1727

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

Sir Edward Coke

The Second PART of the

REPORTS

OF

EDWARD COKE,

Her Majeſty's ATTORNEY-GENERAL,

OF

Divers Matters in Law, with great and mature Conſideration reſolv'd and adjudg'd, which were never reſolv'd or adjudg'd before; and the Reaſons and Cauſes thereof; during the Reign of the moſt Illuſtrious and Renowned Queen *ELIZABETH*, the Fountain of all JUSTICE, and the LIFE of the LAW.

With REFERENCES to all the BOOKS of the *COMMON LAW*, as well Ancient as Modern.

Videte quod non mihi ſoli laboravi, ſed omnibus exquirentibus ſcientiam.
ECCLESIASTICUS, CAP. 24.

Lex eſt commune præceptum, virorum prudentium conſultum, delictorum quæ ſponte vel ignorantia contrahuntur, communis reipublicæ ſponſio.
PAPIAN, LIB. 1. *Definit'.*

Lex dicitur a ligando, quia obligat; vel dicitur a legendo, quia publice legatur.
ISIODORUS.

Cum dico legem, a me dici nihil aliud intelligi volo quam imperium; ſine quo domus ulla, nec civitas, nec gens, nec hominum univerſum genus ſtare, nec rerum natura omnis, nec ipſe mundus poteſt.
CIC. LIB. 1. de Legibus.

In the *SAVOY*:

Printed by E. and R. NUTT, and R. GOSLING, (Aſſigns of *Edward Sayer*, Eſq;) for D. Browne, J. Walthoe, B. Lintot, R. Gosling, W. Mears, T. Ward, W. Innys, J. Osborn, J. Hooke, T. Woodward, F. Clay, T. Wooton, R. Williamſon, and A. Ward.

M.DCC.XXVII.

Seneca ad Lucil. Epiſt. 108.

ILLUD tamen prius ſcribam, quemadmodum tibi iſta cupiditas diſcendi, qua flagrare te video, regenda ſit, ne ipſa impediat; nec paſſim carpenda ſunt, nec avide invadenda univerſa: Per partes pervenitur ad totum: Aptari onus viribus debet, nec plus occupari, quam cui ſufficere poſſumus: Non quantum vis, ſed quantum capis hauriendum eſt: Quo plus recipit animus, hoc ſe magis laxat.

THIS firſt will I ſet down, (which elſe might hinder thee) how thou art to order that fervent Deſire of Learning which I find to be in thee; Things are not every where to be alike gathered, nor univerſally all greedily ſnatched: The Whole is to be attained unto by Parts: Burdens muſt be fitted to the Strength of the Bearers; neither ſhould we gripe more than we are able to hold: Draw out ſo much as may ſatisfy not thy Will but thy Want: The very Mind of Man the more it receiveth, the more it looſens and freeth itſelf.

Lectio certa prodeſt, varia delectat; qui quo deſtinavit pervenire vult unam ſequatur viam, non per multas vagetur, non ire iſtud ſed errare eſt.

Certainty in Reading is profitable, Variety delightful; he that deſireth to come to his Journey's End, muſt purſue one Way, not wander in many, for that is rather to err than to go forward. Idem Epiſtola 45.

Idem ad Lucil. in Epiſt.

Non refert quam multos, ſed quam bonos habeas Libros; multitudo librorum onerat non inſtruit, & ſatius eſt paucis

It matters not how many Books thou haſt, but how good; Multitude of Books do rather burden than inſtruct, and it is far better

thoroughly to acquaint thyſelf with a few Authors, than to wander thorough many.

authoribus te tradere, quam errare per multos.

Jero. Epiſt. 88.

Tax thyſelf at ſo many Hours for Reading, that thou mayſt do it rather with Delight than with Toil.

Statue tibi quot horis legas, non ad laborem ſed ad delectationem.

TO THE

Learned READER.

QUÆ tria *Euripides* civis pariter atque viri boni officia facit, Deos colere, & qui te genuerunt parentes, νόμες τε κοινὲς Ἑλλαδ῟ legeſque inquit communes Greciæ; ea quo commendo tibi, (humaniſſime Lector) ut ſecundum pietatem ac religionem in Deum, & unctam ejus ſereniſſimam tuam Principem, addo etiam & honorem parentibus debitum, proxime leges Angliæ communes juſto obſequio ſtudioque proſequaris: Nam ex omnibus legibus (humanis dico) &

THERE are (ſaith Euripides) *three Vertues worthy our Meditation: To honour God, our Parents who begat us,* νόμες τε κοινὲς Ἑλλαδ῟ *and theſe Common Laws of* Greece; *the like do I ſay to thee (Gentle Reader) next to thy Duty and Piety to God, and his Anointed, thy Gracious Sovereign, and thy Honour to thy Parents, yield due Reverence and Obedience to the Common Laws* of England: *For of all Laws (I ſpeak of human) theſe are moſt equal and moſt certain, of greateſt Antiquity, and*

Honour God and thy Parents, obſerve the Common Law.

the Common Law, but ſometimes upon Conveyances and Inſtruments made by Men unlearned; many Times upon Wills intricately, abſurdly, and repugnant ſet down, by Parſons, Scriveners and ſuch other Imperites: And oftentimes upon Acts of Parliament, overladen with Proviſoes and Additions, and many Times on a ſudden penn'd or corrected by Men of none or very little Judgment in Law.

nes ex principiis juris oriuntur, ſed aliquando ex imperitia hominum pactiones aut inſtrumenta conſcribentium; ſæpius ex teſtamentis perplexis abſurdis, pugnantibuſque, ſive ab eccleſiæ alicujus rectore factis, ſive a tabellione & ſcriba, ſive ab imperito quocunq; alio nonnunquam denique ex ipſis comitiorum inſtitutis, cautionum atque additionum mole onuſtis, & vel in pulvere ac feſtinatione conſcriptis, vel a Sciolo quopiam in hoc genere correctis & emendatis.

