descent after his full Age before his Entry, for then the Warranty will bind him; for which Matter see 33 H. 8.

(a) 4 Co. 24. a. Br. Warranty 84. 3 H. 7. 9. 35 H. 6. 63. 18 E. 3. 3. 18 E. 4. Cr. Eliz. 699. 13. Br. Warr. 54. 28 Aff. 28.

3dly, If a Disseisor or other, who hath a defeasible Title in a Manor, grants a (a) voluntary Estate by Copy, as if a Copyhold Estate be forfeited to him; or if a Copyholder dies without Heir, and he grants those Lands again by Copy, those Grants shall not bind him who hath Right after he hath recontinued the Manor; but such (b) Admittances which a Disseisor makes to Copyholders of the Manor, these are good, for these are in a Manner judicial Acts and shall bind the Disseisee. 17 Eliz. Dyer 343.

4thly, That an (c) Estate made to one and his Heirs during the Life of J. S. is but an Estate for Life, upon which a Remainder may depend by the Common Law, as appears by the Books of 11 H. 4. 42. a. 39 (32) E. 3. 25. b. 7 H. 4. 46. a. 8 H. 4. 14. b. 8 Eliz. Dyer 253. a. 17 E. 3. 48. b.

5thly, That an (d) Estate made to one and his Heirs on the Body of Jane S. begotten, is an Estate-tail and no Fee-simple against the Opinion of *Afcugh*, 20 H. 5. fo. 36. b. For all these Points were adjudged in this Case, as it may appear by the (Perusal and) Consideration of the Case.

[For the Points supra see Skinner 28, 317.]

ANNE

ANNE MAYOWE'S Case.

Hill. 35 Eliz. Rot. 498. in B. R.

GGeorge Mason and Francis Esterly were attached by the Writ of the Lady the Queen of second Deliverance, to Answer to *John Kettle* of a Plea, wherefore they took the Cattle of the said *John*, and them detained against Gages and Pledges, &c. And whereupon the said *John Kettle*, by *Edward Willan* his Attorney, complains, That they the said *George* and *Francis* the 18th Day of *June* in the 33d Year of the Reign of the Lady *Elizabeth* now Queen of *England*, &c. at *Sutton Atthorne* in the County aforesaid, in a certain Place there called *Abraham's Land*, took certain Cattle, that is to say, 7 Cows and 1 Bull of him the said *John*, and them unjustly detained against Gages and Pledges, until, &c. Whereupon the said *John Kettle* saith, that he is the worse, and hath Damage to the Value of 30*l.* and thereof bringeth Suit, &c. And the aforesaid *George Mason* and *Francis Esterley*, by *Michael Lowe* their Attorney, come and defend the Force and Injury when, &c. And as the Bailiffs of *Anne Mayowe* Widow, do well acknowledge the taking of the Cattle aforesaid, in the Place aforesaid, wherein, &c. And justly, &c. because they say, That the aforesaid Place, in which it is supposed the taking of the Cattle aforesaid to have been done, doth contain, and at the Time of the taking aforesaid, above supposed to be done, did contain in it self by Estimation 8 Acres of Pasture, with the Appurtenances, in *Sutton Atthorne* aforesaid, and that long before the aforesaid Time in which, &c. one *Dionise Mayowe*, Gent. was of the aforesaid Place in which, &c. amongst other Things, seised in his Demesne as of Fee, and so thereof being seised, the same *Dionise* afterwards, and before the Time of the taking aforesaid, above supposed to be done, that is to say, the 3d Day of *May* in the 19th Year of the Reign of the said Lady the now Queen, at *Sutton Atthorne* aforesaid, by

Kent, ff.
Declaration in
Replevin on a
Writ of second
Deliverance.

Pleadings in Anne Mayowe's Case. PART I.

Grant of Rent,
&c.

by his Writing sealed with his Seal, and into the Court of the said Lady the now Queen brought, bearing Date the same Day and Year, gave and granted to the aforesaid *Anne*, by the Name of *Anne Maxey* of *Chigwell* in the County of *Essex*, one Annuity or yearly Rent of 20 Pounds of lawful Money of *England*, to be issuing out of the aforesaid Place in which, &c. amongst other, by the Names of all Lands and Tenements of him the said *Dionise*, in *Sutton Atthorne* aforesaid, and in *Wilmington* in the aforesaid County of *Kent*; To have and perceive the aforesaid Annuity or yearly Rent aforesaid of 20 Pounds aforesaid, to the aforesaid *Anne* and her Assigns, for the Time of the natural Life of her the said *Anne*, at the Feast of the Blessed Lady *Mary* the Virgin, and *St. Michael* the Archangel, by equal Portions yearly to be received. And if it should happen the aforesaid yearly Rent or Annuity of 20 Pounds, at any Feast of Payment in which the same ought to be paid, within 20 Days after any Feast of the said Feasts, in Part or in Whole, be behind and not paid, that then it be lawful to the aforesaid *Anne*, or her Assigns, into the Tenements aforesaid, with the Appurtenances, to enter and distrain, and the Distresses there found or taken, to carry away, lead and drive, and with her to keep, until of the whole aforesaid yearly Rent or Annuity, together with all the Arrearages thereof, if any should be due to her, she should be fully satisfied and paid, as by the said Writing, amongst other Things, more fully appeareth. By Virtue of which Gift and Grant the said *Anne* was of the Annuity or yearly Rent aforesaid seised in her Demesne as of Freehold, for the Term of her Life; and so thereof being seised, the said *Anne* afterwards, and before the Time in which, &c. at *Sutton Atthorne* aforesaid, took to Husband the aforesaid *Dionise*, and afterwards, and before the Time in which it is supposed the taking aforesaid of the Cattle aforesaid to be done, that is to say, the 20th Day of *March* in the 29th Year of the Reign of the said Lady the now Queen, the aforesaid *Dionise* at *Sutton Atthorne* aforesaid died, and the aforesaid *Anne* him over lived, and was of the Annuity or yearly Rent aforesaid seised in her Demesne as of Freehold for the Term of her Life. And because 20 Pounds of the Annuity or yearly Rent aforesaid, by one whole Year ended at the Feast of *St. Michael* the Archangel in the 29th Year of the Reign of the said Lady the now Queen, and within the Space of 40 Days then next following, were not paid to the said *Anne*, but were in Arrear; the said *George Mason* and *Francis*, as Bailiffs of the said *Anne*, do well acknowledge the taking of the Cattle aforesaid, in the aforesaid Place in which, &c. and justly, &c. as in Parcel of the Tenements aforesaid,

aforesaid with the Appurtenances, to the Distress of the said *Anne*, in Form aforesaid charged and bound. And this they are ready to aver: Whereupon they demand Judgment and Return of the Cattle aforesaid, together with their Damages, Costs and Charges, by them about their Suit in this Behalf put unto, to be adjudged unto them, &c. And the afores. *John Kettle*, saith, That the afores. *George Mason*, and *Francis Esterley*, by any Thing before alledged, the taking of the Cattle aforesaid in the aforesaid Place, in which, to be just ought not to acknowledge; for he saith, That long before the aforesaid Time of taking of the aforesaid Cattle done, and long before the Grant of the aforesaid Annuity or yearly Rent aforesaid of 20 Pounds; and long before the said *Dionise Mayowe* had any Thing of and in the aforesaid 8 Acres of Pasture, with their Appurtenances, one *Thomas Mayowe* was thereof seised in his Demesn as of Fee; and so being thereof seized, the said *Thomas Mayowe* before the Time of the taking of the Cattle aforesaid, and long before the Grant of the aforesaid Annuity, that is to say, the 15th Day of *January* in the 19th Year of the Reign of the Lady the now Queen, at *Sutton Atthorne* aforesaid, of the said 8 Acres of Pasture, with the Appurtenances, in which, &c. enfeoffed one *Thomas Scot* of *Sutton Atthorne* aforesaid, Gent. and *John Fremling* of *Dartford* in the said County, Baker, amongst other Things, by the Name of all those his two Manors of *Sawters* and *Sawley*, with the Barns, Stables, Dove-houses, and all other Houses and Buildings to the said Manors belonging, Orchards and Gardens, with the Appurtenances, situate, lying and being in *Sutton Atthorne* aforesaid, then in the Tenure or Occupation of the said *Thomas Mayowe*, and also by the Name of all other his Houses and Buildings, Lands and Tenements, Meadow, Pasture, Woods and Underwoods, Rents and Reversions, situate, lying and being within the Towns, Parishes, and Fields of *Sutton Atthorne* aforesaid, *Wilmington*, and *Dartford*, or elsewhere, in the aforesaid County of *Kent*, as also the Reversion and Remainder of all and singular the Premises, Rents and yearly Profits, reserved upon whatsoever Demises or Grants of the Premises, or any Parcel thereof before then made: To have and to hold the aforesaid Manors, and other the Premises, with the Appurtenances, whereof, &c. to the afores. *Tho Scot*, and *John Fremling*, their Heirs and Assigns for ever, to the only Use and Behoof of the afores. *Dion. Mayowe*, Son and Heir Apparent of the said *Tho. Mayowe*, his Heirs and Assigns for ever, of the chief Lords of the Fee, by the Services thereof first due, and of right accustomed, upon the Conditions following, that is to say, that the aforesaid *Dionise Mayowe*, or his Heirs should

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should pay or cause to be paid to *Petronill Martin* of *Mylton* in the afores. county of *Kent*, widow, the yearly rent of 10*l.* for the term of the life of her the said *Petronill*. Which yearly rent of 10*l.* the afores. *Tho. Mayowe*, to the afores. *Petronill*, before had granted, for and in consideration of a marriage to be had and solemnized between the afores. *Tho. Mayowe* to the afores. *Petronill*, after the death of the afores. *Thomas Mayowe*; and upon condition, that if the afores. *Tho. Mayowe*, at any time during the natural life of the said *Tho.* should pay or cause to be paid to the afores. *Tho. Scot* and *John Fremling*, or to either of them, and to the Heirs of the longer liver of them, 10*s.* of good and lawful money of *England*, that then the Feoffment afores. should be void, and of no force in law: And that then it should be lawful to the afores. *Tho. Mayowe* into the aforesaid two manors, and all the premises, with the appurtenances, whereof, &c. to re-enter, and the same to have again in his former estate and condition, any act, thing, cause, or matter whosoever to the contrary thereof notwithstanding. By virtue of which feoffment, and by force of a certain act, in the parliament of the lord *Henry* the 8th, late King of *England*, made and held at *Westm.* in the county of *Middlesex*, the 4th day of *February* in the 27th year of his reign, of transferring uses into possession; the said *Dionise Mayowe* was seized of the afores. 8 acres of pasture, with the appurtenances, in which, in his demesn as of fee, upon the condition afores. And so thereof being seized, the said *Dionise*, before the afores. time of taking the Cattle afores. that is to say, the 30th day of *May* in the 19th year of the reign of the said lady the now Q. abovesaid, at *Sutton Atthone* afores. by his writing sealed with his seal, bearing date the same day and rear, gave and granted to the afores. *Anne*, by the name of *Anne Maxey* of *Chigwel* in the county of *Essex*, the annuity or yearly rent afores. of 20*l.* to be issuing out of the afores. place, in which, &c. amongst other, in manner and form, as the afores. *George Mason* and *Francis Esterley* above in their consuance abovesaid have alledged; and the said *Anne* afterwards, and before the afores. time, in which, &c. at *Sutton Atthone* afores. took to husband the said *Dionise*, and afterwards, and before the time of the taking of the Cattle afores. that is to say, the 30th day of *January* in the 24th year of the reign of the said lady the now Q. the afores. *Tho. Mayowe* at *Sutton Atthone* afores. payed to the afores. *Tho. Scot* and *John Fremling* 10*s.* of good and lawful money of *England*, in the condition of the feoffment afores. above mentioned, in full satisfaction and performance of the condition afores. by which the said *Tho. Mayowe* afterwards, and before the aforesaid time of the taking of the cattle afores. into the afores. 8 Acres of Pasture, with the appurt. in which, &c. amongst other, entred and was thereof seized, that is to say, in his demesn as of Fee, and so thereof being seized,
the

the said *Tbo. Mayowe*, before the Time, in which, &c. that is to say, the 3d Day of *May* in the 24th Year of the Reign of the said Lady the now *Q.* aforesaid, at *Sutton Atthone* afores. by his Writing sealed with his Seal, and into the Court of the said Lady the *Q.* now here brought, bearing Date the same Day and Year, enfeoffed one *Tbo. Walter*, amongst other Things, of the afores. 8 Acres of Pasture, with the Appurtenances, in which, &c. by the Name of *Abrahams Land*, containing by Estimation 9 Acres, more or less, lying in *Sutton Atthone* aforesaid: To have and to hold the same Close called *Abrahams Land*, with the Appurtenances, amongst other, to the afores. *Tbo. Walter*, his Heirs and Assignes, to the only proper Use and behoof of the said *Tbo. Walter*, his Heirs and Assigns for ever, as by the said Writing amongst other Things more fully appeareth: By Virtue of which Feoffment the said *Tbo. Walter*, of the aforesaid Close, with the Appurtenances, in which, &c. was seized in his Demesn as of Fee, and so thereof being seized, the aforesaid *Dionise Mayowe* afterwards, and before the aforesaid Time of the Taking of the Cattle afores. that is to say, the 20th Day of *March* in the 29th Year of the Reign of the Lady the now *Q.* at *Sutton Atthone* afores. died, as the afores. *George Mason* and *Francis Esterley* above in pleading have alledged; after whose Death, and before the afores. Time of the taking of the Cattle aforesaid, that is to say, the 29th Day of *September* in the 32d Year of the Reign of the said Lady the now Queen, the aforesaid *Thomas Walter*, at *Sutton Atthone* aforesaid, demised and to farm let to the aforesaid *John Kettle* the aforesaid Close, with the Appurtenances, in which, &c. amongst other; To have and to hold to the aforesaid *John Kettle* and his Assigns, from the aforesaid 29th Day of *September* in the 32d Year aforesaid, unto the End and Term of one whole Year then next following, and fully to be compleat and ended; by Virtue of which Demise, the aforesaid *John Kettle* afterwards, and before the aforesaid Time, in which, &c. that is to say the 30th Day of *September* in the 32d Year aforesaid, into the Close aforesaid, in which, &c. entred, and was thereof possessed; and so thereof being possessed, the same *John Kettle* afterwards, and before the aforesaid Time, in which, &c. that is to say, the 17 Day of *June* in the 33d Year of the Reign of the said Lady the now Queen, put his Cattle aforesaid, into the aforesaid Close, to eat the Grasse there, as it was lawful for him to do, which Cattle were in the aforesaid Close, &c. there the Grasse there late growing eating, until the aforesaid *George Mason*, and *Francis Esterley*, the aforesaid Cattle at the aforesaid Time in which, &c. unjustly took and detained in Manner and Form, as the aforesaid *John Kettle* above against them complaineth. And this he is ready to aver: Wherefore in as much as the said *George* and *Francis*
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Pleadings in Anne Mayowe's Case. PART I.

the taking of the Cattle aforesaid above acknowledge, the said *John Kettle* demands Judgment, and his Damages aforesaid, for the Occasion of the taking, and unjust detaining of the said Cattle, to be adjudged to him, &c. And the aforesaid *George Mason* and *Francis Esterley* say, that well and true it is, that before the aforesaid Time of the taking of the Cattle aforesaid, above supposed to be done, and before the grant of the aforesaid Annuity of 20 *l.* and before the said *Dionise* had any Thing in the aforesaid 8 Acres of Pasture, with the Appurtenances, in which, &c. the aforesaid *Tho. Mayowe*, in the Bar aforesaid to the Conuſance aforesaid named, was seized of the aforesaid 8 Acres of Pasture, with the Appurtenances, in his Demesn as of Fee; and so thereof being seized, that the said *Thomas* the aforesaid 15th Day of *January* in the 19th Year aforesaid, of the said 8 Acres of Pasture, with the Appurtenances, enfeoffed the aforesaid *Tho. Scot* and *John Fremling*, in the Bar named; To have to them and their Assigns for ever, to the Use of the said *Dionise*, his Heirs and Assigns for ever, upon the Conditions aforesaid, in the Bar above in this Part specified; and that by Virtue of the same Feoffment, and by Force of the aforesaid Statute, the said *Dionise* was seized of the aforesaid 8 Acres of Pasture, with the Appurtenances, in which, &c. amongst other, in his Demesn as of Fee, in Manner and Form, as the aforesaid *John Kettle*, in the Bar aforesaid to the Conuſance aforesaid, above in pleading hath alledged. And the said *George* and *Francis* now Defendants further say, that the aforesaid *Dionise* before the aforesaid Time of the taking of the Cattle aforesaid, above supposed to be done, that is to say, the aforesaid 30th Day of *May* in the 9th Year aforesaid, by his Writing aforesaid, gave and granted to the aforesaid *Anne* the aforesaid Annuity or yearly Rent of 20 *l.* to be issuing out of the aforesaid Place, in which, &c. amongst other, in Manner and Form as the aforesaid *John Kettle*, in his Bar aforesaid to the Conuſance aforesaid, above in pleading hath alledged; To have and to receive the Annuity or yearly Rent aforesaid of 20 *l.* to the aforesaid *Anne* and her Assigns, for the Term of the natural Life of the said *Anne*, at the Feasts aforesaid above in this behalf specified, by equal Portions to be yearly received, with the aforesaid Clause of Distress in that Writing contained, in the conuſance above in this Behalf specified; and the said *George* and *Francis Esterley* also in *Facto* say, That the aforesaid *Thomas Mayowe* the aforesaid Grant of the Rent aforesaid, and the Estate of the said *Anne*, in the said Rent then and there, that is to say, the aforesaid 30th Day of *May* in the 19th Year aforesaid, at *Sutton Atthorne* aforesaid, by the Name of *Tho. Mayowe* of *Sutton Atthorne* in the County of *Kent*, Gent. by his Writing sealed with the Seal of him the said *Tho.* and into the Court of the said Lady

the now Queen here brought, bearing Date the same Day and Year, to the aforesaid *Anne*, by the Name of *Anne Maxey* of *Chigwell* in the County of *Essex*, ratified and confirmed, as by the said Writing amongst other Things more fully appeareth; by Colour of which the said *Anne* was of the Annuity or Yearly Rent aforesaid seized in her Demesne as of Freehold, for the Term of her Life; and so thereof being seized, the said *Anne* afterwards, and before the aforesaid Time in which, &c. at *Sutton Atibone* aforesaid, took to Husband the abovesaid *Dionise*; and afterwards, and before the aforesaid Time in which it is supposed the taking of the Cattel aforesaid to be done, that is to say, the aforesaid 20th Day of *March* in the 29th Year of the Reign of the said Lady the now Queen aforesaid, the aforesaid *Dionise*, at *Sutton Atibone* aforesaid dyed; and the aforesaid *Anne* him overlived, and was and yet is of the aforesaid Annuity or Yearly Rent of 20 l. seized in her Demesne as of Freehold, for the Term of her Life; And because 20 l. of the Annuity or Yearly Rent aforesaid, by a whole Year ended at the Feast of *St. Michael* the Archangel in the 29th Year of the Reign of the said Lady the now Q. aforesaid, and within the Space of 40 Days then next following, were not paid to the said *Anne*, but were behind, the aforesaid *George Mason*, and *Francis Esterly*, as Bailiffs of the said *Anne*, do acknowledge the taking of the Cattle aforesaid, in the aforesaid Place in which, &c. and justly, &c. as in Parcel of the Tenements aforesaid with the Appurtenances, to the Distress of the said *Anne*, in Form aforesaid charged and bound: And this they are ready to aver: Whereupon as at first they demand Judgment, and a return of the Cattle aforesaid, with their Damages, Costs, and Expences by them about their Suit in this behalf put unto, according to the Form of the Statute in such Case had and provided, to be adjudged unto them, &c. And upon this the aforesaid *John Kettle* prayeth that the Writing of Confirmation of the Annuity aforesaid be inrolled in these Words, &c. and it is inrolled in this Form as followeth. *ff.* To all Christian People to whom this present Writing shall come, *Thomas Mayowe* of *Sutton Atibone* aforesaid, in the County of *Kent* Gent. and *Dionise Mayowe*, Son and Heir apparent of the said *Thomas Mayowe* of *Bernards Inn* in the County of *Middlesex* Gent. Greeting in our Lord God everlasting. Know ye, we the aforesaid *Thomas* and *Dionise* to have given, granted, and by this our present Writing confirmed to *Anne Maxey* of *Chigwell* in the County of *Essex*, for and in Consideration of a certain Marriage to be had and solemnised between the aforesaid *Dionise Mayow* and *Anne Maxey* aforesaid, one yearly Rent or Annuity of 20 l. of good and lawful Money of *England*, of all our or either of our Lands and Tenements in *Sutton Atibone* aforesaid, and *Wilmington* in the County of *Kent* aforesaid; To have, hold and receive the said yearly Rent or Annuity of twenty Pounds aforesaid, of the aforesaid Lands and Tenements with their Appurtenances, to the aforesaid *Anne* and her Assigns, for the Term of the Life of the aforesaid *Anne*, at the Feasts of the
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Pleadings in Anne Mayowe's Case. PART I.

Annunciation of the blessed *Mary* the Virgin, and *St. Michael* the Archangel, by equal Portions yearly to be received; and if it happen the afores. yearly Rent, or Annuity of 20 *l.* at any Feast of Payment, in which it is said it ought to be paid, within 40 Days after any of the aforesaid Feasts, in Part or in all, to be behind and unpaid, that then it be lawful to the aforesaid *Anne* and her Assigns into the aforesaid Lands and Tenements to enter and distrein, and the Distresses there found and taken, to carry away, lead, drive, and with them to keep, until of the aforesaid Yearly Rent or Annuity, together with all the Arrearages thereof, if any were, to them it be satisfied and paid; of which Yearly Rent or Annuity we have put the aforesaid *Anne Maxey* in full Possession and Seisin, by paying of one Penny of lawful Money of *England, &c.* In witness whereof we the aforesaid *Thomas Mayore* and *Dionise Mayowe*, to this our present Writing our Hands and Seals have put; dated the 30th Day of *May* in the 13th Year of the Reign of our Lady *Elizabeth*, by the Grace of God of *England, France* and *Ireland* Queen, Defender of the Faith, &c. Which being read and heard, the said *John Kettle* saith, that the Plea aforesaid, by the aforesaid *George* and *Francis* above to the Bar of the said *John Kettle* aforesaid, to the Conufance aforesaid in Manner and Form aforesaid above pleaded, and the Matter in the same contained is not sufficient in Law, as to the taking of the Cattle aforesaid, in the Place aforesaid, in which, &c. justly acknowledged; to which the said *John Kettle* needeth not, or by the Law of the Land is any ways bound to answer; wherefore for want of a sufficient Plea in this behalf, the same *John* as at first demandeth Judgement, and his Damages aforesaid by the Occasion aforesaid, to be to him adjudged, &c. And the afores. *George Mason* and *Francis Esterley* say, that the Plea afores. by them the said *George* and *Francis* above unto the Bar of the afores. *Jo. Kettle* afores. to the Conufance afores. in Manner and Form afores. above pleaded, and the Matter in the same contained, is good and sufficient in Law, to the taking of the Cattle afores. in the afores. Place in which, &c. justly acknowledged; which Plea, and the Matter therein contained, the said *George* and *Francis* are ready to aver and prove, as the Court, &c. And because the afores. *J. Kettle* to that Plea doth not answer, nor the same as yet any ways denyeth, the said *George* and *Francis* as at first demand Judgm. and Return of the Cattle afores. together with their Damages, according to the Form of the Stat. in such case late had and provided, to them to be adjudged. And because the Court of the L. the Q. here, of their Judgm. of and upon the Premises to be given is not yet advised, Day is given to the Parties afores. before the L. the Q. here until from the Day of *East* in 15 days, wherefoever, &c. to hear their Judgm. of and upon the

Premiffes, because the Court of the Lady the Queen here thereof not yet, &c. At which day, before the Lady the Q. at *Westm.* come the parties aforesaid by their Attornies aforesaid; and because the Court of the Lady the now Queen here, of giving their Judgment of and upon the Premiffes is not yet advised, further Day is given to the Parties afores. before the Lady the Q. in the Morrow of the *H. Trinity*, Trinit. wherefoever, &c. to hear their Judgment of and upon the Premiffes, because the Court of the Lady the Q. here thereof not yet, &c. At which Day before the Lady the Q. at *Westm.* came the Parties aforesaid, by their Attornies aforesaid; And because the Court of the Lady the now Queen here, of giving their Judgment of and upon the Premiffes is not yet advised, further Day is given to the Parties aforesaid, before the Lady the Q. in 8 Days of *St. Michael*, wherefoever, &c. to hear their Judgment of and upon the Premiffes, because the Court of the L. the Queen here thereof not yet, &c. Before which Day the Plea aforesaid was adjourned by the Writ of the Lady the Queen of common Adjournment, before the Lady the Q. until from the Day of *St. Michael* in one Month, at the Town of *St. Alban* in the County of *Hertford*; Mich. At which Day the Plea aforesaid was further adjourned by another Writ of the L. the Q. of common Adjournment, before the said Lady the Q. until the Morrow of *All Souls*, at the Town of *Saint Alban* aforesaid: At which Day, before the Lady the Q. at the Town of *St. Alban* aforesaid, come as well the said *John Kettle* by his Attorney aforesaid, as the aforesaid *George Mason* and *Francis Esterley*, in their proper Persons; and because the Court of the said L. the Queen, that now is, here, of giving their Judgment of and upon the Premiffes is not yet advised, Day further is given to the Parties aforesaid, before the Lady the Q. in 8 Days of *St. Hillary*, wherefoever, &c. to hear their Judgment of and upon the Premiffes, because the Court of the Lady the Queen here thereof not yet, &c. Before which Day the Plea aforesaid was further adjourned, by another Writ of the Lady the Q. of common Adjournment, before the Lady the Q. at *Westminster* aforesaid, at the aforesaid eight Days of *St. Hillary*; At which Day before the Lady the Q. at *Westminster* come as well the aforesaid *John Kettle*, by his Attorney aforesaid, as the aforesaid *George Mason* and *Francis Esterley* in their proper Persons: And because the Court of the said Lady the now Queen here, of giving their Judgment of and upon the Premiffes is not yet advised, Day farther is given to the Parties aforesaid, before the L. the Queen, from the Day of *Easter* in 15 Days Passc. wherefoever, &c. to hear their Judgment of and upon the Premiffes, because the Court of the Lady the Q. here thereof not yet, &c. At which Day, before the Lady the Queen

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Judgm for the
Defendant.

