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The Reports of Sir Edward Coke

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The Reports of Sir Edward Coke Kt., in English, Compleat in Thirteen Parts: The First Part of the Reports of Sir Edward Coke Kt., Her Majesty's Attorney General

Sir Edward Coke

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THE
R E P O R T S

O F

Sir Edward Coke Kt.

In English,

Compleat in thirteen Parts,

W I T H

REFERENCES to all the Antient 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

P L E A D I N G S

T O T H E

C A S E S.

In the *SAVOY*:

Printed by E. and R. NUTT, and R. GOSLING, (Assigns
of *Edw. Sayer Esq;*) for D. Browne, J. Walthoe,
W. Lintot, K. Gosling, W. Pears, T. Ward, W.
Junys, J. Osborn, L. Woodward, F. Clay, T.
Wotton, K. Williamson and A. Ward.

M. DCC. XXVII.

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 Antient as Modern.

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 D. Browne, J. Walthoe, B. Lintot, K. Gosling, W. Sears, L. Ward, T. Amys, J. Dehorn, L. Woodward, F. Clay, T. Motton, R. Williamson and A. Ward.

M. DCC. XXVII.

The P R E F A C E.

brevi est amifurus: Et proinde sicut nullam studio intermissionem totalem concedo, quia auferet unus mensis quod multi non restituent, ita perseverantiam ei imprimis commendo, quasi singulis huiusce mediis comitem individuum. Anni jam viginti & plus eo facti sunt, a vicessimo secundo imperii serenissimæ nostræ Principis, ex quo observavi quantum potui veras earum actionum rationes (quarum præsertim pars fui & quæstionis statum intellexi) quæ matura deliberatione & iudicio decisæ sunt, & ut nunquam animum induxi (id quod complures experti sunt) ita eas in privatos usus seponere, ut petitioni cujusquam hominis amici deessem, sive ut videret sive ut transcriberet, ita nunquam in hoc usque tempus persuaderi potui (testor qui me norunt omnes) sic eas ullis precibus divulgare, ut prelo committi paterer. Verum cum cogitarem quomodo regia plane cura & prudenti electione principis nostræ, forensia iudiciorum subsellia occupata sint & ornata, viris sapientia & eruditione præstantibus (qui in florentissimo hoc foelicissimi ipsius imperii vere munus

his Gain, or his Ease, soon shall be (I warrant him) lose a great Part of his Learning: Therefore as I allow not to the Student any Discontinuance at all (for he shall lose more in a Month than he shall recover in many:) So do I commend Perseverance to all, as to each of these Means an inseparable Incident. I have since the 22d Year of her Majesty's Reign, which is now twenty Years complete, observed the true Reasons as near as I could, of such Matters in Law (wherein I was of Counsel, and acquainted with the State of the Question) as have been adjudged upon great and mature Deliberation; And as I never meant (as many have found) to keep them so secret for my own private Use, as to deny the Request of any Friend to have either View or Copy of any of them: So till of late I never could be persuaded (as many can witness) to make them so publick, as by any Entreaty to commit them to print: But when I considered how by her Majesty's princely Care and Choice, her Seats of Justice have been ever for the due Execution

THE
PREFACE
TO THE
READER:

N *NIHIL* est adeo
aut memoriæ in-
fitum, aut infix-
um animo, quin
intervallo temporis obscu-
rari, sensimq; sine sensu
deberi possit. Proin neces-
sarium plane est, ut si quid
dignum nobis, posteris,
literarum lucè aliquando
contingat, id (testi tem-
porum, veritatis vitæ,
nuncio vetustatis) scripto
committatur, neque labi-
li tantum manderetur me-
moriæ, quæ raro sive fi-
dem liberat, sive fidelem

N *NOTHING* is or
can be so fixed
in Mind, or fast-
ned 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 Wri-
ting (the Witness 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 bewail- ed, having greater Cause, are less careful, having better Opportunity, are less occasioned, and being in greater Necessity, are of all

*acceptorum rationem red- dit: Qua in re ætas hæc nostra succedentibus re- tro sæculis aliis est ingra- tissima; sæculum prius (hoc nostro minus foelix) magis industrium, ad mag- num tum ipsorum, tum nostri, tum posteritatis omnis emolumentum, fi- de & studio singulari, suo- rum temporum dicta, facta insignioris notæ om- nia, literis tradiderunt: Nam ut missis cæteris in hoc uno insistam, quam studiose nostri olim ordi- nis viri, sententias, re- sponso, decreta reveren- dissimorum nostræ legis præstitum transcripse- runt? Quæ si involvisset silentio, neque propalaf- sent, certe eadem terra quæ jamdudum corpora, nomina item & judicia contexisset: Verum o! nos (sive conqueri de hoc, sive lugere potius debeat- mus) in causa graviore magis supinos; in majore necessitate minus solici- tos, in commodiore op- portunitate magis impro- vidos, quos neque eximia scientiæ perfectio, quæ est suavissima, neque ejus usus in administranda ju- stitia, quæ est res utilissi- ma, neque doctissimi pa- riter atque gravissimi *viri exemplum, qui in hoc ip- so*

* Edmundus
Plowden.

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so stadio non ita pridem prævit viamque munivit, præsertim in hoc tanto literatorum numero, ipsoque bonarum literarum vere, movere potest. Atque hic quidem neglectus (mea sententia) multifariam est periculosus: Quandoquidem sæpius observavi, causam aliquam judicum 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 sæpenu-mero ipsius causæ membra & partes distortæ, deartuatæ ac luxatæ, recta vero ratio & regula quæ movebat judices 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 judicii sensibusque aut imponant aut illudant. Ut ergo non assentior iis, qui

others the most negligent, whom neither the Excellency and Perfection of Knowledge, a Thing most pleasant, nor the Practise thereof in furtherance of Justice, a Thing most profitable (although one

Edmund
Plowden.

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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or bedazil their Conceits and Judgments. Therefore as I allow not of those that make Memory their Storehouse, for at their greatest Need they shall want of their Store; so I like not of those that stuff their Studies with wandering and masterless Reports, for they shall find them too soon to lead them to Error. In Troth, Reading, Hearing, Conference, Meditation, and Recordation, are necessary I confess to the Knowledge of the Common Law, because it consisteth upon so many, and almost infinite Particulars: But an orderly Observation in Writing is most requisite of them all; for Reading without Hearing is dark and irksom, and Hearing without Reading is slippery and uncertain, neither of them truly yield seasonable Fruit without Conference, nor both of them with Conference, without Meditation and Recordation, nor all of them together without due and orderly Observation: Scribe sapientiam tempore vacuitatis tuæ, saith Solomon. And yet he that at length by these Means shall attain to be learned, when he shall leave them off quite for

ærario, quod frustra quandoque depositum requirunt urgente necessitate, ita neque illos probo, qui musæa vagis & incertis relationibus suffarciunt, quibus cito in errorum labyrinthum volentes & ultro inducentur. Certe quidem lectionem, auditionem, congressus, meditationem, recordationem, omnia hæc & singula fateor ad legum nostrarum cognitionem requiri, utpote quæ ex tot tamque infinitis prope particularibus consistit, verum ordinata in scribendo observatio & methodus, etiam cæteris omnibus est magis necessaria: Est enim lectio sine auditione præter tædium obscura, sine lectione auditio lubrica & incerta, neutra sine congressu, neq; cum congressu utraq; absq; meditatione, & recordatione, neq; omnia hæc sine justa & ordinata observacione ac methodo, tempestivos fructus proferunt: *Scribe sapientiam tempore vacuitatis tuæ*, inquit Solom. Et tamen qui ista tandem ratione doctus evaserit, si quidem penitus desueverit studiumque intermiserit sive otio, sive lucro deditus, audacter dico magnam scientiæ partem quam longo spatio acquisiverat, brevi

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ecution 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 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 securâ quies & status iis compareretur, qui in generalibus huiusmodi quæstionibus de possessionibus antehac in magna opinionum varietate anxie disceptarunt. In hiis autem judiciorum 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 & fusiorem actionum harum tractionem,

tum

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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 omitteri 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. a.

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

Bene Vale.

A N

A N
A C C O U N T
O F T H E
A U T H O R S
Referred to in these
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1, 2 And. — Anderfon's Reports.
O. Bendl. — Bendloe's Reports 1661.
Bendl. in Kelw. — Bendloe's in Keilway's Re-
ports.
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.
Cawley's

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1, 2, &c. Co.	—	Coke's Reports 13 Parts.
Comb.	————	Comberbatch's Reports, 1724.
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Cro. Jac.	—	Croke James, 1683.
Cro. Car.	————	Croke Charles, 1683.
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Doct. pla.	————	Doctrina placitandi, 1677.
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Dugd. Bar.	—	———— Baronage ſecond Tome, 1676.
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Dy.	————	Dyer's Reports, 1688.
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Farr.	————	Farreſley's Reports.
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Fitzh.	————	Fitzherbert's Abridgment, 1577.
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- Selden's Epinomis ——— Tracts.
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Yelv. ———	Yelverton's Reports, 1674.

Year B O O K S.

The first Part of *Edward* the Third, 1596.
The second Part of *Edward* the Third, 1619.
Book of Assize, 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,

Paschæ

Paschæ 40 *Elizabethæ*,

Between the

Lord BUCKHURST Plaintiff,

A N D

FENNER Justice and others, Executors
of the Lady DACRES, Defendants
in Chancery.

IN the Chancery, in the great Case betwixt the Lord *Buckhurst* Pl. and Justice *Fenner* and others, the Executors of the Lady *Dacres*, Def. it was resolved by the two Chief Justices, *Popham* and *Anderson*, and Justice *Garway*, whom the Lord Keeper called to him for his Assistance, after many Arguments before them in the Court of Chancery, and upon Consideration and Conference amongst themselves.

Moor 483.
2 Anderl. 113.

1. That if a Man for him and his Heirs do warrant Lands to another and his Heirs, it is a general Warranty, because it is not restrained against any Person in certain.

2 Anderl. 113,
Noy. 146.
Godb. 152.

2. If a Man seized of Lands in Fee-simple, and having divers Evidences and Charters, (some containing Warranty and some not) conveys the Lands over to another without any warranty upon which he may be vouched, the Purchaser shall have all the Charters and Evidences, as well those which comprehend the Warranty, as the others, for in as much as the Feoffor, hath conveyed over all his Estate in the Land absolutely, and is not bound to warrant the Land, so that he cannot be vouched to Warranty, and to render in Value, but the Feoffee is to defend the Land at his Peril: It is therefore reasonable that the Feoffee for his better Defence, shall have all the Charters and Evidences as Incidents to the Land, although they be not granted to him by express Words; and that the Feoffor shall not have them, because he can receive no Benefit by keeping them, nor sustain any Damage by delivering them.

Co. Lit. 6. a. 1
Mo. 497. 502.
503. 18 E. 4. 14.
2. 15b. Br. Chart.
deter. 67. Br
Detinue 41.
2 Rol. 31. N.
Br 38. G. 7. E.
4. 26. a. 44 E
3. 1. b. 6 H. 7.
3. b. 11 Co.
50. b Br. Char.
de terre 53. 63.
56 15. 9 E. 4.
52. b. 53. a
Fitz. Detinue
26. 28. 44.

PART I. *The Lord BUCKHURST'S Case.*

3 Keb. 48. pl. 3.
 2 Rol. 31. N.
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 (4) 1 Inft. 384.
 b. 5 Co. 16. b.
 3 Co. 63. a.
 (5) Dyer 29. 200.
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 44. 3 H. 6. 21.
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 16. b. 23. a. b.
 5 Co. 25. a.
 (6) 9 Co. 17. b.
 19 H. 6. 65. b.
 4 Kel. 8. pl. 3.
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 9 H. 6. 4. b. 5. a.
 Br. double Plea
 7. 4 H. 7. 10. a.
 9 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.
 10 E. 4. 9. b.
 33 H. 6. 29. b.
 30. a. Br. Count.

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 exprefs 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.* enfeoffe *B.* in Fee with Warranty to him, his Heirs and Assignes; 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 *com- comitantia & incidentia* to the Possession.

4. If *A.* enfeoffe *B.* with Warranty to him, his Heirs, and Assignes, 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 Seigniori, 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.* 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 *Poph. 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. 11. *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 *Poph. 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 enfeoffe 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*) This is mis-
printed and
should be 44 *E.*
3. 1.

Mo. 492. 501.
Br. Chart. d:
terre 67. 44 7.
3. 1. b. Detinue:
Fitz. 44. Br.
Chart. de ter.
15. Detinue
Fitz. 29. Br.
Chart. de ter
58. Br. Char-
de ter. 32. De-
tinue Fitz. 39.
Br. Chart. de
ter. 38. Br.
Chart. de ter.
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. Char
de ter. 58. M
492. 497. Co
Lit. 285.

Br. Detinue d
Chart. 11. Ga-
nisth. & Gar-
nishment Fitz.
11.

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Br. Charter de
terre. 44. 54.
Mo. 499.

it perfects his Estate. *Vide* 6 H. 7. 3. b. \S 21 H. 7. 35. 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.

*Placita coram Baronibus de Scaccario
apud Westmonaster', ad placita de Ter-
mino sancti Michaelis, anno regni do-
minæ Elizabethæ dei gratia Angliæ,
Francia, & Hiberniæ Regina, fidei
defensoris &c. tricesimo, & tricesimo
primo.*

Memorandum quod alias scilicet, Termino Sancti Hillarii, Anno Regni Dominæ Elizabethæ Reginae nunc tricesimo, Henricus Page debitor dominæ Reginae nunc, ven' coram Baronibus de Scaccario dictæ dominæ regin' apud Westmonaster' in Comitatu Middlesex', per Johannem Hawkesworth Attornatum suum: Et protulit tunc & ibidem, quandam billam suam versus Edwardum Griffyn, de pl'ito Transgr' & Ejectionis firmæ: cujus quidem billæ tenor sequitur in hæc verba, ff. London. ff. Henricus Page debitor dominæ Elizabethæ Reginae nunc, venit coram Baronibus hujus Scaccarii vicesimo septimo die Januarii hoc Termino, per Johannem Hawkesworth Attornatum suum. Et queritur per billam versus Edwardum Griffyn præsentem hic in curia eodem die, per Richardum Hatton attornatum suum, de placito transgressi & Ejectionis firmæ, pro eo videlicet, Quod cum quidam Thomas Bowes artium Magister, decimo die Januarii, anno regni dictæ dominæ Reginae nunc vicesimo nono, apud London in parochia sanctæ Mariæ Wolnoth in warda de Langborne London, dimississet, concessisset, & ad firmam tradidisset dicto Henrico Page, unum capitale mesuagium, tunc vel nuper in tenura sive occupatione Edwardi Griffyn de London Haberdather, scituar', jacen', & existen' in Lomberstreet, in parochia sanctæ Mariæ Wolnoth, in warda prædicta, infra Civitatem London, communiter vocat' & cognitum, per nomen signi albi Leonis, Anglice the white Lion, simul cum omnibus shoppis

London ff. Hen-
ry Page Plaint.
Edw. Griffyn
Def. Ejectione
firmæ.

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cellar', sollar', cameris, locis esiamentiis, advantagiis, proficiis, & commoditatibus, cum suis pertinentiis quibuscunque dicto mesuagio spectan', sive ullo modo pertinent'. Habendum & tenendum dictum mesuagium, ac omnia alia premissa cum suis pertinentiis, dicto Henrico Page, executoribus, & assignatis suis, a festo Nativitatis Domin' tunc ultimo præterito, usque finem & terminum sex annorum, ex tunc proximo & immediate sequen' plenarie complend', & finiend': virtute cujus quidem dimissionis, idem Henricus Page in mesuagium prædictum cum pertinen' intravit, & fuit inde possessionat': Et sic inde possessionat' existens, prædictus Edwardus Griffyn postea scilicet undecimo die Januarii, anno regni dictæ dominæ Reginæ nunc vicesimo nono suprædicto, vi & armis &c. in mesuag' præd' cum pertinentiis, quod præd' Thomas Bowes eidem Henrico in forma præd' demisit, ad terminum præd' qui nondum præteriit, intravit, & ipsum Henricum a firma sua præd' inde (termini suo præd' nondum finito) ejecit, expulit, & amovit. Et alia enormia ei intulit, ad grave dampnum ipsius Henrici, & contra pacem dictæ dominæ Reginæ nunc: unde idem Henricus dicit quod ipse deterioratus est, & dampnum habet ad valentiam viginti marcarum, quo minus præd' Henr' dictæ dominæ Reginæ nunc satisfacere valeat de debitis quæ eidem dominæ reginæ debet ad dictum Scaccarium suum. Et inde producit sectam &c.

Pleg' de prosequend' Johannes Doo.
Richardus Roo.

¶ Et modo hic ad hunc diem, scilicet in octabis Sancti Michaelis isto eodem Termine, viz. anno 30 Eliz. usque quem diem præd' Edwardus Griffyn pet' licentiam inde interloquendi. Et tunc ad respond' ven' hic tam præd' Henricus Page, quam præd' Edward' Griffyn, per attornat' suos præd'. Et præd' Henricus petit quod præd' Edwardus ei respond' in præmissis &c. Et super hoc præd' Edwardus Griffyn per præd' Attornatum suum, ven' & defend' vim & injuriam, quando &c. Et dicit quod ipse de transgr. & ejectione præd' in nullo est inde culpabil'. Et de hoc pon' se super patriam. Et præd' Henricus Page similit'. Ideo fiat inde Jurat'. Et præc' est vic' London, quod venire faciant hic a die Sancti Michaelis in unum mensem xii. &c. de vish' parochiæ Sancti Mariæ Wolnothæ, in warda de Langborne, infra civitatem Lond. quorum quilibet &c. per quos &c. Et qui nec &c. ad recogn' &c. Et idem dies dat' est partibus præd' hic &c. Ad quem diem hic ven' partes præd' per attornat' suos præd'. Et Vic' London, videlicet, Hugo Offeley, & Richardus Saltonstal, miser' hic breve de venire facias Jur' præd' cum panello, de nominibus Jur' eidem brevi annex',

Non culp'.

annex'. Et ipsi Jur' voc. non vener. Ideo præcept. est Vic. London, qd. distring. Jur' prædict' per terr' &c. Ita &c. die Mercurii, 6 die Novembr' proxime futur', Nisi *Rogerus Manwood* miles, capitalis Baro Scaccar' dictæ Dom' Reginae die Martis 5. die Novembr' proxime futur' apud Guildhaldam civitatis London, per formam statuti inde provisi, prius venerit. Ita qd. inquisit. inde coram præfat. capitali Barone tunc ibidem distincte & aperte capta habeatur hic ad præd' diem Mercurii. Et dictum est partibus præd', qd. expectent coram præfat. capitali Barone apud Guildhald' præd'. ad præd' diem Martis, Et qd. sint hic ad prædict' diem Mercurii, ad audiendum Judicium suum super veredictum inquisitionis prædictæ, si &c. Ad quem diem hic ven' partes prædictæ per attorn' suos prædictos. Et prædictus capitalis Baro deliberavit hic tenor' hujus placiti, una cum brevi de Distring. Jurat' prædict' cum pannelo de nominibus Jurator' eidem brevi annex'. Et eidem tenori affilat': Qui quidem tenor indorsatur sic. Postea die. & loco infra content', coram *Rogero Manwood* milite, capitali Barone Scaccarii dom' reg. associato sibi Waltero Moyle gen', per formam statuti &c. ven' tam infranomin' Henricus Page, quam infrafer' Edwardus Griffyn, per attorn' suos infra content'. Et Jurator' jur', unde infra fit mentio, exacti, quidam eorum viz. Johannes Palmer, Thomas James, Thomas Thomas, Georgius Maunfell, Thomas Bagnall, & Robertus Bilborough ven', & in Juratam prædictam jurati existunt. Et quia residuum Jurator' juratæ illius non comparuer', Ideo alii de circumstantibus per vicecom' elect' ad requisitionem præd' Henrici Page, ac per mandatu' præd' capitalis Baronis de novo apponunt', quor' nomina pannelo infrafer' affilantur, secund' form' statuti in hujusmodi casu edit' & provisi. Ac Jurator' sic de novo apposit', viz. Georgius Clarke, Johannes Barnes, Georgius Günbe, Thomas Stanbanke, Will' Surton, & Georgius Roberts, exacti similiter ven': Qui ad veritatem de infra contentis, simul cum aliis Juratoribus prædictis prius impanelatis, & Jurati dicend', electi, triat', & jurati, Dicunt super sacramentum suum, prædict' civitas London est antiqua civitas. Ac quod omnia terr' & tenementa infra eandem civitatem sunt, & a tempore cujus contrarii memoria hominum non existit fuerunt divisibilia & legabilia per testamentum in scriptis. Quodque diu ante infrascriptum tempus quo supponitur transgressionem & ejectionem infra specificatam fieri, quidam Martin' Bowes Miles, fuit seiscitus de mesuag. inframentionato cum pertinen' inter alia, in dn'ico suo ut de feodo, quodq; idem M. Bowes Mil' habuit exit. de corp' suo legitim' procreat', quend'

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

12 E. 3. cap. 3.

Jur. de circumstantibus. 35
H. 8. cap. 6.
1 Ro. R. 52.
Poph. 35.

Verdict.

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Thomam Bowes. Ac quod idem Thomas habuit exitum de corpore suo legitime procreat. Martinum Bowes, & infranominat. Thomam Bowes artium Magist', & quendam Georgium Bowes. Ac etiam pd. Juratores dicunt super sacramentu' suu' præd', quod præd' Martinus Bowes Miles, ante præd' tempus quo &c. scilicet 29. die Junii, anno regni Dominae Reginae nunc 8. condidit testamentum & ultimam voluntatem suam in scriptis. Et per eandem inter alia voluit, & legavit præfat. Thomæ Bowes filio suo mesuagium præd' cum pertinentiis inter alia, pro termino vitæ ejusdem Thomæ, absque impetitione vasti. Et post ejus decessum, tunc præd' Martinus Bowes Miles, per testamentum suum præd' voluit, quod mesuagium præd' cum pertinentiis inter alia remaneret præfato Martino Bowes, filio præd' Thomæ Bowes: Habendum & tenend' eidem Martino, filio præd' Thomæ, & hæredibus masculis de corpore suo legitime procreatis. Et pro defectu talis exitus, quod tunc mesuagium præd' cum pertinentiis inter alia integre remaneret præfato Thomæ Bowes, secundo filio præd' Thomæ Bowes, filii & hæred' præd' Martini Bowes Militis, & hæred' masculis de corpore suo legitime procreatis. Et pro defectu talis exitus, quod tunc mesuagium præd' cum pertinentiis inter alia integre remaneret præfato Georgio Bowes, tertio filio præd' Thomæ Bowes, filii & hæred' præd' Martini Bowes Militis, & hæred' masculis de corpore suo legitime procreatis. Et pro defectu talis exitus, quod tunc mesuagium præd' cum pertinentiis inter alia integre remaneret hæred' masculis de corpore præd' Thomæ Bowes, filii & hæred' apparen' præd' Martini Bowes Militis legitime procreatis. Et pro defectu talis exitus, quod tunc mesuagium præd' cum pertinentiis inter alia integre remaneret cuidam Martino Bowes filio & heredi apparen' ejusdem Martini Bowes de Jenkins, in paroch. de Barking in com' Essex armigeri, & hæred' masculis de corpore suo legitime procreatis. Et pro defectu talis exitus, qd. tunc mesuagium præd' cum pertinent. inter alia integre remaneret hæredibus masculis de corpore dicti Martini Bowes de Jenkins legitime procreatis. Et pro defectu talis exitus, qd. tunc mesuagium præd' cum pertinentiis inter alia integre remaneret cuidam Will' Bowes, filio præd' Martini Bowes Militis, & hæredibus masculis de corpore suo legitime procreat'. Et pro defectu talis exitus quod tunc mesuagium prædict' cum pertinentiis inter alia integre remaneret rectis hæred' dicti Georgii Bowes, imperpetuum. Prædictusq; Martinus Bowes Miles, de mesuagio prædict' cum pertinentiis inter alia in dn'ico suo ut de feodo in forma præd' seifitus existens, postea & ante prædict' tempus quo &c. scz. primo die October, anno regni dictæ Dominae regine. nunc octavo obiit.

obiit, de mesuagio præd' cum pertinen' inter alia in forma præd' seisit', post cujus mortem præd' Thomas Bowes filius & hæres prædict' Martini Bowes Militis, in mesuagium prædict' cum pertinentiis intravit, & fuit inde inter alia seisitus in dominico suo ut de libero tenemento pro termino vitæ suæ, absque impetitione vasti, secundum formam & effectum testament' prædict' remanere inde in forma prædicta spectan'. Idemque Thomas sic inde seisitus existens, ante prædict' tempus quo &c. scilicet decimo nono die Decembris, anno regni dictæ dom' Reginæ nunc quarto-decimo, per quandam Indenturam inter eundem Thomæ Bowes ex una parte, & quandam Willihelmum Pelham Armigeru' ex altera parte factam, gerent' dat' eisdem die & anno, ac in cur' Cancellariæ dict' domin' Reginæ nunc apud Westmonasterium in com' Middlesex tunc existent' infra sex menses tunc proxim' sequent', debito modo de recordo irrotular', secundum formam statuti in hujusmodi casu edit' & provis. cujus altera pars sigillo prædict' Thomæ Bowes signat' Jurat' prædictis in evidentiis ostens. fuit, pro & in consideratione certæ pecuniæ summæ, eidem Thomæ per præfat' Will'm Pelham Armiger' præ manibus solut', barganizavit, & vendidit eidem Willmo Pelham, messuag. præd' cum pertinentiis inter alia, habend' sibi, hæred', & assignatis suis imperpetuum, cujus quidem Indentur' tenor sequitur in hæc verba.

This Indenture made the nineteenth Day of December 1571. And in the fourteenth Year of the Reigne of our Sovereign Lady Elizabeth, by the Grace of God Queen of England France & Ireland Defender of the Faith, &c. Betweene Thomas Bowes Esquire, Son & Heir of Sir Martin Bowes Knight, late Citizen and Alderman of the Citie of London deceased on the one Party, and William Pelham of London Esquire and Lieutenant generall of the Queenes Majesties Ordnance on the other Party. Witnesseth that the said Thomas Bowes for & in Consideration of the Sum of one thousand Pounds of good and lawfull Honey of England unto him the said Thomas Bowes, by the same William Pelham at & before the ensealing of these Presents well and truly contented and payd, whereof and wherewith the said Thomas Bowes acknowledgeth himself fully contented satisfied & paid, and thereof and of every Part and Parcell thereof, doth by these Presents clearly acquitt, 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, & by these Presents,
doth

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fully and absolutely bargain, sell, give, & 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 Woolnoth within the City of London, now or late in the severall Tenures or Occupations of Francis Bernard Cooke, Thomas Atkinson Scribener, Jo. Allen, Thomas Giles Haberdasher, Jo. Heath Scribener, Thomas Kiding Clothworker, Citizens of London, Ellen Witten, and Elizabeth Bancister of London Widows, or their severall Assigns, together with all and singular Shops, Sellers, Sillers, Yards, Backsides, voyd Grounds, Casements, Wayes, 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 Woolnoth, together with all the Right, Title, Interest, Claim and Demand, and Reversions, with Aents reserved, which the said Thomas Bowes hath, or of Right ought to have, of, in, or to the same eight Messuages, & 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 severall counterpains of the Indentures of Leases made, demised, and granted of the foresaid severall Messuages or Tenements, as also all and every the Deeds, Evidences, Charters, Court-Rolls, Rentals, Escripts, muniments, & Writings, touching or in any wise concerning the Premises, or any Part or parcel thereof: All which said severall counterpains of the said severall 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, & agree for himself, his Heirs, Executors, Administrators, or Assigns, & every of them, to & with the said William Pelham, his Executors, Administrators, & 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

at or before the Feast of the Nativity of S. John the Baptist next ensuing after the Date of this Indenture, together with the True Copies of all such other Deeds, Evidences, Charters, Court-Rolles, Rentals, Miniments, and Writings as concern the said mentioned premises, 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 Premises 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 behoofe 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 Premises 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 Bargaines, Sales, Joyntures, 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 severall Leases heretofore made and granted of the Premises now standing in their full Force only excepted and forepysed) During which said severall Terms in the said severall 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 & Assigns: That the severall Rents thereupon severally reserved, shall and may have Continuance, and be payable to the said William Pelham, his Heire, and Assigns, during the said severall Terms, (all manner of chief Rents & Services hereafter to be due for the same to the chiefe Lord & 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 Premises, 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 Dependance, of all the said eight Messuages, and other the Premises, 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 lawfull Estate or Interest, of or in the Premises, 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 Premises, 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 Council 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 Premises by these Presents bargained and sold, now are of the clear Yearly

ly value of sixty seven Pounds, thirteen Shillings, and eight Pence, of lawfull Honey of England, ober and above all charges and repzises: 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 lawfull Honey of England, ober and above all charges and repzises. In witnesse whereof the Parties aforesaid, to these Indentures sunderly have set their Seals, Given the Day and Year first above written.

Memorandum, quod postea videlicet vicefimo primo die Decembris, Anno suprascripto, venit præfatus Thomas Bowes coram dicta Domina Regina in Cancellaria sua apud Westmonasterium, in propria persona sua, Et recognovit ibidem Indenturam prædictam, ac omnia & singula in eadem contenta, & specificata in forma suprascript: Quorum quidem barganiæ, venditionis, & irrotulamenti prædicti prætextu, necnon vigore cujusdam actus, de usibus in possessionem transferendis, in Parlamento Domini Henrici nuper Regis Angliæ octavi, apud Westmonasterium in Comitatu Middlesex, quarto die Februarii, Anno Regni sui vicefimo septimo tent' edit', & provif. prædictus Willihelmus Pelham fuit seifit' de mesuagio prædicto cum pertinentiis inter alia, in quo &c. prout Lex postulat: Ipsaque Willihelmo sic inde seifit' existent' ante prædicti tempus quo &c. quædam recuperatio habita fuit in Curia Hustingali de placitis terræ, tent' in Guidhaldal London', coram Majore, & Vicecomitibus ejusdem Civitatis, secundum consuetudinem Civitatis illius, per quosdam Nicholaum Parker & Simonem Patrick, petent', versus prædictum Willihelimum Pelham tunc tenen', de prædicto mesuagio cum pertinentiis inter alia, in quo &c. in & super breve Dominae Reginae de Recto paten', per præfat' Nicholaum, & Simonem, extra Curiam Cancellariæ ipsius Dominae Reginae impetrat', & in dicta Curia Hustingali secundum consuetudinem Civitatis prædictæ prosecut': tenores quorum quidem brevis, & return', ac processuum inde, necnon recuperationis prædicti cum omnibus ea tangen' sequuntur in hæc verba. ff. Placita terræ tent' in Hustingo in Guildhaldal London, die Lunæ proximo ante festum Sanctorum Perpetue & Felicitatis Anno Regni Dominae nostræ Elizabethæ, Dei gratiæ Angliæ Franciæ & Hiberniæ Reginae fidei defensoris, quarto decimo. Ad hunc Hustin-

The acknowledgment of the Indenture of Sale by Thomas Bowes to William Pelham, 27 H. 8. c. 10. 3 Bro. 19.

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Hustingum venerunt hic in propriis personis suis Nicholaus Parker & Simon Patrick, & protulerunt hic in curia, breve dominæ Reginæ nunc de Recto paten', Majori & Vicecomitibus London direct' in hæc verba. ff. Elizabetha Dei gratia Angliæ, Franciæ & Hiberniæ Regina fidei defensor, &c. Majori & Vicecomitibus London salutem, Præcipim' vobis quod sine dilatione plenum rectum teneatis Nicholao Parker, & Simoni Patrick, de octo mesuagiis cum pertinentiis in London, quæ clamant tenere de nobis per liberum servitium unius denarii per annum, pro omni servitio, quæ Willihelmus Pelham Armiger eis deforc', ne amplius inde clamorem audiamus pro defectu recti. Teste me ipsa apud Westmonasterium ultimo die Februarii, anno regni nostri quarto decimo. Et invenierunt pleg' de prosequendo breve illud, videlicet, Johannem Doo, & Richardum Roo. Et tunc & ibidem iidem Nicholaus Parker, & Simon Patrick, ponunt loco suo Willihelimum Dalby Attornatum suum, versus præfatum Willihelimum Pelham, & per eundem Attornatum suum, tunc & ibidem petierunt processum &c. secundum consuet' civitatis prædictæ. Et eis conceditur, &c. Super quo tunc præceptum fuit tunc & ibidem per eandem Curiam Vicecomitibus London, secundum consuetudinem ejusdem civitat', quod ipsi summonent per bonos summonitores, prædict' Willihelimum Pelham, quod sit ad proxim' Husting' London de placitis terræ, in Guilhalda Civitatis prædict', secundum consuetudinem ejusdem civitat' tenend', ad respondendum præfato Nicholao Parker, & Simoni Patrick in eodem placito hic, &c. Ad quem diem, scil' ad Husting' London de placitis terræ tent' in Guilhalda London, die Lunæ proxim' ante festum Sancti Edwardi Regis & Martyris, anno regni dictæ dom' Elizabethæ, &c. Decimo quarto prædict' prædicti Nicholaus Parker & Simon Patrick, per dictum Willihelimum Dalby attornatum suum, venerunt & comparuerunt hic, &c. Et Vicecomites London, videlicet, Henricus Milles, & Johannes Braunch, modo mandaverunt & retornaverunt hic super præceptum prædictum eis directum, quod ipsi virtute præcepti illius summ' prædictum Willihelimum Pelham essend' hic ad hunc Hustingum, ad respondend' præfat' Nicholao Parker, & Simoni Patrick, in placito prædict', prout eis, &c. per Johannem Doo, & Richardum Roo, summon', &c. Qui quidem Willihelimus Pelham ad hunc Hustingum, pon' loco suo Rogerum Coys, & Robertum Hodgeson, Attornatos suos conjunctim & divisim, versus præfat' Willihelimum Parker, & Simonem Patrick, in placito prædicto, per Willihelimum Fleetwood Armig' Recordatorem Civitatis prædict', &c. & super hoc prædict'

Nichola-

Nicholaus Parker, & Simon Patrick, per dictum Willihel-
 mum Dalby attornatum suum, pet' versus prædictum Wil-
 lihelmum Pelham octo messuagia cum pertinentiis, scituat'
 jacent', & existent' in parochia sanct' Mariæ Woolnoth, in
 warda de Langborn London', ut jus eorum, &c. per breve
 dominæ Reginæ nunc de Recto patent', &c. Et tenere de
 dicta domina Regina per liberum servitium unius denarii
 per annum, pro omni servitio, &c. Et unde dic' quod ipsi
 fuerunt seisit' de prædictis octo messuag' cum perti-
 nentiis, &c. in dominico suo ut de feodo, & jure, &c. tem-
 pore pacis tempore dictæ Dominæ Reginæ nunc, &c. capi-
 eorund' inde expl'es' ad valentiam, &c. Et quod tale sit jus
 eorum offerunt, &c. Et prædictus Willihelmus Pelham per
 Attornatum suum prædictum, ven' & defend' jus prædict'
 Nicholai Parker, & Simon' Patrick, quando, &c. Et sei-
 sinam eorundem Nicholai Parker, & Simonis Patrick, de
 qua seifina, &c. Et totum, &c. Et quicquid, &c. ut de feo-
 do, & jure, &c. Et maxime de prædict' octo messuag' cum
 pertinentiis, &c. Et voc' inde ad warrant' Thomam Bowes,
 de London armiger'. Et pet' quod summ' in London per
 auxilium hujus Cur', ad warrant' præfat' Willihelm' Pel-
 ham prædict' octo messuag' cum pertinentiis, &c. quæ præ-
 dict' Nicholaus Parker, & Simon Patrick, clamant ver-
 sus dictum Willihelm' Pelham, ut jus eorum, &c. Et præ-
 dictus Nicholaus Parker, & Simon Patrick, per Attorna-
 tum suum prædict' gratis concedunt, quod prædictus Wil-
 lihelmus Pelham habeat vocare suum prædict'. Ideo stet
 vocare, &c. Et super hoc ad eundem Hustingum, ad pe-
 titionem dictorum Nicholai Parker, & Simonis Patrick,
 præceptum fuit per curiam hic Vicecom' London, quod
 ipsi summ' per bonos summonit' prædict' Thomam Bowes,
 quod sit hic ad proxim' Hustingum London de placitis
 terræ, in Guilhaldâ Civitatis prædictæ tenend', &c. ad
 warrantizand' præfat' Willihelm' Pelham, dicta octo mes-
 suag' cum pertinentiis, &c. versus præfat' Nicholaum Par-
 ker, & Simonem Patrick, &c. Et idem dies datus fuit
 tunc & ibidem, tam prædictis Nicholao Parker, & Simo-
 ni Patrick quam præfato Willihelmo Pelham, in placito
 prædicto hic, &c. Ad quem diem scilicet ad Hustingum
 London de placitis terræ in Guilhaldâ Civitatis prædictæ,
 die Lune proxim' ante festum sancti Alphæg' Archiep' an-
 no regni dictæ Dominæ Reginæ, &c. decimo quarto su-
 prædicto, vener' tam prædict' Nicholaus Parker, & Simon
 Patrick, per dictum Willihelm' Dalby Attornatum suum,
 quam prædictus Willihelmus Pelham per Attornatum su-
 um prædictum. Et Vicecomites London, videl', Henricus
 Mills & Johan. Braunch, modo mandaverunt & retorn' hic su-
 per præceptum præd' eis directum, quod ipsi virtute præ-
 cepti

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cepti illius summ' prædictum Thomam Bowes effendi hic ad hunc Hustingum, ad warrant' præfato Willihelmo Pelham prædicta octo messuag' cum pertinentiis, &c. prout eis, &c. per Johannem Doo, & Richardum Roo summ'. Et super hoc prædict' Thomas Bowes, quem prædictus Willihelmus Pelham vocavit ad warrant', &c. ad hunc Hustingum po. lo. suo Rogerum Coys & Robertum Hodgeson Attornatos suos conjunctim & divisim versus præfat' Nichol' Parker & Simonem Patrick, in placito prædicto, &c. per Willihelimum Fleetewood armigerum, Recordatorem Civitatis prædict', &c. Et modo hic ad hunc Hustingum prædictus Thomas Bowes, per prædictos Rogerum Coys, & Robertum Hodgeson Attornat' ven' & gratis prædict' mesuag' cum penitentiis, &c. præfat' Willihelmo Pelham versus præfat' Nichol' Parker, & Simonem Patrick warrant', &c. Et super hoc prædict' Nichol' Parker, & Simon Patrick, per dictum Willihelimum Dalby Attornatum suum, pet' versus præfat' Thomam Bowes tenen' per warrant' suam prædictam, dicta octo mesuagia cum pertinentiis, &c. ut jus eorum, &c. per breve prædictum, &c. in forma prædicta, &c. Et unde dic' quod ipsimet fuerunt seifiti de mesuag' prædictis cum pertinentiis, &c. in Dominico suo ut de feodo & jure, &c. tempore pacis, tempore dictæ dominæ Reginæ nunc, &c. capiend' inde exples' ad valentiam, &c. Et quod tale sit jus eorum offerunt, &c. Et prædictus Thomas Bowes tenens per warrant' suam prædictam, per prædictos Rogerum Coys, & Robertum Hodgeson Attornat' suos, ven' & defend' jus prædictorum Nichol' Parker & Simonis Patrick quando, &c. Et seifinam eorundem Nichol' Parker & Simonis Patrick, de qua seifina, &c. & totum, &c. Et quicquid, &c. ut de feodo, & jure, &c. Et maxime de prædict' octo mesuag' cum pertinentiis, &c. Et voc' inde ulterius ad warrant' Richardum Horested de London Ironmonger, qui modo præfens est hic in Cur' in propria persona sua, & gratis præd' octo mesuag' cum pertinentiis, &c. præfat' Thomæ Bowes warrant', &c. Et super hoc ad Hustingum prædictum, dict' Nicholaus Parker, & Simon Patrick, per dictum Willihelimum Dalby attornatum suum, pet' versus prædictum Richardum Horested tenen' per Warrant' suam, tunc & ibidem in propria persona sua existen' prædict' octo mesuagia cum pertinentiis, &c. ut jus eorum, &c. per breve prædictum, &c. in forma prædicta, &c. Et unde dic' quod ipsimet fuer' seifit' de præd. octo messuagiis cum pertinentiis, &c. in dominico suo ut de feodo, & jure, &c. tempore pacis, tempore dictæ dom' Reginæ nunc, capiend' inde exples' ad valentiam, &c. Et quod tale sit jus eorum offerunt, &c. Et præd' Richardus Horested tenens per warrant' suam præd' in propria

propria persona sua venit & defend' jus prædictorum Nichol' Parker, & Simonis Patrick, quando &c. Et seisinam eorundem Nichol' Parker, & Simonis Patrick, de qua seifina &c. Et totum &c. Et quicquid &c. Et maxime de prædict' octo mesuag' cum pertinentiis &c. ut de feodo, & jure &c. Et dic', quod ipse majus jus habet tenend' prædict' octo mesuag' cum pertinentiis &c. ut tenens inde per warrantiam suam prædictam, sibi, & hæred' suis, ut ill' nunc tenet, quam prædict' Nicholaus Parker, & Simon Patrick habent petend' prædicta octo mesuag' cum pertinentiis &c. prout ill' superius petunt &c. Et de hoc ponit se super magna' assisam dictæ Dominæ Reginæ &c. Et pet' recognitionem ei superinde fieri secundum cons. civitatis prædict' &c. Et super hoc prædict' Nicholaus Parker, & Simon Patrick, per Attorn' suum prædictum pet' licenc' inde interloquendi &c. Et habent &c. Et postea iidem Nicholaus Parker, & Simon Patrick per Attornatum suum prædict' reven' ad ill' eandem Cur' Hustingal', parati ad placitum ejusdem Richard' Horested tenen' per warr' suam prædictam, in forma prædicta placitat' repliand' &c. Et prædictus Richard' Horested tenens per warrantiam suam prædictam licet solempniter exact' non reven', sed in contempt' Cur' recessit, & defaultam fecit: Ideo considerat' est per eandem Cur', quod prædict' Nicholaus Parker, & Simon Patrick, recuperent seisinam versus præfat' Willihelmu Pelham, de præd' octo mesuagiis cum pertinentiis &c. tenend' eisdem Nicolao Parker, & Simon Patrick & hæred' suis quiet' de prædict' Willihelm' Pelham, & hæred' suis: Ac etiam de prædicto Thoma Bowes, & hæred' suis: Necnon de præd' Richardo Horested, & hæred' suis imperpet' Et quod prædictus Willihelmus Pelham habeat de terris & tenementis prædict' Thomæ Bowes ad valenc' &c. Et quod idem Thomas Bowes habeat de terris & tenement' prædict' Richard' Horested ad valenc' &c. Et quod idem Richardus Horested sit in misericordia &c. Et super hoc ad ill' eandem Husting' ad petition' dictor' Nichol' Parker, & Simonis Patrick, præc' fuit vic' Lond' quod ipsi eisdem Nichol' Parker, & Simoni Patrick, & hæred' suis imperpet' de præd' mesuag' cum pertinen' &c. habere facerent plenam & pacific' seisin' Et qualit' hoc præcept' fuer' execut' scire fac' Cur' hic ad proxim' Husting' Lond' de placit' terræ, in Guilhald civitat' præd', tenend' &c. Ad quem diem scilicet ad Husting' de placit' terr' ten' in Guilhald London', die Lunæ proxim' ante festu' sanctoru' Philippi & Jacobi, anno regni dictæ dom' Reg' &c. 14. supradict', vic' London', videl' Henricus Mills, & Johannes Braunch retorn', & certificaverunt cur' hic &c. Quod ipsi virtute præcepti prædict' eis directi, plenam & pacificam seisinam prædict' Nichol' Parker, & Simoni Patrick, de prædictis octo mesuag' cum

Judgment.

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pertinentiis &c. habere fecerunt juxta exigentiam præcepti præd', prout eis superius præcept' fuit &c. prout per recuperationem præd' sub sigillo officii Majoratus civitatis præd', Jurator' prædictis in evidenc' ostens. plenius liquet & apparet. Et ulterius Jurator' præd' dicunt super sacramentum suum, quod præd' Willihelmus Pelham in Indentura præd' nominatus, & præd' Willihelmus Pelham versus que' præd' Nicolaus Parker, & Simon Patrick, prosecut' fuer' breve de Recto prædict', Et prædictus Willihelmus Pelham Miles superius nominatus, est una & eadem persona, & non alia, neque diversa. Et quod prædictus Thomas Bowes, filius & hæres prædicti Martini Bowes Militis, & prædictus Thomas Bowes, in recuperatione prædicta specificat', quem prædictus Willihelmus Pelham vocavit inde ad warrant' & prædictus Thomas Bowes superius nominatus, est una & eadem persona, & non alia, neque diversa. Quorum prætextu prædictus Nicholaus, & Simon, postea & ante octavum diem Maii anno regni dictæ dominæ Reginæ nunc quartodecimo, scil't primo die Maii, anno quartodecimo supradicto, in mesuagium prædictum cum pertinentiis inter alia intraverunt, & fuerunt inde inter alia seisis'. Et ulterius iidem Jurat' dicunt super sacramentum suum, quod recuperatio prædict' de prædicto mesuagio cum pertinentiis inter alia in forma prædicta habita, fuit habita ex assensu & agreemento prædictorum Nichol' & Simon', Willihelm' Pelham, Thomæ Bowes, filii præd' Martini Bowes Militis, & Richardi Horested, & sine aliquo justo titulo ipsorum Nicholai, & Simonis, ad usum prædicti Willihelmi Pelham, hæred' & assignator' suorum, pro ulteriori assurantia sua de & in prædicto mesuagio cum pertinentiis inter alia, juxta formam & effectum conventionum & agreement' prædict' Indentur' barganiæ & venditionis specificat' per præfat' Thomam Bowes, filium prædict' Martini Bowes Militis, dicto Willihelmo Pelham ut præfertur fact': Prætextu cujus quidem recuperationis, necnon vigore prædict' actus de usibus in possessione' transferend' prædictus Willihelmus Pelham fuit seisitus de præd' mesuagio cum pertinentiis inter alia, prout lex postulat. Et quod postea scilicet primo die Decembris, anno regni dictæ dominæ Reginæ nunc sexto decimo, prædictus Martinus Bowes, filius præd' Thomæ Bowes, filius præd' Martini Bowes Militis, tunc existens infra ætatem viginti & unius annoru', scilicet ætatis decem & septem annoru', obiit sine exitu de copore suo legitime procreat'. Ac quod prædict' Willihelmus Pelham de prædicto mesuagio cum pertinentiis inter alia ut præfertur recuperat' in forma præd' seisis' existens, ante prædictum tempus quo &c. scilicet, decimo die Septembris,

bris, Anno Regni dictæ Domine Regine nunc vicesimo septimo, dimisit prædictum mesuagium cum pertinentiis in narratione prædicti superius spec' præfat' Edwardo Griffyn, habend' sibi, & Assign' suis a festo Sancti Michaelis Archangeli tunc proxim' futur', usque finem & termin' viginti & unius annorum tunc proxim' sequen': Virtute cujus dimissionis, idem Edwardus Griffyn fuit de eodem mesuagio cum pertinentiis possessionat', posteaque scilicet decimo die Januarii, Anno Regni dictæ Domine Regine nunc vicesimo nono, prædictus Thomas Bowes, filius prædicti Thomæ Bowes, filii & hæred' prædicti Martini Bowes Militis, in mesuagium prædicti cum pertinentiis in narratione prædicti superius spec' super possessionem prædicti Edwardi Griffyn inde intravit, & adtunc & ibidem dimisit, concessit, & ad firmam tradidit præfat' Henrico Page mesuagium illud cum pertinentiis, habend' sibi executoribus & assign' suis, a infra-script' festo Nativitatis Domini tunc ultimo præterito, usq; finem & terminum infra-script' sex annorum. Quodque prædictus Edwardus Griffyn, postea scilicet infra-script' undecimo die Januarii, anno vicesimo nono supra-dicto in idem mesuagium cum pertinentiis super possessionem prædicti Henrici Page inde reintravit, & ipsum Henricum a possessione mesuagii illius expulit, & amovit. Ac quod prædict' Thomas Bowes filius præd' Martini Bowes militis, ac pater præd' Thomæ Bowes artium magistr' adhuc superstes, & in plena vita existit, videlicet apud London in parochia, & Warda prædictis. Sed utrum super tota materia prædicti in forma prædicti comperta, intratio prædicti Thomæ Bowes artium magistr' filii prædicti Thomæ Bowes, filii prædicti Martini Bowes milit', in mesuagium prædicti cum pertinentiis in narratione præd' superius spec' super possessionem prædicti Edwardi Griffyn, sit, & in lege adjudicari debet, legitima intratio in mesuagium illud, necne, Jur' prædicti penitus ignorant: Et petunt inde advisamentum Cur' hic &c. Et si super tota materia præd' in forma præd' comperta, videbitur Cur' hic, quod præd' intratio præd' Thomæ Bowes, artium magistr' filii prædicti Thomæ Bowes, filii prædicti Martini Bowes militis, sit legitima intratio, tunc Jur' prædicti dic' super sacram' suum, quod prædicti Edwardus Griffyn est culpabilis de transgressione, & ejectione prædictis, prout præd' Henricus interius versus eum queritur. Et assid' damna ipsius Henrici occasione transgressione & ejectionis predictarum ultra misas & custag' sua per ipsum circa sectam suam in hac parte opposit', ad duodecim denarios. Et pro misis & custagiis illis ad quinquaginta tres solidos, & quatuor denarios. Et si Curie Dom' Regin' hic videbitur quod præd' intratio prædicti Thom' Bowes, artium magistr' filii

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fili præd' Thomæ Bowes, filii præd' Martini Bowes militis, non fit legitima intratio, tunc Jurat' præd' dic' super sacramentum suum, quod præd' Edwardus Griffyn non est culpabilis de transgressione & ejectione præd' prout prædictus Henricus Page interius allegavit. Et quia Barones hic se advisare volunt, de & super præmissis, priusquam Judicium suum inde reddant, dies dat' est partibus præd' hic, usque in octabis Sancti Hillarii proxim' futur', de judicio suo inde audiend', eo quod Barones inde nondum &c. Ad quem diem hic ven' partes prædictæ per Attornatos suos prædictos, Et quia Barones hic nondum advisantur de Judicio suo reddend' de & super præmissis dies ulterius dat' est partibus prædictis hic, usque a die Paschæ in xv. dies proxim' futur', de Judicio suo inde audiend', eo quod Barones inde nondum &c. Ad quem diem hic ven' partes præd' per Attornatos suos præd'. Et super hoc visis præmissis per Barones hic, habitaq; inde deliberatione matura inter eosdem, quia videtur eisdem Baronibus quod prædict' intratio præd' Thom' Bowes artium Magistri, filii prædicti Thom' Bowes, filii præd' Martini Bowes militis, est legitim' intratio, Ideo cons. est quod prædictus Henricus Page recuperet versus præfat' Edwardum Griffyn possessionem sua' termini sui prædicti adhuc venturi, de & in mesuagio prædicto cum pertinentiis, in narratione præd' superius specificat', Et Dampna sua occasione transgression' & ejectionis prædictarum ad quinquaginta quatuor solidos, & quatuor denarios, per jurat' prædictos in forma prædicta assessa. Necnon ulterius octo libras, & decem solidos, eidem Henrico Page, ad requisition' suam, pro misis & custag' suis præd', per Cur' hic de incr'o adjudicat'. Quæ quide' dampna in toto se attingunt ad undecim libras, quatuor solidos & quatuor denarios. Et prædictus Edwardus Griffyn capiatur &c. Et super hoc per breve dictæ Domine Regine a Cur' ejusdem Dom' Regin' hic emanant' ad petition' præd' Henric' Page, præc' est vic' Lond' quod præfat' Henric' plenar' possession' suam termini sui præd' adhuc ventur' de & in mesuag' præd' cum pertinent', in narratione præd' superius specific', sine dilatione habere faciant. Et qualiter præcept' illud fuerint executi, iidem vic' constare fac' Baronibus de Scaccario dictæ Domine Regine, hic in Craffino Sanctæ Trinitatis proxim' futur'. Ac etiam præcept' est eisdem vicecom' quod de bonis & catallis præd' Edwardi Griffyn, in balliva sua fieri faciant præd' undecim libras, quatuor solidos & quatuor denarios pro damnis præd' in forma præd' recuperat'. Et denar' illos cum eos sic levaverint, habeant coram præfat' Baronibus hic, ad præfat' termin', præfato Henrico Page seu ejus in hac parte Attornat'

Hill. 31 Eliz.

Pasch. 31 Eliz.

Judgment pro
Quer.

Trin. 31 Eliz.

tornat' tunc hic solvend' &c. Posteaque dicta Domina Regina nunc mand' quoddam breve sub magno sigillo suo extra Cancellariam suam Theaurar' & Baronibus suis de Scaccario hic direct', quod irrotulatur in Memorandis hujus Scaccarii de anno tricesimo primo Regine nunc Elizabethæ, videlicet inter recorda de Termino Paschæ Rotulo. Ex parte Remem' dictæ dominæ Regine ibidem, cujus quidem brevis tenor sequitur in hæc verba. ff. Elizabetha Dei gratia Angliæ, Franciæ, & Hiberniæ Regina, fidei defensor, &c. Theaurar' & Baronibus suis de Scaccario salutem: Quia in Recordo & processu, ac etiam in redditione Judicii loquelæ, quæ fuit in Curia nostra, coram vobis vos præfat' Barones in Scaccario nostro prædict', per billam inter Henricum Page debitorem nostrum, & Edwardum Griffyn, de quibusdam transgressione & Ejectione firmæ eidem Henrico per præfat' Edwardum illat' ut dicitur, error intervenit manifestus, ad grave damnu' ipsius Edwardi, sicut ex querela sua accepimus, Ac cu' in statuto in Parlamento domini Edwardi nuper Regis Angliæ tertii progenitoris nostr' apud Westmonaster' anno regni sui tricesimo primo tenet', edit', inter cætera concordat' fuit & stabilit' quod in omnibus casibus nos & alias personas tangen', ubi quis q'ritur de errore facto in Scaccario, Cancellar', & Theaurar', venire fac' coram eis in aliqua' Cameram concilii juxta Scaccarium recordum & processum hujusmodi, extra dictum Scaccarium, & assumptis sibi Justiciar' & aliis peritis, talibus qualibus sibi videbitur fore assumend', & vocatis coram eis Baronibus de Scaccario prædict' ad audiend' informationes suas, & causas Judiciorum faorum, negotiorum hujusmodi debite faciend' examinari. Et si aliquis error inventus fuerit, illum corrigi & rotulos emendari. Et postea eos in dictum Scaccarium ad executionem inde prout decet faciend' remitti fac' prout in statuto prædict' plenius continetur. Nos igitur volentes errorem si quis fuerit juxta forma' statuti prædicti corrigi, & partibus prædictis plenam & celerem justiciam fieri in præmissis, vobis mandamus quod si Judicium inde redditum sit, tunc recordum & processum præd' cum omnibus ea tangen' coram Cancellario nr'o Angliæ & vobis, vos præfat' Theaurar' in Camera juxta Scaccarium prædictum vocat' le **Council Chamber** tertio die Junii proxim' futur' venire fac', ut idem Cancellar' & vos præfat' Theaur' visis, & examinatis recordo & processu prædictis, auditisque informationibus vestris, vos præfati Barones ulterius in hac parte de consilio Justiciar' & aliorum peritorum hujusmodi fieri fac' quod de jure & secundum formam statuti prædict' fuer' faciend'. Teste me ipsa apud Westmonaster' sexto die Maii, anno regni nostri tricesimo primo Posteaq; dicta Domina

Breve d'Error.
31 H. 3. cap.
12. Sav. 36.
11 Co. 59. a. 8
H. 7. 13. a.
Plow. 200. b.