The Remedy. *If Men would take ſound Advice and Counſel in making of their Conveyances, Aſſurances, Inſtruments, and Wills; and Counſellors would take Pains to be rightly and truly informed of the true State of their Client's Caſe, ſo as their Advice and Counſel might be apt and agreeable to their Client's Eſtate; and if Acts of Parliament were after the old Faſhion penn'd, and by ſuch only as perfectly knew what the Common Law was before the making of any Act of Parliament concerning that Matter, as alſo how far forth former Statutes had provided Remedy for former Miſchiefs and De-*

Quod ſi homines in teſtamentis, contractib' & inſtrumentis aliis conficiendis ſolidum ac maturum judicium adhiberent, operamq; & laborem diligentem inſumerent Conſiliarii in clientum ſuorum cauſis recte ac limate pernoſcendis, quo apte & ad rem ipſam accommodate imprimis reſpondeant: Et ſi leges publicis comitiis ſancitæ, non niſi antiqua ratione ſcriberentur, ab iis ſcilicet qui explorate norunt, quid de quaque re poſtulata jus regni antiquum præſtituerit, quouſque etiam inſtituta vetera, malis & incommodis illorum temporum experientia retectis providerint

& oc-

and leaſt Delay, and moſt beneficial and eaſy to be obſerved; *as, if the Model of a Preface would permit, I could defend againſt any Man that is not malicious without Underſtanding, and make manifeſt to any of Judgment and Indifferency, by Proofs pregnant and demonſtrative, and by Records and Teſtimonies luculent and irrefragable:* Sed ſunt quidam faſtidioſi, qui neſcio quo malo affectu oderunt Artes antequam pernoverunt. *There is no Jewel in the World comparable to Learning*; *no Learning ſo excellent both for Prince and Subject, as Knowledge of Laws*; *and no Knowledge of any Laws (I ſpeak of human) ſo neceſſary for all Eſtates, and for all Cauſes, concerning Goods, Lands, or Life, as the common Laws of* England. *If the Beauty of other Countries be faded and waſted with bloody Wars, thank God for the admirable Peace, wherein this Realm hath long flouriſhed under the due Adminiſtration of theſe Laws: If thou readeſt of the Tyranny of other Nations, wherein powerful Will and Pleaſure ſtands for Law and Reaſon, and*

æquiſſimæ illæ ſunt certiſſimæque, & integritatis maximæ, minimæque moræ, utiliſſimæ deniquæ facillimæque obſervatu. Atque hoc, (ſiquidem præfatiunculæ iſtius pateretur modulus) puto me, niſi ſi quis malitioſe nolit intelligere, adverſus quempiam tueri poſſe, idque oſtendere graviſſimis ac demonſtrativis argumentis, monimentis etiam & teſtimoniis clariſſimis firmiſſimiſque, cuicunque æquo eſtimatori incorrupti candidique judicii: Sed ſunt quidam faſtidioſi, qui neſcio quo malo affectu oderunt artes, antequam pernoverunt. Nulla eſt uſquam gentium margarita doctrinæ æquiparabilis; nulla doctrina, principi ſimul ac populo legum ſcientia præſtantior; nullæ Leges (humanas intelligo) ita cognitu neceſſariæ omni hominum conditioni, ad omnes cauſas & judicia, de fortunis, poſſeſſionibus, vita denique ipſa atque communes Angliæ. Quod ſi cæterarum fere nationum ſplendorem ac pulchritudinem, aut fœdavit aut extinxit cruentum bellum, immortales Deo gratias age, pro admirabili pace, in qua regnum hoc ſub iſtarum

legum

legum juſta adminiſtratione diutiſſime floruit: Sin quid unquam de exterarum gentium tyrannide legeris, in qua ſtat pro ratione voluntas præpotens, libido pro lege, ubi offenſæ leves (forte etiam proprie eſtimationis errore ſuſceptæ) venificio aut cœde, indicta cauſa, ſubito vindicant' lauda Deum pro juſtit' almæ tuæ Principis, quæ hiis ipſis legib' (ad totius mundi admirationem) populum ſuum dei benignitate in pace & proſperitat' regit; neq; vel graviſſime delinquentem punit quempiam, etiamſi læſæ Majeſtatis capitale crimen admiſerit, niſi ſecundum juſtam & æquam in hac lege actionem.

where, upon Conceit of Miſlike, Men are ſuddenly poiſoned, or otherwiſe murder'd, and never called to anſwer; praiſe God for the Juſtice of thy gracious Sovereign, who (to the World's Admiration) governeth her People by God's Goodneſs, in Peace and Proſperity by theſe Laws, and puniſheth not the greateſt Offender, no, though his Offence be Crimen læſæ Majeſtatis, *Treaſon againſt her Sacred Perſon, but by the juſt and equal Proceedings of Law.*

Quod ſi in aliis regnis obtinere quidem videntur leges, eas tamen malint Judices ad injuſtitiam detorquere, quam ut offenſum habeant dominum Regem, unde Poetæ illud, *Ad libitum Regis ſonuit ſententia legis*; benedicas (Lector) Deo pro *Elizabetha* noſtra, quæ ſecundum antiquum regni ipſius canonem, illud imprimis legum interpretibus & juſtitiæ miniſtris ſuis omnibus in mandatis dare ſolet, ne intervenientibus quibuſcunq; reſcriptis, epiſtolis, mandatis

If in other Kingdoms, the Laws ſeem to govern, but the Judges had rather miſconſtrue Law, and do Injuſtice, than diſpleaſe the King's Humour, whereof the Poet ſpeaketh, Ad libitum Regis ſonuit ſententia legis; *bleſs God for Queen* Elizabeth, *whoſe continual Charge to her Juſtices, agreeable with her ancient Laws, is, that for no Commandment under the Great or Privy Seal, Writs or Letters, common Right be diſturbed or delayed. And if any ſuch Commandment (upon untrue Surmiſes)*

2 E. 3. cap. 8.
20 E. 3. c. 1.
20 E. 3. c. 2.

Surmiſes) *ſhould come, that the Juſtices of her Laws ſhould not therefore ceaſe to do Right in any Point: And this agreeth with the ancient Law of* England, *declared by the great Charter, and ſpoken in the Perſon of the King*, Nulli vendemus, nulli negabimus, aut differemus Juſtitiam vel Rectum.