Note.

Plaintiff, &c.
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at *Westminster*, cometh as well the aforesaid *John Kettle*, by his Attorney aforesaid, as the aforesaid *George Mason* and *Francis Esterly* in their proper Persons. And upon this; all and singular the Premises, by the Court of the said Lady the Queen that now is here, being seen, and mature Deliberation thereof being had, because it seemeth to the Court of the Lady the now Queen here, that the Plea aforesaid, by the aforesaid *George* and *Francis*, to the Bar of the aforesaid *John Kettle* aforesaid, to the Conuſance aforesaid, in Manner and Form aforesaid above pleaded, and the Matter in the same contained is good and sufficient in Law; therefore it is granted, that the said *John Kettle* take nothing by his Writ aforesaid, and that he and his Sureties for his false Clamour aforesaid, thereof be in mercy, &c. and the aforesaid *George Mason* and *Francis Esterly* thereof go without Day, &c. and have a Return of their Cattle aforesaid, to be holden by them irreplegiable for ever. And further according to the Form of the Statute in such Case late had and provided, it is granted, that the aforesaid *George Mason* and *Fr. Esterly*, recover against the aforesaid *John Kettle*, their Damages which they have sustained as well by the Occasion of the Premises, as for their Costs and Charges by them about their Suit in this Behalf expended. But because to the said Court of the said Lady the now Q. here it is unknown what Damages the said *George* and *Francis* in this behalf have sustained: It is commanded to the Sheriff, that by the Oath of good and lawful Men of his Bailiw. he diligently enquire what Damages the aforesaid *George* and *Francis* have sustained, and the Enquiry which, &c. to the Lady the Q. in the Morrow of the *Holy Trinity*, wheresoever, &c. under the Seal, &c. and the Seals, &c. he send together with the Writ of the said Lady the Q. thereof to him directed. The same Day is given to the said *George* and *Francis*, &c. At which Day before the Lady the Queen at *Westminster*, come the aforesaid *George* and *Francis* in their proper Persons; And the Sheriff, that is to say, *Michael Sands* Esq; at that Day certified that the Cattle aforesaid, before the Receiving of the Writ aforesaid, were esloined to Places to the said Sheriff unknown, by the within named *John Kettle*, so that the Cattle to the aforesaid *George* and *Francis Esterly* he cannot return irreplegiable, as to the said Sheriff by the Writ aforesaid it was commanded; And further the said Sheriff certified an Enquiry taken before him the 8th Day of *June* in the 36th Year afores. at *Deptford Strand* in the County afores. by the Oaths of 12 lawful Men of his Bailiwick, by which it is found, That the afores. *G. Mason* and *Francis* sustained Damages by the Occasion of the Premises,

miffes, above their Cofts and Charges, by them about their Suit in this Behalf expended, to 40 s. and for their Cofts and Charges to two pence; Therefore it is granted, that the aforefaid *George Mafon* and *Francis Eftefly* recover Ante 22. a. againft the aforefaid *John Kettle* their Damages aforefaid, by the Inquifition aforefaid, in Form aforefaid found, as alfo 9 l. to them the faid *George* and *Francis*, for their Cofts and charges aforefaid, by the Court of the Lady the Queen here of encrease adjudged; which Damages here in the whole do amount to 11 l. and 2 d. And the aforefaid *J. Kettle* be in mercy: And further it is commanded to the Sheriff, that of the Cattle of the faid *John Kettle* in his Bailiwick, to the Value of the Cattle aforefaid, which to the aforefaid *George* and *Francis* were adjudged, he take in *Withernam*, and them to the aforefaid *George* and *Francis*, caufe to be delivered, to be kept by them, until the Cattle of them the faid *George* and *Francis*, in the faid Court firft adjudged can be delivered, &c.

ANNE MAYOWE'S Case.

Hill. 35 Eliz.

Poph. 50 10 Co.
49. a. La 10 38.

IN a Replevin between *John Kettle* Plaintiff, and *George Mason* and *Francis Esterley* Defendants, which began Hill. 35. Eliz. Rot. 498. the Case was such; *Tho. Mayowe* was seised in Fee of the Manors of *Saifters* and *Hawley* in *Sutton Atthone* in the County of *Kent*, and so seised by Deed indented did enfeof *Tho. Scot* and *John Fremling* in Fee to the Use of *Dionise Mayowe*, Son and Heir apparent of the said *Tho. Mayowe* and his Heirs, upon certain Conditions, and afterwards, and before the Conditions or any of them broken, the said *Thomas* and *Dionise* by their Deed sealed with their Seal bearing Date 30 *May* 19 *Eliz.* granted to *Anne Maxy* a yearly Rent of 20 *l.* issuing out of the said Manors for the Term of her Life with Clause of Distress; and after the Condition was broken, and *Thomas Mayowe* thereupon did enter upon the said *Dionise* for Breach of the Condition, and afterwards the Defendants as Bailiffs of the said *Anne Maxy* distrained for the said Rent, &c. And the great Question in this Case was, whether the Possession of the said *Thomas Mayowe* after his Entry for the Condition broken should be charged with the said Rent. And it was objected by *Godfrey* and others of Counsel with the Plaintiff that his Possession should not be charged for divers Reasons; First, when the Father and the Son join in the Grant of the said Rent, it was the Grant of the Son, for he was the Tertenant, and the said Grant enured (a) as the Confirmation of the Father, then it was said that a Confirmation cannot make any Estate which is subject unto a Condition to be absolute, and a Confirmation cannot alter the Quality of the Estate, unless it enlarges the Estate; and therefore *Littleton fol. (b)* 120. a. saith, if the Disseisee confirm the Estate of one Disseisor, it shall not alter the Estate of the Disseisors; and (c) 11 *H.* 7. 29. a. If the Feoffor confirms the Estate of the Feoffee upon Condition before the Condition broken, that shall not alter the Estate of the Feoffee to make that absolute which was subject to a Condition before

(a) Poph. 50.

1 Co. 49. a.

(b) Lit. sect.
518, 519. Co.
Lit. 298.(c) 11 *H.* 7. 28. b.
29. a. Co. Lit.
300. a. 301. a.
Bro. Confrm.
37. Cro. Car.
478.

before; so it was said in our Case, the Grant of the Rent made by the Feoffee upon Condit. was subject to the Condition, and then the Confirmat. of the Feoffor, and namely before any Condition broken, cannot alter the Quality of the Estate of the Rent, and make it absolute. And the Manner of Pleading in the Case aforesaid was also urged, for the Effect of the Avowry was, that *Dionise Mayowe* was seised of the said Manors in Fee, and by the Deed aforesaid granted the said Rent-charge to the said *Anne ut supra*, and the Effect of the Bar to the Avowry was, that before *Dionise* had any Thing in the said Manors, *Tho. Mayowe* was seised in Fee, and enfeoffed the said *Dionise* upon Condit. *ut supra*, and confesseth the said Grant of the Rent-charge by *Dionise*, and after for the Condition broken *Tho.* entered; to which the Avowant said, that well and true it is that the said Feoffment was made upon Condit. to *Dion.* and that he 50 *Maii anno 19.* granted the said Rent-charge *prout, &c.* But (a) further he said, that the said *Tho. Mayowe prædict' concessio' redditus præd', ac statum ejusd' Annæ in eod' redditu ad tunc, scil' præd' 30 Maii anno 19, per quodd' script' suum sigillo suo sigillat' curiæq; hic prolat' genen' dat' iisd' die 25 anno præfat' Annæ ratificav' & confirmav', &c.* The Plaintiff prayeth the said Grant of Confirmat. may be entered *in hæc verba*, and so it was, by which it appears that both, that is to say the Feoffor and Feoffee joined in the Grant *ut supra*, and upon that the Parties demur. And it was said, that by that it appears, that the Avowant pleaded the Deed by way of Confirmat. so that in Supposition of Law the Grant of the Rent doth precede the Confirmation, and then it is all one whether it had been a Day or a Year after the Grant, and then the Case had been clear as 'twas said. For (b) *Littleton* doubts the Case of the Disseisor and Disseisee, if they both join in a Grant of a Rent-charge, whether the Disseisee after his Regress shall avoid it, and yet there the Entry of the Disseisee is lawful, and no Estate subject to any Condition. And (c) *11 H. 7. 28. b.* was cited, where a Rule is taken, that where I may avoid a Thing by my Entry, I may make it good by my Confirmation; upon which they did imply, that if his Entry be not lawful at the Time of the Confirmation, (as in our Case it was not) the Confirmation is nothing worth.

Against which it was argued by the Attorn. General and others; and as to the first Reason they conceived there was a Difference between the Case at Bar, and the Cases which were put; for when the Estate of him to whom the Confirmation is made is upon an express Condition, there the Confirmation made to him cannot take away the Condition, but if such Feoffee upon Condition makes a Feoffment over, so that his Estate is only subject to a Condition contained in another Conveyance, but no Condition is expressed or annexed by his Feoffor to his Estate, there a Confirmation

(a) Co. Lit. 302.
a. it. fecit. 524.
v. Co. Lit. 45. a.
Foph. 57.

(b) Lit. fecit.
527. Co. Lit.
300. a.

(c) Co. Lit. 303.
a. Br. Confim.
32. Ci. Cal. 47.

Co. Lit. 301. a.

ANNE MAYOWE'S Case. PART I.

(a) Co. Lit.
301. a.
Lit. sect. 520.
Kelw. 103. a.

(b) Br. Confir-
mation 15, 16.
(c) Br. Grant
73, 80.
(d) Co. Lit.
301. a.

(e) 9 Co. 140. a.
142. a.
Co. Lit. 277. b
Poph. 51.

(f) Co. Lit.
300. a.

(g) Poph. 50.
Winch 31.
Lit. sect. 648.
Co. Lit. 343. a.
10 Co. 48. b.

(h) 5 Co. 81. b.
Co. Lit. 343. b.
8 R. 2. Annui-
ty 53. F.N.B.
152. i.

(i) Poph. 50.
7 Co. 14. a.
Moore 325. Br.
Condition 249.
Co. Lit. 243. a.

(k) 1 R. 3.
cap. 1.

mation of his Estate which he hath by absolute Words shall extinguish the Condition which was annexed to the Estate of the first Feoffee. And the Attorney said, that this Difference is well proved by the Case of *Litt.* and other Books; for (a) if the Lessee for Life grants a Rent-Charge in Fee, this Grant by the Words of it is absolute, and a Fee simple not determinable by any Thing contained in the Deed, but in respect of the Estate of the Grantor it is determinable by his Death. And yet *Litt. fol. 122. a.* saith, and (b) 26 *Aff. pl. 38.* and (c) 45 *Aff. pl. 13.* agree it also, that if he in the Reversion confirms such Grant, the Rent is good in Fee, but without question if the (d) Determination of the Rent had been expressed in the Deed, the Confirmation had not enlarged it, or made it absolute. And therefore if Lessee for Life had granted a Rent to one and his Heirs during the Life of the Lessee for Life, and afterwards the Lessor had confirmed the Rent to the Grantee and his Heirs, and the Tenant for Life died, the Rent should cease, for the Confirmation cannot enlarge that which is determinable by express Condition or Limitation, and that fully appears by *Litt. Tit. Confirmation 124.* So that this Difference appears plainly by *Litt.* for in his Chapter of Confirmation he puts both the Cases. The Attorney further said, that if a Man be Lessee for Life upon Condition, and he grants a Rent in Fee, and the Lessor confirm it, and then the Condition is broken, and the Lessor enters, yet the Rent doth remain *causa qua supra*; And it seemed to him, that if the (e) Feoffee upon Condition makes a Feoffment over absolutely, and the first Feoffor confirms his Estate, he shall hold it without any Condition, be the Confirmation made after or before the Condition broken.

So (f) Feoffee upon Condition grants a Rent in Fee, and the Feoffor by another Deed confirms it to him and his Heirs, and after the Condition is broken, and the Feoffor enters for the Condition broken, yet the Rent remains, which was granted by *Popham* Chief Justice, & *totam Curiam*. And further he said, it appears by *Litt.* that it is a (g) Principle in Law, that all Land in Fee-simple may be charged with a Rent Charge one way or other; so in this Case, when all those who have Interest in the Land join in a Grant of a Rent, so that the Grant is made *concurrentibus his que in jure requiruntur*, he conceiveth the Grant is good: And therefore if the (b) Patron and Ordinary charge the Glebe in Time of Vacation, it shall bind, because no other hath Interest therein during the Vacation but they only, and he relied much upon the Book in 11 *H. 7. 21. a.* (i) *Eriche's Case*, which in Effect was, That Tenant in Tail made a Feoffment in Fee upon Condition, which Feoffment is to the Use of himself and his Heirs, and afterwards he bound himself in a Stat. which by Force of the Stat. of (k) 1 *R. 3. c. 5.* is extended (he having then but an Use and a Condi- tion)

tion) and after the Condition is broken, by which the Feoffment is avoided, and he seised of an Estate in Tail again, yet he shall not avoid the Extent: The same Law, if he had granted a Rent-Charge, and after the Condition had been broken, the Charge had been good, although the Estate, out of which the Use was limited, and which was the Cause that the Grant of the Rent was good by the said Statute, were defeated by the said Condition; yet he having the Use and the Condition together at the Time of the Grant, the Grant remains good. And the Case of Disseisor and Disseisee, which is agreed in 11 H. 7. 28. b. is all one in Effect with our Case, and our Case is stronger, because the Grant and Confirmation are all by one Deed, so that the Rent was never subject to any Condition; and afterwards Judgment was given by *Popham* Chief Justice, *Clench*, *Gawdy* and *Fenner*, Justices, for the Avowant, that the Rent did remain good.

Co. Lit. 300.
Cr. Car. 478.
Br. Confirmation 32.

The Rector of Chedington's Case.

*Michaelmas Term, 38 & 39 Eliz.
Rot. 551.*

In the King's Bench, Ejectione firmæ.

Bucks, ff.
Declaration in
Ejectment.

*M*emorandum, That at another Time, that is to say, in Easter Term last past, before the Lady the Queen at Westminster, came David Lloyd Clerk, by Stephen Worley his Attorney, and brought here in the Court of the said Lady the Queen then and there his Bill against William Wilkinson, in the Custody of the Marshal, &c. of a Plea of Trespass and Ejectment of him out of his Farm; and are Pledges of Suit, John Doe and Richard Ree, which Bill follows in these Words, ff. Bucks, ff. David Lloyd Clerk, complaineth of W. Wilkinson, in the Custody of the Marshal of the Marshalsea of the L. the Q. before the Q. herself being, for that, that is to say, that whereas David Roberts Clerk, Rector of the Parish Church of Chedington in the County aforesaid, the 26th Day of March in the 38th Year of the Reign of the Lady Elizabeth now Queen of Engl. at Chedington aforesaid, by his Indenture sealed with his Seal, and to the Court of the said Lady the now Queen here shewed, bearing Date the same Day and Year, demised, granted, and to Farm let to the aforesaid David Lloyd the Rectory of the Parish Church of Chedington aforesaid, and 60 Acres of Lands, with the Appurtenances, in Chedington aforesaid; To have and to hold the Rectory and Tenements aforesaid, with the Appurtenances, to the said David Lloyd and his Assigns, from the Day of the Date of the Indenture aforesaid, unto the End and Term of 3 Years then next following and fully to be compleated; By Virtue of which Demise, the said David Lloyd into the Rectory and Tenements aforesaid, with the Appurtenances aforesaid, did enter, and was thereof possessed, until the said William afterwards, that is to say, the 10th Day of April in the Year above said, at Chedington aforesaid, with Force and Arms, &c. into the Rectory and Tenements aforesaid, with the Appurtenances, upon the Possession of the said David Lloyd, thereof did enter, and the said David Lloyd from his Farm aforesaid thereof (his Term aforesaid not yet ended) ejected, expelled

expelled and amoved, and him the said *David Lloyd* from his Possession aforesaid held out, and doth yet hold out, and other Wrongs did unto him, against the Peace of the said Lady the now Queen, to the Damage of the said *David Lloyd* 20 Pounds, and thereof he produce:h Suir, &c. With this, that the said *David Lloyd* will aver, that the aforesaid *David Roberts*, then Rector of the Parish Church aforesaid, is living, and is in full Life, &c. at *Chedington* aforesaid, &c. And now at this Day, that is to say, *Saturday* next after 8 Days of *St. Michael* in' this same Term, until which Day the said *William* had license to the Bill aforesaid to imparle, and then to Answer, &c. before the Lady the Queen at *Westminster* cometh as well the aforesaid *David Lloyd* by his Attorney aforesaid, as the said *William* by *Richard Belfield* his Attorney; and the said *William* defendeth the Force and Injury when, &c. and saith that he is not thereof guilty; and of this he putteth himself upon the Country; and the said *David* likewise, &c. Therefore let a Jury come before the L. the Q. at *Westminster*, *Saturday* next after one Month of *St. Michael*, and who, &c. And because, &c. the same Day is given to the Parties aforesaid there, &c. At which Day the Jury aforesaid, between the Parties aforesaid, was put between them in respite, before the Lady the Queen at *Westminster*, unto *Thursday* next after one Month of *Easter* then next following, for want of Jurors, &c. At which Day before the Lady the Queen at *Westminster*, come as well the said *David Lloyd* as the said *William Wilkinson*, by their Attornies aforesaid; and the Jurors of the said Jury being called, also appeared, who to say the Truth of the Premisses, being chosen, tried and sworn, as to the said 60 Acres of Lands, above in the Declaration aforesaid specified, do say upon their Oath aforesaid, that the said *Will. Wilkinson* is not thereof of the Trespafs and Ejectment aforesaid guilty, as the said *William* above in Pleading hath alledged; and as to the Rectory aforesaid, with the Appurtenances in the Declaration aforesaid likewise specified, the Jurors aforesaid likewise say upon their Oath aforesaid, That long before the Time in which it was supposed the Trespafs and Ejectment aforesaid to be done, that is to say, the second Day of *March* in the 2d Year of the Reign of the Lord *Edward* the 6th, late King of *England*, one *Nicholas Fitz Williams* Clerk, was Rector of the Parish Church of *Chedington*, otherwise *Chettington* aforesaid; and that the said *Nicholas* being Rector of the said Church before the Time in which, &c. that is to say, the second Day of *March* in the 2d Year aforesaid, at *Chedington* aforesaid, by his Indenture made at *Chedington* aforesaid, between the said *Nicholas*, by the Name of *Nich. Fitz-Williams*, Rector of the Parish Church of *Chedington* in the County of *Buks* of the one Party, and *Eliz. Elderker* Widow, *Ralph Elderker*, *William Elderker*, and *Thomas Elderker*, by the Name of *Elizabeth Elderker* Widow, late Wife of *William Elderker*, Gent. deceased, *Ralph Elderker*, *William Elderker*, and *Thomas Elderker*, Sons of the Body of the first named *William* and *Elizabeth* lawfully begotten, of the other Parr, (which Parr, with the Seal of the said *Nicholas*, sealed to the Jurors aforesaid here was shewed in Evidencc) gave, granted, and

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and to Farm had letten to the said *Elizabeth Elderker* the Rectory and glebe Lands of the Church aforesaid; To have and to hold the said Rectory and glebe Lands, with all Fruits, Oblations, Obventions, Tithes and Rights, with their Appurtenances and Commodities whatsoever, to the said Rectory in any Manner belonging or appertaining to the said *Elizabeth*, from the aforesaid second Day of *March* in the second Year aforesaid, until the End and during the Term of 80 Years from thence and immediately following the Date of the said Indenture, if the aforesaid *Elizabeth* should so long live, and should not alien, grant, or give the said Demise or Term; and if it should happen the aforesaid *Elizabeth* within the said Term of 80 Years to die, or to alien, give or grant the Premises, that then the Estate of the said *Elizabeth* should cease; and then the said *Nicholas* by his Indenture aforesaid gave, granted, and demised all and singular the Premises for so many Years, as then should remain unexpired after the Death of the said *Elizabeth*, or the Alienation of the said *Elizabeth*, to the aforesaid *Ralph*, for and during the Residue of the said Term of the said 80 Years (if he should so long live) without making any Alienation, Grant or Gift of the said Term; and if it should happen he to die, or to alien the Premises within the Term aforesaid, that then his Estate should cease: And then the said *Nicholas*, by his Indenture aforesaid, gave and granted all and singular the Premises to the aforesaid *William* for and during so many Years of the said Term of 80 that then should remain, if he should live so long, and should not alien the said Term; and if it should happen the said *William* to die, or to alien the Premises within the aforesaid Term, that then his Estate should cease; and then the said *Nicholas*, by his Indenture aforesaid, gave and granted all and singular the Premises, for and during so many Years of the aforesaid 80 Years as then should continue and remain unexpired, to the aforesaid *Thomas*, his Executors and Assigns, as by the said Indenture shewed to the Jurors aforesaid, in Evidence, amongst other Things, it more plainly appeareth. And further, the Jurors aforesaid, upon their Oath aforesaid, say, that the aforesaid Lord *Edward*, late King of *England*, afterwards and before the Time in which, &c. that is to say, the 12th Day of *September* in the 3d Year of his Reign, the aforesaid *Nicholas* then being Rectory of the Church aforesaid, by his Letters Patents under his Great Seal of *England*, and in due Manner made, bearing Date at *Westminster* the said 12th Day of *September* in the 3d Year of his Reign aforesaid, (the aforesaid Lord the King then being true Patron of the said Rectory) seeing, reading and examining the Indenture aforesaid, of his special Grace, certain Knowledge and meer Motion, as also with the Advice and Consent of the Beloved Uncle of the aforesaid Lord the King the Duke of *Somerset*, Governor of the Person of the King, and Protector of the Kingdoms, Dominions, and Subjects of the said King, and of other of the Council of the said King before, and especially in Consideration of the most excellent present Service then to the King in his Wars, then and sole

in

in the beating back of the Scots, which then late happened at *Muscleborough*, in which war the aforesaid *William Elderker*, valiantly fighting, was slain, the said indenture, and all in the same specified, and all the right, title, and interest of the same *El. Elderker*, *Ralph Elderker*, *Will. Elderker*, and *Tbo. Elderker*, in the said rectory, glebe lands, fruits, profits and other things, in the same indenture expressed, with the appurten. to have and to hold the said rectory to the said *El. Ralph, Will. and Tbo.* and their assigns, had confirmed, and ratified, and all things, as much as in him was, had approved for him and his successors: and further, the Jurors afores. say upon their oath afores. that afterwards, that is to say, the 21st day of *Jan.* in the 3d year of the Reign of the said *L. Edw.* afores. the said *Nicholas* being then rector of the church afores. one *Henry*, by divine providence, bish. of *Lincoln*, and of the Rectory and church afores. of *Ched.* afores. ordinary, the demise or grant afores. by the said *Nic.* as before is said, made, and all and singular in the same contained, for him and his successors, confirmed, ratified, and as much as in him was, approved, to have, hold, and enjoy to the afores. *El. Ralph, Will. Elderker, and Tbo. Elderker*, during the Term afores. as by the said several confirmations in due manner made, and to the Jurors afores. shewed, more fully appeared, by colour of which Demise, and several Confirmations afores. in form afores. made, the afores. *El. Elderker* into the rectory afores. and the glebe lands afores. with the Appurt. did enter, and was thereof possessed; and she thereof being so possessed, the said *Nic. Fitz-williams* afterwards and before the time, in which, &c. that is to say, the 10th day of *Jan.* in the 1st year of the reign of the Lady *Mary*, late *Q. of Eng.* at *Ched.* afores. then being rector of the parish church at *Ched.* afores. died: And the Jurors afores. say upon their oath afores. that the said *Tbo. Elderker* afterwards, that is to say, the 10th day of *June* in the year of the reign of the said lady *Eliz.* now *Q. of Eng.* the 16th. at *Greenwich* in the county of *Kent*, died intestate, the said *Eliz.* of the rectory afores. and of the glebe lands afores. with the appurtenances, in form aforesaid being possessed; and the said *Elizabeth* being thereof so possessed, the aforesaid *William Elderker* afterwards, that is to say, the 8th day of *July* in the 17th year of the reign of the said lady the now Queen likewise died: And the aforesaid *Elizabeth Elderker*, so of the rectory and glebe lands aforesaid possessed, as is said, afterwards, that is to say, the 20th day of *July* in the said 17th Year of the reign of the said Lady the now Queen aforesaid, at *Chedington* aforesaid, the said *Elizabeth Elderker* likewise died, and the said *Ralph Elderker* did over-live her, and into the rectory aforesaid, and the glebe lands aforesaid, with the appurtenances, by virtue of the demise aforesaid, likewise entred and was thereof possessed, and so being thereof possessed, the said *Ralph Elderker* afterwards