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Regina nunc mand' hic quoddam aliud breve sub magno sigillo suo extra Cancellariam sua' Theſaurar' & Baronibz suis hujus Scaccarii direct', quod irrotulatur in Memorandis ejusdem Scaccarii de anno tricesimo primo Reginae nunc Elizabethae, videlicet inter recorda de Termino Sanctae Trinitatis, Rotulo. Ex parte Remem' dictae dn'ae Reginae ibm', cujus quidem brevis tenor sequitur in haec verba. ff. Elizabetha Dei gratia Angliae, Franciae, & Hiberniae Regina, fidei defensor, &c. Theſaurar' & Baronibus suis de Scaccario salutem: Quia in Recordo & processu, ac etiam in redditione Judicii loquelae, quae fuit in Cur' nostra coram vobis praefatis Baronibus de Scaccario nostro praedict', Termino Paschae ultimo praeterito, per billam inter Henricum Page debitorem nostru', & Edwardum Griffyn, de quibusdam transgressione & Ejectione firmae eidem Henrico per praefat' Edwardum illat' ut dicitur, error intervenit manifestus, ad grave damnum ipsius Edwardi, sicut ex querela sua accepimus. Ac cum in statuto in Parlamento domini Edwardi nuper Regis Angliae tertii progenitoris nostr' apud Westmonaster' anno regni sui tricesimo primo tent', edit', inter caetera concordat' & stabilit' fuit, quod in omnibus casibus Regem vel alias personas tangen', ubi quis queritur de errore facto in processu in Scaccario, Cancellarius, & Theſaurarius venire fac' coram eis in aliquam Camera concilii juxta Scaccarium recordum & processum hujusmodi, extra dictum Scaccarium, & assumptis sibi Justiciar' & aliis peritis, talibus qualibus sibi videbitur fore assumend'. Ac etiam vocari fac' coram eis Barones de Scaccario praedicto ad audiend' informationes suas, & causas Judiciorum suorum, & superinde negotium hujusmodi debite faciend' examinari. Et si aliquis error inventus fuerit, illum corrigi faciant, & rotules emendari. Et postea eos in dictum Scaccariu' ad executionem inde faciend' remitti sicut pertinet, prout in eodem statuto continetur. Nos igitur volentes errorem si quis fuerit juxta formam statuti praedicti corrigi, & partibus praedictis plenam & celerem Justitiam fieri in hac parte: vobis mandamus quod si Judicium inde redditum sit, tunc recordum & processum praedict' cum omnibus ea tangen' coram Cancellario nr'o Angliae & vobis, vos praefat' Theſaurar' in Camera concilii juxta Scaccarium praedictum vocat' le Council-Chamber decimo die instantis mensis Junii venire fac', ut idem Cancellar' & vos praefat' Theſaurar' visis, & examinatis recordo & processu praedictis, auditisque informationibus vestr' vos praefat' Barones ulterius in hac parte de consilio Justiciar' & aliorum peritorum hujusmodi fieri faciatis quod de jure & secundum formam statuti praedicti fuerit faciend'. Teste

me ipsa apud Westmonaster' tertio die Junii, anno regni nostri tricesimo primo. Ad quem diem præfat' Cancellarius & Thesaurarius in Cameram prædict' non venerunt. Posteaque dicta Domina Regina nunc mand' hic quoddam alium breve suum sub magno sigillo suo extra Cancellariam suam Thesaurar' & Baronibus suis hujus Scaccarii direct', quod irrotulatur in Memorandis ejusdem Scaccarii de anno tricesimo primo Reginæ nunc Elizabethæ, videlicet inter recorda de Termino Sanctæ Trinitatis, Rotulo. Ex parte Remem' dictæ Domine Reginæ, cujus quidem brevis tenor sequitur in hæc verba. s. Elizabetha Dei gratia Angliæ, Franciæ, & Hiberniæ Regina, fidei defensor, &c. Thesaurar' & Baronibus suis de Scaccario salutem, Quia in Recordo & processu, ac etiam in redditione Judicii loquelæ, quæ fuit in Cur' nostra coram vobis præfatis Baronibus de Scaccario nostro prædict', Termino Paschæ ultimo præterito, per billam inter Hen' Page debitorem nostrum & Edwardum Griffyn, de quibusdam transgressione & ejectione firmæ eidem Henrico, per præfat' Edwardum illat' ut dicitur, error intervenit manifestus, Ad grave damnum ipsius Edwardi, sicut ex querela sua accepimus, Ac cum in statuto in Parlamento domini Edwardi nuper Regis Angliæ tertii progenitoris nostr' apud Westmonaster' anno regni sui tricesimo primo, tent', edit', inter cætera concordat' & stabilit' fuit, quod in omnibus casibus Regem vel alias personas tangen', ubi quis queritur de errore facto in processu in Scaccario, Cancellarius, & Thesaurarius venire fac' coram eis in aliqua Cameram concilii juxta Scaccarium recordum & processum hujusmodi, extra dictum Scaccarium, & assumptis sibi Justiciar' & aliis peritis, talibus qualibus sibi videbitur fore assumend'. Ac etiam vocari fac' cora' eis Barones de Scaccario prædicto ad audiend' informationes suas, & causas Judiciorum suorum, & superinde negotium hujusmodi debite faciend' examinari. Et si aliquis error inventus fuerit, illum corrigi faciant, & rotulos emandari. Et postea eos in dictum Scaccarium ad executionem inde faciend' remitti sicut pertinet, prout in eodem statuto continetur. Nos igitur volentes errorem si quis fuerit juxta forma' statuti præd' corrigi, & partibus prædictis plenam & celerem justitiam fieri in hac parte: vobis mandamus, quod si Judicium inde reddit' sit, tunc record' & processum præd' cum omnibus ea tangen' cora' Cancellario nostro Angliæ & vobis, vos præfat' Thesaurar' in Cameram concilii juxta Scaccariu' prædict' vocat' le Council-Chambre: quarto decimo die Octobris proxim' futur' venire fac', ut ide' Cancellar' & vos præfat' Thesaur' visis & examinatis recordo & processu præd', auditisq; informationibus vestris, vos præfat' Barones ulterius in hac parte de consilio Justiciar' & aliorum Je it' hujusmodi fieri fac' quod de jure & secund' formam

statuti præd' fuerit faciend'. Teste me ipsa apud Westmonaster' xiii. die Junii, anno regni nostri tricesimo primo. Ad quem quidem quartum decimum diem Octobris, coram Christophoro Hatton Milite Cancellario Angliæ, & Willihelmo Cecil Milite, domino Burghley, Thesaurar Scaccarii præd', in dicta Camera juxta Scaccarium præd' apud Westmonaster', ven' præd' Edwardus Griffyn, per Richardum Hatton Attornatum suum, Et præfat' Thesaurar' & Barones recordum & processum prædict' cum omnibus ea tangen' tunc ibidem venire fecerunt. Et super hoc prædictus Edwardus die' quod in recordo & processu prædictis, necnon in redditione Judicii prædict' manifeste est erratu'.
1. Imprimis in hoc, videlicet, eo quod non apparet in record' præd' quod præd' Thomas Bowes artium magister in record' præd' superius nominat' fuit seifitus de remanere mesuagii prædict' cum pertinentiis in narratione placit' superius spec', tempore prædict' recuperationis in prædict' Cur' Hustingali in Guilhalda London in forma præd' habit', qua de causa intratio præd' Thomæ Bowes artium magistr', in mesuagium prædictum cum pertinentiis in narratione præd' spec' non fuit legitima. Item, in hoc etiam erratum est, pro eo quod præd' recuperatio habita fuit in præd' Cur' Hustingali ante octavum diem Maii, anno regni dominæ Reginae nunc quarto decimo, ac quod præd' Thomas Bowes qui antea fuit tenens ad terminum vitæ suæ, voc' fuit in eandem Curiam per præfat' Willihelmum Pelham in recuperate illo nominat' ad warr' mesuagium præd' cum pertinentiis inter alia, qui quidem Thomas Bowes postea per summ' per Attornatum suum comperuit in Cur', Et gratis mesuagium illud eidem Willihelmo warrant'. Et ulterius voc' ad warrant' præd' Richardum Horested, qui præfens in Cur' illa idem mesuagium cum pertinentiis, gratis warr' & postea fecit defaltam, per quod Judicium versus præfat' Willihelmum Pelham in recuperatione illa redditum fuit, & executio inde in forma præd' habebatur, sicque præd' Thomas Bowes artium magister de remanere sine aliqua demanda in mesuagio præd' cum pertinentiis habend' penitus præclusus extitisset. Et ea de causa prædict' intratio prædict' Thomæ Bowes artium magistr' in mesuagium illud cum pertinentiis post recuperationem illam in forma prædict' habit' & execut' fuit illegitima. Item, in hoc etiam erratum est, eo quod compertum fuit quod ante aliquam intrationem prædict' Thomæ Bowes artium magister judicium prædict' plenarie & debito modo execut' fuit, postquam quidem executionem inde sic habit' licet præd' Thomas Bowes artium magister ante executionem prædict' habuisset titulum intrandi, tamen idem Thomas per legem terræ in mesuagium prædict' post executionem prædictam

fic habitam intrare non potuit. Item, in hoc in super erratum est, eo quod compertum fuit per Jurat. prædict' quod prædict' Thom' Bowes pater &c. qui fuit tenens pro termino vitæ suæ de mesuagio prædict' cum pertinentiis adhuc superstes & in plena vita existit: Sicque prædict' intratio prædict' Thomæ Bowes artium magistri in mesuagium prædict' cum pertin' in forma prædict' durante vita prædict' Thomæ Bowes patris sui fact. esse legitim' adjudicari non debet, Et hiis de causis judicium prædict' pro præf. Henrico Page versus ipsum Edwardum Griffyn & totum inde dependens super billam prædict' versus ipsum Edward' in forma prædict' prolat. & exhibit. minus validum in lege existit. Et pet. quod judicium illud ob errores prædict', & alios in recordo & processu prædict' existen' revocetur, annulletur, & penitus pro nullo habeatur, & quod ipse ad omnia quæ occasione redditionis judicii illius amisit restituatur &c. Et ulterius idem Edwardus Griffyn pet. breve diætæ Dom' Reginæ ad præmuniend' præf. Henric. Page essendi coram præf. Cancell' & Thesaur' in Camera prædict' apud Westmonaster' auditur' recordum & processum prædict', ac etiam errores prædict', & ulterius ad faciendum & recipiendum quod fuerit justum in præmissis &c. Et ei conceditur retornabile ibidem die Martis, 20 die Octobris, proxim' futur'. Et idem dies datus est præf. Edwardo ibidem &c. Ad quem diem cor' præf. Cancellario & Thesaur' in Camera præd' apud Westmonaster', ven' præd' Henricus Page per attorn' suum præd', Et vicecom' London', viz. Richardus Gourney, & Stephanus Soame, modo mand' quod per Thomam Bickliffe, & Humfrid' Walsingham, probos & legales homines de balliva sua scire fecer' præfato Henrico Page, quod esset coram Cancellar' & Thesaur' præd' in Camera præd', ad diem & locum præd', ad faciendum & recipiendum prout breve illud in se exigebat & requirebat. Et super hoc præd' Edwardus per Johannem Hawkesworth Attornatum suum, similiter ven', Et pet. auditum recordi & process. necnon errorum prædictorum, Et ei leguntur &c. Quibus lectis & auditis, idem Henric. Page dic. quod in recordo & processu præd' ac redditione judicii præd' in nullo est erratum. Et pet. quod Curia hic procedat tam ad examinationem recordi & process. prædict', quam causarum prædictarum superius pro erroribus allegat', & quod judicium prædictum in omnibus affirmetur &c. Et quia præfat. Cancellar' & Thesaurat' se advisare volunt de & super præmissis, priusquam judicium suum inde reddant, dies datus est partibus prædict' hic scilicet in Camera prædicta, usque diem Martis undecimum diem Novembris prox-

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proxime futurum, de Judic. suo inde audiend' &c. Ad quem diem cor' præf. Cancellario & Thesaurar' in Camer' prædict' apud Westmonasterium venerunt partes prædict' per attornatos suos prædict', Et quia præf. Cancellar' & Thesaur' nondum advisantur de judicio suo reddendo, de & super præmissis dies ulterius datus est partibus prædict' coram præf. Cancell' & Thesaurar' in Cam' prædict', usque diem martis xviii. diem Novembris proxim' futur', de judicio suo inde audiend' &c. Ad quem diem coram præf. Cancellar' & Thesaurar' in Camera prædict' apud Westmonast. ven' partes prædict' per attorn' suos prædict'. Et quia præf. Cancellar' & Thesaurar' nondum advisantur de judicio suo reddendo, de & super præmissis dies ulterius datus est partibus prædict' coram præf. Cancellar' & Thesaurar' in Camera prædict', usque diem Martis xxv. diem Novembris prox. futur', de judicio suo inde audiend' &c. Ad quem diem coram præfat. Cancellar' & Thesaurar' in Camera præd' apud Westmonast. ven' partes præd' per attorn' suos præd', Et quia præfat. Cancellar' & Thesaurar' nondum advisantur de judicio suo reddendo, de & super præmissis, dies ulterius datus est partibus prædict' hic coram præf. Cancellario & Thesaurar' in Camera prædict' usque diem Martis xxvii. diem Januar' proxim' futur' de judicio suo inde audiend' &c. Ad quem Diem coram præf. Cancellario & Thesaurar' in Camera præd' apud Westmonaster' prædict', ven. tam prædict' Henricus Page, per Johannem Hawkesworth attornatum suum prædict', quam prædict' Edwardus Griffyn, per Richardum Hatton Attornatum suum prædict', Et super hoc idem Henr' dic. quod prædict' Edward' breve suum præd' de errore corrigend' versus ipsum Henr' in hoc casu ulterius prosequi seu manutenere non debet, Quia dic. quod post ultimam continuationem placit. prædict', scz. post prædict' diem Martis, scz. prædict' xxv. diem Novembris, de quo die loquela prædict' ultime continuat. fuit, usque ad hunc diem, scz. prædict' diem Martis, scz. præd' xxvii. diem Januarii & ante hunc diem, viz. xv. die Januarii, anno regni dictæ Dom' Regin' nunc 32. prædict' Edwardus, per nomen Edwardi Griffyn de London Habertather, apud London in Parochia beatæ Mariæ de Arcubus, in Warda de Cheape London, per quoddam scriptum suum relaxationis, quod idem Henricus sigillo prædicti Edwardi signat. hic in Curia profert, cujus datus est eodem xv. die Januarii, anno tricesimo secundo supradicto, relaxavit, & quiet. clamavit eidem Henrico Page, per nomen Henrici Page de London Merchant Taylor, omnimodas actiones, sectas, errores, brevia de error', lites Anglice **quarrels**, querelas, Anglice **plaints**, & demand' quæcunque quæ

Release Errors,

quæ præd' Edw. versus ipsum Henr' tunc habuit dependent', vel ad aliquod tempus extunc imposterum potuit, vel debuit habere versus dictum Henr', executores, vel administratores suos, pro aliqua materia, vel re quibuscunque ab origine mundi, usque diem dat' præd' scripti relaxationis, prout per idem scriptum hic in curia prolat' plenius apparet. Et hoc idem Henr' paratus est verificari, unde pet' Judic' si præd' Edw. præd' breve suum de errore corrigendo, contra præd' scriptum relaxationis ipsius Edw. proprium, ulter' versus ipsum Henr' manutenere, seu prosequi debeat &c.

A. Tenant for life, Remainder in tail, Remainder in fee, bargains and sells the Lands in fee to one who before the Statute 14 Eliz. suffers a Recovery, in which A. is vouched and vouches over, and he in Remainder enters, and the Entry adjudg'd lawful, and a Writ of Error thereupon sued out, and the Plaintiff released the Errors. Co. Lit. 251. b. 356. a. 352. a.

Hill, Term 32 Eliz.

B E T W I X T

PAGE *and* G R I F F Y N.*Sir WILLIAM PELHAM'S Case.*

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

IN 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 Mesuage in *Lombard-street*, in the Parish of *S. 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 Impediment 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*
William

Wil. Pelham and his Heirs, who suffer'd a common Recovery, in which *Thom.* Son of *Sir Martin*, who was Tenant for Life, was vouch'd, and that was before the Statute of 14 *E. 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 firmæ* 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 Fitzberb.* 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 Curtesie, &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 *Bendloes* 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 *Cornwall*, *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 devested, so that they had

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

10 Co. 45. a.

Plow. 17. b.
47. a. 2 Inst.
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.
13. b. 19. a. 6
E. 3. 216 b.
Br. Voucher
164. 2 H. 7. 17. z.
Br. Voucher
139.

Benl. in Kel.
211. a. 10. Co.
45. a.
n. Benl. 132.
pl. 194. 4 Leon.
128. 2 Le.
01. 63. 1 Jones
423. Co. Lit.
362. a. Palm.
230.

10 Co. 45. a.
Co. Lit. 362. z.

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 second 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 E. 3. *tit. 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 congeable 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 congeable* 22. 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

(a) 1 Rol. 853.

(b) 10 Co. 44. a.
Pop. 23. Mo.
271. Co. Lit.
356. a. 362. a.
Vaugh. 51.
2 Brownl. 170.
2 Co. 74. a. 1
Rol. R. 304. 3.
Co. 4. b. 5
Co. 40. b. 4
Leon. 133. 2
Leon. 67.

Co. Lit. 362. a.
356. a.

(c) 3 Co. 4. b.
2 Leon. 60, 63,
66. 4 Leon.
124, 126, 128,
131. Co. Lit.
356. a. 362. a.
10 Co. 44. a.

Br. Entre cong.
49. Br. forfeit.
de ter. 29. Co.
Lit. 362. a. 1
Rol. 853.

which Cause the Court did adjudge that he should recover his Seifin. 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 Mife 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.* *vir. Recit* 135. That in a *Præcipe* the Tenant (being Tenant for Life) pleaded to Issue the first Day, without taking any Delay 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.* *Avowry* 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. Flo.
553. a. Co. L
254. b. 4 Co.
59. b.

In memorandis Scaccarii de an 34. Regina nunc Elizab. viz. inter Record' de Termino S. Hill. anno supradicto, Rotulo 149, in Scaccario remanen', & in custodia remem' Reginae ibidem existen' inter al' continet' sic.

London' ff.

Memorand' quod *Joh. Popham* Armiger, Attornat. Dom' Reginae nunc generalis, qui pro eadem domina Regina sequit', praesens hic in cur' 3. die Febr' hoc term' pro eadem Dom' regina, dedit Cur' hic intelligi & informari, quod cum rot. ill' *le key and wharfe* voc. *the old well key*, ac omnia mesuag', aedific', terr', advantag', commoditat', & profic. eidem quoquo mod' spectan' cum suis pertin', scituat', & existen' in parochia omnium S. Barking in civit. Lond', in man' & possession' dictae Dom' Reginae nunc 26 die Januar', anno regni sui 34 ac diu antea & continue postea fuer' & extiter', & de jure existere deberent, ut in jure Coron' suae Angl', prout in quam plurimis Recordis, Rotulis, & memorandis hujus Scaccarii plenius liquet & apparet de recordo: Quidam tamen *Joh. Porter* de Lond' *fishmonger*, and *Henr' Cockain*, leges dictae Dom' Reg. nunc minime verentes, sed exhaeredation' ejusd' Dom' Reg. in praemissis intenden', vi & arm' &c. praed' 26. die Jan', an' 34. suprad' in & super possession' dictae Dominae reg. nunc praemissor' intraver', intruser', & ingressum fecer', Ac exit. & profic. inde provenien' ad usus suos propr' per ceper' & habuer', & adhuc percipiunt & habent, transgr' ill' hucusque & adhuc continuan' in contempt. dictae Dom' Reg. nunc, ac contr' leges suas, und' praed' attorn' dictae Dom' Reg. nunc pro eadem Dom. reg. petit advisament. cur' in praemissis. Ac quod praed' *J. Porter* & *H. Cockain* ven' hic ad respond' dict. Dominae reg. in praemissis. Super quo concordat. est, quod praed' *J. P.* & *H. C.* attach. per corpor' sua ubicunque &c. ad respond' dict. Dom' reg. in praemiss.

Et præcept' Vicecom' dictæ Civitatis London', quod ipsos Johannem & Henricum attach' in forma prædict'. Ita &c. in Oſtabis Purificationis beatæ Mariæ virginis hoc termino. Ante quidem diem, videlicet, quarto die Februarii hoc anno, prædict' Johannes Porter hic in cur' inventus, ac de præmissis per Barones hic allocutus pro præmissis committit' prisonæ Dominæ Regiæ de le *ſpleet*, ibidem moraturus quouſque &c. Et incontinen' eodem die Johannes Porter huc ad barram per Gardianum prisonæ prædict' ductus, ex gratia Cur' traditur in ball Henrico Cockain de Parochia omnium Sanctorum Barking, in Warda Turris London', & Roberto Dodde de parochia Sancti Buttolphi extra Algate London', viz. cuilibet eorum corpus pro corpore, usque crastinum diem, & sic de die in diem, & termino in terminum quouſque &c. Cujus quidem ball' prætextu idem Johannes Porter a prison' prædict' liberat'. Et super hoc venter' tunc ibidem præfat' Johannes Porter, & Hen. Cockain, viz. dictus Johannes Porter in propria persona sua, ac præfatus Henricus Cockain per Arthurum Salway Attornatum suum, ad hoc ex gra' cur' specialiter admiss'. Et petunt &c. auditum informationis prædictæ. Et eis legitur. Qua lecta, audit', ac per eos intellecta, iidem Johannes Porter & Henric' queruntur se colore præmissorum in dicta informatione specificat' graviter vexatos fore & inquietat'. Et hoc minus iuste: Quia protestando quod informatio prædicta, ac materia in eadem content' minus sufficien' in lege existunt, Ad quas ipsi necesse non habent, nec per legem terræ tenent' respondere: Pro placit' tamen quoad venire vi & armis, aut quicquid quod est contra pacem dictæ dominæ Regiæ, aut in contemptum ejusdem dominæ Regiæ, iidem Johannes Porter & Henric' dicunt quod ipsi in nullo sunt inde culpabiles, nec eorum alter est inde culpabilis. Et de hoc pon' se super patriam. Et prædictus Attornat' &c. similiter. Et quoad intrationem, intrusionem, & ingressum in tor' ill' prædict' le *Key and Wharf*, voc' *the (1) Wool Key*, ac prædict' mesuag', edific', & cætera præmiss' cum pertinentiis in dicta informatione superius specificat' fieri supposit' iidem Johannes Porter & Henric' dicunt quod dicta domina Regina nunc, ipsos Johan' & Henric', seu eorum alterum inde impetere seu occasion' non debet: Quia die' quod diu ante prædict' vicesimum sextum diem Januarii, in dicta informatione specificat', quædam domina Avicia Knevet vidua, nuper uxor Nicholai Gybson de London' *Porter*, fuit seisit' de & in tor' ill' præd' le *Key and Wharf*, & cæteris præmissis cum pertinentiis in dicta informatione spec' in dominico suo ut de feodo. Et sic seisit' existens, eadem dom' Avicia diu ante præd' tempus quo supponitur intrationem, intrusionem, & ingressam præd' fieri, scil. tertio decimo die April' anno

anno regni domini Edw. nuper Regis Angliæ sexti tertio, apud London in parochia omnium Sanctorum Barking prædict' in Warda Turris London', demisit tot' ill' prædict' le Key & Wharf, ac cætera præmissa cum pertinentiis cuidam Bartholomæo Gibs, habendum sibi & assign' suis, a festo Natalis Domini quod esset in anno Domini millesimo quingentesimo sexagesimo sexto, usque finem termini quadragint' annorum extunc proxime sequen' & plenar' complend'. Virtute cujus dimissionis idem Bartholomæus post præd' festum Natalis Dom', quod fuit in præd' anno Dom' millesimo quingentesimo sexagesimo sexto, & ante præd' tempus quo &c. intravit, & fuit inde possessionat': Et sic inde possessionat' existens idem Bartholomeus ante prædictum tempus quo &c. scilicet primo die Januarii, anno Domini millesimo quingentesimo quinquagesimo secundo, apud London in parochia & Warda prædictis, condidit testament' & ultimam voluntatem suam in scriptis, ac eorundem testamenti & ultimæ voluntatis fecit & constituit quandam Aliciam uxor' ejus execut' suam. Et postea idem Bartholomæus eisdem die & anno ibidem obiit de tot' ill' prædict' le Key & Wharf, ac cæteris præmissis cum pertinentiis possessionat': Post cujus mortem, & ante prædictum tempus quo, &c. eadem Alicia assumpto super se onere executionis testamenti & ultimæ voluntatis prædictorum, in tot' ill' prædict' le Key & Wharf, ac cætera præmissa cum pertinentiis intravit, & fuit inde possessionat': Et sic inde possessionat' existen' eadem Alicia ante prædictum tempus quo, &c. scilicet quarto die Maii, anno regni dictæ nuper dominæ Regin' Mariæ primo, apud London in parochia & Warda prædict', cepit in virum quandam Thomam Wilcox, per quod iidem Thomas & Alicia in jure prædict' Aliciæ fuerunt de tot' ill' prædict' le Key & Wharf, ac de cæteris præmissis cum pertinentiis possessionat': Et sic inde possessionat' existen' iidem Thomas Wilcox & Alicia ante prædictum tempus quo, &c. scilicet sexto decimo die Novembris, annis regnorum Domini Philippi, & Dominæ Mariæ nuper Regis & Reginæ Angliæ primo & secundo, apud London' in parochia & Warda prædict', per quoddam scriptum suum sigillis suis sigillat', ac hic in cur' prolat', cujus dat' est eisdem die & anno, dederunt & concesserunt totum statum, jus, titulum, interesse, & terminum annorum suorum, quæ ipsi iidem Thomas & Alicia adtunc habuerunt ventur' de & in tot' ill' præd' le Key & Wharf, ac cæteris præmissis prædict' cum pertinentiis ratione executionis testamenti præd' Bartholomæi Gibbes præd' cuidam Johanni Haynes: Virtute quorum quidem doni & concessionis, idem Johannes Haynes ante prædictum tempus quo &c. in tot' illud prædict' le Key & Wharf, ac cætera præmissa

missa cum pertinen' intravit, & fuit inde possessionat' : Et sic inde possessionat' existens idem Johannes Haynes ante prædictum tempus quo, &c. scilicet xxi. die Decembr', anno Domini millesimo quingentesimo quinquagesimo nono, apud London in parochia prædicta, condidit testament' & ultimam voluntatem suam in scripris, ac per eandem devisavit & legavit præmissa cuidam Jocosæ tunc uxori suæ, ac eorundem fecit & constituit præd' Jocosam adtunc uxor' ejus execut' suam. Ac postea eisdem die & anno ibidem de tot' ill' prædict' le Key & Wharf, ac cæteris præmissis cum pertinentiis obiit possessionat' : Post cujus mortem, & ante prædictum tempus quo, &c. prædicta Jocosæ assumpto super se onere executionis testamenti & ultimæ voluntatis prædicti Johannis Haynes prædictorum in tot' ill' prædict' le Key & Wharf, ac cætera præmissa cum pertinentiis intravit, & fuit inde possessionat' virtute executionis eorundem testamenti & ultimæ voluntatis prædicti Johannis Haynes : Et sic inde possessionat' existens eadem Jocosæ ante prædictum tempus quo, &c. scilicet sexto die Octobris anno regni dictæ dominæ Regin' nunc tricesimo prim', apud London in parochia & Warda prædict', cepit in virum præfat' Johannem Porter, per quod idem Johannes Porter fuit & adhuc est inde possessionat'. Cujus prætextu idem Johannes Porter in jure suo proprio, & prædictus Henricus Cockain ut serviens ejusdem Johannis Porter, ac per ejus præceptum & mandatum in tot' ill' prædict' le Key & Wharf, ac cætera præmissa cum pertinentiis in dicta informatione specific' prædicto tempore quo, &c. intraverunt, ac exitus & proficua eorundem per totum tempus in dicta informatione spec' perceperunt & habuerunt, & adhuc percipiunt & habent, prout eis bene licuit & licet : Absque hoc quod idem Johannes Porter in & super possessionem dictæ dominæ Reginæ prædictorum le Key & Wharf, ac cæterorum præmissorum cum pertinentiis in dicta informatione spec', aut alicujus inde parcell' intruserunt, seu eorum alter intrusit, modo & forma prout per dictam informationem superius supponitur. Et absque hoc quod præd' le Key & Wharf, ac cætera præmissa cum pertinentiis in dicta informatione spec' aut aliqua inde parcella dicto vicesimo sexto die Januarii, Anno tricesimo quarto supradicto in eadem informatione spec' vel unquam antea seu postea existebant vel fuerunt, existebat vel fuit, in manibus & possessione dictæ Dom' Reg' nunc, modo & forma prout per eandem informationem superius supponitur. Et etiam absque hoc quod habetur aliquod Record', Rotul' seu memorand' in Curia Scaccarii hic, præter Record' informationis præd', per quod liquere potest præd' le Key & Wharf, ac cætera præmissa, aut aliquam inde parcell' cum pertinen'

esse seu de jure existere in manibus & possessione dictæ Dominæ Reginæ nunc. Quæ omnia, & singula iidem Johannes Porter, & Henricus Cockain parat' sunt verificare prout Cur' &c. Unde petunt iudicium. Et quod ipsi quoad præmissa ab hac Cur' dimittantur &c. Et eorum alter dimittatur &c. Et quia Cur' vult avifare de placito præd' antequam ulterius &c. Datus est dies hic, præfatis Johanni Porter & Henr' Cockain eodem statu quo nunc usque ad xv. Paschæ. Ad quem diem præfati Johannes & Henricus venerunt hic ut prius. Et prædictus Johannes Popham Armiger, Attornatus Dominæ Reginæ nunc generalis, Qui pro eadem Domina Regina sequitur præfens hic in Curia ad eundem diem in propria persona sua, Protestando non cognoscend' aliquid in placito prædictorum Johannis Porter, & Henrici Cockain per ipsos superius placitat' fore verum modo & forma prout iidem Johannes Porter, & Henricus Cockain in placito suo prædicto superius placitaverunt: Pro replicatione tamen idem Attornatus dictæ Dominæ Reginæ nunc pro eadem Domina Regina dicit ut prius dixit, quod præd' Johannes Porter & Henricus Cockain in & super possessionem dictæ Dominæ Reginæ nunc prædictam le Hay & Warf, vocat' the old wood hay, ac cæterorum præmissorum in informatione prædicta spec' intraverunt, intruserunt & ingressum fecerunt, modo & forma prout in informatione præd' superius allegatum existit. Et hoc idem Attorn' dictæ dominæ Reginæ pro eadem domina Regina petit quod inquiratur per patriam. Et præd' defend' dicunt ut prius, & petunt similiter, ideo fiat inde Inquisitio &c. Et præcept' vic' London' quod non omitt' &c. Et ve. fa. hic a die Paschæ in unum mensem eodem termino, duodecim liberos & legales homines de balliva sua de vicenet' parochiæ omnium Sanctorum Barking in Civitate London' præd', quorum quilibet &c. per quos &c. Et quia nec &c. Ad recognoscend' in præmissis. Et idem dies datus est hic præfat' Johanni Porter & Henric' Cockain. Ad quem diem iidem Johannes & Henricus vener' hic ut prius. Et vic', viz. Willihelmus Rider, & Benedictus Barnham return' breve præd' una cum pannello de nominibus Jur' quæ sunt in ligula brevium execut' pro Regina de hoc anno xxxiv. dictæ Dominæ Reginæ nunc ex parte hujus rememeratoris in London'. Et jurat' non vener', ideo præcept' vic' quod ipsos Jur' distring' per terr' &c. Ita &c. in Octab. Sanctæ Trinitatis vel interim coram dilecto & fideli dominæ Reginæ Rogero Manwood mil' Capitali Barone hujus Scaccar' apud Guilhald' Civitat' London' prædict' die veneris xxvi. die Maii anno regni dominæ Reginæ nunc xxxiv. post meridiem ejusdem diei si prius tunc ibidem adven'. Et dictum est præfatis Johanni Porter & Henrico

Cockain

Cockain quod expectent diem suum coram præfato Capitali Barone ad dictos diem & locum. Et quod sint hic ad dictum Octab. Sanctæ Trinitatis, ad audiendum iudicium suum. Si &c. Ad quem diem iidem Johannes Porter & Henricus Cockain vener' hic ut prius, Et præfatus Capitalis Baro, coram quo, &c. deliberavit hic tenorem Record' præd' sibi in forma præd' direct', qui est inter Inquisitiones & Extent' de hoc anno xxxiv Reginæ nunc, Ex parte hujus Rememeratoris indorsat' sic. ff. Postea die & loco infracontent' coram *Regero Manwcod* Milite, Capitali Barone Scaccarii dominæ Reginæ, ven' tam infranominatus Johannes Popham, Qui pro domina Regina sequitur, quam infra-script' Johannis Porter & Henricus Cockain in propriis personis suis. Et Jurat' jurat' unde infra fit mentio exacti quidam eorum ven', & quidam eorum non vener', prout patet in panello &c. Et quidam eorundem Jur' modo comparen', viz. Rogerus Tasker, Humfridus Street, Georgius Gunby, Thomas Cox, Thomas Langhorn, Johannes Eaton, Willihelmus Frith, & Johannes Moth, in Jurat' præd' jurat' existunt. Et quia resid' Jurat' jurat' illius non comparuer', ideo al' de circumstantibus per vic' com' præd' ad hoc electi ad requisitionem præd' Johannis Popham, qui &c. ac per mandat' præd' Capitalis Baronis de novo apponuntur, quorum nomina panello infra-scripto affilantur, secundum formam statut' in hujusmodi casu nuper edit' & provis. Ac Jur' sic de novo apposit', viz. Thomas Wigges, Henricus Aylward, Radulphus Baily, & Cutbertus Booth exact' similiter' vener', qui ad veritatem de infracontent' simul cum al' Jur' præd' prius impanellat' & jurat' dicend', electi, triat', & jurati, dicunt super sacramentum suum, quod diu ante prædictum tempus Intrusionis præd' superius fieri supposit', quidam Nicholaus Gybson fuit seiscitus de & in Wharfam & tementis prædictis cum pertinentiis in informatione prædicta specificat', in dominico suo ut de feodo, Et wharfam & ten' præd' cum pertinentiis tenuit de Domina Regina in socagio, viz. ut de libero Burgagio suo Civitatis London' per fidelitatem tantum. Et sic inde seiscitus existens, idem Nicholaus postea & ante prædictum tempus Intrusionis præd' &c. scilicet vicesimo tertio die Septembris, anno regni domini Henr. nuper Regis Angliæ octavij tricesimo secundo, apud London' in parochia Sancti Dunstani in Orien' condidit Testamentum & ultimam voluntatem suam in scriptis, & quendam Avitiam adtunc uxorem ejus executricem ejusdem testamenti sui constituit & ordinavit, & per eandem voluntatem suam legavit & devisavit inter al' wharfam & tement' prædicta cum pertinen' prædictæ Avitiæ & hæred' suis in hiis Anglican' verbis, & in forma sequen', viz. In Dei nomine Amen.

I Nicholas Gibson 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 Abice Gibson 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 Abice Gibson, 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 Gibson in mind to edify divers Houses, Parishes, and Places convenient for a Free School, the Pastor of the same, and certain Warden and Wardenwomen, 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 Beadwomen, 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 Kuthson, Serjeant at the Law, William Gunston Esquire, Thomas Wood, Cooper. Thomas Reynolds, Clothworker, and John Bucklove, Scrivener. In Witness whereof I have herunto put my Seal, Given the xiii. 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: Prout per eandem voluntatem plenius apparet. Et postea idem Nicholaus Gybson apud London' in parochia Sancti Dunstani in Orient' præd', sexto die Octobris, anno regni dicti Henrici nuper Regis Angliæ octavi tricesimo secundo suprascripto, obiit de tali statu suo seisit', de & in wharfs & tenementis prædictis cum pertinentiis sine exitu de corpore suo exeunt: Post cujus quidem Nicholai mortem, prædicta Avicia in prædicta parochia Sancti Dunstani suscepit super se onus executionis testamenti prædicti, Ac ante prædictum tempus intrusionis præd' &c. in wharfam & tenement' præd' cum pertinentiis intravit, & fuit inde seisit' prout lex postulat, virtute testamenti præd': Ipsaque Avicia sic inde seisit' existent', eadem Avicia ante prædictum tempus intrusionis præd' supposit', scilicet tertio decimo die Aprilis, anno regni domini Edwardi nuper Regis Angliæ sexti tertio, apud London' in parochia omnium Sanctorum Barking præd' dimisit wharfam & tenement' prædictis cum pertinen' cuidam Bartholomæo Gibs, Habendum & occupandum sibi & assignat' suis, a festo Natalis Domini quod tunc foret in anno Domini millesimo quingentesimo sexagesimo sexto, usque finem termini quadragint' annorum extunc proxime sequen' & plenarie complend'. Virtute cujus dimissionis idem Bartholomæus fuit de interesse termini prædict' possessionat': Et sic inde possessionat' existent', idem Bartholomæus ante prædictum

tempus quo, &c. scilicet primo die Januarii, Anno Dom. millesimo quingentesimo quinquagesimo secundo, apud London in parochia omnium in Sanctorum Barking prædict', condidit testament' & ultimam voluntatem suam in scriptis, & quandam Aliciam adtunc uxorem ejus execut' ejusdem testament' sui constituit & ordinavit. Et postea idem Bartholomæus adtunc & ibidem obiit de tali statu suo possessionat' de wharfa & tenementis prædictis cum pertinent'. Post ejus mortem & ante prædictum tempus quo, &c. prædicta Alicia suscepit super se onus executionis testamenti prædicti, in prædicta parochia omnium Sanctorum Barking, & fuit de interesse prædict' termini quadragint' annorum possessionat' ut executrix testamenti ejusdem Bartholomæi. Et sic inde possessionat' existens, eadem Alicia ante prædict' temp' quo, &c. apud London in parochia omnium Sanctorum Barking præd' cepit in virum quendam Thom Wilcox, per quod iidem Thom. & Alicia ante præd' tempus quo, &c. fuer' de interesse præd. termini quadragint' annorum, de & in wharfa & tenementis prædict' cum pertinen' possessionat' : Ipsisque Thoma & Alicia sic inde possessionat' existens ante prædict' tempus quo, &c. Scilicet decimo sexto die Novembr', anno regni dom' Mariæ nuper Regin' Angliæ secundo, apud London in parochia omnium Sanctorum Barking præd' concesserunt totum statum, interesse, & terminum annorum suorum, quæ ipsi tunc habuerunt de & in wharfa & tenementis prædictis cum pertinentiis cuidam Johanni Haynes. Virtute cujus concessionis idem Johannes Haynes fuit de interesse præd' termini quadragint' annorum, de & in wharfa & tenementis præd' cum pertinentiis possessionat', Et sic inde possessionatus existens, idem Johannes Haynes ante prædict' tempus quo, &c. scilicet xxi. die Decembris, Anno Dom. millesimo quingentesimo quinquagesimo nono, apud London in parochia omnium Sanctorum Barking præd' condidit testamentum & ultimam voluntatem suam in scriptis, & quandam Jocosam adtunc uxorem ejus executr' ejusdem testamenti sui constituit & ordinavit, & per eandem voluntatem suam voluit & legavit totum statum, interesse, & terminum annorum quæ ipse tunc habuit, de & in wharfa & tenementis præd' cum pertinentiis eidem Jocosæ. Et postea idem Johannes Haynes apud London, in parochia omnium Sanctorum Barking prædict' obiit de tali statu suo, de & in wharfa & tenementis prædict' cum pertinentiis possessionat', Post cujus mortem prædict' Jocosa suscepit super se onus executionis testamenti prædict' & fuit de interesse prædicti termini quadraginta annorum, de & in wharfa & tenementis prædictis cum pertinentiis possessionat', Et sic inde possessionat' existens, eadem Jocosa ante prædictum tempus

pus quo, &c. apud London' in parochia omnium Sanctor' prædict' cepit in virum prædict' Johannem Porter, per quod iidem Johannes Porter & Jocola fuerunt de interesse prædict' termini quadragint' annorum, de & in wharfam & tenementis prædict' cum pertinentiis possessionat'. Et Jur' prædict' ulterius dicunt super sacram' suum quod quidam Johannes Gibson est consanguineus & hæres prædict' Nicholai Gibson, viz. filius & hæres Hugonis Gibson defuncti, fratris & hæredis prædict' Nicholai Gibson, Quodque idem Johannes Gibson ante prædict' tempus quo, &c. scilicet xxiiii. die Januar', anno regni dominæ Reginæ nunc xxxiiii. in wharfam & tenementum prædict' cum pertinentiis intravit, clamand' eandem wharfam & tenementum prædict' cum pertinentiis vigore testam' & ultimæ voluntatis dicti Nicholai Gibson, prætextu forisfact' & ratione conditionis in dict' testamento superius spec' per præd' Avitiam in vita sua forisfact' & fract', & fuit inde seistus in dominico suo ut de feodo: Et sic inde seisit' existen' idem Johannes Gibson ante præd' tempus quo, &c. scilicet xxv. die Jan' anno reg' dict' dom' Reginæ nunc xxxiiii. per quoddam scriptum suum indentatum geren' datum eisdem die & anno in cur' dict' dom' Reginæ Cancellar' suæ apud Westm' existen' debito modo irrotulat' & Jur' præd' in evidenc' osten' barganiz', concessit, & vendidit wharfam & tenement' præd' cum pertinentiis dict' dom' Reginæ nunc: Habend' & tenend' eidem dom' Reginæ nunc, hæred' & successoribus suis imperpetuum: Quorum quidem barganiz', concessionis, & venditionis, & irrotulament' prætextu eadem dom' Regina nunc fuit de wharfam & tenement' præd' cum pertinentiis seisit' in dominico suo ut de feodo in jure Coron' suæ Angliæ: Ipsaq; Regina nunc sic inde seisit' existen', præd' Johan' Porter clamand' wharfam & tenement' præd' in jure suo proprio, & præd' Henric' ut serviens ipsius Johannis Porter & per ejus præcept', prædict' tempore quo, &c. in wharfam & tenement' præd' cum pertinentiis super possessionem dict' dominæ Reginæ nunc inde intraverunt & ingressi. fecerunt, sed utrum super tota materia præd' per ipsos Jur' in forma præd' compert' præd' intratio præd' Johan' Porter & Henr' in wharfam & tenement' præd' cum pertinentiis fit intrusio super possessionem dict' dom' Reginæ eorundem wharfæ & tenementor' præd', necne iidem Jur' inde petunt avisament' dict' Cur' scaccarii hic, &c. Et si super tota materia præd' per ipsos Jur' in forma præd' compert' videbitur dictis Baronibus & Cur' hic quod præd' intratio prædictor' Johan' Porter & Henrici in wharfam & tenement' prædict' cum pertinentiis, fit & adjudicari deberet intrusio super possessionem dict' dominæ Reginæ, tunc iidem Jur' dicunt super sacramentum suum quod prædicti Johannes Porter, & Henricus in & super possessionem dict' dominæ Reginæ nunc prædictorum *le key & wharf* vocat' *the old Wool key*, ac caterorum præmis-

præmissorum in dicta informatione præd' superius allegat' intraverunt, intruserunt, & ingressi fecerunt, modo & forma prout in informatione prædict' superius allegat' existit. Et si super tota materia præd' per ipsos Jur' in forma prædict' compert' videbitur Baronibus & Cur' hic, quod prædicta intratio prædictorum Johannis Porter & Henrici in wharfam & tenementum præd' cum pertinentiis, non sit nec adjudicari deberet intrusio super possessionem dict' dominæ Reginæ prædict' wharfæ & tenement' prædict' cum pertinentiis, tunc iidem Jur' dicunt super sacramentum suum quod prædictus Johannes Porter & Henricus in & super possessionem dict' dominæ Reginæ nunc prædict' *le Key & wharf* vocat' *the old Wool Key*, ac cæterorum præmissorum in dicta informatione superius allegat', non intruserunt & ingressum fecerunt modo & forma prout in informatione prædict' superius allegat' existit. Et quia Cur' vult advisari de præmissis prædictis antequam ulterius, &c. Datus est dies his præfatis Johanni Porter & Henrico Cockain eodem statu quo nunc usq; octabis sancti Michaelis, ante quem diem, videlicet, in crastino sancti Michaelis, anno regni dom' Reginæ nunc xxxiiii. processus præd' una cum omnibus ea tangen' adjornantur per breve dom' Reginæ nunc de communi adjornamento sub magno sigillo suo Angliæ, geren' dat' apud Westmonaster' xxiii. die Septembris, anno regni dictæ dominæ Reginæ nunc xxxiiii. supradicto Thesaur' & Baronibus hujus Scaccarii direct', quod irrotulat' alibi in memorand' hujus Scaccarii de præd' anno xxxiiii. Reginæ nunc, viz. inter record' de termino sancti Michaelis Rotulo. Ex parte hujus rememorat' usque mensem sancti Michaelis extunc proxim' sequent'. Ad quem diem processus præd' una cum omnibus ea tangen' per aliud consimile breve de communi adjornament', geren' dat' apud Hampton-Court xxv. die Octobris, ann' tricesimo quarto supradict', ac inter record' de dicto termino sancti Michaelis Rotulo præd', ex parte remem' præd' similiter irrotulat', adjornant' ulterius usq; in crastinum Animar' a Westm' præd' usq; ad Castrum dom' Reginæ de Hertf. in Com. Hertf. Et idem dies dat' est hic præfat' Johan' Porter & Henrico Cockain. Ad quem diem iidem Johannes & Henric' venerunt hic ut prius. Et viso veredicto præd' & cæteris præmissis per Barones hic, habitaq; matura deliberatione inde inter eisdem, Quia super tota materia præd' per Jurat' præd' in forma præd' compert', videbit' Baronibus hic quod præd' intratio prædictor' Johan' Porter, & Henrici Cockain in wharfam & tenementa prædict' cum pertinentiis, est intrusio super possessionem dictæ dominæ Reginæ eorundem wharfæ & tenementorum prædictorum. Ideo concessum est per eisdem Barones quod prædicti Johannes Porter & Henricus Cockain de prædicta intratione,

intrusione & ingressione, in & super possessione prædictæ domus Regine prædictæ le Key & Wharf, ac cæterorum præmissorum convincant, & eorum uterque convincatur. Quodque prædictæ wharfa & tenementum prædictum cum pertinentiis in manus dictæ domine Regine nunc capiant, &c. Et quod iidem Johannes Porter & Henricus Cockain attachientur per corpora sua ubicunque &c. ad faciendum finem pro contemptu prædicti. Et ad ulterius faciendum quod Curia &c. Et præceptum Vicarij London, quod ipsos attachiant in forma prædicta. Ita &c. in octavo sancti Hillar. Ante quem diem, videlicet, vicesimo octavo die Novembris, anno xxxv. Regine nunc, processus prædicti una cum omnibus præmissis tangentur adjournantur ulterius per aliud consimile breve de communi adjournamento sub sigillo suo Angliæ Thesaurar' & Baronibus hujus Scaccarii directi, quod irrotulatur alibi in memorandis hujus Scaccarii de anno 34. Regine nunc finiendum & 35. incipiendum, videlicet, inter record de Terminis sancti Michaelis Rotulo secundo, ex parte dicti remem' a prædicto Castro de Hert' usque Westm' prædictum. Ad quem diem iidem Johannes Porter & Henricus Cockain apud Westm' prædictum venerunt hic ut prius, & Vicarius non retornavit breve, prædictum tamen Johannes Porter & Henricus Cockain ad eundem diem venerunt hic ut prius, Et pro præmissis submiserunt se in gratiam curiæ ad rationabilem finem cum domina Regina in præmissis faciendum admitti, quod eis per curiam hic concessum est. Et super hoc prætextu brevis dictæ domus Regine de privato sigillo suo Thesaur', Cancell' Baronibus, & aliis officariis hujus Scaccarii, de anno secundo Regine hujus, viz. inter breviam directam Baronibus ac termino Paschæ in hoc Scaccario irrotulatur, ex parte hujus remem' Regine de personis admittendis per prædictos Thesaurar', Cancellar', Barones, & alios officiar' hujus Scaccarii, juxta eorum discretiones admissi sunt ad hujusmodi finem faciendum &c. juxta tenorem brevis prædicti: Et fecerunt finem in præmissis sicut continetur in hiis memorandis, viz. inter fines de hoc termino, ex parte hujus rememoratoris Regine, cujus finis prætextu, Concessum est per Barones hic, quod versus prædictos Johannem Porter & Henric' Cockain, non fiat pro contemptu suo hic ulterius executio, &c.

(a) 1 Ro. R.
271. 3 Bullfr.
92, 93, 94. 1
Ro. 77, 774.
Cro. Car. 442,
45. Cro. Jac.
386, 632. Yelv.
130. Hob. 194.
1 Ro. R. 279.
Après 40. a.
Stat. 16 & 17.
Car. 2. cap. 8.
Stat. 22 & 23
Car. 2. cap. 4.
Cro. Jac. 6.
Jenk. Cent. 13.
13 Cro. El. 145.
Palm 260. N.
Bend. 184. pl.
226. Poph. 203,
212. Noy 77.
Latch. 78, 83,
188. Hob. 327.
1 Bullfr. 125.
126. Hob. 17.
19. 1 Co. 83. a.
119. b. 1 Syd.
70. 1 Bullfr.
179.

Mich.

Mich. 34 & 35 Eliz.

Between the

Queen and Porter.

PORTER'S *Case.*

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, Almsmen, and Almswomen 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 maintain'd. 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.*

11 Co. 64. b.
71. a. b.

(a) Hob. 124.
Lath. 38.

(b) 4 Co. 105.
L. Hob. 124.

the said *Avice* did demise the said Wharf and House to one *Bartholomew Gibbs* from the Feast of *Christmass*, 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 forisfacti*, & *conditionis in dicto testamento specificat per præd' Avice in vita sua forisfacti & fracti*, 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 Obis 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 23 (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 23 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 *distinguenda sunt tempora*, and the Time when this Act 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 reserv'd 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 Pace 74. a. Palm. 125. Poph. 8.

(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 25, 26 & 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, Priors, 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 Cases) 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 satise some Burgeesses 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 Burgeesses, 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 Statute 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

is,

(a) Co. Lit. 342. a. Hob. 122. Dyer 337. pl. 38. Latch. 38. 4 Co. 111. a. Palm. 125. Co. 0. El. 449.

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

(c) Hard. 375, 443.

(d) Poph. 8. Rowd. 564. a.

(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 Almsmen and Almswomen 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, 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 Acts 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 Kel. 224;

(b) Co. L't.
111. b. 1 Roll.
Rep. 92.(c) Hob. 136.
2 Bullth. 334
Dy. 255. 11. 7.

- (*a*) 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 32 & 34 *H. 8.* have sufficient Words to take away the said Act of 23 *H. 8.* (as to the Preservation of good Uses) & *leges (b) 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 3 *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, first, 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 Gibbon's* Plaintiff, and *Thomas Maltrywade* and *John Marston* Defendants, in an *Ejectione firmæ* of Lands in *E.* in the County of *Suffolk*, and Judgment there given accordingly.
- (*b*) 11 Co. 62. b. 64. b. Cro. Jac. 121. 11. Co. 59. 2. 8 Co. 137. b. Stamf. Prærog. 69. b. 12 Co. 8. 2 Rol. 423. 2 Inst. 685. Godb. 169.
- (*c*) Lit. R. 132.
- (*d*) Palm. 73.
- (*e*) Lit. Sect. 357, 358. Perk. Sect. 801: Co. Lit. 221. a. b. 222. 2. 2 Co. 59. b. 79. a. 13 H. 7. 23. b. Br. Condition. 265. 217. 44 Aff. 265. 26 H. 6. 34. b. 5 Co. 21. a. Cro. El. 450. 479. 2 And. r8. Mo. 452, 453. Poph. 110. Hurr. 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. Pop. 8. Pult. de Pace. 74. a. Hob. 124. 2 Bullst. 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, Sustainance of poor People, Reparation of Churches, Highways, Bridges, Cawties, 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 or 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) *Fult. de*
Pacc. 74. a.

(b) *Hob. 137.*

Hob. ibid.

(c) *Anr. 22. 1.*
2 Rol. 787, 732.
10 Co. 24. a.
34. a.

Per Trinitatis Record'.

Ann. 37. *Regina Elizabethæ, Rot. 199.*

Memorandum quod compertum est alibi in memorand' hujus Scaccarii de hoc anno 37 Reginae nunc Elizabethæ, videlicet inter Record' de hoc Termino Sancti Trinitat' Rotulo. Ex parte hujus Rememerat' Reginae, in hæc verba, scilicet Wigorn', ff. Memorand. quod *Edwardus Coke* Armiger, Attornat' dominæ Reginae nunc generalis, qui pro eadem dom' Regina sequitur præfens in cur' vicesimo die Junii hoc termino, in propr' persona sua pro eadem Domina Regina dedit cur' hic intelligi, & informari, Quod cum quidam (a) boscus cum pertinentiis vocat' Alton, alias Alvington Wood, continen' per estimationem tres mille acras bosci in Alton, alias Alvington, & Rock, in præd' com' Wigorn' in man' & possession' dictæ dominæ Reginae nunc, prim' die Octobris, anno regni sui primo, ac diu antea & continue postea hucusque fuer', & extiterunt, & de jure existere deberent, & adhuc debent ut in jure Coronæ suæ Angliæ prout in quamplurimis record', Rotulis & memorand' hujus Scaccarii plenius liquet, & apparet de Record'. Quidam tamen Anna Comitissa Warwick', Humfridus Hill, Richardus Bushop, & Edwardus Bushop, leges & statut' dictæ dominæ Reginae nunc minime verentes, sed exhæreditationem ejusdem dominæ Regi' in præmissis intendentes, vi & armis, &c. primo die Octobris, anno regni dictæ dominæ Reginae vicesimo septimo, ac diversis diebus & vicib' inter eundem primum diem Octobris, anno 27. & diem exhibitionis hujus informationis in & super possessionem dictæ dominæ Reginae præmissorum intraverunt, intruserunt, & ingressum fecerunt, ac exit' & profic' inde provenien', ad usus suos proprios perceperunt, & habuer', & adhuc percipiunt, & habent, transgressionem illam hucusque, & adhuc continuand', in contempt' dictæ Dominæ Reginae nunc, ac contra leges suas, unde prædictus Attornatus dictæ Dominæ Reginae, pro eadem Domina Regina petit avilament' Curiam in præmissis.