Magna Carta cap. 29.

etiam ſub ſigillo ſive communi, ſive privato ſuo, aut impediatur publicum jus, aut vel tantillum differatur. Quod ſi forte aliquod mandatum fictis nixum cauſis aliquando intercedat, ne propterea judices a debita juſtitiæ adminiſtratione ceſſent aut retardentur: Atque hoc facit ex antiquo inſtituto Angliæ, in *Magna* (ut loquuntur) *Charta* poſito, quæ ſic loquentem inducit perſonam Regis, *Nulli vendemus, nulli negabimus, aut differemus Juſtitiam vel Rectum.*

If the ancient Laws of this noble Iſland had not excelled all others, it could not be but ſome of the ſeveral Conquerors and Governors thereof, that is to ſay, the Romans, Saxons, Danes, or Normans, *and ſpecially the* Romans, *who (as they juſtly may) do boaſt of their Civil Laws, would (as every of them might) have altered or changed the ſame.*

Quod ſi antiquæ leges celeberrimæ iſtius Inſulæ, cæteris omnibus non excelluiſſent, fieri profecto non poſſit, quin ex tot victoribus dominiſq; cum penes ſingulos eſſet, ſive Romani, ſive Saxones, ſive Dani, ſive Normani, precipue vero Romani, qui de jure ſuo civili merito gloriantur, eas immutaſſent

For thy Comfort and Encouragement, caſt thine Eye upon the Sages of the Law, that have been before thee, and never ſhalt thou find any that hath excelled in the Knowledge of theſe Laws, but hath ſuck'd from the Breaſts of that Divine

Pone tibi, Lector, ante oculos ad ſolatium & alacritatem tuam in hoc ſtudio, ſapientes noſtri juris qui aliquot retro actis ſæculis vixerunt, neq; quenquam invenies qui aliquando jura hæc calluerit, quin ab uberibus quaſi divinæ

vinæ illius ſcientiæ, honeſtate, gravitatem, integritatem una ſuxerit, & ſingulari Dei beneficio, majori ornamento familiæ poſteriſque ſuis extiterit, quam quicunque cujuſcunque profeſſionis alii; id quod ſequens pagina in aliquibus ſaltem ex magno numero indicabit; manent enim indubitata & conſtans illa veritas, *Juſtus ut Palma florebit, & ſicut Cedrus Libani multiplicabitur.*

Knowledge, Honeſty, Gravity, and Integrity, and by the Goodneſs of God hath obtained a greater Bleſſing and Ornament than any other Profeſſion to their Family and Poſterity, as by the Page following, taking ſome for many, you may perceive; for it is an undoubted Truth, That the Juſt ſhall flouriſh like the Palm-Tree, and ſpread abroad as the Cedars of *Libanus.* Pſalm 91. ver. 13.

Horum igitur exempla, una cum hoc tuo inſtituto vitæ, ſtudium ac virtutem requirunt: Neque enim hactenus vidi hominem impura & improba vita, ſolidam perfectamque noſtri Juris ſcientiam attigiſſe: Neq; quenquam ex adverſo, præſtantis judicii in hoc jure obſervavi, qui non idem (hujuſmodi Magiſtrum nactus) honeſtus fidelis, probus evaſerit.

Their Example and thy Profeſſion do require thy Imitation: For hitherto I never ſaw any Man of a looſe and lawleſs Life, attain to any ſound and perfect Knowledge of the ſaid Laws: And on the other Side, I never ſaw any Man of excellent Judgment in theſe Laws, but was withall (being taught by ſuch a Maſter) honeſt, faithful, and virtuous.

Quod ſi quando Juriſperitorum diſcrepantes paulo ſententiæ occurrant, contendite ipſi (ſicut æpuum eſt) ad ſcientiæ iſtius culmen, & intelligetis profecto, *Hominum hæc, non Artis vitia eſſe.* Neque enim (ut quod res eſt dicam) difficiles propemodum ac ſpinoſæ queſtio-

If you obſerve any Diverſities of Opinions amongſt the Profeſſors of the Laws, contend you (as it behoveth) to be learned in your Profeſſion, and you ſhall find, that it is Hominis vitium non profeſſionis. *And to ſay the Truth, the greateſt Queſtions ariſe not upon any of the Rules of* The Cauſe of Diverſity of Opinions.

the

& occurrerint, certe quidem tum queſtiones in jure perpaucæ orirentur, neque ſe torquerent adeo viri docti, in conciliandis aptandiſque ſecundum juris regulas, verbis, ſententiis, & cautelis pugnantibus alioqui inter ſe planeq; incommodis ac ineptis.

fects diſcovered by Experience; then ſhould very few Queſtions in Law ariſe, and the learned ſhould not ſo often and ſo much perplex their Heads, to make Atonement and Peace by Conſtruction of Law between inſenſible and diſagreeing Words, Sentences, and Proviſoes, as they now do.

Quinetiam adeo certum eſt Jus noſtrum ſibiq; conſtans, ut ex toto illo tempore quo ſtudium & inſtitutum hoc vitæ ſum ingreſſus, ne duas quidem adverti queſtiones de jure hæreditatum, de terrarum legitima confiſcatione ſive (ut loquuntur) eſcæta aliiſq; conſimilibus. Fælices merito perhiberentur artes, ſiquidem primo qui eas profitentur, ſumma cura ac religione in id incumberent, ut poſſent plenam perfectamque earum cognitionem adipiſci: Deinde ſi in eas nullus cenſoriam authoritatem, abſque judicio & doctrina cenſoria in ſe aſſumeret.

In all my Time, I have not known two Queſtions made of the Right of Diſcents, of Eſcheats by the Common Law, &c. ſo certain and ſure the Rules thereof be: Happy were Arts, if their Profeſſors would contend, and have a Conſcience to be learned in them, and if none but the Learned would take upon them to give Judgment of them.

Humaniſſimi Lectores, fecit gratus ac benevolus veſter animus quo ſuperiorem elucubrationum mearum editionem proſecuti & amplexi eſtis, ut quod de ſecunda hac, numero cauſarum aucta, prius promiſeram nunc ex-

Your kind and favourable Acceptation (gentle Reader) of my former Edition, hath cauſed me to publiſh theſe few Caſes in Performance of my former Promiſe, and I wiſh to you all no leſs Profit in reading of them than I perſwade

perſwade myſelf to have reaped in obſerving of them: This only of the Learned I deſire:

oluam; in quibus legendis non minorem vobis exopto fructum, quam (ſicut mihi perſuadeo) in colligendis ipſe perceperim. Hoc tantum a doctis peto:

Perlege, ſed ſi quid noviſti rectius iſtis,
Candidus imperti; ſi non hiis utere mecum.

A.

AUdeley.
Aldeburgh
Aſcoughe.
Aſhton.
Arderne.
Alyngton.

B.