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wards, that is to say, the 10th of *May* in the 18th year of the reign of the said L. the now Q. at *Ched.* afores. died intestate: And the jurors afores. say, upon their oath afores. that after and before the time, in which, &c. that is to say, the 19th day of *Jan.* 1576. administration of all and singular the goods, chattels, rights and credits, which were of the afores. *Tho.* at the time of his death, by *William Smith* Doct. of law, commissary and official of the Archdeaconry of *Buckingham*, to one *Anne Hetbrington* then wife of *Ralph Hetbrington*, and then the late Widow of the said *Ralph Elderker* at *Ched.* afores. was committed, by virtue of which committing of the administration afores. the afores. *Ralph Hetbrington* and *Anne* his wife into the rectory afores. and the glebe lands afores. with their appurt. did enter and were thereof possessed; and the said *Ralph Hetbrington* and *Anne* his wife, so thereof possessed, the said *Ralph Hetbrington* and *Anne* afterwards, that is to say, the 28th day of *March* in the 19th year of the reign of the said lady the now Q. at *Ched.* afores. by a certain indenture made between the afores. *Ralph Hetbrington* and *Anne* his wife, by the names of *Ralph Hetbrington* of *Sheale* in the county of *Lieccester* Gent. and *Anne* his wife, late wife of *Ralph Elderker* deceased, of the one part, and one *Ralph Celey* by the name of *Ralph Celey* of *London*, Mercer, of the other part, one part whereof sealed with the seals of the said *R. Hetbrington* and *Anne*; to the jurors afores. in evidence likewise shewed, for the consideration in the said indenture specified, had bargained, sold, assigned and set over, to the said *R. Celey*, his executors, administrators and assigns, all the interest, title, estate and term of years then to come and unexpired, in and to the rectory afores. and the glebe lands afores. with the appurt. to have and to hold to the only and proper behoof and use of the said *R. Celey*, his executors and assigns for ever; by virtue of which assignm. the said *R. Celey* into the rectory afores. and the glebe lands afores. with the appurt. entred, and was thereof possessed: And the jurors afores. farther say upon their oath afores. that after, and before the time, in which, &c. that is to say the 16th day of *May* in the year of our Lord 1577, for that the said *Thomas Elderker* while he lived, and at the time of his death had divers his goods, and chattels, rights and credits, in divers dioceses, or jurisdictions, administration of all and singular the goods, chattels, rights and credits, which were of the said *Thomas* at the time of his death by *Edmund*, by divine providence Arch-Bishop of *Canturbury* of all *England* *Primat* and *Metropolitan*, to the aforesaid *Anne Hetbrington* then the wife of the said *Ralph Hetbrington*, and then late the widow of the said *Ralph Elderker* deceased, late natural and lawful brother of the said *Thomas Elderker*, at *London*, that is to say, in the parish of the blessed *Mary of Bow*, in the ward of *Cheap*, *London*, was committed:

And

And the Jurors aforesaid farther say upon their Oath aforesaid, that the said *Ralph Celey*, so being possessed, the said *Ralph Hethrington* and *Anne* his Wife, and the said *Ralph Celey*, afterwards, that is to say the 20th Day of *May* in the 19th Year of the Reign of the said Lady the now Queen at *Chedington* aforesaid, by their certain Indenture with the Seal of the said *Ralph Celey* sealed, and to the Jury aforesaid given and shewed in Evidence, bearing Date the said 20th Day of *May* in the 19th year aforesaid, for the Considerations in the said Indenture specified, gave, granted, bargained and aliened to one *John Eden*, all the Interest, Title, Estate and their Term of Years, then of and in the aforesaid Rectory and glebe Lands, with the Appurtenances to come and unexpired, to have and to hold to the said *John Eden* his Executors and Assigns, during the Residue of the aforesaid Term of the aforesaid 80 Years, as before is said, granted: By Virtue of which Assignment, the said *John Eden* into the Rectory aforesaid, and the glebe Land aforesaid, with the Appurtenances, entred and was thereof possessed; and the Jurors aforesaid further upon their Oath aforesaid say, that the said *John Eden* being so seized of the Rectory aforesaid, and of the glebe Land aforesaid, with the Appurtenances, afterwards, that is to say the 12th Day of *May* in the 29th Year of the Reign of the said now Queen, at *Chedington* aforesaid, in the County aforesaid, by his Indenture, sealed with his Seal, and to the Jurors aforesaid likewise shewed here in Evidence, whose Date is the same 12th Day of *May* in the 29th Year aforesaid, bargained, sold, and assigned to one *Thomas Tasburgh*, Esq; all his Interest and Term of Years then to come and unexpired, of and in the Rectory aforesaid and the glebe Lands aforesaid, with the Appurtenances: by Reason of which, the said *Thomas Tasburgh* into the Rectory aforesaid, with the Appurtenances, entred, and was thereof possessed: And the Jurors aforesaid say upon their Oath aforesaid, that the said *Thomas Tasburgh* being thereof so possessed, afterwards and before the Time, in which, &c. that is to say, the 23 Day of *November* in the 36th Year of the Reign of the said Lady the now Queen at *Chedington* aforesaid in the County aforesaid, by his Indenture, with the Seal of the said *Tasburgh* sealed, and to the Jurors aforesaid, in evidence likewise shewed, granted, bargained, aliened and assigned, all his Right, Title, Interest, and Term of Years then to come of and in the Rectory aforesaid, and the glebe Lands aforesaid, with the Appurtenances, to one *John Agmondesham*, Esq; by Virtue of which the said *John Agmondesham* into the Rectory aforesaid, and the glebe Lands aforesaid, with the Appurtenances, entred, and was thereof possessed: And the Jurors aforesaid further say upon their Oath aforesaid, that the said *John Agmondesham* so being thereof possessed, afterwards and before the Time, in which, &c. that is to say, the 27th Day of *November* in the 36th Year of the reign of the said now Queen at *Chedington* aforesaid, by his Indenture sealed with the Seal of the said *John Agmondesham*, and to the Jurors aforesaid here in Evidence likewise shewed, demised the Rectory aforesaid and the glebe Lands aforesaid with the Appurtenances, to the aforesaid *Tho. Tasburgh*, Esq; to have and to hold to the said

Tho.

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Tho. and his assigns, from the said 27th Day of *Nov.* in the 36th Year afores. until the 26th Day of *March*, which then should be in the Year of our Lord 1595. By Virtue of which Demise, the afores. *Tho. Tasburgh* into the Rectory aforesaid and the glebe Lands, with the Appurt. entred, and was thereof possessed; and the said *Tho. Tasburgh* thereof being so possessed, and the said *John Agmondesham* so, as is said, of the Residue of the said Term of 80 Years then to come being possessed, the said *John Agmondesham* afterwards, that is to say, the 17th Day of *February* in the 36th Year aforesaid, at *Ched.* aforesaid, demised, granted and to Farm let the Rectory aforesaid, and the glebe Lands aforesaid, with the Appurtenances, to one *Michael Weston*, to have and to hold, unto the said *Michael* and his Assigns from and immediately after the End, Expiration and Determination of the said Demise to the said *Thomas Tasburgh* by the aforesaid *John Agmondesham*, as is said, made until the End and Term of 21 Years from thence next following fully to be compleated, if the said *Michael Weston*, and one *Margaret Bromley*, or any of them should so long live: By Virtue of which Demise the said *Michael Weston* afterwards and before the Time, in which, &c. that is to say the 26th of *March* in the Year of our Lord 1595 at *Chedington* aforesaid, into the Rectory aforesaid, and glebe Lands aforesaid, with the Appurtenances, entred, and was thereof possessed; and so being thereof possessed, the said *Michael* afterwards and before the Time, in which, &c. that is to say, the 22d Day of *May* in the 37th Year of the Reign of the now *Q.* at *Ched.* aforesaid, by his Indenture with the Seal of the said *Michael* sealed, and to the Jurors afores. here in evidence shewed, granted and assigned all his Interest, Estate, Term of Years and demand then to come and unexpired, of and in the Rectory afores. and the glebe Lands afores. with the Appurtenances, to the said *Will. Wilkinson* now Defendant: By Virtue of which Grant, the said *Will.* into the Rectory afores. and the glebe Lands afores. with the Appurt. entred, and was thereof possessed; and the said *Will.* so being possessed, the said *David Roberts*, Clerk, afterwards and before the Time, in which, &c. that is to say, the 11 Day of *Jan.* in the 38th Year of the Reign of the said Lady the now *Q.* to the Rectory of *Chedington* aforesaid was lawfully presented, admitted, instituted, and inducted; by Virtue of which the said *David Roberts*, into the Rectory aforesaid, with the Appurtenances entred, and was thereof possessed in his Demesn as of Fee in the Right of his Church of *Chedington* aforesaid, and so being seized, afterwards and before the Time, in which, &c. that is to say, the 26th Day of *March* in the 38th Year of the Reign of the said Lady the now *Queen* aforesaid by Indenture in the Declaration afores. specified, demised the Rectory afores. with the Appurt. in the Declaration likewise mentioned, to the afores. *David Lloyd*, to have and to hold to the afores. *David Lloyd*, from the Day of the Date of the same Indenture, unto the End and Term of three Years, then next following, and fully to be compleat and ended: By Virtue of which Demise, the said *David Lloyd* afterwards, that is to say, the 27th Day of *March* in the 38th Year of the said Lady the now *Q.* into the Rectory aforesaid, with the Appurtenances, entred, and was thereof possessed, until the said *William Wilkinson* afterwards, that is to say, the said 10th Day of *April*

in the 38th year afores. into the rectory afores. with the appurt. upon the possession of the said *David* thereof entred, and him the said *David*, from thence his term afores. not yet ended, did eject, expel, and amove, as the said *D. Lloyd* above against him complaineth: And further, the Jurors afores. say upon their oath afores. that as well the said *D. Roberts* as the said *Mich. Weston*, are yet alive, and in full life, that is to say, at *Chedington* afores. But whether upon the whole matter afores. in form afores. found the re-entry of the said *W. W.* into the rectory afores. with the appurt. in the declarat. afores. above specified, upon the possession of the said *D. Ll.* thereof in manner afores. made, be, or in law ought to be adjudged a good and lawful re-entry in law or not, the jurors afores. are utterly ignorant; whereupon they pray thereof the advice and discret. of the Court here of the said Lady the now *Q.* before the said *L.* the *Q.* her self being: And if upon the whole matter afores. in form afores. found, it shall seem to the said Court of the said *L.* the *Q.* that the afores. re-entry of the afores. *W. Wilkinson* into the said rectory afores. with the appurt. in which, &c. upon the possession of the said *D. Lloyd*, be not a good and lawful re-entry in law, then the Jurors afores. say upon their oath afores. that the afores. *W. Wilk.* the said *D. Lloyd* from his farm afores. of the rectory afores. with the appurt. in which, &c. unjustly did eject. And that the ejectment afores. and the trespass in the declarat. afores. specified, as unto the rectory afores. with the appurt. the said *W. Wilk.* is guilty in manner and form, as the said *D. Ll.* above by declaring hath alledged. And then they assess the damages of the said *D.* by the occasion of the ejectment and trespass in the rectory afores. with the appurt. besides his charges and costs by him in the Suit afores. in this behalf expended, to 3 s. and 4 d. and for his costs and charges to 12 d. And if upon the whole matter afores. it shall seem to the said Court of the said *L.* the *Q.* here, that the said entry of the said *W. Wilk.* into the rectory afores. with the appurt. upon the possession of the said *D. Lloyd* thereof, in the form afores. made, be a good and lawful re-entry in law; then the afores. Jurors say upon their oath afores. that the said *W. Wilk.* is not guilty of the trespass and ejectm. of the farm afores. as to the rectory afores. with the appurt. as the afores. *W. Wilk.* above in pleading hath alledged. And because the Court of the said *L.* the now *Q.* here, of their judgm. of and upon the premisses to be given, are not yet advised, day is given to the parties afores. before the said *L.* the *Q.* at *Westm.* until *Friday* next after the morrow of the *H. Trin.* to hear their judgm. thereof, &c. because the court of the said *L.* the now *Q.* here not yet, &c. At which day, before the said *L.* the *Q.* at *Westm.* come the parties afores. by their Attorn. afores. and because the court of the said *L.* the *Q.* here, of their judgm. of and upon the premisses to be given is not yet advised, further day is given to the parties afores. before the said *L.* the *Q.* at *Westm.* until *Monday* next after 8 days of *St. Mich.* to hear their judgm. thereof, &c. because the Court of the said *L.* the *Q.* here thereof not yet, &c. At which day, before the said *L.* the *Q.* at *Westm.* come the parties afores. by their Attorn. afores. and because the court of the said *L.* the now *Q.* here, of giving their judgm. of and upon the premisses are not yet advised, further day is given to the parties afores. before the said *L.* the *Q.* at *West.* until *Monday* next after 8 days of *St. Hill.* to hear their judgm. thereof, because the court of the said *L.* the now *Queen* here thereof not yet, &c.

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At which Day, before the said L. the Q. at *Westm.* afores. come the Parties afores. by their Attornies afores. And because the Court of the said Lady the now Q. here, of giving their Judgm. of and upon the Premisses are not yet advised, further Day is given to the Parties afores. before the said L. the Q. at *West.* until *Wednesday* next after 15 Days of *East.* to hear their Judgm. thereof because the Court of the said L. the Q. here thereof not as yet, &c. At which Day before the L. the Q. at *Westm.* come the Parties afores. by their Attornies afores. And because the Court of the said L. the now Q. here of giving their Judgment of and upon the Premisses are not yet advised, further Day is given to the Parties afores. before the said L. the Q. at *Westm.* until *Friday* next after the Morrow of the *Holy Trin.* to hear their Judgment thereof, because the Court of the said L. the now Q. here thereof not yet, &c. At which Day, before the said Lady the Q. at *Westm.* come the Parties afores. by their Attornies aforesaid, and because the Court of the said L. the Q. here of giving their Judgment of and upon the Premisses are not yet advised, further Day is given to the Parties afores. before the said L. the Q. at *Westm.* until *Monday* next after 8 Days of *St. Mich.* to hear their Judgm. thereof because the Court of the said L. the Q. here thereof not yet, &c. At which Day, before the said L. the Q. at *West.* come the Parties afores. by their Attornies aforesaid, upon which seen, and by the Court of the said L. the now Q. here diligently look'd into, and fully understood all and singular the Premisses, and mature Deliberation being had thereupon, because it seemeth to the Court of the said Lady the now Q. here, that the aforesaid Re-entry of the said *W. Wilkinson* into the said Rectory with the Appurtenances, in which, &c. upon the Possession of the said *D. Lloyd* is not a good and lawful Re-entry in Law; It is (a) consider'd, (i. e. adjudg'd) that the said *D. Lloyd* shall recover against the said *W. Wilkinson* his Term aforesaid, of and in the Rectory aforesaid, with the Appurtenances, yet to come, and also his Damages assessed by the said Jurors in Form aforesaid, and that the said *W. Wilkinson* be taken, &c. And likewise that the said *D. Lloyd* be in Mercy as to the Residue of the Trespass and Ejectment aforesaid, whereof the said *W. Wilkinson* stands acquitted in Form aforesaid, and the said *W. Wilkinson* thereof go acquitted, &c.

(a) A it. fo. 22. 2.

The Rect. of Chedington's Case.

Term Mich. 40 & 41 Eliz. in B. R.

Between David Lloyd, Plaintiff,

And William Wilkinson, Defendant.

IN an *Ejectione firmæ* between *David Lloyd* Plaintiff, for Moor 478.
 the Rectory of *Chedington* in the County of *Bucks*, on a
 Demise made by *David Roberts* Rector there, against *Wil-*
liam Wilkinson Defendant, upon not guilty pleaded, the Ju-
 ry gave a special Verdict to this Effect: *Nicholas Fitz-wil-*
liams was Parson of the said Rectory, and 2 *Martii* 2 *Ed.* 6.
 by his Indenture between him on the one Part, and *Eliza-*
beth Elderker Widow, *Ralph Elderker*, *William Elderker*,
 and *Thomas Elderker* on the other Part, did demise to the
 said *Elizabeth* the said Rectory, to have and to hold to her
 from the said second Day of *March usque ad finem* & du-
 rante termino octoginta annorum extunc proxim' sequent' si
 præfat. *Eliz.* tam diu viveret. And if the said *Elizabeth*
 obiret infra prædict' terminum 80 annorum, or should alien
 the Premises, that then her Estate should cease. *Ac adtunc*
prædict' Nicolaus per indenturam prædict' dedit, concessit &
dimisit omnia & singula præmissa pro tot annis quot tunc
inexpirat' remanerent post mortem prædict' Eliz. vel aliena-
tionem suam præfat' Radulpho, pro & durante resid' præd'
termini prædict' 80 annorum, si ipse tam diu viveret sine
alienatione dicti termini & si ipse contingeret obire vel alie-
nare præmissa infra terminum prædict', quod tunc ejus sta-
tus cessaret. Ac adtunc prædict' Nicolaus per indentur' illam
concessit omnia & singula præmissa præfato Willielmo pro &
durant' tot annis prædict' termini 80 annorum quot adtunc
remanerent, si ipse tam diu viveret & non alienaret dictum
terminum, & si contingeret ipsum Willielmum obire vel alie-
nare præmissa infra dictum terminum, quod tunc ejus status
cessaret. Et tunc præd' Nicolaus per indenturam illam
concessit præmissa præd' duram' tot annis de præd. 80 annis
quot adtunc continuarent & remaner' inexpirat' præd' Thom'
 X execut'

execut' & assignat' suis. Which Indent. of Demise and all therein contained was confirmed by the Patron and Ordinary, and afterwards the said *Nich. Fitzwill.* died, and afterwards the said *Tbo. Elderker* 10 *Julii* 16 *El.* died, and afterwards the said *W. Elderker an.* 17 *Reg. El.* died, and afterwards in the same 17th Year the said *El. Elderker* died; after whose Death the said *Ralph. Elderker* enter'd into the said Rectory, and died 18 *El.* and afterwards *R. Hetherington* and *Anne* his Wife Administrat. of *T. Eld.* assign'd the said Rectory to *R. Cely*, who assign'd it to *Jo. Eden*, who assign'd it to *T. Tasburgh* Esq; who assign'd it to *Jo. Agmondisham* Esq; who conveyed the Term to the Defendant by mean Assignments. And afterwards the said *Roberts* was admitted, instituted, and inducted to the said Rectory, and made the Lease to the Plaintiff, who entered upon the Defendant, and was possessed, upon whom the Defendant re-enter'd, and whether his Entry was lawful or not was the Question.

(a) Moor 479. And this Case was argued by the Attorn. Gen. (a) *Conventry*, and *Hughes* on the Plaintiff's Part, and by *Law. Tanfield* and *Fr. Moore* on the Defendant's Part, and the Plaintiff's Counsel argued that the Plaintiff should have Judgment for divers Causes:

(b) Moor 479. 2 Rol. Rep. 43. 415. 1. That the Demise to *Ralph* and *Will.* was (b) void, because the Term which *Eliz.* had was for 80 Years if she should so long live, so her Term was not for 80 Years absolutely, but for 80 Years *sub modo, sc.* upon this Limitation. if she should so

(c) 2 Rol. Rep. 356. long live, then her Term by her (c) Death is determin'd, and by consequence the Demise to *Ralph pro tot ann. quot remaner' post mort' dict' Eliz. pro & durante residuo dicti termini præd' 80 ann.* is void, for there cannot be a Residue of the said Term of 80 Years after the Death of *El.* for the Term by express Limitation determined by the Death of *El.* So it was adjudged in the Com. Pleas *M. 32 & 33 Eliz. Rot.* 1832, between (d) *Green* Pl. and *Edwards* Def. wherefore the Plaintiff's Counsel concluded, that the said Demises to *Ralph.* and *Will.* were void, *quod fuit concessum per totam curiam.* And thereupon the Defendant's Counsel did endeavour to maintain the Demise made to *Tbo.* (for if any of the Demises be in Force, the Action shall not be maintainable) and they conceived there was an apparent Difference betwixt the Demises to *Ralph* and *Will.* and the said Demise to *Tbo.* for the Demise to *Tbo.* is *durant' tot annis de præd' 80 annis*, and not *durant' tot annis de præd' termin. 80 annorum*, for *de præd' 80 annis* relate to the said Years without any other Limitation, but *prædict' termin. 80 ann.* refer to the said Term of Years subject to the said Limitation, *sc.* if the said *El.* shall so long live, and so there is an apparent Difference *inter terminum annorum & tempus annorum*; and this Diversity is held for good Law in 2 *Eliz. Dyer* 178. *scil. inter (e) terminum annorum & spatium sive tempus annorum.* So in *Wortlesley's Case Plowd. Comm.* 198. if one makes a Lease for

(d) Moor 297. Cr. Eliz. 216. 1 And. 258. 1 con. 218. 2 Bulltr. 193.

(e) Owen 136. Lit. Rep. 336. Bridg. 102. Moor 247. Co. Lit. 45. b. 1 Rol. 849.

21 Years, and afterwards makes another Lease to begin at the End and Expiration *præd' term' annor' dimiss.* and the first Lease is afterwards surrendered, the second Lease shall begin presently; but if it was at the End and Expirat. *præd' 21 annor.* there altho' the first Term be surrendered, the second Lease shall not begin, for the Term which continues the Interest for Years is determined by Surrender, but the Years are not determined but by Fluxion of Time, so that *termin. annorum* includes also the Estate and Interest in the Land, and by the Grant of the Term, the Estate and Interest for Years pass. And (a) 35 H. 8. Tit. *Exposition de parols Br.* 44. agrees to this Difference, for there it is agreed, if *A.* makes a Lease to *B.* for 10 Years, and covenants, that if *B.* shall pay 100 l. to *A.* *infra dictos decem annos*, that *B.* shall have Fee, if *B.* surrenders his Term to *A.* and afterwards pays the 100 l. within the 10 Years, he shall have Fee; otherwise where it is covenanted, that if he shall pay 100 l. *infra term. præd. decem annorum.* And the Case of the Lord *Paget*, which was adjudged in the Exchequer in *M.* 33 & 34 *Eliz.* which began *Pasc.* 33. before Sir *R. Manwood* Chief Baron, and other Barons of the Exchequer upon Conference had with all the Judges of *England*, was such in Effect: *Thomas Lord (b) Paget* being seised of the Manors of *B. L. &c.* in the County of *Staff.* by Deed indented 10 *Oct.* 20 *El.* covenanteth with *Tho. Fearmer Esq;* and others, that in Consideration of Discharge of his Funeral, Payment of his Debts and Legacies out of the Profits of his Lands, and for the Advancem. of his Son, Brother, and others of his Blood, that he and his Heirs would stand seised of the said Manors to the Use of the said *Tho. Fearmer &c.* for the Life of the said Lord *Paget*, and after his Death to the Use of *Ch. P.* and others, for the Term of 24 Years; and after the Expiration or End of the said Term of 24 Years, then to the Use of *Will. Paget* his Son in Tail, with divers Remainders over. And afterw. the *Ld. Paget* was attainted of Treason; and in that Case it was agreed and so adjudged that the said Term to *Ch. P.* was void, because it wanted good Considerat. forasmuch as *Ch. P.* and the others were (c) Strangers to the Considerat. *sc.* to the Paym. of his Debts or Legacies; but if he had made them Execut. so that they had been chargeable to the Paym. of them, and so privy to the Considerat. then the Considerat. had been good. But the Doubt of the Case was, altho' the said Term was void, yet inasmuch as the Use to *Will. Paget* was to be raised by Covenant out of the Estate of the Covenantor, and not by Transmutation of the Estate, if the Use should be raised and vested in *William Paget* until the twenty-four Years were expired by Effluxion of Time; for in the same Case it was said by Sir *Roger Manwood* Chief Baron, that if a Man makes a Feoffment in Fee to the Use of *A.* for Life,

(a) 8 Co 145 b.
Bridgm. 102.
8 Co 75. b.