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

missis. Ac quod prædicta Anna Comitissa Warwici, Humfridus Hill, Richardus Bushop, & Edwardus Bushop, ven' hic ad respondendum dictæ Dominæ Reginæ de & in præmissis, sicut continetur ibidem. Et modo scilicet, a die Sanctæ Trinitatis in tres Septiman' hoc termino, venit hic prædictus Richardus Bushop per Arthurum Salway Attornat' suum, ad hoc ex gratia Cur' special' admitt' & petit auditum informationis prædictæ, & ei legitur, &c. qua lecta, audita, & per ipsum Richardum plenius intell', idem Richardus queritur se colore præmissorum in informatione prædicta superius spec' gravit' vexat' fore, & inquietat', & hoc minus juste, Quia protestando quod informatio prædicta, ac mater' in eadem content' minus sufficient' in lege existunt, Ad quas idem Richardus necesse non habet nec per legem terr' tenet' aliquo modo respondere, protestando etiam quod boscus prædictus in informatione prædicta superius spec' non continet, nec prædicto tempore transgressionis & intrusionis prædict' superius fieri supposit' continebat in se tres mille acras, modo & forma prout per informationem prædictam superius supponit'. Pro placito tamen idem Richardus quoad venire vi & armis, seu quicquid quod est contra pacem dictæ Dominæ Regin' nunc, necnon totam transgress' contempt' & intrusionem in informatione prædict' superius spec' superius fieri supponit', præter intrationem & ingressum in boscum prædictum vocat' Alton Wood, alias Alvington Wood, vicesimo primo die Februarii, anno regni dictæ Dominæ Reginæ nunc tricesimo secundo, & ab eodem die usque diem exhibitionis informationis prædict', ac præter perceptionem exituum, & profic' inde per tempus illud provenien' superius fieri supposit' idem Richardus dicit quod ipse in nullo est inde culpabilis, modo & forma prout per informationem prædictam superius supponit', & de hoc ponit se super patriam. Et prædictus Attornat' dictæ Dominæ Reginæ nunc generalis qui pro eadem Domina Regina in hac parte sequitur, similit', &c. Ideo fiat inde Inquisitio, &c. Et quoad intrationem & ingressum in boscum prædict', prædicto vicesimo primo die Februarii, anno tricesimo secundo suprædicto, & ab eodem die usque diem exhibitionis informac' præd', necnon perception' exituum, & proficuum inde per tempus illud inde provenien' superius fieri supposit', idem Richardus dicit, quod dicta domina Regina nunc, ipsum Richard' proinde aliquant' impetere seu occasionare non debet, quia dicit quod diu ante præd' tempus quo supponit' intrationem, intrusionem, & ingressum præd' fieri, Quædam Anna Comitissa Warwic' vid' quondam uxor, Ric' quondam comitis War' fuit scilicet de maner' de Abbotteley, alias Abberley, alias Abbedeley, cum pertinet' in præd' comit' Wigorn', unde præd' boscus in quo, &c. tunc & usque

The Case of ALTON WOODS. PART I.

tempus concessionis hic postea specificat' fact' Roberto comiti Leicestr', tertio die Julii, Anno tricesimo Elizabethæ Reginæ hic postea mentionat', & a tempore cujus contrar' memoria hominum tunc non existerat, fuit parell', in dominico suo ut de feodo. Et sic inde seisit' existens quidam finis levavit in Curia domini Henrici nuper Regis Angliæ septimi, apud Westmonaster' in Comitatu' Midd', a die Sancti Hilarii in xv. dies, anno reg' sui tertio, coram Tho. Brian, Rogero Townsend, & Johanne Haugh Justiciar', & aliis dicti nuper Regis fidelibus tunc ubi præsentibus, inter ipsum dominum Regem querent', & præfat' Annam quondam comitissam, quondam uxorem præd' Richardi comitis Warwic', per nomen Annæ Comitissæ Warwic' deforc' de manerio præd' cum pertinentiis, unde, &c. inter al', unde placitum conventionis summonit' fuit inter eos in eadem Curia, scilicet, quod eadem comitissa concessit præfat' dom' Regi Maner' prædict' cum pertinentiis unde, &c. Et illud ei reddidit in eadem Curia, habend' & tenend' eidem domino Regi & hæredibus masculis de corpore suo procreat', & si contig' quod idem dominus Rex obiret sine hæred' masculino de corpore suo procreat', tunc post decessum ipsius domini Regis, prædictum Maner' cum pertinentiis unde, &c. integre revertetur ad eandem comitissam, & hæred' suos quiete de aliis hæred' prædict' domini Regis, prout per Record' finis prædict' in Curia dictæ dominæ Reginæ nunc de banco apud Westmonaster' prædict' residens plenius liquet. Virtute cujus quidem finis prædict' nuper Rex Henricus septimus fuit seisitus de manerio prædict' cum pertinentiis unde, &c. in dominico suo ut de feodo talliato, videlicet sibi & hæred' masculis de corpore suo exeunt', reversione inde prædict' comitissæ quondam uxori prædicti Richardi nuper comitis Warwic', & hæred' ipsius comitissæ spectant', ipsoque nuper Rege sic inde seisit' existent', ac reversione inde eidem comitissæ in forma prædict' spectant', eadem Comitissa postea, & ante prædict' tempus, quo, &c. apud Abbottesley, alias Abberley in prædict' com' Wigorn' obiit sic ut præfert' de reversione præd' seisita, post cujus mortem reversio prædict' cum pertinentiis descendebat cuidam Edwardo comiti War', ut consanguin' & hæred' ejusdem comitissæ, videlicet, filio & hæred' Isabellæ, filia ipsius comitissæ, per quod id' Comes fuit seisitus de reversione man' præd' cum pertinentiis unde, &c. ut de feodo & jure: Ipsoq; Edw' comit' War' sic inde seisit' existent', per quemdam actum in Parliament' ejusdem nuper Regis tent' apud Westmon' præd' vicesim' quinto die Jan' anno regni sui decimo nono, inter al' inactitat' fuit per ipsum nuper Regem, per assens' dominor' spiritual' & temporal', ac communitatis in eod' Parliam' assemblat' & autoritate ejusd'. Qd cum Pet. Warbeck' cum aliis præd' nuper Reg' inimic' rebel' & prodit', in

magna

magna multitudine & numero ei associat' intravit & arrivavit in hoc Regnum, in quodam loco vocat' *Whitsonhay*, in parochia Sancti Bercium in Comitatu Cornub' septimo die Septemb' anno regni dicti nuper Regis tertio decimo, & levavit guerram adversus prædict' nuper Regem; nihilominus prædict' Petrus in itinere & exit' suo ad idem falsum & maledictum proposit' debellat' & capt' fuit, & per eundem nuper Regem commissus prisonæ Turris London', ubi & in quo loco prædictus Edwardus Comes Warwic' confederavit cum præfato Petro imaginan' & intenden' falsè & proditorie mortem & destructionem ipsius nuper Regis & subversion' hujus regni Angliæ intenden' facere prædictum Petrum Regem ejusdem regni per diversa devisament' inter eos concept' & inspirat' laboravit divers' adhærentibus suis instanter per diversa signa, nuntia, & notas ad ponend' ipsum ad libertatem & largum, ad intentionem exequi falsum & proditorium proposit' suum promittent' ad auxiliand' & assistend' ei ad ejus ultim' posse, pro quibus prædictus Edwardus Comes Warwic' per debit' cursum legum dicti nuper Regis ex propria confessione sua convict' & atinctus fuit de alta prodicione, prout merita sua in ea parte requirebant quod idem Comes pro offensa sua prædicta auctoritate parliament' prædict' esset convict', adjudicat', & atinctus de alta prodicione, & quod forisfaceret predicto nuper Regi & hæredibus suis omnia honores, castra, maner' dominia, hundred', franches' libertat', privileg', advocaciones, nominationes, præsentationes, feod' milit', tenement, reddit', servitia, reversiones, reman', portiones, annuitates, pensiones, jura, possessiones, hæreditament', bon', catt', & debit', unde idem Comes, seu aliquis ad ejus usum seifitus vel possessionat' fuit die prodicionis suæ commissæ, & fact' vel ad aliquod tempus postea, infra Regnum Angliæ, Hiberniæ, Walliæ, Caliciæ, seu Marches' eorundem, in feodo simplici, feod' talliato, pro termino vitæ, vel in quæ idem Comes adtunc, five ad aliquod tempus imposterum habuisset legitimam causam intrand', infra Angliam, Hiberniam, Walliam, Cales' seu Marches' eorundem. Et ulterius, quod præd' Edwardus comes War' forisfaceret præd. nuper Regi, & hæred' suis, omnia honores, castra, maner', dominia, hundred', franches' libertates, privileg' advocaciones, nominationes, præsentationes, feod' milit' terr', tenement', reddit', servitia, reversiones, portiones, reman', annuitates, pensiones, jura, possessiones, hæreditament' bona catall', & debit', unde idem Comes, seu aliqua alia persona ad ejus usum seifit', vel possessionat' fuit secundo die Augusti, anno regni prædicti nuper Regis quartodecimo, five ad aliquod tempus imposterum, prout per eundem Actum inter al' plenius apparet. Et idem Richardus dicit quod prædictus Edwardus Comes

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Warwic' confanguin' & hæres prædictæ Annæ Comitiffæ Warwic', in fine prædicto nominat', & prædictus Edwardus comes Warwic' in forma prædicta attinctus, & in actu prædicto nominat', sunt una atque eadem persona, & non al', neque diverf. Quarum quidem convictionis & attinctur' prætextu ac vigore prædicti actus parliament', prædictus nuper Rex Henric' feptimus fuit feifitus de reverfione manerii prædicti cum pertinentiis, unde, &c. ut de feodo & jure, in jure Coronæ fuæ Angliæ; & fic inde feifit' existen', ac de Maner prædicto cum pertinentiis, in dominico fuo ut de feodo talliato in forma prædicta feifit' existen', idem nuper Rex poftea & ante prædictum tempus quo, &c. Apud Westmonafter' præd' obiit de maner' præd' cum pertinentiis, unde, &c. ac de reverfione præd' in forma prædicta feifitus, poft cujus mortem maner' prædictum cum pertinentiis unde &c. ac reverfio præd' difcendebant domino Henrico nuper Regi Angl' octavo, ut filio & hæred' prædict' nuper Regis Henrici feptimi, per quod idem nuper Rex Henricus octavus fuit feifitus de manerio prædicto cum pertinentiis unde, &c. in dominico fuo ut de feodo talliato, videlicet fibi & hæred' mafculis de corpore fuo exeunt', ac de reverfione ejuſdem Manerii cum pertinentiis ut de feodo & jure: Ipſoque nuper Rege Henrico octavo fic inde feifit' existen', per quandam Inquifitionem captam apud Caſtrum Wigorn' in prædicto comitatu Wigorn', quinto die Julii, anno regni prædicti nuper Regis Henrici octavi viceſimo tertio, coram Rogero Winter armigero, tunc Eſcactore ejuſdem nuper Regis in eodem com' virtute Officii fui, per ſacrament' Richardi Frier gener', Richardi Sheldon gener', Wilhelmi Androwes gener', Richardi Dedick gen', Richardi Hill de Liegh, Ed. Evolt, Henrici Diſon, Rogeri Ibud, Henrici Woodward, Johannis Porter de Claynes, Johannis Brodforde, Walteri Solly, Rogeri Alderne de Marteley, & Richardi Walter capt', compertum extitit inter al' quod prædicta Anna Comitiffa Warwic', in fine prædicto nominat', fuit feifita de maner' præd' cum pertinentiis unde, &c. in dominico fuo ut de feodo. Et quod ipſa fic inde feifit' existen' finis præd' in forma prædicta levat' fuit, per quod prædictus nuper Rex Henricus feptimus fuit feifit' de maner' præd' cum pertinentiis, unde, &c. in dominico fuo ut de feodo talliato, videlicet fibi & hæred' mafculis de corpore fuo exeunt'. Ac quod eadem Comitiffa fuit feifita de reverfione maner' illius, ut de feodo & jure, quodque eadem Comitiffa fic de reverfione illa feifit' existen', de tali ſtatu fuo inde obiit feifita: Ac quod poſt mortem ipſius Comitiffæ eadem reverfio difcendebat præfato Edwardo nuper Comiti Warwic' ut confanguin' & hæred' ejuſdem Comitiffæ, videlicet, filio & hæred' Iſabellæ, filiæ & hæred' ipſius Comitiffæ, per quod idem Edwardus nuper Comes Warwic' fuit feifitus

seifitus de reversione maner' præd' cum pertinentiis ut de feodo & jure; ipsoq; nuper Comite sic inde seifit' existen', quod præd' actus in præd' Parliament' præd' nuper regis Henr' septimi, anno regni sui decimo nono supradicto edit' fuit modo & forma præd', ac quod prætextu actus illius præd' nuper Rex Henr' septimus fuit seifitus de reversione maner' præd' cum pertinen' ut de feodo & jure. Quodque idem nuper Rex Henr' septimus sic inde seifitus existens, ac de maner' præd' cum pertinen', unde, &c. in forma præd' seifit' existen' de tali statu suo inde obiit seifitus, post cujus mortem maner' præd' cum pertinen', unde, &c. ac reversione præd' descendebant præd' domino Henr' nuper Regi Angliæ octavo ut filio & hæred' præd' nuper Regis Henr' septimi, per quod idem nuper Rex Henricus octavus fuit seifitus de maner' præd' cum pertinen' unde, &c. in dominico suo ut de feodo talliato, viz. sibi & hæred' masculis de corpore suo exeunt', reversione inde sibi & hæred' suis in forma præd' spectan', prout per inquisitionem præd' in Cur' Cancellar' dictæ dominæ Reginæ apud Westmonaster' præd' debito modo retorn' & ibidem de record' reman' plenius apparet. Et idem Richardus ulterius dicit quod præd' nuper Rex Henricus octavus sic de manerio præd' cum pertinen' unde, &c. ac de reversione inde in forma præd' seifit' existen', idem nuper Rex Henric' octavus, tertio die Novembris, anno regni sui 33. apud Westmonaster' præd' per literas suas paten' sub magno sigillo suo Angliæ figillat' quas idem Richardus hic in cur' profert, geren' dat' apud Westmonaster' præd' eisdem die & anno recitan' quod cum idem nuper Rex Henricus octavus vicesimo die Octobris, anno regni sui decimo nono per literas suas paten' dedisset, & concessisset Waltero Walsh, per nomen Walteri Walsh unius Gromet' privat' Cameraæ suæ, maner' suum de Grafton Flevere, per nomen maner' de Grafton Fleeford' cum suis pertinen' in com' Wigorn', ac advocacionem Ecclesiæ de Grafton Fleeford' præd', necnon omnia & singula mesuagia, terr', & tenementa sua quæcunque in Grafton Fleeford' in com' præd', una cum feodis militum, ward', maritag', releviis, reddit', & servic' quibuscunque, ad maner', & cæter' præmissa, & ad quamlibet inde parcell' qualitercunque pertinen', sive spectan', habend' & tenend' maner' illud & cætera præmissa cum omnibus & singulis suis membris & pertinentiis quibuscunque præfat' Waltero pro termino vitæ suæ, prout in eisdem literis paten' plenius continebatur. Cumque etiam præd' nuper Rex Henricus octavus sexto die Decembris anno regni sui vicesimo primo per alias literas suas paten' dedisset, & concessisset præfato Waltero Walsh, & cuidam Elizabethæ tunc uxori ejus per nomina Walteri Walsh unius Gromet' privatæ Cameraæ suæ, & Elizabethæ uxoris ejus maner' de Charleton in com' Somersf. per nomen manerii sui de Charleton in com' Somersf. cum omnibus

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omnibus & singulis suis membris & pertinentiis quibuscunque, quocunque jure five titulo manerium illud in manibus ipsius nuper Regis adtunc extitit. Habend' & tenend' maner' illud cum suis pertinentiis eidem Waltero & Elizabethæ & assign' suis, pro termino vitæ eorundem Walteri & Elizabethæ, ac eorum alterius diutius viven', prout in eisdem literis paten' plenius continebatur: Præd' nuper Rex Henricus octavus adtunc in consideratione veri & laudabilis servitii eidem domino Regi per præfat' Walterum Walslh ante tunc impens'. & extunc imposterum impendend', ac pro eo quod idem Walterus præd' alias literas patent' ei de præd' maner' de Grafton Flevord' alias Flevord, ac iidem Walterus & præd' Elizabetha, præd' alias literas patent' eis de præd' maner' de Charleton cum eorum membris & pertinentiis univers'. in forma præd' confect', dicto nuper Regi Henrico octavo in Cancell' suam restituissent ibid' cancelland', ad intentionem quod idem nuper Rex præd' maner' de Grafton Flevord' cum pertinent', ac dictam advocationem Ecclesiæ de Grafton Flevord, ac omnia & singula mesuagia, terr', & tenementa ipsius Domini Regis in Grafton Flevord', necnon præd' maner' de Abbottesley in præd' com' Wigorn' cum suis pertin' quibuscunque, ac advocationem Ecclesiæ de Abbottesley in com' præd', ac omnia terr' & tenementa ipsius Domini Regis quæcunque cum pertin' in Abbottesley alias Abberley per alias literas patent' ejusdem nuper Regis eidem Waltero & Eliz. concedere dignarent. Quæ quidem separales priores literæ patent' in Cur' Cancellar' præd' apud Westmonaster' præd' ad eandem intentionem tempore confectio- nis prædictarum literarum patent' hic in Cur' prolat' restituit' & cancellat' fuerunt de gratia ipsius Regis speciali, ac ex certa scientia, & mero motu suis per eandem literas patent' hic in Cur' prolat', dedit & concessit eidem Waltero Walslh, & Elizabethæ uxori ejus præd' maner' de Grafton Flevord' & Abbottesley, alias Abberley, cum eorum membris & pertinent' univers'. Necnon omnia & singula terr', tenementa, reddit', reversiones, & servitia, feod' milit', libertates, franc' Cur' let', vis. franc' pleg', parcos, warren', waife, Straife, ac cætera commoditat' & privileg' quæcunque infra prædict' maner', aut eorum aliquod existen', aut ad eadem maner' five eorum aliquod quoquo modo pertinentia five spectant'. Habend' & tenend' maner' præd' & eorum quælibet, ac cæter' præmiss' sic ut præfertur per eandem literas patent' hic in Cur' prolat' concess'. & quamlibet inde parcell' cum eorum membris & pertinen' quibuscunque, prædictis Waltero Walslh & Elizabethæ uxori ejus & hæred' masculis de corpore ipsius Walteri procreat', prout per eandem literas patent' inter alia plenius apparet. Et idem Richardus in facto dicit, quod prædictus Walterus diu ante confectio-
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confectionis earundem, ac diu postea fuit serviens dicti nuper Regis Henrici octavi ac unus Gromet' privat' Camera ipsius nuper regis, ac diversa bona, laboriola, & laudabil' servitia eidem nuper Regi Henrico octavo ante confectionem earundem literarum paten', & postea impendisset, & impendit, quodque idem Walterus præd' literas paten' ei de præd' maner' de Grafton Flevord', ac iidem Walterus & Elizabetha, præd' alias literas paten' eis de præd' maner' de Charleton cum eorum separalibus membris & pertinentiis universis in form' præd' confect' præd' nuper Regi Henrico octavo ante confectionem præd' aliarum literarum paten' eis in forma præd' confect', ac hic in Cur' prolata in Cancellariam suam præd' apud Westmonaster' præd' sursum reddidissent, & cancellari procurassent, prout in eisdem literis paten' hic in Cur' prolata, allegat' & testificat' existit: virtute quarum quidem literarum paten' hic in Cur' prolata idem Walterus & Elizabetha fuerunt seifiti de præd' maner' de Abbottesley cum pertinentiis unde, &c. inter alia videlicet idem Walterus in dominico suo ut de feodo talliato, scilicet sibi & hæredibus masculis de corpore suo exeun', & præd' Elizabetha in dominico suo ut de libero tenemento pro term' vitæ suæ, ipsisque Waltero & Elizab. sic inde seifit' existen' eadem Elizab', postea & antea præd' tempus quo, &c. apud Abbottesley præd' obiit. Et præd' Walterus ipsam supervixit & tenuit intus in præd' maner' de Abbottesley cum pertinentiis unde, &c. Et fuit inde solus seifitus in dominico suo ut de feodo talliato in forma præd' per jus accrescend' &c. Ipsoque Waltero sic inde seifit' existen' per quendam actum in Parliament' ejusdem nuper regis Henrici octavi apud Westmon' præd' octavo die Junii, anno regni sui vicefimo octavo tent' edit', recitan' per eundem actum: Cum præd' Anna Comitissa Warwick' in fine prædict' superius nominat' anno regni præd' nuper regis Henric' septimi tertio, per finem levat' coram tunc Justiciar' ipsius regis de communi Banco apud Westmonaster', dedisset, & concessisset, eidem nuper regi Henrico septim' int' alia dominium & maner' de Abbottesley, cum pertinentiis in com' Wigor'. Habend' eidem nuper Regi & hæred' masculis de corpore suo exeun', prout per finem illum de record' remanen' inter alia plenius apparebat, virtute cujus idem nuper rex fuit seifitus de eodem maner' cum pertin' in dominico suo ut de feodo talliato. Et sic inde seifit' existen' eadem Comitissa obiit, post cujus mortem reversio ejusdem manerii cum pertin' in feodo simplici descend' & deveniebat Edwardo nuper Comiti Warr', Quæ quidem reversio & feodum simplex ejusdem maner' inter alia, Castr', honores, maner, terr', tenementa & hæreditam' tunc postea escactaverunt & devener' ad manus & possession' præd' nuper regis Henrici septimi, & hæredum suorum per attincturam altæ præditionis præd' Edwardi Comitis Warr', prout per

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Record' inde plenius apparebat. Et præd' nuper Rex Henricus septimus sic inde seifitus existen' obiit, post cujus mortem eadem castra, honores, maner', terr', tenementa, & hæreditamenta, & alia præmissa in fine præd' content', inter alias terras tenementa & hæreditamenta descenderunt, & devenerunt præd' nuper Regi Henrico octavo ut filio & hæred' præd' nuper Regis Henrici septimi per debitum cursum hæreditarium, virtute cujus idem nuper Rex Henricus octavus fuisset & adtunc fuit inde seifitus. Et quia præd' castra maner' dominia terr' tenementa & cætera præmissa fuerunt magni valoris, & habuerunt multa magna & ampla libertates præhementias commoditat' & delectamenta ad eadem spectan': Ideo tunc & ibidem inactitat' fuit auctoritate ejusdem Parliamenti, quod præd' nuper Rex Henricus Octavus hæred' & successores sui extunc imposterum haberent, tenerent, & gauderent imperpetuum omnia & singula præd' castra, maner', terr', tenementa, & hæreditament', cum pertinentiis, & omnia & singula alia præmissa. Ac quod eadem castra maner' terr', tenementa, & hæreditamenta, cum pertinentiis, & omnia & singula alia præmissa auctoritate ejusdem Parliament' adjudicarentur in præd' nuper Rege Henrico octavo hæredibus & successoribus suis in feod' simplici imperpetuum, sine præd' seu aliquibus aliis re five rebus ante tunc habitis, factis, usitatis five allocatis in contrarium inde non obstan', prout per eundem actum plenius apparet. Salvis semper omnibus & singulis personæ & personis, corporibus politicis & corporatis, hæred' & successoribus suis, & hæred' & successoribus cujuslibet eorum, aliis quam præd' nuper Comitissæ Warwic' & hæred' suis, ac hæred' Richardi nuper Comitis War' patris præd' nuper Comitissæ omnibus talibus juribus, titulis, usibus, interesse, termin' annorum, dimissione, dimissionibus, redditibus, feodis, annuitatibus, possessionibus, reversione, remanere, districtionibus, intrationibus, actionibus, concessionibus, officiis, communis, conditionibus, libertat', proficuis, commoditat', & sectis in talibus modis, forma & conditionibus, qualibus ipsi seu aliquis eorum hæred' & successores sui, vel hæred' & successores alicujus eorum tunc habuerunt, habuissent, potuissent five debuissent habuisse, si actus præd' nunquam habitus seu factus fuisset, aliqua re in eodem actu in contrarium non obstante, prout etiam per eundem actum inter alia plenius apparet, cujus quidem actus prætextu, reversio prædict' prædict' maner' de Abbottesley, alias Abberley, ac manerium prædict' in reversione post statum & interesse præfat' Walteri Walsh, & Elizabethæ sic ut præfertur concessum præfato nuper Regi Henrico octavo hæredibus & successoribus suis in feodo simplici spectabat, secundum formam & effectum actus prædicti, per quod

quod idem nuper Rex Henricus octavus fuit seifitus de reversione illa ut de feodo & jure: Ipfoque nuper Rege sic inde seifit' existent', ac præd' Waltero de præd' maner' de Abbottesley cum pertinent', unde, &c. in forma præd' seifit' existent', præd' Walterus apud Abbottesley præd' ante prædictum tempus quo, &c. obiit de tali ftatu suo inde seifitus, post ejus mortem maner' illud cum pertinentiis, unde, &c. discendebat cuidam Waltero Walsh filio suo, ut filio & hæred' mafculo de corpore ejusdem Walteri Walsh patris exeunt', per quod idem Walterus Walsh filius postea & ante prædictum tempus quo, &c. in præd' maner' de Abbottesley cum pertinentiis unde, &c. intravit, & fuit inde seifitus in dominico suo, ut de feodo talliat', videlicet sibi & hæredibus mafculis de corpore suo exeunt', ac præd' nuper Rex Henricus octavus fuit seifitus de reversione inde, ut de feodo & jure. Et sic seifit' existent', idem nuper rex postea, & ante præd' tempus quo, &c. apud Westmonaster' præd' obiit de tali ftatu suo inde seifit', post ejus mortem reversione præd' maner' de Abbottesley cum pertinentiis, unde, &c. discendebat domino Edwardo nuper Regi Angliæ sexto, ut filio & hæred' præd' nuper Regis Henrici octavi, per quod idem nuper Rex Edwardus sextus fuit seifitus de reversione ejusdem maner' cum pertinentiis, ut de feodo & jure. Et sic inde seifit' existent' idem nuper Rex Edwardus sextus postea, & ante præd' tempus quo, &c. apud Westmonaster' præd' obiit de tali ftatu suo inde seifit' sine exit' de corpore suo exeunt': post ejus mortem reversione præd' maner' de Abbottesley cum pertinent' discendebat Domin' Mariæ nuper Regin' Angliæ, ut forori & hæred' præd' nuper Regis Edwardi sexti, per quod eadem nuper Regina Maria fuit seifit' de reversione ill' ut de feodo & jure; & sic inde seifit' existent', eadem nuper Regina Maria postea, & ante præd' tempus quo, &c. apud Westmonaster' præd' obiit de tali ftatu suo inde seifit' sine exit' de corpore suo exeunt'. Post ejus mortem reversione illa discendebat dictæ domin' Regin' nunc, ut forori & hæred' prædict' nuper Regin' Mariæ, per quod eadem dom' Reg' nunc, fuit seifit' de eadem reversione, ut de feodo & jure: Ipsaque domina Regina nunc, sic inde seifit' existent', ac prædicto Waltero Walsh filio, de prædicto maner' de Abbottesley cum pertinentiis unde, &c. in dominico suo ut de feodo talliat' in forma prædicta seifit' existent', idem Walterus postea & ante prædictum tempus quo, &c. apud Abbottesley prædict' obiit de tali ftatu suo inde seifit', post ejus mortem maner' illud cum pertinentiis, unde, &c. discendebat cuidam Willihelmo Walsh armiger', filio suo, ut filio & hæred' de corpore prædict' Walteri Walsh filii exeunt', per quod idem Willihelmus postea, & ante prædict' tempus quo, &c. in idem maner' cum pertinentiis, unde, &c. intravit

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intravit & fuit inde seifitus in dominico suo, ut de feodo taliato, videlicet, sibi & hæred' masculis de corpore suo exeun'. Et sic inde seifit' existens idem Willihelmus postea, scilicet, tertio die Julii, anno regni dictæ domin' Regin' nunc tricesimo, apud Abbottesley præd' per quandam Indenturam suam barganie & venditionis inter Robertum tunc Comitem Leicestr', per nomen præhonorabilis Roberti Comitis Leicestr', Baronis de Denbigh, utriusque nobilissimorum ordin' garterii, & Sancti Michaelis Militis, domini alti Seneschalli suæ Majestatis honorabilissimi hospitii, Capital' Justiciar' audiend' & terminand' omnium Forestarum suæ Majestatis, & Chacearum citra Trent', Anglice *by South Trent*, & unius suæ Majestatis honorabilissimi privati Concilii, ex una parte, & præfat' Willihelm' Walslh, per nomen Willihelm' Walslh de Witley, in comitatu Wigorn' Armigeri, ex altera parte factam, ac postea octavo die ejusdem mensis Julii juxta formam Statuti in hujusmodi cas. edit', & provis. in Curia Cancellar' dictæ domin' Regin' nunc, apud Westmonaster' præd', in dicto comitatu Middlesex', tunc existen' debit' modo de record' irrotulat', cujus alteram partem sigillo præd' Willihelmi Walslh signat', idem Richardus Bushop hic in Curia profert, cujus dat' est eodem tertio die Julii, anno tricesimo supradictò, pro & in consideratione cujusdam pecuniæ summæ eidem Willihelmo per præfatum Comitem Leicestr' adtunc & ibidem præ manibus solut', barganizavit, & vendidit eidem comiti Leicestr', boscum præd' cum pertinentiis, in quo, &c. Habend' & tenend' eidem Comiti Leicestr', hæred' & assign' imperpetuum. Quarum quidem barganiæ & venditionis, ac irrotulament' ejusdem pertextu idem comes Leicestr' in boscum præd' cum pertinen' intravit, & fuit inde seifit' in dominico suo ut de feod'. Et sic inde seifit' existen' idem comes Leicestr', postea scilicet, quinto die Septembris anno regni dictæ domin' Regin' nunc tricesimo supradictò, apud Abbottesley prædict', obiit de tali statu suo inde seifitus, sine hæred' de corpore suo exeun', post cujus mortem boscum prædict' cum pertinentiis discendebat Ambrosio tunc comiti Warwic', ut fratri & hæred' prædicti nuper comitis Leicestr', per quod idem Ambrosius Comes Warwic' in boscum prædictum cum pertineniis intravit, & fuit inde seifitus in dominico suo ut de feodo. Et sic inde seifit' existens idem Ambrosius Comes Warwic', postea scilicet, vicefimo quarto die Januarii, Anno regni dictæ domin' Regin' nunc tricesimo secundo supradictò, apud Abbottesley prædict' per quandam Indenturam suam inter ipsum Ambrosium Comitem Warwic', per nomen præhonorabilis Ambrosii Comitis Warwic', nobilissimi ordinis Garterii militis, ex una parte, & Edwardum tunc comitem Bedford, ac quosdam Willihelimum Russell militem

militem, Carolum Morrison militem, & Ambrosium Coppinger armiger', per nomina præhonorabilis Edwardi Comitis Bedford, Willihelmi Ruffel militis, Caroli Morrison militis, & Ambrosii Coppinger armigeri, ex altera parte fact', cujus alteram partem sigillo dicti Ambrosii Comitis Warwic' signat', idem Richardus Bushop hic in Cur' profert, cujus dat' est eisdem die & anno, pro & in consideratione naturalis, integri, & cordialis amoris & affectus, quem præd' Ambrosius Comes Warwic', tunc habuit, & gerebat erga suam charissimam & dilectam tunc uxorem dictam Annam Comitissam Warwic' in informatione præd' superius nominat', filiam præhonorabilis Francisci comitis Bedford defuncti, avi prædicti Edwardi tunc comitis Bedford, ac patris prædicti Willihelmi Ruffell, ac pro & in consideratione maritaggi ante tunc habit' inter prædictum Ambrosium tunc Comitem Warwic', & prædictam dominam Annam modo Comitissam Warwic' tunc uxorem suam, ac pro & in consideratione augmentationis junctur' ipsius Annæ ante tunc fact' in respect' præd' maritag' : Et in consideratione etiam promovendi eandem Annam eo melius, post mortem præd' Ambrosii tunc Comitis Warwic' si ipsa eadem comitissa dilectum suum maritum superviveret, ad supportand' & manutenend' ejus honorabilem statum, & ad solvend' tal' debit' qual' idem comes deberet tempore mortis suæ, ac etiam tal' legat' qual' idem comes Warwic' per ultimam voluntatem suam legaret, idem comes convenit, & concessit pro se hæredibus, execut', & administratoribus suis, ad & cum præfato Edwardo Comit' Bedford, Willihelmo Ruffel, Carolo Morrison, & Ambrosio Coppinger, hæredibus & assignatis suis, & quolibet eorum, quod immediate ab & post sigillationem & deliberationem ejusdem Indenture, idem comes Warwic' hæred' & assignat' sui, & quilibet eorum starent & essent seisciti, de & in bosco præd. cum pertinentiis inter al' per nomen sive nomina de Alton Woods, alias Alvington Woods cum pertinentiis, situat' & existent' infra paroch' de Rock, aut alibi infra separal' com' Wigorn' & Salop', aut aliquem vel alterum eorum ad usum, intentiones, & proposit', postea in ead' Indentur' express' & declarat', scilicet ad usum ipsius Ambrosii Comitis Warwic' pro termino vitæ suæ absque impetitione alicujus vasti. Et post deceß' ipsius Comitis Warwic' ad usum præd' Annæ Comitissæ Warwic' in informatione præd' nominat' per nomen dominæ Annæ Comitissæ Warwic' Uxoris ipsius comitis Warr', & rect' hæred' ipsius Annæ imperpetuum. Quorum quidem conventionis & concessionis prætextu, ac vigore cujusdam actus de usibus in possession' transferend' in parliament' præd' domini Henric' nuper Regis Angliæ octavi patris dict' dom' Regiæ nunc præcharissimi, apud Westm' prædict'

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prædict' quarto die Februarii anno regni sui vicesimo septimo tent' ædit' & provif' præd' Ambrosius comes Warwic' fuit seifitus de bosco præd' cum pertinentiis inter al' in dominico suo ut de libero tenemento pro termino vitæ suæ absque impetitione vasti, remanere inde post deceffum ipsius comitis Warwic' præfat' Annæ nuper Comitiff' Warwic' & hæred' suis spectan', Ipsiq; Ambrosio comite Warwic' sic inde seifit' existen' remanere inde in forma præd. spectan' idem comes postea, scilicet præd' vicesimo primo die Febr', anno regni dict' dom' Reginæ nunc tricesimo secundo supradicto apud Abbottesley præd' obiit, post cujus mortem eadem Anna nunc Comitiff' Warwic' in boscum prædictum cum pertinentiis, ut in suo remanere inde intravit, & fuit, & adhuc est inde seifita in dominico suo ut de feodo, prætextu & vigore præmissorum, per quod idem Richardus Bushop, ut serviens præd' Annæ nunc Comitiff' Warwic' & per ejus præceptum præd' vicesimo primo die Februarii, Anno regni dict' dom' Reginæ nunc, tricesimo, secundo supradicto, ac diebus & vicibus præd' inter eundem 21 diem Februarii, anno tricesimo secundo supradicto, & diem exhibitionis informationis præd' in boscum præd' cum pertinentiis intravit, & exit' & profic' inde per tempus illud provenien' ad usum præd' Annæ nunc Comitiff' Warwic' percepit, & habuit, & adhuc percipit & habet, prout ei bene licuit & licet. Et idem Richardus Bushop ulterius dicit quod præd' Willihelmus Walsh adhuc superstes, & in plena vita existit, videlicet, apud Abbottesley præd' absque hoc quod boscus præd' cum pertinentiis, aut aliqua inde parcell' in manibus & possession' dict' dom' Reginæ nunc est, aut antehac fuit aut de jure existere debet, modo & forma prout per informationem præd' superius supponitur. Et absque hoc quod idem Richardus Bushop, in aut super possessionem dict' dom' Reginæ nunc bosci præd' cum pertinentiis aut alicujus inde parcell' intravit, intrusit aut ingressum fecit modo & forma prout per informationem prædict' superius supponitur. Et absque hoc quod habet aliquod record' Rotulum aut memorand' præter Record' informationis præd' per quod liquere potest, quod boscus præd' cum pertinentiis in informatione prædicta superius specificat', aut aliqua inde parcell' in man' & possession' dict' dom' Reginæ nunc est, aut existit aut de jure existere debet aut debuit, modo & forma prout per informationem prædictam superius supponitur. Quæ omnia & singula idem Richardus Bushop, paratus est verificare prout Cur' &c. unde petit judic', & quod ipse quoad præmissa ab hac Cur' dimittatur, Et quia Cur' hic vult avifare de placit' prædict' antequam ulterius, &c. dat' est dies præfat' Rich' Bushop eod' statu quo nunc usque octabis

octabis sancti Michaelis, ad quem diem idem Richardus Bushop venit hic, ut prius. Et prædict' Attornat' dom' Reginæ nunc generalis qui pro eadem domina Regina sequitur præfens hic in Cur' ad eundem diem in propria persona sua pro eadem domina Regina protestando non cognoscendo aliquid in placito prædicto, prædicti Richardi Bushop per ipsum superius placitat' fore verum, modo & forma prout idem Richardus in placito suo prædicto superius placitavit. Pro replicatione tamen idem Attornat' dict' dom' Reginæ pro eadem domina Regina dicit, quod placitum prædict' dicti Richard' quoad intrationem, intrusionem, & ingressum præd' in præd' bosc' per ipsum Rich' in informatione præd' fieri supposit' minus sufficient' in lege existit, ad exonerand' eundem Rich' de intratione, intrusione, & ingressu prædict' unde pro defectu sufficient' respon' in hac parte, idem Attorn' dom' Reginæ pro eadem domina Regina petit iudicium. Ac quod præd' Rich' de intratione, intrusione, & ingressu ill', per præd' Richard' inde fieri supposit' convincatur. Et præd' Rich' Bushop dicit quod ipse sufficient' mater' in lege ad excludend' dict' dom' Reginam nunc a possess' prædict' bosci, in dicta informatione spec', & cujuslibet inde parcell' superius in barram & exclusionem eiusdem informationis allegavit, quam ipse parat' est verificare, prout cur', &c. Quam quidem materiam prædict' Attorn' dom' Reginæ pro eadem domina Regina non dedit, nec ad eam aliquammodo pro dicta domina Regina respondet, sed verificationem illam admittere omnino recusat, unde ut prius idem Richard' Bushop petit iudicium; quodque ipse quoad præmissa ab hac Curia dimittatur, &c. Et quia Barones hic se advisare volunt, de & super præmissis, unde præd' Richardus Bushop superius se posuit in iudicium Cur', priusquam iudicium inde reddant, dies inde ulterius dat' est præfato Richardo Bushop, hic usque in Octabis sancti Hillarii, de audiend' inde iudicium suum, eo quod iidem Barones inde nondum, &c. Et quoad triand' exit' præd' per patriam triand' superius junct' præcept' Vic' prædict' com' Wigorn' quod non omitt', &c. & venire fac' hic ad dict' Octabis sancti Hillarii xii. liberos & legales homines de visnet' de Alton, alias Alvington & Rock, in eodem Com' quorum quilibet, &c. per quos, &c. & qui nec, &c. ad recognoscend', &c. & idem dies dat' est inde præfato Richardo Bushop hic, &c. Ad quem diem venit hic præd' Richard' Bushop per Attorn' suum præd'. Et quoad præd' breve de venire fac' Vic' nihil inde fecit, nec breve illud misit; ideo quoad triand' exit' præd', sicut prius, præcept' vic' præd' com' Wigorn' quod non omitt', &c. Et venire fac' hic a die paschæ in xv. dies xii, &c. Ad recognoscend' in forma prædicta, &c. Et idem dies dat' est inde hic præfato Richardo Bushop.

Anno xxxviii.

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Et quia Barones hic se ulterius avifare volunt, de & super præmiſſ' unde præd' Richardus Buſhop ſuperius ſe miſit in Judicium Cur', dies inde ulterius dat' eſt præfato Richardo Buſhop, hic uſque a dicto die Paſchæ, in quindecim dies, ad audiendum inde Judicium ſuum, eo quod iidem Barones inde nondum, &c. Ad quem diem venit hic præd' Richardus Buſhop per Attorn' ſuum prædict'. Et quoad præd' breve de venire fac', Vic' nihil inde fecit nec breve illud miſit; ideo quoad triand' exit' præd' ſicut prius, præc' vic' præd' Comit' Wigorn' quod non omitt', &c. & venire faciat hic in Octabis ſanctæ Trinitatis duodecim, &c. ad recognoſcend' in forma præd', &c. Et idem dies dat' eſt inde hic præfat' Richardo Buſhop, & quia Barones hic ſe ulterius avifare volunt, de & ſuper præmiſſis, unde præd' Richardus Buſhop ſuperius ſe miſit in Judicium Cur', dies ulterius dat' eſt præfato Richardo Buſhop hic uſque ad prædict' Octabis ſanctæ Trinitatis, ad audiend' inde Judicium ſuum eo quod iidem Barones inde nondum, &c. Ad quem diem hic venit præd' Richardus Buſhop per Attornat' ſuum prædict'. Et quoad præd' breve de venire fac' vic' nihil inde fecit, nec breve illud miſit; ideo quoad triand' exit' præd', ſicut prius præc' vic' præd' Com' Wigorn' quod non omitt', &c. & venire faciat hic in Octabis ſancti Michaelis duodecim, &c. ad recognoſcendum in forma prædicta, &c. Et idem dies dat' eſt inde hic præfato Richardo Buſhop. Et quia Barones hic ſe ulterius avifare volunt de & ſuper præmiſſis, unde prædictus Richardus Buſhop ſuperius ſe miſit in iudicium Cur', dies ulterius inde dat' eſt præfato Richardo Buſhop, hic uſque ad prædict' Octabis ſancti Michaelis de audiend' inde iudicio ſuo eo quod iidem Barones inde nondum, &c. Ad quem diem venit hic prædictus Richardus Buſhop per Attorn' ſuum prædictum, & quoad prædict' breve de venire fac' vic' nihil inde fecit, nec breve illud miſit; ideo quoad triand' exit' prædict' ſicut prius, præcept' Vicecomiti prædicto comitatus Wigornienſis, quod non omitt', &c. & venire fac' hic die ſancti Hillarii in quindecim dies duodecim, &c. Ad recognoſcendum in forma præd' &c. Et idem dies dat' eſt inde hic præfato Richardo Buſhop, & quia Barones hic ſe ulterius avifare volunt de & ſuper præmiſſis, unde præd' Richardus Buſhop ſe ſuperius miſit in iudicium Cur', dies ulterius inde dat' eſt præfato Richardo Buſhop hic uſque a dict' die Sancti Hillarii in quindecim dies ad audiend' inde iudicium ſuum, &c. eo quod iidem Barones hic inde nondum, &c. Ad quem diem venit hic prædictus Richardus Buſhop per Attorn' ſuum præd'. Et per Barones hic viſis præmiſſis, unde prædictus Richardus Buſhop ſuperius ſe miſit in iudicium Cur', habitaq; matura delibera-

A. xxxix.

Judicium. 1

deliberatione inde inter eosdem. Quia videtur eisdem Baronibus quod placitum præd' Richardi Bushop inde per ipsum modo & forma superius placitat' fatis sufficiens in lege existit, ad exonerandum prædictum Richardum Bushop de intratione, intrusione, & ingressu prædict', per ipsum superius fieri supposit', in præd' bosco, vocat' *Alton*, alias *Alvington Wood*, in dicta informatione specificat' prædicto vicefimo primo die Februarii, anno regni dictæ dominæ Reginæ nunc tricesimo secundo, & ab eodem vicefimo primo die Februarii, usque prædict' diem exhibitionis dictæ informationis scilicet vicefimum diem Junii, anno Regni ejusdem dominæ Reginæ tricesimo septimo, ac de perceptione exit' & profic' inde per tempus illud provenien' (a) concessum est per Barones quod præd' Richard' Bushop quoad præd' intrationem, intrusionem, & ingress' per ipsum superius fieri supposit' in prædict' boscum vocat' *Alton*, alias *Alvington Wood*, in dicta informac' spec' præd' xxxi. die Februarii anno Regni dictæ dominæ Reginæ nunc xxxii. & ab eodem xxi. die Februarii usq; præd' diem exhibic' dictæ informationis scilicet xx. diem Junii, anno regni ejusdem dom' Reginæ xxxvii. & quoad perceptionem exit' & profic' inde per tempus ill' provenien', eat inde ad præfens sine die, salvo semper jure Reginæ si alias, &c. Et quoad triandum exit' prædictum, superius junct' per patriam triand' præd' vic' præd' Com' Wigorn' ut prius, quod non omitt', &c. & venire fac' hic a die Paschæ in quindecim dies duodecim, &c. ad recognoscend', &c. Et idem dies dat' est inde hic præfato Richardo Bushop, ad quem diem idem Richard' venit hic, ut prius, & præd' Attorn' dictæ dominæ Reginæ nunc generalis, quia pro eadem dom' Regina sequitur præfens hic in Cur' ad eundem diem in propria persona sua, & per Barones hic allocut', & requisit', si ipse versus præfatum Richardum Bushop pro triatione præd' exitus superius ad patriam ulterius presequi velit, dicit quod non, super quo visis præmissis per Barones hic, habitaque matura deliberatione inde inter eosdem, concessum est per eosdem Barones quod præd' Richardus Bushop, quoad triationem exitus illius, eat ad præfens sine die, salva semper actione Reginæ si alias, &c. Et postea scilicet undecimo die Aprilis, anno regni dictæ dominæ Reginæ nunc xxxix. eadem domina Regina mandavit hic, breve suum clausum, sub magno sigillo suo Thesaurar' & Baron' suis hujus Scaccarii direct', cujus tenor sequitur in hæc verba. ff. Elizabetha dei gratia Angliæ, Franciæ & Hiberniæ Regina, fidei defensor, &c. Thesaurar' & Baronibus suis de Scaccario suo salutem. Quia in Record' & processu, ac etiam in redditione judicii loquelæ, quæ fuit in Curia nostra coram

(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
 & 23. Car. 2.
 cap. 4. Jenk.
 Cent. 13. Cro.
 El. 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.

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vobis præfatis Baronibus nostris de Scaccario nostro prædicto, Termino sanctæ Trinitatis, anno regni nostri tricesimo septimo per billam inter nos, & Richardum Bushop, de quibusdam transgressionibus, & intrusion' in quibusdam boscis nostris cum pertinentiis, vocat' Alton, alias Alvington Wood, continen' per estimationem tres mille acr' bosci in Alton, alias Alvington & Rock, in Com' nostro Wigorn, error intervenit manifestus, ad grave dampnum nostri, ac cum in statuto in Parlament' domini Edwardi nuper Regis Angliæ tertii progenitoris nostri apud Westmonaster', & anno regni sui tricesimo primo tent', edit', inter cætera concordat' & stabilitum fuit, quod in omnibus casibus, Regem aut alias personas tangen' ubi quis queritur de errore facto in processu in Scaccario, Cancellarius & Thesaurarius venire fac' coram eis in aliqua' Cameram concilii juxta Scaccarium Record' de processu hujusmodi, extra dict' Scaccarium; & assumptis sibi Justiciar', & aliis peritis talibus, quales sibi videbitur fore assumend', vocari fac' coram eis Barones de Scaccario prædict', ad audiend' informationes suas, & causas judiciorum suorum, & super hoc negotium hujusmodi debite fac' examinari; & si aliquis error inventus fuerit illum corrigi fac', & Rotulos emendari; & postea eos in dictum Scaccarium ad execution' inde faciend' reinitti, sicut pertinet, prout in eodem statuto continet': Nos igitur volentes errorem, si quis fuerit, juxta formam statuto præd' corrigi, & celerem Justitiam fieri in hac parte, vobis mandamus quod si Judicium inde redditum sit, tunc recordum & processum præd', cum omnibus ea tangen', coram prædilecto & fideli consilarii nostro *Thoma Egerton* milite, custod' magni sigilli nostri Angliæ & vobis, vos præfat' Thesaurar' in Cameram concilii juxta Scaccarium præd', vocat' le Counsel-Chamber, die Martis, videlicet vicesimo nono die instantis mensis Aprilis venire fac', ut idem Custos magni sigilli nostri, & vos præfat' Thesaurar' visis & examinat' Recordo, & processu præd', auditisq; informationibus vestris, vos præfat' Barones ulterius in hac parte de consilio Justiciar', & aliorum peritorum hujusmodi fieri fac', quod de jure, & secundum formam statuto præd' fuerit faciend': Teste me ipsa apud Westmonaster' undecimo die Aprilis, ann' regni nostri tricesimo nono. *Symons.* Et ad præd' undecimum nonum diem dict' mensis Aprilis, præfatus egregius vir *Thomas Egerton* miles custos magni sigilli Angliæ, & *Willibelmus* dominus *Burghley*, dominus Thesaurar' Angliæ, venire fecer' coram eis Recordum præd' in præd' Camera juxta Scaccarium præd' le Counsel-Chamber vocat', & ad dictum diem & locum ven' coram præfat' domino Custod' magni sigilli, & domino Thesaur' prædict' Attornat' dominæ Reginæ generalis, & pro eadem

dominæ

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

domina Regina dicit, quod in Record' & process' præd', ac in redditione iudicii præd', de & super præd' moratione in lege diversimodo est erratum, viz. in hoc, quod præd' Richardus Bushop per placitum suum in barram informationis præd' placitat' supponit', quod præd' nuper rex Henricus septimus fuit seifitus de reversione manerii præd' cum pertin', unde, &c. ut de feodo & jure, in jure Coronæ suæ Angliæ, pretextu attinctur' præd' Edw' nuper com War', ac vigore præd' act' Parliament' anno regni ejusdem nuper Regis decimo nono in barra præd' spec'; per quem quidem actum inactitat' fuit, quod prædict' Edwardus nuper comes, forisfaceret eidem nuper Regi omnia maneria, terras, tenementa & hereditamenta; ubi præd' nuper Rex virtute attinct', & act' Parliament' prædict', ut præfatur, edit', non potuit esse seifitum de reversione prædict' ante inquisitionem inde capt', & de Record' remanen', per quam compert' foret, quod prædict' comes tempore proditionis prædict' per ipsum perpetrat', seu unquam postea, fuit seifit' de reversione ill' ut de feodo & jure; & in hoc quod prædict' Richardus suppon', quod præd' nuper Rex Henricus septimus obiit seifitus de reversione illa, & quod eadem reversio descend' præd' nuper Regi Henrico octavo, ut filio, & hæred' præd' nuper Regis Henrici septimi, ubi in facto reversio illa non descendebat præfat' nuper Regi Henrico octavo, nec per leges hujus regni descendere potuit, ante inquisitionem inde pro præd' nuper Rege Henrico septimo, proinde comperind', & de Recordo remanen'; & in hoc quod præd' Richardus Bushop suppon' quod per quandam inquisitionem capt' apud Castrum Wigorn' quinto die Julii, anno regni prædict' nuper Regis Henrici octavi vicesimo tertio, coram Rogero Winter armigero, tunc escaetore ejusdem nuper Regis in eodem comitat', virtute officii sui, compertum fuit, quod prædictus Edwardus nuper comes Warwic' fuit seifit' de reversione manerii prædict' ut de feodo & jure: Et sic inde seifit' existens prædict' act' in prædicto Parliament' prædicti nuper Regis Henrici septimi, anno regni sui decimo nono supra dicto edit' fuit modo & forma prædict', ac quod prætextu act' Parliament' illius prædict', nuper Rex Henricus septimus fuit seifit' de reversione prædict', prout per inquisitionem præd' in Cur' Cancellar' dictæ dominæ Reginæ apud Westmonasterium debito modo retornat', & ibidem de Record' remanen' plenius apparet, ubi quælibet inquisitio capt' super quamcunque attinctur' de alta proditione capt' coram escaetore virtute officii sui, in Cur' Scaccarii regis retornari, & ibidem de Record' affilari debet, et non in Cur' Cancellar'; & si in Curia Scaccarii retornat', & ibidem de Record' non affilat' existat, tunc hujusmodi inquisitio vacua & nullius vigoris in lege existit; & in hoc quod ubi prædict' Ri-

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chardus Bushop ſupon' quod prædict' nuper Rex Henricus octavus tertio die Novembris, anno regni ſui viceſimo tertio per literas ſuas patent' ſub magno ſigillo ſuo Angliæ ſigillat', gerent' dat' eiſdem die & anno, recitan' quod cum idem nuper Rex, viceſimo die Octobr', anno regni ſui decimo nono per literas ſuas patent'es, dediffet & conceſſiffet præfato Waltero Walfh maner' de Graſton Flevord in Comitatu Wigorn', ac advocacionem Eccleſiæ de Graſton Flevord cum pertinentiis, pro termino vitæ ipſius Walteri, cumque idem nuper Rex ſexto die Decembris, anno regni ſui viceſimo primo per alias literas ſuas patent'es, dediffet & conceſſiffet præfato Waltero & cuidam Elizabethæ tunc uxori ejus, prædict' manerium de Charleton cum pertinentiis in prædicto comit' Somers' habend' & tenend' eiſdem Waltero & Elizabethæ, & assignatis ſuis pro termino vitæ eorundem Walter' & Eliz' & eorum alterius diutius viven', prædict' nuper Rex Henricus octavus, pro eo quod prædictus Walterus prædict' literas patent' ei, de prædicto maner' de Graſton Flevord, ac idem Walter' & prædicta Elizabetha, prædict' literas ſuas patent' eis de prædicto manerio de Charleton in forma prædict' confeſt', dicto nuper Regi Henrico octavo in Cancellar' ſuam reſtituiſſent, ibidem cancelland', per eaſdem literas patent' dedit & conceſſit præfatis Waltero & Elizabethæ prædictum manerium de Abbotſley cum pertinentiis, unde, &c. Habend' & tenend' eiſdem Waltero & Eliz' & hæred' masculis de corpore ipſius Walter' procreat'; & prædictus Rich' Bushop in placito ſuo præd' non demonſtravit in facto quod prædict' nuper Rex Henricus octavus, per literas ſuas patent', dediffet & conceſſiffet præfat' Walter' prædict' maner' de Graſton Flevord, habend' ſibi pro termino vitæ ſuæ; nec quod idem nuper Rex per literas ſuas patent', dediffet & conceſſiffet præfat' Walter' & Eliz' præd' maner' de Charlton cum penitentiis, Habend' & tenend' eidem Waltero & Elizab. pro termino vitæ eorum alterius diutius vivent', prout per legem terr' demonſtraſſe debuiffet. Et quia expreſſe non demonſtratur in placito illo quod hujusmodi conceſſiones factæ fuer' ſed ſolummodo per viam recitationes, prædict' conſideratio in prædict' liter' paten' prædict' nuper Regis Henr' viii. anno regni ſui 23. præd' confeſt' nulla & inſufficiens in lege exiſt'. Et idem nuper Rex in conceſſione ſua prædicta ratione inde decepr' fuit; & in hoc quod præd' Rich' Bushop in placito ſuo præd' allegavit quod præd' Walt' & Eliz' prædict' literas patent' eis de prædict' maner' de Charleton confeſt' in Cancellar' dicti nuper Regis Henric' octavi ſurſum reddiſſent & cancellari procuraffent, per quod ſtatus præd' Walteri & Eliz' de & in manerio ill' determinat' fuit, ubi per legem terr' ſtatus ejuſdem Elizab. ad tunc exiſten' viro coopert' per ſurſum redditionem & cancel-

cancellac' literar' paten' illarum non fuit determinat' seu sursum redit' ; & in hoc quod ubi prædict' Richardus Bushop placitand' allegavit, quod per prædict' actum in Parliament' prædicti nuper Regis Henrici octavi, octavo die Junii anno regni sui vicesimo octavo, edit' inactitatum fuit, quod idem nuper Rex Henricus octavus hæred' & successores sui haberent, tenerent, & gauderent omnia & singula maneria prædict' cum pertinentiis in feodo simplici, salvis semper omnibus personæ & personis, corporibus politicis, & corporat', hæredibus & successoribus suis, & hæred' & successor' cujuslibet eorum, al' quam prædict' nuper comitissæ Warwic', hæred' suis ac hæred' præd' Richardi nuper comitis Warwic', fratris ejusdem nuper comitis, omnibus talibus juribus, titulis, usibus, interesse, terminis annorum, dimissione, dimissionibus, intrationibus, actionibus, concessionibus, & conditionibus qual' ipse seu aliquis eor' hæred' & successor', vel hæred' & successores alicujus eor' tunc habuerunt, habuissent, potuissent seu debuissent habere, si act' præd' nunquam habitus seu factus fuisset, aliqua re in eodem act' in contrar' inde non obstant'. Et prædict' Richardus Bushop in placito suo prædicto non allegavit in facto quod prædicta Anna nunc Comitissa War', in cujus jure, ac ut serviens cujus Comitissæ, idem Richardus facit justificationem transgr', & intrusionis præd', non fuit hæres præd' Richard' nuper comitis War' prout per legem terr' demonstrasse debuisset, &c. Et in hoc quod per eundem actum de anno vicesimo octavo suprascripto præd' manerium de Abbottesley cum pertin', unde, &c. dat' fuit per expressa verba præfato nuper Regi Henrico octavo, hæred' & successor' suis, & ideo præd' salvatio in eodem actu mentionat' existit repugnans actui Parl' ill' ac vacua ad reservand' aliquod jus in manerio ill' alicui al' personæ ; & idcirco præd' Walter Walsh, & Eliz. uxor ejus ad habend' seu clamand' aliquid juris seu stat' de vel in eod' manerio vigore ejusdem act' Parl' omnin' exclusi fuer', & in hoc quod ubi præd' placitum præd' Richard' Bushop superius in barr' placitat' minus sufficiens in lege existit ad ipsum Rich' de transgr' intratione & intrusione præd' exonerand' seu excusand', super quo quidem placito præd' Attorn' dict' dom' Reginæ pro eadem domina Regina morabat' in lege ; & inde petiit judicium pro ead' dom' Regina, eo tamen non obstant' adjudicat' existit per Barones quod præd' placitum præd' Rich' Bushop sufficiens in lege existit ad ipsum Ric' de intratione & ingressu in præd' bosc' vocat' *Alton Wood*, alias *Alvington Wood*, præd' primo die Febr', anno regni dict' dom' Reginæ nunc tricesimo secundo, & ab eod' die usq; diem exhibitionis informac' præd', ac de perceptione exituum & proficuo' inde per tempus illud exonerand'. Et sic idem generalis pro ead' dom' Regin' dicit quod in Record, &

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processu præd', ac in redditione iudicii præd' manifeste est erratum. Et superinde idem Attorn' dictæ dominæ Reginae pro eadem domina Regina petit quod iudicium præd' ob errores illos & alios in Record' & proces' præd' existen' revoce- tur, adnulletur & pro nullo habeatur, ac etiam breve de præ- muniend' præfat' Ric' Bushop effend' coram præfat' dom' cus- tod' magni sigilli & domino Thesaurar' ad certum diem au- ditur' record' & proces' præd', necnon prædictos errores, quos ipse diem Attorn' dom' Reginae tunc ibidem allegavit, & ei conceditur. Et precept' vic' dict' com' Wigorn', quod per pro- bos & legales homines de ball' sua scire fac' eidem Richar- do Bushop quod sit coram præfat' domino custod' magni si- gilli & domino Thef' in camera præd' die martis acceden' xxvi. die dict' mensis April' auditur' in forma præd' si, &c. Et ulterius, &c. quod Cur, &c. Ad quem diem vic' viz. Ed- wardus Harewell arm' retorn' brevi præd', & mandavit quod præd' breve adeo tarde sibi delibarat' fuit, ut illud propter temporis brevitatem exequi non potuit, præd' tamen Richar- dus Bushop coram præfat' domino custod' magni sigilli & dom' Thesaur' ad eundem diem ven' in camera prædicta per Arthur' Salway Attornat' suum, & petit auditum Record', & process' necnon errorum prædictorum, & ei leguntur. Quibus lectis & auditis, idem Richardus dicit quod in Re- cord' & processu prædict', & in redditione iudicii prædict' in nullo est erratum. Et petit quod præd' dominus Custos mag- ni sigilli, & dominus Thesaur' procedant ad examinationem, tam Record' & processus quam præd' mater' superius pro erroribus allegat' juxta formam statut' præd', & prædic- tus Attornat' dominæ Reginae dicit, ut prius, & petit similit- er. Et quia præfat' dominus Custos magni sigilli, & domi- nus Thesaur' se avifare volunt de & super præmissis priusquam iudicium suum inde reddant, dies datus est hic præfato Ri- chardo Bushop in Camera prædicta usq; proximum diem Martis acceden' tertio die Maii de iudicio suo inde audiend', &c. Ad quem diem coram præfat' domino custod' magni si- gilli, & domino Thesaur' in Camera præd', præd' Richardus Bushop, venit per Attornat' suum præd'; & quia præfat' dominus Custos magni sigilli, & dominus Thesaur' nondum avifant' de iudicio suo reddend', de & super præmiss' dies ul- terius dat' est præfato Richard' Bushop in Camera præd' usq; primum diem Martis, proxim' termin' sanctæ Trinitat' de iudicio suo inde audiend', &c. Ad quem diem coram præfat' domino custod' magni sigilli & domino Thesaur' in Cam- era præd' ven' prædict' Richardus Bushop per Attorn' suum præd'; & quia præfat' dominus Custos magni sigilli, & dom' Thesaur' nondum avifant' de iudicio suo reddend', de & super præmiss' dies ulterius dat' est præfat' Richardo Bushop, in Camera prædict' usque secundum diem Martis in termino sancti

sancti Mich' proxim' futur', de judicio suo inde audiend', &c. Ad quem diem præfat' dominus Custos magni sigilli, & dominus Thesaur', in Camera præd' non vener', sed *Johannes Popham Miles, & Edmundus Anderson Miles*, capital' Justic' de utroque Banco ad diem ill' ven', & sunt tunc ibidem præsentés secundum formam statuti in hujusmodi cas. edit', & præd' Richardus Bushop in Camera præd' ven' per Attornatum suum præd' coram eisdem Justiciari', & præd' negotium & fact' error' per eisdem Justiciari' adjornatur, & continuatur, virtute ejusdem statut', usque diem Martis proxim'. Et idem dies dat' est præfat' Richardo Bushop in Camera præd', de judicio suo inde audiend', &c. Ad quem diem coram præfato dom' Custod' magni sigilli, & dom' Thesaur' in Camera præd' venit præd' Richardus Bushop per Attornatum suum præd'; & quia præfat' dominus Custos magni sigilli, & dom' Thesaur' nondum advisantur de judicio suo reddend', de & super præmissis, dies ulterius dat' est præfato Richardo Bushop in Camera præd' usque diem Martis accidend', octavo die Novembris proxim', de judicio suo inde audiend', &c. Ad quem diem coram præfato dom' Thesaur' & præfat' Capital' Justiciari' præsentibus in Camera præd', ven' præd' Richardus Bushop per Attornat' suum præd'; & quia propter absentiam præd' dom' Custod' magni sigilli in præd' negotio & fact' error' proceder' non potest, eadem causa continuatur & adjornatur per eisdem dom' Thesaur' & capital' Justiciari', virtute actus præd' inde edit', ulterius usque diem Martis accidend', xxii. diem Novembr' tunc proxim' sequen' in Camera præd'; & idem dies datus est præfat' Richardo Bushop in eadem Camera, de judicio suo inde audiend', &c. Ad quem diem coram præfat' dom' Custod' magni sigilli, & præfat' Justiciari', in Camera præd' ven' præd' Richard' Bushop per Attorn' suum præd', & præd' dom' Thesaur' tunc ibid' non venien', negotium & fact' error' præd' continuatur & adjornatur ulterius per eisd' dom' Custod' magni sigilli, & capital' Justic', virtute præd' actus inde edit', usque secund' diem Martis, in termino sancti Hillar' tunc proxim' sequen'; & idem dies dat' est præf. Richardo Bushop in Camera præd', de judicio suo inde audiend', &c. Ad quem diem præf. dom' Custos magni sigilli, & dom' Thesaur' non vener' in Camera præd', sed præf. capital' Justiciari' de utroq; Banco ven' in Camera ill', & sunt ibid' præsentés, & præd' Richard' Bushop ad eund' diem in Camera præd' coram eisd' Justiciari' similiter ven' per Attorn' suum præd', & præd' negotium & fact' error' continuatur & adjornatur ulterius, virtute præd' statut' inde edit', usque primum diem Martis, in termino Paschæ proxim' sequen'; & idem dies dat' est præfat' Richardo Bushop in Camera prædicta de judicio suo inde audiend', &c. Ad quem diem coram præfat' domino Custod' magni

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magni sigilli, & præfat' capital' Justiciar', venit hic præd' Rich. Bushop in Camera præd' per Attorn' suum præd', & præd' dom' Thesaur' tunc ibidem non veniente, præd' negotium & sect' error' continuatur & adjornatur, per statut' præd' inde edit', ulterius, usque ultimum diem Martis præd' termino Paschæ in Camera præd'; & idem dies dat' præfato Richard' Bushop in Camera præd', de judicio suo inde audiend', &c. Ad quem diem præd' dom' Custos magni sigilli, & dom' Thesaur' non ven' in Camera præd', sed præfat' capital' Justiciar' vener' in eade' Camera, & sunt ibid' præsent'es, & præd' Rich' Bushop coram eisd' Justiciar' ad eund' diem in Camera præd' similiter ven' per Attorn' suum præd', & præd' negotium & sect' error' per eos continuatur, & adjornatur ulterius, virtute statut' præd' inde edit', usque primum diem Martis in termino sanctæ Trinitatis proxim' sequen'; & idem dies dat' est præfat' Rich. Bushop in Camera præd', de judicio suo inde audiend', &c. Ad quem diem coram præfat' capital' Justiciar' in Camera præd', ven' præd' Rich. Bushop per Attorn' suum præd'; & quia præfat' dom' Custos magni sigilli, & dom' Thesaur' tunc ibidem non vener', præd' negotium & sect' error' continuat', & adjornatur secundum formam statut' præd' inde edit', ulterius, usque diem Martis, quartum diem Julii, eodem termino sanctæ Trinitatis; & idem dies dat' est præfat' Rich. Bushop in Camera præd', de judicio suo inde audiend', &c. Ad quem diem coram præfat' capital' Justiciar' in Camera præd' venit præd' Rich. Bushop per Attorn' suum præd'; & quia præd' dom' Custos magni sigilli, & dominus Thesaur' non vener', ideo præd' negotium & sect' error' continuatur, & adjornatur secundum formam statut' præd', ulterius, usque tertium die, Martis, in termino sancti Michaelis proxim' sequen'; & idem dies dat' est præfato Rich. Bushop in Camera præd', de judicio suo inde audiend', &c. Ad quem diem coram præfat' capital' Justiciar' in Camera præd' venit præd' Richardus Bushop per Attorn', suum præd'; & quia præfat' dom' Custos magni sigilli, & dominus Thesaur' non ven', ideo præd' negotium & sect' error' continuatur & adjornatur, virtute statut' præd' inde edit', ulterius, usque xxi. diem Novembris, eodem termino sancti Michaelis; & idem dies dat' est præfato Richardo Bushop in Camera præd' de judicio suo inde audiend', &c. Ad quem diem coram præfat' capital' Justiciar' in Camera præd' venit præd' Richardus Bushop per Attorn' suum præd'; & quia præfat' dominus Custos magni sigilli, & dominus Thesaur' non ven', ideo præd' negotium & sect' error' adjornatur & continuat' secundum formam statut' prædict', ulterius, usque secundum diem Martis, in term' sanct' Hill proxim' sequen'; & idem dies dat' est præfat' Rich. Bushop in Camera præd', de judicio suo inde audiend', &c. Ad quem diem coram præfat' capital' Justiciar' in Camera præd' venit præd' Richardus

Richardus Bushop per Attorn' suum præd' ; & quia præfat' dom' custos magni sigilli & dom' Thesaur' non ven', ideo præd' negotium & sect' error' continuatur & adjornatur, virtute statut' præd' inde edit', ulterius, usque primum diem Martis in Termino Paschæ proxim' sequen', & idem dies dat' est præf. Rich. Bushop in Camera præd' de judicio suo inde audiend', &c. Ad quem diem coram præf. capital' Justic' in Camera præd' venit præd' Ric' Bushop per Attorn' suum præd', & quia præf. dom' Custos magni sigilli, & dom' Thesaur' non ven', ideo præd' negotium, & sect' error' continuatur & adjornat', secund' formam statut' præd' inde edit', ulterius, usque primum diem Martis in Term' sanctæ Trinitatis proxim' sequen'; & idem dies datus est præfat' Rich' Bushop in Camera præd' de judicio suo inde audiend'. Ad quem diem coram præf. *Thoma Egerton* milite dom' custod' magni sigilli, & *Thoma* dom' *Buckburst* modo dom' Thesaurar' Angliæ, in Camera præd' ven' præd' Richardus Bushop per Attorn' suum præd', & præd' Attorn' dom' Regin' pro eadem dom' Regin' ut prius pet' ; & quia præfat' dom' custos magni sigilli, & dom' Thesaur', ulterius se avifare volunt de judicio suo reddend' de & super præmissis, antequam, &c. dies ulterius dat' est præfat' Ric' Bushop in Camera præd' usque secundum diem Martis in term' sancti Michaelis proxim' sequen' de judicio suo inde audiend', &c. Ad quem diem coram præfat' dom' custod' magni sigilli, & dom' Thesaur', in Camera præd' ven' præd' Rich. Bushop per Attorn' suum præd' ; et quia præfat' dom' Custos magni sigilli, & dom' Thesaur' nondum avifantur de judicio suo inde reddend' de & super præmis. dies ulterius dat' est præfat' Ric' Bushop in Camera præd' usque diem Martis xxiii. diem Octob. eodem term' sancti Michaelis, de judicio suo inde audiend', &c. Ad quem diem coram præf. dom' custod' magni sigilli, & dom' Thesaur' in Camera præd' venit præd' Rich. Bushop per Attorn' suum præd', & quia præf. dom' Custos magni sigilli, & dom' Thesaur' nondum avifantur de judicio suo reddend' de & super præmissis, dies ulterius dat' est præf. Rich. Bushop, in Camera præd', usque diem Martis xxx. diem ejusdem mensis Octobris, eodem term' Sancti Michaelis de judicio suo inde audiend', &c. Ad quem diem præfat' dom' custos magni sigilli, & dom' Thesaur' non vener' in Camera præd', sed præfat' Capital' Justiciar' in Camera præd' ven' ; & præd' Rich. Bushop ad eund' diem in eadem Camera coram eisd' Justiciar' similiter ven' per Attorn' suum præd' ; & præd' negotium & sect' errorum continuatur & adjornatur, virtute statut' præd' inde edit', ulterius, usque diem Martis, sextum diem Novembris eodem termino sancti Michaelis ; & idem dies dat' est præfat' Richard' Bushop in Camera prædicta, de judicio suo inde audiendo, &c. Ad quem diem nec præd'.