Bereford.
Burghe.
Brooke.
Butler.
Browne.
Bridges.
Bere.
Belknap.
Babthorpe.
Brampton.
Bingham.
Billing.
Babington.
Barton.
Brudnell.
Brian.
Bacon.
Bell.
Beaumont.
Baſſet.
Botteler.
Bouſſer.
Brencheſle.
Bois.

C.

Cheny.
Cavendiſh.
Clopton.
Connisby.
Conſtable.
Cokeine.
Choke.
Catesby.
Cherlton.
Callowe.
Colepeper.
Corbet.
Carrill.
Cotteſmore.
Cooke William

D.

Danby.
Danvers.
Delves.

E.

Elderton.
Ermitage.
Englefield.
Elyot.

F.

Forteſcue.
Falſtolf.
Fencotes.
Finchden.
Fineux.
Fitz-John.
Fitz-James.
Fitz-Herbert.
Fiſher.
Frowick.
Fulthorpe.
Fairfax.

G.

Glanvile.
Grevile.
Grene.
Gaſcoine.
Godard.
Gargrave.
Gawdy.

H.

Howard.
Huſſey.
Holt.
Hankford.
Heydon.
Herle.
Hare.
Hubart.
Hill.
Hales.
Huls.
Hody.
Haugh.
Hynde.
Harper.

I.

Ingleby.
Juyin.
Jenney.

K.

Knyvet.
Knightley.
Kirton.
Kingſmill.
Kelleſhull.

L.

Laicon.
Lowther.
Littleton.
Lodington.
Luke.

M.

Mowbrey.
Markham.
Molyneux.
Mordant.
Morgan.
Mervin.
Mutford.
Martin.

Marow.

Marow.
Mountague.
Moyle.
More.
Meade.
Manwood.

N.

Nevile.
North.
Nele.
Newport.
Newdigate.
Newton.
Norton.
Nedham.
Norwich.

O.

Oxenbrige.
Owen.
Onley.

P.

Perſey.
Pole.
Pawlet.
Paſton.
Portington.
Poer.
Pigot.
Portman.
Preſton.
Palmer.
Pollard.

R.

Ratclife.
Ruſſell.
Roe.
Riche.
Rokeby.
Rolfe.
Rokewood.
Rhodes.

S.

Segrave.
Strange.
Scrope.
Seton.
Sadlier.
Stoner.
Skipwith.
Sulyard.
Sydenham.
Stonerton.
Stonford.
Strangeways.
Scot.
Shelley.
Say.
Starkey.
Sydney.
Spilman.
Stamford.
Southill.

T.

Thorpe.
Towneſende.
Travers.
Tremayle.
Tirwhitt.
Trevaignon.
Treſham.
Tilleſley.

W.

Willoughby.
Weſt.
Wangford.
Wichingham.
Whorewood.
Weſton.
Wood.
Wadham.
Wray.

Y.

Yelverton.
Yaxley.
Yonge.

Paſchæ 26. Elizabethæ Reginæ, *Rotul'* 1608.

RIchardus Manſer nuper de London Yeoman alias dictus Rich. Manſer de Gillingham in com' Kanc' Yeoman, ſum' fuit ad reſpondend' Will' Painter arm', de placito qd' reddat ei xl. li. quas ei debet, & injuſte detinet, &c. Et unde idem Will' per Thom' Antrobus attorn' ſuum dicit, qd' cum præd' Ric. vj. die Aprilis, Anno Regni Dominæ Reginæ nunc xij. apud Londinum in Parochia beatæ Mariæ de Arcubus, in Warda de Cheape, per quodd' ſcriptum ſuum obligatiorium, conceſſiſſet ſe teneri eidem Will' in præd' xl. li. ſolvend' eidem Will' in feſto Aſcentionis domini tunc proxim' ſequen': Præd' tamen Ric. licet ſepius requiſit' præd' xl. li. eidem Will' nondum reddidit, ſed illas ei hucuſq; reddere contradixit, & adhuc contradicit, unde dicit qd' deterioratus eſt, & dampnum habet ad valenciam x. li. & inde producit ſectam, &c. Et profert hic in curia ſcriptum pred' quod debitum pred' in form' pred' teſtatur, cujus datum eſt die & anno ſuprad', &c. Et pred' Ric. per Joh. Cooke attorn' ſuum venit & defendit vim & injuriam quando, &c. Et petit auditum ſcripti pred' & ei legitur, &c. Petit etiam audit' indorſamenti ejuſd' ſcripti, & ei legitur in hæc verba. The Condition of this Obligation is ſuch, That whereas the within bounden Richard Manſer and John Manſer his Son, by their Deed of Feoffment, bearing the Date of this Obligation, have given, granted and confirmed, unto the within named William Painter, and his Heirs, all that Parcel of Woodland called Southwood, containing by Eſtimation Ten Acres, be it more or leſs, lying together in the Parish of Gillingham within ſaid, and Bedherſt in the County within ſaid, to the Lands of one Thomas Kemſley, towards the Eaſt, Weſt, and North, and to the King's Highway towards the South, as by the ſame Deed more at large it appeareth, if the ſaid William Painter, and his Heirs, ſhall and may at all Times here-