(b) Lit. Rep.
123, 220. 1 Le-
on. 194, 195.
God. 442.
Moor 193, 194,
310, 495. 1 And.
259, 263. 2 Rol.
784. Co. Lit.
45. b. Jenk.
cent. 247.
Raym. 43, 229,
249. 1 Sid. 83.
Hob. 151 O.
Benl. 65, 69.
1 Vent. 374, 375.
3 Keb. 130, 240,
241, 327, 318,
339, 340, 341.
Lit. Rep. 123.
1 Mod. Rep. 40,
237, 263. 2
Bulstr. 132.
Cart. 145, 202.
(c) Raym. 48.
Jenk. cent. 247.
Moor 494. H.
151. O. Ben.
65. Cro. Car.
530. Cro. Jac.
181. Plowd.
307. b. 2 Rol.
260, 384.
1 Sid. 262.
Cart. 140, 145.

(a) Ant. 101. a.
 Le. n. 197.
 Flow. 307. b. c.
 & 114.

and (a) after to the Use of *B.* for Life, and after to the Use of *C.* in Fee, in that Case if *A.* refuses, *B.* shall take his Estate presently, for the Feoffor by his Feoffment hath given all his Estate out of him, and all the Uses are created out of it as out of one and the same Root; and therefore as long as any of the Uses can take Effect, the Feoffor shall not have any meddling with the Land; but in the Case of a Covenant which raiseth an Use, there the Consideration which is the Cause which raises every several Use is several; and all the Uses grow and rise out of the Estate of the Covenantor, and therefore there, if one refuses, he who is next in Remainder shall not take the Land presently, but the Covenantor shall keep it; as if *A.* covenants that in Consideration that *B.* is his Son, he shall have for Life, and after his Death, in Consideration that *C.* hath given him 100 *l.* that he shall have in Fee, here the Consideration and Grounds of raising these Uses are several; and therefore if *B.* refuses, *A.* shall retain it, and *C.* shall not take immediately. And it was adjudged in the principal Case that the Lord *Paget* himself had an Estate for his Life, for inasmuch as the Remainders were limited by the Covenant after his Death, &c. the Estate could not pass out of him during his Life; and therefore in Case of Covenant he himself had an Estate for his Life.

1 Leon. 200.

And it was also agreed in the same Case, that altho' the said Term was void *ab initio*, yet if the Covenant had been (and after the End and Expiration of the said 24 Years, that then he would stand seised to the Use of his Son (*ut supra*) that his Son should not have it till the Years be incurred, for altho' the Term was void, yet the Estate of the Son by express Limitation should not commence until the 24 Years expired, and that stood well with the Words and the Intent also of the Words, but forasmuch as the Words of the Covenant were (after the Expiration or End of the said Term of 24 Years,) and the Term imports in it self the Estate and Interest in the Land (as hath been said) for that Reason the Term being void, the Estate of the Son should begin immediately. And upon that *W. Paget* had by the Rule of the Court an *Amoveas manum*; wherefore the Counsel of the Defend. concluded, that there was a Difference between the Demises to *Ralph* and *Will.* and the said Demise to *T'bo. quod fuit concessum per totam curiam*, and the Court directed the Plaintiff's Counsel to argue only against the Demise made to *T'bo.* against which Lease the Plaintiff's Counsel did argue, that it was void for several Reasons.

Moor 479.

First, because the Lessor had no Power to contract for the Land during the 80 Years, for altho' the Term should determine by the Death of *Eliz.* yet she had an Estate for 80 Years, and the Lessor had but a Possibility to have the Land again before the 80 Years, that is to say, if *Elizabeth* died, which Possibility (was said) could not be demised. But it was agreed

agreed by the Pl.'s Counsel, that if a Man makes a (a) Lease for Life, and the Lessor afterw. makes a Lease for Years, and afterw. the Lessee for Life dies, the Lessee shall have the Land for the residue of the Years: And so if a Man makes a Lease for 80 Years, if the Lessee shall so long live, and afterwards Leases to another by Deed indented for 80 Years, and afterwards the first Lessee dies, the second Lessee shall have the Land for the Residue of the Term, as appears in *Plow. Com. 15 Eliz. fo. 434*. But in this Case *Tbo.* cannot take any Advantage of any † Conclusion, for a Conclus. is to estop one to speak the Truth, but here the whole Truth appears in one and the same Indenture, as in *7 Eliz. Dy. (b) 244. a. King E. 6.* granted to the Bp. of *Coventry* and his Successors the Advowson of a Church, and that after the Death of the present Incumb. he should keep it *in proprios usus*. The Bishop by Indenture made a Lease to commence after the Death of the Incumbent, which was confirmed, and the Incumbent died; and it was adjudged that the Lease was void, and that it should not take Effect by Estoppel, because it appears in the Indent. it self, that the Lessor had nothing at the Time of the Lease made. See *37 Ass. pl. 17. & 19 E. 3. Tit. Abbot 13*. But as to this Point the Court shewed no Opinion, for they resolved upon the other Points following.

2dly, It was moved that the Lease to *Tbo.* was void for the Incertainty, for it was incertain at the Time of the Making of the Lease how many Years would be behind at the Time of the death of *Eliz.* as it is agreed in (*d*) *7 E. 6. tit. Grant, Br. 154. & Plow. Com. 520. b.* A Man possessed of a Lease for 40 Years, grants to *B.* as many of the Years as shall be behind *tempore mortis sue*, it is void for the Incertainty: And *3 & 4 P. & M. (c) Gravenor's Case, Dy. 150.* a Man made a Lease for Life by Deed indented, with a Proviso that if the Lessee should die within 60 Years, that his Execut. should have for so many of the 60 Years as should be behind at the Time of his Death; this is but a Covenant, and not a Lease, for the Incertainty. *Vid. 22 Ass. pl. 37.* And Just. *Garwy* said, there was a Case now lately adjudged in this Court in (*f*) *Locroft's Case, M. 34 & 35 Eliz.* and the Case was; one possessed of certain Lands for 60 Years in consideration of a Marriage to be had betw. his Son and the Daughter of another Man, demised the Land to his Son for 70 Years to commence after his Death, and afterwards the Lessor died; and it was adjudg'd that the Lease was good; and the Reason of the Difference betw. that Case and the Case in *7 Ed. 6.* was because that in *Locroft's Case* he demised the Land, *Habend'* after the Death of the Lessor for 70 Years, in which there was sufficient Certainty, and no apparent Incert. in the Deed, but in (*g*) *7 E. 6.* he granted so much of his Term as should be behind at the Time of his Death, which was altogether incert. in the Grant it self; which Difference put by Justice *Garwy* was agreed by *Popham Ch. Justice* and the whole Court.

3dly, It was objected against the Lease made to *Thomas*,

(a) Cro. El. 160.
Plow. 422. 2.
1 Leon. 174.
Plow. 433. a.

† Co. Lit. 352.
a. b.

(b) Lit. Rep. 283.
Dy. 244.
pl. 60.
10 Co. 48. a.
11 Co. 11. a.
Co. Lit. 352. b.

(c) Co. Lit. 45. b.
Cro. El. 217.
Vaugh. 8.

(d) Moor 479,
480.

1 Bulstr. 108,
191.

1 Roll. 848.
Plowd. 520. b.

Br. Lease 66.
Hob. 171.

1 Anderf. 122.
(e) Moor 247,
480.

1 Roll. 848,
518.

Dyer 150. pl. 83.
1 Anderf. 19.

Hob. 35.
Yelv. 9.

3 Leon. 22, 154.
4 Leon. 193.

Noy 14.
3 Bulstr. 163.

10 Co. El. 841.
1 Roll. Rep.

359.
(f) 11 Bulstr. 108.
1 Roll. 344, 848.

Cro. El. 287.
Moor 395.

Poph. 4, 97.
Carr. 155.

Skinner 535.
(g) 7. E. 6.
Br. Grant 154.
Br. Lease 166.

(a) 5 Co. 6. a. that for as much as *Tho.* was dead in the Life of *Eliz.* so that it was at first uncertain and was not (a) reduced to any Certainty during the Life of *Tho.* the Lease was therefore utterly void. For when an Interest or an Estate, which is to be reduced to a Certainty upon a contingent Precedent, and the Lessor or Grantor, or Lessee or Grantee dies before the Contingency happens, the Lease or Grant is void, and shall never take Effect, as in *Plow. Com. Say and Fuller's Case, fo. 273. b.* If a Man makes a Lease to another for as many

(b) Moor 479. Years as his Executors shall (b) name, it is void, for it ought to be reduced to a Certainty in the Life of the Parties. And note there is a good Difference between a Covenant, or other Agreement which is perfect and certain, altho' it shall take Effect in Possession upon a future Matter precedent, and a Covenant and Agreement uncertain, which is to be reduced to a Certainty by future Matter *ex post facto*, for in the one Case the Interest or Estate of the Land is bound immediately, and in the other Case not, as in 3 *Ma. Br. (c) Feoffment at uses* 59. It is covenanted by Indenture between *A.* and *B.* that the Son of *A.* should marry the Daughter of *B.* for which *B.* had given *A.* 100*l.* and therefore *A.* covenanted, that if the Marriage did not take Effect, that *A.* and his Heirs would stand seised of certain Lands to the Use of *B.* and his Heirs until *A.* should repay the 100*l.* to *B.* his Executors or Administrators; and afterwards *B.* had Issue within Age, and after the Marriage did not take Effect, the Estate is executed in the Heir of *B.* and shall have Relation to the Making of the Indenture. (Note the Reason) for these Indentures the Book saith bound the Land with the Use, and they were made in the Life of *B.* But if a Man grants the Reversion of his Lease for Life to *B.* and his Heirs, and before (d) Attornment the Grantee dies, no Attornment can vest it in the Heir of *B.* for by the Grant the Estate of the Reversion was not bound, but is to receive its Perfection by the Attornment, and the Grantor may notwithstanding such Grant transfer the Reversion to whom he will. So in (e) *Bret and Rigden's Case, Plow. Com. fo. 345.* if a Man devises Land to one and his Heirs, and afterwards the Devisee dies before the Devisor, the Devise is void; for the Will was alterable at the Pleasure of the Devisor, and the Heir cannot be a Purchaser. But in (f) *Shelley's Case* it was adjudged, that where *Ed. Shelley* suffered a Recovery of the Manor of *Worminghurst* to Uses declared by certain Indentures between him and others; that is to say, to the Use of himself and the Heirs Males of his Body (for so it was in Effect) and afterward *Edward Shelley* died before any Execution of the Recovery, the Wife of the eldest Son (who was dead before him) being great with Child with a Son, and afterwards and before the Birth of the Son, of the eldest Son, Execution of the Recovery was had; it was adjudged that in the mean Time the Use vested in *Richard* the younger Son of *Edward* as Heir Male of the Body of *Edward,*

(c) Mo. 481, 482.

(d) Co. Lit. 309. a. b. 2 E. 4. 39. a. Lit. sect. 551. 568. Antea 104 b. Br. Attornm. 55. Br. Disseisin & Disseisor 61. (e) 1 Roll. Rep. 253. 2 Rol. Rep. 484. 1 Jones 59. Moo. 353. Swinb. 29, 109. Cro. El. 423. 2 Syd. 53. Cart. 4. Palm 556. Antea 105. a. (f) Mo 140, 141, 482. 1 Jones 59. Jenk. Cent. 249. Antea 94. b. 106. b. 2 Leon. 27.

and that he had it in the Nature of a Descent, and that the Son of the eldest Son born after should enter upon him, for the Agreement was perfect in the Life of the Parties, and the Execut. of the Recovery was only after the Death of *Edw.*

So 11 H. 7. 12. a. if Land be rendered by Fine to one and his Heirs, there the Land is bound thereby, and altho' he to whom the Render is made dies before Execution, yet his Heir shall have it, for the Fine was levied in the Life of the Parties, and the Estate of the Land was so bound by it, that he who render'd it could not alter or defeat it. But if a Man makes Livery within the View, there till (a) Entry by the Feoffee the Estate of the Land is not bound by it no more than by the Grant of a Reversion before Attornment; and therefore if the Feoffor or Feoffee dies in such Case before Entry by the Feoffee, the Feoffment shall not take Effect. So in the Case at Bar, the Demise made to *Thomas* depends upon a Contingency precedent, and upon a meer Incertainty, so that until it happens, the Interest or Term which is intended to be demised, is not certain, nor is the Land bound with it. So that in as much as *Thomas* died before it was reduced to any Certainty, the Lease could never take Effect, and cannot vest in his Executors or Administrators for the Reasons and Causes aforesaid, *quod fuit concess. per totam Curiam.*

4thly, It was objected against the said Demise made to *Thomas*, that if *Thomas* had been living it could never have vested in him, for *Thomas* died before *Ralph* or *William*, and *William* and *Ralph* survived *Eliz.* And by the express Condition precedent *Ralph* could not take, unless *Eliz.* died within the Term, and *William* could not take unless *Ralph* died *infra terminum præd.*, and that is as much as to say, if *Ralph* died before *Eliz.* for the Term is for 80 Years, if *Eliz.* should so long live, and *Thomas* could not take unless *William* died in the Life of *Elizabeth*, *scil. infra terminum præd.*, and both *William* and *Ralph* survived *Elizabeth*, so that both the Contingents precedent fail, *scil.* the Death of *Ralph* and the Death of *William* in the Life of *Elizabeth*, so that the Demise to *Thomas* could never commence; and altho' the Demise to *Ralph* and the Demise to *William* are void, yet the Limitation precedent (*scil.* if *Ralph* and *William* die in the Life of *Elizabeth*) to the Lease made to *Thomas* is not void, for his Interest may depend upon both the Contingents. And so was the Meaning of the Parties, and all this was affirmed *per totam Curiam.* And *Popham* Chief Justice put this Case, If *A.* demises his Lands to *B.* for 30 Years after the Death of *C.* if *C.* dies within 10 Years next following; there if *C.* survives the 10 Years, the Term shall never take Effect: So here the Lease to *Tho.* cannot commence, unless *Will.* dies before *Eliz.* but he survived *Eliz.* and therefore the Lease to *Thomas* shall never commence.

Co. Lit. 266 b.
1 Mod. 91.
(a) Co. Lit.
43. b.
2 Roll. 7.

And *Popham* Ch. Justice also said, the Lease to *Tho.* was void for another Reason; for he said it could not commence upon a (a) Contingent which depended upon another Contingent: As here, the Lease to *Thomas* depends upon the Contingent annexed to the Demise made to *William*, and the Lease to *William* depends upon the Contingent annexed to the Demise to *Ralph*. And to this Purpose he cited the Book in (b) 12 *Aff. pl.* 5. *A.* Leases to *B.* upon Condition that if *A.* pays *B.* 10*l.* within a certain Day, that he shall re-enter, and if he do not pay before the said Day, and *B.* pays him 10*l.* at such a Day, which is after, that he shall have Fee. *A.* doth not pay, neither doth *B.* pay. *A.* enters after both the Terms, *B.* ousts him, *A.* brought an Assise and got nothing by his Writ. And afterwards Judgment in this Case was given and entered for the Plaintiff.

(a) Cro. Jac.
461.
Cro. Car. 377.
1 Roll. Rep.
321.
1 Syd. 451.
10 Co. 50. b.
(b) Br. Con-
dic' 102.
Perk. sect. 745.

DIGGES'S Case.

England, ss. Memorandum, That *Tho. Egerton*, Knt. Lord Keeper of the Great Seal of England, on *Tuesday* next after 8 Days of *St. Hillary* in this same Term, before the Lady the Queen at *Westminster*, by his own proper Hands delivered here into Court * a * i. e. in B. R., certain Record had before the Lady the Queen in her Chancery, in these Words :

Pleas before the Lady the Queen, in her Chancery at Westminster in the County of Middlesex, of the Term of Easter in the 40th Year of Reign of our said Lady Elizabeth, by the Grace of God of England, France and Ireland Queen, Defender of the Faith, &c. Hill. 41 Eliz. Rot. 358.

THE Lady the now Queen sent her Writ closed to the Sheriff of *Suffex*, directed in these Words : *Elizabeth* by the Grace of God of *England, France and Ireland Queen, Defender of the Faith, &c.* To the Sheriff of *Suffex*, Greeting, &c. Whereas by a certain Inquisition indented, taken at *Dartford* in our County of *Kent* the 8th Day of *November* in the 35th Year of our Reign, before *Edward Fenner*, one of our Justices to Pleas, before us to be holden assigned, *William Sydley, Justinian Champneys, Edmund Cook* Esquires, and *William Knaplock* Gent. Deputy of our Escheator of our County aforesaid, by Virtue of our Commission to them and others in that Behalf directed, to inquire after the Death of *Thomas Digges*, Esq; by the Oaths of good and lawful Men of the County aforesaid (amongst other Things) it is found, that the aforesaid *Tho. Digges* in the same Commission named, was seised in his Demesne as of Fee (amongst other Things) of and in the Manor of *Owtelmeiston*, with the Appurtenances, and in all Lands and Tenements, with the Appurtenances, to the same belonging and appertaining, lying and being in the said County of *Kent*, and of 110 Acres of Land, Meadow, Pasture and Wood, with the Appurtenances, called *Estendown* and *Beacondown*, lying and being in *Barbam* and *Kingston* in the said County of *Kent*, and of and in the Manor of *Toke* and *Tokes Court* and *Fokebam*, and in all Messuages, Lands, Tenements and Hereditaments to the said Manors belonging and appertaining, lying and being in the said County

Monfrans de droiz.
Inquisitio post mortem Thomæ Digges.

Pleadings in Digges's Case. PART I.

County of *Kent*, and of 40 Acres of Land, Wood and Pasture called *Tbroughly Close* and *Tylers* in *Barham* afores. which late were purchased of *Will. Boyes*, Gent. by way of Exchange, and of 2 Acres of Land and Wood lying and being in *Wemingsfold* in the afores. County; and farther by the Inquisition afores. it is found, that *Thomas* Archbish. of *Canterbury* being seised in his Demesne as of Fee, as in the Right of his Archbishoprick of *Canterbury* afores. of and in the Manor of *Busbopsborn*, with the Appurtenan. in the said County of *Kent*, by an Act of Parliam. made and provided at *Westm.* in the County of *Middles.* in the 34th Year of the Reign of *Henry* the 8th, late K. of *Engl.* (amongst other things) it is enacted and established, that one *Tho. Culpeper* Esq; should have, hold and enjoy by Authority of the said Act, to him and his Heirs of the Body of him the said *Tho.* of the Body of one *Eliz.* sometime his Wife deceased lawfully begotten; and for Default of such Issue, the Remainder thereof to the Heirs of the Body of the aforesaid *Eliz.* and for Default of such Issue, the Remainder thereof to the right Heirs of one *Will. Haute* for ever, the aforesaid Manor of *Busbopsborn*, with the Appurtenances, in the said County of *Kent*, and then Parcel of the Possessions of the said Archbishop, to hold the Manor afores. with the Appurtenan. (amongst other Things) of the afores. Lord the King, his Heirs and Successors *in Capite* by the 20th Part of a Knights-fee, and the Rent of 38s. by the Year. By Virtue of which Act of Parliam. the said *Tho. Culpeper* entred into the afores. Manor, with the Appurtenan. and was thereof seised, as the Law required; and so being and thereof seised, the same *Thomas Culpeper*, by sufficient Conveyance and Assurance in Law, conveyed and assured the afores. Manor of *Busbopsborn*, with the Appurtenan. to one *Anthony Awcher*, Knt. to have and to hold to him and his Heirs; By Virtue of which the said *Anth. Awcher*, Knt. in the afores. Manor of *Busbopsborn*, with the Appurt. entred, and was thereof seised in his Demesne as of Fee, the Estate of which *Anth. Awcher* of and in two Parcels of Land and Wood, with the Appurt. called the *Haute* and *Reed*, containing by Estimation 60 Acres of Land, late were purchased by *Chr. Digges*, Father of the aforesaid *Thomas Digges*, in the said Commission named, lying and being in *Barham* aforesaid, and in *Bourn*, of which he died seised, the said *Tho. Digges* was of the aforesaid Parcels of Land and Wood, with the Appurtenances, seised in his Demesne as of Fee, which Parcel of Land and Wood, with the Appurtenances, called the *Haute* and *Reed* at the Time of the making and ordaining of the said Act of Parliam. and Time whereof the Memory of Men was not to the contrary, were Parcel of the said Manor of *Busbopsborn*; and the said *Tho. Digges* of the Manors, Lands and Tenem. and other the Premises afores. with the Appurt. as before is said, being seised, died thereof so seised;

And

And further by the same Inquisition it is found, that the Manor of *Yoke*, otherwise *Yokes Court* aforesaid, with the Appurt. in *Lenham* and *Frensted* in the said County of *Kent*, at the Time of the taking of the Inquisition aforesaid, and at the Time of the Death of the aforesaid *Tho. Digges*, were holden of *Warham Saintleger*, Knt. as of his Castle of *Leeds* by the half of a Knight's Fee, and were worth by the Year in all the Profits, above Reprises 114 s. And that the Manor of *Fokeham*, and other the Premisses to the said Manor belonging in *Framstead* and *Lenham*, at the said Time of the taking of the said Inquisition, and at the Time of the Death of the said *Tho. Digges*, of whom or by what Services held the Jurors of the same Inquisition were altogether ignorant, and they were worth by the Year in all the Profits, above Reprises, 7 l. And that the aforesaid Manor of *Ouelmeston* and other the aforesaid Premisses whatsoever, with the Appurtenances, to the said Manor belonging and appertaining, at the Time of the taking of the said Inquisition aforesaid, and at the Time of the Death of the said *Thomas Digges*, were worth by the Year in all the Profits, above Reprises, 20 l. and that the said Land called *Eastendown* and *Beacondown* in *Barham* and *Kingstone* aforesaid, were holden of the Arch-Bishop of *Canterbury*, in the Right of his Bishoprick aforesaid; but by what Services the aforesaid Jurors are altogether ignorant, and they were worth by the Year, above Reprises, 3 l. 6 s. 8 d. And that the aforesaid Lands called the *Haute* and *Reed*, late Parcel of the aforesaid Manor of *Bishopshorn*, and purchased by the aforesaid *Christopher Digges* of the aforesaid *William Arwber* Esq; were holden of the said Lady the Queen in Capite by Knights Service, that is to say, by particular, according to the Rate and Quantity of the said Manor of *Bishopshorn*; and that the said Lands and Pasture called *Thoroughly Close* and *Tylers* in *Barham* aforesaid, late purchased by the aforesaid *Christopher Digges*, by Way of Exchange of *William Boyes*, of whom, or by what Services they were holden, the Jurors aforesaid are altogether ignorant; and that the aforesaid Land and Woods called the *Haute* and *Reed*, and the aforesaid Land, Wood and Pasture purchased of the aforesaid *William Boyes*, were worth by the Year, above Reprises, 4 l. And that the aforesaid 2 Acres of Land in *Wemings-Wold* aforesaid, were holden of who or whom, or by what Services, the aforesaid Jurors were altogether ignorant, and they were worth by the Year, above Reprises, 2 s. and that the said *Tho. Digges* had not nor had more or other Lands and Tenements in the said County of *Kent*, in Demesn or Service of us, nor of any other, the aforesaid Day in which he died, and that the aforesaid *Tho. Digges* died the 10th Day of April

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April in the 32d Year of our Reign, leaving the said *Margaret* his Wife with Child with *Tho. Posthumus Digges*. And that the said *Tho. Posthumus Digges*, born the second Day of *July* in the 32d Year aforesaid, was Son and Heir of the said *Tho. Digges*, and that the said *Tho. Posth. Digges* the Son, at the Time of taking the Inquisition aforesaid, was of the Age of 2 Years, 9 Weeks and 6 Days, as by the Inquisition aforesaid in our Chancery returned, and in the Files there remaining of Record, it more fully appeareth: And whereas afterwards, that is to say, the 23d Day of *Jan.* in the Term of *St. Hill.* in the 39th Year of our Reign, before us in our Chancery aforesaid, at *Westm.* aforesaid then being, came *Christopher Digges* and *Edward Digges*, Sons of the aforesaid *Christ. Digges* in the Inquisition aforesaid named, and prayed the Hearing of the Inquisition aforesaid, which was read unto them, which being read and heard, and by them fully understood, the said *Christopher* and *Edward* complained them by Colour of the said Inquisition aforesaid to be grieved and molested, and that they from the Possession of the said Lands and Tenements, with the Appurtenances to the said Lands called *Eastendown*, and of two Parts of so much of the Demesn, and of the said Manor of *Owteilmeston* with the Appurtenances to the said Lands called *Eastendown*, adjoining in 4 Parts to be divided, as with the aforesaid Lands called *Eastendown*, extend to the third Part of all the Manors, Lands and Tenements, whereof the aforesaid *Christ.* the Father died seized for the Part of the aforesaid *Christ.* and *Edward* of the Premises aforesaid, to be expelled and amoved; and that they from the Possession thereof, and of every Parcel thereof, by Colour of the said Inquisition to be held out, and that unjustly; because, they take it by Protestation, that the Inquisition aforesaid, and the Matter in the same contained, was insufficient in Law, to which they needed not nor by the Law of the Land were bound any ways to answer; And shewing of their Right in that behalf, the said *Christopher* and *Edward*, said, that the aforesaid *Christ. Digges*, Father of them the said *Thomas, Christopher* and *Edward*, was in his Life time seized in his Demesn as of Fee, of and in the aforesaid Manor of *Owteilmeston* in *Barham*, in the County aforesaid, and of all and singular the Rights, Members, Parcels, and Appurtenances whatsoever, containing 900 Acres of Land, Meadow, Pasture and Wood; and also was seized of and in the aforesaid Manor of *Yoke* and *Folkham*, lying and being in the Parish of *Lenbam, Frensted* and *Horisham*, with its Rights, Members and Appurt. whatsoever, containing 800 Acres of Land, Meadow, Pasture and Wood; And of and in the Manor of *Marton*, lying and being in the Parishes of *Sturrey, Hackington*, and *St. Stephen*, in the said County, containing by Estimation 40 Acres of Land, Pasture, Meadow, and Wood; and of diverse Gardens in the City of *Cant.* containing half an Acre of Land; and of and in the Manor of *Ne-*

Moustracio Juris
Christophori
& Edwardi
Digges.