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præd' dom' Custos magni sigilli, & dom' Thesaur', nec præfatus capital' Justiciar' vener' in Camera præd'. Postea dict' dom' Regina nunc mandavit hic quoddam aliud breve suum clausum, sub magno sigillo suo, extra cur' Cancellar' suæ, Thesaurar' & Baron' suis hujus Scaccarii direct', cujus quidem brevis tenor sequitur in hæc verba. ff. Elizabetha dei gratia Angliæ, Franciæ, & Hiberniæ Regina, fidei defensor, &c. Thesaurar' & Baronibus suis de Scaccario suo salutem, Quia in Record' & processu, ac etiam in redditione iudicii loquelæ, quæ fuit in Cur' nostra coram vobis præfat' Baronibus nostris de Scaccario nostro præd', term' sanctæ Trinitatis, anno Regni nostri tricesimo septimo per billam inter nos, & Rich. Bushop, de quibusdam transgressione, & intrusione in quibusdam boscis nostris cum pertin' vocat' **Alti** ii, alias **Albington Wood**, contin' per estimationem tres mille acr' bosc' in **Alton**, alias **Albington**, & **Roche**, in comitatu nostro Wigorn' error intervenit manifestus, ad grave dampnum nostrum, ac cum in statut' in Parliament' dom' Edwardi nuper Regis Angliæ tertii progenitoris nostri apud Westmon', anno regni sui tricesimo primo tent', edit', inter cæter' concordat' & stabilitum fuit, quod in (a) omnibus casibus regem autal' person' tangen', ubi quis queritur de errore facto in processu in Scaccario, Cancellar' & Thesaur' venire fac' coram eis in aliquam Camer' concilii juxta Scaccar' Record' de processu hujusmodi, extra dict' Scaccar', & assumptis sibi Justiciar' & aliis peritis talibus qual' sibi videbitur fore assumend' vocari fac' coram eis Barones de Scaccario præd', ad audiend' informationes suas, & causas judicior' suor', & super hoc negotium hujusmodi debite fac' examinari; & si aliquis error inventus fuerit, illum corrigi fac', & Rotulos emendari, & postea eos in dict' Scaccar' ad execution' inde faciend' remitti, sicut pertinet, prout in eodem statut' continetur: Nos igitur volentes error', si quis fuerit, juxta formam statut' præd' corrigi, & plenam & celerem Justitiam fieri in hac parte, vobis mandamus quod si Judicium inde redditum sit, tunc record' & process' præd' cum omnibus ea tangen' coram prædilecto & fideli consiliario nostro *Thoma Egerton* milite, custod' magni sigilli nostri Angl' & vobis vos præfat' Thesaur' in camer' concilii juxta Scaccar' præd', vocat' **le Counsel Chamber**, die Martis, viz. v. die Febr' proxim' futur' venire fac', ut idem Custos magni sigilli nostri, & vos præf. Thesaur' visis & examinatis Record', & processu præd' auditisq; informationibus vestris, vos præf. Baron' ulter' in hac parte de consilio Justic' & alior' peritor' hujusmodi fieri fac' quod de jure & secund' form' statut' præd' fuerit faciend', Teste me ipsa apud Westm' xxix. die Jan' anno regni nostri quadragesimo secundo. *Symons*. Et ad præd' quintum diem Februarii in dicto brevi mentionat', præfatus *Thomas Egerton* miles Custos magni sigilli Angliæ,

(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.
Er. Discou. de
Proces. 50. 15
E. 4. 21. b.
37 H. 6. 15. a
4. Inst. 119.
Vet. N. B. 55. 2.

Angliæ, & Thomas dom' Buckhurst, dom' Thesaur' Angliæ, venire fecer' coram eis Recordum præd' in præd' Camera juxta Scaccarium præd', le Counsel-Chamber vocat'; & ad dictum diem & locum ven' coram præfat' domino Custod' magni sigilli, & domino Thesaur' præd' Attornat' dominæ Reginæ, & pro eadem domina Regina dic', quod in Record' & process. ac in redditione judicii præd', diversimodo est erratum modo & forma, prout per prædictos articulos de erroribus per ipsum prius allegat' & assignat' superius allegatum est. Et pro eadem dom' Regina petit aliud breve dom' Reginæ de præmuniend' præfat' Richardo Bushop, esend' coram præfat' dom' Custod' magni sigilli, & domino Thesaur', ad certum diem auditur' record' & processus prædict', ac etiam errores præd', &c. & ei conceditur. Et præcept' Vice' comitat' Wigorn', quod per probos & legales homines de balliva sua Scire fac' Richardo Bushop, quod fit coram præfat' dom' Custod' magni sigilli, & dom' Thesaur', in Camera præd' apud Westmonaster', primo die Martis, termino Paschæ proxim' sequen', auditur' record' & process. præd', necnon errores præd' superius allegat'. Et ulterius, &c. quod Curia, &c. Ad quem diem coram præfat' dom' Custod' magni sigilli, & domino Thesaur' in Camera præd' apud Westmonaster' Vicecom' præd' comitat' Wigorn', videlicet, Willihelmus Child armig', retorn' breve præd' indorsatum sic. ff. Virtute istius brevis mihi direct', scire feci infra nominat' Richardo Bushop, per Johannem Jones, Johannem Harris, Thomam Penington & Johannem Wembe, probos & legales homines de ball' mea, essend' coram dom' Custod' magni sigilli, & dom' Thesaur' ad diem & locum infracontent', prout interius mihi præcipitur; & super hoc præd' Richardus Bushop per Arthur' Salway Attornat' suum, ad eundem diem in Camera præd' similiter ven', & petit auditum record' & process. necnon errorum prædictorum, & ei leguntur, &c. Quibus lectis & auditis, idem Richardus dicit, quod in record' & process. prædict', ac in redditione judicii prædict', in nullo est erratum; & petit quod prædicti domini procedant ad examinationem tam record' & process. prædict', quam negot' prædict' pro erroribus per dict' Attornat' dom' Reg' superius allegat', juxta formam prædicti statut' inde edit'; & prædictus Attornat' dominæ Reginæ pro eadem domina Regina dicit, ut prius dixerat, & petit similiter: Et quia præfatus dominus Custos magni sigilli, & dominus Thesaur' se ulterius avisare volunt, de & super præmissis, priusquam judicium suum inde reddant, dies dat' est præfat' Richardo Bushop in Camera prædict', usque diem Martis proxim' de judicio suo inde audiend', &c. Ad quem diem coram præfato domino Custod' magni sigilli, & domino Thesaur' in Camera prædict'

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apud Westmonaster', ven' præd' Richardus Bushop per Attornatum suum præd' ; & quia præfat' dom' Custos magni figilli, & dominus Thesaur' nondum advisantur de iudicio suo inde reddend' de & super præmissis, dies ulterius dat' est præfato Richardo Bushop coram præfato dom' Custod' magni figilli, & dom' Thesaur', in Camera præd', usque diem Martis proxim', de iudicio suo inde audiend', &c. Ad quem diem coram præfat' domino Custod' magni figilli, & domino Thesaur' in Camera prædict' apud Westmonaster' venit prædictus Richardus Bushop per Attornatum suum præd' ; & quia præfat' dominus Custos magni figilli, & dominus Thesaur' nondum advisantur de iudicio suo reddend', de & super præmissis, dies ulterius dat' est præfat' Rich. Bushop coram præfato dom' Custod' magni figilli, & domino Thesaurar' in Camera præd', usque primum diem Martis, termino sanctæ Trinitatis tunc proxim' sequen', de iudicio suo inde audiend', &c. Ad quem diem coram præfat' domino Custod' magni figilli, & domin' Thesaur' in Camera præd' apud Westmonaster', venit prædictus Richardus Bushop per Attornatum suum prædict' ; & quia præfat' dominus Custos magni figilli, & dominus Thesaur' nondum advisantur de iudicio suo reddend' de & super præmissis, dies ulterius dat' est præfat' Richardo Bushop coram præfato domino Custod' magni figilli, & domino Thesaur' in Camera prædict', usque diem Martis, tertium diem Junii proxim' eodem termino sanctæ Trinitat', de iudicio suo inde audiend', &c. Ad quem diem coram præfat' dom' Custod' magni figilli, & domino Thesaur' in Camera præd' apud Westmonaster', venit præd' Richardus Bushop per Attornatum suum præd' ; & quia præfat' dom' Custos magni figilli, & dominus Thesaur' nondum advisantur de iudicio suo reddend', de & super præmissis, dies ulterius dat' est præfat' Richardo Bushop coram præfat' dom' Custod' magni figilli, & dom' Thesaur' in Camera præd', usque diem Martis, decimum diem Junii proxim', eodem termino sanctæ Trinitatis, de iudicio suo inde audiend', &c. Ad quem diem coram præfat' domino Custod' magni figilli, & dom' Thesaurar', in Camera præd', apud Westmonaster', ven' præd' Richardus Bushop per Attornatum suum præd' ; & super hoc vis. præmiss. per præfat' Custod' magni figilli Angliæ, & præfat' Thesaur', maturatione deliberatione inde inter eos habit', & assumpt' sibi præfat' *Johanne Popham* Milit', capital' Justiciar' dictæ dom' Reg' ad placita coram ipsa dom' tenend' assign', & *Edmundo Anderson* Milit', capital' Justiciar' dictæ dom' Regin' de Banco, necnon *Francisco Garwy*, uno Justiciar' ad prædicta placita coram prædicta domina Regina tenend' assign', vocatisque coram eis Baron' de Scaccario prædict', ac auditis rationibus eorundem Baron' iudicii prædicti, Quia vis. est præ-

præfat' Custod' magni sigilli Angliæ, & præfato Thef. de consilio prædictorum Justiciar', quod in Record' & processu præd', ac in redditione Judicii præd' manifeste est erratum: Ideo (a) conf. est per eisdem Custod' magni sigilli Angliæ, & præfat' Thef. quod præd' judicium revertatur, & adnulletur. Ac quod præd' Richardus Bushop de intratione, intruf. tranſgr', & contempt' præd' convincat', ac quod præd' Richardus Bushop amoveat' a possession' præmissor', & attachietur per corpus suum ubicunque, &c. ad faciend' finem cum domina Regina pro præd' transgression', & contempt' suis, unde in forma supradicta convictus est; quodque record' præd' remittatur in Scaccar' præd', pro executione inde pro præd' domina Regina fiend', juxt' formam præd' statut' inde edit'. Ideo concordatum est per Barones hic quod breve dictæ dominæ Regiæ eman' extra Cur' hic, ad amovend' præd' Richardum Bushop a possession' præmissorum prædictor', & ad attachiand' præd' Rich. per corpus suum ubicunque, &c. ad faciend' finem cum domina Regina pro præd' tranſgr', & contempt' suis, unde in forma supradicta convictus est, retorn' hic in octabis Sancti Michaelis. Et præcept' Vic' dict' com' Wigorn', quod ipsum Richard' amoveat, & attach. in forma prædicta.

(a) Devant
22. a. 1 Roll.
R. 278, 279.
1 Bulſtr. 125,
126, 179.
3 Bulſtr. 92, 93,
94. 1 Syd. 70.
1 Co. 83. a.
119. b. Hob.
17, 19, 194,
327. Yelv. 130.
Latch. 76, 83,
188. Noy; 77.
Poph. 203, 212.
N. Benl. 148.
pl. 226. Cro.
El. 145. Jenk.
Cent 13. Cr.
Jar. 6. Stat. 16
& 17 Car. 2.
cap. 8. Cro.
Jac. 386, 632.
Stat. 22 & 28
Car. 2. cap. 4.
Cro. Car. 442,
443. 1 Ro. 771,
774.

 Trinity-Term 42 Eliz.

Between the

Queen and RICHARD BUSHOP.
The Case of ALTON WOODS.

(a) 2 And. 154.
Jenk. Cent 251.
Mo. 413. Hob.
230. 10 Co.
68. a.

IN an (a) Information of Entrufion, which began *Trin. 37 Eliz. Rot. 199. Scaccario* againft *Richard Bushop* for Entrufion in a Wood called *Alton Woods*, in *Alton*, alias *Alvington* and *Rock* in the County of *Worcefter*, &c. The Defandant pleaded, that before the Entrufion, one *Anne* Countefs of *Warwick*, who was the Wife of *Richard* Earl of *Warwick*, was feifed of the Manor of *Abbotefley*, alias *Abberley*, in the County aforefaid; whereof the faid Wood was Parcel in her Demefne as of Fee, and fo feifed *quindena Hillarii anno 3. H. 7.* did levy a Fine of the faid Manor whereof, &c. unto King *Hen. 7.* to have and to hold to him and to the Heirs Males of his Body, faving the Reverfion unto the faid Countefs and her Heirs; and afterwards the faid Countefs died feifed of the faid Reverfion in Fee, after whose Death it defcended unto *Edward* Earl of *Warwick* her Coufin and Heir, that is to fay, Son and Heir of *Isabel*, Daughter and Heir of the faid Countefs; and afterwards, by A&t of Parliament 25 *Januarii anno 19 H. 7.* the (b) faid *Edward* Earl of *Warwick* was attainted of Treafon; and further it was enacted by the faid A&t, that he fhould forfeit to the faid King and his Heirs, all his Lands, Tenements and Hereditaments, which he had the fecond Day of *Auguft, anno 14 H. 7. Quarum quidem convictionis & attincturæ prætextu, præd' nuper Rex H. 7. fuit feifitus de reverfione Manerii præd', unde &c. ut de fodo & jure, in jure Coronæ fuæ Angliæ, & fic inde feifitus existens, ac de manerio prædicto cum pertinentiis, fic ut præfertur feifit' existen', idem nuper Rex apud Westmon' in comitatu Mid. obiit, de Manerio præd' cum pertinentiis, unde &c. ac de reverfione*

(b) Bacon's
Hift. 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' seifirus, post cujus mortem, the Manor and Reversion descended unto Hen. 8. by Force whereof he was of the said Manor and Reversion seifed, &c. and so being 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 aforesaid 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 of 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. domine Regine apud Westmonaster. prædict' debito modo retornat', & ibidem de recordo remanen', plenius apparet.* And King 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 vite sue. Cumque etiam prædictus Henricus octavus sexto die Decembris, anno regni sui vicefimo primo, per alias suas literas Patentes dedisset, & concessisset præfato Waltero Walsbe, & cuidam Elizabethæ adtunc uxori ejus, manerium de Charleton, in com' Somerset. Habendum & tenendum manerium illud eidem Waltero, & Elizabethæ pro termino vite eorundem Walteri & Elizabethæ, & alierius 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) restituisfent cancelland', ad intentionem quod idem nuper Rex prædictum manerium de Grafton Fleuord, necnon prædictum manerium de Abbottesley, per alias literas Patentes ejusdem nuper Regis, eidem 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 J. nes 79.
Mj. 413.

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

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

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tionem tempore confectionis prædictarum literarum patentium hic in Cur' prolat', restitut', & cancellat' fuerunt, de (a) gratia ipsius Regis speciali ac ex certa scientia, & mero motu suis, per eandem literas Patentes hic in Curia prolat' 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 præcreat'. (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 surrendred the said Letters Patents of Grafton Fleuord, and that he and his Wife had surrendred 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 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'. Idco tunc, & ibidem inactitatum fuit auctoritate ejusdem Parliamenti, quod prædict' nuper Rex Henricus octavus, hæredes & successores sui, (d) extunc impostertum haberent, & gauderent omnia & singula prædicta maneria, &c. ac quod eadem maneria, &c. adjudicarentur auctoritate ejusdem Parliamenti, 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 Ricardi nuper Comitissæ Warwick, patris prædictæ nuper Comitissæ, omnibus talibus juribus, titulis, &c. in

talibus modo, & forma, prout præd' actus nunquam habitus seu editus fuisset. 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 Walsbe*, and the Reversion to the Queen that now is: And *William Walsbe* by his Deed indent-ed, enrolled in the Chancery, &c. bearing Date 3 *Julii anno 30 Regin' Eliz.* did bargain and sell to the Earl of *Leice-ster* 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 *Bishop* the Def. justified as Servant to the said now Countess, and by her Commandment, &c. upon which Plea *Coke* the Queen's At-torney 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 *Tbo. 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 At-torney caused a (*c*) Writ of Error to be brought for the Queen; and because the Case was most learnedly argued in the Exche-quer-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 en-acted, 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 insuf-ficient; for in as much as it doth not appear when *Edward* Earl of *Warwick*, who was attained, died, it is clear that un-till 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. Dyer 325. Nichols Case, Plowd. Comm. 483. b. & 486. a.* And the Stat. of (*f*) 26 *H. 8. cap. 13.* by which Lands in Tail are forfeit. And (*g*) 33 *H. 8. cap. 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 af-firmed *per totam Curiam*: and that the Pleading in this Point was not so formal as it might have been, but they were of Op-inion that it was notwithstanding sufficient enough in Substance, for *K. H. 7.* did not make the Grant to *Walsbe*, for then the Ex-ception had been material. But after Office found *K. Hen. 8.*

43. pl. 56. 344. a. 1 And. 293. Palm. 439. 3 Co. 2. b. 1 Jones 70, 71, 75, 76, 77. 35. b. Pop. 19. 4 Leon. 169, 172. Cr. Car. 428, 461. Co. Ent. 839. b. 422. b. 312, 320, 323, 327, 329. 1 Le. 21. Godb. 301, 304, 305, 312, 315. Hob. 344, 345. Co. Lit. 372. b. 392. b. 2 Ro. R. 318, 321, 324, 373, 503. Apres 48.

(a) 2 And. 155.
(b) 2 And. 155.
(c) 2 And. 154.
(d) 1 Jones 79.
Palm. 354.
(e) Br. Office
devant Eschett.
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. A-
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-
ter. depardon 52.
(f) 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. Her.
151, 157. 1 Len.
21. Godb. 309,
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. Ent.
422. a. 1 Ro.
R. 162. 2 Ro.
R. 314, 315,
318, 319, 320,
321, 323, 324,
325, 349, 374,
416, 418, 420,
501, 503, 507,
508. 1 Jones 79,
71, 75, 76, 77,
80. Cr. Car. 428.
(g) Stam. Cor.
198. 2. 5 Co.
52. b. Kel. 17. b.
Stam. præ. 53.
a. b. 3 Co. 10.
a. b. 11. a. Dy.
80. 7 Co. 120.
Mo. 307, 311,
Hob. 231, 335, 341.
a. 3 Inst. 19.

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granted to *Walsbe*; 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.
Apres 52. b.
4 Inst. 225.
Kel. 173 a.
4 Co. 57. a.
Ley de wards
Et 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. *Poph.* and *Anderson*, and *Gawdy* 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 King, altho' it was never returned; for it appeareth in the Book of Assises, that upon Examination 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 *Ass. pl. 5. Esc.*

(b) 9H. 7. 10. a.
F. n. b. 154. c.
Br. Assize 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 Surplussage, and more than was necessary.

(c) Mo. 416.
Cr. Jac. 13.

The fourth Exception was, That the Pleading of the Grant made to *Walter Walsbe* 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 King had demised the Manors of *Grafton Fleward* and *Charleton* 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 Fleward* in Tail the rather, because he thought he had granted it (as he recites) to *Walsbe* for Term of his Life, and was induced to grant the Manor of *Abbotresley* in Tail the rather, because the Manor of *Charleton*, which (as he

the recites) he had granted to *Walshe* 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 *Tbo. Wrotbe's* Case, *Plov. Com.* 455. were cited, *sed non allocatur*, for the Consideration was, that *Walter Walshe* should surrendur 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 Fleward*, 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 *Walshe* had a joint Estate with him: And it was said, that the King ought to have the Effect and (h) 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 *Eliz. Di.* 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 surrendred to the Queen *ea intentione*, that the Queen would make a Lease to him for twenty Years; the Queen reciting the Demise for eighty 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.
55. a. 7 Co.
12. a. 11 Co.
87. a. 74. b.
4 Co. 35. w.
5 (10. 94. a.
Hob. 223.
Lane 12. 2 Co.
54. a.

(b) Fitz. Grant
29. Lane 12.
Apres 52. a.

(c) 6 Co. 55. b.
Lane 12.

(d) 2 Ro. R.
277.

(e) Fitz. Estop-
pel 84. 26 H. 8.
1. b. Br. parent.
80. Apres 43.
Hob. 339.
Herl. 156. Plo.
331. a.

(f) Mo. 414;
415.

(g) Hob. 223.
3 Co. 94. a.
6 Co. 55. b.

(h) 9 Co. 132. a.

(i) Dy. 352.
pl. 26. Apres
49. b. 5 Co.
94. a. 10 Co.
68. a. 6 Co.
55. b. 2 Ro. R.
273.

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(a) Lit. R. 135.

(b) Hob. 339.
Plo. 331. a.
9 H. 7. 2. a.
26 H. 8. 1. b.
Herl. 156. Br.
patent. 80. Firz.
Eftoppel 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.
Sry. 189. Hard.
499. Laue 11.

(d) 2 And 156.
Apres 46. a.
Mo. 416. Hob.
224. Co. L. 27.
a. b. 13 a. Br.
Eftate. 33. 18.
Aif. 5. Plo. 251.
a. Dav. 34. b.
43. a. 18 E. 3.
45. b. Lit. Secl.
31. 7 Co. 40. b.
138. 1 Ro. 85c.
Apres 49.
1 Bullf. 10. 222.
Mod. R. 196.
B. N. C. 5.
2 Brownl. 334.
Apres 51.
1 Brownl. 45.
Flo. 335. a.

(e) Apres 137. b.
Co. L. 27. a.
Cotton's Re-
cords 671.
21 E. 3. 41. b.
8 Co. 16 b.
25. b. Raym.
355 Palm. 89.
1 Ro. R. 198.
The Matter en
cay.

(f) Hob 224.
ink 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 King, 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 Entrufion, *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 fursum reddit. totius status, & termin' annor', de & in premiss. per pread' liter. Parent. 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 Heirs Males to be inheritable, and exclude the Females, and because his Intent did not agree with the Law, his Grant was adjudged void. And *1 Ma. Dier. 94. K. Edw. 3.* did grant Land to the D. 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 moyed: One, that the Letters Patents were void, the other admitting that the Letters Patents at the first were good; yet all the Estate which *Walphe* had, was given unto the King by the Act of *28 H. 8.* As to the first, the Case is no other, but, (f) The King being Tenant in Tail of the Manor of *Abbottsey*, 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) 2 I. 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) 2 I. 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 have the Licence to alien to them and their Heirs, in as much as he was not comfust 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 the Bar, the King not knowing his Estate, granted a greater Estate than he could lawfully grant, and therefore his Grant is void, & *vide* (g) 40 Aff. pl. 36. which agrees with 2 I. Aff. 15. in all, and no Case in the whole Law can

(a) Hob. 224.

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

(c) Apres 50. b.

(d) 5 Co. 94. 2

(e) Mo. 415.
Hob. 155. 11 Co.
74. b. 87. a.
87. a. 2 Ro.
191. 10 Co.
113. b. Fitz.
Travers 41.
Apres 50. a.
51. b.(f) 2 And. 156.
11 low. 558. b.
Mo. 415. Br.
Alienation 28.
Br. patent. 77.
Br. gard. 62.
Br. reiseifer pro
Rege 24. Br.
S. i. e fac. 152.(g) Plow. 557. b.
Stam. pra. 18. b.
Br. alienation
13. Mo. 415.
Br. patent. 37.
Br. Scire fac.
57. 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 King'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 & vir. 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 Statute (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 Statute of *Westm. 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 exheredationem exituum*, ergo, it was tortious, 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. 3.
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.
332. 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.

is ill, and these are the Words of the said Book; a *fortiori* in our Case, the King's Grant being restrained by the Statute 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 enrolled 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 the 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 T'bo. Stephens*, that it shall enure as it may lawfully enure, as in (c) *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 King 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 Fenny, Cboke, Fairefax, Brian, & Hussie Justicos 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 501
a. 1 Roll. 190. r
And. 46, 90, 91,
92, 93, 3 Len.
242, 243, 244,
245, 246, 247,
248, 249, 250.
251. Mo. 415,
16. 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. Fitz
grant 35. Br.
patent. 52, 66.
Hard. 500. 2
Roll. R. 277.

(b) 2. Co. 17. a.

(c) Dy 269. pl.
1). Br. patent.
71, 90. Br. ex-
emption. 9, 14.
8 Co. 55, a 167.
1. 11 Co. 11. b.
Dlow. 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 55. 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.

The Case of ALTON WOODS. PART I.

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 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 Cafes were cited by them, where the King's Grants *ex certa 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 holden of the King, and many other Cafes 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. 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 Cafes 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 Construction 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 autre 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

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

(b) Dy. 269. pl.
19. Apres 46.
2. 48. a. 49. a.
50. b. Plow.
331. a Br. Charter
de Pardon.
36. 58. Br. patent
42. Br. Release
40. 2 R. 3.
7. a.

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

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

(e) Lane 110.

Wardship nor *primer seisin*; so that when the King intended to grant an intire and undivided Estate, the Parentee 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 King 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 devested by Disseisin, Abatement, &c. and that which the King cannot by Law transfer to another, shall remain in himself; and in the same Case if the King grant *totum statum suum*, it is void, for none 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 *Starkcy*, 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 King is (c) deceived in his Grant, the Grant is void; and that the King's Letters 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 pertinentiis in Com' Salopiæ*; that the Grant was void, for the King

was

(a) 2 *And.* 15c.
Br. Affize 358.
Br. Que Estate
 18. *Fitz. Que*
Estate 18. *Co.*
L. 121. a. *Cro.*
Car. 428.

(b) *Fitz. Que*
est. 15. *Br. Que*
Estate 29. *Co.*
Lit. 303. b. *Br.*
Aveim. 30. *Lit.*
Secl. 613. 2
And. 156.
Godb. 442. *Mo.*
 414. *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. *Dv.*
 339. pl. 47. &
 352. pl. 26. *Co.*
Enr. 384, 41 *Affs.*
 19. *Br. patent*
 38. *Br. Alienaq.*
 21. *Plowd.* 332.
 a. *Mod. Rep.*
 196. *Kelw.* 8.
 b. 12. b.

(d) *Hob.* 274.
Devant 43 b.
Apr 49 a. 51.
 b. *Mo.* 416. *Co.*
L. 13. a. 27. a.
 b. *Plow.* 251. a.
 338. a. 18. *Affs.*
 5. *Br. Estates*
 33. 69 *Dav.* 34.
 b. 43. a. 18. *E.*
 3. 45. b. *Lit.*
Secl. 51. 7 *Co.*
 40. b. 2 *And.*
 178. 156. 1. *Ro.*
 860. 1 *Bull.* 10.
 222. *Mod. Rep.*
 196. *Br. N. c.* 5.
 1 *Brownl.* 55. 2
Brownl. 334.

(e) *Lanc.* 109.

The Case of ALTON WOODS. PART I.

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 cum Lincoln'*; and it was held that neither of them pass. Another Case was adjudged in the Exchequer, *an. 15 Eliz. K. E. 6.* by his Letters Patents *ex certa scientia & mero motu*, did grant to *Crowcb(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 King'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. And it is well said in *Plowd. Com. fol. 333. a.* which is true, that when the Patent is made *ex gratia speciali, certa scientia & mero motu*, that (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: 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 Dom' 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, although 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 King 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 in as much 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 *Walpole* 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 and

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

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

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

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 *Plowd. Com.* 563. *b.* where the (b) supposed Attainder of the Duke of *Norfolk* was by Act of Parliament 1 *Marie*, declared to be void and null *ab initio*, saving the Estates and Leases made by King *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. Dier* 231. (c) it is enacted by the Stat. of 31 *H. 8. cap. 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 *Ramsay* 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 & Statute*, *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 *Eliz. Di. (e)* 313. *a.* So in our Case when the Manor of *Abottesly* 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.
Sryl. 161. 3
Inft. 47. *Cro.*
Car. 38.

(b) *Plowd.* 555.
a. Mo. 309.
 132. *Dav.* 4. 2.
 3 *Kcb.* 236. *Lit.*
R. 44.

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

(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 *Le-*
on. 40 2 *Ro.*
R. 246. 247.
Dav. 2 a. 1 *Jones*
 234. *Lit.* 1. 43.
Co. L. 1. a.

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(a) 3 pres. 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 *Walshe* and his Wife shall die without Heir Male of their Body? Further it was enacted, That the King *extunc imposter' haberet & teneret maner' præd'*, so that the Saving of the Estate of *Walshe*, which peradventure may continue for ever, is repugnant to these Words. Again, 3dly, the Words of the Act are, *& quod idem maner' adjudicaretur auctoritate ejusd' Parliamenti in præd' nuper rege H. 8. hereda' & 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 seized 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 Eliz. Di. (c) 362. b. And it is said in *Plow. Comm. 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 *Walshe* is something; wherefore for all these Causes it was concluded that the Judgment ought to be reversed. And because *Periam* Ch. Baron 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 *Walshe* 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 *Walshe* for the Life of the King, and after the King's Death without Issue Male to *Walshe* in Tail, it had without Question been good. And he said, if the King 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 *Brock* in 38 Hen. 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 faith, 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.* 233. *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 seized in the Right of his Wife, be attainted of Felony, and the King upon Office thereof found, seize 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.* & (*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 constant 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 King 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. cap.* 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

R. 318, 321, 324, 375, 503. 3 Inst. 19. 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) Plowd. 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 Par-
don 36, 58. Br.
Relieases 40.
Br. Patent. 42.
2 R. 3. 7. a.
(e) Plo. 331. b.
Br. Patent. 24.
Br. Ch. de Par-
don 25. Br.
Ret. de Brief
59. Fitz. Char-
ter. 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,
323, 327, 329.
Godb. 301, 344,
205, 312, 315.
Hob. 331, 335,
341, 344, 345.
Co. Lit. 372. b,
372. b. 2 Ro.
Devant. 42. a.

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 past 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 Ch. Baron, the said Chief Justices, and Justice *Garwy*, heard again the Counsel on both Parties at Serjeants Inn in *Fleet-street*, 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 *Walsh* and his Wife in Tail was utterly void. And the Chief 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. Hurr. 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 King 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 Land (c) to one, and to his Heirs Males, the Grant is void, as it was adjudged 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 King (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 Burgeff, 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 ill' essent ad nocumentum 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 nocumentum* &c. which are the usual Words to create a new Fair,

(a) 6 Co. 6. a.
56. a. 8 Co.
56. a. b. 77. a.
167. a. 9 Co.
30. a. 10 Co.
67. b. 11 Co.
11. a. b. De-
vant 43. b. 46. a.
2 Roll. 200.
3 Bulfr. 6.
2 Inf. 496, 497.
Kelw. 175 a.
198. a. 3 Leon.
243.
(b) 3 Bulfr.
14. 3. 8 Co.
56. b.
(c) 1 Brownl. 45.
2 Brownl. 334.
B. N. c. 5.
Mod. Rep. 196.
1 Bulfr. 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.
Efta. 33. Plow.
251. a. 335. a.
Mo. 416.
Hob. 224. De-
vant. 43 b. 46 a.
Apres 51. b.
(d) Devant
45. b. 46 a.
48. a. Apres
50. b. Plowd.
331. a. Br.
Cha. de Par-
don. 36 Br.
Patent 42. Br.
Release 40.
2 R. 3. 7. a.
(e) Lane 110,
112. Apres 51. b.
Dyer. 276.
pl. 52, 53, 54.
Mo. 416, 427.
i Jones 168.
Palm. 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. Dier 352.* and the other Cases put by Master Attorney are to be applied. And to the Inconveniencies 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 attainted 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 is it 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 it was adjudged in the Case of (b) *Huffey, Hill. 40 Eliz. in Communi B.* and the Case was thus: *Charles Duke of Suffolk* was seized 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 *H. 8. c. 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 *Plowden'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

(a) 3 Leon.
243, 248, 49.
Devant 43. a.
2 Ro. R. 275.
Dy. 352. pl. 26.
Apres 52. b.
Devant 42. a.

(b) Hob. 327.
Cro. El. 519.
Co. Lit. 18. a.
1 Ro. R. 152,
170. 2 Ro. R.
220. Mo. 421.
2 And. 42.
1 Jones 6. 23.

(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 *Pbil. & 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) Statute *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 King doth purpose and intend, and the Subject hath a Mean to

(a) *Mo.* 108.
1 *And.* 19.
1 *Leon.* 198.
2 *Leon.* 5. 3.
1 *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-*
titio 16.

Devant. 44.
a. *Fitz. Tra-*
verse 41. 10
Co. 113. *b.*
11 *Co.* 74. *b.*
87. *b.* 2 *Ro.*
191. *Hob.* 159.
Mo. 415. *Apres*
50. *b.*
(f) 5 *Co.* 52. *b.*
(g) 4 *Co.* 55. *a.*
(h) *Dy.* 77. pl.
37. 3 *H.* 7. *casti*
ultimo. *Fitz.*
Grant 35, 42.
Br. Par. 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. Præ-*
41 *b.* 42, 80.
17 *E.* 2. c. 15.
10 *Co.* 63. *b.*
64. a. 2 *R.* 3.
4. *b.* 41 *E.* 3.
5. *b.* *Flowd.*
252. a. 8 *H.* 7.
2. a. 43 *E.* 3.
22. 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 *E.* 4. and afterwards was Sheriff to King *R.* 3. and King *R.* 3. *ex certa scientia & mero 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 & mero 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 meerly void, for the Estate for Life was all which he could lawfully grant; then if he cannot grant it in such Manner, he cannot at 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. & 21 *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) King 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 *Englefield's Case*; because an Estate

(a) Dy. 269.
pl. 9. 3 Bullt
14. Pl. 331. a.

(b) Lane 11
3 Bullt. 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.
198. Fitz Tra-
verse 41. De-
vant 44. a. 50.
a. 58 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 Parliament will not make it unavoidable, as the Case of 16 E. (b) *Dier* 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*, Chief Justice, delivered, was agreed and resolv'd by *Anderjon* and *Garody*; but because they were not agreed of the Point mov'd by the Attorney General 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 *Walsbe* was not within the (d) Saving. And after their Resolutions thus delivered, Sir *Thomas Egerton*, Lord Keeper of the Great Seal, asked the Justices two Questions: First, admitting that King 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) *Garody*, 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 King 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 make a Grant in Tail in Possession, no more if the King 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.

The second Question that the Lord Keeper of the Great

(a) Styl. 161. A. pres 52. b.

(b) Hob. 123. 243. Dy. 337. pl. 38. 3 Leon. 158. 7 Co. 2. a. N. Ben. 225. pl. 258. O. Ben. 29.

(c) 3 Co. 60. 2. Co. Lit. 45. a. Mod. R. 204. 205.

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

(e) Hob. 224.

(f) Devant 48. a.

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

(h) Hob. 224.

(i) Mod. 196.

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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 is convenient for every Judge openly to shew the Reason and Cause of his Judgment. This Grant to *Walsbe* 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) *Ld. 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 Priory was of the Foundation of the (e) *Bishop of Norwich*, and not of

(a) 3 Leon.
249. Apies 53.
a.

(b) 2 And. 156.
138. Devant
43. b. 46. a.
49 a. Mo. 416.
Hob. 224. Co.
Lir. 13. a. 27 a.
b. Plow. 251. a.
335. a. Br. E.
stare 33. 18
All. 5. Dav.
34. b. 43 a.
1 Ro. 860. 18
E. 3. 45. b.
Lit. sect. 31.
7 Co. 40. b.
1 Bulfr. 10.
222. Mod. Rep.
196. B. N. C. 5.
1 Brownl. 45.
2 Brownl. 334.
Sty. 267.
(c) Mo. 415.
Hob. 155. 10
Co. 113. b
11 Co. 74. b.
87. a. 2 Ro.
191. Fitz. Traverse
41. Devant
44. a. 50.
a. b. 51. b.
(d) Lane 108.
Plowd. 131.
1 And. 93.
(e) Br. Corody
34.

the

the King, and that R. and B. and others had obtain'd a *Corody* at the Request of Kings, and return'd the Letters Patents of King E. 4. reciting the same Matter, *idem Rex ob (a) devotion' quam habuit ad sanct' Trinit' ac caus' premiff' de gratia speciali ac certa scientia, & mero motu suis relaxav' eidem Priori, &c. & exoneravit de Recordo,* (a) 3 K. 7. 6. b. and because he had not return'd all the Names of those in Certainty who had the *Corody*, and by what Kings, the King was not well inform'd of his own Title, and for that Cause it was holden in the Book, that the K. was (b) deceiv'd, and the 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, 331. b. and hecited the Opinion of *Jen.* in 9 *H. 6. 28 b. (c)* If the King 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 *Huffey* agreeth, (d) 21 *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 Businesse; 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' & inconov' & ne judic' sit illusorium*, but in this Case an Absurdity will follow, if there shall be such (b) Fraction of Estates, for *Wallbe* would have an Estate to him and to his Heirs Males of his Body, during the King's Life, and upon that the King would have an Estate-tail, and after expectant upon that the Patentee would have an Estate-tail, where the King intended to grant an Estate-tail in Possession, upon which a Tenure would be reserv'd, by

(a) 3 K. 7. 6. b.

(b) Br. patent 48.

(c) Lane 111.
21 Coll. R. 360.
M. 318. 417.
M. d. Rep. 196.
B. c. 310.
(d) Devant 43.
a. 12. grant
29 Lane 12.
10 Co. 110. a.(e) Br. patent
62. Co. 56. a.
2 S. d. 81 142.
3 L. con. 243.(f) Devant 50.
a.(g) Mod. R.
127.

(b) 6 Co. 56. a

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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 Free-simple to grant, so that the King is not deceived in his Estate.

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 express Name, and therefore the Saving as to *Walsbe* 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 Def. 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 to be good, the said Act gave it the King.

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 entire Estate, and (g) not two several 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

can-

(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
47. a.

(c) Devant 51
a. Sty. 161.

(d) Devant 42.
b. 4 Co. 57. a.
Mo. 416. 4
Inst. 225. Kel.
173. a. Ley de
Gards & Live-
ries 40. 25.

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

(f) Godb 317.
7 Co. 17. b.
Mo. 415, 416.
Noy 182. 1
Roll. R. 167.
Cro. argument
60. Dav. 75. a.
5. Co. 55. b.
Plow. 246, 487-
13 E. 4. 8. a.
Co. Lit. 19. b.
2 Inst. 681. 11
Co. 72. a.
(g) Devant 46.
a.
(h) Devant
45. b. Lane 110.

cannot have, if *Walpole* shall have it but 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 & merito motu*, was void; he agreed the Words *de gratia speciali, certa scientia & merito 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 Mat. in Law, as to Matters in Fact it is true, these Words imply that the King is not misconfutant 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 & merito motu, quod talis clausula non val' in his in quibus presum' 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 shall 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,

(a) Devant 51
b. 3 Len. 249

(b) 2 Co. 54. b.

(c) Devant 46:
a.

(d) Raym. 359.

The Case of ALTON WOODS. PART I.

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 *Walsbe* 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 steadfast in his first Opinion for both the Points in Law.

2 And. 157.

Placito

Placito coram Edmundo Anderson & sociis suis de Termino Paschæ, Anno 23. Eliz. Reg. 1160.

In Communi Banco.

FORDE.

Thomas Gatley summon' fuit ad respond' Johanni Hunt de placito, *Quare cepit averia ipsius Johannis, & ea injuste detinuit contra vad' & pleg', &c.* Heref. ff.
 Et unde idem Johannes per Johannem Lutwich Attornatum suum queritur quod prædictus Thomas vicesimo septimo die Novembris, Anno regni Dominæ Reginæ nunc vicesimo secundo, apud Howcaple in quodam loco vocat' Stockins, cepit averia, videlicet, sex boves & sex vaccas ipsius Johannis, & ea injuste detinuit contra vad' & plegios quousque, &c. unde dic' quod deteriorat' est, & damnum habet ad valentiam centum librarum, & inde producit sectam, &c. Et præd' Thomas per Thomam Willis Attornatum suum venit & defend' vim & injur' quando, &c. Et ut ballivus Antonii Capel gen' bene cognof' captionem averiorum prædictorum in prædicto loco, in quo, &c. & juste, &c. quia dic' quod idem locus in quo supponitur captionem averiorum prædictorum fieri, continet, & prædict' tempore quo supponitur captionem averiorum illorum fieri, continebat in se trescentas acras terre cum pertin' in Howcaple prædict' quodque diu ante prædict' tempus, quo, &c. quidam Thomas Capel Armiger fuit seistus de manerio de Howcaple cum pertin' in Com' præd', unde præd' trescent' acraz terræ cum pertin' in quibus, &c. sunt, & præd' tempore quo, &c. necnon a tempore cujus contrarii memoria hominum non existit fuerunt parcell', in dominico suo ut de feodo, & sic inde seistus existens post quartum diem Februarii, anno regni domini H. nuper Regis Angliæ octavi vicesimo septimo, & ante præd' tempus, quo, &c. de eodem maner' cum pertin', unde, &c. inter alia feoffavit quosdam Johannem Warmecombe, Richard' Walweyn, Alexandr' Whittington, Tho. Walweyn, Johannem Llud, & Henricum Jones: Habend' & respond' maner' illud cum pertin', unde, &c. inter alia eisd' Johan-

feoffament' ad
 ulius cum rem'.

Johanni Warmecombe, Richardo Walweyn, Alexandro Whittington, Thomæ Walweyn, Johanni Llud, & Henrico Jones, hæred' & assignat' suis imperpetuum, ad usum præd' Thomæ Capel, & hæredum masculorum de corpore ipsius Thomæ Capel legitime procreat'. Et pro defectu talis exitus, ad usum Edwardi Capel, & hæred' masculorum de corpore ipsius Edwardi legitime procreat'; & pro defectu talis exitus, ad usum Richardi Capel, & hæred' masculorum de corpore ipsius Richardi legitime procreat'; & pro defectu talis exitus, ad usum Willihelmi Capel, & hæred' masculorum de corpore ipsius Willihelmi legitime procreat'; & pro defectu talis exitus, ad usum Egidii Capel pro termino vitæ ipsius Egidii; & post decessum ejusdem Egidii, ad usum rectorum hæred' præd' Thomæ Capel imperpetuum. Virtute cujus quidem feoffamenti, ac vigore cujusdam actus in Parlamento prædicti nuper Regis apud Westmonaster' in Comitatu Midd' prædict' quart' die Februar', anno regni sui vicefimo septimo supradicto de usibus in possessionem transferend' tunc tent', edit', prædict' Thomas Capel fuit seifitus de manerio prædicto cum pertinentiis, unde, &c. inter alia in dominico suo ut de feodo talliato, videlicet, sibi & hæred' masculis de corpore suo legitime procreat'; & pro defectu talis exitus remanere inde præfat' Edwardo Capel, & hæred' masculis de corpore suo legitime procreat'; & pro defectu talis exitus, remanere inde ulterius in forma prædict' spectant', prædictusque Thomas Capel de manerio prædicto cum pertinentiis, unde, &c. inter alia in forma prædicta seifitus existens, ante prædictum tempus, quo, &c. apud Howcaple prædictum obiit, de tali statu suo inde seifitus, post cujus mortem manerium prædict' cum pertinentiis, unde, &c. inter alia descend' cuidam Willihelmo Capel, ut filio & hæred' de corpore prædict' Thomæ Capel legitime procreat', per quod idem Willihelmus Capel filius, ante prædictum tempus, quo, &c. in manerium prædict' cum pertinentiis, unde, &c. intravit & fuit inde seifitus in dominico suo ut de feodo talliato, videlicet, sibi & hæredibus masculis de corpore suo legitime procreat'; & pro defectu talis exitus rem' inde præfato Edwardo, & hæred' masculis, de corpore suo legitime procreat', in forma prædicta spectan': Idemque Edwardus de reman' illo ut de feodo talliato & jure seifitus existens, ante præd' tempus, quo, &c. apud Howcaple præd' obiit de tali statu suo inde seifitus, post cujus mortem remanere illud descend' cuidam Richardo Capel, ut filio & hæredi de corpore prædicti Edwardi legitime procreat', per quod idem Richardus Capel filius fuit seifitus de prædicto remanere manerii prædicti, cum pertinentiis, unde, &c. inter alia ut de feodo talliato, viz. sibi & hæredibus masculis de corpore suo legitime procreat', Ipsiq; Richardo Capel filio sic inde seifit' existen', As præd'

Wil.

(A) 27 H. 8.
cap. 10.

Willihelm' Capel filio de eodem manerio cum pertinen', unde, &c. inter alia in forma præd' seifito existen', idem Rich' Capel filius ante præd' tempus, quo, &c. scilicet vicefimo secundo die Novembris, anno regni dictæ dominæ Reginæ nunc decim' octavo, apud Howcaple præd' per quodda' scriptum suum, quod idem Thom' Gatley sigillo præd' Rich. Capel signat' hic in cur' profert, cujus dat' est eisdem die & anno, concessit præfato Antonio Capel, per nomen Antonii Capel filii sui, quandam annuitatem five annualem redditum quinquaginta librarum, exeunt' de manerio prædicto cum pertinen', unde, &c. inter alia, Habend', tenend', & gaudendum præd' annuitatem five annualem redditum quinquaginta libr' præfato Antonio Capel, hæred' & assignat' suis imperpetuum ad duos anni terminos, viz. ad festa Sancti Michael' Archang', & Annunciationis beatæ Mariæ virginis per equalles portiones solvend'. Et si contingeret præd' annuitatem five annualem redditum quinquaginta librarum, aretro fore non solut' in parte vel in toto, post aliquod festum festorum prædictor', modo & forma in quo ut præfertur solvi deberet per spatium vigint' dierum, quod tunc & deinceps & in omni tempore, toties quoties contingeret præfat' annuitatem five annualem redditum sic fore insolut', bene liceret præfat' Antonio Capel hæred' & assignat' suis, & cuilibet eorum in manerium prædictum cum pertinentiis, unde, &c. inter alia, & in quamlibet inde partem five parcellam intrare & distringere, distractionesque sic ibidem captas & habitas licite effugare, asportare, imparcare, seu penes se retinere, donec & quousque idem Antonius Capel vel assignati sui tam de præd' annuitate five annuali reddito sic aretro existen' insolut', quam de arreragiis ejusdem si quæ forent plenarie forent satisfact' & persolut', prout per idem scriptum inter alia plenius apparet. Prædictusque Willihelmus Capel filius de maner' prædicto cum pertinentiis, unde, &c. in forma præd' seifitus existens, postea & ante præd' tempus, quo, &c. scilicet decimo die Novembris, anno regni dictæ Dominæ Regin' nunc decimo nono, apud Howcaple prædictam obiit sine hæred' masculo de corpore suo exeunt'. Et quia viginti & quinque libr', de præd' annuali reddit' quinquagint' libr', post mortem præd' Willihelmi Capel filii, ad festum Sancti Michaelis Archangel', anno regni dictæ dominæ Reginæ nunc vicefimo, & per spatium viginti dierum post idem festum præfat' Antonio Capel prædicto tempore, quo, &c. aretro fuerunt non solut', idem Thom' Gatley ut ballivus. prædicti Antonii, pro eisdem viginti & quinque libris de prædicto annuali reddit' præfato Antonio Capel in forma prædict' aretro existen', bene cogn' captionem averiorum prædictorum in præd' loco, in quo, &c. Et juste, &c. ut in parcell' maner' præd'

cum

cum pertin', unde, &c. districtiōn' ipsius Antonii in forma prædicta onerat' & obligat', &c. cum hoc quod idem Thomas Gatley verificare vult, quod præd' Richard' Capel præd' tempore captionis præd' fuit, & adhuc superstes & in plena vita existit, videlicet, apud Howcuple præd', &c. Et præd' Johan' Hunt dic' quod præd' Thomas Gatley ratione præallegat', captionem averiorum prædictorum in prædicto loco, in quo, &c. ut ballivus præd' Antonii Capel justam cogn' non debet, quia dicit quod bene & verum est, quod prædictus Thomas Capel armig', fuit seifitus de prædicto manerio de Howcuple cum pertinentiis, unde, &c. in dominico suo ut de feodo, & sic inde seifitus post prædictum quartum diem Februar', anno regni dicti nuper Regis Henrici octavi vicefimo septimo supradict', & ante prædictum tempus, quo, &c. de eodem manerio cum pertinentiis, unde, &c. feoffavit prædictos Johann' Warmecombe, Richard' Walweyn, Alexand' Whittington, Thomæ Walweyn, Johannem Lloyd, & Henricum Jones: Habendum & tenendum manerium illud cum pertinentiis inter alia, eisdem Johanni Warmecombe, Richardo Walweyn, Alexandro Whittington, Thomæ Walweyn, Johanni Lloyd, & Henrico, & hæred' & assignatis suis imperpetuum, ad usum prædict' Thomæ Capel, & hæredum masculorum de corpore ipsius Thomæ Capel legitime procreat', & pro defectu talis exitus, ad usum prædicti Edwardi Capel, & hæred' masculorum de corpore ipsius Edwardi legitime procreat', & pro defectu talis exitus, ad usum præd' Richardi Capel, & hæred' masculorum de corpore ipsius Richardi legitime procreat', & pro defectu talis exitus, ad usum præd' Willihelmi Capel, & hæred' masculorum de corpore ipsius Willihelmi legitime procreat', & pro defectu talis exitus, ad usum Egidii Capel pro termin' vitæ ipsius Egidii, & post decessum ejusdem Egidii, ad usum rectorum hæredum præd' Thomæ Capel imperpetuum. Virtute cujus feoffamenti, ac vigore statuti præd', præd' Thomas Capel fuit seifitus de manerio prædicto cum pertinentiis, unde, &c. inter alia in dominico suo ut de feodo talliato, videlicet, sibi & hæred' masculis de corpore suo legitime procreat', & pro defectu talis exitus remaner' inde præfat' Edwardo Capel, & hæredibus masculis de corpore suo legitime procreat', & pro defectu talis exitus, remanere inde in forma præd' spectant'. Et quod præd' Thomas Capel de manerio præd' cum pertin', unde, &c. in forma præd' seifitus existens ante prædictum tempus, quo, &c. obiit de tali statu suo inde seifitus, post cujus mortem manerium præd' cum pertinentiis, unde, &c. inter alia descend' præfato Will' Capel, ut filio & hæred' de corpore præd' Thomæ Capel legitime procreat', per quod idem Willihelm' Capel filius, postea & ante prædictum tempus, quo, &c. in manerium prædictum cum pertinentiis, unde,

unde, &c. inter alia intravit, & fuit inde seifitus in dominico suo ut de feodo talliato, videlicet, sibi & hæred' masculis de corpore suo legitime procreat', & quod prædict' Willihelmo Capel filio de eodem manerio cum pertinentiis, unde, &c. inter alia in forma prædicta seifit' existen' idem Ric' Capel filius præd' Edwardi, vicefimo secundo die Novembr', anno regni dictæ dominæ Reginæ nunc decimo octavo, apud Howcapel prædictum, per prædictum scriptum suum concessit præfat' Antonio Capel prædictam annuitatem five annualem redditum quinquagint' librarum, exeun' de manerio prædicto cum pertinent', unde, &c. prout prædictus Thomas Gatley superius allegavit. Sed idem Johannes Hunt ulterius dicit quod præd' Willihelm' Capel filius de manerio præd' cum pertin', unde, &c. in forma præd' seifit' existen', quidam fin levavit in cur' dictæ dom' Reginæ nunc hic apud Westmonast. præd' a die sancti Martini in xv. dies, ann' regni sui 19. coram *Jacobo Dyer, Richard' Harper, Rog. Manwood, & Robert' Mounson*, tunc Justic' dic' dom' Reg' de banco hic: Et postea in octabis sancti Hiltarii, anno regni dictæ dom' Reg' nunc 19 supradict' ibid' concess. & record' coram eisdem Justic' & aliis dictæ dom' Reg' fidelibus tunc ibid' præsent', inter Ric' Wooton, & Ric' Shrawley quer', & præd' Will' Capel deforc', de manerio præd' cum pertin', unde, &c. int' alia, per nomina manerior' de Capel, alias Hugh Capel, Showle, & Okeridge cum pertin', ac viginti mesuagiorum, decem tæstorum, viginti cotagiorum, duorum molendinorum, trium columbariorum, octingentarum acrarum terræ, ducentar' & sexaginta acrar' prati septingentar' acr' pasturæ, ducentar' acrar' bosci, mille acr' jampnorum & bruer', & quinque librat' reddit' cum pertin' in Capel, alias Hugh Capel, Showle, Okeridge, Yarkel, & Ledburie: Necnon advocacionis Ecclesiæ de Capel, alias Hugh Capel, unde placitum conventionis summonit' fuit inter eos in eadem Curia, scilicet, quod prædictus Willihelmus recogn' prædicta maneria, tenementa, & reddit' cum pertinentiis, ac advocacionem præd' esse jus ipsius Richardi, ut ill' quæ iidem Richardus & Johannes habuerunt de dono præd' Will'. Et ill' remis. & quiet' clam' de se & hæred' suis, præd' Ric' & Johanni, & hæred' ipsius Richardi imperpetuum. Et præterea idem Willihelmus concessit pro se & hæred' suis, quod ipsi warrant' præd' Richardo & Johanni, & hæred' ipsius Rich. præd' maneria, tenementa, & reddit' cum pertin', ac advocacion' præd' contra omnes homines imperpetuum. Et pro ill' recogn', remission', quiet' clam', warrant', fine, & concordia, iidem Rich. & Johann' dederunt præd' Will' septingentas libras sterlingor'. Qui quid' finis in forma præd' levat', habitus & levat' fuit ad usum ipsius Johannis Hunt & hæredum suorum: virtute cujus finis ac vigore statuti præd', idem Johann' fuit seifitus

Fine by Tenants
in Tail in Possession.