after, have, hold and enjoy all the foreſaid Parcel of Woodland, with the Appurtenances, diſcharged or ſaved harmleſs, of, and from all and every former Bargain, Sale, Gift, Grant, Leaſe, Right, Jointure, Dower, Rent Charge, and all other Things and Incumbrances whatſoever, had, made, or ſuffered to be done by the ſaid R. Manſer, or his Heirs or Aſſigns: And alſo if the ſaid R. Manſer, and J. Manſer his Son and their Heirs, and the Heirs of either of them, do at all Times hereafter, upon Requeſt to them or any of them made, at the only Coſts and Charges of the ſaid W. Painter, his Heirs and Aſſigns, make, ſeal, deliver, acknowledge, and do all and every ſuch further reaſonable Act and Acts, Thing and Things, Deviſe and Deviſes in the Law, as ſhall be reaſonably deviſed or required to be done by the ſaid W. Painter, his Heirs or Aſſigns, or his or their Counſel learned in the Law, for the further Aſſurance, Surety, and ſure making of the foreſaid Parcel of Woodland, with the Appurtenances, unto the ſaid W. Painter, his Heirs and Aſſigns: That then this preſent Obligation to be void, or otherwiſe to remain in his Force and Vertue. Quibus lectis & auditis, idem Ric. dicit quod pred' Will' actionem ſuam pred' verſus eum habere non debet, quia dicit quod pred' Will' a tempore confectionis ſcripti pred' uſq; diem impetrationis brevis originalis ipſius Will', ſc. xiv. diem Octobris, anno regni dictæ dom' Reginæ nunc xxvi. habuit, tenuit, & gaviſus fuit, totam pred' parcellam boſci cum pertin' vocat' Southwood, in conditione pred' ſuperius ſpecificat', indempn' conſervat' de & ab omnibus & ſingulis prioribus barganiis, venditionibus, donis, conceſſionibus, dimiſſionibus, juribus, juncturis, dotibus, redditibus oneratis, & de omnibus aliis oneribus, & incumbrantiis quibuſcunq; habit' factis vel permiſſis fieri per ipſum R. Manſer, heredes vel aſſign' ſuos, ſecund' form' & effect' indorſamenti illius; Et idem Ric. Manſer ulterius dicit, quod' poſt confectionem ſcripti pred', & ante pred' diem impetrationis brevis originalis pred', ſc. x. die Aprilis, anno regni dictæ dom' Reginæ nunc xxiv. predict', Will' Painter apud Gillingham in comitatu Kanc' deviſavit in ſcriptis quoddam ſcriptum relaxationis inter eundem Will' Painter & ipſum Ric. Manſer, & præfat' Joh. Manſer, & adtunc & ibidem requiſivit ipſum Ric. & præfat' Joh. quod ſcriptum illud ut factum ſuum deliberarent, ſuper quo idem Ric. ſcriptum illud apud Gillingham predictam, ſigillavit & deliberavit ut factum ipſius Ric. præfat' Will': Et ulterius idem Ric. dicit, quod prædictus Joh. filius ipſius Ric. in conditione predicta nominatus, ſuper pred' requiſitionem predicti Will' eidem Joh. factam, ad ſigillan' & deliberand' ſcriptum illud ut factum ſuum, ſuper monſtrationem

ſtrationem predicti ſcripti relaxationis ſic deviſat', pro eo quod predictus Joh. minime literat' fuit & neſcivit legere, neq; diſcernere content' ſive materiam ejuſdem ſcripti, apud Gillingham predictam adtunc requiſivit de præfat' Will' Painter ſcriptum pred' ſibi deliberari, ad monſtrand' illud homini erudit' qui ſcriptum pred' ſibi legere potuiſſet. Ita quod ipſe ſuper lectionem inde de contentis ejuſdem ipſum informare potuiſſet, utrum ſcriptum illud factum eſſet ſecundum tenorem conditionis pred' necne; Idemq; Joh. dixit adtunc & ibidem quod ipſe ſcriptum illud ſigillare & deliberare vellet, ſi ſcriptum illud factum eſſet ſecund' tenorem conditionis pred': Sed pred' Will' adtunc & ibid' recuſavit deliberare eidem Joh. ſcriptum pred' ad oſtendend' homini in lege erudit', qui illud eidem Joh. legere potuiſſet: per qnod pred' Joh. non ſigillavit, neq; deliberavit ſcriptum præd' præf. Will' ſuper requiſitionem pred' Will', modo & forma pred' fact'. Et pred' Rich. Manſer ulterius dicit, quod a tempore confectionis ſcripti pred', uſq; pred' diem impetrationis brevis pred', non fuerunt aliqua alia ulteriora act' vel acta, deviſament' vel deviſamenta, per pred' Will' vel Conſilium ſuum erudit' deviſat' & requiſit' fieri præf. Will' Painter pro ulterior' aſſuran', ſecuritate, & ſecura factione pred' parcellæ boſci cum pertinentiis per præfat. Ric. Manſer & Joh. Manſer ſive eorum alterum, præf. Will' Painter hered' & aſſign' ſuis, ſecundum formam & effectum conditionis pred' fiend': Et hoc parat' eſt verificare, unde petit judicium ſi pred' Will' actionem ſuam pred', verſus eum habere debeat, &c. Et pred' Will' dicit, quod pred' placitum pred' Ric. modo & forma pred' ſuperius placitat', minus ſufficien' in lege exiſtit ad ipſum Will' ab actione ſua pred' verſus præf. Ric. habend' præcludendum; quodq; ipſe ad placitum illud modo & forma pred' placitatum neceſſe non habet, nec per legem ter' tenetur reſpondere, Et hoc parat' eſt verificare, unde pro defectu ſufficien' placiti in hac parte, idem Will' petit judicium & debitum ſuum pred', unacum dampnis ſuis occaſione detentionis debiti illius ſibi adjudicari, &c. Et pred' Ric. ex quo ipſe ſufficien' materiam in lege ad pred' Will. ab actione ſua pred' verſus ipſum Ric. habend' præcludend' ſuperius allegavit, quam ipſe parat' eſt verificare. Ad quam quidem materiam pred' Will' non dedic', nec ad eam aliqualiter reſpondet, ſed verificationem illam admittere omnino recuſat, ut prius petit judicium, & quod pred' Will' ab actione ſua pred' verſus ipſum Ric. habend' præcludatur, &c. Et quia Juſtic' hic ſe adviſare volunt de & ſuper præmiſſis priuſquam judicium inde reddant, dies datus eſt partibus pred' hic uſq; in Craſtino ſanctæ Trinitatis de audiendo inde judicio ſuo, eo quod iidem Juſtic' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Will' Painter, quam præd' Ric. Manſer per attorn' ſuos pred', Et quia Juſtic' hic ulterius ſe

adviſare volunt de & ſuper premiſſis priuſquam judicium inde reddant, dies ulterius 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 ven' tam pred' Will' Painter quam pred' Ric. Manſer per attorn' ſuos pred'. Et ſuper hoc viſis præmiſſis, & per Juſtic' hic plene intellectis, videtur eiſdem Juſtic' hic, quod pred' placitum pred' R. Manſer ſuperius in barram placitat', minus ſufficien' in lege exiſtit ad ipſum Will' ab actione ſua pred' verſus præf. Ric. habend' præcludend', prout pred' Will' Painter ſuperius allegavit: Ideo (*a*) conceſſum eſt, quod pred' Will' Painter recuperet verſus præf. R. Manſer debitum ſuum pred', & dampna ſua occaſione detention' debiti illius ad viginti marcas, eidem Will' ex aſſenſu ſuo per Cur' hic adjudicat'. Et pred' Ric. in miſericordia, &c. Poſtea ſcilicet x. die Junii, anno regni dominæ reginæ nunc xxviii. venit hic in Cur' pred' Will' Painter per pred' Thom' Antrobus attorn' ſuum, per ſpeciale warrant' ei in hac parte conſtitut'. Et cogn' quod ſatisfactum eſt ei de debito, & dampnis pred', Ideo pred' Ric. de debito & dampnis illis ſit quietus, &c.