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the herds, with the Appurtenances, in the County aforesaid, containing 200 Acres of Land; and also of a certain Piece of Land called *Eastendown*, lying and being in *Barbam* aforesaid, containing by Estimation 110 Acres, and of another Piece or Parcel of Land called the *Haute and Reed*, lying and being in the Parish of *Barbam* aforesaid, containing 61 Acres and a half, and in another Piece of Land lying in *Barbam* aforesaid, late as before is said, purchased by Exchange of the aforesaid *William Boyes*, containing 40 Acres of Land, which said Manors, Lands and Tenements, and other the Premises, amount in the whole to 2500 Acres of Lands, and the said *Christopher Digges*, the Father, of the Tenements aforesaid, with the Appurt. in Form aforesaid being seized, the 1st Day of *Febr.* in the 19th Year of our Reign, made his Testament and last Will in Writing, and by the said Testament and last Will declared and limited, as to the Disposition of the third Part of all and singular the Premises, whereof the aforesaid *Christopher Digges*, the Father, was before seized, due to us, or to any other, for Wardship, Primer Seisin, Livery, or any other Manner, that his last Will and Meaning was to bequeath, that there might descend all those his Lands and Tenements, called and known by the Name of *Eastendown*, containing 110 Acres of Lands, and all those Lands and Tenements, and Hereditaments, which the aforesaid *Christopher Digges*, the Father, had by the Descent after the Death of *Thomas Digges* of *Newington*, near *Sittingborne*, Esq; then deceased; and if the Lands and Tenements, as above is said, left to descend, should not be sufficient to satisfy us for the 3d Part that was due to us, then his Will and Meaning was, that so much of the other of his Lands next adjoining to *Eastendown* aforesaid should descend, and should be to his said Son *Thomas Digges*, as should be sufficient to satisfy and fulfil to us the said 3d Part; and by the said his Testament, expressly gave and bequeathed the other two Parts of the aforesaid Manors, Lands, and Tenements, and other the Premises before mentioned, with the Appurtenances whatsoever, to the Use of the Payment of his Debts, and Maintenance of *Martha Digges* then his Wife; and that afterwards the said *Christopher Digges* of all and singular the Premises aforesaid, as is before said, being seized, the 14th Day of the Month of *March* in the Year 1566 died, leaving after him Issue five Sons, then living and in full Life being, that is to say, the said *Thomas Digges* in the said Commission named, and the aforesaid *Christopher*, *Edward*, *Reginald*, and *John Digges*, which said *John* died in the Life of him the said *Tho.* without issue: And that the said *Christ.* and *Edw.* for further

*Testamentum
Chr. Digges
patris.*

shewing

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shewing of their Right in the Premises said, and are ready to aver, that the aforesaid *Christopher*, their Father, ever in his Time had, held or enjoyed any of the Lands and Tenements by Descent of Inheritance of the said *Thomas Digges* of *Newington* aforesaid: By which the third Part of the said Lands and Tenements of him the said *Christopher* be limited and appointed to descend to satisfy us for the Wardship of the Heir of the said *Christopher*, according to the Intent of the same Testament and last Will remained, to be made and taken out of the aforesaid Lands called *Eastendown*, and of other the Lands and Tenements of the same *Christopher*, to the said Lands called *Eastendown* next adjoining: And further, the said *Christopher* and *Edward*, Sons of the aforesaid *Christopher*, in Facto said, That the Demesn Lands of the said Manor of *Owtelmeston*, at the Time of the Death of the said *Christopher*, the Father, were next adjoining to the aforesaid Lands called *Eastendown*; and that the aforesaid *Christopher Digges*, the Father, at the Time of his Death, had not any Lands or Tenements next situate and adjoining to the said Lands called *Eastendown*, than the demesn Lands of the Manor of *Owtelmeston*, with their Rights and Members, by which the third Part by the aforesaid Testament and last Will, left to descend, ought to be taken out of the afores. Lands called *Eastendown*, and of the demesn Lands of the said Manor of *Owtelmeston* adjacent to the said Lands called *Eastendown* next adjoining; and also said, that the afores. Manors, Lands and Tenements, whereof the aforesaid *Christopher* died seized, contained in them 2500 Acres of Lands, and that the third Part of the said 2500 Acres of Lands, is 833. Acres of Lands, by which to make the Lands, called *Eastendown*, a full third Part of all the Manors and Tenem. whereof the said *Christopher Digges* died seized, ought to be taken out of the demesn Lands of the said Manor of *Owtelmeston*, next adjoining to the said Lands called *Eastendown*, 733 Acres, which third part of the Manors and Lands aforesaid, after the Death of the said *Christopher Digges*, Father of the said *Thomas*, to *Christopher*, *Edward*, *Reginald* and *John*, as Sons of the said *Christ.* descended, and of Right ought to descend: And that the aforesaid Lands called *Eastendown*, as also the aforesaid demesn Lands of the aforesaid Manor of *Owtelmeston*, are, and Time whereof the Memory of Man is not to the contrary, are and were of the Tenure and Nature of *Gavelkind*, and for all that Time parted and partible between Heirs Males, by which the said *Thomas*, *Christopher*, *Edward*, *Reginald* and *John*, into the aforesaid Lands called *Eastendown*, and so much of the aforesaid demesn Lands of the aforesaid Manor of *Owtelmeston* aforesaid, called *Eastendown* next adjoining, as with the aforesaid Lands called *Eastendown*, amounted to the third part of all the aforesaid Manors, Lands and Tenements, whereof the said *Christopher Digges* aforesaid seized, entred, and were thereof seized in their Demesn as of Fee in Coparcenery; and so thereof being seized, the said *John Digges* died without Issue of his Body of his purpart thereof seized: after whose Death, the aforesaid *Thomas*, *Christopher*, *Edward* and *Reginald* were seized of the aforesaid Lands called *Eastendown*, and of so much of the demesn Lands of the aforesaid Manor of *Owtelmeston*

Gavelkind
Lands.

Ortelmeston afores. called *Eastendown* next adjoining, as with the afores. Lands called *Eastendown*, did amount to the third Part of all the aforesaid Manors, Lands, and Tenements, whereof the aforesaid *Christopher* died seized, and were thereof seized in their Demesn as of Fee in Coparcenery; and they being thereof so seized, the aforesaid *Thomas Digges* died thereof seized: And further, the said *Christopher* and *Edward* said, that afterwards the aforesaid *Thomas Digges* in the aforesaid Commission named, so thereof as is said, of his Purpart of the Premisses being seized, died thereof seized, after whose Death the said *Christopher* and *Edward* together with the aforesaid *Reginald*, into the aforesaid Lands and Tenements being, as before is said, of the Nature and Tenure of *Gavelkind*, entred, and were by Virtue of the said Custom of *Gavelkind* thereof Lawfully seized in Coparcenery as of their Purparts, until after the Birth of the said *Thomas Posthumus Digges*, and by Colour of the Inquisition aforesaid, the aforesaid Lands called *Eastendown* and the aforesaid Manor of *Owtelmeston* (amongst other Things) were totally and wholly seized into our Hands. And the aforesaid *Christopher* and *Edward* utterly thereof and of their aforesaid Purparts thereof to them, as before is said, due and belonging, they were amoved and expelled unjustly; with this, that the said *Christopher* and *Edward* will aver, that the aforesaid Manor of *Owtelmeston*, and the aforesaid Lands called *Eastendown*, in the aforesaid last Will of the aforesaid *Christopher*, the Father, mentioned, and left to descend as afore is said, are the same Lands called *Eastendown*, and the said Manor of *Owtelmeston* in the Inquisition aforesaid mentioned, whereof the said *Christopher* and *Edward* demand Judgment, and that our Hands from the two Parts of the aforesaid Lands called *Eastendown*, and so much of the demesn Lands of the aforesaid Manor of *Owtelmeston* next adjoining to the aforesaid Lands called *Eastendown*, as do amount to the third Part of the aforesaid Manors and Lands, whereof the aforesaid *Christopher* the Father died seized, in 3 Parts to be divided, that is to say, of 416 Acres of Lands, which to them for their Purpart by the Death of the aforesaid *Christopher Digges* their Father, by the Custom aforesaid, thereof to them due and belonging, are, and to them of Right descended, and ought to descend, be amoved; and that they to their said Purparts of the Premisses together with the Issues and Profits thereof, and of every Parcel thereof, from the Time of the taking of the Inquisition aforesaid, and in the mean Time received, be restored, &c. And whereas, we by our Letters Patents under our Great Seal of *England*, bearing

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Commissio custodia T. posthum. Digges.

bearing Date at *Westm.* the 7th Day of *Septem.* in the 38th Year of our Reign, have committed to *Margaret Digges*, the late Wife of the afores. *Tho. Digges*, and now the Wife of *Tho. Palmer*, Esq; the Wardship of the Body and the Marriage of the said *Thomas Posthumus Digges*; To have, enjoy, and possess the Wardship and Marriage of the said *Tho. Posthumus Digges*, to the said *Margaret*, her Executors and Assigns, until the said *Margaret*, her Executors and Assigns, the Effect of the Marriage of the said *Tho. Posthumus Digges* receive, or have or should receive, or have; By Virtue of which the said *Tho. Palmer* and *Margaret*, as in the Right of the said *Margaret*, are of the Wardship aforesaid possessed; and because it seemeth expedient to us that the said *Tho. Palmer* and *Margaret* be warned before it be further proceeded in the said Plea, We command you that by good and lawful Men of your Bailiwick you warn the afores. *Tho. Palmer* and *Margaret*, that they be here before us in our said Chancery in 15 Days of *Easter* next following, wheresoever it then shall be, to inform us and our Council wherfore our Hands from the afores. two Parts of the afores. Lands called *Eastendown*, and so much of the Demesne Lands of the said Manor of *Owltmesbon* next adjoining to the afores. Lands called *Eastendown*, as shall amount to the third Part of the afores. Manors, Lands and Tenements whereof the afores. *Christopher Digges* the Father died seised, in 4 Parts to be divided, that is to say, of 416 Acres of Land, which to the afores. *Christopher* and *Edward*, for their Purpart after the Death of the said *Christ.* their Father, according to the Custom afores. thereof to the afores. *Christopher* and *Edward* are due and belonging, and which to them of right descended, and ought to descend, be amoved; and that the said *Christopher* and *Edward* to the said Purparts of the said Premisses, together with the Issues and Profits thereof, and each Parcel thereof, from the Time of the taking of the Inquisition afores. in the mean Time received, ought not to be restored according to the said Plea and Petition of the said *Christopher* and *Edward*; and farther to do and receive that which our Court shall consider in this Behalf. Witness my self at *Westminster* the 23d Day of *Jan.* in the 40th Year of our Reign, and have here the Names of them by whom you gave Warning, and this Writ. And now at this Day, that is to say, the aforesaid 15 Days of *Easter*, before the Lady the Queen in her Chancery here, that is to say, at *Westminster* aforesaid, come the aforesaid *Christopher Digges* the Son, and *Edward Digges*, by *John Rotherham* their Attorney, of themselves, the 4th Day, against the said *Tho. Palmer* and *Margaret*, of the Plea aforesaid, and *George More*, Knt. Sheriff of the said County of *Suffex*, * before the said Lady the Q. in her said Chancery, here sent the said Writ executed and returned,

Scire fac' eis quibus custod. T. posthumi Digges committitur.

Return scire fac'.
* Q. if not *Kent.*

that is to say, that he, by Virtue of the said Writ to him directed, the 12th Day of *April* in the 40th Year of the Reign of the said L. the now Q. abovef. by *John Brystie* Gent. and *T. Wolfe* Gent. good and lawful Men of his Bailiw. gave warning to the said *Tho. Palmer* and *Margaret*, to be here at this Day, to inform the said L. the Q. and her Counsel, as the Writ aforef. in it importeth and requireth, and as by the said Writ to him it was commandeth: At which Day the *Emperlans.*
 said *Tho. Palmer* and *Margaret*, before the aforef. L. the Q. in the said Court here at *Westm.* aforef.; according to the Warning aforef. to them as before is said given, come likewise, and pray Licence with the Queen's Counsel, thereof to imparl before the said Lady the Q. in the said Court here, until the Morrow of the *Holy Trin.* then next following, &c. wheresoever, &c. and then to answer, &c. and have it, &c. And the same Day is given to the aforef. *Christ. Digges* the Son, and *Edw. Digges* then and there, &c. At which Morrow of the *Holy Trin.* before the said L. the Q. in the said Court here, that is to say, at *Westminst.* aforef.; come as well the aforef. *Christ. Digges* the Son, and the said *Edw. Digges*, as the aforef. *Tho. Palmer* and *Marg.* by their Attornies aforef.; and upon this the said *Tho. Palmer* and *Marg.* pray Licence further with the Queen's Counsel thereof to imparl, before the said L. the Q. in the said Court here, until 8 Days of *St. Michael* then next coming, &c. wheresoever, &c. and then to answer, &c. and have it, &c. And the same Day is given to the aforef. *Christ. Digges* the Son, and *Edw. Digges* then and there, &c. At which 8 Days of *St. Michael* before the aforef. L. the Q. in the said Court here, that is to say, at *Westminst.* aforef.; came as well the aforef. *Christ. Digges* the Son, and *Edw. Digges*, as the aforef. *Tho. Palmer* and *Marg.* by their Attornies aforef.; and upon this the said *Tho.* and *Margaret* pray the hearing of the Writ aforef.; and it is read unto them, &c. Which being read and heard, the said *Tho.* and *Margaret* say, that the Hands of the said L. the Q. from the said two Parts of the aforef. Lands called *Eastendown*, and so much of the Demesn Lands of the aforef. Manor of *Ouelmeston*, next adjoining to the aforef. Lands called *Eastendown*, as amount to the third Part of the aforef. Manors, Lands and Tenements, in four Parts to be divided, nor from any Part thereof ought to be amoved; nor the aforef. *Christopher Digges* the Son, and *Edward Digges* to the aforef. Purparts of the Premisses above demanded, together with the Issues and Profits of the said Purparts of the Premisses, in the mean time aforef. received, ought not to be restored: Because by protesting that the aforef. Manors and Tenements of which it is supposed the aforef. *Christ. Digges* the Father to have died seized, or any Part thereof, are not of the Nature of *Gavelkind*, in

*Le plea des
Committees.*

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the said County of *Kent*, protesting also that the said *Christ Digges* the Father, by his last Will and Testament did not will and devise the Manors and Tenements aforesaid with the Appurtenances, as the aforesaid *Christ Digges* the Son, and the said *Edw. Digges* in their Declaration above have alledged, for Plea they say, That the afores. *Ch. Digges* the Father, in his Life-time was seised of all the Manors and Tenements aforesaid with the Appurtenanc. in his Demesn as of Fee, and so thereof being seised, the 6th Day of *May* in the 20th Year of the Reign of the said L. the now Q. at *Outelmeiston* aforesaid, by a certain Indenture between him the said *Christ*. of the one Part, and *Henry Crippes* of *Tennet*, in the aforesaid County of *Kent* Knt. *John Brooke*, *Francis Gatacre*, *Richard Brooke*, *Thomas Leveson*, and *Richard Horewood* Gent. of the other Part, made, and with the Seal of the said *Christ*. the Father sealed, bearing Date the same Day and Year, as well in Consideration of a Marriage between the said *Christ*. the Father, and *Martha* Sister of the aforesaid *John* and *Richard Brook*, before that Time had and solemnized, as in Consideration of the Sum of 200*l.* of good and lawful Money of *England*, before the Solemnization of the Mariage aforesaid, to the said *Christ*. the Father paid, and also for the preferring and sure advancing of the aforesaid *Tho. Digges*, Son and Heir apparent of the said *Christ*. begotten; as also for divers other good Causes and Considerations the said *Christ*. the Father moving, covenanted, granted and agreed to and with the aforesaid *Henry Crippes*, *John Brooke*, *Francis Gatacre*, *Rich. Brook*, *Tho. Leveson*, and *Rich. Horewood*, their Executors and Administrators in Form following, That as well the said *Christopher Digges* the Father, and his Heirs, and every other Person and Persons, and their Heirs, who then stood or were seised, or that at any Time then after should stand or be seised, of and in all and singular the Manors, Messuages, Lands, Tenements, Rents, Reversions, Services and Hereditaments, of the said *Christ Digges* the Father whatsoever, with the Appurtenances, situate, lying, and being in the aforesaid County of *Kent*, from thence forward should stand and be seised of and in all and singular the said Manors, Messuages, Lands, Tenements, Rents, Reversions, Services, and Hereditaments, and other the Premises in the said County of *Kent*, with all and singular their Appurtenances, to the only Uses and Intents afterwards in the said Indentures mentioned and expressed, and to no other Use, Intent or Purpose, that is to say, to the Use of the said *Christopher Digges* the Father, for the Term of his Life, and after the Decease of the said *Christ*. the Father, to the Use of the said *Tho.* Son of the said *Christ*. the Father, and the Heirs Males

Chr Digges
conveyavit
omnis premiffi
fibi pro term.
vite. rem'
Thomæ filio
fuo in tallio.

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Males of the Body of the said *Thomas* lawfully begotten, or to be begotten; and for Default of such Issue, to the Use of the Heirs Males of the Body of the said *Christopher* the Father, upon the Body of the said *Martha* lawfully to be begotten, as by the said Indenture amongst other Things it more fully appeareth; By virtue whereof, and by Force of a certain Statute of transferring of Uses into Possession, made in the Parliament of the late King *Henry* the 8th, the 4th Day of *February* in the 27th Year of his Reign at *Westminster* in the County of *Middlesex* holden, the said *Christopher Digges* the Father was seised of the Manors and Tenements aforesaid, with the Appurtenances, in his Demesne as of Freehold for the Term of his Life; the Remainder thereof to the aforesaid *Thomas* in Form aforesaid expectant; and the said *Christopher* the Father being thereof so seised, the Remainder thereof in Form aforesaid expectant, the said *Christopher* the Father at *Outelmeston* aforesaid died, of such his Estate thereof seised; after whose Death, the said *Thomas Digges* the Son, into the Manors and Tenements aforesaid with the Appurtenances ^{Mort. Chr. le} entred, and was thereof seised in his Demesne as of Fee-tail ^{pere.}, that is to say, to him and the Heirs Males of his Body begotten, by virtue of the Indenture aforesaid, and by Force of the Statute aforesaid; and so being seised of all and singular the Manors and Tenements aforesaid, the aforesaid 10th Day of *April* in the 32d Year of the Reign of the said Lady the now Queen, at *Outelmeston* aforesaid, of such his Estate died seised, *Thomas Posthumus Digges* being Son and Heir of his Body within Age, and in the Ward of the said Lady the Queen, as by the said Inquisition it is found; without that, that the aforesaid *Christopher Digges* the Father died seised of the Manors and Tenements aforesaid with the Appurtenances, in his Demesne as of Fee, as the aforesaid *Christopher* the Son, ^{Issue.} and *Edward*, in the *Monstrans de droit* aforesaid above have alleged; and this they are ready to aver. Whereupon they demand Judgment, if the Hands of the said Lady the Queen from the aforesaid two Parts of the aforesaid Lands called *Eastendown*, and so much of the Demesne Lands of the Manor of *Outelmeston*, next adjoining to the aforesaid Lands called *Eastendown*, as amount to the third Part of the aforesaid Manors, Lands and Tenements, whereof it is supposed that the said *Christopher* the Father died seised, in four Parts to be divided, or of any Part thereof, ought to be removed, or the aforesaid *Christopher Digges* the Son, and *Edward* to the aforesaid Purparts of the Premises, in the mean Time aforesaid received, ought to be restored: And the aforesaid *Christophes* the Son, and *Edward*, as at first, say, that the aforesaid *Christopher Digges* the Father died seised of the Manors and Tenements aforesaid in his Demesne as of Fee, as in their

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Morstrans de droit aforesaid above they have alledged; and this they are ready to aver; and pray that it be inquired of by the Country. And the aforesaid *Thomas Palmer* and *Margaret* likewise, &c. And therefore Day is given to the Parties aforesaid, before the said Lady the Queen in eight Days of *St. Hillary*, wheresoever it should be, to do and receive what shall be just in the Premises; and that it was commanded to the Sheriff of *Kent*, that he cause to come before the said Lady the Queen at that Day twelve good and lawful Men of the Neighbourhood of *Barham*, *Lenham*, *Frensted*, *Harrisham*, *Sturvey*, *Hackington*, and the Parish of *St. Stephens*, and of the Manor of *Netherhard* in his Bailiwick, whereof every one have four Pounds *per Annum* in Lands, Tenements or Rents at the least, by whom the Truth of the Matter might best be known, and who neither, &c. to recognize, &c. At which Day before the Lady the Queen at *Westminster* come as well the aforesaid *Christopher Digges* the Son, and *Edward Digges*, by *Thomas Webbe* the Elder, their Attorney, as the aforesaid *Thomas Palmer* and *Margaret* in their proper Persons; and the Sheriff of *Kent* returned the Names of the Jurors, &c. whose Names, &c. whereof none, &c. Therefore it is commanded to the said Sheriff of *Kent*, that he have their Bodies before the Lady the Queen in eight Days of the Purification of the Blessed *Mary*, wheresoever, &c. to recognize in Form aforesaid, &c. And the same Day is given to the Parties aforesaid, &c. At which Day, before the Lady the Queen at *Westminster*, came as well the aforesaid *Christopher Digges* the Son, and the said *Edward* by their Attorney aforesaid, as the aforesaid *Tb. Palmer* and *Margaret* in their proper Persons; and the Sheriff sent not his Writ thereof, &c. Therefore again, as before, it is commanded, &c. that he distrain the aforesaid Jurors by all their Lands, &c. so that he have their Bodies before the Lady the Queen, from the Day of *Easter* in fifteen Days, wheresoever, &c. unless the Justices of the Lady the Queen to Assizes, in the County of *Kent* to be taken, assigned, first upon *Monday* in the fifth Week of *Lent*, at *Rocheſter* in the aforesaid County of *Kent*, according to the Form of the Statute shall come for default of Jurors. And therefore that the Sheriff have their Bodies, &c. to recognize in Form aforesaid: And the same Day is given to the Parties aforesaid: At which Day, before the Lady the Queen at *Westminster*, came as well the aforesaid *Christopher Digges* the Son, and *Edward Digges* by their Attorney, as the aforesaid *Thomas Palmer* and *Margaret* in their proper Persons. And the aforesaid Justices to Assizes, before whom, &c. sent here the Record had before them in these Words: Afterwards, the Day and Place within contained, before *Francis Gawdy*, one of the Justices to Pleas, before the Queen her self to be holden, assigned, and *G. Kingsmill*, one of the Justices of the said Lady the Queen of the Bench, Justices of

of the said Lady the Queen to Assises, in the said County of Kent to be taken, assigned, by the Form of the Stat. &c. come as well the within named *Ch. Digges* and *Ed. Digges*, by *Edmund Gibbon*, their Attorney within written, as the said *Tho. Palmer* and *Margaret*, by *Nathanael Marwle* their Attorney. And the Jurors of the Jury, whereof within mention is made, likewise being called come, who to say the Truth of the within contained being chosen, tried, and sworn, say upon their Oaths, that long before the Day of the bringing of the *Monstrans de droit* within written, one *Ch. Digge*, otherwise *Digges Esq;* in the *Monstrans de droit* within named, Father of the aforesaid *Ch. Digges* and *Edw. Digges* was seised of the Manors, Lands and Tenem. with the Appurtenances, in the *Monstrans de droit* specified, and of and in the Lands and Tenem. in the Indenture hereafter specified (bearing Date the 6th Day of May in the 10th Year of the Reign of the L. the now Q.) in his Demesne as of Fee; and so thereof being seised, the said *Ch. Digges* the Father, before the Day of the bringing of the *Monstrans de droit* within written, that is to say, the 6th Day of May in the tenth Year of the Reign of the said Lady the now Queen, by his Indenture between him the said *Christ. Digges* the Father of the one Part, and *Henry Crippes Knt.* *John Brooks*, *Francis Gatacre*, *Richard Brook*, *Thomas Levison*, and *Rich. Horewood Gent.* of the other Part made, one Part whereof with the Seal of the said *Christ. Digges* the Father sealed, to the Jurors aforesaid in Evidence was shewed, whose Date is the same Day and Year, for the Considerations and Causes in the same Indenture specified, covenanted and granted for him and his Heirs, to and with the aforesaid *H. Crippes*, *J. Brooke*, *F. Gatacre*, *R. Brooke*, *Th. Levison* and *R. Horewood* and their Heirs, that the said *Ch. Digges* the Father, and his Heirs, then and from thenceforth should stand and be seised of and in all and singular the aforesaid Manors, Lands and Tenements, to the Behoofs and Uses, Provisions and Intents, in the same Indenture specified; the Tenor of which Indenture followeth in these Words. *ff.*