Recuperatio.

seifitus de manerio præd' cum pertinen', unde, &c. in domino suo ut de feodo, Ipsoque Johanne Hunt sic inde seifito existen', quidam Thomas Spenceley & Baldwinus Castleton ante præd' tempus captionis, &c. scilicet quarto die Januarii Anno regni dictæ dominæ Reginæ nunc decimo nono supradicti' prosecuti fuerunt extra Curiam Cancellariam dictæ dominæ Reginæ nunc apud Westmonaster' in comitatu Middlef. tunc existen' quoddam breve dictæ dominæ Reginæ de ingressu super disseifinam in le post versus ipsum Johannem Hunt de manerio præd' cum pertinentiis, unde, &c. inter alia per nomina manerii de Capel, alias Hugh Capel, alias Howcapel cum pertinentiis, ac viginti meluagior' decem tofforum unius molendini duorum columbr' quingentarum acrar' terre, ducentarum acrarum prati, sexcentarum acrar' pastur', centum acr' bosci, septingentar' acr' jampnorum & bruer', & quatuor librar' redditus cum pertinen' in Capel, alias Hugh Capel, alias Howcapel, Brokerton & Solershop, necnon aduocationis Ecclesiæ de Capel, alias Hugh Capel, alias Howcapel, tunc vic' præd' com' Heref. direct', per quod quidem breve eadem domina Regina nunc, eidem tunc vicecomit' præcepit, quod idem tunc vic' præciperet eidem Johanni Hunt quod iuste & sine dilatione redderet præfat' Thomæ Spenceley & Baldwino manerium tenementa & reddit' præd' cum pertinen'; ac aduocation' præd' quæ iidem Thomas & Baldwinus tunc clam' esse jus & hæreditat' suam; & in quæ idem Johannes tunc non habuit ingressum nisi post disseifinam quam Hugo Hunt inde iniuste & sine iudicio fecit præfat' Thomæ Spenceley & Baldwino infra triginta annos tunc ultimos elapsos, ut dixerunt. Et unde querebantur quod idem Johann' Hunt eis tunc deforc'. Et nisi fecisset, & prædict' Thom' Spenceley & Baldwin' fecissent ipsum tunc vicecom' secur' de clam' suo tunc prof. tunc summ' per bonos sum' ipsum Johann' Hunt quod esset coram tunc Justic' dictæ dom' Regin' hic scilicet apud Westmonaster' præd' in octabis Sancti Hillarii tunc proxim' sequent' ostens. quare non fecisset, & quod idem tunc vicecom' haberet ibidem sum' & breve illud, ad quas quidem octabas Sancti Hillarii coram præfat' *Jacobo Dier* milit', & sociis suis tunc Justic' dictæ dom' Regin' de banco hic ven' tam præd' Thomas Spenceley & Baldwinus quam idem Johannes Hunt in propriis personis suis, & Jacobus Warmecombe armiger, tunc vicecom' præd' comitat' Heref. ad tunc & ibidem retornavit breve præd' sibi in forma præd' direct' in omnibus seruitum & executum, viz. quod iidem Thom. Spenceley & Baldwinus inuenissent eidem tunc vic' pleg' de prof. breve illud, scilicet Johannem Doo, & Rich' Roo. Et quod idem Johannes Hunt summ' fuit per Johannem Den, & Richard' Fen. Et super hoc prædicti Thomas Spenceley & Baldwinus narrando versus ipsum

ipsum Johannem Hunt super brevi prædict' petierunt versus ipsum Johan' Hunt manerium, tenement', & reddit' præd' cum pertinentiis; ac advocacionem præd' ut jus & hæreditatem suam, & in quæ idem Johannes tunc non habuit ingressum nisi post disseisinam quam Hugo Hunt inde injuste & sine judicio fecit præfat' Thomæ Spenceley, & Baldwinò, infra triginta annos, &c. Et unde tunc dixerunt quod ipsimet fuerunt seifiti de manerio, tenementis, & reddito prædictis cum pertinentiis in dominico suo ut de feodo & jure; ac de advocacione præd' ut de feodo & jure, tempore pacis, tempore dominæ Reginæ nunc capiendo inde explec' ad valentiam, &c. Et in quæ, &c. Et inde tunc producerunt sectam, &c. Et idem Johan' Hunt in propria persona sua tunc defend' jus suum quando, &c. Et vocat inde ad warrant' prædictum Willihelmu[m] Capel, qui tunc præfens fuit ibidem in eadem Cur' hic in propria persona sua, & gratis manerium, tenementa & reddit' præd' cum pertinentiis, ac advocacionem præd' ei warrantizavit. Et super hoc præd' Thomas & Baldwinus tunc petierunt versus præfat' Willihelmu[m] tenen' per warrantiam suam manerium, tenementa, & reddit' prædict' cum pertinentiis, ac advocacionem prædictam, in forma prædicta, &c. Et unde tunc dixerunt quod ipsimet fuerunt seifiti de manerio, tenementis, & reddit' prædictis cum pertinentiis in dominico suo ut de feodo & jure, ac de advocacione prædicta ut de feodo & jure tempore pacis, tempore dominæ Reginæ nunc capiendo inde explec' ad valenc', &c. Et in quæ, &c. Et inde tunc producerunt sectam, &c. Et prædictus Willihelm' tenens per warrant' suam tunc defend' jus suum quando, &c. Et ulterius tunc voc' ad warrant' Johannem Howel, qui tunc similiter præfens fuit ibidem in eadem Curia hic in propria persona sua, & gratis manerium, tenement', & reddit' præd' cum pertinentiis, ac advocacionem prædict' ei warrant', &c. Et super hoc prædict' Thomas & Baldwinus ad tunc petierunt versus ipsum Johannem Howel tenen' per warrant' suam manerium, tenement', & reddit' prædicta cum pertinentiis, ac advocacionem prædictam, in forma prædicta, &c. Et unde tunc dixerunt quod ipsimet fuerunt seifiti de manerio, tenementis, & reddit' prædict' cum pertinentiis in dominico suo ut de feodo & jure, ac de advocacione prædicta ut de feodo & jure tempore pacis, tempore dominæ Reginæ nunc capiendo inde explec' ad valentiam, &c. Et in quæ, &c. Et inde tunc producerunt sectam, &c. Et prædictus Johannes Howel tenens per warrantiam suam tunc defend' jus suum quando, &c. Et tunc dixit quod prædictus Hugo non disseisivit præfat' Thomam Spenceley & Baldwinum de manerio, tenementis, & reddit' prædictis cum pertinentiis, ac de advocacione prædicta,

prout

prout iidem Thomas & Baldwinus per breve & narrationem sua præd' superius tunc supposuer'. Et de hoc tunc posuit se super patriam, &c. Et præd' Thomas Spenceley & Baldwinus tunc petierunt licentiam inde interloquend', & habuerunt, &c. Et postea iidem Thomas & Baldwinus reuenerunt ibid' in ead' Cur' hic illo eodem termino in propriis personis suis, & prædictus Johannes Howel licet solemniter exact' tunc non reuen', sed in contempt' Cur' recessit & defaltam fecit, per quod tunc (a) concess. fuit in eadem Cur' hic quod præd' Thomas Spenceley & Baldwinus recuperarent seifinam suam versus ipsum Johannem Hunt de manerio, tenementis, & reddit' prædict' cum pertinentiis, ac de advocacione prædict', & quod idem Johannes haberet de terra prædict' Willihelmi Capel ad valenc', &c. Et quod idem Will' ulterius haberet de terra præd' Johannis Howel ad valenc', &c. Et quod idem Johannes tunc esset in misericordia, &c. Virtute cujus recuperationis prædict' Thomas Spenceley & Baldwinus in maner & tenementa præd' cum pertinentiis intraverunt, & fuerunt inde seisit' in dominico suo ut de feodo; quæ quidem recuperatio & executio inde in forma præd' profecut' & habita fuit ad usum ipsius Johannis Hunt & hæred' suorum imperpetuum, per quod ac vigore statuti præd' idem Johannes Hunt fuit seisitus de maner' prædict' cum pertinentiis in dominico suo ut de feodo, & sic inde seisitus existens ante præd' tempus captionis, &c. posuit averia sua præd' in præd' trescent' acras terræ, ad herb' ibid' tunc crescent' depascend', ac averia illa fuerunt in eisd' trescent' acris terr' herb' in eisd' tunc crescent' depascend', quousque præd' Thom' Gatley præd' vicesimo septimo die Novembr', anno regni dictæ dom' Reg' nunc vicesimo secundo supradicto apud Howcapel præd' in præd' loco voc' *Storkins* cepit ead' averia ipsius Johannis, & ea injuste detinuit contra vad' & pleg' quousque, &c. prout idem Johan' superius versus eum queritur. Et hoc paratus est verificare, unde ex quo præd' Thomas Gatley caption' averior' præd' in præd' loco in quo, &c. superius cogn', idem Johannes petit iudicium & damna sua occasione captionis & injuste detentionis averiorum illorum sibi adjudicari, &c. Et prædict' Thomas Gatley dic' quod prædict' placitum prædict' Johannis Hunt superius in barram cognitionis prædict' placitatum minus sufficiens in lege existit ad ipsum Thomam ut ballivum prædicti Antonii a iusta cognitione caption' averiorum prædictorum in prædicto loco, in quo, &c. præcludend', quodque ipse ad placitum illud modo & forma prædict' placitat' necesse non habet, nec per legem terræ tenetur respondere, & hoc paratus est verificare, unde pro defectu sufficien' placiti in hac parte idem Thomas pet' iudicium & return' averior' prædictor', una cum

damnis

(a) Devant
 22. a. 40. a.
 Apres 83. a.
 119. b. 1 Roll.
 R. 278, 279.
 3 Bullr. 92,
 93, 94. 1 Ro.
 771, 774. Cr.
 Cr. 442, 443.
 Cr. Jac 6. 386.
 632. Yelv. 130.
 Ho. 17, 19,
 194, 337. Sret.
 16 & 17 Car. 2.
 c. 8. Stat.
 22 & 23.
 Car. 2. c. 4.
 Jenk. Cent. 13.
 Cr. El. 145.
 Palm. 260.
 N Ben. 184.
 pl. 226.
 Pap. 203, 212.
 Nov 77.
 Larch. 76, 83,
 183. 1 Bullit.
 125, 126, 179.
 1 Syd. 70.

damnis, &c. sibi adjudicari, &c. Et prædict' Johannes Hunt ex quo ipse sufficien' materiam in lege ad prædictum Thomam ut ballivum ejusdem Antonii a juste cognoscend' caption' averiorum prædictorum in prædicto loco, in quo, &c. præcludend', superius cogn' quam ipse paratus est verificare quam quidem materiam prædict' Thomas non dedic' nec ad eam aliquammodo respondet, sed verificationem illam admittere omnino recusat, ut prius petit judicium & damna sua occasione captionis & injustæ detentionis averior' prædictorum sibi adjudicari, &c. Et quia Justiciar' hic se advisare volunt de & super præmissis priusquam judicium inde reddant, dies datus est partibus prædictis hic usq; in Crastino Sanctæ Trinitatis de audiend' inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Johan' Hunt, quam præd' Tho' Gatley per Attornat' suos præd'. Et quia Justic' hic ulterius se advisare volunt de & super præmissis priusquam judicium inde reddant, dies dat' est partibus præd' hic usq; in Octabis Sancti Michaelis de audiend' inde judicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic venit tam prædictus Johannes Hunt quam prædictus Thomas Gatley per Attornatos suos prædictos. Et quia Justiciar' hic ulterius se advisare volunt de & super præmissis priusquam judicium inde reddant, dies dat' est partibus præd' hic usq; in Octabis Sancti Hillarii, de audiend' inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic venit tam præd' Johannes Hunt quam præd' Thomas Gatley per Attornat' suos prædictos. Et quia Justiciar' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant, dies dat' est partibus præd' hic usq; a die Paschæ in xv dies de audiend' inde judicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Johannes Hunt quam præd' Thomas Gatley per Attornat' suos prædictos. Et quia Justiciar' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant, dies datus est partibus præd' hic usq; in Crastino Sanctæ Trinitatis de audiend' inde judicio suo eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Johannes Hunt quam præd' Thomas Gatley per Attornatos suos prædictos. Et quia Justiciar' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant, dies datus est partibus præd' hic usq; in Crastino Animarum de audiend' inde judicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ante quem diem loquela prædict' adjornat' fuit per breve Domine Regine de communi adjornament' a Westmonast' præd' usq; Castrum dictæ Dom' Regin' Hertford in com' Hertford usq; in præd' Crastin' Animarum. Ad quem diem hic scil' apud præd' Ca-

Trinit.

Mich.

Hillar. 24.

Pasch.

Trinit.

Mich.

Adjorn.
Hertf.

Hillar. 25. *strum Dom' Regin' Hert' ven' tam præd' Johan' Hunt quam præd' Tho' Gatley per Attornat' suos præd'. Et quia Justiciar' hic ulterius se advisare volunt de & super præmissis priusquam judicium inde reddant, dies dat' est partib' præd' hic usq; in Octabis S. Hillarii, de audiend' inde judicio suo eo quod iidem Justic' hic inde nondum, &c. Ante quem diem loquela præd' adjornat' fuit per breve Dom Regin' de comuni adjornament' a præd' Castro Herf' usq; Westmonaster' prædict' ad prædictas Octabas Sancti Hillarii. Ad quem diem hic scilicet apud Westmonaster' venit tam præd' Johannes Hunt quam præd' Thomas Gatley per Attornat' suos prædictos. Et quia Justiciar' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant, dies datus est partibus præd' hic usque a die Paschæ in xv dies de audiend' inde judicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic ven' tam prædictus Johannes Hunt quam prædictus Thomas Gatley per Attornatos suos prædictos. Et quia Justiciar' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant, dies datus est partibus præd' hic usq; in Octabis Sancti Michaelis de audiend' inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic venit tam prædictus Johannes Hunt quam prædictus Thomas Gatley per Attornat' suos prædictos. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant, dies dat' est partib' præd' hic usq; in Octab' S. Hillarii de audiend' inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic venit tam præd' Johannes Hunt quam præd' Thomas Gatley per Attornatos suos prædictos. Et quia Justiciar' hic ulterius se advisare volunt de & super præmissis priusquam judicium inde reddant, dies datus est partibus prædictis hic usque a die Paschæ in xv. dies de audiend' inde judicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic venit tam prædictus Johannes Hunt quam prædictus Thomas Gatley per Attornat' suos prædictos. Et quia Justiciar' hic ulterius se advisare volunt de & super præmissis priusquam judicium inde reddant, datus est partibus prædictis hic usque in Crastino Sanctæ Trinitatis de audiend' inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam prædict' Johannes Hunt quam prædictus Thomas Gatley per Attornatos suos prædictos.*

Pasch.

Trinit.

Mich.

Hillar. 26.

Pasch.

Trinit.

prædictos. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam iudicium inde reddant, dies datus est partibus præd' hic usq; in Octabis S. Michael' de Mich. audiend' inde iudicio suo, eo quod iidem Justic' hic ind' nondum, &c. Ad quem diem hic ven' tam præd' Johan' Hunt quam præd' Tho. Gatley per Attorn' suos præd'. Et quia Justic' hic ulterius se advisare volunt de & super præmissis priusquam iudicium inde reddant, dies dat' est partib' præd' hic usq; in Octab. S. Hillarii de audiend' inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic veni' Hill. 27. tam præd' Johan' Hunt quam præd' Th. Gatley per Attorn' suos præd'. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam iudicium inde reddant dies dat' est partib' præd' hic usq; à die Paschæ in xv. dies de audiend' Pasch. inde iudicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Johan' Hunt quam præd' Th. Gatley per Attornat' suos præd'. Et quia Justic' hic ulterius se advisare volunt de & super præmissis priusquam iudicium inde reddant, dies dat' est partib' præd' hic usq; in Crastino Sanctæ Trinitatis de audiend' inde iudicio Trinit. suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic venit tam prædict' Johan' Hunt quam præd' Th. Gatley per Attornat' suos prædict'. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam iudicium inde reddant, dies datus est partibus prædictis hic usque in Octabis Sancti Michaelis de audiend' inde Mich. iudicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic venit tam prædictus Johannes Hunt quam prædictus Thomas Gatley per Attornatos suos prædictos. Et quia Justiciar' hic ulterius se advisare volunt, de & super præmissis priusquam iudicium inde reddant, dies datus est partibus prædict' hic usque in Octabis Sancti Hillarii de audiend' inde iudicio suo eo quod iidem Hill. 28. Justic' hic inde nondum, &c. Ad quem diem hic venit tam prædictus Johannes Hunt quam prædict' Thom' Gatley per Attornatos suos prædictos. Et quia Justic' hic ulterius se advisare volunt de & super præmissis priusquam iudicium inde reddant, dies datus est partibus prædictis hic usque à die Paschæ in xv dies de audiend' inde iudicio suo eo quod Pasch. iidem Justic' hic inde nondum, &c. Ad quem diem hic venit tam prædict' Johannes Hunt quam prædict' Thomas Gatley per Attornat' suos prædictos. Et quia Justic' hic ulterius se advisare volunt de & super præmissis priusquam iudicium inde reddant, dies datus est partibus prædictis hic usque in Crastino Sanct' Trinitatis de audiend' Trinit. inde iudicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic venit tam prædictus Johannes Hunt quam prædict' Thomas Gatley per Attornatos suos

Mich. prædict'. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam iudicium inde reddant, dies datus est partibus præd' hic usq; in Octabis S. Michael' de audiend' inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Johan' Hunt quam præd' Th. Gatley per Attorn' suos præd'. Et quia Justic' hic ulterius se advisare volunt de & super præmissis priusquam iudic' inde reddant, dies ulterius dat' est partib' præd' hic usq; in Octab' S. Hillarii de audiend' inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Johan' Hunt quam præd' Th. Gatley per Attorn' suos præd'. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam iudic' inde reddant, dies datus est partibus præd' hic usq; à die Paschæ in xv. dies de audiend' inde iudicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic venit tam præd' Johan' Hunt quam prædict' Th. Gatley per Attornat' suos prædict'. Et quia Justic' hic ulterius se advisare volunt de & super præmissis priusquam iudicium inde reddant, dies datus est partibus præd' hic usq; in Crastino Sanctæ Trinitatis de audiend' inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic venit tam præd' Johannes Hunt quam præd' Th. Gatley per Attornat' suos prædict'. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam iudicium inde reddant, dies datus est partibus prædictis hic usque in Octabis Sancti Michaelis de audiend' inde iudicio suo, eo quod iidem Justiciarii hic inde nondum, &c. Ad quem diem hic venit tam prædictus Johannes Hunt quam prædictos Thomas Gatley per Attornatos suos prædictos. Et quia Justiciar' hic ulterius se advisare volunt, de & super præmissis priusquam iudicium inde reddant, dies datus est partibus prædict' hic usque in Octabis Sancti Hillarii de audiend' inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic venit tam prædictus Johannes Hunt quam prædict' Tho' Gatley per Attornatos suos prædictos. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam iudicium inde reddant, dies datus est partibus præd' hic usque in Crastino Sanct' Trinitatis de audiend' inde iudicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic venit tam prædictus Johannes Hunt quam prædictus Thomas Gatley per Attornatos suos

suos præd'. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam judic' inde reddant, dies datus est partibus prædictis hic usq; in Octabis Sancti Michael' de audiend' inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Johannes quam præd' Thom' per Attornat' suos prædictos. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant, dies ulterius dat' est partib' præd' hic usq; in Octab' S. Hillarii de audiend' inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Johan' quam Tho' per Attorn' suos præd'. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant, dies dat' est partib' præd' hic usq; à die Paschæ in xv. dies de audiend' inde judicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic venit tam prædictus Johannes quam prædictus Thom' per Attornatos suos prædictos. Et quia Justic' hic ulterius se advisare volunt de & super præmissis priusquam judicium inde reddant, dies datus est partibus prædictis hic usque in Crastino Sanctæ Trinitatis de audiend' inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic venit tam prædictus Johannes quam prædictus Thomas per Attornatos suos prædictos. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant dies ulterius datus est partibus, prædictis hic usq; in Octabis Sancti Michaelis de audiend' inde judicio suo, eo quod iidem Justiciarii hic inde nondum, &c. Ad quem diem hic venit tam prædictus Johannes Hunt quam prædictus Thomas Gatley per Attornatos suos prædictos. Et quia Justiciar' hic ulterius se advisare volunt, de & super præmissis prædictis priusquam judicium inde reddant dies ulterius datus est partibus prædict' hic usq; in Octabis Sancti Hillarii de audiend' inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic venit tam prædict' Johannes quam prædictus Thomas per Attornatos suos prædictos. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant, dies ulterius datus est partibus prædictis hic usq; à die Paschæ in xv. dies de audiend' inde judicio suo eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic venit tam prædict' Johannes quam prædict' Thomas per Attornat' suos prædictos. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis prædict' priusquam judicium inde reddant, dies ulterius datus est partibus prædictis hic usque in Crastino Sanctæ Trinitatis de audiend' inde judicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic venit tam prædict' Johannes Hunt quam prædict' Thomas Gatley per Attornatos suos prædictos.

M.ch.

Hill. 31.

Pasch.

Trinit.

Mich.

Hill. 32.

Pasch.

Trinit.

Et

Mich. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant, dies ulterius datus est partibus prædict' hic usq; in Octabis Sancti Michaelis de audiend' inde judic' suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam prædict' Johannes quam prædict' Thomas per Attornat' suos prædictos. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant, dies ulterius datus est partibus prædict' hic usq; in Octabis Sancti Hillarii de audiend' inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Johannes quam præd' Thomas per Attornat' suos prædictos. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant, dies ulterius datus est partibus prædict' hic usque in Crastino Sanctæ Trinitatis de audiend' inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic venit tam prædictus Johannes quam prædictus Thomas per Attornatos suos prædictos. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant, dies ulterius datus est partibus præd' hic usque in Octabis Sancti Michaelis de audiend' inde judicio suo, eo quod iidem Justiciarii hic inde nondum, &c. Ad quem diem hic venit tam præd' Johannes Hunt quam præd' Thomas Gatley per Attornatos suos prædictos. Et quia Justiciar' hic ulterius se advisare volunt, de & super præmissis prædictis priusquam judicium inde reddant, dies ulterius datus est partibus præd' hic usque in Octabis Sancti Hillarii de audiend' inde judicio suo, eo quod iidem Justic' inde nondum, &c. Ad quem diem hic venit tam præd' Johannes quam præd' Thomas per Attornatos suos prædictos. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis priusquam judicium inde reddant dies ulterius datus est partibus præd' hic usq; a die Paschæ in xv. dies de audiend' inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic venit tam præd' Johannes quam præd' Thomas per Attornat' suos prædictos. Et quia Justic' hic ulterius se advisare volunt, de & super præmissis prædict' priusquam judicium inde reddant, dies ulterius datus est partibus præd' hic usque in Crastino Sanct' Trinitatis de audiend' inde judicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic venit tam præd' Johannes

quam

quam præd' Thomas per Attornatos suos prædictos: Et quia Justic' hic ulterius se advisare volunt de & super præmissis priusquam iudicium inde reddant, dies ulterius datus est partibus præd' hic usque in crastino animarum de audiend' ind' iudicio suo, eo quod iidem Justic' hic inde nondum, &c. Ante quem diem loquela præd' adjornat' fuit per breve dominæ Reginæ de communi adjornament' a Westm' in com' Midd' usq; Castrum Dominæ Reginæ Hertf. in com' Hertf. ad eundem Crastinum animarum, &c. Ad quem diem hic scilicet apud præd' castrum Hertf' ven' tam præd' Johannes quam præd' Thom' per Attorn' suos præd', & quia Justic' hic ulterius se advisare volunt de & super præmissis priusquam iudicium inde reddant, dies ulterius dat' est partib' præd' hic usq; in Octabis S. Hillar', de audiend' inde iudicio suo, eo quod eidem Justic' hic inde nondum, &c. Ante quem diem loquela præd' adjornat' fuit per breve Dominæ Reginæ de communi adjornamento a dicto Castro dictæ Dom' Reginæ Hertf' in Com' Herf' usq; Westm' præd' in præd' Com' Midd' ad eandem Octabas Sancti Hillar', &c. Et modo hic scilicet apud Westm' præd' ven' tam præd' Johannes, quam præd' Thomas Gatley per Attorn' suos præd'. Et super hoc visis præmissis & per Justic' hic plenius intellectis videtur eisd' Justic' hic quod præd' placit' præd' Joh. Hunt superius in barram cognitionis præd' placitat' sufficiens in lege existit ad ipsum Th. Gatley ut ball' præd' Antonii juste cognoscend' captionem averior' prædictor' in præd' loco in quo præcludend' prout præd' Joh. Hunt superius allegavit, ob quod præd' Joh. Hunt damna sua occasio' caption' & injustæ detention' averior' præd' versus præfat' Tho Gatley recuperare debeat, sed quia nescitur quæ damn' præd' Joh' sustinuit occasio' caption' & injustæ detention' averior' præd', Præc' est Vic' quod per sacrament' probor' & legal' hominum de Com' suo diligent' inquirat quæ damna præd' Joh' Hunt sustinuit tam occasio' caption' & injustæ detention' averior' præd' quam pro missis & custagiis suis per ipsum circa sectam suam in hac part' apposit', et inquisition' quam, &c. Vic' constare fac' hic a die Pach' in xv. dies sub sigillo, &c. & sigillis, &c. Ad quem diem hic ven' præd' Joh' Hunt per Attornat' suum præd', & super hoc idem Johannes Hunt fatetur se hic in Cur' ulterius nolle prosequi versus præfat' Thom' Gatley pro aliquibus damnis ei occasione captionis & injustæ detentionis averiorum prædictorum adjudicand' sed omnia hujusmodi damna ei sic adjudicand' gratis hic in cur' præfat' Thom' Gatley remittit & relaxat: Ideo idem Thom' Gatley de damnis illis fit quietus, &c.

Mich:
Adjorn'.

Hillar: 35r

Judicium.

Inquisitio
de damnis.

Relaxat dam'.

B E T W E E N

John Hunt, *Plaintiff*,

A N D

Thomas Gatley, *Defendant*.

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

C A P E L'S Case.

(a) Poph. 5.
Jenk. Cent.
250. 4 Le-
on. 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 Sbrawley*, 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 *Baldwinc 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 Gatley* 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 Recoverers, 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 Recoverer 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 (e) 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 (f) 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 (g) 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 Recoverer derived (h) 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,

(a) Mo. 154.

(b) Mo. ibid.

(c) 2 Co. 50. b. Co. Lit. 372. b.

(d) Noy 10. §

Keb. 288, 289

3 Keb. 288, 289.

2 Co. 52. b.

6 Co. 42. a.

Cro. Jac. 592.

Cro. Car. 103.

Après 128. a.

Poph. 5. Palm.

139. Winch 41.

2 Ro. R. 221.

(e) Après 128.

a.

(f) Palm. 141.

2 Ro. R. 222.

(g) 1 And. 283.

Poph. 5.

(h) Cro. El.

793. 2 Co 52.

b. 1 Jones 61.

72. Noy 10.

2 Ro. R. 490

-by

by the same Reason every other Estate or Interest deriv'd 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, and 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

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

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 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.

(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.

Another Reason was added, that the Grantee of him in the Remainder cannot (e) falsifie 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 falsifie, and by the same Reason no Person that derives an Interest under him shall falsifie. And so it was resolv'd, 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 Recoverer. And it was also resolv'd by all the Justices aforesaid, *nullo contradicente*, that a common Recovery against

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

Tenant in Tail, shall (a) bind not only the Remainder, and all Leases, Charges, &c. granted or made by him in the Remainder, but also the Reversion, and all Leases, Charges, &c. granted by him in the Reversion, and no Difference between a Reversion and 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*, *Garwy*, *Walmesley* and *Fenner*, Justices, *Windham* Justice being dead, and by *Gent* and *Clark*, Barons of the Exchequer.

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

Trinitatis 36. Elizabeth. Rotulo 1676.

SCOT.

Essex. ff.

Johannes Smith generos. summonit' fuit ad respondend' Willihelmo Baldwin de placito, quare cepit averia ipsius Willihelm', & ea injuste detinuit contra vad' & pleg', &c. Et unde idem Willihelmus per Isaacum Hamond Attornat' suum queritur, quod prædictus Johannes nono die Januarii, anno regni Dominæ Reginæ nunc tricesimo sexto apud Bocking in quodam loco vocat' *the Meadow*, abuttan' super communem viam ducen' a Baintree usque Paintfield in Comitatu prædicto versus le *Northeast*, & super terras Johannis Mott versus le *Southwest*, cepit averia, videlicet, viginti & octo oves ipsius Willihelmi, & ea injuste detinuit contra vad' & pleg' quousque, &c. unde dic' quod deteriorat' est & damn' habet ad valentiam quadraginta librar', & inde produc' sextam, &c. Et prædictus Johannes per Thomam Regnolds Attornat' suum venit & defend' vim & injuriam quando, &c. & ut ballivus Johannis Kent Generosi, filii Johannis Kent Generosi defuncti bene cogn' captionem averiorum prædictorum in prædicto loco, in quo, &c. & juste, &c. quia dic' quod idem locus in quo supponit' captionem averiorum prædictorum fieri, continet, & prædicto tempore captionis prædictæ superius fieri supposit' continebat in se quatuor acras pasturæ cum pertinentiis in Bocking prædict', quæ quidem quatuor acræ pasturæ cum pertinentiis sunt & prædicto tempore quo, &c. fuerunt solum & liberum tenementum prædicti Johannis Kent filii, & quia averia prædicta prædicto tempore quo, &c. fuerunt in præd' loco in quo, &c. herbam in eodem tunc crescen', depalcen', & damnum ibidem facien', idem Johannes Smith, ut ballivus præd' Johannis Kent filii bene cogn' captionem averior' prædictor', in præd' loco in quo, &c. & juste, &c. damnum ibidem sic faciend', &c. Et prædictus Willihelmus Baldwin dic', quod prædictus Johannes Smith, ut ballivus prædicti Johan-

Johannis Kent filii ratione præallegat' captionem averiorum prædictorum in prædicto loco in quo, &c. justam cogn' non debet quia dic', quod diu ante prædictum tempus captionis prædict' fact' quidam Johannes Archer generosus fuit seifitus de prædictis quatuor acris pasturæ cum pertinentiis in quibus, &c. in dominico suo, ut de feodo. Idemque Johannes Archer sic inde seifitus existens ante præd' tempus captionis prædictæ factæ, scilicet octavo die Januarii anno regni Dominæ Reginæ nunc tricesimo sexto supradicto apud Bocking prædict', licentiam dedit eidem Willihelmo ad imponend' averia sua prædicta in prædicto loco in quo, &c. ad herbam in eodem tunc crescen' depascend', virtute cujus licentiæ idem Willihelmus, postea scilicet prædicto nono die Januarii, anno tricesimo sexto supradicto posuit averia sua prædicta in prædicto loco, in quo, &c. ad herbam ibidem tunc crescen', depascend', quæ quidem averia fuerunt in eodem loco in quo, &c. herbam in eodem tunc crescen' depascen' quousque prædictus Johannes Smith prædicto nono die Januarii, anno Regni Dominæ Reginæ nunc tricesimo sexto supradicto apud Bocking prædict' in prædicto loco, vocat' the Meadow, cepit prædicta averia ipsius Willihelmi, & ea injuste detinuit contra vad' & pleg quousque, &c. prout ipse superius versus eum queritur, absque hoc quod prædictæ quatuor acræ pasturæ cum pertinentiis in quibus, &c. prædict' tempore captionis prædictæ, factæ fuerunt solum & liberum tenementum prædicti Johannis Kent filii prout prædictus Willihelmus superius allegavit, & hoc parat' est verificare unde ex quo prædictus Johannes Smith, captionem averiorum prædictorum in prædicto loco, in quo, &c. superius cogn' idem Willihelmus petit judicium & damna sua occasione captionis & injustæ detentionis averior' illor' sibi adjudicari, &c. & præd' Johannes Smith, ut prius dic' quod prædictæ quatuor acræ pasturæ cum pertinentiis, in quibus, &c. prædicto tempore, quo, &c. fuerunt solum & liberum tenementum prædicti Johannis Kent filii prout ipse superius allegavit, & de hoc ponit se super patriam, & prædictus Willihelmus Baldwin similis'. Ideo præc' est Vicecom' quod venire faciat hic a die Sanctæ Trinitatis, in tres septimanas xii. &c. per quos, &c. Et qui nec, &c. ad recogn', &c. quia tam, &c. Postea continuatur processus inter partes prædictas de prædicto placito per Jur' posit' inde inter eas in respect' hic usque ad hunc diem scilicet a die Paschæ in tres septimanas, Anno Regni Dominæ Reginæ nunc tricesimo septimo, & modo hic ad hunc diem venit tam prædictus Willihelmus quam prædictus Johannes Smith per Attornatos suos prædictos, & Jur' inde impanellat' exact' similis' vener', qui ad veritatem de præmissis dicend' electi, triat', & jurat' dic' super sacrament' suum quod quidam Franciscus Archer,

cher fuit seifit' de prædictis quatuor acris pasturæ cum pertinentiis in quibus, &c. in dominico suo ut de feodo, & ill' tenuit de quodam Thoma Wilson, ut de manerio suo de in Comitatu præd' in libero focagio, quod- que præd' Franciscus Archer habuit exit' quendam Robertum Archer, qui quidem Robertus ad tunc habuit exitum præfat' Johannem Archer filium & rectum & proximum hæred' suum apparen', prædictusque Franciscus Archer sic de præd' quatuor acris pasturæ cum pertinentiis seifit' existen' ante prædictum tempus, quo, &c. scilicet vicefimo quinq' mo septuagesimo octavo, condidit testamentum & ultimam voluntatem suam in scriptis, & per eandem ultimam voluntatem suam voluit & legavit tenementa præd' cum pertin' inter alia prout sequitur.

Item, I give and bequeath to Robert Archer my said 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 Woking 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.

Posteaque prædictus Franciscus Archer obiit de prædictis quatuor acris pasturæ cum pertinentiis inter alia in forma prædicta seifit', & iidem Jurator' ulterius dic' super sacramentum suum, quod prædictus Franciscus Archer perquisivit prædictas quatuor acras pasturæ cum pertinentiis de prædicto Johanne Palmer in prædicta ultima voluntate prædicti Francisci nominat': & iidem Jur' ulterius dic' super sacramentum suum, quod post mortem prædicti Francisci Archer prædictus Robertus Archer existens filius & hæres prædicti Francisci in prædictas quatuor acras pasturæ cum pertinentiis intravit, & fuit inde seifit' de tali statu prout lex in hoc casu postulat, idemque Robertus sic inde seifit' existens ante prædictum tempus, quo, &c. scilicet vicefimo primo die Januarii, Anno Regni Domine Regine nunc vicefimo sexto, per quandam cartam suam
 feoffa

feoffamenti sigillo prædicti Roberti signat' ac Jur' prædict' in evidenc' ostens. feoffavit quendam Johannem Kent patrem præd' Johannis Kent, in cognitione præd' superius nominat' de præd' quatuor acris pasturæ cum pertinentiis, in quibus, &c. inter alia per nomina totius illius mesuagii sive tenementi, ac omnium domorum, ædificiorum, horreorum, pomariorum & gardinorum, cum pertin' quondam voc' sive cognit' per nomen sive nomina de *le Brayhound* seu aliter, seu quocunq; alio nomine, seu nominibus eadem vocabant' sive cognoscebant' situat' jacen' & existen' in Bocking præd' in quodam vico ibidem vocat' Bocking eand', ac etiam omnium illarum terrar' prator' & pasturar' eisdem pertin' sive spectan, aut cum eisdem aliquo tempore tunc præantea dimissorum usitat' sive occupat' jacen' & existen' in Bocking præd', habend' & tenend' præfat' Johanni Kent patri hæred' & assign' suis imperpetuum ad proprium opus & usum ipsius Johan' hæred' & assign' suor' imperpetuum, & ulterius præd' Robertus Archer & hæred' sui per cartam præd' omnia & singula præd' mesuagia sive tenementa, domos, ædificia, prata, pasturas, & cætera præmissa præd' cum pertinentiis præfat' Johanni Kent patri hæred' & assign' suis ad usum in eadem carta mentionat' contra omnes gentes warr', prout per eandem cartam feoffamenti Jur' præd' in evidenc' ostens. plenius apparet, virtute cujus quidem feoffamenti præd' Johan' Kent pater fuit seisit' de præd' quatuor acris pasturæ, cum pertinentiis, in quibus, &c. in dominico suo ut de feodo, & ulterius iidem Jur' dic' super sacramentum suum quod post feoffamentum prædict' in forma præd' factum prædict' Johannes Archer filius & rectus & proxim' hæres apparens præd' Roberti Archer, in vitis prædictor' Roberti Archer & Johannis Kent patris in præd' quatuor acris pasturæ cum pertin', in quibus &c. super possessione prædicti Johannis Kent patris inde intravit, super cujus quidem Johannis Archer possessione inde præd' Johannes Kent pater postea intravit, & fuit de prædict' quatuor acris pasturæ, cum pertinentiis, in quibus, &c. seisit', prout lex in hoc casu postulat; idemq; Johannes Kent pater sic inde seisit' existens antè præd' tempus, quo, &c. scilicet sexto decimo die Maii, anno regni dominæ Reginæ nunc vicesimo septimo, condidit testamentum & ultimam voluntatem suam in scriptis, & per eandem ultimam voluntatem suam voluit & legavit præfat' Johanni Kent secundo filio suo & hæred' suis præd' quatuor acras pasturæ, cum pertin', in quibus, &c. inter al', posteaq; & ante præd' tempus, quo, &c. præd' Johan' Kent pater de tali statu de præd' quatuor acris pasturæ cum pertin', in quibus, &c. obiit seisit', post cujus mortem præd' Johannes Kent filius in præd' quatuor acras pasturæ, cum pertin' intravit, & fuit inde seisit' de tali statu prout lex in hoc casu postulat posteaq; &

ante præd' tempus, quo, &c. præd' Robertus Archer obiit post
 cujus mortem præd' Johannes Archer filius & rectus & proxi-
 mus hæres prædicti Roberti Archer in prædict' quatuor ac-
 ras pasturæ, cum pertinen' in quibus, &c. super possessionem
 prædicti Johannis Kent filii inde intravit & fuit inde seifit',
 prout lex in hoc casu postulat, idemque Johannes Archer
 sic inde seifit' existens, prædict' 8. die Januarii anno tri-
 cesimo sexto supradicto, dedit licentiam præfat' Willihelmo
 Baldwyn ad ponend' averia sua præd' in præd' locum, in quo,
 &c. ad herbam in eodem tunc crescentem depascend', vir-
 tute cujus licentiæ idem Willihelmus postea, scilicet præd'
 nono die Januarii anno tricesimo sexto supradicto, posuit a-
 veria sua præd' in præd' locum, in quo, &c. ad herbam ibi-
 dem tunc crescentem depascend', quæ quidem averia fuerunt
 in eodem loco, in quo, &c. herbam in eodem tunc crescentem
 depascend' quousq; præd' Johannes Smith ut ballivus præd'
 Johannis Kent filii præd' nono die Januarii anno tricesimo
 sexto supradicto in prædicto loco, vocat *the Meadow*, ad u-
 sum dicti Johannis Kent filii intravit & cepit præd' averia
 præd' Willihelmi & ea detinuit contra vad' & plegios quous-
 que, &c. prout præd' Willihelmus Baldwyn superius versus
 præfat' Johannem Smith queritur; & si super tota materia
 præd' per Jur' præd' in forma præd' compert', videbitur Ju-
 stic' & cur' hic, quod præd' quatuor acra pasturæ cum pertin',
 in quibus, &c. præd' tempore, quo, &c. non fuerunt solum
 & liberum tenementum præd' Johannis Kent filii, tunc i-
 dem Juratores dicunt super sacrament' suum, quod præd'
 quatuor acra pasturæ cum pertin', in quibus, &c. præd' tem-
 pore quo, &c. non fuerunt solum & liberum tenement' præd'
 Johan' Kent filii prout præd' Willihelmus Baldwyn superius
 allegavit, & tunc assident dampna ipsius Willihelmi Baldwyn
 occasione captionis & injustæ detentionis averior prædictor'
 ultra misas & custagia sua per ipsum circa sectam suam in
 hac parte opposit' ad duodecim denarios & pro misis & cu-
 stagiis ill' ad duos denarios; & si super tota materia præd'
 per Juratores præd' in forma præd' compert' videbitur Ju-
 stic' & curiæ hic quod præd' quatuor acra pasturæ cum pertin',
 in quibus, &c. præd' tempore, quo, &c. fuerunt solum
 & liberum tenementum præd' Johan' Kent filii, tunc iidem
 Juratores dic' super sacramentum suum quod præd' quatuor
 acra pasturæ, cum pertin', in quibus, &c. præd' tempore, quo,
 &c. fuerunt solum & liberum tenementum præd' Johannis
 Kent filii prout præd' Johannes Smith superius allegavit, &
 tunc assident dampna ipsius Johannis Smith occasione præ-
 miss' ultra misas & custagia sua per ipsum circa sectam su-
 am in hac parte apposit' ad duodecim denarios & pro misis
 & custagiis ill' ad duos denarios, & quia Justic' hic se advi-
 tare volunt de & super præmissis priusquam judicium inde red-
 dant,

dant dies dat' est partibus præd' hic usq; in Crastino sanctæ Trinitatis de audiendo inde iudicio suo, eo quod iidem Justiciari' hic inde nondum, &c. ad quem diem hic venit tam præd' Willihelmus quam præd' Johannes per Attornatos suos prædictos; & quia Justiciarii hic se ulterius advisare volunt de & super præmissis priusquam iudicium inde reddant, dies ulterius datus est partibus præd' hic usque in Octabis sancti Michaelis de audiendo inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. ad quem diem hic ven' tam præd' Willihelmus quam præd' Johannes per Attorn' suos prædictos; & quia Justiciari' hic se ulterius advisare volunt de & super præmissis priusquam iudicium inde reddant, dies ulterius dat' est partib' præd' hic usq; in octabis sancti Hillarii de audiendo inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. ad quem diem hic ven' tam præd' Willihelmus quam præd' Johannes per Attornat' suos prædictos; & quia Justic' hic se ulterius advisare volunt de & super præmissis priusquam iudicium inde reddant, dies ulterius dat' est partib' præd' hic usq; a die Paschæ in xv dies de audiendo inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. ad quem diem hic ven' tam præd' Willihelmus quam præd' Johannes per Attorn' suos prædictos, & quia Justiciari' hic se ulterius advisare volunt de & super præmissis, priusquam iudicium inde reddant dies ulterius dat' est partib' præd' hic usq; in Crastino sanctæ Trinitatis de audiendo inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. ad quem diem hic ven' tam præd' Willihelmus quam prædict' Johannes per Attornatos suos prædict', & super hoc visis præmissis & per Justic' hic plene intellectis (a) concessum est quod præd' Willihelmus nihil capiat per breve suum præd', sed sit in misericordia pro falso clamore suo, & prædict' Johannes eat inde sine die, &c. & habeat retorn' averiorum prædict' detinend' sibi irreplog' imperpet' & qualiter, &c. Vic' constare fac' hic in Octabis sancti Michaelis, &c. concess. est etiam quod præd' Johannes recuperet versus præfat' Willihelmum dampna sua præd' ad quatuordecim denarios per Jur' præd' in forma præd' assess' necnon decem & octo libras, decem & octo solidos, & decem denarios, eidem Johanni ad requisitionem suam pro misis & custagiis suis præd' per cur' hic de incremento adjudicat', quæ quidem dampna in toto se atting' ad decem & novem libras, &c.

(a) i Roll. 771.
774. i Bullt.
125, 126, 179.
1 Syd. 70. i Co.
83. a. 119. b.
22. a. 40. 3.
Hob. 17, 19,
327. Latch. 78,
83, 188. Noy
77. Poph. 203,
212. Palm. 260.
N. Ben. 184.
pl. 226. Cr. El.
145. Jenk.
Cent. 13. Cr.
Jac. 6. 385,
632. i Roll. R.
275, 279. 3
Bullt. 92, 93,
94. Cr. Car.
45, 442. Yely.
130. Hob. 194.
Sat. 15 & 17.
Car. 2. cap. 8.
Star. 22 & 23.
Car. 2. cap. 45

Mich. 39 & 40 Eliz.

Between Baldwyn and Smith.

ARCHER'S Case.

BETWEEN (a) *Baldwyn* and *Smith* in the Common Pleas, which began *Trinit. 36 Eliz. rot. 1676*, in a *Replevin*; upon a special Verdict the Case was such: *Francis Archer* was seised of Land in 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 Warrantry, upon whom *John* enter'd, and *Kent* re-enter'd, and afterwards *Robert* died, &c. And first it was agreed by *Anderson*, *Watmsley*, & *totam Cur'*, that *Robert* had but an Estate for (c) Life, because *Robert* had an expresse 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) *Cranmer's Case 14 Eliz. Dier. 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 *Gascoigne* in 7 *Henry 4. 23. b. (m)* But if the Tenant for Life had been disseised, and died,

(a) Cr. El. 453.
2. Anderf. 37.
Hob. 333, 338.
Rol. 627. 1 vent.
216, 225. 2
vent. 213.
(b) 3 Keb. 18,
99, 176, 178.
(c) Raym. 38.
3 Keb. 42, 95.
(d) 1 Vent. 215,
225. Lit. Rep.
344. Raym. 333
3 Keb. 95, 99.
(e) Raym. 333.
3 Keb. 18, 99,
176. Godb.
155. 2 Syd. 51.
2 Rol. Rep.
256. Plowd.
29. b. Palm.
304. Hetl. 76.
Sty. 250. 1 Roll.
832. 2 Roll.
253, 417. 1 Co.
104. a. 1 Bulltr.
222, 223.
Moor 593. Cr.
Eliz. 315. Ow-
en 148. Co.
Lit. 8. Cr. Jac.
145.
(f) 1 Vent. 374.
3 Keb. 339.
Co. Lit. 578. a.
7 H. 4. 23. b.
Br. done & Re-
mainder 8.
(g) 2 Vent. 213.
(h) Yelv. 9.
Moor 107.
2 Leon. 5. 1 And.
19. 1 Leon. 196.
3 Leon. 29.
Dyer 309. 310.
Vent. 118, 119.
O Ben. 43.
Goldsb. 20.
2 And. 37. Lit.
Rep. 289. Pop. 82. (i) 1 Syd. 47. Hob. 338. Poph. 74. Bridg. 3. 1 Co. 135. a. 2 Roll. Rep. 216, 219, 222. 2 Anderf. 37. Cr. Car. 102. 2 Sand. 383. Palm. 134, 136. Hetl. 155. 1 Keb. 177. Lit. Rep. 254, 262, 287. (k) Cr. Car. 364. (l) Plowd. 29. a. b. 25. b. 35. a. 2 Co. 51. a. 3 Co. 21. a. Raym. 54. 2 And. 37. 1 Co. 130. a. 129. b. 134. b. Moor 104. Perk. 12. Raym. 413. Palm. 139. Pop. 82, 83, 84. (m) Apres 135. b. Palm. 254. Pop. 83.

yet the Remainder is good, for there the particular Estate doth remain in Right, and might have been revested, 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 *Popham*, Chief Justice, and divers Justices in the Argument of the Case between (a) *Dillon* and *Frein*, 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 by a Warranty, who could never have defeated it by any Means, as in 44 E. 3. 30. & (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* 3 H. 7. 9. a. & 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.

(a) Pop. 72
And. 309. 1 Co.
120. a. Jeak.
Cent. 276.
(b) Lit. Rep.
290. Palm. 238.

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

(d) 5 Co. 80. b.
Co. Lit. 380. b.
388. b. 1 Jones
210. Palm. 238.
248. Cr. Eliz.
72.
(e) 1 Roll. Rep.
178.

(f) 2 Roll. 740.

(g) Apres 130.
b.

Term. Trinitatis xxxviii Eli-
zabethæ, Rotulo 1831.

SCOT.

Suff. ff.

Repleg.

Willihelmus Bredon & Johannes Bredon summoni-
ti fuerunt ad respondendum Agneti Gardiner vi-
duæ, de placito quare ceperunt averia ipsius
Agnetis, & ea injuste detinuerunt contra vadios & pleg, &c.
Et unde eadem Agnes per Thomam Waller Attornatum
suum queritur, quod prædictus Willihelmus & Johannes de-
cimo octavo die Martii anno Regni Domine Regine nunc
tricesimo septimo apud Stowmarket, in quodam loco vocat'
le Parkewood, parcell' maneril de Columbine Hall, ceperunt
averia, videlicet, quindecim vaccas mulcibiles, & quinque
vitulos ipsius Agnetis, & ea injuste detinuerunt contra vad'
& pleg' quousque, &c. unde dicit quod deteriorat' est, &
dampnum habet ad valentiam decem librarum, & inde pro-
ducit sectam, &c. Et prædicti Willihelmus & Johannes per
Richardum Walker Attornatum suum venerunt & defende-
runt vim & injuriam quando, &c. & ut ballivi Marthæ Cary
viduæ bene cognoverunt captionem averiorum prædictorum
in prædicto loco, in quo, &c. Et iuste, &c. quia dicunt, quod
idem locus, in quo supponitur captionem averiorum præ-
dictorum fieri, continet, & prædicto tempore captionis illi-
us superius fieri supposit' continebat in se octo acras terræ
cum pertinentiis in Stowmarket prædicta, quodque diu an-
te prædictum tempus, quo, &c. quidam Johannes Gardiner
generosus fuit seiscitus de & in manerio de Columbine
Hall, alias Thorney Columbers cum pertinentiis in comi-
tatu prædicto, unde prædictæ octo acra terræ cum pertinenci-
is, in quibus, &c. sunt & prædicto tempore, quo, &c. nec-
non a tempore cujus contrarium memoria hominum non ex-
istet fuerunt parcell' in dominico suo ut de feodo; Ipsiq; sic
inde seiscit' existen', quidem finis levavit in Curia Dom' Regi-
næ nunc de banco hic, scilicet apud Westmon' in Octab' sancti
Michaelis

Michaelis, anno Regni dictæ Dominæ Reginæ nunc viceſimo nono coram *Edmundo Anderson, Francisco Windham, Willihelmo Periam, & Francisco Rodes*, tunc Juſticiariis dictæ Dominæ Reginæ de banco hic, & aliis dictæ Domⁿⁱ Reginæ fidelibus tunc hic præſentibus, inter quosdam Edmundum Cary militem, & Robertum Cary armiger, per nomina Edmundi Cary militis, & Roberti Cary armiger quer, et quosdam Willihelmum Cary armig, præd^{icti} Johannem Gardiner, & dictam Agnetem modo quer, tunc uxorem ipſius Johannis & Georgium Totty gener & Elizabetham uxorem ejus, per nomina Willihelmi Cary armiger, Johannis Gardiner generoſi, & Agnetis uxoris ejus, & Georgⁱ Totty gener, & Elizabethæ uxoris ejus defore de manerio præd^{icti} cum pertinentiis, unde, &c. Ac de decem meſuagiis, decem cottagiis, decem horreis, uno columbar^{um} vigint^{um} curtilagiis, viginti gardinis, decem pomariis, trecentis acris terræ, ſexagint^{um} acris prati, ducentis acris paſtura, triginta acris boſci, ſexagint^{um} acris jampnorum, & brueræ triginta ſolidat^{um} reddit^{um}, Reddit^{um} unius libræ ceræ & quatuor caponum cum pertinentiis in Stowmarket, Newton, Gipping, & Onehouſe, Necnon de viſu fran^{co} pleg^{um} in Stowmarket, Newton, Gipping, & Onehouſe per nomina manerii de Collumbine Hall, alias Thorney Columbers cum pertinen^{tiis}, ac decem meſuagior^{um}, decem cottagior^{um}, decem horreorum, unius collumbar^{um} vigint^{um} curtilagiorum, vigint^{um} gardinor^{um}, decem pomariorum, trecentar^{um} acrar^{um} terræ, ſexagint^{um} acrar^{um} prat^{um} ducent^{um} acrar^{um} paſtura, trigint^{um} acrar^{um} boſci ſexagint^{um} acrar^{um} jampnorum & brueræ, triginta ſolidat^{um} reddit^{um}, & reddit^{um} unius libræ ceræ & quatuor caponum cum pertinentiis in Stowmarket, Newton, Gipping, & Onehouſe, necnon viſus franc^o pleg^{um} & quicquid ad viſum Franc^o pleg^{um} pertinet in Stowmarket, Newton, Gipping, & Onehouſe, unde placitum conventionis ſummonit^{um} fuiſſet inter eos in eadem Curia, ſcilicet, Quod præd^{icti} Willihelmus, Johannes, Agnes, Georgius, & Elizabetha recogn^{erunt} præd^{icta} manerium, tenementa, reddit^{um}, & viſus franc^o pleg^{um} cum pertinentiis eſſe juſ ipſius Edmundi, ut ill^{ud} quæ iidem Edmundus & Robertus habuer^{unt} de dono præd^{ictorum} Willihelmi, Johannis, Agnetis, Georgii, & Elizab^{ethæ}; et ill^{ud} remiſer^{unt} & quiet^{um} clamaver^{unt} de ipſis Willihelmo, Johanne, Agnete, Georgio, & Elizabetha, & hæredibus ſuis præd^{ictis} Edmundo & Roberto, & hæredibus ipſius Roberti imperpetuum. Et præterea idem Willihelmus conceſſit pro ſe & heredibus ſuis, quod ipſi warrantizabunt præd^{ictum} Edmundo & Roberto, & hæredibus ipſius Edmundi præd^{icta} manerium, tenementa, reddit^{um} & viſus Franc^o pleg^{um} cum pertinentiis, contra ipſum Willihelmum & hæredes ſuos imperpetuum. Et ulterius iidem Johannes & Agnes conceſſer^{unt} pro ſe & hæredibus ipſius Johannis quod ipſi warrantizabunt præd^{ictis}.

prædictis Edm. & Roberto, & hæredibus ipsius Edmundi præd' manerium, tenementa, reddit' & vis. franc' pleg' cum pertinens contra ipsos Johannem & Agnetem, & hæredes ipsius Johannis imperpetuum. Et insuper iidem Georgius & Elizab' concesser' pro se & hæredibus ipsius Georgii quod ipsi warrantizabunt præd' Edmundo & Roberto & hæredibus ipsius Edm. præd' manerium, tenementa reddit' & visum franc' pleg' cum pertinentiis, contra ipsos Georgium & Elizab' & hæredes ipsius Georgii imperpetuum. Qui quidem finis de manerio, tenementis, reddit' & vis. franc' pleg' præd' cum pertinentiis in forma præd' levat', habit' & levat' fuit ad usum ipsorum Johannis Gardiner, & Agnetis uxoris ejus pro termino vitarum suarum, & eorum alterius diutius vivent', absq; impetitione vasti in aliquibus boscis & subboscis; et post decessum ipsor' Johannis Gardiner & Agnetis, ad usum prædicti Willihelmi Cary, & hæredum de corpore suo legitime procreat'. Et pro defectu talis exitus ad usum præd' Roberti Cary tunc armiger' & modo militis, & hæred' de corpore suo legitime procreat'; et pro defectu talis exitus ad usum Henrici Cary militis, Dom' de Hundsdon, & hæred' suorum imperpetuum. Virtute cujus quidem finis ac vigore cujusdam actus in Parlamento Dom' Henrici nuper Regis Angliæ octavi apud Westmon' in Comitatu Midd' quarto die Februar', anno Regni sui viceesimo septimo de usibus in possessionem transferend' tent' edit' iidem Johannes Gardiner & Agnes fuer' seisit' de manerio prædicto cum pertinentiis, unde, &c. in dominico suo ut de libero tenemento pro termino vitarum ipsorum Johannis & Agnetis & eorum alterius diutius viven' absq; impetitione vasti, prædict' remanere inde post mortem ipsorum Johannis & Agnetis præfat' Willihelmo Cary & hæredibus de corpore suo legitime procreat', remanere inde pro defectu talis exitus præfat' Roberto Cary & hæredibus de corpore suo legitime procreat', & pro defectu talis exitus remanere inde præfat' Henrico Cary militi Domino de Hundsdon, & hæredibus suis imperpetuum. Prædictisque Johanne Gardiner & Agneto uxore ejus sic inde seisit' existen', quidem al' finis levavit in dicta Curia dictæ Dom' Reginae nunc de banco hic scilicet apud Westmon' prædict' a die Paschæ in xv. dies, anno Regni dictæ Dom' Reginae nunc tricesimo secundo coram *Edmundo Anderson, Francisco Windham, Willihelmo Periam, & Thoma Walmsley* tunc Justic' ipsius Dom' Reginae de banco hic, & aliis dictæ Dom' Reginae fidelibus tunc ibi præsentibus, inter quosdam Johannem Higham militem, & Thomæ Turner armiger' per nomina Johannis Higham militis & Thomæ Turner armiger' quer', & prædictum Willihelimum Cary, ac præd' Martham adtunc uxorem ejus, & prædict' Johannem Gardiner, ac prædict' Agnetem adtunc uxorem

Ufus finis.