(*a*) 1 Co. 22. a. 40. a. 83. a. 119. b. 1 Rol. Rep. 278, 279. 3 Bulſtrod. 92, 93, 94. 1 Rol. 771, 774. Cr. Car. 442, 443. Cr. Jac. 6, 386, 622. Yel. 130. Hob. 17. 19. 194. 337. Stat. 16 & 17 Car. 2. c. 8. Stat. 22 & 23 Car. 2. c. 4. Jenk Cent. 13 Cr. El. 145. Palm. 260. Noy 77. N. Benl. 184. pl. 226. Poph. 203. 212. Latch. 76. 83. 188. 2 Bulſtr. 125, 126. 179. 1 Sid. 70.

Pach.

Paſch. 26 Eliz.

Rot. 1608. in Communi Banco.

MANSER's *Caſe.*

BETWEEN *Painter* and (*a*) *Manſer*, the Caſe was thus: *Painter* brought an Action of Debt upon an Obligation againſt *Manſer*, and the Defendant pleads the Obligation was with Condition, *ſc.* That whereas the Def. had enfeoft the Pl. of certain Lands, if the Pl. ſhall at all Times following enjoy thoſe Lands diſcharged, or otherwiſe kept indempnified from all Incumbrances, *&c.* and alſo if the Def. and *John Manſer* his (*b*) Son, ſhall do all Acts and Deviſes for the better Aſſurance of thoſe Lands to him, as by the Pl. or his Council learned in the Law ſhall be deviſed, that then the Obligation ſhall be void; and pleads that the Pl. had enjoy'd the ſaid Lands diſcharged and kept indempnified from all Incumbrances, *&c.* and that the Pl. deviſed a Writing of Releaſe to be made by the Def. and *John* his Son, to the Pl. which the Def. did ſeal and deliver as his Deed; and becauſe his Son was not lettered, and could not read, the ſaid *John* prayed the Pl. to deliver it to him, to be ſhewed to ſome Man learned in the Law, who might inform him if it was made according to the Condition; and ſaid further, that if it was according to the Condition, he would deliver it: which the Pl. refuſed; wherefore he did not deliver it, as it was lawful he ſhould not: Whereupon the Pl. demurred; and it was adjudged for the Pl. In this Caſe three Points were reſolv'd, (1.) That if a Man not lettered be bound to make a Deed, he is not bound to ſeal and deliver any Writing tender'd to him, unleſs ſome Body be preſent who can (*c*) read the Deed to him, if he requires the Writing to be read to him; and if the Deed be in *Latin*, *French*, or other Language (which the Party who is to execute the Writing doth not underſtand) in ſuch Caſe, if the

(*a*) Moor 182. 12 Co. 89. 1 Roll. 440. 4 Leon. 62.

(*b*) 3 Bulſtr. 30.

(*c*) Inſt. 9. b. 1 Jones 314.

Party demands that one ſhould read and interpret the Writing to him, and none be preſent that can read and expound the Tenor of the ſame in that (*a*) Language that the Party who is to deliver the Deed underſtands, there the Party may well refuſe to deliver it. So it is although the Man can read (*b*), yet if the Deed be endited in *Latin*, *French*, or other ſuch Language as the Party who is to execute cannot underſtand, if he demands that the Writing be (*c*) read or expounded to him in ſuch Language as he may underſtand it, and no Body be there to do it, the Party may refuſe to deliver it. And it is to be obſerved, *quod* (*d*) *ignorantia eſt duplex*, viz. *facti & juris*; *& rurſum ignorantia facti* (*quoad rem noſtram attinet*) *eſt duplex*, *videlicet*, *lectionis & linguæ*. Note, Reader, that Ignorance in Reading, or Ignorance of the Language, *quæ ſunt ignorantiæ facti*, may excuſe; but as is commonly ſaid (*e*), *ignorantia juris non excuſat*: for notwithſtanding it was ſaid there, that altho' the Party might read, and underſtand the Language alſo in which the Writing was made, yet he might not know the Senſe and Operation of the Words in Law, and whether they agree with the Condition of his Obligation or not; and therefore *prima facie* ſome of the Juſtices did ſeem to hold, that in ſuch Caſe the Party ſhall have (*f*) reaſonable Time to ſhew the Writing to his Council learned in the Law, to be inſtructed by them whether it be according to what he is bound to do, and namely when there is no Time limited, in which it is to be done, ſo as in regard that the other Party might requeſt the doing of it when he pleaſed, it is not poſſible for the Party to have his Council at all Times with him: and therefore it ſeems reaſonable, *prima facie*, that the Party ſhall have reaſonable Time, as is aforeſaid. But at laſt, upon the View of the Record of a Judgment in this Court, *An.* 16. *Eliz.* in the Time of the Lord *Dyer*, between Sir *Anthony Cook* and *Wotton*, that upon ſuch Requeſt made to Sir *Anthony Cook* (*g*) by *Wotton*, to ſeal an Indenture, Sir *Anthony*, who was not learned in the Law, was obliged to ſeal it peremptorily at his Peril, and could not obtain convenient Time to conſult upon it with his Council; hereupon it was reſolved in the Caſe at the Bar according to the ſaid Judgment. See the Caſe now reported by the Lord *Dyer*. And it was ſaid, that the Caſe at the Bar was ſtronger than that of Sir *Anthony Cook*; for in this Caſe the Def. obliged himſelf, that his Son, who was a Stranger to the Obligation, ſhould do, *&c.* In which Caſe he has undertaken that his Son ſhall do it at his Peril; for he that is obliged, undertakes more for a (*h*) Stranger than for himſelf, in many Caſes. *Vide* (*i*) 33 *H.* 6. 16. b. 36 *H.* 6. 8. 2 *E.* 4. 2. 15 *E.* 4. 5. b. 22 *E.* 4. 43. and 10 *H.* 7. 14. b. It was reſolved that the Pleading was inſufficient; for he hath pleaded, That the Pl. had enjoyed the Land diſcharged