This Indenture made the 6th Day of May in the 10th Year of the Reign of our Sovereign Lady Eliz. by the Grace of God Queen of England, France and Ireland, Defender of the Faith, &c. between Ch. Digge, alias Digges, of Owtelm. in the County of Kent Esq; on the one Party, and Sir H. Crippes of Thanet in the said County Knt. J. Brooke, F. Gatacre, R. Brooke, T. Leveson, and R. Horwood Gent. on the other Party, witnesseth, that whereas the said Christ. Digges heretofore did marry and take to Wife Martha Brooke, Sister of the said John Brooke and Richard Brooke, and now Wife of the said Christopher, and during the said Marriage had and continuing between the said Christopher and Martha, they had and have Issue between them Thomas Digge,

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Digge, alias Digges, now being Son and Heir apparent of the said Christopher; therefore as well in Consideration of the said Marriage so had between the said Christopher and Martha, as also for and in Consideration of the Sum of 200l. of good and lawful Money of England before the Solemnization of the Marriage aforesaid, unto the said Christopher well and truly contented, satisfied, and paid, as also for the Preferment and certain Advancement of the said Tho. Digges, and of the Heirs Males of the said Tho. Digges of his Body lawfully to be begotten, and also for divers other good Considerations the same Christopher Digges thereunto especially moving, it is now covenanted, granted, concluded, condescended and agreed between the said Parties to these Presents, and the said Christopher Digges for him and his Heirs doth by these Presents covenant, grant, and agree to and with the said Sir Henry Crippes Knt. John Brooke, Francis Gatacre, Richard Brooke, Tho. Lefeson, and Richard Horwood Gentlemen, their Executors and Administrators in Manner and Form following, that is to say, that as well he the said Christopher Digges and his Heirs, and all and every other Person and Persons and their Heirs which now stand or be seised, or any Time hereafter shall stand or be seised of and in all and singular his Manors, Messuages, Lands, Tenements, Rents, Reversions, Services and Hereditaments whatsoever, with their Appurtenances set, lying, and being in the said County of Kent, shall from the Day of the Date of these Presents stand and be seised of and in all and every the said Manors, Messuages, Lands, Tenements, Rents, Reversions, Services and Hereditaments, and other the Premises in the said County of Kent, with all and singular their Appurtenances, to the only Uses and Intentions hereafter in these Presents mentioned and expressed, and to none other Use, Intent and Purpose, that is to say, to the Use of the said Christopher Digges for Term of his natural Life, and after the Decease of the said Christopher Digges, then to the Use of the said Thomas Digges, and of the Heirs Males of his Body lawfully begotten, and to be begotten; and for Default of such Heirs Males, then to the Use of the Heirs Males of the Body of the said Christopher upon the Body of the said Martha lawfully to be begotten. Provided always, and nevertheless it is further covenanted and agreed by these Presents between the said Parties to these Presents upon the Considerations abovementioned, that for the Preferment and Advancement of the other Children of the said Christopher Digges, and for the Payment of his Debts

Debts or Legacies, or for any other necessary Purpose or Intent, it shall and may be lawful to and for the said Chr. Digges, together with Sir Henry Crippes Knt. John Brooke, Francis Gatacre, Richard Brooke, Thomas Levelson, and Rich. Horwood, or three of them, the said Henry Crippes, John Brooke, Francis Gatacre, Richard Brooke, Thomas Levelson, and Richard Horwood, at any Time hereafter during the Life of the said Christopher Digges, together with and by the joint Consent and Agreement of the said Henry Crippes, John Brooke, Francis Gatacre, Richard Brooke, Thomas Levelson, and Richard Horwood, or of three of them the said Henry, John, Francis, Rich. Tho. and Richard, by their joint Deed or Writing indented of them the said Christopher Digges, Henry Crippes, John Brooke, Francis Gatacre, Rich. Brooke, Thomas Levelson, and Richard Horwood, or of the said Christopher Digges, or three of them, the said Henry, John, Francis, Richard, Thomas and Richard, and being sealed with the Seals of the said Christopher Digges, Henry Crippes, John Brooke, Francis Gatacre, Richard Brooke, Thomas Levelson, and Richard Horwood, or of the said Christopher Digges, or three of them the said Henry, John, Francis, Rich. Tho. and Rich. and to be inrolled in any Court of Record of our Sovereign Lady the Queen, or of her Heirs and Successors, to make void and frustrate any of the Use or Uses, Estate, or Estates in these Presents abovementioned, expressed, or declared, only for, of, or in any such Part or Parcel of the Premises, as by the said Christopher Digges, Hen. Crippes, John Brooke, Francis Gatacre, Richard Brooke, Thomas Levelson, and Richard Horwood, or by the said Christoph. Digges, or three of them the said Henry, John, Francis, Richard, Thomas, and Richard, shall be thought meet and convenient, and by the said Writing indented and inrolled shall be expressed, limited and appointed, and none otherwise, and thereof by the said Writing, so to be inrolled, of new to declare, limit, or appoint any such new, or other Use or Uses, Estate or Estates, as to the said Christopher Digges, Henry Crippes, John Brooke, Francis Gatacre, Richard Brooke, Thomas Levelson, and Richard Horwood, or to the said Christopher Digges, and any three of the said Henry, John, Francis, Richard, Thomas and Richard, shall be thought meet and convenient, and by the said Writing indented shall be expressed, declared, and none otherwise, any Thing in this present Indenture contained to the contrary thereof in any wise notwithstanding, and that immediately from and after such new Declaration, Limitation, and appointing of any new or other Use or Uses, Estate or Estates, of or in any Part or Parcel of the Premises

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by Writing indented, sealed and inrolled, as is aforesaid, then the Use and Uses, Estate or Estates of such and so much only of the Premises, whereof any such new Declaration, Limitation and Appointing shall be so had and made, shall be, and the said Christopher Digges, his Heirs and Assigns, and all other Person and Persons, their Heirs and Assigns, which at any Time hereafter shall stand and be seised of or in such and so much of the Premises, whereof any such new Declaration, Limiting and Appointing shall be so had and made, shall stand and be seised thereof to the Use of such Person or Persons, and to such Use, Intents and Conditions only, as shall be mentioned and expressed in the said Writing indented and inrolled, and to none other Use, Intent or Purpose, any Thing abovementioned to the contrary thereof in any wise notwithstanding. In Witness whereof the Parties to these Presents interchangeably to this present Writing indented have put to their Seals the Day and Year above-written. By Virtue of which Indenture, and by Force of a Statute for transferring of Uses into Possession, made in the Parliament of the Lord Henry the 8th, late King of Engl. holden the 4th Day of Feb. in the 27th Year of his Reign, at Westm. in the County of Middlesex, the aforesaid Christo. Digges the Father was seised of the Manors and Tenements, with the Appurtenances, within the said *Monstrans de droit* above specified in his Demesne as of Freehold, for the Term of his Life; the Remainder thereof to the afores. Thomas, and the Heirs Males of his Body issuing; and for Default of such Issue, the Remainder thereof to the Heirs Males of the Body of the said Christopher, the Father of the aforesaid Martha lawfully begotten: And the said Christoph. Digges the Father, so of the Manors and Tenements afores. with the Appurtenances, being seised, the Remainder thereof to the aforesaid Tho. Digges, in Form afores. expecting; the said Chr. Digges the Father, and the afores. John Brooke, Rich. Brooke, and Tho. Leveson afterwards, and before the Day, &c. that is to say, the 6th Day of May in the 12th Year of the Reign of the said L. the now Q. by his certain Indenture between them the said Chr. Digges the Father, and the afores. John Brooke, Rich. and Tho. Leveson of the one Part, and Tho. Ovington, and Tho. Digges of Chertham in the County of Kent, Gent. of the other Part, made, and in the Court of Chancery of the said Lady the now Q. at Westm. then being the 4th Day of June in the 12th Year of the Reign of the said Lady the now Q. afores. in due Manner of Record inrolled; one Part of which, with the Seals of the afores. Chr. Digges the Father, John, Rich. and Tho. Leveson sealed, to the Jurors afores. in Evidence was shewed, whose Date is the same Day and Year above. in which Indenture, reciting the first Indenture, bearing Date the 6th Day of May in the 10th Year of the Reign of the said Lady the now Q. above. made between him the said Christopher

Digges the Father of the one Part, and the aforesaid Henry Crippes, Knt. John Brooke, Francis Gatacre, Rich. Brooke, Thomas Leveson, and Richard Horwood of the other Part, covenanted, granted and agreed, to and with the aforesaid Thomas Ovington and Thomas Digges, their Heirs, Executors and Assigns, in Manner and Form as followeth in these Words. And also whereas the said Christopher Digges, at the Time of the making of the said Indenture in these Presents above recited, was seised of an Estate of Inheritance, amongst other the Lands, Tenements and Hereditaments aforesaid, of and in one Close in the aforesaid Parish of Barham, in the Occupying of Bartholomew Baker, containing by Estimation three Acres, and two Acres of Land in stony Rock, and three Acres and two Yards in Parsonage Field in the Occupation of the said Bartholomew Baker in Barham aforesaid, and two half Acres of Land in the Occupying of Henry Crowde, and one half Acre late in the Occupation of John Barham, Gent. in the Parish of Barham aforesaid, and also three Acres called Greene Hill, and one Acre lying in Brome Lease, joining to Thomas Ladd's Ground, and one Yard in John Nasse's Land, lying in Barham aforesaid, and Kingston next Barham in the County aforesaid, and also 16 Acres of Downland and Pasture in the said Parish of Barham and Kingston aforesaid, and Adsham in the County aforesaid, in the Occupying of Kymber's Heirs, and also the Moiety of one and thirty Acres of Marsh Land and Arable, the Moiety of one Tenement lying in the Parish of Wockham in the said County, and three Acres of Marsh Land more, late in the Occupying of Robert Formell, and five Acres of that now in the Occupying of David Denne of Littleborne Court, lying in the Parishes of Littleborne and Wockham aforesaid, and Ickeham in the County aforesaid, and also one Tenement with 7 Acres of Land, lying at Stelling Mennis in the Parish of Ekham, late in the Occupying of Richard Ovington, 30 Acres of Woodland in the Parish of Netherhards, now in the Occupying of the said Christopher Digges, and one Acre of Arable Land in the Occupying of Henry Rigden, called Bedle Acre, and also two Acres of Land in Demisdale, and three Acres in Spottes Crofte, half an Acre in Whodslane in the Parishes of Barham and Kingston, and twelve Bushels of Rent Barley out of William Atdenne's Land in Kingston aforesaid, and three Acres of Land at a certain Place called Marley within the said Parish of Kingston, in the Occupying of James Atdenne, and also one Tenement with 7 Acres of Arable Land and Pasture, in the Occupying of Henry Crowde in the Parish

of

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of Barham aforesaid, and also threescore Acres of Land Arable, Pasture and Down Land in the Parish of Barham aforesaid, and also three Acres of Meadow lying in Winchep in the Parish of Tannington, and ten Seams of Rent Barley in the Parish of Sutton next Sandwich, and also three Acres of Arable Land in the Occupying of Richard Rudgety in the Parish of Kingston aforesaid, and six and thirty Acres of Wood-land, Arable and Pasture, and half a Messuage, half a Barn, half a Stable, an Out-house, and a Meadow containing twelve Acres joining to the Barn, in the Occupying of James Herring in the Parishes of Kingston afores. and born in the County aforesaid, whereupon and for and in Consideration that the said Christoph. Digges is indebted to divers Persons in the Sum of nine hundred Pounds or thereabouts, and that he the said Christopher may have full Authority to sell and alienate some Part of the said Lands and Tenements for the Payment of his said Debts, it is now covenanted, granted, descended, and agreed, between the said Christopher Digges, John Brooke, Richard Brooke, and Thomas Leveson, and the abovesaid Thomas Ovington, and Thomas Digges, their Heirs and Assigns, and the said Christopher Digges, John Brooke, Richard Brooke, and Thomas Leveson, for them and every of them, their Heirs and Assigns, by their joint Consent and Agreement do covenant and grant to and with the said Thomas Ovington, and Thomas Digges, their Heirs and Assigns by these Presents, that from the Time of the Inrolment of this present Indenture in the Queen's Majesty's Court of Chancery, that all and every the said Use and Uses, Considerations and Intents limited, declared and mentioned in the abovesaid Indenture in these Presents above comprised, and to and as concerning only all and singular those several Parcels of the Premises particularly above-mentioned, shall be utterly void, frustrate, and be determined and ended, and that the said Christoph. Digges and his Heirs, and all and every other Person and Persons, which now stand or be seised, or at any Time hereafter shall stand and be seised of and in the said several Parcels particularly abovementioned, with the Appurtenances, shall from the Time of the Inrolment of these Presents stand and be of all and every the same particular Parcels abovementioned only, with their Appurtenances, seised unto the only Use of the said Christopher Digges, his Heirs and Assigns for ever, and to no other Use, Uses, Purposes and Intents: In Witness whereof the Parties abovesaid to these present Indentures their Seals interchangeably have

have set, dated the Day and Year first above written, as by the Indenture aforesaid more fully appeareth. By Colour of which Indenture and Inrollment, and by Force of the aforesaid Statute of transferring of Uses into Possession, made and provided, the aforesaid *Christ. Digges* the Father was seized of the aforesaid Parcel of Lands, Tenements and Hereditaments, with the Appurtenances, in the Indenture aforesaid particularly further specified, as the Law requireth: And further, the Jurors aforesaid say upon their Oath aforesaid, that the aforesaid *Christ. Digges* the Father, of the Manors, Lands and Tenements, in the *Monstrans de droit* within written, with the Appurtenances, in Form aforesaid being seized, the said *Christ. Digges* the Father, and the aforesaid *John Brooke, Rich. Brooke* and *Rich. Horwood* afterward, and before the Time of the bringing of the *Monstrans de droit* within written, that is to say the 20th Day of *Sept.* in the 13th Year of the Reign of the said Lady the now *Q.* by another Indenture between them the said *Christ. Digges* the Father, *John, Rich.* and *Rich. Horwood* on the one Part, and the aforesaid *Tho. Ovington* and *Tho. Digges* of *Chert-ham* aforesaid, on the other Part made, by the Names of *Christ. Digges* of *Barham* in the County of *Kent*, Esq; *John Brooke, Rich. Brooke* and *Rich. Horwood*, Gent. on the other Part made, and in the Court of the Lady the *Q.* of *Com. Pleas*, at *Westm.* afterwards, that is to say, in the Term of *St. Mich.* in the 13th and 14th Year of the Reign of the said Lady the now *Q.* in due Manner of Record inrolled; one Part whereof, with the Seals of the aforesaid *Christopher Digges* the Father, *John* and *Rich. Brooke*, and *Rich. Horwood* sealed, and to the Jurors aforesaid in Evidence shewed, whose Date is the same Day and Year, reciting the aforesaid Indenture, bearing Date the 6th Day of *May* in the 10th Year of the Reign of the said Lady the now *Q.* aforesaid, made between the aforesaid *Christ. Digges* the Father of one Part, and the aforesaid *Henry Cripps*, Knt. *John Brooke, Francis Gatacre, Rich. Brooke, Tho. Leveson* and *Rich. Horwood*, of the other Part, covenanted, granted and agreed, to and with the aforesaid *Tho. Ovington* and *Tho. Digges*, their Heirs and Assigns, in Manner and Form, as followeth in these Words. *Whereupon, and for and in Consideration that the said Christopher Digges is indebted to divers Persons, in the Sum of 1000 l. or thereabouts, and that he the said Christopher may have full Authority to sell, and alienate Part and Parcel of all and singular bis said Lands and Tenements whatsoever, for the Payment of his said Debts, and for any other necessary Purpose or Intent, it is now covenanted, granted, condescended and agreed, between the said Christ. Digges, John Brooke, Rich. Brooke, and Rich. Horwood, and the aforesaid Tho. Ovington, and Tho. Digges, their Heirs and Assigns, and the said Christopher Digges, John Brooke,*

Richard

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Rich. Brooke, and Rich. Horwood, for them and every of them, their Heirs and Assigns, by their joint Consent and Agreement, do covenant and grant to and with the said Thomas Ovington and Thomas Digges, their Heirs and Assigns by these Presents, that from the Time of the Inrolment of this present Indenture in the Queen's Majesty's Court of Chancery, that all and every the said Use and Uses, Considerations and Intents in any wise limited, declared and mentioned in the abovesaid Indenture in these Presents above comprised, and for and as concerning all and singular the Manors, Messuages, Lands, Tenements, Rents, Reversions, Services and Hereditaments whatsoever, with the Appurtenances in any wise mentioned, meant, comprised, and specified in the abovesaid Indenture in these Presents above comprised, except one Field or Meadow lying and being in the Parish of Buthopsborne in the said County of Kent, containing by Estimation or thereabouts, and now or late in the Occupation or Possession of one Vincent Edley or of his Assigns, shall be utterly void, frustrate, and be determined and ended, and that the said Christ. Digges and his Heirs, and all and every Person and Persons which now stand or be seized, or at any Time hereafter shall stand and be seized of and in all and singular the said Manors, Messuages, Lands, Tenements, Rents, Reversions, Services and Hereditaments whatsoever, with the Appurtenances, or any Parcel thereof, in any wise mentioned, meant, comprised or specified in the abovesaid Indenture, in these Presents comprised (except before excepted) shall from the Time of the Inrolment of these Presents, stand and be seized of and in all and singular the said Manors, Messuages, Lands, Tenements, Reversions, Services, and Hereditaments, with the Appurtenances, in the said former Indenture, or in these Presents meant, contained or specified, and of every Part and Parcel thereof (except before excepted) to the only Use of the said Christopher Digges, his Heirs and Assigns for ever, and to none other Use, Uses, Purposes or Intents. In witness whereof the Parties abovesaid to these present Indentures their Seals interchangeably have set, dated the Day and Year first above written, as by the said other Indenture further recited more fully appeareth: And the aforesaid Christopher Digges the Father, so as before is said, of the Manors, Messuages, Lands, Tenements and Hereditaments aforesaid, with the Appurtenances, in the aforesaid Indenture bearing Date the 20th Day of September in the 13th Year abovesaid, as the Law, requireth being seized, he the said Christopher Digges the Father, afterwards and before the Day of the Issuing of the *Monstrans de droit*, within written, that is to say, the 20th Day of October in the 14th Year of the Reign of the said Lady the now Queen, by another certain Indenture, made between the said

Christo-

Christopher Digges the Father, of the one of Part, and Richard Gaunt, Gent. and Lawrence Applegate of the other Part, one Part of which with the Seal of the said Chris. to the Jurors aforesaid, in evidence was shewed, whose Date is the same Day and Year, covenanted and granted for him and his Heirs, to and with the aforesaid Richard Gaunt and Lawr. Applegate, in manner and Form as in the Indenture aforesaid is contained, the Tenor of which followeth in these words. This Indenture made the 26th Day of October in the 14th Year of the Reign of our Sovereign Lady Eliz. by the Grace of God Q. of England, France and Ireland, Defender of the Faith, &c. Between Christ. Digges of Barham in the County of Kent, Esq; on the one Part, and Richard Gaunt of the City of Canterbury, Gent. and Lawrence Applegate of the Parish of St. George of the same City, Draper, on the other Party, Witnesseth that it is covenanted, granted, condescended, and agreed between all the abovesaid Parties to these Indentures by these Presents in Manner and Form following, that is to say. And first the said Christopher Digges for him, his Heirs, Executors, and Assigns doth covenant and grant to and with the said Richard Gaunt and Lawrence Applegate, their Executors and Assigns, by these Presents, that he the said Christ. Digges and Martha his Wife before the End of this instant Term of St Mich. upon one Writ of Covenant to be pursued by the said Richard and Laurence out of the High Court of Chancery, and returnable before the Queen's Majesty's Justices of the Common Pleas at Westminster, shall knowledge and levy a Fine of all these the Manors, Lands Tenements, Meadows, Marshes, Pastures, Feedings, Woods, Underwoods, Rents and Services to any the same Manors appertaining, or in any wise belonging, set, lying and being in the Parishes of Barham, Kingston, Bushopsborne, Patricksborne, Littleborne, Well, Sturrey, St. Stephens, Nackington, Netherhards, Leneham, Harisham and Frinsted in the County of Kent. And also all other the Lands, Tenements and Hereditaments whatsoever, which he the said Christ. Digges now hath or late had in the same County. And that by the Names of Owtelmeiston, Mayton, Nackington and Yokescourt, with the Appurtenances and 40 Messuages, 20 Tosts, 1 Mill 3 Dove-houses, 20 Gardens, 10 Orchards, 1000 Acres of Land, 100 Acres of Meadow, 700 Acres of Pasture, 600 Acres of Wood, 100 Acres of Heath and Furs, and 5 Pounds Rent, and the Rent of 10 Quarters of Barley with their Appurtenances in Barham, Kingston, Bushopsborne Bridge, Patricksborne, Littleborne, Well, Sturrey, St. Stephens, Nackington, Netherhards, Leneham, Harisham, Frinsted, Sutton,