uxorem

uxorem ejus deforc' de præd' manerio de Columbinehall, alias Thorney Columbers, cum pertinentiis, unde, &c. per nomen maneriis de Columbine Hall alias Thorney Columbers cum pertin' in Stowmarket, Newton, Gipping, & Onehouse, unde placitum conventionis sum' fuisset inter eos in eadem Curia, scilicet, quod prædict' Willihelmus Cary, & Martha, Johannes Gardiner & Agnes, recognover' prædict' maner' cum pertinen', unde, &c. esse jus ipsius Johannis Higham, ut illud quod iidem Johannes & Thomas habuerunt de dono prædictorum Willihelmi Cary & Marthæ, Johannis Gardiner & Agnetis & illa remisit' & quiet' clam' de ipsis Willihelmo Cary & Martha, Johanne Gardiner & Agnete, & hæred' suis prædictis Johanni Higham & Thomæ & hæred' ipsius Johannis Higham imperpetuum. Et præterea iidem Willihelmus Cary, & Martha, & Johannes Gardiner & Agnes, concesser' pro se & hæredibus ipsius Willihelmi Cary, quod ipsi warrantizabunt prædictis Johanni Higham & Thomæ, & hæred' ipsius Johannis Higham prædictum manerium cum pertinentiis contra omnes homines imperpetuum. Et pro illa recognitione, remissione, quiet' clam', warrant', sine, & concordia, iidem Johannes Higham & Thomas concess. præd' Marthæ quandam annuitatem five annualem redditum quadraginta librarum legalis monet' Angliæ exeun' de & in prædicto manerio cum pertinentiis, et ill' ei reddider' in eadem Curia dictæ Dom' Reginæ: Habend' & percipiend' prædictam annuitatem five annualem reddit' quadragint' librarum eidem Marthæ ad festum sancti Michalis archangeli, & Annunciationis beatæ Mariæ virginis, per equales portiones annuatim solvend' tota vita ipsius Marthæ, si prædicti Johannes Gardiner & Agnes, aut eorum alter tam diu vixerit. Prima solutione inde incipiend' ad illud festum festorum prædictor' quod proxim' post decessum prædicti Willihelmi Cary fore contingeret. Et si contingeret prædictam annuitatem five annualem reddit' quadragint' librarum retro fore in parte vel in toto post aliquod festum festorum prædictor', quo ut præfertur solvi deberet non solut', quod tunc bene liceret prædictæ Marthæ tota vita sua, si prædicti Johannes Gardiner & Agnes, seu eorum alter tam diu vixerit, in prædict' maner' cum pertinentiis intrare & distringere, distractionesque sic ibidem capr' & habit' licite abducere, asportare, & effugare, ac penes se retinere, quousq; de prædicta annuitate five annual' reddit' quadragint' librarum cum arrengiis ejusdem, si quæ forent, plenar' forent satisfact' & persolut', prout per Recordum finis illius in curia dictæ Dominæ Reginæ de banco prædicto hic residen' inter alia plenius liquet: Prædictusque Willihelmus Cary postea, scilicet, vicesimo quarto die Martii, anno Regni

Dominæ

Dominæ Reginæ nunc tricesimo quinto apud Stowmarket prædict' obiit, post cujus mortem virtute finis prædicti ultim' recitat' prædicta Martha fuit & adhuc est seifit' de prædicta annuitate sive annuali reddit' quadragint' librarum in dominico suo ut de libero tenemento pro termino vitæ suæ, si prædicti Johannes Gardiner & Agnes uxor ejus, vel eorum alter tam diu vixerit. Et quia quadragint' libræ de prædict' annuali reddit' præfat' Marthæ ad & post festum sancti Michaelis archangeli, anno regni Dominæ Reginæ nunc tricesimo quinto, necnon prædicto tempore, quo, &c. aretro fuerunt non solutæ, iidem Willihelmus Bredon & Johannes Bredon, ut ballivi ejusdem Marthæ bene cognoverunt captionem averiorum prædictorum in prædicto loco, in quo, &c. & juste, &c. pro prædictis quadragint' libris de annuali reddit' prædicto eidem Marthæ sic aretro existen' ut in terra diffraction' ejusdem Marthæ de reddit' prædict' in forma prædict' onerat' & obligat', &c. cum hoc quod iidem Willihelmus Bredon & Johannes Bredon verificare volunt quod prædicta Martha adhuc superstes & in plena vita existit, videlicet, apud Wrattin parva in prædicto comitatu Suffol', &c. cum hoc etiam quod iidem Willihelmus Bredon & Johannes Bredon verificare volunt, quod prædicta Agnes jam quer', & prædicta Agnes una deforc' in prædict' separalibus finibus nominat' sunt una & eadem persona & non alia neque diversa, &c. Et prædicta Agnes quoad viginti libras de annuali reddit' prædicto ad festum Annunciationis beatæ Mariæ virginis anno tricesimo quinto supradicto solubil' dicit quod ipsa non potest dedicere nec quin eadem viginti libræ ad idem festum aretro fuerunt præfat' Marthæ non solut', prout prædicti Willihelmus Bredon & Johannes Bredon per cognitionem suam prædictam superius suppon'. Et quoad prædictas alias viginti libras de prædictis quadragint' libris resid' quas prædicti Willihelmus Bredon & Johannes Bredon, per cognitionem suam prædictam suppon' aretro fuisse non solut' præfat' Marthæ ad prædictum festum sancti Michaelis, anno tricesimo quinto supradicto, dicit quod prædicti Willihelmus Bredon & Johannes Bredon, ratione præallegat' captionem averiorum prædictorum in prædicto loco, in quo, &c. pro eisdem viginti libris justam cognoscere non debent, quia dicit quod bene & verum est quod prædict' Johan' Gardiner fuit seifit' de manerio prædicto cum pertinentiis, unde, &c. in dominico suo ut de feodo, eodemq; Johanne sic inde seifit' existen' prædict' finis in cognitione prædictorum Willihelmi Bredon & Johannis Bredon, superius primo mentionat' levavit in prædicta curia Reginæ hic in prædictis Octabis Sancti Michaelis, anno regni dictæ Dominæ Reginæ nunc vicessimo

cesimo nono supradicti coram prefat' tunc Justiciar' & aliis dictae dom' Regi' fidelibus tunc ibi praesentibus, inter prefat' Edmundum Cary Militem, & Robertum Cary armiger', ac prefat' Willihelmu' Cary armig', Johannem Gardiner & ipsam Agnetem modo quer' tunc uxorem praed' Johannis Gardiner, & prefat' Georgium Totty, & Elizabeth' uxorem ejus defore' de manerio praedicto cum pertinentiis, unde, &c. Ac de praedictis tenementis & reddit' cum pertinentiis in praed' sine in cognitione praed' superius primo mentionat', quodque idem finis in forma praed' levat', habit' & levat' fuit ad usum praedictor' Johannis Gardiner & ipsius Agnetis pro termino vitarum suarum & eorum alterius diutius viventium, & post decessum praedictorum Johannis & Agnetis, ad usum praed' Willihelmi Cary, & haered' de corpore suo legitime procreat'; & pro defectu talis exit' ad usum praedicti Roberti Cary Militis & haered' de corpore suo legitime procreat'; & pro defectu talis exit' ad usum praed' Henrici Cary Militis domini de Hunsdon, & haered' suorum imperpetuum: Virtute cujus finis ac vigore praedicti actus de usibus in possessionem transferendis tent', edit', praedictus Johannes ac eadem Agnes fuerunt seifiti de manerio praedicto cum pertinentiis, unde, &c. in dominico suo ut de libero tenemento, pro termino vitarum ipsorum Johannis & Agnetis, & eorum alterius diutius viven', remanere inde post mortem ipsorum Johannis & Agnetis prefat' Willihelmo Cary & haered' de corpore suo legitime procreat', remanere inde pro defectu talis exit' prefat' Roberto Cary & haered' de corpore suo legitime procreat', remanere inde pro defectu talis exit' prefat' Henr' Cary Militi domino de Hunsdon & haeredibus suis imperpetuum, prout praedicti Willihelmus Bredon & Johannes Bredon per cognitionem suam praedictam superius suppon'. Sed eadem Agnes ulterius dic' quod praed' Johanne Gardiner & Agnete sic de manerio praed' cum pertinentiis, unde, &c. pro termino vitarum ipsorum Johannis & Agnetis & eorum alterius diutius viven', in forma praed' seifiti' existen', remanere inde post mortem praedictor' Johannis & Agnetis prefat' Willihelmo Cary & haeredibus de corpore suo legitime procreat', remanere inde pro defectu talis exit' prefat' Roberto Cary & haeredibus de corpore suo legitime procreat', remanere inde pro defectu talis exit' prefat' Henrico Cary Militi dom' de Hunsdon & haered' suis spectan', ante levation' praed' finis in cognitione praedictor' Willihelmi Bredon & Johannis Bredon superius secundo mentionat', quidam alius finis levavit in dicta curia dictae dom' Reg' nunc de banco, hic scilicet apud Westmon' praed' a die Paschae in xv. dies, anno Regni dictae Dominae Reginae nunc tricesimo primo coram prefat'

Edmundo

Edmundo Anderson, Francisco Windham, & Willihelmo Periam, tunc Justic' ipsius Dominæ Reginæ de banco hic, & aliis dictæ Dominæ fidelibus tunc ibi præsentibus, inter quosdam David' Bulward, & Robertum Ham, per nomina David' Bulward & Robert' Ham quer', & præfat' Willihelimum Cary, per nomen Willihelmi Cary armigeri defore' de manerio præd' cum pertin', unde, &c. ac de vigint' mesuag', uno columbar', viginti gardinis, trecentis acris terræ, centum acris prati, ducentis acris pasturæ, triginta acris bosci, & viginti & sex solidat' & quatuor denar' reddit', ac de reddit' quatuor caponum, & unius libræ ceræ cum pertinentiis in Stowmarket, Newton, Gipping, & Onehouse, per nomina maner' de Columbine Hall, alias Thorney Columbiers, cum pertinens, ac vigint' mesuag', unius columbar', viginti gardinorum trecentar' acrarum terræ, centum acrarum prati, ducentarum acrarum pasturæ, triginta acrarum bosci, & viginti & sex solidat', & quatuor denar' reddit' ac reddit' quatuor caponum & unius libræ ceræ cum pertinentiis in Stowmarket, Newton, Gipping, & Onehouse, unde placitum conventionis sum' fuisse inter eos in eadem Curia, scil. quod præd' Willihelm' recognovit præd' maner', tenementa, & reddit' cum pertin' esse jus ipsius David', ut ill' quæ idem David' & Robert' habuissent de dono præd' Willihelmi, & illa remisit' & quiet' clamaverunt de se & hæred' suis præfat' David' & hæred' ipsius David' imperpet'. Et præterea idem Willihelm' concessit pro se & hæred' suis, quod ipsi warrantizabunt præd' David' & Roberto, & hæredibus ipsius David' præd' manerium, tenementa, & reddit' cum pertinentiis contra præd' Willihelimum & hæredes suos imperpetuum, prout per recordum finis illius in curia dictæ Dominæ Reginæ de banco præd' hic residen' inter alia plenius liquet: Qui quidem finis in forma præd' levat' & habit', habit' & levat' fuit ad usum prædictor' David' & Roberti Ham & hæredum suorum, ea intentione & quousque perfect' recuperat' per breve dictæ Dominæ Reginæ de ingressu super disseisinam in le Post, de eodem manerio cum pertinentiis, unde, &c. Ac de tenementis & reddit' præd' cum pertinentiis versus præd' Davidem, & Robertum Ham, per quendam Rogerum Pierfon generos. secundum cursum commun' recuperationum habitum foret, prædictisque Johanne Gardiner & Agnete de manerio præd' cum pertinentiis, unde, &c. pro termino vitarum ipsorum Johannis Gardiner & Agnetis, & eorum alterius diutius viven' sic ut præfertur seisisit' existen', remanere inde præfat' David' & Roberto Ham & hæredibus suis in forma prædict' spectan', prædict' finis in cognitione prædictor' Willihelmi Bredon & Johannis Bredon, superius secundo mentionat' in forma prædict' levavit in prædict' curia Reginæ hic a prædict' die Paschæ in xv. dies,

anno tricesimo secundo supradicto, coram præfat' tunc Justic' dictæ dominæ Reginæ de banco hic inter præfat' Johannem Higham Militem, & Thomam Turner armiger' quer', & prædictum Willihelmum Cary, & prædictam Martham tunc uxorem ejus, ac præfat' Johannem Gardiner & ipsam Agnetem tunc uxorem ejus deforc' de manerio præd' eum pertinentiis, unde, &c. Ac præd' Johannes Higham & Thomas per eundem finem concesserunt præfat' Marthæ prædict' annuitatem five annualem reddit' quadragint' librarum exeun' de & in manerio prædicto cum pertinentiis, & ill' ei in forma prædicta reddiderunt, habend' & percipiend' prædictam annuitatem five annualem reddit' quadragint' librarum eidem Marthæ ad prædicta festa Sancti Michaelis archangelis, & Annuntiationis beatæ Mariæ virginis per æquales portiones annuatim solvend' tota vita ipsius Marthæ si prædicti Johannes & Agnes, seu eorum alter tam diu vixerit, prima solutione inde incipiend' ad illud festum festorum prædictorum quod proxime post deceffum prædicti Willihelmi Cary fore contingeret cum prædicta clausula restrictionis in eodem sine mentionat', prout prædicti Willihelm' Bredon & Johannes Bredon per cognitionem suam præd' superius suppon', prætextu levationis cujus quidem finis ultim' mentionat' sic habit' & levat' præd' Johannes Gardiner & Agnes statum suum præd' ad terminum vitarum ipsorum Johannis & Agnetis, de & in manerio præd' cum pertin', unde, &c. forisfecerunt, posteaque scilicet præd' vicesimo quarto die Martii, anno tricesimo quinto supradict', prædictus Willihelmus Cary apud Stowmarket prædictam obiit sine exit' de corpore suo legitime procreat', post cujus mortem, & ante præd' festum Sancti Michaelis Archangel', anno tricesimo quinto supradict', scilicet primo die Aprilis, anno tricesimo quinto supradict', præd' Robertus Cary Miles, ratione præd' forisfacturæ prædictor' statuum ipsor' Johannis Gardiner & Agnetis, de & in manerio præd' cum pertinentiis, unde, &c. ut præfertur commiss' in manerium præd' cum pertinentiis, unde, &c. intravit, & fuit inde seisit' in dominico suo ut de feodo talliat', videlicet sibi & hæredibus de corpore suo legitime procreat', & sic inde seisit' existen' idem Robertus postea, & ante prædict' tempus captionis prædictæ factæ, scilicet decimo septimo die Martii, anno regni Dominæ Reginæ nunc tricesimo septimo supradict' apud Stowmarket prædict' dedit licentiam eidem Agneti ad imponend' averia sua prædict', in prædictum locum, in quo, &c. ad herbam in eodem tunc crescen' depascend', virtute cujus licentiæ eadem Agnes postea & ante prædictum tempus, quo, &c. posuit averia sua prædicta in prædictum locum, in quo, &c. ad herbam in eodem crescen' depascend'. Quæ quidem averia fuerunt in eodem loco, in quo, &c. quousque præd' Will' Bredon

Bredon & Johannes Bredon die & anno supradictis in narratione prædicta superius specificat' apud Stowmarket prædictam, in prædicto loco vocat' *le Parke* in *esso* ceperunt prædicta averia ipsius Agnetis, & ea injuste detinuerunt contra vad' & pleg', quousque, &c. prout ipsa superius versus eos quer', & hoc paratus est verificare, unde ex quo iidem Willihelmus Bredon & Johannes Bredon captionem averiarum prædictorum in præd' loco, in quo, &c. superius cogn'eadem Agnes petit iudicium & dampna sua occasione captionis & injustæ detentionis averiorum illorum sibi adjudicari, &c. Et præd' Willihelmus Bredon & Johannes Bredon quoad prædictum placitum prædictæ Agnetis ad cognitionem eorundem Willihelmi & Johannis pro prædictis viginti libris resid', &c. factam superius in barram placitat', dic' quod bene & verum est quod præd' finis in barr' præd' Agnetis secundo specificat' in præd' curia dictæ Dominæ Reginæ de banco præd' hic in præd' quindena Paschæ, anno regni dictæ Dominæ Reginæ nunc tricesimo primo supradicto, coram præfat' *Edmundo Anderson, Francisco Windham, & Willihelmo Periam*, tunc Justic' dictæ Dominæ Reginæ de banco præd' hic, & aliis, ejusdem Dominæ Reginæ nunc fidelibus tunc hic præsentibus, inter præfat' Davidem Bulward & Robertum Ham quer', & præfat' Willihelm' Cary deforc' de manerio præd' cum pertinentiis, unde, &c. Ac de præd' tenementis & reddit' cum pertinen' in eodem fine in barr' præd' Agnetis secundo specificat' & mentionat' in forma præd' levavit, prout præd' Agnes superius allegavit. Sed iidem Will' Bredon & Johann' ulterius dic' quod præd' finis in barr' præd' Agnetis secundo specificat' in forma præd' levat', habit' & levat' fuit ad opus & usum præd' David' Bulward & Rob. Ham, & hæred' suor', ea intentione & quousque recuperar' per breve dom' Reg' de ingressu super disseisinam in le Post, de eodem manerio cum pertinen', undè, &c. Ac de tenementis & reddit' præd' cum pertinen' versus præd' David' & Robert' Ham habit' foret, & postea ad opus & usum Joh. Gardiner & præd' Agnetis pro termino vitarum eorum, & alterius eorum diutius viven', & post decessum eorum ad opus & usum præd' Will' Cary & hæred' de corpore suo legitime procreat', per quod postea scil. nono die April', anno regni dictæ dom' Reg' nunc tricesimo primo, præd' Rogerus Piferon in curia Cancellar' dictæ dom' Reg' nunc, eadem Cancellar' apud Westm' in com' Midd' tunc existen' impetravit & prolecur' fuit quoddam breve ejusdem dom' Reg' nunc de ingressu super disseisinam in le Post, versus præfat' Davidem & Robertum Ham de manerio, tenement', & reddit' præd' cum pertinen' Vic' præd' com' Suff. direct' eidem David' & Roberto ad tunc tenentibus liberi tenementi, manerii tenementorum, & reddit' præd' cum pertinentiis,

virtute

Replication al
barr' al conu-
fans.

Recoverit.

Briefe dent'.

virtute præd' finis in barra præd' Agnetis secundo specificat', per quod quidem breve eadem Domina Regina nunc eidem tunc Vicecom' Suff. mandavit, quod idem Vic' præciperet præfat' David', & Roberto Ham, per nomina Davidis Bulward, & Roberti Ham, quod iuste & sine dilatione redderent præfat' Rogero Pierfon, per nomen Rogeri Pierfon, maner', tenemen', & reddit' præd' cum pertinentiis per nomina manerii de Columbine Hall, alias Thorney Columbers cum pertin', ac viginti mesuag', unius columbar', viginti gardinorū, trecentar' acrarum terr', centum acrar' prati, ducentar' acrar', pasturæ, triginta acrar' bosci, & viginti & sex solidat' & quatuor denar' reddit', ac reddit' quatuor caponum, & unius libri ceræ cum pertinen' in Stowmarket, Newton, Gipping, & Onehouse, quæ clam' esse jus & hæreditat' suam, & in quæ iidem David & Robertus non habuerunt ingressum nisi post disseisinam, quam Hugo Hunt inde injuste & sine iudicio fecit præfat' Rogero infra trigint' annos tunc ultimo elapsos, ut dixit. Et unde querebatur quod præd' David & Robertus eum injuste deforc', & nisi fecissent, & præd' Rogerus fecisset ipsum tunc Vic' secur' de clam' suo prof. tunc idem Vic' sum' per bonos summon' præd' David' & Robertum, quod essent coram Justiciariis ipsius Dominæ Regin' hic, scilicet apud Westmonaster' a die Pasch' in unum mensem tunc proxim' sequen' ostend' quare non fecissent, & quod idem Vic' haberet tunc hic sum' & breve illud, &c. Ad quem quidem mensem Paschæ hic scilicet apud Westm' præd' venit tam præd' Rog' quam præd' David & Rob. in propriis personis suis, & tunc vic' præd' com' Suff. viz. Philip' Tyley arm', ad tunc retorn' hic breve præd' sibi in forma direct' servit' & execut' in forma sequen', viz. Quod præd' Rogerus invenisset eidem tunc Vic' pleg' de prosequend' breve illud, videlicet, Johannem Doo, & Richard' Roo, &c. Et quod præd' David & Robertus Ham sum' fuerunt essend' tunc hic per Johannem Den, & Rich. Fen, &c. Super pro præd' Rogerus narrand' versus præfat' David' & Robertum Ham, tunc tenen' liberi tenementi maner', tenement', & reddit' præd' cum pertinentiis in forma supradict' super brevi suo præd', in propria persona sua præd' petiit versus præfat' Davidem & Robertum Ham, maner', tenementa, & reddit' præd' cum pertinen' ut jus & hereditat' suam, & in quæ iidem David & Robertus Ham non habuerunt ingressum nisi post disseisinam quam Hugo Hunt inde injuste & sine iudicio fecit præfat' Rogero infra trigint' annos jam ultime elapsos, &c. & unde tunc dixit quod ipsemet fuisset seistus de maner', tenementis, & reddit' præd' cum pertinentiis in dominico suo ut de feodo & jure tempore pacis, tempore Dominæ Reginæ nunc capiendo inde explec' ad valentiam, &c. Et in quæ, &c. Et inde tunc produxit sectam, &c. Et præd' David & Robertus Ham

Vouch. Willihel' Cary.

Ham ad tunc defend' jus suum quando, &c. & voc' inde ad warrant' præfat' Willihelm' Cary, per nomen Willihelmi Cary Armigeri, quæ tunc similiter præfens fuit hic in eadem curia in propria persona sua, & gratis maner', tenementa, & reddit' præd' cum pertinen' eis warrant', &c. Et super hoc præd' Rogerus petiit versus ipsum Willihelmum Cary ten' per warrant' suam, manerium, tenementa, & reddit' præd' cum pertinentiis in forma prædicta, &c. & unde tunc dixit quod ipsemet fuisset seifit' de manerio, tenementis, & reddit' præd' cum pertinentiis in dominico suo ut de feodo & jure, tempore pacis tempore Dominae Reginae nunc capiend' inde explec' ad valentiam, &c. Et in quæ, &c. Et inde tunc produxit sectam, &c. Et præd' Willihelmus Cary tenens per warrant' suam defend' jus suum quando, &c. Et ulterius voc' inde ad warrantiz' Davidem Howell, qui tunc similiter præfens fuit in eadem Curia in propria persona sua, & gratis manerium, tenementa, & reddit' præd' cum pertinentiis ei warrantiz', &c. Et super hoc præd' Rogerus petiit versus præfat' Davidem Howell tenen' per warrant' suam manerium, tenement', & reddit' præd' cum pertinentiis in forma præd', &c. Et unde tunc dixit quod ipsemet fuisset seifit' de manerio, tenementis, & reddit' præd' cum pertinen' in dominico suo ut de feodo & jure, tempore pacis tempore Dominae Reginae nunc capiend' inde explec' ad valentiam. Et in quæ, &c. Et inde tunc produxit sectam, &c. Et præd' David Howel tenens per warrant' suam defend' jus suum quando, &c. Et tunc dixit quod præd' Hugo non disseifivit præfat' Rogerum de manerio, tenementis, & reddit' præd' cum pertinentiis, prout idem Rogerus per breve & narrationem sua prædicta superius supponit, & de hoc posuit se super patriam, &c. Et præd' Rogerus ad tunc petiit licentiam inde interloquendi, & habuit, &c. Et postea idem Rogerus reven' hic in cur' illo eodem termino in propria persona sua, & prædict' David Howell licet tunc solemniter exact' non revenit, sed in contemptu Curia recessit & defaultam fecit, per quod ad tunc (a) concessum fuit in eadem Curia hic quod præd' Rogerus recuperaret seifinam suam versus præfat' Davidem Bulward, & Robertum Ham, de manerio, tenementis, & reddit' præd' cum pertinen', & quod iidem David Bulward & Robertus Ham haberent de terra præd' Willihelmi Cary ad valentiam, &c. Et quod idem Willihelmus Cary ulterius haberet de terra prædicti Davidis Howell ad valentiam, &c. Et quod idem David Howell esset inde in misericordia, &c. Super quo prædictus Rogerus, ad tunc in eadem curia petiit breve Dominae Reginae de habere-faciend' ei plenariam seifinam de manerio, tenementis, & reddit' prædictis cum pertinentiis vicecom' comitat' præd' dirigend', & ei concessum fuit, retornabile hic in Crastino sanctæ Trinitatis tunc proxim' sequen'

(a) Devant
22. a. 40. a.
1 Ro. Rep.
278, 279. 1 Ro.
Abr. 771, 774.
1 Syd. 70.
1 Bulstr. 125,
126, 179.
3 Bulstr. 92,
93, 94.
Yelv. 130.
Après 83. a.
119. b. Hob. 17,
19, 194, 327.
Larch. 76, 83,
188. Noy 77.
Poph. 203, 212.
N. Ben. 148.
pl. 226. Cro.
El. 145. Jenk.
Cent. 13.
Cr. 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.

Breve de disseifin.

sequen', ad quem diem hic venit præd' Rogerus in propria persona sua & tunc vic' præd' Com' Suff. videlicet, prædict' Phil' Tilney armig' tunc mandavit hic quod ipse virtute brevis prædicti sibi direct' sexto decimo die Maii, tunc ultime præterit' habere fecit præfat' Rogero plenariam seisinam de manerio, tenementis, & reddit' præd' cum pertinentiis prout per breve illud sibi præcept' fuit, &c. Qui quidem finis in barra præd' Agnetis superius specificat' in forma præd' levat', & recuperare præd' in forma præd' habit', levat' & habit' fuerunt ad usum præd' Johannis Gardiner & Agnetis pro termino vitarum suarum & eorum alterius diutius viven', & post decessum eorundem Johannis Gardiner & Agnetis ad usum prædict' Willihelmi Cary & hæred' de corpore suo legitime procreat': virtute quorum quidem finis & recuperat' in forma prædict' habit', ac vigore prædicti actus de usibus in possessionem transferend' præd' Johan' Gardiner & Agnes fuerunt seisit' de manerio prædict' cum pertinent', unde, &c. in dominico suo ut de libero tenemento pro termino vitarum eorundem Joh. & Agnetis & eorum alterius diutius viven', remaner' inde post mortem præd' Johannis & Agnetis præfat' Willihelmo Cary & hæredibus de corpore suo legitime procreat' spectan', ipsisque Johanne Gardiner & Agnete sic inde seisit' existen', remanere inde præfat' Willihelmo Cary in forma prædict' spectan', prædict' finis in cognitione præd' Willihelmi Bredon & Johannis Bredon superius secundum specific' in forma prædict' levavit in præd' Curia dictæ Dominæ Reginæ hic a prædict' die Paschæ in xv. dies anno tricesimo secundo suprascripto coram præfat' tunc Justic' dictæ Dominæ Reginæ de Banco præd' hic inter præfat' Johannem Higham & Thomam Turner quer', & præd' Willihelimum Cary & Martham, ac præfat' Johann' Gardiner & Agnetem defore' de manerio prædicto cum pertinentiis, unde, &c. prædictique Johannes Higham & Thom' per eundem finem concesserunt præfat' Marthæ prædict' annuitatem sive annualem reddit' quadragint' librarum excunt' de & in maner' prædict' cum pertinent', unde, &c. & ill' ei in eadem Curia hic in forma præd' reddider', habend' & percipiend' eandem annuitatem sive annual' reddit' quadragint' librarum eidem Marthæ ad præd' festa S. Michael' Archangeli, & Annunciationis beatæ Mariæ virginis per æquales portiones annuatim solvend' totâ vita ejusdem Marthæ si præd' Johann' Gardiner & Agnes seu eorum alter tam diu vixerit, prim' solutione inde incipiend' ad illud festum festorum præd', quod proxim' post decessum præd' Willihelmi Cary fore contingeret, cum præd' clausula distinctionis in eodem fine mentionat' prædictusq; Will' Cary postea scilicet præd' 24. die Martii, anno 33. suprascript' apud Stowmarket præd' obiit post cujus mortem virtute finis præd', præd' Marthæ fuit & adhuc est

Rejoinder al'
 replicatio &
 al bar al conu-
 fans.

seifit' de præd' annuitate five annuali reddit' quadragint' li-
 brar' in dominico suo ut de libero tenemento pro termin' vi-
 tæ suæ si præd' Johan' Gardiner & Agnes vel eor' alter tam
 diu vixerit, & hoc parati sunt verificare unde petunt judic' &
 retorn' averior' præd' una cum damnis, &c. sibi adjudicar', &c.
 Et præd' Agnes ut prius dicit quod præd' Johan' Gardiner fuit
 seifit' de maner' præd' cum pertin', unde, &c. in dominico suo
 ut de feodo, ipsoq; Johanne sic inde seifit' existen' præd' finis
 in cognitione præd' Will' Bredon & Johan' Bredon superius
 primo mentionat' levavit in præd' Curia Reg' hic in præd' Oc-
 tabis Sancti Michaelis, anno regni dict' dom' Reg' nunc vice-
 sim' nono supradict' coram præfat' tunc Justic' & aliis dict'
 dom' Reg' fidelibus tunc ibi præsentibus, inter præf. Edmun-
 dum Cary militem, & Robert' Cary arm' quer', ac præfat'
 Will' Cary arm', Johann' Gardiner & ipsam Agnetem modo
 quer' tunc uxorem præd' Johan' Gardiner, & præfat' Georg'
 Totty & Eliz. uxorem ejus deforc' de manerio præd', cum
 pertin', unde, &c. Ac de præd' tenementis & reddit' cum
 pertin' in præd' sine in cognitione præd' superius primo men-
 tionat', quodq; idem finis in forma præd' levat', habit' & le-
 vat' fuit ad ulum præd' Johan' Gardiner & ipsius Agnetis, pro
 termino vitarum suar' & eorum alterius diutius viven' & post
 decessum præd' Johannis & Agnetis, ad usum præd' Willi-
 helmi Cary & hæred' de corpore suo legitime procreat', &
 pro defectu talis exitus ad usum præd' Roberti Cary militis
 & hæred' de corpore suo legitime procreat', & pro defectu ta-
 lis exitus ad usum præd' Henr' Cary militis, Dom' de Hunf-
 don, & hæred' suor' imperpetuum, virtute cujus finis, ac vi-
 gore præd' flatuti de usibus in possession' transferend' tent'
 edit', præd' Johan' ac ead' Agnes fuer' seifit' de maner' præd'
 cum pertin', unde, &c. in dominico suo ut de libero tenemen-
 to pro termino vitar' ipsor' Johan' & Agnetis & eor' alterius
 diutius viven', remanere inde post mortem ipsor' Johan' & Ag-
 netis præf. Will' Cary & hæred' de corpore suo legitime pro-
 creat', remanere inde pro defectu talis exitus præf. Rob. Ca-
 ry & hæred' de corpore suo legitime procreat', remanere inde
 pro defectu talis exitus præf. Henr' Cary militi Dom' de
 Hunfdon, & hæred' suis imperpetuum, quodq; præd' Johan'
 Gardiner & Agnete sic de maner' præd' cum pertin', unde,
 &c. pro termin' vitarum ipsor' Johann' & Agnetis & eorum
 alterius diutius viven' in forma præd' seifit' existen', remanere
 inde post mortem ipsor' Johan' & Agnetis præfat' Will' Cary
 & hæredibus de corpore suo legitime procreat', remanere in-
 de pro defectu talis exitus præf. Rob. Cary & hæred' de cor-
 pore suo legitime procreat', remanere inde pro defectu talis exi-
 tus præf. Henr' Cary militi Dom' de Hunfdon & hæred' suis
 spectan' ante levation' præd' finis in cognitione præd' Willihel-
 mi Bredon & Johan' Bredon superius secundo mentionat',
 præ-

prædict' alius finis in præd' placito ipsius Agnetis superius
 specificat' levavit in præd' curia Regin' hic a prædict' die
 Paschæ in xv. dies, anno regni dictæ dom' Regin' nunc, 31.
 supradicto coram præfat' tunc Justic' & aliis dictæ Dom' Re-
 ginæ nunc fidelibus tunc ibi præsentibus inter præfat' David'
 Bulward & Robertum Ham quer', & præfat' Willihelm' Ca-
 ry deforc' de maner' præd' cum pertin', unde, &c. ac de
 præd' viginti mesuag', uno columbar', vigint' gardinis, tre-
 centis acris terræ, centum acris prati, ducentis acris pastura,
 triginta acris bosci, & vigint' & sex solidat' & quatuor denar'
 reddit', ac de reddit' quatuor caponum, & unius libræ ceræ
 cum pertin' in Stowmarket, Newton, Gipping, & Onehouse.
 Qui quidem finis in forma præd' levat' & habit', habit' & le-
 vat' fuit ud usum præd' David' & Rob. Ham, & hæred' suor'
 imperpetuum ad intention' in placit' præd' Agnetis superius
 mentionat': prædictisque Johanne Gardiner & Agnete de
 maner' præd' cum pertin', unde, &c. pro termino vitaru' ip-
 sorum Johan' Gardiner & Agnetis, & eor' alterius diutius
 viven' sic ut præfert' seisit' existen' remaner' inde præf. Da-
 vid' & Rob. Ham & hæred' suis spectan', præd' recuperatio in
 præd' placit' præd' Will' Bredon & Johan' Bredon superius
 mentionat' in forma præd' habit' fuit. Et præd' Agnes ulte-
 rius in facto dicit quod præd' Johan' Gardiner & Agnes a
 tempor' levationis præd' finis in cognitione prædictor' Will'
 Bredon & Joh. Bredon primo mentionat' semper contiaave-
 runt possession' & seisin' suam præd' de manerio præd' cum
 pertin', unde, &c. quousq; præd' finis in cognitione prædictor'
 Will' Bredon & Johan' Bredon secund' mentionat' in forma
 præd' levavit: absq; hoc quod præd' David & Robert' Ham,
 præd' die impetrationis præd' brevis dict' dom' Regin' de in-
 gressu super disseisinam in le Post, in præd' placito prædictor'
 Will' Bredon & Johan' Bredon superius mentionat' vel un-
 quam postea fuerunt tenentes liberi tenementi maner', tenor',
 & reddit' præd' cum pertin' in recuperatione præd' superius
 mentionat', prout præd' Will' Bredon & Johan' Bredon al-
 legaver', & hoc parat' est verificare, unde ut prius petit ju-
 dicium & damna sua occasione captionis & injustæ detentionis
 averior' prædictor' sibi adjudicari, &c. Et præd' Will' Bredon
 & Johan' Bredon dicunt quod præd' placitum præd' Agnetis
 ad cognition' ipsor' Will' & Johannis quoad præd' viginti li-
 bras resid' de præd' quadragint' libris ad præd' festum S. Mi-
 chaelis Archangel' ann' 35. supradict' solubil' superius rejun-
 gend' placitat' minus sufficiens in lege existit ad ipsam Agne-
 tem action' suam præd' de captione averior' præd' versus ip-
 sos Will' & Johan' habend' manutenend', aut ipsos Will' & Jo-
 han' a captione averior' præd' in præd' loco, in quo, &c. juste
 cognoscend' præclud' quodq; ipsi ad placit' illud modo & form'
 præd' placitat' necesse non habet nec per legem terr' tenentur

respondere, pro eo videlicet quod præd' inductio prædict' Agnetis ad traversam prædictam in placito suo præd' ad cognitionem ipsorum Willihelmi & Johannis superius rejungend' placitat' minus sufficiens in lege existit ad traversam illam inducendam, quodque eadem traversa de prædict' tenentia prædictor' Davidis & Roberti Ham die impetrationis præd' brevis de ingressu super disseisinam in le Post, de prædicto manerio, tenementis, & reddit' cum pertinentiis in eodem placito placitat' non est in lege materialis, & hoc parati sunt verificare; unde pro defectu sufficien' placiti præd' Agnetis in hac parte iidem Willihelm' & Johannes ut prius petunt iudicium & return' averiorum prædictor' una cum damnis, &c. sibi adjudicari, &c. Et prædicta Agnes ex quo ipsa sufficien' materiam in lege ad prædict' Willihelm' Bredon, & Johannem Bredon, a cognitione sua prædicta quoad prædictas viginti libras de prædictis quadragint' libris resid' ad prædict' festum Sancti Michaelis Archangel' solubil' manutenend', præcludend', ac ad ipsam Agnetem actionem suam prædict' inde versus præfat' Willihelmum Bredon & Johannem Bredon habend' manutenend' superius allegavit, quam ipsa parat' est verificare; quam quidem materiam prædicti Willihelmus & Johannes Bredon non dedic' nec ad eam aliquammodo respond' sed verificationem illam admitter' omnino recusant, ut prius petunt iudicium & damna sua occasione captionis & injustæ detentionis averiorum prædictorum sibi adjudicari, &c. Et quia Justic' hic se advisare volunt de & super præmissis priusquam iudicium inde reddant, dies data est partibus prædictis hic usque in Octabis Sancti Michaelis de audiend' inde iudicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem diem hic venit tam prædicta Agnes quam prædicti Willihelm' Bredon, & Johannes Bredon, per Attornat' suos præd', & quia Justiciar' hic se ulterius advisare volunt de & super præmissis priusquam iudicium inde reddant, dies ulterius dat' est partibus præd' hic usque in Octabis Sancti Hillarii de audiendo inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic venit tam præd' Agnes quam præd' Willihelmus Bredon & Johannes Bredon, per Attornat' suos præd', & super hoc visis præmissis & per Justic' hic plenius intellectis, videtur eisdem Justic' hic quod prædictum placitum prædict' Agnetis ad cognitionem prædictor' Willihelmi & Johannis quoad prædict' viginti libras, residuum de prædict' quadragint' libris ad præd' festum Sancti Michaelis Archangeli, anno tricesimo quinto supradict' solubil' superius rejungend' placitat' minus sufficiens in lege existit ad ipsam Agnetem actionem suam præd' de captione averiorum prædictorum versus ipsos Willihelm' & Johannem habend' manutenend', aut ipsos Willihelmum & Johannem a captione averiorum prædictor' in

in prædicto loco, in quo, &c. iuste cognoscend', præcludend' prout prædicti Willihelmus & Johannes superius allegaverunt; Ideo (a) concessum est quod præd' Agnes nihil capiat per breve suum prædictum, sed sit in misericordia pro falso clam' suo & prædicti Willihelmus & Johannes eant inde sine die, &c. & habeant retorn' averiorum prædictorum detinend' sibi irrepleg' imperpetuum, & qualiter, &c. vic' constare faciat hic a die Paschæ in xv. dies, &c. Concessum est etiam quod prædicti Willihelmus & Johannes damna sua occasione præmissor' versus præfat' Agnetem recuperare debeant. Sed quia nescitur quæ damna iidem Willihelmus & Johannes sustinuerunt occasione illa, Præcept' est vic' quod per sacramentum proborum & legalium hominum de com' prædicto diligenter inquireat quæ damna iidem Willihelmus & Johannes sustinuerunt tam occasione præmissor' quam pro misis & costagiis suis per ipsos circa sectam suam in hac parte apposit', & inquisitionem, quam, &c. vic' constare fac' hic ad præfat' terminum sub sigillo, &c. & sigillis, &c. Ad quem diem hic venerunt prædicti Willihelmus Bredon & Johannes Bredon per Attorn' suum prædictum, & vic' nihil inde fecit nec breve inde misit: Ideo fiat aliud breve inde in forma prædicta retornabile hic a die Sanctæ Trinitatis in xv. dies, &c. Ad quem diem hic vener' prædicti Willihelmus & Johannes per Attornatum suum prædictum, & vic' videlicet Thomas Edon armiger, modo mand' quod ante adventum brevis prædicti aver' prædicta elongat' fuere extra ballivam suam ad loca sibi incognita per quod averia prædicta præfat' Willihelmo & Johanni retorn' non potuit prout sibi præcept' fuit, mand' etiam idem vic' hic quandam inquisitionem coram eo apud Bury Sancti Edmundi in comitatu prædicto tricesimo die Maii proximo præterito per sacramentum xii. &c. virtute brevis prædicti capt', per quam compert' existit quod prædicti Willihelmus & Johannes sustinuerunt damna occasione præmiss'. ultra misas & costag' sua per ipsos circa sectam suam in hac parte apposit', ad quinque libras, & pro misis & costag' il' ad decem solidos: Ideo præcept' est vicecom' quod de aliis averiis præd' Agnetis ad valentiam averiorum prædictorum prius capt' in Withernam capiat, & ea præfat' Willihelmo & Johanni sine dilatione deliberet detinend' eis quousque averia præd' prius capt' retorn' fuerint, & qualiter, &c. vicecom' constare fac' hic in Octab' Sancti Michael', &c. Et etiam prædict' Agnetem attachiar' quod sit hic ad præfat' terminum ad respondend' tam Dom' Regin' de contempt' præd' quam præfat' Willihelmo & Johanni de damnis & injuriis eis in hac parte illat', &c. Et etiam concessum est quod prædicti Willihelmus & Johannes recuperent versus præfat' Ag-

(a) 1 Siderf. 70.
1 Bulitr. 125,
126, 179.
3 Bulitr. 92,
93, 94. Noy 77.
Latch. 76,
33, 188.
Poph. 203, 212.
N. Bendl. 148.
pl. 226.
Palm. 260.
Jenk. Cent. 13
Hob. 17, 19,
194, 337.
Yelv. 130.
Cro. El. 145.
Gro. J. c. 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.
Ro'. Abr. 771.
774. Ante
22. a. 34. a.
40. a.
Post 119. b.

netem damna sua prædicta ad quinque libras & decem solidos, per Inquisitionem prædictam in forma prædicta comperit, necnon viginti & unam libr', tres solidos, & quatuor denarios eisdem Willihelmo & Johanni ad requisitionem suam pro misis & costagiis suis prædictis per Curiam hic de incremen' adjudicat. Quæ quidem damna in toto se attingunt ad viginti sex libras tresdecem solidos & quatuor denarios, &c.

Mich. 39 & 40 Eliz.

Between GARDINER and BREDON.

BREDON'S Case.

(a) **B**etween Gardiner and Bredon, in *Replevin* in *Communi 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 comfians 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 Glanwill*, 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 divested 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. Di.* 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

(d) 2 And. 66
Hob. 277.

(b) Owen 130
Hob. 277. 1 Sid.

derf. 83. Co.
Lit. 302. b. 2

Sand. 386. Cr.
El. 56, 82, 83;

Cr. Jac. 406.
Raym. 142, 147.

1 Jones 324.
(c) 1 Sid. 83.

Mutr. 96. Owen
130. 1 Keb. 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 Bullfr. 273.
(e) Cr. Car. 406.

Co. Lit. 42. a.
45. a. Br. join-

der in Action 1.
Br. Leafe 2.

(f) Br. Discon-
tinuance de

posset. 38.
(g) 2 And. 66.

Hob. 277.
Cr. El. 253.

1 Leon. 262. 1
And 45. O Ben.

32. Co. Lit. 302.
b. 351. b. 1 Roll.

855. 1 Keb. 77.
N. Ben. 222.

1 And. 286, 287.
(h) Br. Entre

congeable 100.
Br. Forfeiture

de terre 63.
(i) Raym. 142,

147. Hob 277.
2 And. 66. 3

Keb. 581. Cr.
Car. 394

(k) 8 Co. 95. b. 3 Keb. 288. 2 Jones 69. 5 Co. 55. b. Mod. Rep. 109. 8 Co. 95. b. 3 Keb. 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's 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 & 42 *Eliz.* in *Com' Banco, Rot.* 356. 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's all by one and the same Fine. And note the Difference between this Case and the Case in (c) 41 *E.* 3. 21 *a.* & (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 devised 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 Act, 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 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 & 17 *Eliz. Di.* 339. *a.* (g) was agreed for good Law, for there both the Feoffors had but an Estate for Life, and therefore their Feoffment did devise 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) *English*, 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 passeth but his own Estate, but inasmuch as he made a Livery in Fee, it is a Forfeiture, altho' none of the Remainders are devised. 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 Rolls 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 Co. 68. a. 8 Co. 71. b. 72. a. Lit. sect. 291.
 (f) Supra.
 (g) ante 76. a.

- (b) Hob. 277, 278. Cr. El. 115, 124. 2 Leon. 108. Moor 565. 1 Leon. 119. 1 Roll. Rep. 21. 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. 252. a. 2 Roll 496.

- (l) Styl. 193.

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. Commentaries 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.

(a) Syd. 83.
con. 1 Cr. Car,
387, 405.

(b) 6 Co. 15. a.
Cro. Eliz. 56.
Co. Lit. 302. b.

*Placita coram Edmund' Anderson, &
sociis suis de Termino Sancti Hillar',
Anno 41. Eliz. Reg. Rot. 1049.*

BROWKER.

Leicestr' ff.

Roland' Corbet nuper de Stokefaston in com' prædict' arm' attach' fuit ad respondend' Arthuro Corbet gen' de placito, quare vi & armis clausum ipsius Arthuri apud Stokefaston fregit, & herbam suam ad valentiam decem librarum ibidem nuper crescen', cum quibusdam averiis depast' fuit, conculcavit, & consumpsit, & alia enormia ei intulit, ad grave damnum ipsius Arthuri, & contra pacem Domin' Regin' nunc, &c. Et unde idem Arthurus per Laurentium Lytler attorn' suum queritur, quod præd' Rolandus vicesim' die Junii, anno regni Domin' Regin' nunc quadragesim', vi & armis, &c. clausum ipsius Arthuri apud Stokefaston fregit, & herbam suam ad valentiam, &c. ibidem nuper crescen', cum quibusdam averiis, videlicet, equis, bobus, vaccis, porcis, & bidentibus depastus fuit, conculcavit, & consumpsit: Et alia enormia, &c. ad grave damnum, &c. & contra pacem, &c. unde dic' quod deterioratus est, & damnum habet ad valentiam viginti librar'. Et inde producit sectam, &c. Et prædictus Rolandus per Willihelimum Evering attorn' suum, venit & defendit vim & injuriam quando, &c. Et quoad venire vi & armis, dic' quod ipse in nullo est inde culpabilis. Et de hoc ponit se super patriam, & prædict' Arthurus similiter. Et quoad resid' transgr' prædict' fieri superius supposit', idem Rolandus dicit, quod prædict' Arthurus actionem suam prædictam inde versus eum habere non debet, quia dic' quod clausum præd', necnon locus, in quibus supponitur transgr' præd' fieri, sunt, & præd' tempore, quo supponitur transgr' illam fieri, fuerunt viginti acr' pastur', cum pertin' in Stokefaston prædicta, vocat' *Dew-close*; quodque ante prædictum tempus, quo, &c. quidam Christophorus Corbet armiger, pater prædictor' Rolandi, & Arthuri, fuit seiscitus de manerio de Stokefaston cum pertinen' in comitatu prædict', unde præd' viginti acræ pasturæ cum pertinentiis, in quibus, &c. sunt, &

præd'

præd' tempore, quo, &c. necnon a tempore cujus contrarii memoria hominum non existit fuerunt parcell. in dominico suo ut de feodo, & sic inde seisit' existit', idem Christophor' ante præd' tempus, quo, &c. scil. 12. die April', anno regni dict' Dom' Reg' nunc tricesimo apud Stokefaston præd', per quandam Indenturam inter ipsum Christophor', per nomen Christophori Corbet de Stokefaston in Com' Leic' armig' ex una parte, & quosdam Robert' Slade, Henric' Allin, Thomam Hunt, & Georg' Noone, per nomina Robert' Slade, Henric' Allin, Thom' Hunt, & Georgii Noone gen', ex altera parte factam, cujus alteram partem sigillo præd' Christophori signat', idem Rolandus hic in cur' profert, cujus dat' est eisdem die & anno testat' existit, quod præd' Christophor' Corbet, pro & in consideration' paterni amoris intimi cordis, Anglice *Zeale*, & magnæ affection', quæ ipse idem Christoph' Corbet gerebat præd' Rolando Corbet filio natu maximo præd' Christophori, & pro ejus præferement', & advanceamento, Anglice *Advancement*, ac pro promotione, præferemento, & stabilitione, Anglice *Establishment*, victus præd' Rolandi, & hæred' de corpore suo legitime provenien', & pro & in consideratione paterni amoris intimi cordis, Anglice *Zeal*, & affectionis, quæ ipse idem Christophor' gerebat prædicto Arthuro Corbet ejus altero filio, & pro ejus præferemento, & advanceamento victus, Anglice *Advancement of living*, Ac pro & in considerac' magni amoris, favoris, & affectionis, quæ ipse idem Christophor' gerebat Francisco Corbet, filio Humfridi Corbet nuper de Ratley in Comit' Warwick' gen' defuncti, ejus prope cognat', & consanguineo, & pro ejus præferemento, & advanceament', Anglice *Advancement*, ac etiam pro stabilitione, præservatione, & continuatione omnium & singulorum maner', terrarum, tenementorum, possessionum, & hæreditament' quorumcunque ejusdem Christophori Corbet, infra regnum Angliæ, tunc postea in eadem Indentura mentionat', vel content', in nomine & sanguine prædicti Christophori Corbet, & pro aliis bonis & justis causis & considerationibus ipsum prædict' Christophor' Corbet moven', per eandem Indenturam pro se, & hæredibus suis, convenisset, concessisset, concordasset, Anglice *condescend*, & agreasset ad & cum præfat' Roberto Slade, Henrico Allin, Thoma Hunt, & Georgio Noone, eorum executor' & administratoribus, & ad & cum eorum quolibet, modo & forma postea in eadem Indentura mentionat', videlicet, quod ipse idem Christophorus Corbet, hæredes & assignati sui, & omnes & quælibet alia persona & personæ, hæredes & assignati sui, qui tunc steterunt, sive fuerunt seisiti, vel extunc imposterum starent, vel essent seisiti, de & in prædicto manerio de Stokefaston cum pertinentiis in comitatu Leicestr', & de & in omnibus aliis mesuagiis, terris,

terris, tenementis, & hæreditament' quibuscunque prædicti Christophori Corbet in dicto comit' Leicestr', de quibus ipse idem Christophorus Corbet adtunc habuit aliquod stat' hæreditar' in feodo simplici in possessione, reversione, vel remanere, extunc imposterum starent, & essent seifit', de & in prædicto manerio de Stokefaston, & omnibus aliis præmissis cum suis pertinentiis quibuscunque, ad usum, opera, Anglice *Weshoofs*, intentiones, & proposit', & cum & sub illis provisionibus, limitationibus, & conditionibus, & in talibus modo, ordine & forma, qual' imposterum in Indentura prædicta nominat', limitat', expressat', mentionat', vel declarat' essent, & ad null' al' usum, usus, opera, intentiones vel proposit', videlicet, de & in prædicto manerio de Stokefaston cum pertinentiis, ac aliis præmissis quibuscunque cum suis pertinentiis, in prædicto com' Leicestr', ad usum & opus, Anglice *Weshoof*, prædicti Christophori Corbet, durante vita sua natural' sine impetitione alicujus vasti, & post decessum ejusdem Christophori Corbet, tunc de & in prædicto manerio de Stokefaston cum pertinen' in prædicto Com' Leicestr', & de & in omnibus aliis prædictis mesuagiis, terris, tenementis, reddit', reversionibus, servitiis, & hæreditament' præd' Christophori Corbet quibuscunque cum omnibus & singulis suis pertinen' in dicto com' Leicestr', de quo vel in quibus ipse idem Christophorus Corbet adtunc habuit aliquod statum hæreditarium in feodo simplici in possessione, reversione, vel remanere, ad usum prædicti Rolandi Corbet & hæred' masculorum de corpore suo legitime procreat', & pro defectu talium hæredum masculorum, ad usum prædicti Arthuri Corbet, & hæred' masculorum de corpore suo legitime procreat', & pro defectu talium hæredum masculorum, tunc ad usum præd' Francisci Corbet filii prædict' Humfrid' Corbet defuncti, & hæred' masculor' de corpore prædicti Francisci legitime procreat', & pro defectu talium hæred', tunc ad usum hæred' de corpore præd' Roland' Corbet legitime procreat', & pro defectu talium hæred', tunc ad usum hæred' de corpore præd' Arth. Corbet legitime procreat', & pro defectu talium hæred', tunc ad usum & opus, Anglice *Weshoof*, rector' hæred' præd' Christophori Corbet imperpetuu', prout per præd' Indenturam inter alia plenius apparet: Quorum prætextu necnon vigore cujusdam actus in Parlamento Domini Henr' nuper Regis Angliæ octavi apud Westm' in Comitatu Middlesex. quarto die Februar', anno regni sui vicesimo septimo de usibus in possessionem transferend', tent', edit', & provis. prædictus Christophor' Corbet fuit seifitus de præd' manerio de Stokefaston cum pertinentis, unde, &c. inter alia in dominico suo ut de libero tenement' pro termino vitæ suæ, remanere inde in forma prædicta spectan': Ipsoque Christophor' sic inde seifit' existen', idem Christophor' postea & ante prædict'

prædict' tempus, quo, &c. scilicet ultimo die Maii, anno regni dictæ Dom' Reginae nunc tricesimo supradicto apud Stokefaston prædictam obiit de manerio prædicto cum pertinentiis, unde, &c. in forma prædicta seisit' post cujus mortem & ante prædictum tempus, quo, &c. idem Rolandus Corbet in manerium prædictum cum pertinen', unde, &c. intravit, & fuit inde seisit' in dominico suo ut de feodo talliar' videlicet sibi & hæred' masculis de corpore suo legitime procreat', remanere inde in forma prædicta. Et prædictus Arthurus Corbet clam' manerium prædictum cum pertinen', unde, &c. colore cujusdam Chartæ dimissionis sibi inde fact' pro termino vitæ suæ per præfat' Christophor' patrem diu ante confectiōnem Indenturæ prædictæ inter prædictum Christophorum & præfat' Robertum Slade, Henric' Allin Thomam Hunt, & Georgium Noone, ubi nihil maner' prædicti cum pertinentiis, unde, &c. in possessionem ipsius Arthuri per Chartam illam unquam transfuit in prædict' viginti acras pasturæ cum pertinentiis, in quibus, &c. ante prædictum tempus, quo, &c. intravit & fuit inde possessionat', super cujus quidem Arthuri Corbet possessionem inde, idem Rolandus postea, scilicet præd' tempore, quo, &c. in eisdem viginti ac' pastur' cum pertinen' reintravit, & clausum præd' in præd' viginti acris pastur' cum pertinentiis fregit, & herbam prædictam ibidem tunc crescen' cum averiis præd' depast' fuit conculcavit & consumpsit, prout ei bene licuit: Et hoc paratus est verificare, unde petit iudicium si prædict' Arthurus actionem suam prædictam versus eum habere debeat, &c. Et prædict' Arthurus dicit quod ipse per aliqua præallegat' ab actione sua præd' habend' præcludi non debet, quia dic' quod bene & verum est, quod præd' Christophorus fuit seisit' de prædicto manerio de Stokefaston præd' cum pertinentiis, unde prædict' viginti acrar' pasturæ cum pertinentiis in quibus, &c. sunt & præd' tempore, quo, &c. necnon a toto tempore supradicto fuerunt parcell' in dominico suo ut de feodo; et sic inde seisit' existen' præd' duodecimo die April', anno regni dictæ Domine Reginae nunc tricesimo supradicto, per præd' Indenturam suam pro causis & considerationibus supradictis in eadem indentura specificat', pro se & hæredibus suis, convenisset, concessisset, concordasset, & agreeasset, ad & cum præfatis Roberto Slade, Henrico Allin, Thoma Hunt, & Georgio Noone, eorum executor' & administrator', & ad & cum eorum quolibet modo & forma in eadem Indentura mentionat', videlicet, quod idem Christophorus Corbet, hæredes & assignati sui, & omnes & quælibet alia persona & personæ, hæredes & assignati sui, qui tunc steterunt, sive fuerunt seisit', vel extunc impofterum starent vel essent seisit' de in prædicto manerio de Stokefaston cum pertinentiis, & de in omnibus prædictis

aliis

aliis mesuagiis, terris, tenementis, & hæreditament' quibus-
 cunq; præd' Christophori Corbet in dicto comit' Leicestr', de
 quibus idem Christophor' Corbet adtunc habuit aliquod stat'
 hæreditarium in feod' simplici in possessione, reversione vel
 remanere, extunc imposterum starent, & essent seisit', de &
 in præd' manerio de Stokefaston, & omnibus præd' aliis
 præmissis cum suis pertinentiis quibuscunq; ad prædict' u-
 sus, opera, Anglice *Behoofs*, intentiones, & proposit' &
 sub illis provision', limitationibus, & conditionibus, & in ta-
 libus modo & forma, qual' imposterum in eadem Indentura
 nominat', limitat', expressat', mentionat', vel declarat' essent,
 & ad null' al' usum, usus, opera intentiones vel proposit'. viz. de
 & in præd' manerio de Stokefaston cum pertinentiis, ac in
 præd' aliis præmissis quibuscunq; cum suis pertinentiis in
 prædicto com' Leicestr', ad usum & opus, Anglice *Behoof*,
 præd' Christophori Corbet, durante vita sua natural' sine
 impetitione alicujus vasti, & post deceffum ejusdem Chri-
 stoph' Corbet, tunc de & in præd' maner' de Stokefaston
 cum pertinentiis, & de & in omnibus aliis præd' mesuagiis,
 terris, tenementis, reddit', reversionibus, servitiis, & hæredi-
 tament' præd' Christoph' Corbet quibuscunq; cum omnibus
 & singulis suis pertinen' in dicto com' Leicestr', de quo vel
 in quibus ipse idem Christoph' Corbet adtunc habuit aliquod
 stat' hæreditarium in feodo simplici in possessione, reversione,
 vel remanere, ad usum prædicti Rolandi Corbet & hæred'
 masculorum de corpore suo legitime procreat', & pro defectu
 talium hæred' masculorum, ad usum præd' Arthuri Corbet,
 & hæred' masculorum de corpore suo legitime procreat',
 & pro defectu talium hæredum masculorum, tunc ad usum
 præd' Francisci Corbet filii prædict' Humfrid' Corbet de-
 funct', & hæred' masculorum de corpore præd' Francisci le-
 gitime procreat', & pro defectu talium hæred', tunc ad usum
 hæred' de corpore præd' Roland' Corbet legitim' procreat'
 & pro defectu talium hæred', tunc ad usum hæred' de cor-
 pore præd' Arth. Corbet legitime, procreat', & pro defectu
 talium hæred, tunc ad usum & opus, Anglice *Behoof*, rector'
 hæred' præd' Christoph' Corbet imperpetuum, prout per
 præd' Indendenturam inter alia plenius apparet : Quorum
 prætextu necnon vigore actus præd' de usibus in possessionem
 transferend' præd' Christophor' fuit seisit' de præd' maner' de
 Stokefaston cum pertin', unde, &c. inter alia in dominico suo ut
 de libero tenemento pro termino vitæ suæ, reman' inde in for-
 ma præd' spectan', ipsoq; Christoph' sic inde seisit' existen' i-
 dem Christoph' postea & ante præd' tempus, quo, &c. scilicet
 præd' ultimo die Maii, anno regni dictæ Dom' Reginae nunc
 tricesimo supradicto apud Stokefaston prædictam obiit de
 manerio prædicto cum pertinentiis, unde, &c. in forma
 præd' seisit', post cujus mortem & ante prædictum tempus,
 quo