(*a*) Inf. 9. b.
(*b*) 12 Co. 89.
(*c*) 11 Co. 27.
(*d*) Plowd. 19. a.
(*e*) 1 Jones 314. 1 Co. 177. b. 14 H. 8. 26. b.
(*f*) Cr. El. 9. Cr. Car. 299.
Vide Dyer, Tr. 16 El. placito 39. fo. 337, & 338.
(*g*) 4 Leon. 63. 190. 1 Jones 314. Dyer 337, 338. pl. 39. 1 Ander. 53. New Benl. 228. pl. 260. 5 Co. 8. a. 19. a. 1 Rol. 424, 440. Godb. 445.
(*h*) Moor 183. 3 Bulſt. 30. 5 Co. 23. b. Cr. El. 716. 864. C. Lit. 209. a. 1 Rol. 452. 6 Co. 31. a. 2 Rol. Rep. 196. 2 Rol. 402. H. 2. Perk. Sect. 756. 15 E. 4, 5. b. 6. a. Br. Condition. 62. 242.
(*i*) 2 Rol. Rep. 196. 3 Bulſtr. 29, 30. 5 Co. 23. b. Br. Covenant. 3. Br. Condition. 13. Fitz. Bar. 62.

diſcharged and kept harmleſs from Incumbrances, where he ought to have ſhewed how: So if he had (*a*) pleaded, That he had ſaved him harmleſs, he ought to have ſhewed how; but in ſuch Caſe, if he had pleaded in the negative, *Non fuit damnificatus*, there it is otherwiſe. Secondly, He hath pleaded, *Quod quoddam* (*b*) *ſcriptum relaxationis* was ſealed and delivered, and doth not ſhew whether the Releaſe concerns the Land mentioned in the Condition, and for all theſe Cauſes the Plaintiff had Judgment to recover.

Note Reader, There is great Reaſon, that the Writing ſhould be expounded in ſuch Language, that the Party may underſtand it, although he could read, becauſe by the Law he is at his Peril to (*c*) deliver it preſently upon Requeſt, and hath not Time to conſult upon it with Council learned in the Law.

(*a*) Cr. Jac. 165, 340, 359, 363, 503, 634. Moor 857. Hob. 13. 296. Cr. El. 253, 393, 477, 914, 916. Cr. Car. 384. 2 Leonard 214. Kelw. 80. b. 95. b. 5 H. 7, 8. a. 6 H. 7. 6. a. Plowd. 7. b. 33. b. Co. Lit. 303. a. Dyer 43. Pl. 18, 19. Br. Condition 133. in fine, 9 Co. 25. a. 1 Leon. 71. Winch. 9. Hardres 133. 2 Rol. Rep. 159. 488. Doctrin. Placit. 58, 270. 40 E. 3. 20. a. Moor 3. Pl. 9. Bro. Cond. 185. 3 Mod. 252. 5 Mod. 243.

(*b*) Moor 183.

(*c*) Cr. El. 9.

Hill. 26 Eliz.

Rot. 1038. *in the Common Pleas.*

GODDARD's *Caſe.*

(a) 3 Leon. 100. (a) GOddard, Adminiſtrator of *James Newton*, brought an Action of Debt againſt *John Denton*, upon a Bond made to the Inteſtate, bearing Date 4 *Aprilis* 24 *Eliz.* The Defendant pleaded, That the Inteſtate died before the Date of the Bond, and ſo concluded, that the ſaid Writing was not his Deed, upon which they were at Iſſue; the (b) Jury found that the Defendant did deliver it as his Deed, 30 *Julii*, *Anno* 23 *Eliz.* and found the Tenor of the Deed *in hæc verba*, *Noverint Univerſi*, *&c. dat.* 4 *Aprilis*, *Anno* 24 *Eliz.* and that the Inteſtate was living 30 *Julii* 23 *Eliz.* and that he died before the ſaid Date of the Bond: And prayed the Advice of the Court, Whether this was (c) the Defendant's Deed. And it was adjudged by *Anderſon* Chief Juſtice, *Windham*, *Periam* and *Walmeſley*, That it was his Deed, and the Reaſon of their Judgment was, That although the Obligee in Pleading cannot alledge the Delivery before (d) the Date, as it was adjudged in 12 *H.* 6. 1. (e) which Caſe was affirmed to be good Law, becauſe he is eſtopped to take an Averment againſt any Thing expreſſed in the Deed, yet the Jurors, who are ſworn to ſay the Truth, ſhall not be eſtopped, for an Eſtoppel is to conclude one to ſay the Truth; and therefore Jurors cannot be eſtopped, becauſe they are ſworn to ſay the Truth. *Vide* (f) 1 *H.* 4. 6. *b.* 35 *Aſſ.* 8. 17 *E.* 3. 6. *Plow. Comm.* 515. *a.* but if the Eſtoppel or Admittance be within the ſame Record in which the Iſſue is joined, upon which the Jurors ſhall give their Verdict, there they cannot find any Thing againſt that which the Parties have affirmed and admitted of Record, although the Truth be contrary; for the Court may give Judgment upon a Thing confeſſed by the Parties, and (g) Jurors are not to be charged with any ſuch Thing, but only with Things in which the Parties differ. *Vid.* 28. *Aſſ.*

(b) Cr. Car. 130. 131. 1 Jones 192.

(c) Cr. Jac. 640.

(d) 3 Keb. 332. Br. faits 94. Perk. Sect. 140.

(e) 2 Rol. 690. 4 Co. 53. a. Cr. El. 36, 37, 140, 309. Cr. Car. 110. Co. Lit. 227. a. 352. a. Owen 96. 1 Leon. 206. Savil. 98. 99. Dyer 147. Pl. 73. Cart. 155. Palm. 20. Hard. 483.

(f) 1 H. 4. 5. b.

(g) Raymond 47. 2 Rol. 691. Dyer 33. Pl. 8. 9 Co. 69. b. 28 Aſſ. 17. per Finchden. Br. Confeſſion 27.