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Sutton, Ripple and Sholden. And nevertheless it is covenanted, granted and agreed between the said Christopher Digges, Richard Gaunt, and Laurence Applegate, their Heirs, Executors and Assigns, by these Presents, and the said Rich. Gaunt and Lawrence Applegate for them, their Heirs, Executors and Assigns, do covenant and grant by these Presents, to and with the said Christopher Digges, his Heirs, Executors and Assigns, in Form following, that is to say, that the same Fine and the Use and Execution of the same, as to the Manor of Yokecourt, with the Appurtenances, and one Messuage called Fokeham, five hundred Acres of Land, Meadow and Pasture, by Estimation be it more or less, with the Appurtenances set, lying, and being in the Parishes of Frensted Leneham, and Harisham in the County of Kent abovesaid, one Hundred and threescore Acres of Land, Meadow, and Pasture in the Parishes of Netherhards, Nackington and Patricksborne in the said County. And all those Lands Arable and Pasture, containing by Estimation 200 Acres, called Gore and Ilding, lying and being in the Parishes of Barham and Kingston abovesaid, now or late in the Occupying of James Herring, and John Netherfole, or of their Assigns, all Woodland, Woods and Underwoods, Courts, Rents, and Perquisites of Courts, of all the same only except, shall be to the Use of the said Christopher Digges and Martha, and the Heirs and Assigns of the said Christopher Digges for ever, and that the said Fine, Use and Execution thereof, as well to the Manors of Owtelmeiston, Mayton, &c. and all the Lands, Meadows, Pastures, Marshes, Feedings, Woods, Underwoods, Rents, and Services to the same Manors, or any of them belonging or in any wise appertaining: And also all other the Messuages, Lands, Tenements, Meadows, Pastures, Marshes, Woods, Underwoods, and other Hereditaments whatsoever above in these Presents specified, mentioned or comprised, the Use thereof in the abovesaid Fine in Form abovesaid to be levied and acknowledged before by this Indenture not limited or appointed, the Rent of 10 Quarters of Barley only except, to be to the only Use and Beboof of the said Christ. Digges, his Heirs and Assigns for ever, and to none other Use or Uses, Purpose or Intent, and that the said Fine and Use and Execution thereof, as to the abovesaid 10 Quarters of Barley to be to the only Use and Beboof of the abovesaid Richard Gaunt and his Heirs for ever. In witness whereof the Parties abovesaid to these present Indentures their Seals interchangeably have set, dated the Day and Year first above Written. And the abovesaid Christopher Digges the Father (so as afore is said)

of the manors, messuages, lands, tenements and hereditaments afores. with the appurt. in the *Monstrans de droit* within written specified as the law requireth, being seized, afterwards, and before the bringing of the *Monstrans de droit* within written, that is to say, from the day of *St. Martin* within written in 15 days in the 14th Year of the reign of the said L. the now Q. above. He thereof levied a certain Fine in the court of the said L. the now Q. at *Westm.* in the county of *Middlesex* before *James Dyer, Rich. Weston, John Walsh,* and *Rich. Harper,* then Just. and afterwards in 8 days of *St. Hill.* in the same 14th Year of the said L. the now Q. above. there then granted and recorded before the said Just. and others of the Q.'s faithful people then and there present, between the afores. *R. Gaunt,* Gent. and *Laur. Applegate,* plaintiffs, and the afores. *Christ. Digges* and *Martha* his wife, by the name of *Christ. Digges* and *Martha* his wife deforceants, of the manors, lands, tenements, and hereditaments, in the *Monstrans de droit* within written within specified, with the appurt. amongst other, by the names of the manors of *Owelmeston, Mayton, Nackington,* and *Tokes-court* with the appurt., and 40 messuages, 20 tofts, 1 Mill, 3 dove-houses, 20 gardens, 12 orchards, 1000 acres of land, 100 acres of meadow, 700 acres of pasture, 600 acres of wood, 100 acres of furze and heath, and 100 s. rent, and the rent of 10 quarters of barley with the appurt. in *Barbam, Kingston, Bushopsborne, Bridge, Patricksborne, Littleborne, Well, Sturrey, St. Stephens, Nackington, Netherhards, Lenbam, Harisbam, Frensted, Sutton, Ripple,* and *Shoulden;* whereupon a plea of covenant then was summoned between them in the said court, that the afores. *Christ. Digges* and *Martha* do acknowledge, the afores. man. tenem. and rents with appurt. to be the right of the said *Rich.* as those which the said *Rich.* and *Laur.* then had of the gift of the afores. *Christ.* and *Martha,* and those then remised and quit claimed from them the said *Christ.* and *Mar.* and their heirs, to the afores. *Rich.* and *Laur.* and the heirs of the said *Rich.* for ever: and moreover, that the said *Christ.* and *Mar.* then had granted for them and the heirs of the said *Christ.* that they warrant to the afores. *Rich.* and *Laur.* and rents the heirs of the said *Rich.* the afores. manors, tenem. and with the appurt. against all men for ever, and for this recognition, release, quit-claim, warranty, fine and concord, the said *Rich.* and *Laur.* gave to the afores. *Christ.* and *Martha* 80 l. Sterling, which fine was levied with proclamations, according to the form of the statute in such case made and provided. And further the Jurors say upon their oath aforesaid; That the aforesaid fine in form aforesaid levied, was had and levied to the uses and intents in the indenture aforesaid, bearing Date the 26th of *October* in the 14th Year of the reign of the said Lady the now Queen as aforesaid above specified, by colour of which fine, indenture and

Statute

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Statute afores. the afores. *Christopher Digges* the Father was seised of the Manors, Tenements, and Hereditaments afores. with the Appurtenances, as the Law requireth: And the Jurors afores. further say, upon their Oath afores. That the afores. *Christopher Digges* the Father, so (as aforesaid) of the Manors, Lands and Tenements above written, as the Law requireth, being seised, the said *Christopher Digges* the Father, and the afores. *John Brooke, Richard Brooke,* and *Richard Horwood*, afterwards, that is to say, the 7th Day of *Novemb.* in the said 14th Year of the Reign of the said Lady the now Queen, came into the Court of the said Lady the Queen of her Chancery, and then and there acknowledged the Indenture aforesaid, bearing Date the 20th Day of *Septemb.* in the 13th Year afores. to be their Deed: And upon that the said Indenture afterwards, that is to say, the 7th Day of *Novemb.* in the 14th Year afores. in the said Court of Chancery in due Manner of Record was inrolled: By Virtue of which, and by Force of the Stat. aforesaid, the said *Christopher Digges* the Father was of the Manors, Lands and Tenements within written seised, as the Law requireth; and so thereof being seised, the said *Chr. Digges* the Father, afterwards, and before the Day of the bringing of the *Monstrans de droit* within written, that is to say, the first Day of *Feb.* in the Year of our Lord 1576, and in the 19th Year of the Reign of the said Lady the now Q. made his Testament and last Will in Writing, of which said Testament and last Will, the Tenor (amongst other) followeth in these Words. *In the Name of God Amen, the first Day of Feb. in the Year of our Lord God 1576, and in the 19th Year of the Reign of our Sovereign Lady Elizabeth, by the Grace of God Queen of England, France and Ireland, Defender of the Faith, &c. I Chr. Digges of St. Gregory's without the Walls of the City of Canterbury, Esq; Son and Heir of Will. Digges, late of Barham in the County of Kent, deceased, being sick in Body, but of good and perfect Remembrance, thanked be Almighty God, revoking and making void all and other my former Wills, or aain and make this my present Testament and last Will in Manner and Form following, that is to say, This is the last Will of me the above-said Christopher Digges, made the Day and Year abovesaid, touching the Disposition of all my Lands, Tenements and Hereditaments in the County of Kent and Canterbury, or elsewhere in the Realm of England: First touching the thirds and third Part of my Lands to be due unto the Queen's Majesty or any other, for Wardship, primer Seisin, Livery; or otherwise, my Will and Meaning is to leave to descend to Thomas Digges my Son, to have and to hold to him and his Heirs for ever; All these my Lands and Tenements, called or known by the Name of Eastdowne, containing by Estimation One Hundred and Ten Acres of Land, and all these Lands, Tenements*

and Hereditaments which I had by Descent after the Death of Tho. Digges of Newington next Sittingborne Esq; deceased, and if the said Lands and Tenements, as is aforesaid, left to descend to Tho. my Son, do not amount to satisfy the Queen's Majesty of the Thirds or third Part to be due unto her Highness, then my Will and Meaning is, that so much other Lands next adjoining to the said Eastendown, shall descend and be unto my said Son Thomas Digges, as shall suffice to satisfy and make up the Queen's Highness's Thirds or third Part, and that her Highness be answered out of the Rents and Profits of the same, and out of the Demise made of the Manor of Owtelmeston. Item, I will that Thomas Ovington aforesaid, immediately after my Departure out of this transitory World, shall sell all my Lands in the Parishes of Hardes and Nackington in the County aforesaid, with the Rents thereto belonging. Item, I will, that the said Thomas Ovington or his Assigns, immediately after my Death, shall sell all those my Lands, Tenements, and Hereditaments, with the Appurtenances whatsoever, in the Parishes of Sturrey and Hackington, alias St. Stephens in the County of Kent aforesaid, and also all those my Gardens in the County of Canterbury aforesaid, for the Sum of 200 l. of lawful Money of England. And I will that the said two hundred Pounds coming of the Sale of my Lands, Tenements and Hereditaments aforesaid, with the Appurtenances in Sturrey and Hackington, and in the County of Canterbury; and also that the Money coming of the Sale of all my Lands in the Parishes of Hardes and Nackington aforesaid, shall go and be employed towards the Payment of my Debts, and for and towards the Performance of this my present Testament and last Will. Item, I will, that if Martha my Wife, by Release or otherwise will grant over all that the Estate that she hath or may have in the Lands in Hardes and Nackington aforesaid, with the Rents thereto belonging, by Way of Jointure, unto such as the said Thomas or his Assigns shall make Sale thereof; that then the said Martha, for and in Recompence of her said Jointure therein, shall have for Term of her Life all such my Lands in Barham aforesaid, which I purchased of Master William Aucher, and also all such my Lands there as I late had of Master William Boys by Way of Exchange for other Lands. Item, I will, that Henry Aldy and Nicholas Franklin aforesaid shall have all the aforesaid Lands and Tenements with their Appurt. Rents, Reversions, Services and Hereditaments, other than such as before are given to T. Digges

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my Son, and to Martha my Wife for Term of her Life, or by Way of Jointure or otherwise, or willed to be sold as aforesaid, and shall receive and take the yearly Revenues and Profits thereof, for and towards the further and full Payment of my Debts, Legacies, and Annuities afore expressed, and hereunder mentioned, and also of my Funeral Charges, and for and towards the bringing up of my Sons and Daughters aforesaid, until either Martha my Wife, or the aforesaid Thomas Ovington and Rich. Brooke, or the aforesaid Thomas Ovington enter into Bond unto the said Henry Aldy and Nicholas Franklin or to their Assigns, in such Manner and Form as before is expressed. Item, I will, that if the said Thomas Ovington and the aforesaid R. Brooke within one Month next following, after such Refusal aforesaid by my Wife, do enter into Bond unto the aforesaid Henry Aldy and Nicholas Franklin as is aforesaid, and within the Time aforesaid, that the said Thomas and Richard, immediately after such Bond had and made, shall have the Lands and Tenements aforesaid, and other Hereditaments whatsoever, other than such as before are given to Th. Digges my Son, or to Martha my Wife for Time of her Life, by Way of Jointure, or otherwise, or appointed to be sold, or are appointed to the Poor as is aforesaid, and shall receive and take the yearly Revenues and Profits thereof, in such Manner and Form, and for such Purpose and Effect, and for no other, and for so long as my aforesaid Wife should have done, if she should have entered into Bond as is aforesaid: But and if the aforesaid Rich. Brooke do not within the Time above limited enter into Bond to the aforesaid Henry and Nicholas, with the said Tho. Ovington in Manner and Form aforesaid, but shall refuse or neglect so to do, then I will, if the aforesaid Thomas Ovington within the Time aforesaid do enter into Bond unto the aforesaid Henry Aldy and Nicholas Franklin in the Sum of four hundred Pounds, according as is above specified, then I will immediately after the said Entry into such Bond by the said T. Ovington unto the said Henry and Nicholas made and done, that then the said Tho. Ovington or his Assigns, shall have the aforesaid Lands and Tenements, Rents, Reversions and Hereditaments, other than such as before are given to Thomas Digges my Son, or to Martha my Wife, or appointed to be sold, or appointed to the Poor to dwell in as aforesaid, and shall receive and take the yearly Revenues and Profits thereof, in such Manner and Form, and for such Purpose and Effect, and for no other, and for so long as my aforesaid
Wife

Wife, or her Assigns should have done, if she should have entred into Bond, as is aforesaid, and as the aforesaid Richard Brooke, and the said Thomas Ovington and their Assigns should have done, if the said Thomas Ovington and Richard Brooke should have entred into a Bond unto the aforesaid Henry and Nicholas, as is above specified. Item, I will after all my Debts, Legacies, Payments, Annuities, and funeral Charges aforesaid be fully satisfied, discharged, or be or may be fully levied, that then all my Lands and Tenements, with their Appurtenances, other than the Lordship of Yoke, and the Manor of Fokeham with their Appurtenances in the Parishes of Leneham, Frynsted, and Harrisham in the County of Kent aforesaid, the Lands in Barham aforesaid, appointed to my Wife for Term of her Life, as is aforesaid, and the Lands and Tenements in Sturrey and Hackington, alias Saint Stephens in Canterbury, and the Lands in Hardees and Nackington aforesaid, with the Rents thereof belonging, appointed to be sold as aforesaid, (excepted and reserved) shall be to my eldest Son then living, and to the Heirs Males of his Body lawfully begotten for ever, paying yearly unto every of my other Sons then living, until every of them shall come to the Age of four and twenty Years, four Pounds of lawful Money of England, at the Feast Day of the Annunciation of our blessed Lady the Virgin, and Saint Michael the Archangel by even Portions, half-yearly to be paid, and also paying yearly to every of my aforesaid Daughters then living until every of them shall be married, or shall come to the Age of 21 Years, five Marks of lawful Money of England at the Feast-day next aforesaid, by even Portions half-yearly to be paid; and if Default of Payment happen to be of the aforesaid several four Pounds yearly to be paid to every or any of the aforesaid Sons, as is aforesaid, or of the aforesaid several five Marks yearly to be paid to every or any of the aforesaid Daughters, as is aforesaid; that then it shall be lawful to every or any of my aforesaid Sons and Daughters for Default of Payment of the Sums or Sum due to them or any of them, by Way of Annuity as is aforesaid, into the Lands and Tenements and other Hereditaments above limited to my eldest Son aforesaid, and to his Heirs Males as is aforesaid, to enter and distrain, and the Distress there so taken lawfully with them, or any of them, to lead, drive, and carry away, until every of them shall be fully satisfied, contented and paid off their several Annuities in Manner

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and Form aforesaid, to be paid together with their Costs and Damages in that behalf sustained and had. Item, I will, that after the Decease of Martha my Wife, if then my eldest Son aforesaid, or the Heir Male of his Body lawfully begotten then living, shall be of full Age of 22 Years, that then the said eldest Son, or his Heir Male aforesaid, shall have the aforesaid Lordship of Yoke, and Manor of Folkham with their Appurtenances, and the Lands aforesaid bought of Mr. Aucher, and had in Exchange of Mr. Boys, to him and to the Heirs Males of his Body lawfully begotten for ever; and if then my eldest Son aforesaid, or his Heirs Male as is aforesaid, shall be of the Age of two and twenty Years, then I will that the yearly profits and Revenues of the abovesaid Lordship of Yoke and Manor of Fokeham with their Appurtenances, and the Lands aforesaid bought of Mr. Aucher, and had in Exchange of Mr. Boys afores. until my said eldest Son aforesaid, or his Heir Male aforesaid shall come to the full Age of two and twenty Years, shall go and be employed towards the Payments of my Debts, Legacies, Payments and Annuities aforesaid. Item, I will, that if it happen my eldest Son aforesaid, or his Heirs male aforesaid to depart this transitory World without Heirs Males or Male of his Body lawfully begotten, then for lack of such Heir Male, all and every the aforesaid Lordship, Manors, Lands, Tenements, with their Appurtenances, Rents, Services, and Hereditaments, other than such as are appointed to be sold, and for the Poor as is aforesaid, shall be and remain to his next eldest Brother then living, and to the Heir Males of his Body lawfully begotten for ever, paying Yearly to every of his Brothers my Sons then living, until every of them shall be of the full Age of four and twenty Years, four Pounds of lawful Money of England, and to every of his Sisters my Daughters then living, five Marks of lawful Money, in such Manner and Form and so long as is afore specified. Item, I will that all and singular the, abovesaid Lordships, Manor, Lands and Tenements with their Appurtenances, Rents, Reversions, Services, and Hereditaments whatsoever in the County of Kent, or elsewhere, other than such as afore specified to be sold by Thomas Ovington aforesaid, and willed to my eldest Son aforesaid, as is afore specified for lack of Heir Male of the Body of any of my aforesaid Sons shall successively remain from Brother to Brother, and to his Heirs Male, paying yearly and for so long to his Brother and Sisters, as is aforesaid; and if it fortune
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all my Sons depart this transitory World without Heirs Males or Male of their or his Body lawfully begotten, then for lack of such Heir Male, I will all the aforesaid Lordship, Manor, Lands, and Tenements with their Appurtenances, Rents, Reversions, Services, and Hereditaments in the Parishes of Lencham, Frintsted, and Harrisham aforesaid, shall be and remain unto my Daughters aforesaid, and to their Heirs for ever. And I will, that all other my Lordships, Manors, Lands, and Tenements, with their Appurtenances, Rents, Reversions, Services, and other Hereditaments in Barham aforesaid, for lack of Heirs Males or Male of the Body of any of my Sons lawfully begotten, shall remain to Thomas Digges, one of the Sons of Leonard Digges Esq; late of the Parish of Sutton in the County of Kent aforesaid, and to the Heir Males or Male of his Body lawfully begotten for ever; and for lack of such Heir Male to remain to James Digges one other of the Sons of the aforesaid Leonard, and unto the Heirs Males or Male of his Body lawfully begotten for ever, and for lack of such Heir Male to remain to the right Heirs of me the aforesaid Christopher Digges, one other of the Sons of the aforesaid Leonard, and unto the Heirs Males or Male of his Body lawfully begotten for ever, and for lack of such Heir Male, to remain to the right Heirs of me the aforesaid Christopher Digges for ever, as by the Testament and last Will aforesaid amongst other Things more fully appeareth. And that afterwards and before, &c. that is to say, the second Day of February in the nineteenth Year of the Reign of the said Lady the now Queen, the aforesaid Christopher the Father, at Barham in the County aforesaid, died of the Manors, Tenements and Hereditaments aforesaid, in the *Monstrans de droit* within written, specified, with the Appurtenances so seized as aforesaid, as the Law requireth. And further the Jurors aforesaid say upon their Oath aforesaid, that the aforesaid Martha Digges, Wife of the said Christ. Digges the Father, him the said Christopher Digges her Husband overlived; and that the aforesaid Martha afterwards, that is to say, the 4th Day of May in the 19th Year aforesaid, at Barham aforesaid died: And further the Jurors aforesaid say upon their Oath aforesaid, that the said Thomas Digges, Father of the said Thomas posthumus Digges, in the Inquisition and *Monstrans le droit* named, and the aforesaid T. Digges, in the Indenture aforesaid here first specified named, were one and the same Person, and not other nor divers; and that the Manors, Lands and Tenem. in the Inquisition aforesaid specified, and the Manors, Lands, and

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Tenements in the Indenture afores. here first mentioned and comprised, are the self same Manors, Lands and Tenements, and not others, nor divers; and that the afores. Lands and Tenements, whereof the Uses by the aforesaid Indenture, bearing Date the 6th Day of *May* in the 12th Year afores. are revoked, are not the Manors, Lands and Tenements in the aforesaid *Monstrans de droit* specified, nor any Parcel thereof; and that the Uses of the Manors, Lands and Tenements in the afores. *Monstrans de droit* specified, nor any Part thereof, by the aforesaid second Indenture here within specified, were not revoked, annulled, or mentioned to be by the same revoked or annulled; and that the afores. Manors, Lands and Tenements, whereof the Uses by the afores. Indenture, bearing Date the 20th Day of *Septemb.* in the 13th Year afores. mentioned to be by the same Indenture revoked and annulled, are the same Manors, Lands and Tenements in the *Monstrans de droit* within written specified, and not other, nor divers. But whether upon the whole Matter aforesaid in form aforesaid found, the said *Chr. Digges* the Father died seised of the Manors, Lands and Tenements in the *Monstrans de droit* within written specified, in his Demesne as of Fee, as in the afores. *Monstrans de droit* it is supposed, or not, the Jurors afores. are utterly ignorant; and thereof pray the Advice of the Justices afores. and of the Court here, &c. And if upon the whole Matter afores. by the Jurors afores. in form afores. found, it shall seem to the same Justices and Court here, &c. that the aforesaid *Chr. Digges* the Father died seised of the Manors and Tenements in the *Monstrans de droit* within written specified, in his Demesne as of Fee, or of any Part thereof, with the Appurtenances; then the Jurors say upon their Oath aforesaid, That the afores. *Chr. Digges* the Father died seised of the Manors and Tenements, with the Appurtenances, in the *Monstrans de droit* specified, or of so much thereof, as to the same Justices shall seem the same *Christopher* so died seised in his Demesne as of Fee, as the afores. *Chr. Digges* the Son, and the afores. *Edw. Digges* within by Pleading have alleged; and if upon the whole Matter afores. by the Jurors aforesaid, in form aforesaid found, it shall seem to the same Justices and Court here, &c. that the afores. *Chr. Digges* the Father died not seised of the Manors and Tenements, with the Appurtenances, in the *Monstrans de droit* within written specified, or of any Parcel thereof in his Demesne as of Fee; then the said Jurors say upon their Oath aforesaid, that the aforesaid *Christopher Digges* the Father died not seised of the Manors and Tenements, with the Appurtenances, in the *Monstrans de droit* within written specified, or of so much thereof as to the said Justices aforesaid shall seem the same *Christopher* so not to die seised of

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in his Demesne as of Fee, as the said *Thomas Palmer* and *Margaret* within by Pleading have alledged; And because the Court of the Lady the Queen here of giving their Judgment of and upon the Premisses are not yet advised, Day thereof is further given to the Parties afores. in state as now, before the L. the Q. until the Morrow of the *Holy Trinity*, wheresoever, &c. to hear their Judgment of and upon the Premisses, &c. because the Court of the Lady the Queen here thereof not yet, &c. At which Day, before the Lady the Q. at *Westm.* come as well the afores. *Chr. Digges* the Son, and *Edw. Digges*, by their Attorney aforesaid, as the afores. *Tho. Palmer* and *Margaret*, in their proper Persons; And because the Court of the Lady the Q. here of giving their Judgment of and upon the Premisses are not yet advised, further Day is given to the Parties afores. in state as now, before the Lady the Q. until in 8 Days of *St. Michael* wheresoever, &c. to hear their Judgment of and upon the Premisses, because the Court of the Lady the Queen here thereof not yet, &c. At which Day, before the Lady the Q. at *Westm.* come as well the afores. *Chr. Digges* the Son, and the said *Edw. Digges*, by their Attorney afores. as the afores. *Tho. Palmer* and *Margaret*, in their proper Persons; And because the Court of the said Lady the Queen here of giving their Judgment of and upon the Premisses are not yet advised, Day thereof is given to the Parties afores. before the Lady the Q. until in 8 Days of *St. Hillary*, wheresoever, &c. to hear their Judgment thereof, &c. because the Court of the Lady the Queen here not yet, &c. At which Day, before the Lady the Queen at *Westm.* come the aforesaid *Chr. Digges* the Son, and *Edw. Digges*, by their Attorney afores. as the said *Thomas* and *Margaret*, in their proper Persons; And because the Court of the Lady the Q. here of giving their Judgment of and upon the Premisses are not yet advised, further Day is given to the Parties afores. before the Lady the Q. until from *Easter Day* in 15 Days wheresoever, &c. to hear their Judgment thereof, &c. because the Court of the Lady the Queen here thereof not yet, &c. At which Day before the Lady the Q. at *Westm.* come the aforesaid *Chr. Digges* the Son, and *Edw. Digges*, by their Attorney afores. as the afores. *Tho. Palmer* and *Margaret*, in their proper Persons; And because the Court of the Lady the Q. of giving their Judgment of and upon the Premisses are not yet advised, further Day is given to the Parties afores. before the Lady the Queen at *Westm.* until the Morrow of the *Holy Trinity*, wheresoever, &c. to hear their Judgment thereof, because the Court of the Lady the Queen here not yet, &c. At which Day, before the Lady the Queen at *Westm.* come as well the afores. *Chr. Digges* the Son, and *Edw. Digges*, by their Attorney afores. as the said *Thomas Palmer* and

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Judgment.

Margaret, in their proper Persons: Upon which being seen, and all and singular the Premises, by the Court of the said Lady the Queen here fully understood, and mature Deliberation thereof being had; because it seemeth to the Court of the Lady the now Queen here, that the aforesaid *Christopher Digges* the Father died not seised of the Manors and Tenements, with the Appurtenances, in the *Monstrans de droit* above specified, or of any Parcel thereof in his Demesne as of Fee. It is considered (*i. e.* adjudg'd) that the aforesaid *Christopher Digges* the Son, and *Edward Digges*, take nothing by their Writ aforesaid, but for their false Clamour be thereof in Mercy, &c. And the aforesaid *Thomas Palmer* and *Margaret* do go thereof without Day, &c.

DIGGES'S

DIGGES'S Case.

Term Trin. 42 Eliz. in a *Monstrans de droit* between *Chr. Digges* and *Edw. Digges* Plaintiffs, against *Tho. Palmer* and his Wife Defendants, in the *King's Bench*.

IN a *Monstrans de droit* by *Christopher Digges* and *Edward Digges* against *Palmer* and his Wife, the Grantees Moor 603.
2 And. 205. of the Ward of *Posthumus Digges*, Son and Heir of *Thomas Digges* now dead, in which the Issue was *alsque hoc quod Christophorus Digges* (Father of the said *Thomas*) *obit seifus* (of Land found in the Office) *in Dominico suo ut de Feodo*, upon which a special Verdict was found to this Effect: The said *Christopher* was seised of the Land in Question and of other Land in Fee, and by Deed indented 6 *Maii* 10 *Eliz.* covenanted (in Consideration of Marriage between him and his Wife, and for Advancement of the said *Thomas* their Son, and for 200 *l.* paid him before Marriage, and for other Considerations) that he and his Heirs would stand seised to the Use of himself for Life, and after to the Use of the said *Thomas* in Tail, and after to the Use of the said *Christopher* in Tail, with a Proviso for the Considerations aforesaid, &c. that it should be lawful for the said *Christopher* &c. any Time, during his Life, with the Consent of certain Persons by Deed indented to be inrolled in any of the Queen's Courts, to revoke any of the Uses or Estates, and to limit new Uses. And afterwards 6 *Maii* 12 *Eliz.* Moor 604. *Christopher*, with the Consent, &c. by Deed indented and inrolled in the Chancery revoked the Uses and Estates in the first Indenture in Part of the Land, and limited the Use thereof to him and his Heirs: Afterwards *Christopher* by Deed indented 20 *Septemb.* 13 *Elizab.* with Consent, &c. and inrolled in the Common Pleas *M.* 13 & 14. declared that for the Payment of his Debts, &c. that from the Time of the Inrolment of this Deed in the Chancery, all the Uses in the first Indenture should be void,

void, and that the Land should be to the Use of *Cbr.* in Fee: Afterwards *Cbr.* by Indent. 26 Oct. 14 *El.* covenanted to levy a Fine of all his Lands, Part whereof should be to the Use of him and his Wife and his Heirs, and the Residue to the Use of him and his Heirs, which Fine in the same Term was levied accordingly; and afterwards the said Indent. bearing Date 20 Sept. 13 *El.* was inrolled in the Chancery, and afterwards *Cbr.* entered into the Land and made his Claim. And whether *Cbr.* died seised in Fee of the said Lands mentioned in the Deed of Revocation of 20 Sept. 13 *Eliz.* was the Question. And in this Case after many Arguments at the Bar and at the Bench, six Points were upon good Advice and Deliberation resolved and adjudged.