quo, &c. idem Rolandus Corbet in manerium prædict' cum pertinentiis, unde, &c. intravit, & fuit inde feifit' in dominico suo ut de feodo talliat', videlicet sibi & hæred' masculis de corpore suo legitime procreat', reman' inde in forma præd', prout præd' Rolandus superius allegavit. Sed idem Arthurus ulterius dic' quod per indenturam prædict' provisum, convent', concessum & agrcat' fuit, per & inter partes prædict' ad eandem indenturam, quod si quando ac totiens quotiens præd' Rolandus Corbet, vel aliqui hæred' masculorum de corpore suo legitime procreat' vel procreand', vel præd' Arthurus Corbet, vel aliqui hæred' masculorum de corpore suo legitime procreat' vel procreand', vel prædict' Franciscus Corbet filius prædict' Humfrid' Corbet defunct', vel aliqui hæred' masculorum de corpore suo legitime procreat' vel procreand', plenar' & finaliter resolut' & determinat' forent, ac advisate, determinat', & effectualiter devisarent, concludarent, & agrearent, vel ingredirentur in aliquam communicationem, promissionem, sive conventionem quascunq; vel advisate & effectualiter attemptarent, procurar', ambirent, Anglice *goe about*, vel assentirent, ad vel pro aliquo act', vel act', re, vel rebus, pro, vel concern' aliquam barganiam, venditionem, discontinuationem, alienationem, conveyantiam, vel assurantiam, habend', vel fiend' de aliquibus præd' maner', terr', tenementis, & hæreditament' talliat', vel talliari inten'. vel mentionat', vel de aliquibus eorundem, vel de aliqua parte, vel parcell' eorundem, per quod, Anglice *wherewy*, aliquod statum præd' præmiss' recitat', talliat', vel talliari mentionat', vel alicujus parcell' inde in usu sive possessione mentionat', appunctuat' limitat', vel declarat' per eandem Indenturam, possunt, debuerunt, vel potuerunt aliquo modo vel aliquibus modis dissolvi, Anglice *be undone*, discontinuari, excludi, Anglice *debarred*, alterari sive determinari ac eandem barganiam, venditionem, excambium, alienationem, devisament', conclusionem, agreement', promissionem, communicationem, concessionem, obligationem, conveyantiam, vel assurantiam, vel aliquam aliam apertam vel effectual' materiam, rem, vel act' attemptaret, ambiret, causaret, procuraret, præciperet, Anglice *command*, vel volent', sive scient', Anglice *wittingly*, assentiret, præcizaret aut permetteret attemptari, præcizari in actu poni, Anglice *put in Act*, vel ambiri, Anglice *gone about*, exequut' fore, performari, prosequut' fore, vel in usu, sive in actu poni, Anglice *put in Use or Use*, per cognitionem alicujus notæ, vel notarum, de vel pro aliquo sine sive finibus levand', aut per cognitionem alicujus warrantæ, sive warrant' Attornat', vel Attornator' pro aliqua recuperatione, aut recuperationibus, aut aliquo vocari, sive vocar' habendum vel prosequendum, aut per intrationem

in aliquam warrant' five warrant' quascunque, aut per cognitionem alicujus warrant' proinde, aut per aliquam sectam five impetrationem alicujus brevis vel aliquorum brevium per eum, eam, vel eos, vel per ejus, illius, Anglice *her*, five eorum assens. five agreement' aut per assensum per comparantiam, vel aliter ad aliquod breve vel brevia, de præd' recitat' præmissis vel aliqua parte five parcell' inde, vel ad aliquam rem in eisdem vel aliquo eorundem, aut per cognitionem aliquorum cartæ vel cartarum, scripti vel scriptorum irrotuland' vel per aliqua alia actum five acta, rem vel res quæcunque in facto, five in lege unde vel per quæ aliqua bargania, vendit', discontinuat' alienat', excambium, vel forisfact' insequi possent, Anglice *might ensur*, vel per quæ stat', usus, vel possessio prædict' recitat' præmissorum, talliat' vel talliar' mentionat', vel alicujus parcell' inde non possit, debuit, vel potuit, venire, crescere, remanere & descendere, vel esse in talibus modo & forma, qual' eadem per eandem Indenturam præantea limitaretur, appunctuaretur, declaretur & mentionaretur, ac secundum verum intentum, intentionem, Anglice *Meaning*, prædictæ Indenturæ, quod tunc & immediate, ab & post quælibet talia tempus & tempora hujusmodi procurationis, attempt', causationis, præcept', Anglice *Commanding*, scient' assensus, practizationis, promissionis vel ambitus, Anglice *going about*, modo & forma ut supra dictum est, & ante talia barganiam, venditionem, discontinuationem, alienationem, excambium, five forisfacturam, habit' fact', perfect', execut', commiss. five acta præd' usus & usus, status & status, Anglice *the said Use and Uses, Estate and Estates*, limitat' & declarat' in Indentura prædicta ei, illi, vel eis qui sic attemptarent, causarent, procurarent, præciperent, vel voluntarie five scient' assentirent, practizarent, promitterent, vel ambirent, Anglice *go about*, aliqua talia actum vel acta, rem vel res prosecut' fore, execut' fore, performari, fier', vel in actu poni, Anglice *put in Act*, five ambiri, Anglice *gone about*, execut' fore, fieri, performari, vel in actu poni, Anglice *put in Act*, in form' superius declarat', unde, Anglice *whereupon*, vel per quæ aliqua bargania, venditio, discontinuatio, alienatio, conveiancia, assurance, excambium, vel forisfactura foret, habit', fact', five insequeretur, contra veram intentionem Indenturæ præd', de & in tali & tant' prædict' recitat' manerior', terrar', tenement' & hæredit' cum pertinen' talliat' vel talliari mentionat' five intens. per eandem indenturam, pro quibus, Anglice *for the which*, aliqua rerum, Anglice *any of the Things*, vel materiar' prædict' ad aliqua tempus vel tempora forent attempt', ambit', Anglice *gone about*, causat', procurat', præcept' assentat' practizat', vel promissa fore, execut', performari fieri, practizari, in actu poni, Anglice *put in Act*, vel ambiri, Anglice *gone*

gone about, execut' fore, performari, fieri, vel in actu poní, Angl' put in *Ure*, contra veram intentionem indenturæ præd' de tempore in tempus cessarent tant' ut in respectu & habit' regard', Anglice *having Regard*, ad tales personam five personas sic attemptant' procurant', causant', præcipient', volent', vel scient' assentient', practizant', Anglice *practising* permittent' aut ambient', Anglice *going about*, aliqua actum five acta rem vel res ut supradict' est, contra effectum & veram intentionem indenturæ prædict', in talibus modo gradu & conditione ac si tales persona five personæ, hæres vel hæredes sic attempt', procurant', causant', præcipient', volent', vel voluntarie assentient', practizant', permittent' vel ambient', Anglice *going about* aliqua talia actum & acta rem vel res ut supradict' est naturalit' mortuæ essent & non aliter, & tunc, & in omnibus talibus casibus immediat' usus, Anglice *the immediate Uses* cujuslibet tal' parcell' præmissorum essent immediate talibus personæ & personis, quibus usus inde venir' cresceret vel esset per verum intentum & intention' Anglice *Intent and Meaning* indenturæ prædict' si tales persona five personæ qui sic procuraret vel procurarent, attemptaret five attemptarent, causaret vel causarient, præciperet vel præciperent, practizaret vel practizarent, permitteret five permitterent, ambiret vel ambirent, assentiret vel assentirent, ad vel pro aliquo tali actu vel act', re vel rebus, esset five essent naturaliter mortua vel mortuæ de consimili statu & in consimilibus modo & forma & cum reman' in usu ulterius, Anglice *over* ac cum consimilibus limitationibus & conditionibus, sicuti idem usus venissent accrevissent vel essent, si eadem persona quæ sic procuraret, attemptaret, causaret, præciperet practizaret, permitteret, ambiret, Anglice *go about* vel assentiret ad vel pro aliquo tali act' vel act', re five rebus fiend', ad vel immediat' ante tempus hujusmodi procurationis, attemptationis, causationis, perceptionis, practizationis, permissionis, Ambitus Anglice *going about* vel assensus fuisset naturaliter mortua & non aliter, prout per eandem indenturam inter alia plenius apparet. Et idem Arthurus ulterius dic' quod prædict' Rolandus de manerio prædict' cum pertin', unde, &c. inter alia in forma prædict' seifit' existens, quid Rob' Greenhurst 23 die Jan. anno regni dict' Dom' Reg' nunc 36, per mandat' procuracion' & consensum præd' Rolandi profecut' fuit extra Cur' Cancellar' ipsius Dom' reg' ead' cur' Cancell' apud Westm' in com' Midd' tunc existens, quoddam brève ipsius Dom' Reg' de ingressu super disseisin' in le post versus præd' Rol' Corbet de maner' de Stokefaston cum pertin', unde, &c. inter alia per nomina maner' de Stokefaston cum pertin' ac

quinque mesuag', 500 acrar' terræ, 100 acrar' prati, & 200 acrarum pasturæ cum pertin' in Stokefaston, ad tunc vic' præd' com' Leic' direct', per quod quid' breve ead' Domina Regina nunc eidem tunc vic' Leic' præcepit quod idem tunc vic' præcipere præf' Roland' Corbet quod iuste & sine dilatione redderet eidem Rob. Greenhurst præd' man' de Stokefaston cum pertin' ac præd' 5 mesuag', 500 acr' terræ, 100 acr' prati, & 200 acr' pasturæ cum pertin' in Stokefaston, quæ tunc clam' esse jus & hæreditatem suam, & in quæ idem Roland' tunc non habuit ingressum nisi post disseisin' quam Hugo Hunt inde injuste & sine iudicio fecisset præf' Rob. Greenhurst infra 30 annos tunc ult' elapsos ut idem Robertus tunc dixit, & unde tunc quærebatur quod præd' Roland' ei desor' & nisi fecisset, & præd' Rob. Greenhurst tunc fecisset ipsum tunc vic' secur' de clam' suo prof. tunc sum' per bonos sum' prædict' Roland' Greenhurst quod esset cor' tunc Justic' ipsius Domine Regine hic, sc. apud Westm' prædict' in Oct' Purification' beatæ Mariæ tunc prox' sequen', ostens' quare non fecisset, & quod idem tunc vic' haberet ibidem tunc sum' & breve illud, &c. Ad quas quidem Octab' Purificationis beatæ Mariæ coram *Edmundo Anderson* milite & sociis suis tunc Justic' dictæ Dom' Regine de banco hic scilicet apud West' præd' ven' tam præd' Rob. Greenhurst per Thom' Lane ad tunc attorn' suum, quam prædict' Rolandus in propria persona sua, & Will' Turpen arm', tunc vic' com' præd' retorn' breve præd' sibi in forma præd' direct' in omnibus servit' & execut', viz. quod præd' Rob. Greenhurst invenisset eidem tunc vic' pleg' de prof. breve illud, viz. Joh. Doo & Rich. Roo. Et quod præd' Rolandus Corbet sum' fuit per Joh. Den & Rich. Fen: Super quo prædict' Rob. Greenhurst per attorn' suum præd' in eadem Cur' hic narrando versus præf' Roland' super brevi suo præd' petit versus eundem Roland' Corbet maner' & tenementa præd' cum pertin' in illo brevi de ingressu spec' ut jus & hæred' suam, & in quæ idem Roland' Corbet ad tunc non habuit ingressum nisi post disseisin' quam Hugo Hunt inde injuste & sine iudicio fecit præf' Rob. Greenhurst, infra 30. annos tunc ult' elapsos, &c. Et unde tunc dixit quod ipsemet fuit seisis' de maneriis & tenementis præd' cum pertin' in præd' brevi de ingressu specific' in dominico suo ut de feodo & jure tempore pacis, tempore Dom' Reg' nunc capiend' inde explef' ad valenc', &c. & in quæ, &c. & inde tunc produxit sect', &c. & præd' Roland' Corbet tunc defend' jus suum quand', &c. & tunc voc' inde ad warran' Johan' Howel qui tunc similiter præfens fuit hic in eadem Cur' in propria persona sua & gratis maner' & tenement' prædict' cum pertinentiis in prædict' brevi de ingressu spec' ei warran', &c. Et super hoc idem Robertus Greenhurst tunc petit versus ipsam

Johan' Howell tunc tenen' per warr' suam maner' & tene-
 menta præd' cum pertin' in præd' brevi de ingressu specific'
 in forma præd', &c. Et unde tunc dixit quod ipsemet fuit sei-
 sit' de maner' & tenement' præd' cum pertin' in præd' brevi
 de ingres' spec' in dominico suo ut de feodo, & jure tempore
 pac', tempore Dom' Reginae nunc capiend' inde explef. ad va-
 lenc', &c. Et in qua, &c. Et inde tunc produxit sect', &c. Et præd'
 Joh' tenens per warr' suam ad tunc defend' jus suum quando,
 &c. Et tunc dixit quod præd' Hugo Hunt non disseisivit præf'
 Ro. Greenhurft de maner' & tenem' præd' cum pertin' in præd'
 brevi de ingres. spec' prout idem Rob. per bre' & nar' sua præd'
 super' suppon', & de hoc tunc posuit se sup' patriam, &c. Et præd'
 Rob. ad tunc petiit licentiam inde interloquend', &c. Et habuit,
 &c. Et postea idem Rob. reven' hic in cur' de banco præd' illo
 eod' term' per attorn' suum præd', & præd' Joh. licet tunc so-
 lempniter exaßt' non reven', sed in contemptu cur' recessit &
 defalt' fecit, per quod tunc concess' fuit quod præd' Ro. Green-
 hurft recuperar' seisin' suam vers. præf. Roland' de man' & te-
 nement' illis cum pertin' in præd' brevi de ingressu spec', & quod
 idem Roland' Corbet haberet de terr' præd' Joh' ad valenc', &c.
 Et quod idem Joh. esset in misericordia, &c. Et super hoc præd'
 Rob. ad tunc petiit breve Dom' reg' vicecom' com' præd' di-
 rigend' de habere fac' ei plenar' seisin' de man' & tenement'
 præd' cum pertin' in præd' brevi de ingressu, & ei concedeba-
 tur, retornabile hic sc. apud West' a die Pasc' in xv. dies tunc
 prox' sequen', &c. Ad quem diem hic sc. apud West' præd' ve-
 nit præd' Rob' per attorn' suum præd', & tunc vic' præd' com'
 Leicestr', viz. præd' Will' Turpyn ad tunc hic mand, quod ipse
 virtute brevis illius sibi directi 25 die Martii tunc ultim' præter'
 habere fac' præf' Rob' plenar' seisin' de man' & tenement' præd'
 cum pertin' in præd' brevi de ingressu spec', prout per breve il-
 lud sibi præcept' fuit, prout per record' & processum inde in cur'
 ipsius Dom' reg' de banco hic residen' liquet manifeste: Vir-
 tute cujus quid' recuperat' præd' Rob' in man' præd' cum per-
 tin', unde, &c. intravit, & fuit inde seisit' in dominico suo ut
 de feodo, & ulter' idem Arthur' dic', quod recuperat' præd' in
 form' præd' habita fuit ad opus & usum præd' R. Corbet & hæ-
 red' suor', imperpet', quodq; idem Rol' præd' tempore recuperat'
 præd' habit', seu unquam postea, nullum habuit exitum de cor-
 pore suo legitime procreat', post quam quidem recuperat' sic ut
 præf' habit' ad exheridat' ipsius Art. de man' præd' cum per-
 tin' unde, &c. Et ante præd' tempus, quo, &c. sc. 30. die Junii,
 anno regni dict' Dom' Reginae nunc tricesimo sexto supradict'
 idem Arthur' in prædict' maner' de Stokefaston cum pertin',
 unde, &c. intravit, & fuit inde seisit' in dominico suo ut de feodo
 ralliato, viz. sibi & hæred' masculis de corpore suo legitime
 procreat' virtute provisionis præd' ac vigore record' actus de
 usibus in possess' transferend', remanere inde in forma præd'
 spectan', quousq; præd' Rol' præd' tempore, quo, &c. clausum

præd' in præd' 20 acr' pastur' cum pertin' in quib', &c. fregit,
 & herbam præd' ibid' tunc crescen', cum averiis præd' depast.
 fuit, conculc', & consumpsit, cont' pac' dist' Dom' reg' nunc,
 prout ipse super' vers. eum querit', & hoc parat' est verificare,
 unde ex quo præd' Roland' transgr præd' super' cogn', idem Ar-
 thur' petit' judic' & dampna sua occasione transgr. præd' sibi
 adjudic', &c. Et præl' Rol' dic' quod præd' placit' præd' Arth.
 modo & form' præd' super' replic' placit' min' sufficiens in le-
 ge existit ad præd' Arth. ad action' sua præd' vers. ipsum habend'
 manuten', quodq; ipse ad replicat' illam modo & forma
 præd' placitat', necesse non habet nec per legem terræ tenetur
 respond', & hoc parat' est verificare, unde pro defectu sufficien'
 replication' in hac parte, idem Rol' petit judic' & quod præd'
 Arth', ab action' sua præd' vers. eum habend' præcludatur, &c.
 Et præd' Arth. ex quo ipse sufficien' mater' in lege ad action'
 suam præd. vers. præf. Rol. habend. manuten. super. replican-
 do allegavit, quam ipse parat. est verificare, Quam quid. ma-
 teriam præd' Rol. non dedic. nec ad eam aliquid. respondet,
 sed verificat. illam admittere omnino recusat, ut prius pet. ju-
 dic. & dampna sua occasione transgr. præd. sibi adjudicari, &c.
 Et quia Justic. hic se advisare volunt, de & super premis. prius-
 quam judic. inde reddant, dies dat' est partib. præd. hic usq; in
 Octab. Purificat. beatæ Mariæ de audiend. inde judic. suo, eo
 quod Justic. hic inde nond', &c. Ad quem diem hic ven' tam
 præd. Arth. quam præd. Rol. per attorn. suos præd', & quia Jus-
 tic. hic se ulterius advisare volunt de & super premis. prius-
 quam judic. inde reddant, dies ulterius dat' est partib. præd. hic
 usq; a die Pasc. in xv dies de audiend. inde judicio suo, eo quod
 Justic. hic inde nond', &c. Ad quem diem hic ven' tam præd.
 Arth. quam præd' Rol. per attorn. suos præd' & quia Justic' hic
 se ulterius advisare volunt de & super præmis. priusquam Ju-
 dic. inde reddant, dies ulterius dat' est partib. præd. hic usq;
 in Crastino S. Trin. de audiend. inde judic. suo, eo quod Jus-
 tic. hic inde nond. &c. Ad quem diem hic ven. tam præd.
 Arth. quam præd' Rol. per attorn suos præd' & quia Justic.
 hic se ulterius advisare volunt, de & super præmis. priusquam
 judic. inde reddant, dies ulterius dat. est partib. præd. hic
 usq; in Octab. S. Mich. de audiend' inde judic. suo, eo quod
 Justic' hic inde nond', &c. Ad quem diem hic ven. tam præd.
 Arth. quam præd. Rol. per attorn. suos præd. Et quia Justic.
 hic se ulterius advisare volunt de & super præmis. priusquam
 judic. inde reddant, dies ulterius dat. est partib. præd. hic usq;
 in Octab. S. Hill. de audiend. inde judic. suo, eo quod Justic.
 hic inde nond', &c. Ad quem diem hic ven. tam præd. Arth.
 quam præd. Rol. per attorn. suos præd., & super hoc viso præd.
 placit. præd. Arth. super. replic. placit, & per Justic. hic plenius
 intellect. videt. eisd. Just. hic quod placit. ill' mod. & forma
 præd. placit. minus sufficiens in lege existit ad ipsum Arth. ad
 action.

action. suam præd. versus præf. Rol. habend. manutenend', I-
 deo (a) concess. est quod præd. Arthurus nihil capiat per breve
 suum præd', sed sit in misericord' pro falso clam. suo, & quod
 præd. Rol. eat inde sine die, &c. Postea scil. 30. die April.
 anno regni Dom. reg. nunc 42. Record' & process. loquelæ
 prædict. cum omnibus ea tangen. virtute cujusdam brevis e-
 jusdem Dom. reg. de errore corrigend. cujus dat. est apud
 West. 11. die April' ann' 42. supradicto *Ed. Anderson* militi
 direct', & præf. defend' tangen' coram dicta Domina Re-
 gina ubicunque, &c. mittuntur, &c.

ante 22. a. 40. a. 57. b.
 post 119. b.
 1 Ro. Rep.
 178, 279. 1 Ro.
 Abr. 771, 774.
 1 Bull. 125,
 126, 179. 3
 Bull. 92, 93,
 94. Yelv. 130.
 Hob. 17, 19,
 194. 337. Cr.
 Car. 442, 443.
 Cro. Jac. 6.
 386, 632. Cro. El. 145. Stat. 16 & 17 Car. 2. cap. 8. Stat. 22 & 23 Car. 2. cap. 4. Jenk.
 Cent. 13. Palm. 265. N. Ben. 184. pl. 226. Poph. 203, 212. Noy 77. Latch. 76, 83
 183. 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 Leon. 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
of

(b) Postea r 30. a.

of the same Indenture, 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. It was resolved by the Lord *Anderson*, *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

(a) Lit. sect.
720. Co. Lit.
377. b.
Cr. Jac. 697.
698. 1 Co.
130. a.
6 Co. 40. b.
Raym. 358.

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 is repugnant to the Beginning; for by the express Limitation 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.
½ Anderf. 12.
138. Br. jointenants 40.

And *Anderfons* Chief Justice put the Case in 8 (a) *Aff. pl.* 35. where a Man gave Lands to one *Mary* and *Jean* her Sister & *heredibus de corporibus eorum 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 *ius 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 clamatur*, 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

(b) Co. Lit.
378. b.
Plowd. 26. a.
34. b. 487. a.
8 Co. 76. a.
Dier. 209.
pl. 21.
Perk. sect. 729.
½ 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.
Goldst. 6.

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 Infensibility and Incertainty, and although it hath a Clause (d) of Warranty to them and their Heirs, that will not make the first Words which are uncertain and infensible 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 Pruff*, and the Heirs of her Body for ever, in which Will were these Provisoos 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. b.
B. N. C. 156.
Br. Estate 4,
18, 73.

19 H. 6. 73. b.
20 H. 6. 35. b.
22 H. 6. 15. b.
22 E. 4. 16. b.
Fitz. Feoffment
& Faits 8.

Powd. 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 Premises, 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 *Thomas Cary* died, and afterwards, viz. *Quintena 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 Provisoes 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 revest 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. 33. 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.
Poitea 86. b.
Cro. Jac. 697,
698. 6 Co. 40. b.
8 Co. 17. a.

(c) Cro. Jac. 592.
2 Roll. Rep.
216. Hurton 60.
2 Anderf.
11, 142.
Palm 49.
Winch. 56.
Cro. Car. 58.
Finch. 46. b.
Bridgm. 135
Dier 33. pl. 12.
2 Leon. 114.
Cro. El. 525,
833.
Vaugh. 271.

(d) 3 Co. 20. b.
8 Co. 95. a.
3 Bulltr. 106.

(e) Co. L. 9. b.
322. b.
Lit. sect. 586.
3 Keb. 96.
1 Bulltr.
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, that then 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 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* seised in Fee of the Manor of *Tbornton super Montem*, &c. by his Deed indented, covenanted with *William Bapthorp*, *Philip Constable*, *John Hussyey* 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 seised 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) anrea
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 indented, if he was Deed 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.

(a) Moor 592.

(b) Cro. Eliz.

374.

Poltea 138. b.

Co. Lit. 27. a.

6 Co. 41. b.

8 Co. 17. a.

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 transferenda*, 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.

(c) 3 Co. 27. a.

(d) Co. Lit.

224. a.

6 Co. 41. a.

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

(f) Plowd.

Com. to. 25. a.

Co. Lit. 214. a.

1 Jones 58.

And *Walmeley* 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

intended to continue the Estate-tail, and to cease it as 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) *quandocumq; 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 *Pre-cipue* 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 1st of *Aug.* until *Easter* in Severalty, this is good as to the Possession and Taking of the Profits, but it is no Sever-

Plow. Com. 249,
350.

(a) Postea
130. a. b.
Perk. sect. 327.
Plow. 156. a.
10 H. 7. 13. b.
12 E. 3. Con-
dir. 11. 22 E. 3.
19. a. 4. Leon. 33.
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. Qui.
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. 329.
Cro. El. 421.
F. N. B. 62. K.

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 saw 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 affests. So that an Act of Parliament, or an Act of the Law may do it in divers Cases to severall 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; meerly 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.

And *Glanvil* 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

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

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

(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 E. 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,
547.

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

or brought upon the Statute of *Merton, cap. 6. de Dominis 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 H. 7. *cap. 17.* 9 H. 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) Richill* 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 Entry 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.

(a) 2 And. 146.
Co. Lit. 23. a.
Hob. 31.

(b) 2 Anderf.
135, 138.
6 Co. 42. b.
1 Co. 130. a.
Lit. frēt 720.
Co. Lit. 377. b.
1 Rol. Rep. 485.
Postea 131. b.

*Termino Paschæ, Anno Regni do-
mina Elizabethæ nunc Regina Angliæ
vicefimo primo, Rotulo lviii.*

Suff. ff.

MEmorandum, quod alias scilicet Termino sancti Hil-
larii ultimo præterito, coram Domina Regina apud
Westmon. ven. Nicolaus Wolfe per Mich. Mosley attorn.
suum, & protulit hic in Cur. dictæ Dom. Reginae tunc ibi-
dem quandam billam suam versus Henr. Shelley arm', in
custod. Mar', &c. de placito transg', & sunt pleg. de prof.
scilicet Joh. Doo, & Ric. Roo, quæ quidem billa sequitur
in hæc verba. ff. Suffex ff. Nicolaus Wolfe querit. de Henr.
Shelley, arm', in custod. Mar. Marisc. Dom. Reginae coram
ipsa Regina existen' de eo quod ipse septimo die Novembris,
ann. regni Dom. Elizab. nunc Reginae Angliæ vicefimo vi
& armis, &c. clauf. & domum ipsius Nicolai vocat. ~~Wur-~~
~~sam-wicke~~ alias ~~Barham-weeke~~, apud Augmering in co-
mitatu prædicto fregit & intravit, & herbam suam ad valenc.
centum marcarum ibidem nuper crescen. cum quibusdam
averiis, viz. equis, bobus, vaccis, porcis, & bidentibus de-
pastus fuit, conculcavit, & consumpsit, & alia enormia ei
intulit contra pacem dictæ Dom. Reginae nunc, ad dampnum
ipsius Nicolai centum libr. & inde produc. fact', &c. Et
modo ad hunc diem scilicet diem Mercurii proxim. post
xviii. Paschæ isto eodem Term. usque quem diem prædict.
Henricus Shelley habuit licenc. ad billam prædictam inter-
loquend', & tunc ad respondend', &c. coram domina Re-
gina apud Westm. ven. tam prædictus Nicolaus Wolfe per
attornat. suum prædict. quam præd. Henr. Shelley per Ric'.
Best attorn. suum. Et idem Henricus defend. vim & in-
jur. quando, &c. Et dic. quod ipse non est inde culpabil'.
Et de hoc ponit se super patriam. Et prædict. Nicolaus
similiter, &c. Ideo ven. inde Jurat. coram Domina Regi-
na apud Westmonast' die veneris proxim. post crastinum
sanctæ Trinitatis. Et qui nec, &c. Ad recog. &c. Quia tam,
&c. Idem dies dat' est partibus prædict' ibidem, &c. Postea
conti-

continuat' inde process. inter partes præd' de placito præd' per Jurat' posit' inde inter eas in respect' coram Dom' Regina apud Westm' usque diem Lunæ tunc proxim' post tres septiman' Paschæ, extunc proxim' sequen' pro defectu Jur', &c. Ad quem diem coram Dom' Regina apud Westm' ven' partes præd' per Attornat' suos præd', & Jur' jurat' præd' exact' similiter vener', qui ad veritatem de premiss' dicend' elect', triat' & jurat', dicunt super sacramentum suum quod diu ante præd' tempus transgr' præd' superius fieri supposit', dominus Henricus nuper Rex Angliæ octavus pater Dominæ Reginæ nunc inter alia fuit seisit' de tenementis præd' cum pertinentiis in narr' præd' superius specificat' in dominico suo ut de feodo in jure Coronæ suæ Angliæ, & idem nuper Rex sic inde seisit' existen' diu ante præd' tempus, quo, &c. per literas suas patent' magno sigillo suo Angliæ sigillat' gerendat' apud Westm' quarto decimo die Maii, anno regni sui tricesimo secundo, dedisset & concessisset tenementa prædict' cum pertinentiis inter alia cuidam Annæ Cobham viduæ, habend' & tenend' tenementa prædict' cum pertinentiis inter alia eidem Annæ & assign' suis pro termino vitæ ipsius Annæ, redd' inde eidem nuper Regi, hæred' & successoribus suis sexaginta duos solid' & octo denar' sterlingorum, ad Cur' Augment' & reven' Coronæ suæ, ad festum Sanct' Michaelis Archangeli annuatim solvend'. Et post decessum præd' Annæ idem nuper Rex per præd' literas suas patent' voluisset & concessisset quod tenementa præd' cum pertinentiis inter alia remaner' quibusdam Edwardo Shelley Armigero, & Johannæ uxori ejus & hæred' de corporibus ipsorum Edwardi & Johannæ inter eos legitime procreat', tenend' de præfato nuper Rege, hæred' & successoribus suis in Capit' per servitium vicesimæ partis unius feod' militis, ac reddend' inde annuatim præfat' nuper Regi, hæred' & successoribus suis sexaginta duos solid' & octo denar' sterlingorum, ad Cur' suam augmentac' & reventionis Coronæ suæ præd', ad præd' festum Sancti Michaelis Archangeli singulis annis solvend' pro omnibus servitiis & demandis quibuscunq; proinde eidem nuper Regi, hæred' & successoribus suis quoquo modo redd', solvend', vel faciend'. Et si contingeret præfat' Edward' & Johannam uxorem ejus sine tal' exit' de corporibus eorum legitime inter eos procreat' obire, tunc idem nuper Rex voluisset & concessisset per præd' literas suas patent', quod tenementa præd' cum pertin' inter alia integre remaner' rectis hæred' præd' Edwardi Shelley imperpet' tenend' de præfat' nuper Rege hæred' & successoribus suis per reddit' & servic' præd' pro omnibus servitiis & demand', prout per literas patent' præd' inter alia plenius apparet, virtute quorum quidem doni & concessionis eadem Anna Cobham in tenementa præd' cum pertin' inter alia intravit, & fuit inde seisit' in domin' suo ut de

libero tenemento, remaner' inde in forma præd', & eadem Anna sic inde seisit' existen', postea & ante præd' tempus, quo, &c. scilt. die Ann' regni dicti nuper Regis H. 8.

apud Worminghurst in dicto com' Suffex obiit, post cujus quidem Annæ mort' præd' Edw. Shelley & Johanna uxor ejus in tenementa præd' cum pertin' inter alia intraver', & fuer' inde seisit' in dominico suo ut de feodo talliat', videlicet sibi & hæred' de corporib' ipsorum Edward' & Johan', reman' præf' Edward' & hæred' suis in forma præd', & sic inde seisit' existen', iidem Edw. & Johan' habuer' exitum de corporib' suis Henr. Shelley patrem præd' Henr. modo defend' primogenit' filium suum, & Rich. Shelley filium suum secundum genitum, qui quidem Rich. Shelley adhuc superstes & in plena vita existit: Quodq; iidem Edw. & Johan' sic inde seisit' existen' præd' Johan' postea & ante præd' tempus transgr' præd' fact' obiit, & præd' Edw. ipsam supervixit & se tenuit intus in tenementa præd' cum pertin', & fuit inde solus seisit' in dominico suo ut de feodo talliat' reman' inde sibi & hæred' suis imperpet' ut præfert', & iidem juratores etiam dicunt super sacrament' suum quod præd' Henr' pater præd' Henr. modo defend' habuit exit' de corpore suo legitime procreat' Mariam Shelley filiam suam, & quod idem Henr. Shelley obiit in vita præd' Edw. Shelley patris sui quidem Anna uxor præd' Henr. ad tunc manifeste pregn' & gravida cum præf. Henr. Shelley mod' defend' in narr' præd' nominat', prædictoq; Edw. Shelley sic inde seisit' existen', idem Ed. postea 25. Sept. annis regnor' Dom' Philip. & Dom' Mariæ nuper Regis & Reginae Angl' primo & secundo per Indentur' suam sigillo suo sigillat' gerendat' eisdem die & anno, ac primo deliberat' sextodie Oct. tunc proxim' sequen' fact' inter ipsum Edw. Shelley, per nomen Edw. Shelley de Worminghurst in com' Suffex armig' ex una parte, & quosdam Richard' Cowper & Willihelm' Martin ex altera parte: Cujus quid' Indentur' tenor' sequit' in hæc verba, ff.

This Indenture made the xxv. Day of September, in the 1st and 20 Years of the Reigns of our Sovereign Lord and Lady Philip and Mary, by the Grace of God King and Queen of England, France, Neopolis, Jerusalem and Ireland, Defenders of the Faith, Princes of Spain and Sicil, Archdukes of Austria, Dukes of Burgoyne, Flanders and Brabant, Carls of Harspurg, and Tyrols, Between Edward Shelley of Worminghurst in the County of Suffex, Esq; of the one Party, and Richard Cowper and William Martin of the other Party, witnesseth, that it is fully covenanted, granted, descended and agreed between the said Parties in Manner and Form following: That is to say, first the said Edward Shelley for and upon divers great and urgent Causes and Considerations 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 Entry sur disseisin en le Poſt, the Manors of Worminghurst, Barhamwicke, and Fyndon, with the Appurtenances in the said County of Suſsex, and all other his Lands, Tenements, Possessions, and Hereditaments, with the Appurtenances, set lying, and being in Fyndon, Worminghurst, Barhamwicke,atching, Caſtangmering, Weſtangmering, Wygenholt, Sterington, Waſhington, Abington, Grenested, Althhurst, Stening, Wilton, Chackham, 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, Bullets Frises, and Palmerſthcomb, 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 Edw. Shelley, of all and 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 Lotts, one Watermill, two Colberhouſes, 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 8 l. 10 s. of Rent, with the Appurtenances in Fyndon, Worminghurst, Barhamwicke,atching, Caſtangmering, Weſtangmering, Wigenholt, Sterington, Waſhington, Abington, Grenested, Althhurst, Stening, Wilton, Chackham, 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

declared, and to none other Use or Intent: That is to say, of the said Manor of Findon with the Appurtenances, except the Park of Findon, and except also all those Lands, Tenements, and Hereditaments in Findon aforesaid, called or known by the Name of the Park of Findon, the said Recovery thereof shall stand and be to the only Use, Profit, and Behoof of him the same Edward Shelley, and of the Heirs Males of his Body lawfully begotten, and for lack of such Issue to the Use, Profit, and Behoof of the Heirs Males of the Body of John Shelley Esquire, sometime of Michell 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 Behoof of the right Heirs of the said Edward Shelley for ever, and of the said Manors of Worminghurst and Warhamwick with the Appurtenances, and of the said Park of Findon, and of all the said Lands, Tenements, and Hereditaments, called or known by the Name of the Park of Findon, and of all and singular other the Premises 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 Behoof 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 Behoof of John Carrel and John Apsey of Thackham, Esquires, and Edward 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 Edward Shelley, and after the four and twenty Years ended, then to the only Use, Profit, and Behoof 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, thce to the Use, Profit, and Behoof of the Heirs Males of the Body of the said John Shelley, sometime of Michell Grove, Esquire 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 Behoof of the Right Heirs of the Edward Shelley for ever. And the said Edward

ward Shelley further covenanteth, promifeth, and granteth, to and with the ſaid Richard Cowper, and William Martin, that he the ſame Edward Shelley ſhall and will from Time to Time do, ſuffer, procure, make, and know ledge, 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 Survivoꝝ 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 Intentſ in theſe Indentures ſpecified, declared and contained; as alſo for the further Surety, Eſtabliſhment, Execution, Perſecting, and Continuance of all and every the ſaid Uſes, Eſtates, and other the Premiſſes, to be and go according to the Covenants, Promiſes, Articles, and Agreements in theſe preſent Indentures contained. In witneſs whereof the Parties abovesaid to theſe preſent Indentures interchangeably have ſet their Seals, the Day and Year firſt abovesaid.

Et Jur' præd' ulterius dicunt ſuper ſacramentum ſuum, quod tenementa præd' in Indentur' præd' except', non ſunt terr' & tenementa in declaratione præd' ſpecificat', & quod præd' Edwardus Shelley ſic inde leiſit' exiſtens, præd' Richardus Cowper & Willihelmus Martin, viceſimo die Septembris, anno regnorum dictorum nuper Regis & Reginae primo & ſecundo ſupradicto, extra cur' dictorum nuper Regis & Reginae Cancellariae ſuae apud Weſtmonaſter' in com' Midd' proſequut' fuer' quoddam breve dictorum nuper Regis & Reginae tunc vic' Suffex direct' verſus præfat' Edward' Shelley, per quod quidem breve eidem Vic' Suffex præcept' fuit quod præciperet præfat' Edward' Shelley, quod juſte & ſine dilatione redderet præfat' Richardo Cowper & Willihelm' Martin maneria de Worminghurſt, Barhamwicke, & Findon cum pertinentiis, necnon triginta meſuag', decem toſta, unum molendinum aquaticum, duo columbar', triginta gardina, quadringent' acr' terr', ſexaginta acr' prati, quadringent' acr' patur', centum & vigint' acr' boſc', quingent' acr' jamn' & bruer', & octo libr' & decem ſolid' reddit' cum pertinentiis in Findon, Worminghurſt, Barhamwicke, Patching, Eaſtangmering, Weſtangmering, Wighenholt, Storington, Aſhington, Greneftede, Aſherſt, Stening, Wiſton, Thackham, & Shipley, ac etiam advocacionem eccleſiae de Worminghurſt, quæ clamat eſſe juſ & hæreditar' ſua, & in quæ idem Edwardus non habuiſſet ingreſſum niſi poſt' diſſeiſinam quam Hugo Hunt inde injuſte &

sine iudicio fecit prefato Richardo & Willihelmo infra triginta annos tunc ultimos elapsos ut dixerunt, & unde querebantur quod præd' Edwardus eis deforc', &c. Et nisi fecisset, & præd' Richardus & Willihelmus fecissent ipsum Vic' secur' de clam' suo prof. tunc summ' præd' Edward' quod esset coram Justic' ipsorum nuper Regis & Regin' apud Westmonast. in Octabis Sancti Michaelis extunc prox' sequen', ostens. quare non fecisset, & habere ibidem sum', & breve præd'. Ad quas quidem Octabas Sancti Michaelis coram Justic' dictorum nuper Regis & Reginæ apud Westmonast. vener' præd' Richardus Cowper, & Willihelm. Martin, per Joh. Bythe Attorn' suum, & vic'. viz. Thomas Saunders Miles retorn' quod Richardus & Willihelmus inven' eidem Vic' pleg' de prof. scil. Joh. Doo, & Rich. Roo. Et quod præd' Edw. sum' fuisset per Johannem Den, & Rich. Fen. Et præd' Edw. Shelley juxta summ' suam præd' ei in forma præd' fact' per Thom. Ingler Attorn' suum ven. Et super hoc præd' Richardus Cowper & Willihelmus Martin per Attorn' suum, pet' versus præd' Edw. Shelley maneria de Worminghurst, Barhamwicke, & Findon, cum pertin' necnon triginta mesuag', decem tosta, unum molendinum aquaticum, duo columbar', triginta gardina, quadringent' acr' terr', sexaginta acr' prati, quadringenta acr' pascuar', centum & vigint' acr' bosc', quingent' acr' jampnorum & bruer', & octo libr' & decem solid' reddit' cum pertinentiis in Findon, Worminghurst, Barhamwicke, Patching, Eastangmering, Westangmering, Wighenholt, Sterington, Washington, Ashington, Grenestede, Asherst, Stening, Wiston, Thackham, & Shipley; ac etiam advocationem ecclesiæ de Worminghurst, ut jus & hæreditar' sua, & in quæ idem Edwardus non habuit ingressum nisi post disseisinam quam Hugo Hunt inde injuste & sine iudicio fecit præf. Richardo & Willihelmo, infra trigint' annos tunc ultim' elapsos, &c. Et unde dixer' quod ipsimet fuer' seisit' de Maneriis, tenement', & reddit' præd' cum pertinentiis in dominico suo ut de feodo, & jure, ac etiam de advocatione præd' ut de feodo & jure, tempore pacis tempore dictorum nuper Regis & Reginæ capiend' inde explef. ad valenc', &c. Et in quæ, &c. Et inde tunc produxer' sect', &c. Et præd' Edw. per præd' Thom. Ingler Attornat' suum ven' & defend' jus suum quando, &c. Et voc' inde ad warrant' Henr. Silleborne, qui præsens ibidem in Cur' in propria persona sua gratis maner', tenement', & reddit' præd' cum pertin', ac etiam advocat' præd' ei warrant', &c. Et super hoc præd' Rich. & Will. petierunt versus ipsum Henr. tenent' per warrant' suam maner', tenementa, & reddit' præd' cum pertin', ac etiam advoc' præd' in forma præd', &c. Et unde dixer' quod ipsimet fuer' seisit' de maner', tenement', & redd' præd' cum pertin' in dominico suo ut de feod', & jure ac etiam de advoc' præd', ut de feodo & jure, tempore pacis tempore dictor' nuper

nuper Regis & Reginae capiend' inde explec' ad valenc', &c. Et in qua, &c. Et inde produxer' secl', &c. Et praed' Henr. ten' per warrant' suam defend' jus suum quando, &c. Et dixit quod praed' Hugo non disseisivit praed' Rich. & Will. de maneriis, tenementis, & reddit' praed' cum pertin', ac etiam de advocacione praed', prout iidem Rich. & Will. per breve & narr' sua praed' superius supposuer'. Et de hoc pon' se super patriam, &c. Et praed' Rich. & Will. petier' licenc' inde interloquend', & habuerunt, &c. Et postea iidem Rich. & Will. reven' ibidem in Cur' eodem term' per Attornat' suum praed', & praed' Henr. licet solemniter exact' non reven' sed in contempt' Cur' recessit & defaultam fecit; ideo cons. fuit per Cur' in praed' Octabis Sancti Mich. quod praed' Rich. & Will. recuperarent seisinam suam versus praef. Edw. de maneriis, tenementis, & reddit' praed' cum pertin', Ac etiam de advocac' praed'. Et quod idem Edw. haberet de terr praed' Henr. ad valenc', &c. Et idem Henr. esset in misericordia, &c. Et super hoc immediate praed' Rich. Cowper & Will. Martin in praed' Cur' petier' breve Dom' Regis & Dom' Reg' tunc vic' praed' comit' Suffex dirigend' de habere faciend' eis plenar' seisin' de maner', tenement', & redd' praed' cum pertin'; ac etiam de advocac' praed' & breve praed' eis concedebat' geren' dat' nono die Octobris, annis regnor' praed' nuper Regis & Reg' Phil. & Mariae primo & secundo supradicto, retornabil' ibid' a die Sancti Michaelis in unum mensem extunc prox' sequen', Et praeterea iidem Jur' dicunt, quod tenementa praed' voc' **Barhamwick** in narr' praed' spec', & tenement' praed' voc' **Barhamwick**, in record' recuperacionis praed' mentionat' sunt una & eadem tenementa, & non alia neque diversa, & quod recuperatio praed' fuit ad opus, usus, proficuum, & intentiones in praed' Indentur' spec', quodque praed' Edw. Shelley obiit nono die Octob. annis regnor' dictor' nuper Regis & Reginae 1. & 2. inter horam 5. & 6. ante meridiem ejusdem diei. Et quod postea, scil. 19. die Octob. extunc proxim' sequen' tunc vic' dict' com' Suffex, viz. Thomas Saunders Miles, virtute brevis praed' habere fecit praefat. Rich. Cowper & Will. Martin plenar' seisin' de maner', tenementis, & redd' praed' cum pertin', ac etiam de advocacion' praed'. Et ulterius iide' Jur' dic' super sacrament' suum quod quid' Rich. Belchamber praed' tempore mortis praed' Edw. ac tempore recuperac' praed' & executionis ejusdem, ac diu ante impetrationem praed' brevis de intracione super disseisinam in le Post fuit tenens tenementorum praed' & possessionat' de tenementis praed' in narr' praed' spec' pro termino diversor' annorum ad tunc ventur' ratione dimiss' inde fact' praefat' Rich. Belchamber per praed' Edw. Shelley diu ante impetration' praed' brevis de intracione super disseisinam in le Post. Et quod postea, scil. quarto die Decembris annis regnorum dictorum

nuper Regis & Reg. primo & secundo, præd. Henr. Shelley modo defend. natus fuit ex præd. Anna matre sua nuper uxor. prædict. Henrici Shelley patris dicti Henrici modo defend', qui quidem Henric. pater fuit filius primogenit. prædicti Edw. Shelley, & quod præd. Maria Shelley adhuc superstes & in plena vita existit, quodq; prædict. Rich. Shelley, postea ac post expirationem prædicti termin. annorum dimiss. præfat. Richardo Belchamber per præfat. Edwardum Shelley ut prædicitur, scilicet nono die Octobris anno regn. dictæ Domine Regine nunc vicesimo, apud Augmering prædictam in tenementa præd. in narr. præd. spec. intravit, & adtunc & ibidem dimisit tenementa prædicta in narr. prædict. spec. præf. Nicolao Wolfe, habend. & tenend. eidem Nicolao & assign. suis a festo sancti Michaelis Archangeli tunc ultimo præterito usque finem & termin. viginti & unius annorum, extunc proximi. sequent. & plenar. complend': virtute cuius quidem dimissionis idem Nicolaus in tenementa prædict. cum pertinentiis intravit, & fuit inde possessionat. quousque prædictus Henricus Shelley modo defend', prædict. septimo die Novembris, anno regni dictæ Domine Regine nunc vicesimo suprascripto vi & armis, &c. claus. & domus prædict. fregit & intravit & herbam prædictam cum averiis suis depast. fuit, conculcavit, & consumpsit modo & forma prout prædict. Nicolaus superius versus eum narravit. Et pet. advisament. Cur. Domine Regine hic, & si super totam materiam præd. compert. videbitur Cur. Domine Regine hic quod intratio prædicti Henrici in tenement. prædict. cum pertinentiis super possessioni. prædicti Nicolai sit bona & legitima intratio in lege, tunc iidem Jur. dicunt super sacramentum suum quod prædict. Henric. non est culpabil. de transgr. prædicta modo & forma prout idem Nicolaus Wolfe modo quer. superius placitando allegavit. Et si super totam materiam prædict. videbitur Cur. Domine Regine hic, quod intratio prædict. Henrici Shelley modo defend. in tenementis prædictis cum pertinentiis super possession. prædict. Nicolai non sit bona & legitima intratio in lege tunc iidem Jur. dic. super sacramentum suum quod prædict. Henricus Shelley modo defend. est culpabil. de transgr. prædict. modo & forma prout prædict. Nicolaus Wolfe superius versus eum queritur. Et assid. dampna ipsius Nicolai occasione transgr. ill. ultra mis. & custag. sua, per ipsum circa sect. suam in hac parte apposit. ad viginti solid', & pro mis. & custag. ill. ad quadragint. solid', & quia Cur. Domine Regine hic de iudicio suo inde reddendo nondum advisat. dies inde dat. est partibus præd. coram Domina Regina apud Westmonaster. usque diem Veneris proxim. post Crastinum Sanctæ Trinitatis de iudicio suo inde audiendo, eo quod Cur. domine Regine hic inde nondum, &c. Ad

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quem diem coram Domina Regina apud Westmonast. vener. partes præd. per Attornatos suos præd. & quia cur. Domina Regina hic de iudicio inde reddendo nondum advisat. dies inde dat. est partibus præd. coram Domina Regina apud Westmonast. usque diem lunæ proxim. post Octabas Sancti Michaelis de iudicio suo inde audiendo, eo quod Cur. Domina Regina hic inde nondum, &c. ad quem diem coram Domina Regina apud Westmonast. ven. partes præd. per Attornatos suos præd', & quia Cur. Domina Regina hic de iudicio suo de & super præmiss. reddend. nondum advisat. dies inde dat. est partibus præd. coram Domina Regina apud Westmonast. usque diem lunæ proxim. post xv. Sanct. Hillar. de iudicio suo inde audiendo, &c. eo quod Cur. Domina Regina hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonast. ven. partes præd. per Attornatos suos prædictos, & quia Cur. Domina Regina hic de iudicio suo de & super præmiss. reddend. nondum advisat, dies inde dat. est partibus præd. coram Domina Regina apud Westmonaster. usque diem Merc. proxim. post xv. Paschæ de iudicio suo inde audiendo, &c. eo quod Cur. Domina Regina hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westm. ven. partes præd. per attornat. suos præd', & quia Cur' Dom' Regina hic de iudicio suo de & sup' præmissis reddend' nondum advisatur dies inde dat' est partibus præd' coram Domina Regina apud Westmonast. usque diem veneris proxim. post Craftin. Sanct. Trin', de iudicio suo inde audiendo, &c. eo quod Cur. Domina Regina hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonast. ven. partes per Attornatos suos prædictos super quo vis. & per Cur. Domina Regina hic plenius intellectis omnibus & singulis præmissis maturaque deliberatione inde habit', pro eo quod videtur eidem Cur. Domina Regina hic super tota materia præd. superius in forma præd. comperta quod præd. intratio præd. Henrici Shelley modo def. in tenementa præd. cum pertinentiis super possession. præd. Nicolai est bona & legitima intratio in lege: Ideo (a) con. est quod præd. Nicolaus Wolfe nihil capiat per billam suam prædictam, sed pro falso clam. suo sit in misericordia: Et præd. Henricus Shelley eat inde sine die, &c.

(a) 1 Siderf. 70,
1 Bulfr. 125,
126, 179.
3 Bulfr. 92,
93, 94.
Noy 77.
Latch. 33,
76, 188.
Pop. 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.
Polit 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.

Term. Trin. 23 Eliz.

SHELLEY'S Case.

Nicholas Wolfe brought an *Ejectione 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 *Barhamvile*, whereof the said Land wherein the said Ejectment was supposed, was and is Parcel, 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 ninth Day of *October*,

1 Anderf. 69.
Moor 136.
Jenk. Cent. 249.
Dier 373.
pl. 15.

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 entered 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 deem'd unlawful, then the Jury found that the Defendant was guilty, and assessed Damages: And if the Entry of the Defendant should be deem'd by the Court to be lawful, then they found for the Defendant that he was not guilty, &c.

(a) 1 Anderf. 69.
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 *præsentem* 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.

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

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 shall not be a Bar to the Issue, upon which Execution is had in the Life of the Tenant in Tail, it would be mischievous and a great Impeachment to common Assurances. 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.

As to the second Point, they conceived, that it was not any Question, but that the Recoverers 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,

(a) *Anderf.* 70.
Moor 137, 139.

(b) *Moor* 137.

1 Point.

(c) *Moor* 137,
340. *Poitea* 96. a.
106. a. *Co. Lit.*
361. b.

(d) *Poitea* 96. b.
Flow. 436. b.
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.

2 Point.
2 *Bulltr.* 43.
Raym. 349.
Hard. 209, 384.
3 *Keb.* 287.
(e) 7 *Co.* 39. a.
10 *Co.* 38. a.
(f) *Poitea* 96. b.
1 *Roll.* 270.
Moor 141.
Di. 375. pl. 26.
3 *Keb.* 699.

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

3 Point.

(b) *Poitea* 97. b.
106. b.

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 *Edw. Shelley* they said was manifest, for before the Recovery executed no (b) Use could 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 Ravi- (c) 3 Co. 39. b. shier, having Issue a Daughter, the Daughter enters by the 61. b. Fitz. Assize 27. Statute of (d) 6 R. 2. a Son is afterwards born, he shall never de- Plovd. 43. a. vest it, for it vested in the Daughter by Purchase; so 56. b. is the Case agreed in 9 H. 7. 25. a. If a Lease be made to Br. Done 28. one for Life, the Remainder to the Right Heirs of *J. S.* if Br. Entre cong. 94. *J. S.* dies having a Daughter, his Wife with Child with a 9 H. 7. 25. b. Son, the Daughter claims it by Purchase, and therefore the Postea 98. b. Son born after shall never de-vest it; but they relied princi- 137. b. pally upon the Case (e) in 9 H. 7. 25. a. that if a Condition (d) Br. Entre congeable 94. descends to the Daughter, and she enters for the Condition Plovd. 42. b. broken, the Son born afterwards shall never enter upon her, 45. b. and yet there she is in by Descent, and the Title of her 2 Inst. 434. Entry, that is to say, the Condition she hath as Heir: And Longuinto. E. 4. 58. a. yet because she was the First in whom it vested, the Son 1 H. 6. 1. a. born after shall not de-vest it, which is a stronger Case than Fitz. Corone 1. our Case at the Bar. Bro. Rape 4. Br. Appeal 48. Br. Parliament 89. Stamf. Coron. 82. 6 R. 2. cap. 6.

And further it was said by the Plaintiff's Council, 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 Lim- itation 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

(e) Moor. 140. Poitea 90. a. 8 Co. 76. a. Hob. 3. Cro. Car. 87.

(a) 1 Andersonf. 70.
Moor 138, 140.
Cro. Car. 24.
Postea 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 forasmuch 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 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 *Anderson* 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 later Reason, admitting the Recovery had been executed, notwithstanding the Heirs Males of the Body of *Edward Shelley*, should take by Purchase, and so *quacunq; via data*, they concluded, that the Use first settled in *Richard Shelley* as a meer Purchaser. And (c) as 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

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

(c) Postea
106. b.

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 Will 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 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 him ; 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, 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

(a) Co. Lit. 361.
b. Antea 94. b.
1 And. 70. Moor
137, 139. Po-
ftea 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. Bendl. 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. Swinh.
327. 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 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 Judgment 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 sofarasmuch as the Estate-tail doth not descend to the Issue; and sofarasmuch 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) *Octavian Lombard'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' Affets 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 Proclamations 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. 209, 384.
Plow. 436. b.
466. a. Plow.
Manxel's Case
14. b. 15. a.
Styl. 320.
Antea 94. a.
Co. Lit 343. b.
Br. Charge 4.
Br. Tail 6.
1 Rol. 812. 10
Co. 37 b. Dr.
& Stud. 49. a.
2 Brownl. 67,
2 Bullstr. 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. 501 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 Execution 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) Execution 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 cognissance 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 (h) *fo.* 131. b. But if a Fine *sur cognissance de droit tantum* be levied of a Reversion upon an Estate for Life or Years, or of a Seignior, 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 Lessee, because he cannot enter, and the Law will ad-

Co. Lit. 262

(a) Br. Fauxfier de Recovery 19. Fitz. Affize 271.

(b) Br. Fauxfier de Recovery 10. Br. Remittery 9.

(c) Co. Lit. 361. b. Dyer 35. pl. 28. Dyer 376. pl. 26. 10 Co. 38. a. 12 E. 4. 15. a.

(d) Antea 24. a. b. Postea 106. b.

(e) Palm. 256. Moor 139.

(f) Moor 139.

Co. Lit. 266; b;

(g) Br. Attornm. 42. Fitz. Attornm. 2.

(h) Lit. sect. 579. 580. Co. Lit. 319. b. 320. a. Vaugh. 39.

(i) Postea 174. a. Br. Condition on 167. 8 H. 7. 8. a. 4 Co. 53. a. Co. Lit. 218. a. b. 1 Roll. 939. 11 H. 7. 24 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 Execution 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 *Edward 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 general Rule of Law is, that a Man shall not be 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. Postea 106. b.

(f) 6 Co. 68. a. Co. Lit. 29. a. F N. B. 149. a. Fitz. Discent 3. Fitz. Bar. 293. Perk. sect. 458, 469. Dr. & Stud. 84. a. Br. Tenant per le Courtesy 5.

66. a. b. & 3 H. 7. 5. a. for it is impossible for him by the Act of God 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 all 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 Plight 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) impotenti 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 *Edw. 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 *Laches* was in any Party, but it became impossible by the Act of God that Execution could 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 cognitione de droit tantum* to *E. S.* in Fee, and after, and before Execution *E.* had died, and *R.* had enter'd before *H.* was born; now altho' *R.* be the first who entreth, 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.

(d) Allen 27. (e) 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) Sratham Age 2.

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 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 Seignory 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 Seignory, was in the Father, therefore the Son shall enter upon the Uncle. And *Chapman's Case* in *Plowden's* new Reports, *fo. 284. a.* was cited, for there it appears, that a (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 Affets 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.

Moreover admitting that *E. S.* had (f) exchanged 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

(a) Co. Lit. 75.
b. 2 Roll. 38.

(b) 9 H. 7. 25.
a. Antea 95. a.
Moor 140. A-
Post. 99. a. C. o.
Car. 37. 8 C. o.
76. a. Hob. 3.
(c) Antea 95.
a. 3 Co. 39. b.
61. b. Fitz. Ac-
tize 27. Plowd.
43. a. 56. b. Br.
Done 28. Br.
Entre congea-
ble. 94. Postea
137. b.
(d) 3 Bullf. 257.

(e) 3 Bullf.
257.

(f) Postea 105.
a. Co. Lit. 50.
b. 51. b. Perke-
sect. 285. 1 Roll.
814.