(a) Moor 605.
Co. Lit. 237. a.
Hob. 313.
(b) Lane 119.
Moor 604, 605.

1. That *Cbr.* might revoke Part (a) at one Time, and Part at another Time, and so of the Residue till he had revoked all. But he could revoke one Part but (b) once, unless he had a new Power of Revocation to the Uses newly limited; for these Words (at any Time) amount to as much and are equivalent, as if he had said, from Time to Time as often as he shall think good. As if a Man leases 20 Acres of Wood, and grants that he may fell the Timber-Trees (d) at any Time during the Term, he may fell Part at one Time, and Part at another. So if a (e) Man devises that his Executors shall sell his Lands, they may sell Part at one Time, and Part at another: And the Ch. Just. said, this Point had been adjudged before now, and it was said it was Sir *Richard Lee's* Case in the Com. Pleas.

(d) 4 Leon. 36.
3 Leon. 54.
1 And. 7.
(e) Co. Lit. 113
a. Moor 221.
1 And. 67, 68.

2. It was resolved, that where the Revocation is to be made by Deed indented to be (f) inrolled, it is as much as to say, by Deed indented and inrolled, for no Revocation shall be in the same Case until the Deed be inrolled; for if it should be a Revocation before the Inrolment, then peradventure the Deed would never be inrolled, which would be against the Words and Intent of the Parties.

(f) Palm. 432.

3. It was resolved, that it was not a perfect and complete Revocation by the Indent. 20 Sept. ann. 13 *El.* till the Indent. was inrolled in the Chancery, for altho' the Proviso of Revocation in the first Indent. will be satisfied with an Inrolment in any of the King's Courts (as in this Case it was in the Com. Pleas) yet sofarasmuch as the Indent. of Revocation itself limits the Revocation to take Effect after the Inrolment thereof in the Chancery; for that Reason, until it was inrolled in the Chancery, there was no perfect Revocation.

(g) Moor 605.
Hard. 14, 414.
Br. Feoffment
& Volunt. 6, 7.
Br. Feoffment
al use 12. Ant.
111. a. 112. a.
4 Leon. 134,
135, 220, 221.
Co. Lit. 265. b.
237. a. Kelw.
44. b. Litch 10.
Pop. 194. 14 H.
7. casu ultimo.

4. It was resolved, that the Fine levied before the Inrolment in the Chancery (which was before the Revocation) had extinguished the Power of Revocation, for it is not to be resembled to the Case in (g) 15 *H.* 7. 11. b. if Executors or Feoffees who have Power by the Will of *Cestuy que use*, to sell the Use, if they make a Feoffment of the Land to the former Use, yet they may sell the Use, for the same Use which was devised to be sold remains untouched

touched by the Feoffment; also after the Sale, the Vendee shall be in by the Devisor and not by the Feoffees; but in the Case at the Bar, the Feoffm. is made of the Land itself, which is to be revested to *Chr. Digges* by the Revocation, or is to be transferred to him to whom he shall limit it, and he shall come in under him, for in such Case he who raises and limits the Use shall be supposed to be the Donor, 2 *E. 6. Br. Formedon* 49. 35 *H. 8. Dy. 55. a.* and so was it adjudged in this Court between *Albany* and *Grendon* for Land in *Midd. 28 El.* that by the (a) Feoffment of the Land the Power of Revocation was extinguished. And there it was also agreed *per totam curiam*, that such Power of Revocation might be released by a Release made to any who had an Estate of Freehold in Possession, Reversion or Remainder. And *Polpham* Ch. Just. said, there was not any Question thereof; for his Power is not merely collateral, but favours and tastes of the Estate and Interest of the Land, *quod fuit concess. per tot' cur'*. But the Ch. Justice said, if a Feoffm. in Fee be made by *A.* to divers Uses, with Proviso that if *B.* shall revoke, that the Uses shall cease, there (b) *B.* cannot release this Power; and a Fine levied or a Feoffment by him, shall not extinguish it, for the Power of *B.* is merely (c) collateral, and the Land doth not move from him, nor shall the Party be in by him, nor under him; but a Fine, Feoffment, or Release by *A.* if the Power had been reserved to him, would extinguish it, *causa qua supra*.

5. It was agreed, that if the Fine had not been levied, then by the Revocation of *Chr.* the ancient Uses were determined without (d) Entry or Claim, because he himself was Ten't for Life of the Land, so that he could not enter upon himself, and claim he need not, when he himself is seized of the Land, and makes an express Act of Revocation which is as strong as any Claim can be. And therefore it is agreed in 20 *E. 4. 18 & 19. a.* that (e) if a Feoffment be made upon a collateral Condition, and before the Condition performed the Feoffee leases it to the Feoffor, if afterwards the Feoffee doth not perform the Condition, the Land shall be in the Feoffor immediately without Entry or Claim, because he himself is in Possess. of the Land. So if a Villein purchases Rent which is issuing out of the Lord's Land, it shall be in the Lord without Entry or Claim of the Lord; for if he should make an Entry or Claim, it ought to be upon the Land, and that is not necessary when he himself is seized thereof. And this very Point was agreed *M. 40 & 41 El.* in the (f) Earl of *Shrewsbury's* Case, that the Uses in the like Case should cease without Entry or Claim, he who made the Revocation being Tenant for Life, as in the Case at the Bar.

6. It was agreed, that (g) other Uses might be limited or raised by the same Conveyance which revoked the ancient Uses, for in as much as the ancient Uses cease *ipso facto* by the Revocation without Claim or other Act

(a) Moor 605.
Winch 56.
2 Roll. Rep. 337.
466. A. 111. b.
Co. Lit. 237 a.
Hob. 337, 338.

(b) Moor 605.
Winch 56. Co.
Lit. 237. a.
265. b.
(c) Hard. 414,
415.

(d) Moor 605
Co. Lit. 237. a.

(e) 3 Keb. 505.
Owen 41. Co.
Lit. 280. a. b.
Br. Condition
167. 8 H. 7. 8. a.
4 Co. 53. a.
1 Ro. 539.
11 H. 7. 21. b.
Antea 97. a.

(f) Co. Lit.
215. a.
(g) 3 Keb. 510.
Co. Lit. 237. a.
1 Siderf. 343.
6 Co. 32. b.
33 b. Moor 609,
681, 682. 10 Co.
144. a. Winch
83. 1 Jones 353.

Antea 76. b.
6 Co. 33. a.

the Law will adjudge Priority of the Operation of one and the same Deed, although it be sealed and delivered at one and the same Instant; and therefore it shall be first in Construction of Law a Revocation and a Cesser of the antient Uses, and then a Limitation or Raifing of the new. As if Tenant in Tail and a Stranger levy a Fine to *A.* who grants and renders to the Stranger for Years, rendring Rent, and by the same Fine grants the Reversion and Rent to the Tenant in Tail (which Manner of Fine is commonly admitted at this Day) in that Case although the Render of the Lease and the Grant of the Reversion be by one and the same Fine, and at one and the same Instant, yet in Law the Lease precedes, and the Grant of the Reversion is subsequent. *Vide (a)* 36 *H.* 8. *Br. Fines* 118. & *vide M.* 41 & 42 *Eliz. Rot.* 366. adjudged upon a Demurrer in Law *in Communi Banco* between *(b) White* and *White* in a Replevin accordingly. And here in this Case a Judgment was cited, that where *A.* covenants with *B.* that in Consideration that he would marry his Daughter, that *A.* and his Heirs would stand seized to the Use of *B.* and his Heirs, *B.* entreth and disseiseth *A.* and made a Feoffment in Fee, *A.* re-entered, and afterwards *B.* married his Daughter, yet the Use shall not vest in him, for he hath extinguished it by his Feoffment.

(*) Raym. 142.
Antea 76. b.

(b) Owen 126.
Cr. Eliz. 727,
792.

2 And. 131.
Antea 76. b.
3 Keb 321.
Moor 575.

[See this Case cited in Skinner 53, 72, and 186.]

MILDMAY'S Case.

Term. Hill.

24 and 26 Eliz.

THE Case in an Information exhibited in the Court of Wards by *Richard Kingmill*, Esq; Attorney of the same Court, against the Lady *Anne Sharington*, late Wife of Sir *Henry Sharington*, Knight, and *John Talbot*, Esq; and *Oloff* his Wife, one of the Daughters and Heirs of the said Sir *Henry Sharington*, which was resolved *Hill. 24 Eliz.* and afterwards *Hill. 26. Eliz.* adjudged in the Court of Common Pleas, *Rot. 745*, between *Anthony Mildmay*, Esq; Plaintiff, and *Roger Standish*, Gen. Defendant, in an Action upon the Case for slandering his Title, &c. which Judgment was *M. 26 & 27 Eliz. Rot. 35.* affirmed in the King's Bench, in a Writ of Error, and was in Effect thus: The said Sir *Henry Sharington* having Wife the said *Dame Anne*, and three Daughters, *Grace* married to the said *Anthony Mildmay*, *Ursula* married to *Thomas Sadler*; Esq; and *Oloff* married to the said *John Talbot* by Indenture bearing Date 20 *Augusti* 15 *Eliz.* made between the said Sir *Henry Sharington* of the one Part, and *Edmund Pirton* and *James Paget*, Esquires, of the other Part, in Consideration of a (a) Jointure for his Wife, for the Advancement of his Issue Male of his Body, if he should have any, and for the Advancement of his said three Daughters and the Heirs of their Bodies, if he should have no Heir Male of his Body, and for the Continuance of his Land in his Blood, and for other good and just Considerations did covenant to stand seized of six hundred Acres of Land (*exempli gratia*) to the Uses, Intents, and Purposes, and under the Provi-

Co. Ent. 30. a.
Cr. Eliz. 34.
Jenk. Cent.
247.
N. Moor 144, 372.

(a) Bridg. 55.

so

so following, *scil.* of all to the Use of himself for his Life, and after for 300 Acres of Land in certain to the Use of his Wife for her Life for her Jointure; And of the other 300 Acres after his Death, and of the said 300 Acres limited for the Jointure of the Wife after their Deaths to the Use of the Heirs Males of his Body begotten; and for Default of such Issue, then for the 300 Acres not being limited for Jointure, &c. to the Use of his three Daughters severally by themselves, and to the Heirs of their Bodies; and for Default of such Issue, to the Use of the right Heirs of the said Sir *Henry*, with Like Limitation of the other 300 Acres to them of the like Estate, with the Reversion to his right Heirs. And if any of his said three Daughters should die without Issue, then her Portion should be by Moieties to the Survivors of the like Estate, *ut supra*, with Remainder *ut supra*; with Proviso for the three several Husbands of the said three Daughters to have several Portions for their Lives, if they should survive their Wives, and should not be entitled to be Tenants by the Curtesy, with this Proviso in these Words following, *scil.* (a) Provided always, and it is covenanted and agreed between all the said Parties, that it shall be lawful for the said Sir *Henry* by his Will in Writing to limit any Part of the said Lands to any Person or Persons for any Life, Lives, or Years, for the Payment of his Debts, Performing of his Legacies, Preferment of his Servants, or any other reasonable Considerations as to him shall be thought good, and all Persons thereof seized, to stand seized thereof to the Use of such Persons and for such Interests as shall be so limited by his Will. After which the said *Ursula* died without Issue, *Grace* and *Oloff* surviving, whereby her Portion by Moieties came to them: And afterwards the said Sir *Henry* by his Will in Writing for the (b) Advancement of his Daughter *Oloff*, and of her Husband, and of the Heirs of the Body of the said *Oloff*, limited a great Part, limited by the Indenture for the Portion of *Grace*, after the Death of his Wife, and another great Part of Land which remained to her by the Death of the said *Ursula*, to the said *Oloff* and her Husband, and to the Heirs of the Body of *Oloff* for (c) 1000 Years without Reservation of any Rent; and afterwards the said Sir *Henry* died without Issue Male, and whether this Limitation for 1000 Years being made for the Advancement of his Daughter *Oloff* and her Husband, and the Heirs of the Body of the said *Oloff*, be good in Law by Force of the said Proviso, was the Question. And it was resolved and adjudged by Sir *Christopher Wray*, Ch. Just. of *England*, Sir *Edm. Anderson* Ch. Just. of the Court of Common Pleas, and all the Judges of *England*, That the Limitation for 1000 Years was void, and not warranted by the said Proviso; and in this Case five Points were resolved.

First, That an Use cannot be raised by any Covenant or

Proviso, or by Bargain and Sale upon a (a) general Consideration: And therefore, if a Man by Deed indented and enrolled according to the Stat. for divers good Considerations bargains and sells his Lands to another and his Heirs, *nihil operatur inde*; for no Use shall be raised upon such general Consideration, for it doth not appear to the Court that the Bargainor hath *quid pro quo*, and the Court ought to judge whether the Consideration be sufficient or not; and that cannot be when it is alledged in such Generality. But note Reader, the Bargainee in such Case may (b) aver that Money or other valuable Consideration was paid or given, and if the Truth be such, the Bargain and Sale shall be good. So if I by Deed covenant with *J. S.* for divers good Considerations, that I and my Heirs will stand seized to the Use of him and his Heirs, no Use without a special Averment shall be raised by it; but if *J. S.* be of my Blood, and in Truth the Covenant was made for the Advancement of his Blood, he may aver that the Covenant was in Consideration thereof; for in both these Cases the Person who shall take the Use is certain; and that such Averment may be taken which stands with the Deed, altho' it be not expressly comprised in the Deed, is proved by a Case adjudged in an Assise between (c) *Villers and Ecaumont, Term. Pasch. 3 & 4 Ph. & M.* reported by *Bendloes* Serjeant at Law; which Case you will find also *Pasch. 3 & 4 Ph. & M. Dy. fo. 146.* where the Case in Effect was, That *George Beaumont* and *Jane* his Wife, as in the Right of his Wife, were seized of the Manor of *Northball, &c.* and had Issue *Will. Beaumont*, who had Issue *Rich. Beaumont*, and he and his Wife, by Indenture 12 *H. 8.* between them of the one Part, and *Rich. Clark* of the other Part, in Consideration of 70 *l.* given by *Rich. Clark*, did bargain and sell the Land to the said *Rich. Clark* for 30 Years, the Remainder to themselves for their Lives, the Remainder to *Will. Beaumont* for Life, the Remainder to *Rich. Beaumont* and to one *Collet* the Daughter of *Rich. Clark* in Tail, &c. and afterwards a Recovery was had to the same Uses; *Rich. Beaumont* and *Collet* did intermarry; and it was found and averred, that the said Indenture was made, and the said Recovery had *tam in consideratione maritagii præd' inter Rich' Beaumont & Colletam, habend' & celebrand'* (to make it a Jointure within the Statute of (d) 11 *Hen. 7.*) *quam* of the said Sum of 70 *l.* and it was adjudged, That although there was a particular Consideration mentioned in the Deed, yet an Averment in the same Case might be made of another Consideration which stood with the Indenture, and which was not contrary to it; *a fortiori* in the said Cases, for in the Deed there is no certain Consideration, but the Deed is general for divers good Considerat. then

(a) Hob. 151.
2 Roll. 783.
786.
Cr. Eliz. 394.
2 Co. 15. a.
Moor 195.
Cr. Jac. 168.
175.
1 Anderf. 141.
Cart. 138, 140.

(b) 2 Roll. 786.
2 Co. 76. a.
7 Co. 39. a.

(c) Br. N. C.
182.
2 Anderf. 47.
N. Ben. 39.
2 Roll. 781.
2 Inst. 672.
4 Co. 3. b.
Owen 33.
Raym. 47.
Ben. in Kelw.
208.
7 Co. 39. a.
Cart. 140.
Palm. 214, 215.
506, 507.
Raym. 50.
Moor 93, 505.
2 Rol. Rep. 68.
11 Co. 25. a.
3 Co. 51. a.

(d) 11 H. 7.
c. 20.
Co. Lit. 326. b.
365. b.
1 Ro. 878.
10 Co. 37. a.
1 Co. 102. a.
3 Co. 50. b.
61. b. 62. a.
Cr. Eliz. 514.
Moor 93, 455.
2 Anderf. 44.

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the Averment that the Bargainee gave Money, &c. or that the Covenantee was of his Blood, is but an Explanation and particularising of the general Words of the Deed, which include every Manner of Consideration, and in all the said Cases the Matter so averred is (a) traversable and issuable.

(a) Doct. pla. 189.

(b) 2 Rol. 260.
Cr. Car. 181.
Moor 145.

See Fitzgib. 300.
Notre.

Secondly, it was resolved, that when (b) Uses are raised by Covenant in Consideration of paternal Love, &c. to his Sons and Daughters, or for the Advancement of any of his Blood; and after in the same Indenture a Proviso is added, that the Covenantor for divers good Considerat. may make Leases for Years, &c. that the Covenantor in such Case cannot make a Lease for Years to his Son or Daughter, or to any other of his Blood (much less to any other Person) because the Power to make Leases for Years was void when the Indenture was sealed and delivered; for the Covenant upon such general Consideration cannot raise the Use for the Causes aforesaid, and no particular Averment can be taken because his Intent was as general as the Consideration was, and his Intent was not at the Time of the Delivery of the Deed to demise to any Person in certain, to one more than another, but to demise generally to whom he pleased; and therefore his Power to make Leases (the Uses being created and raised by Covenant upon the Considerations aforesaid) was void *ab initio*. But if the Uses had been limited upon a Recovery, (c) Fine or Feoffment, in that Case there needs not any Consideration to raise any of the Uses, and so a manifest Difference. And the Case at Bar is stronger, because the Proviso which gave Power to make Leases will defeat or at least incumber the Estates vested and settled upon good Considerations in Strangers by the Covenants of the same Indenture. So note a Difference when the Consideration is general, and the Covenant or bargain made with a Person certain, there an Averment according to the Truth of the Case may be taken as aforesaid; but when the Consideration is general, and the Person uncertain, there no Averment can help: And therefore if I for divers good Considerations covenant with you, that I will stand seised to the Use of such a one as you shall name, now although you name my Son, or my Cousin, yet no Use shall be raised thereby; for, for the Generality and Incertainty, it was void *in initio*, and never could be made good to any Purpose after; and no Averment can make it good, or reduce it to any Certainty, for the Intent of the Covenantor was as general as his Words were. But if I (d) covenant with you that in Consideration of fatherly Love, or for the Advancem. of my Blood, I will stand seised to the Use of such of my Sons, or to the Use of such of

(c) 2 Leon. 138.
Owen 40.
Moor 102.
1 Lev. 30.

(d) Raym. 83.

my Cousins as you shall name, upon the Nomination made the Use shall be raised, for there the Consideration is particular and certain, and the Person by Matter *ex post facto* may be made certain. 3. Upon these Words in the Proviso (a) (other Considerations) it was held, that this Word other could not comprehend any Consideration, mention'd or express in the Indentures before the Proviso; for (other) ought to be other in Nature, Quality, and Person, and the Advancement of his Daughter is the Consideration mention'd before. 4. It was resolv'd, that the said Limitation of (b) 1000 Years was as well against the Intent of the Parties, as against the Words of the Proviso, for the Intent and Scope of the Indentures was to make Distribution of his Lands amongst his three Daughters, and the Heirs of their Bodies; and every of them, upon good Consideration and by Agreement between their Parents, had her Portion by her self; but if this Limitation for 1000 Years should be good, it would rather frustrate the Estate of the other Sister, and defraud the Intent of the Parties grounded upon a Consideration of Marriage, than perform and pursue the Intent and Meaning of the Proviso, for the Intent of the Proviso was never to give any Power to make void the Estates of the other Sisters; but it appears by all the Parts of the Indenture, that each Daughter should be advanc'd equally; And so this Limitation for 1000 Years without any Rent reserved was against the Intent and Meaning of the Parties; it seems also to be against the Words of the Proviso, for that cannot be called a reasonable Consideration which tends to the Subversion of the Estates vested and settled by the said Indentures upon so good and just Considerations against the Meaning of the Parties. After the said Resolution of the Justices certified into the Court of Wards, it was adjudg'd in the Common Pleas, and also affirmed upon a Writ of Error in the King's Bench in an (c) Action upon the Case brought by the said *Anthony Mildmay* against *Roger Standish*, because the said *Roger* had said, and openly published that the said Land was lawfully assured to the said *John Talbot* and *Oliffe* his Wife for 1000 Years, and that they were lawfully possess'd of the Interest of the said Term, whereas in Truth the said Land was not lawfully assured for the Term aforesaid, nor were the said *John Talbot* and *Oliffe* lawfully possess'd of the Interest thereof, and so for slandering of the Estate and Title which was convey'd to his Wife by the said Indentures, and shew'd all in Certainty, and how he was prejudic'd by the said Words, he brought the said Action. And *Standish* pleaded the said Proviso in the same Indentures, and the said Limitation for 1000 Years by the said Will, &c. according to the said Proviso (as he pretended) by Virtue whereof he said the said *Oliffe* had an Interest for 1000 Years, and

Skinner 532.

(a) Bridgm. 55.

Cro. Car. 400.

Cro. Jac. 175.

Cait. 138.

Stile 156.

(b) Hob. 159.

(c) Moor 144.

Cro. El. 34.

177.

Co. Ent. 30.

Nu. 27.

Palm. 592.

Jenk. Cont. 247.

MILDMAY'S Case.

PART I.

justified the Words upon which the Plaintiff demurred. And it was adjudged, that the Action upon the Case was maintainable: And in this Case two Points were resolved in both the Courts: First, that the said Lease for the Causes aforesaid was void in Law. Secondly, altho' *de facto* the said *John Talbot* and *Oliffe* had a Limitation of the Land by the said Will of *Sir Henry Sherington* in Writing for 1000 Years, which was the Occasion that *Standish*, being a Man not learned in the Law, did affirm and publish that *Oliffe* had a Term for 1000 Years; yet forasmuch as he hath taken upon him the Knowledge of the Law, and meddling with a Matter which did not concern him, had published and declared, That *Oliffe* had a good Estate for 1000 Years, in Slander of the Title of *Mildmay*, and thereby had prejudiced the Plaintiff, as appears by the Plaintiff's Declaration; for this Reason the Judgment given for the Plaintiff was affirmed in the Writ of Error; *Et ignorantia juris non excusat.*

2 Co. 3. b.

[See Fitzgib. 299, 300. Skinner 552, &c.]

PART I.

How alr

A SERIES, OR TABLE of the Cases in this Book, shewing in what Court they were transacted, in what Term recorded, and in what Folio they may be here found.

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adjudged, the Judges were, *viz.*

Judges of the King's Bench.

Sir Christopher Wray, *Knt. Ch. Just. who dyed*
An. 34 Eliz. *and after him,*
Sir John Popham, *Knt.*
John Southcote, *Esq;*
Sir Thomas Gawdy, *Knt.*
William Ayloff, *Esq;*
Robert Shute, *Esq;*
John Clenche, *Esq;*
Sir Francis Gawdie, *Knt.*
Edward Fenner, *Esq;*

Judges of the Common Pleas.

Anno 19 Eliz. } Sir James Dyer, *Knt. C. J. who dyed after Hill.*
 } Term 24 Eliz. and Pasch. 24. Sir Edmund
 } Anderson, *Knt. succeeded.*
 } Roger Manwood, *who removed to the Excheq.*
 } Hill. 21.
 } Robert Mounson *resign'd Pasch. 22.*
Hill. 20. } Thomas Meade *dyed Pasch. 27.*
Trin. 21. } Francis Windham *dyed after Trin. 34.*
Hillar. 23. } Will. Periam, *removed to the Exchequer Hill. 35.*
M. 27 & 28. } Francis Rhode, *dyed Anno 31.*
Paschæ 31. } Thomas Walmesley.
Hillar. 35. } Francis Beaumont *dyed before Pasch. 40.*
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Trin. 40. } John Glanvil *dyed after Trin. 42.*
Hillar. 41. } George Kingesmill.
Mich. 43. } Peter Warberton.

Barons in the Exchequer.

Sir John Jeffrey, <i>Knt.</i>	Thomas Gent.
Robert Shute.	Matthew Evans.
Edward Flowerdew.	John Savill.
John Clenche.	John Sotherton.
Robert Clerke.	