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.* covenanted with another that when *J. S.* shall enfeof 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.* enfeofeth the Covenantor, in this Case it was holden in *(a)* Wood's Case 3 Eliz. in the Court of Wards, that the Heir shall be adjudg'd in in Course and Nature of a Descent; and yet it was neither a Right, Title, Use, nor Action that descended, but only a Possibility of an Use, which could neither be released nor discharged; yet it might, if the Condition had been perform'd, have vested in the Ancestor, and then the Heir had claimed by Descent. And therefore in that Case the Heir was not in by Purchase, but in by Course of Descent. And admitting that in all the 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, that the Son of the elder Son shall devert the Land from the Uncle, for it might have vested in the Ancestor; and as to 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, that it might be allowed for Law if the true Sense thereof 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 Condition, in these Cases peradventure the Son shall not devert it, for if the Daughter had not perform'd the Condition 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 entering for such Condition broke shall be in *(e)* Ward, and have his Age, and no such special Reason as in the Case next before.

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, forasmuch 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

(a) 2 Roll. 794
2 Roll. Rep. 13
Hob. 136. Cro.
Jac. 409, 512.
1 Vent. 373.
Winch 55.

(b) Postea 100
a. Co. Lit. 11
b.

(c) Antea 95.
a. 98. b.

Cro. Car. 87;
Kiron's Case,
Hob. 3.

(d) 5 Co. 24.
b. 100. a. 7 Cg.
38. b. Co. Lit.
231. a. 2 Inf.
489. Cart. 142.
3 Keb. 592.
(e) F. N. B.
143. q. Co. Lit.
76. b.

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 Defendants 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 Ass. 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 Bulstr. 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.
Darrein Presentment 4.
7 E. 3. Darrein 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 Bulstr. 257. 33 Ass. pl. 7. Br. Treasf. 15.
Br. Corone 116.
Stamf. Coron. 10. b.
19. H. 6. 47. b.
Hale's pl. Cor. 23.
Dalt. Justf. 337.
3 Inst. 20.
Plowd. 260. 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 Defendants Counsel conceived that the Son of the elder Son, although the Use did first attach in the Uncle, should have the Subpœna. For if the Intent of *Edward 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 *Bracton* saith, fo. 18 *Nilil tam* (c) *conveniens est naturali equitati 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 *Statbam 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 arose

(a) Antea 99. a.
Co. Lit. 11. b.

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

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

(d) Dier 325.
pl. 37.

Recoveries which are the common Assurances of the Land.

(a) Antea 94. a.
b. 97. a. Moor
141. 1 Roll.
270. Jenk. Cent.
249. Kelw.
108. b. 2 Inst.
323.
(b) Moor 140,
141. Antea 94.
b. 2 Co. 93. a.
3 Co. 62. a.
8 Co. 76. a.
Postea 155. b.
156. a. 2 Leon.
27. 1 Jones 59.
1 Anderf. 70.
Jenk. Cent. 249.
(c) 7 Co. 38. a.

As to the (a) second Point, they were all agreed, that the Reversion was not in the Recoverors immediately by the Judgment: But he said, that all the Justices of *England* and Barons of the Exchequer, except one of the Justices of the Common Pleas, were agreed as to the third Point. That the Uncle was in in Course and Nature of a (b) Descent, although he should not have his Age, nor be in Ward, &c. First, because the original Act, viz. the Recovery, out of which all the Uses and Estates had their Essence, was had in the Life of *Edw. Shelley*, to which the Execution after had a (c) Retrospect: Secondly, because the Use and Possession might have vested in *Edward Shelley*, if Execution had been sued in his Life: Thirdly, the Recoverors by their Entry, nor the Sheriff by doing of Execution, could not make whom they pleased inherit. Fourthly, because the Uncle claimed the Use by Force of the Recovery, and of the Indentures by Words of Limitation, 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* Knight, Lord Chancellor of *England*, Sir *Christopher Wray* Knight, Lord Chief Justice of *England*, Sir *James Dier* Knight, Lord Chief Justice of the Court of Common Pleas, Sir *Roger Manwood* Knight, Lord Chief Baron of the Exchequer, Sir *Thomas Garway* Knight, 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.
Dall. 17. pl. 3.

supponit. transgression' præd' fieri, continet & præd' tempore
 quo, &c. continebat in se viginti acras pasturæ cum pertin'
 in Willefdon præd' : Et quoad aliquam transgr. in 5. acris de
 præd' 20. acris parcell', idem Tho. dicit quod diu ante præd'
 tempus, quo supponit. transgr' præd' fieri, quidam Franciscus
 Bunny fuit seifit. de præd' 20. acris pasturæ cum pertin' in
 quibus, &c. in dominico suo ut de feodo, & sic inde seifit. exis-
 tent' ante præd' tempus, quo, &c. scz. primo die Maii, anno
 regni dict' dom' Reg' nunc 20. per quandam cartam suam feof-
 famenti Cur' hic prolat. geren' dat. eidem die & anno feof-
 favit quendam Milonem Hitchcok de præd' 20. acris pa-
 sturæ cum pertin' in quibus, &c. Habendum eidem Miloni
 & hæred' suis imperpetuum, ad usum ipsius Francisci pro
 termino vitæ ipsius Francisci, & post ejusd' Francisci mortem
 ad usum cujusdam David. Bunny & hæred' de corpore suo
 legitime procreat' ; & pro defectu talis exit. ad usum Nich.
 Bunny & hæred' de corpore suo legitime procreat', & pro de-
 fectu talis exit. ad usum Walteri Bunny & hæred' de corpore
 suo legitime procreat' ; & pro defectu talis exit. ad usum
 Stephani Bunny & hæred' suorum imperpetuum: virtute cu-
 jus feoffamenti ac vigore cujusd' actus parliamenti Domini
 Henr. nuper regis Angliæ 8. apud West. in com' Midd' 4. die
 Februar', anno regni sui 27. de usibus in possession' transfe-
 rend' tent', edit', præd' Franciscus fuit de præd' 20. acris pa-
 sturæ cum pertin' seifit' in dominico suo ut de libero tenemen-
 to, remanere inde post mort' præd. Francisci præf. David.
 Bunny & hæred' de corpore suo legitime procreat', remanere
 inde præf. Nicolao & hæred. de corpore suo legitime pro-
 creat', remanere inde præf. Walt. & hæred. de corpore suo legi-
 titim. procreat', remanere inde præf. Steph. & hæred. suis
 imperpetuum spectan' : Prædictusque Franc. sic de præd. 20.
 acris pasturæ cum pertin. in forma præd. seifit. existen', re-
 manere inde præf. David' in forma prædict' spectan', idem
 Franc. postea & ante præd' tempus, quo, &c. scz. primo die
 Maii, anno regni Dom' reg. nunc 21. feoffavit quendam Ri-
 chardum Tamson de præd' 20. acris pasturæ cum pertin' ;
 Habend' & tenend' eid' Rich. hæred' & assignatis suis imper-
 petuum, prætextu cujus idem Rich. fuit de eidem 20. acr'
 pasturæ cum pertin' seifit' in dominico suo ut de feodo, præ-
 textu cujus, ac pro eo quod idem feoffament. fact. fuit ad
 exhereditationem prædict' David', idem David' in prædict'
 20. acras pasturæ cum pertin' intravit, & fuit inde seifit'
 in dominico suo ut de feodo, talliato, remanere inde præf.
 Nich. & hæred' de corpore suo legitime procreat', remanere
 inde præf. Waltero & hæred' de corpore suo legitime procreat',
 remanere inde præf. Stephano & hæred' suis imperpetuum :
 Prædictusq; David' sic inde seifit. existen', remanere inde in
 forma

forma præd' spectan', idem David' postea & ante præd' tempus, quo, &c. scz. primo die Maii, anno regni Dominae Reginae nunc 22. apud Willefdon præd' dimisit præd' 5 acras pasturæ de præd' 20 acris pasturæ cum pertinent' in quibus, &c. parcell' cuidam Adamo Blunt: Habend' & tenend' eidem Adamo a festo S. Mich. Archangeli tunc ultimo præterito usque finem & terminum 21 annorum tunc proxime sequent' & plenar' complend', virtute cujus idem Adam' Blunt in eisdem 5 acras pasturæ cum pertinentiis intravit, & fuit inde possessio; idemque Adamus sic inde possessio existens, postea & ante præd' tempus, quo, &c. feoffavit præd' Thom' Albany de eisdem 5 acris pasturæ cum pertinentiis, Habend' eidem Thom', hæred' & assignatis suis, ad proprium opus & usum ipsius Thom' & hæred' suorum imperpetuum, prætextu cujus idem Thomas fuit de eisdem 5 acris pasturæ cum pertinentiis seifitus in dominico suo ut de feodo, & præd' Johannes Grendon clam' eisdem 5 acras pasturæ cum pertinentiis, colore cujusdam cartæ dimissionis sibi inde factæ pro term' vitæ suæ per præfat. Milonem Hitchcock, ubi nihil earund' 5 acrarum pasturæ in possessionem ipsius Joh. Grendon per cartam illam unquam transivit, in præd' 5 acras pasturæ ill' cum pertinentiis ante præd' tempus, quo, &c. intravit, super cujus quidem Johannis possessionem inde idem T. Albany postea, scilicet præd' tempore quo, &c. in eisdem 5 acras cum pertinentiis reintravit, & herbam præd' ibidem tunc crescen' cum averiis præd' depast. fuit, conculcavit & consumpsit, prout ei bene licuit, & hoc paratus est verificare, unde petit iudicium si præd' Joh. Grendon actionem suam præd' inde versus eum habere seu manutenere debeat, &c. Et quoad aliquam transgr' in præd' 15 acris pasturæ de prædict' 20 acris pasturæ resid', idem Tho. Albany dicit quod præd' Joh. Grendon actionem suam præd' inde versus eum habere seu manutenere non debet, quia dic. quod præd' David' diu ante transgr' præd' superius fieri supposit' de 15 acris pasturæ illis in dominico suo ut de feodo talliato sic ut præmittitur seifitus existens ante præd' tempus, quo, &c. scz. 2. die Maii, anno regni dictæ Dominae Reginae nunc 22 supradict' apud West. præd' per quandam Indent. inter eundem David' & præfatam Thomam Albany factam, ger' datum eidem die & anno, ac in Cur' Cancell' ipsius Dominae Reginae apud Westmonaster. præd' tunc existens infra sex menses tunc proxime sequent' debet modo de recordo irrotulat' secundum formam statuti in huiusmodi casu nuper edit' & provis. cujus alteram partem sigillo præd' David' sign' idem T. Albany hic in cur' profert, barganizavit & vendidit eidem T. Albany præd' 15 acras pasturæ de præd' 20 acris resid', habend' & tenend' eidem Th.

Albany & hæred' suis imperpet', quorum quidem barganis, venditionis & irrotulamenti pretextu, præd' Thomas Albany fuit de eisdem 15 acras pasturæ seifitus in dominico suo ut de feodo, & prædict' Johannes Grendon clam' eisdem 15 acras pasturæ cum pertinen', colore cujusdam cartæ dimissionis sibi inde factæ pro term' vitæ suæ per præfat' Milonem Hitchcock, ubi nihil earum 15 acrarum pasturæ in possessionem ipsius Johannis per cartam illam unquam transfivit, in 15 acras pasturæ ill' cum pertinen', ante præd' tempus, quo, &c. intravit, super cujus quidem Johannis possessionem inde idem Tomas Albany postea, scilicet prædict' tempore, quo, &c. in eisdem 15 acras cum pertinentiis reintravit, & herbam præd' ibidem tunc crescent' cum averiis præd' depast. fuit, conculcavit, & consumpsit, prout ei bene licuit, & hoc paratus est verificare, unde petit judicium si prædict' Joh. Grendon actionem suam præd' inde versus eum habere seu manutenere debeat, &c. Et præd' Joh. Grendon tam quoad præd' primum placitum, quam quoad præd' secundum placitum prædict' Thomæ Albany superius in barr' placit', dicit quod ipse per aliqua in eisdem placitis præallegat' ab actione sua præd' versus ipsum Johannem habend' præcludi non debet, quia dicit quod in præd' carta feoffamenti præd' Francisci Bunny in barr' præd' superius spec, provisum fuit, quod si contingeret quendam Petrum Penraddocke obire sine exit' masculino de corpore suo legitime procreat', non relinquens uxorem suam filio pregnantem in vita præd' Francisci, quod extunc & deinceps bene liceret præfato Francisco ad omnia tempora ad suam voluntatem durante vita sua naturali per scriptum suum indentat' per ipsum Franciscum ea intentione faciend', sigilland', & subscribend', in præsentia 4 credibilium & honestorum testium ad minus, alterare, mutare, determinare, diminuere, sive amplificare aliquos usum vel usus, limitationes, intentiones, vel proposit', mentionat', limitat', vel apunctuat', in & per præd' cartam feoffamenti per præd' Francisc. Bunny ut præmittitur fact', vel usum & usus de qualibet sive aliqua parte vel parcell' præmissorum, remanere vel remaneribus, reversione vel reversionibus, limitat' alicui personæ sive aliquibus personis post mortem ipsius Francisci, prout per cartam feoffamenti præd' plenius apparet. Posteaq; & ante prædict' tempus, quo, &c. scilicet, primo die Maii, anno regni Dom' Reginae nunc 23 apud Willefdon prædict', prædict' Petrus obiit sine exit' masculino de corpore suo procreatio, ac tempore mortis suæ non habens aliquam uxorem, per quod præd' Franciscus postea & ante prædict' tempus quo, &c. scilicet 20 die Maii, anno regni Dominae Reginae nunc 24, apud Willefdon præd' per quandam indent' factam

inter

inter præfat' Franciscum ex una parte, & præf. David' Bunny ex altera parte, sigillat', subscript', & deliberat' per ipsum Francif. præf. David' Bunny in præsentia Johan' Frome, Willihelmi Guerfy, Thomæ Waltham & Johannis Gostler, quatuor credibilium & honestorum testium, quam quidem indentur' præd' Johan' Grendon sigillo præd' Francisci sigillat' manuq; sua subscript' hic in Cur' profert, cujus dat' est eodem vicefimo die Martii, anno regni dictæ Dom' Reginae nunc vicefimo quarto supradicto mutavit usum in præd' carta feoffamenti superius expressos. Et per eandem indentur' idem Franciscus conven' & agreavit cum præf. David' Bunny, quod extunc præd' Milo Hitchcocke in præd' carta feoffamenti nominat' & hæred' sui, & omnes alii qui tunc seifit' fuissent vel imposterum seifit' forent de præd' viginti acris pasturæ cum pertinentiis, in quibus, &c. seifit' forent ad usum ipsius Johan' Grendon & hæred' suorum imperpetuum, prout per indentur' ill' plenius apparet, pretextu quorum ac virtute prædict' statuti de usibus in possession' transferend' edit' idem Johannes Grendon in prædictis viginti acris pasturæ cum pertinen', in quibus, &c. intravit, & fuit inde seifit' in dominico suo ut de feodo, quousque præd' Thomas Albany die & anno supradictis in billa prædicta superius spec', claus. ipsius Johannis Grendon in præd' viginti acris pasturæ fregit, & herbam suam ad valenc', &c. ibidem tunc crescen', cum averiis præd' depast' fuit conculcavit & consumpsit, prout ipse superius versus eum queritur, & hoc paratus est verificare. Unde ex quo præd' Thomas Albany transgr' prædict' in præd' viginti acris pasturæ cum pertinen' factam superius cogn', idem Johannes pet' judicium & damna sua occasione transgr' prædict' sibi adjudicare, &c. Et præd' Thomas Albany dic' quod bene & verum est quod in præd' carta feoffamenti præd' Francisci Bunny provisum fuit, quod si contingeret præd' Petrum Penruddock obire sine exit' masculino de corpore suo legitime procreat', non reliquen' uxorem suam filio pregnantem in vita præd' Francif. quod extunc & deinceps bene liceret præf. Francisco ad omnia tempora ad suam voluntatem durant' vita sua naturali per scriptum suum indentat' per ipsum Franciscum ea intentione faciend' in præsentia quatuor credibilium & honestorum testium ad minus, alterare, mutare, determinare, diminuere, sive amplificare aliquos usum vel usus, limitation' intentiones, vel proposit', limitat', vel appunctuat' per præd' cartam feoffamenti per prædict' Franciscum Bunny ut præmittitur fact', vel usum & usus de qualibet sive aliqua part' vel parcell' præmissor' remanere vel remaneribus, reversione vel reversionibus, limitat' alicui person' sive aliquib' personis post mortem præd' Francisci, quodq; postea &

anto

ante præd' temp', quo, &c. præd' Petr' obiit sine exit' mascul' de corpor' suo legitim' procreat' præd' Fran. tempor' mort' præd' Petri in plena vita existen', sed idem Joh. Grendon ulterius dic' quod præd' Francif. in vita præd' Petr' Penruddock, sc. primo die April' anno regni Dom' Reginæ nunc vicesimo tertio apud Willefdon præd' per quoddam scriptum suum indentat' fact' inter ipsum Franciscum ex una parte, & præd' Milonem Hitchcock & Thom' Albany ex altera parte cujus alteram partem idem Thom. Albany sigillo præd' Francif. signat' hic in Cur' profert, cujus dat' est eisdem die & anno, renunciavit, reliquit, & sursum reddidit omnem & omnimod' talem libertatem, potestatem, & aucthoritatem, quam idem Francif. vigore & virtute præd' proviso superius recitat', vel aliquam libertatem in præd' carta feoffamenti mentionat' & express. de & a morte prædict' Petri Penruddock tunc habuit sive habere debuit, de tangen' & concernen' alterationem, mutationem, determinationem, diminutionem, vel amplificationem talium usus, usuum, intention', & limitation', prout in indentur' illa expressa, limitat' & declarat' existunt. Et ulterius præd' Francif. per idem scriptum remisit, relaxavit, & quiet' clam' præf. Miloni Hitchcock & Tho. Albany, totam præd' condition', procurationem, conventionem, & agreementum præmentionat', & omnem & omnimod' talem potestatem, libertatem, aucthoritatem, jus, titulum, vel demand' quæ idem Franciscus post mortem præd' Petri haberet, vel habere potuisset, clamaret, calumniaret, vel demandaret, vigore & virtute dictæ conditionis & proviso in prædict' carta feoffamenti superius mentionat', de & pro alteratione, mutatione, vel determinatione alicujus usus vel usuum in præd' carta feoffamenti content', ita quod prædict' Franciscus, de & a morte præd' Petri Penruddock non clamaret, calumniaret, peteret, exerceret, usus foret, vel haberet aliquam potestatem, libertatem, vel aucthoritatem ad alterand', mutand' determinand', muniend', vel amplificand' aliquos usum vel usus, intentiones, limitationes, vel declarationes in præd' carta feoffamenti content', expressas, limitat', vel appunctuat', sed quod idem Franciscus, de & a morte prædict' Petri, de & ab omni tali libertate, potestate, & aucthoritate ut præfertur, stare & remaneret omnino præclusus, & exclusus, & inhabilis esset, Anglice *disabled*, imperpetuum. Et ulterius idem Francif. per scriptum illud concessit præfat', Miloni & Thom' & hæred' suis, quod extunc deinceps præd' condic', proviso, conventio, & agreementum, & præd' potestas, libert', & aucthorit' cessarent & penit' vacue forent ad omnia intention', construct' & proposit', & hoc parat' est verificat', und' ut prius petit judicium, & quod præd' Johan' Grendon ab actione sua præd' versus ipsum

ipsum Thomam Albany habendum præcludatur, &c. Et præd' Johannes Grendon dic' quod placitum præd' per præd' Thomam Albany modo & forma prædict' superius rejun-
gend' placitat' materiaque in eodem content' minus suffi-
cien' in lege existunt ad ipsum Johannem Grendon ab acti-
one sua prædicta versus prædict' Thomam Albany habend'
præcludend' ad quod idem Johannes Grendon necesse non
habet nec per legem terræ tenetur aliquo modo respondere,
unde pro defectu sufficien' rejunctionis in hac parte idem
Johannes Grendon, pet' judicium & dampna sua occasione
prædicta sibi adjudicari, &c. Et prædictus Thomas Al-
bany dic' quod placitum prædict' per ipsum Thomam modo
& forma prædict' superius rejun-
gend' placitat' materiaque in
eodem content' bon' & sufficien' in lege existunt ad præd'
Johannem Grendon ab actione sua prædicta versus eundem
Thomam Albany habend' præcludend', quod quidem pla-
citur materiamque in eodem content' idem Thomas Al-
bany parat' est verificare & probare prout Cur', &c. Et quia
prædictus Johannes Grendon ad placitum illud non respond'
nec illud hucusque aliquo modo deduc' idem Thomas Albany
ut prius pet' judicium, & quod præd' Johannes Grendon ab
actione sua præd' versus ipsum Thomam Albany habend'
præcludatur, &c. Et quia Cur' Dom' Reginæ hic de judi-
cio suo, de & super præmiss. reddendo nondum advisatur, dies
inde dat' est partibus præd' coram Domina Regina apud
Westm' usque diem Jovis proxim' post crastinum Purifica-
tionis beatæ Mariæ de judicio suo de & super præmiss. au-
diendo, &c. eo quod Cur' Dom' Reginæ hic inde nondum,
&c.

Hill.

Hill. Term. ann. 28 Eliz.

*Between Grendon and Albany in the
King's Bench.*

ALBANY'S Case.

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

IN Trespass brought by *John Grendon* Plaintiff against *Thomas Albany* Defendant, for a Trespass 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 infeof *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 *Stephen Bunny* in Fee. And afterwards, viz. 1 *Maii* 21 *Eliz.* the said *Francis* of the said five Acres in which, &c. did infeof 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 infeofed the said *Thomas Albany* the now Defendant, and justified the Trespass, 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 Trespass, 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 seised 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 seised 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 *Altham* 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. fo. 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 infeof 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 imparsonce 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 Aff. Plac. 41. pending a *Pro-*

- (b) Winch. 31.
Co. Lit. 327. a.
Moor 605.
2 Roll. Rep.
337. Hob. 337.
338. Postea
174. a.
(c) Hard. 415.
(d) Br. Testam.
& volunt. 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.
Hardr. 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,
2 19, 532. Dall.
50. Dav. 6. a.
Noy 35, 132.
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

- tipt*, 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. And as to the said Release it was said, that 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, that 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; 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.
- (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) Postea 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
tr. Curtesie 6.
4 Leon.
135, 221.
Hob. 333.
2 Roll. Rep.
317.
Perk. sect. 474.
- (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.
- (h) 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 altered and devested 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. 221, 135. Br. Feoffment al Use 8. Plow. 352. a. 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 by 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 Power to sell, as is aforesaid, the former Feoffment over to the first Uses, forso 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 Judgment given against him as Tenant; wherefore upon such Judgment given against him after his Feoffment he shall have a Writ of Error; but (e) if after the Judgment 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 (c) Antea 111. a. Pop. 194. 14 H. 7. casu ultimo. Larc. 10. Hard. 414. Kel. 44. b. Moor 605. Polt. a 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.

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 L. *Anderson* and other Justices was *Wray* Ch. Just. of *England*, and all the Court of King's Bench, that is to say, that (a) the said Power as well to revoke, as to limit new Uses, may be utterly gone and extinguished either by a Fine or a Feoffment. And as to the second Point, he conceived, that the said future Power might be released, for it may be resembled to a Condition subsequent, altho' the Performance 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 Assignes 40s. 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 his Chapter of Warranty, fol. 171. saith, That the Warranty is extinguished, for it is an Inheritance in Law, and may descend to the Heir, and by Consequence may be released.

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 proceed as it was adjudged. *Tr. 4 Eliz. Rot. 1027. in Communi 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) Dier.* For by his Death the Law transfers it to his Executor, and by Consequence he may release it. And 16 *E. 3. Fitz. Barre 245. (d)* A Woman hath Title of Dower of Land, whereof one is Tenant for Life, the Reversion to another in Fee, and the Woman releases to him in the Reversion, it is a good Bar in a Writ of Dower against Tenant for Life; and yet at the same Time she had no present Cause of Action against him, but in *future* after the Death of Tenant for Life. So 21 *H. 7. 41. a. (e)* A Release of an Annuity to the Patron in Time of Vacation is good, yet no Action lies against him, nor against any other till a Successor be made; and yet a Release will extinguish it. And suppose in the Case at Bar, that the Power of Revocation upon the said Contingency had

(a) Postea 74. a.
Co. Lit. 237. a.
Hob. 337, 338.
Mo. 605. 2 Rol.
Rep. 337.
3 Co. 83. a.

(b) Lit.
sect. 748.
Co. Lit. 392. b.
8 Co. 154. a.
5 Co. 71. a.

(c) 5 Co. 71. a.
H. 11. H. 17.
10 Co. 51. b.
(d) Co. Lit.
266. a.
5 Co. 71. a.
8 Co. 151. b.
Doctr. plac.
149.

(e) 5 Co. 71. a.
81. b.
2 Rol. 340.
Co. Lit. 266. a.
Fitz. Release
57. Br. Re-
lease 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 Provisos 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.

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

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) Recognisances, 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 adnulled, 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 adnulled; and according to their Resolution Judgment for the Causes aforesaid was given, *quod Querens nil capiat per billam.*

(b) Jones 41 v.
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.

an Use limited, but a Person capable of the Use when the Stat. transfers the Possess. to it, and therefore if the Person fail, it is not possible to have the Possess. executed by this Stat. to one who is not *in rerum natura*, for the Stat. 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 Stat. 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 *Ewens*, 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 Justices, *Fenner, Beaumont, Owen* and *Ewens* 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,

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

PART I. CHUDLEIGH'S Case.

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as is 36 H. 8. Tit. *Feoffm. al uses*, (a) Br. 54. 5 Mar. (b) *Dier* 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 Stat. 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.

(a) Br. N. C. 234. Poph. 81.
(b) *Dyer* 155.
pl. 26. 1 And. 37.
O. Benl. 28.
N. Ben. 61

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 in Tail upon Contingency, and after the Contingency happens, in that Case the Feoffee is the Donor as is proved by 2 E. 6. Br. *Formedon* 41. (c) 7 E. 6. *ib.* 46. (d) *Plow. Com.* 59. 20 Pl. (e) *Dier* 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 the 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*, &

2 Roll. Abr. 797. pl. 15, 16

(c) Ant. 47. b.
(d) Ant. 47. b.
(e) Ant. 47. b.
2 Co. 72. b.
1 Jones 179.
Dy. 362. pl. 21

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

(a) 2 H. 4. 5. b. If a Man makes a Feoffm. in Fee upon (b) Con-
dition 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 U-
ses 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 per-
petually buried, and should never rise again, and be they a-
bove *in nubibus*, in the Clouds, there they should always re-
main, and should never descend ; for he said that the Sons of
Christ. 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.

(c) Ant. 95. a.
3 Co. 39. b. 61. b.
Fitz. Assize 27.
Plow. 43. a.
56 b. Br.
Done 28. Br.
entry congea-
ble 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.

in (c) 5 E. 4. 6. a. when the Son is born after the Entry of the
Daught. and (d) 9 H. 7. 25. a. & (e) 30 Ass. pl. 47. when the Re-
mainder limited to the right Heirs of J. S. first vests in the
Daught. 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.* the Lessor by the ori-
ginal 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 fu-
ture Uses, and resembled it to the Case in 21 E. 3. 41. b. K.

(g) Co. Lit. 27. a.
Cotton's Re-
cords 671.
8 Co. 16. b.
25. b. Raym.
355. Palm. 85.
1 Koll Rep. 198.
Ant. 43. b.
Dy. 94. pl. 30.

E. 3. gave Land to the (g) Black Prince and to his Heirs Kings
of *Engl.* 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 King, the Land did revert. So
all the Just. and Barons of the Exchequer, except *Periam*,
Walm. and *Gawdy* did conclude, that forasmuch as the Sta-
tute 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 dis-
continued before they came in *esse*, by all such Means as Uses
might have been discontinued or destroyed by the com. Law.

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

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

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 destroyed 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 Possession 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 Limitation 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) Flow. 25b.
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.
Perk. 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 Statute of 27 H. 8. for he said, the said Construction did tend to the Subversion of noble and great Families, and to the Disinheriton 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 rear 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 Family, 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 :

Forfeiture: 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 Provisoos 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 Provisoos. 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 Inconveniencies 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.

(a) 5 Co. 6. a.

(b) Co. Lit. 44.
b. 5 Co. 6. a.
Cr. Eliz. 702.

Also Farmers and Lessees can't have any certain and full Assurance; for suppose a (c) Feoffm. 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 Ten't for Life makes Leases according to his Power, the Lessees derive their Interest out of the first Feoffm. 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 forasmuch 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.

(c) 1 And. 273,
274.

(d) 2 Jones 35.

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) *Di.* 32. a. & *Pl. Com.* in *Manxel's* Case, and then by such subtle Devices

(e) Dy. 32. pl. 3.
Co. Lit. 287. a.

as in the Case before put, he who hath Cause of Action will never find one who shall be Tenant to his *Precipe*, 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 amongst 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 Seignories, 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, or by Reason of the Seignory of the Land or of the Villain, 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 Com. 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 Com.

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 Confidence

(a) Co. Lit. 271. b.

(b) Pop. 83.

(c) Antea 122. a. Jek. 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 Trespassor 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) Ten't 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 vest the Estate-tail in Remainder. (b) So if there be Tenant in Tail the Remainder 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 Privity is sole or immediate, and when not, for which see (c) *Littleton* 141. 9 E. 4. 24. b. F. N. B. 142. a. (d) 41 E. 3. 21. & 41 Aff. 2.

2dly, That altho' the Warranty of *Christ*. was collateral, yet in as much as it appears by Computat. 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

1 Anderf. 318.
339.

(a) 1 Roll. 357.

(b) 1 Roll. 634.

(c) Lit. sect. 625.

Co. Lit. 334. b.

335. a.

1 Roll. 633.

Kel. 42. a.

(d) 1 Co. 76. b.

Br. Collusion 31.

Br. Entry con-

geable 82.

Br. Forfeiture

de ter. 84.

Br. Surrender

86. 1 Rolls 857.

Co. Lit. 335. a.

Co. Lit. 380.

a. b.

3 Keb. 410.

Poph. 71.

3 Keb. 410.

Co. Lit. 380.

a. b.

Antea 67. a.

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, *Br. Warranty* 84. 3 *H.* 7. 9. 35 *H.* 6. 63. 18 *E.* 3. 3. 18 *E.* 4.

(a) 4 *Co.* 24. a.
Cr. Eliz. 699.
Co. Lit. 58. b.
 1 *Roll.* 499.
Moor 112,
 236, 237.
Poph. 71.
Owen 27, 28.
 (b) *Cr. Eliz.*
 699.
 4 *Co.* 24. a.
 1 *Roll.* 503.
Moor 112.
 236, 237.
 3 *Bulstr.* 215.
Poph. 71.
 (c) *Br. Estate* 50.
Hob. 323.
 10 *Co.* 98. a.
Plow. 556. b.
 1 *Bulstr.* 135.
B. N. C. 14.
 3 *Kebl.* 487.
 (d) 1 *Roll.*
 837.
Co. Lit. 26. b.
Poph. 77.
 1 *And.* 310.

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. Dier* 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 *E.* 3. 25. b. 7 *H.* 4. 46. a. 8 *H.* 4. 14. b. 8 *Eliz. Dier* 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 *Ascough*, 20 *H.* 6. fo. 36. b. For all these Points were adjudged in this Case, as it may appear by the Consideration of this Case.

De Termino Sancti Hillarii, anno regni Dominae Elizabethae nunc Reginae Angliae 35. Rotulo 498.

Georgius Mason & Franciscus Esterley attach' fuer' per *Kanc' ff'* breve Dominae Reginae de secunda deliberatione ad respondend' Johanni Kettel de placito quare ceper' averia ipsius Johannis, & ea injuste detinuer' contra vad' & pleg', &c. Et unde idem Johannes Kettel per Edwardum Willan attornat' suum queritur quod praed' Georgius & Franciscus decimo octavo die Junii, anno regni Dominae Elizabethae nunc Reginae Angliae tricesimo tertio, apud Sutton Athone in com' praed' in quodam loco ibidem voc' **Abrahams Land** ceperunt averia, videlicet septem vaccas & unum taurum ipsius Johannis & ea injuste detinuer' contra vad' & pleg' quousque, &c. unde idem Johannes Kettel dic' quod ipse deterior' est & dampnum habet ad valentiam triginta librarum. Et inde producit sectam, &c. Et praed' Georgius Mason & Franciscus Esterley per Michaellem Lowe attornat' suum ven' & defend' vim & injuriam quando, &c. Et ut ballivi Annae Mayowe viduae bene cogn' captionem averiorum praedictorum in praedicto loco in quo, &c. Et juste, &c. Quia dic' quod praed' locus in quo supponitur captionem averior' praedictorum fieri, continet, & praed' tempore captionis praed' superius fieri supposit', continebat in se per estimationem octo acras pasturae cum pertinentiis, in Sutton Athone praedicta, quodque diu ante praedictum tempus, quo, &c. Quidam Dionisius Mayowe generos. fuit de praedicto loco, in quo, &c. inter alia seifit' in dominico suo, ut de feodo, & sic inde seifit' existen' idem Dionisius postea & ante praed' tempus captionis praedictae superius fieri supposit', scilicet tricesimo die *Grant de rem.* Maii, anno regni dictae Dominae Reginae nunc decimo nono apud Sutton Athone praedict' per quoddam scriptum suum

ANNE MAYOWE'S *Case*. PART I.

suum sigillo suo sigillat', curiæque dictæ Dominæ Reginae nunc hic prolat' geren' dat' eisdem die & anno dedit & concessit præfatæ Annæ per nomen Annæ Maxey de Chigwell in Comit' Essex quendam annuitatem five annualem redditum viginti librarum legalis monetæ Angliæ exeun' de prædicto loco, in quo, &c. inter alia per nomina omnium terrarum & tenementorum ipsius Dionisii in Sutton Atthone prædicta & in Wylmington in prædicto Comitatu Kanc', habendum & percipiend' annuitatem five annualem redditum prædictum viginti librarum prædict' præfatæ Annæ & assignat' suis ad terminum vitæ naturalis ipsius Annæ, ad festa Annunciationis beatæ Mariæ virginis & sancti Michaelis Archangeli per æquales portiones annuatim percipiendum, & si contingeret prædictum annualem reddit' five annuitatem viginti librarum ad aliquod festum solutionis, in quo ut præfertur solvi deberet infra quadraginta dies post aliquod festum festorum in parte vel in toto aretro fore & non solut' quod tunc bene liceret præfatæ Annæ & assign' suis in tenementa prædicta cum pertinentiis intrare & distringere, & districiones ibidem invent' seu capt' asportare, abducere, effugare & penes se retinere, quousque de toto prædicto annuali redditu five annuitate una cum omnibus arrerag' inde si quæ forent ei plenar' foret satisfact' & solut', prout per scriptum illud inter alia plenius liquet & apparet, virtute quorum quidem doni & concessionis eadem Anna fuit de annuitate five annuali redditu præd' seisit' in dominico suo ut de libero tenemento pro termino vitæ suæ, & sic inde seisit' existen' eadem Anna postea & ante prædictum tempus, quo, &c. apud Sutton Atthone prædictam cepit in virum suum prædictum Dionisium; ac postea & ante prædictum tempus quo supponitur captionem prædictam averiorum prædictorum fieri, scilicet vicesimo die Martii, anno regni dictæ Dominæ Reginae nunc vicesimo nono prædictus Dionisius apud Sutton Atthone prædictam obiit, & prædicta Anna ipsum supervixit, & fuit de annuitate five annuali redditu prædict' seisit' in dominico suo ut de libero tenemento pro termino vitæ suæ, & quia viginti libræ de annuitate five annuali redditu prædicto per unum annum integrum finit' ad festum Sancti Michaelis Archangeli, Anno regni dictæ Dominæ Reginae nunc vicesimo nono, & infra spatium quadragint' dierum tunc proxime sequentium minime solutæ fuerunt eidem Annæ, sed aretro extiterunt, prædicti Georgius Mason & Franciscus ut ballivi ejusdem Annæ bene cogn' captionem averiorum prædictorum in prædicto loco, in quo, &c. Et juste, &c. ut in parcell' tenementorum prædictorum

Etorum cum pertinentiis districtioni ipsius Annæ in forma prædicta onerat' & obligat'. Et hoc parati sunt verificare unde per' iudicium & return' averiorum prædictorum una cum dampnis, misis & expensis suis per ipsos circa sectam suam in hac parte apposit', sibi adjudicari, &c. Et prædictus Johannes Kettell dicit quod prædicti Georgius Mason & Franciscus Esterley per aliqua præallegat' captionem averiorum prædictorum in prædicto loco, in quo, &c. iuste cognoscere non debent, quia dicit quod diu ante prædictum tempus captionis averiorum prædictorum fact' & diu ante concessionem prædictæ annuitatis prædict' viginti librarum & diu antequam prædictus Dionisius Mayowe aliquid habuit de & in prædictis octo acris pasturæ cum pertinentiis inter alia, Quidam Thomas Mayowe fuit inde seifitus in domino suo ut de feodo, & sic inde seifitus existens idem Thomas Mayowe ante prædictum tempus captionis averiorum prædictorum, & diu ante concessionem annuitatis prædictæ, scilicet decimo quinto die Januarii, anno regni dictæ Domine Reginæ decimo nono apud Sutton Atthone prædictam de eisdem octo acris pasturæ cum pertinentiis in quibus, &c. feoffavit quosdam Thomam Scot de Sutton Atthone prædict' generos. & Johannem Fremlinge de Dartford in eodem Comitatu Baker inter alia, per nomen omnium illorum duorum maneriorum suorum de Sawters & Sawley cum horreis, stabulis, Columbar' & reliquis omnibus domibus & edificiis prædictis maneriis spectant', pomariis & gardinis cum pertinentiis, situat', jacen' & existen' in Sutton atthone prædicta, tunc in tenur' & occupatione prædicti Thomæ Mayowe, ac etiam per nomen omnium aliorum domorum & edificiorum terrarum & tenementorum prati & pasturæ bosci & subbosci reddituum & reversionum suorum quorumcunque, situat' jacen' & existen' infra villas parochias & campos de Sutton Atthone præd', Wilmington & Dartford, seu alibi in prædicto comitatu Kancie. Necnon reversion' & remaner' quorumcunque omnium & singulorum præmissorum reddit' & annual' profic' reservat' super quibuscunque dimissionibus & concessionibus de præmissis seu de aliqua inde parcella ante tunc fact', Habendum & tenendum prædicta maneria & cætera præmissa cum pertinentiis, unde, &c. præfat' Thomæ Scot & Johanni Fremling, hæredibus & assignat' suis imperpetuum, ad solum opus & usum præd' Dionisii Mayowe filii & hæredis apparent' præd' Thomæ Mayowe, hæredum & assign' suorum imperpetuum de capitalibus dominis feodi illius per servitia inde prius debita & de jure consueta sub condition' sequen' videl' quod præd' Dionisius Mayowe seu hæredes ejus
solve-

solverent seu solvi facerent Petronillæ Martyn de Milton in prædicto com' Kanc' viduæ annualem reddit' decem librarum pro termino vitæ ipsius Petronillæ; quem quidem annualem reddit' decem librarum prædictus Thomas Mayowe præfat' Petronillæ præante concessisset pro & in consideratione cujusdam maritagii fiend' & celebrand' inter præd' Tho. Mayowe & præfat' Petronillam post mortem præd' Thomæ Mayowe, & sub conditione quod si præfat' Tho. Mayowe aliquo tempore durante vita naturali ipsius Thomæ Mayowe solveret seu solvi faceret præfat' Thomæ Scot & Johanni Fremling, vel eorum alteri aut hæred' eorum diutius viven', decem solidos bonæ & legalis monet' Angliæ, quod tunc feoffamentum prædict' vacuum & nullius vigoris in lege existeret. Et quod tunc liceret præfat' Thomæ Mayowe in præd' duo maneria, ac cætera præmissa cum pertin, unde, &c. reintrare & ill' rehabere in suo pristino statu ac conditione, aliquo actu re causa vel materia quacunque in contrarium inde non obstan', virtute cujus quidem feoffamenti ac vigore cujusdam actus in Parlamento Domini Henrici nuper regis Angliæ octavi, apud Westmonaster' in Comm' Midd' quarto die Februarii, anno Regni sui vicesimo septimo de usibus in possession' transferend' idem Dionisius Mayowe fuit seistitus de præd' octo acris pasturæ cum pertinentiis in quibus, &c. inter alia in dominico suo ut de feodo sub conditionibus supradictis. Et sic inde seistit' existen' idem Dionisius ante præd' tempus captionis averioru' prædictor', scilicet, tricesimo die Maii, anno regni dictæ Dominæ Reginae nunc decimo nono supradicto, apud Sutton Atthone præd' per quoddam scriptum suum sigillo suo sigillat' geren' dat' eisdem die & anno dedit & concessit præfat' Annæ per nomen Annæ Maxey de Chigwell in Com' Essex annuitatem sive annualem reddit' præd' viginti librarum exeun' de præd' loco, in quo, &c. inter alia modo & forma prout præd' Georgius Mason & Franciscus Esterley superius in cognitione sua præd' allegaverunt, eademq; Anna postea & ante præd' tempus, quo, &c. apud Sutton Atthone præd' cepit in virum suum præd' Dionisium, ac postea & ante præd' tempus captionis præd' averiorum prædictor' scilicet tricesimo die Januarii, anno regni dictæ Dom' Reg' nunc vicesimo quarto, præd' Thomas Mayowe apud Sutton Atthone præd' solvit præfat' Thomæ Scot & Johanni Fremling, præd' decem solid' bonæ & legalis monetæ Angliæ in conditione feoffamenti præd' superius mentionat' in plenam satisfactionem & performance conditionis prædict' per quod idem Thomas Mayowe postea & ante prædictum tempus captionis averiorum prædictorum in prædictis octo acris pasturæ cum pertinentiis in quibus, &c. inter alia intravit, & fuit inde seistit', scilicet in dominico suo ut de feodo, & sic inde seistit' existen' idem

idem Thomas Mayowe ante prædict' tempus quo, &c. scilicet tertio die Maii, anno regni dictæ Dom' Reginæ nunc vicefimo quarto supradicto, apud Sutton Atthone prædict', per quoddam scriptum suum sigillo suo sigillat', Curiaque dictæ Dominæ Reginæ nunc hic prolat', geren' dat' eisdem die & anno feoffavit quendam Thomam Walter inter alia de prædictis octo acris pasturæ cum pertinentiis, in quibus, &c. per nomen de *Abrahams Land* continen' per æstimationem novem acr' five plus five minus jacen' in Sutton Atthone prædicta, Habend' & tenend' idem clausum vocat' *Abrahams Land* cum pertinentiis inter alia præfat' Thomæ Walter, hæredibus & assignat' suis, ad solum & proprium opus & usum ejusdem Thomæ Walter, hæredum & assignat' suorum imperpetuum, prout per scriptum illud inter alia plenius liquet & apparet, virtute cujus quidem feoffamenti idem Thomas Walter fuit de prædicto clauso cum pertinentiis, in quo, &c. seifitus in dominico suo ut de feodo, & sic inde seifit' existen' prædictus Dionisius Mayowe, postea & ante prædictum tempus captionis averiorum prædictorum, scilicet vicefimo die Martii anno regni dictæ Dominæ Reginæ nunc vicefimo nono apud Sutton Atthone prædictam obiit, prout prædicti Georgius Mason & Franciscus Esterley superius placitand' allegaver'. Post cujus mortem & ante prædictum tempus captionis averiorum prædictorum scilicet, vicefimo nono die Septembris, anno regni dictæ Dominæ Reginæ nunc tricesimo secundo, prædictus Thomas Walter apud Sutton Atthone prædictam dimisit & ad firmam tradidit præfat' Johanni Kettel prædictum clausum cum pertinentiis, in quo, &c. inter alia, Habendum & tenend' præfat' Johann' Kettel & assignat' suis, a prædicto vicefimo nono die Septembris, anno tricesimo secundo supradicto usque finem & terminum unius anni integri tunc proxim' sequen' & plenar' complend' & finiend; virtute cujus quidem dimissionis prædictus Johannes Kettel, postea & ante prædictum tempus quo, &c. scilicet tricesimo die Septembris, anno tricesimo secundo supradicto in clausum prædict', in quo, &c. intravit & fuit inde possessionat', & sic inde possessionat' existen' idem Johannes Kettel postea & ante prædictum tempus, quo, &c. scilicet decimo septimo die Junii anno regni dictæ Dominæ Reg' nunc tricesimo tertio, posuit averia sua præd' in prædict' clausum, in quo, &c. ad herbam ibidem crescen' depascend', prout ei bene licuit. Quæ quidem averia fuerunt in prædicto loco, &c. herbam ibidem nuper crescen' depascen' quousque prædicti Georgius Mason, & Franciscus Esterley averia illa prædicta prædicto tempore, quo, &c. ceperunt & injuste detinuerunt, modo & forma prout prædictus Johannes Kettel superius versus eos queritur. Et hoc paratus est verificare, unde ex quo præd' Georgius & Francisc.

captio-

pementa in indentura præd' hic primo mentionat' & comprifat' sunt ipsa & eadem maneria, terra, & tenementa, & non alia neque diversa. Et quod prædicta terra & tenementa unde usus per prædictam indenturam geren' dat' sexto die Maii, anno duodecimo supradicto sunt revocat', non sunt maneria, terra, & tenementa in prædicta monstrazione juris specific' nec alicujus inde parcel'; quodque usus maneriorum, terrarum, & tenementorum in prædicta monstrazione juris specific', nec alicujus inde parcel', per prædicti secundam indenturam hic interius specific' non revocetur, adnulletur, sive mentionatur fore per eandem revocari seu adnullari. Et quod prædicta maneria, terra, & tenementa unde usus per prædictam indenturam geren' dat' vicesimo die Septembris, anno decimo tertio supradicto mentionat' fore per eandem indenturam revocat' & adnullat', sunt eadem maneria, terra, & tenementa in monstrazione juris superius specific', & non alia neque diversa. Sed utrum super tota materia prædicta in forma prædicta comperta prædictus Christophorus Digges pater obiit feisit' de maneriis, terris, & tenementis in monstrazione juris infrascript' specificat' in dominico suo ut de feodo modo & forma prout in præd' monstrazione juris supponitur necne, Jurat' prædicti penitus ignorant, & inde petunt advisamentum Justiciar' prædictorum & Cur' hic, &c. Et si super tota materia præd' per Jurat' prædictos in forma prædicta compert' videbitur eisdem Justic' & Cur', &c. quod prædictus Christophorus Digges pater obiit feisit' de maneriis & tenementis in monstrazione juris infrascript' specific' cum pertinentiis vel alicujus inde parcell' in dominico suo ut de feodo, tunc iidem Jurat' dicunt super sacramentum suum prædictum, quod præd' Christophorus Digges pater obiit feisit' de maneriis & tenementis cum pertinentiis in monstrazione juris infrascript' specific', vel tantum inde quantum eisdem Justiciar' videbitur eundem Christophorum sic obiisse feisit' in dominico suo ut de feodo, prout prædicti Christophorus Digges filius, & Edwardus Digges interius placitand' allegaver'. Et si super tota materia prædicta per Jurat' prædictos in forma prædicta comperta videbitur eisdem Justiciar' & Cur' hic, &c. quod prædictus Christophorus Digges pater non obiit feisit' de maneriis & tenementis cum pertinentiis in monstrazione juris infrascript' specific', vel de aliqua inde parcell' in dominico suo ut de feodo, tunc iidem Jurat' dicunt super sacramentum suum prædictum; quod prædictus Christophorus Digges pater non obiit feisit' de maneriis & tenementis cum pertinentiis in monstrazione juris infrascript' spec' vel tantum inde quantum eisdem Justiciar' videbitur eundem Christophorum sic non obiisse feisit' in dominico suo

ut

ut de feodo prout præd' Thomas Palmer & Margáreta interius placitand' allegaver'. Et quia Cur' Domina Regina hic de iudicio suo de & super præmiss. reddend. nond' advisatur dies inde ulterius datus est partibus præd' in statu quo nunc coram Domina Regina usque in Crastino Sanctæ Trinitatis ubicunque, &c. de iudicio suo de & super præmiss. audiendo, &c. eo quod Cur' Domina Regina hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium ven' tam prædicti Christoph. Digges filius & Edwardus Digges per attornat' suum prædictum quam prædicti Thomas Palmer & Margáreta in propriis personis suis, & quia cur' Domina Regina hic de iudicio suo de & super præmiss. reddend' nondum advisatur, dies inde ulterius dat' est partibus prædictis in statu quo nunc, coram Domina Regina usque in Octabas Sancti Michaelis ubicunque, &c. de iudicio suo de & super præmissis audiendo, &c. eo quod Cur' Domina Regina hic inde nondum, &c. ad quem diem coram Domina Regina apud Westm' ven' tam prædicti Christoph. Digges filius & Edwardus Digges per attornat' suum prædictum quam prædict' Thomas Palmer & Margáreta in propriis personis suis; & quia cur' Domina Regina hic de iudicio suo de & super præmissis reddendo nondum advisatur dies inde dat' est partibus prædictis coram Domina Regina usque in Octabis Sancti Hillarii ubicunque, &c. de iudicio suo inde audiendo, &c. eo quod cur' Domina Regina hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westmonasterium ven' tam prædict' Christoph. Digges filius & Edwardus Digges per attornatum suum prædictum quam præd' Thomas Palmer & Margáret' in propriis personis suis, & quia cur' Domina Regina hic de iudicio suo de & super præmiss. reddendo nondum advisatur dies inde ulterius dat' est partibus prædictis coram Domina Regina usq; a die Paschæ in quindecim dies ubicunque, &c. de iudicio suo inde audiendo, &c. eo quod cur' Domina Regina hic inde nondum, &c. Ad quem diem coram Domina Regina apud Westm' ven' tam prædict' Christophorus Digges filius & Edwardus Digges per attornat' suum prædictum quam prædict' Thomas Palmer & Margáreta in propriis personis suis; & quia cur' Domina Regina hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius datus est partibus prædictis coram Domina Regina apud Westmonasterium usque in Crastino Sanctæ Trinitatis ubicunq; &c. de iudicio suo inde audiendo, &c. eo quod curia Domina Reg' hic inde nondum, &c. ad quem diem coram Domina Regina apud Westmonast' vener' tam prædicti Christophorus Digges filius & Edwardus Digges per attornatum suum prædict' quam prædict' Thomas Palmer &

Margareta in propriis personis suis, super quo vis. & per cur' Dominæ Reginæ hic plenius intellectis omnibus & singulis præmissis, maturaque deliberatione inde habita, pro eo quod videtur curiæ Dominæ Reginæ nunc hic, quod præd' Christoph. Digges pater non obiit seifit' de maneriis & tenementis cum pertinen' in monstratione juris præd' superius specificat' vel de aliqua inde parcella in dominico suo ut de feodo, conc' est quod præd' Christoph. Digges filius & Edwardus Digges nihil capiat per breve suum prædictum, sed pro falso clamore suo inde sint in misericordia' &c. Et præd' Thom' Palmer & Margareta cant inde sine die, &c.

*Misericordia.
Sine die.*

Term.

Term. Trin. 42 *Eliz.* in a *Monstrans de droit* between *Chr. Digges* and *Edw. Digges* Plaintiffs, against *Palmer* and his Wife Defendants in the *King's Bench*.

DIGGES's Case.

IN a *Monstrans de droit* by *Christopher Digges* and *Edward Digges* against *Palmer* and his Wife, the Grantees of the Ward of *Posthumus Digges* Son and Heir of *Thomas Digges* now dead, in which the Issue was *absque hoc quod Christophorus Digges* (Father of the said *Thomas*) *chit seistus* (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 *May* 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* at 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 *May* 12 *Eliz.* *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,

Moor 603;
2 And. 284

Moor 604

void, and that the Land should be to the Use of *Chr.* in Fee: Afterwards *Chr.* 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 *Chr.* entered into the Land and made his Claim. And whether *C.* died seised in Fee of the said Lands mentioned in the Deed of Revocation of 20 Sept. 13 *El.* 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.
(c) Moor 604,
605.

1. That *Chr.* 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 Acr. of Wood, and grants that he may sell the Timber-Trees (d) at any Time during the Term, he may sell Part at one Time, and Part at another. So if a (e) Man devises that his Ex'ors 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 Common Pleas.

(d) 4 Leon. 36.
3 Leon. 54.
1 And. 7.
(e) Co. Lit. 213.
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 forasmuch 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
at use 12. Anr.
111. a. 112. a.
4 Leon. 134,
135, 220, 221.
Co. Lit. 265. b.
237. a. Kelw.
42. b. Latch. 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) Feoffm. 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, Rev'n or Rem'r. And *Popham* 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.*

(a) Moor 605.
Winch. 56.
2 Rol. Rep. 337.
496. Ant. 111. b.
Co. Lit. 237. a.
Hob. 337, 338.

(b) Moor 605.
Winch. 56. Co.
Lit. 237. a. 265. b
(c) Hard. 414.
415.

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 seised 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 Condit. the Land shall be in the Feoffor immediately without Entry or Claim, because he himself is in Possess. of the Land. So if a Villain 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 seised 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 Ten't for Life as in the Case at the Bar.

(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. 939.
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 393.

6. It was agreed, that (g) other Uses might be limited or raised by the same Conveyance which revoked the ancient Uses, for inasmuch as the ancient Uses cease *ipso facto* by the Revocation without Claim or other Act, the

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 Raising 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 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 seised to the Use of *B.* and his Heirs, *B.* entred 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.

(a) Raym. 142.

Antea 76. b.

(b) Owen 126.

Cr. Eliz. 727,

792.

2 And. 131.

Antea 76. b.

3 Keb. 321.

Moor 575.

Termino

Term. Hill.

24 & 26 Eliz.

MILDMAY'S Case.

THE Case in an Information exhibited in the Court of Wards by *Richard Kingmill* Esquire Attorney of the same Court, against the Lady *Anne Sharrington* late Wife of Sir *Henry Sharrington* Knight, and *John Talbot* Esquire, and *Oliif* his Wife, one of the Daughters and Heirs of the said Sir *Henry Sharrington*, 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* Gent. Defendant, in an Action upon the Case for flandering his Title, &c. which Judgment was *M. 25 & 27 Eliz. Rot. 35.* affirmed in the King's Bench, in a Writ of Error, and was in Effect thus; The said Sir *Henry Sharrington* having Wife the said Dame *Anne*, and three Daughters, *Grace* married to the said *Anthony Mildmay*, *Ursula* married to *Thomas Sadler*, Esq; and *Oliif* married to the said *John Talbot* by Indenture bearing Date 20 Augusti 15 *Eliz.* made between the said Sir *Henry Sharrington* 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 seised 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.
Moor 144, 372.

(a) Bridg. 55.

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 Rev'n 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 seised, to stand seised 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 of
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(a) Bridg. 55.

(b) Bridg. 55.

(c) Moor 773.

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 *F. S.* for divers good Considerations that I and my Heirs will stand seised to the Use of him and his Heirs, no Use without a special Averment shall be raised by it; but if *F. 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 those 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 Beaumont, 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 seised of the Manor of *Northhall*, &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 maritaggi 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 Considerat. 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 Rol. 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. 378.
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 Explanat. and particularizing 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.

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 Considerations 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

(c) 2 Leon. 138.
Owen 49.

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 Uncertainty, 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 Advancement of my Blood, I will stand seised to the Use of such of my Sons, or to the Use of such of

(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 resolved, 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 advanced 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 adjudged 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 possessed 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 possessed of the Interest thereof, and so for slandering of the Estate and Title which was conveyed to his Wife by the said Indentures, and shewed all in Certainty, and how he was prejudiced 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

(a) Bridgm. 55.
Cro. Car. 400.
Cro. Jac. 175.
Cart. 138.
Stile 196.

(b) Hob. 159.

(c) Moor 144.
C. o. El. 34.
197.
Co. Ent. 30.
nu. 27.
Palm. 592.
Jenk. Cent. 247.

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 Sparington* 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.

Casuum istius Libri Series, continen'
 in qua cur' act', & quando recordat'
 fuer', & in quo folio hujus libri inci-
 piunt.

In the Chancery.

1. The Lord Buckhurst's Cafe. Pasch. 40 Eliz. fol. 1

In the Exchequer.

1. Sir William Pelham's Cafe. Mich. 30 Eliz. 3
 2. Porter's Cafe. Hill. 34 Eliz. 16
 3. The Cafe of Alton Woods. Trin. 37 Eliz. 26

In the Common Pleas.

1. Capel's Cafe. Pasch. 23 El. 54
 2. Archer's Cafe. Trin. 36 El. 63
 3. Bredon's Cafe. Trin. 38 El. 67
 4. Corbet's Cafe. Hill. 41 El. 77

In the King's Bench.

1. Shelley's Cafe. Pasch. 21 El. 88
 2. Albany's Cafe. Mich. 27 El. 107
 3. Chudleigh's Cafe. Hill. 31 El. 113
 4. Anne Mayow's Cafe. Hill. 35 El. 141
 5. The Rect. of Chedington's Cafe. Mich. 38 El. 148
 6. Digge's Cafe. Pasch. 40 El. 157

In the Court of Wards and Liveries.

1. Mildmay's Cafe. Hill. 24 El. 175
 In

In Annis, in quibus casus isti adjudicati erant, hi fuerunt Justiciar'.

Justic' de Banco Regis.

Christophorus Wray Miles, qui obiit anno 34.
Et Post eum Johannes Popham Miles.
Johannes Southcote.
Thomas Gawdy Miles.
Willihelmus Aylofffe.
Robertus Shute.
Johannes Clenche.
Franciscus Gawdie.
Edwardus Fenner.

Justic' de Communi Banco.

Anno 19. } Jacobus Dyer Miles, qui obiit post Hill' 24.
Et Pasch. 24. Edmundus Anderfon Miles.
Rog. Manwood, qui recessit in Scaccar' Hill' 21.
Robertus Mounson cessit Pasch. 22.
Hill. 20. } Thomas Meade obiit Pasch. 27.
Trin. 21. } Franciscus Windham obiit post Trin. 34.
Hillar' 23. } Willihelm' Periam Hillar' 35. recessit in Scaccar'.
M. 27. & 28. } Franciscus Rhodes obiit anno 31.
Paschæ 31. } Thomas Walmesley.
Hillar' 35. } Franciscus Beaumont obiit ante Pasch. 40.
Hillar' 36. } Thomas Owen obiit ante Hillar' 41.
Trin' 40. } Johannes Glanvil obiit post Trin' 42.
Hillar' 41. } Georgius Kingefmill.
Mich. 43. } Petrus Warberton.

Baron' in Scaccario.

Johannes Jeffrey Miles. Thomas Gent.
Robertus Shute. Matthæus Evans.
Ed. Flowerdewe. Johannes Savill.
Johannes Clenche. Johannes Sotherton.
Robertus Clerke.

F I N I S.