Aſſ. 34. 9 *H.* 6. 37. *a. b.* 3 & 4 *Phil. & Mar. Dyer* (*a*) 147. And the (*b*) Date of a Deed is not of the Subſtance of a Deed; for if it hath no Date, or hath a falſe or impoſſible Date, as the thirtieth Day of *February*, yet the Deed is good; for there are but three Things of the Eſſence and Subſtance of a Deed, that is to ſay, writing in Paper or Parchment, Sealing and Delivery, and if it hath theſe three, although it wanted, *In* (*c*) *cujus rei teſtimonium ſigillum ſuum appoſuit*, yet the Deed is ſufficient, for the Delivery is as neceſſary to the Eſſence of a Deed, as the putting of the Seal to it, and yet it need not to be contained in the Deed, that it was delivered. And note, the Order of making a Deed is, firſt to write it, then to ſeal it, and after to deliver it, and therefore it is not neceſſary that the Sealing or Delivery be mentioned in the Writing, foraſmuch as they are to be done after. And ſo it was ſaid it was reſolved in *Henry* the Eighth's Time. See Reader 40 *E* 3. 2. *a.* and an Opinion in 7 *H.* 7. 14. *a.* to the contrary; but ſee the Caſe cited in the Time of *H.* 8. now reported by the Lord *Dyer* (*d*) 28 *H.* 8. 19. and believe, Reader, the late Judgments are grounded upon full and pregnant Reaſon. And when a Deed is delivered, it takes Effect by the Delivery, and not from the Day of the Date. And therefore be the Deed without Date, or of a falſe or impoſſible Date, yet the Deed is good. Secondly, By this Judgment it is to be obſerved, That if a Man bring an Action of Debt, and declares, That the Defendant 4 *Aprilis* 24 *Eliz.* made a Bond, bearing Date the ſame Day and Year, and the Defendant pleads *Non eſt factum*, and it is found that the Deed was (*e*) delivered at another Day before or after the Day which the Plaintiff hath declared, that yet Judgment ſhall be given for the Plaintiff, foraſmuch as the Date is not material, and the Defendant cannot be twice charged. And many Times Bonds are delivered at other Days than they bear Date. So it appeareth by this Judgment, that the miſtaking of the Date of the Bond ſhall not hurt, upon *Non eſt factum* pleaded.

(*a*) Dyer 147. pl. 73.
(*b*) Co. Lit. 6. a. 46. b. 1 Rol. 849. 2 Rol. 21. Mod. Rep. 180. Noy 21, 85. Keilw. 34. b. Plow. 231. b. 491. Cro. Car. 78. 1 Jones 140. Latch 158. Cr. Jac. 261. Yelv. 194. Cart. 153. 1 Brownl. 110. Perk. 25. b. Moor 28.
(*c*) Moor 3. Co. Lit. 6. a. 7. a. 229. b. 2 Inſt. 78. Keilw. 34. b. 70. b. 2 Rol. 21, 22. Perk. 27 b. 28. a. Br. factis 103. Br. Obligation 8. 7 H. 7. 14. b. 8 H. 6. 35. a. Dyer 19. pl. 113. 22. pl. 140. 1 Leon. 25. 3. Bulſt. 300, 301, 302. Old. Benl. 127. Owen 33. 40 E. 3. 2. a. Statham Obligation. 1.
(*d*) Dyer 19. pl. 113.
(*e*) Plow. Com. 323. a. Cr. Jac. 136. Hob. 73. 349. Salk. 463.

Per

Per Trinitatis Recordum, Anno 24 Eliz. Reginæ, *Rot.* 928.

FILMER.

Eſſex. ſſ. WIllihelmus Cole nuper de Paringdon' magna in com' præd' gen', attachiatus fuit ad reſpondendum Will. Throughgood, de placito quare vi & armis clauſum & domum ipſius Will. Throughgood, apud Paringdon' magnam fregit, & herbam ſuam ad valenc' xx.li ibidem nuper creſcen', cum quibuſdam averiis depaſtus fuit, conculcavit, & conſumpſit, & alia enormia ei intulit ad grave dampnum ipſius Will. Throughgood, & contra pac' dominæ Reginæ nunc, &c. Et unde idem Will. Throughgood, per Will. Ayleſburie attorn' ſuum querit' quod præd' Will. Cole xii. die Octobris, an. reg. dominæ Reginæ nunc xxiii. vi & armis, &c. clauſum & domum ipſius Will. Throughgood apud Paringdon' magnam fregit, & herbam ſuam ad valentiam, &c. ibidem nuper creſcen' cum quibuſdam av'iis, viz. equis, bobus, vaccis, porcis, & bidentibus depaſtus fuit conculcavit, & conſumpſit, tranſgreſſion' præd' quoad depaſtum conculcation' & conſumption' herbæ præd' a præd' xii. die Octobris anno xxiii. ſuprad', uſq; diem impetrationis brevis originalis ipſius Will. Throughgood, ſc. vi. die Novemb. tunc proxim' ſequent' div'ſis diebus & vicibus continuando, & alia enormia, &c. Ad grave dampnum, &c. Et cont' pac', &c. unde dic' quod deteriorat' eſt, & dampnum habet ad valenc' xl. li. & inde produc' ſectam, &c: Et præd' Will. Cole per Tho. Raynold atturn' ſuum ven', & defend' vim & injur' quando, &c. Et quoad venire vi & armis dic' quod ipſe in nullo eſt inde culpabilis, & de hoc ponit ſe ſuper patriam, & præd' Will. Throughgood ſimilit': Et quoad reſid' tranſgreſ. præd' ſuperius fieri ſuppoſit', idem Will. Cole dic', quod prædictus Will. Throughgood actionem ſuam præd' verſ. eum habere non debet quia dic' quod clauſum & domus præd' necnon loci in quibus ſupponit' tranſgreſ. præd' fieri, ſunt & præd' tempore tranſgreſ. præd' ſuperius

ſuperius fieri ſuppoſit', fuer' unum meſuagium & duæ acre prati cum pertin' voc' **Nychols tenement** in Paringdon' magna præd', quæ quidem ten'ta cum pertin' ſunt & præd' tempore tranſgreſ. præd' ſuperius fieri ſuppoſit' fuer', ſolum & liberum ten'ta ipſius Will. Cole per quod idem Will. præd' tempore quo, &c. clauſum & domum præd', ut clauſum & ſolum & liber' ten'tum ipſius Will. Cole propr' in eiſdem meſuagio & duabus acris prati cum pertin' fregit, & herbam præd' ut herbam ipſius Will. Cole propriam ibid' tunc creſcen', cum av'iis præd' depaſtus fuit, conculcavit, & conſumpſit, prout ei bene licuit: Et hoc parat' eſt verificare, unde petit judicium ſi præd' Will. Throughgood actionem ſuam præd' verſ. eum habere debeat, &c. Et præd' Will. Throughgood dicit quod ipſe per aliqua præallegat' ab actione ſua præd' habend' præcludi non debet, quia dic' quod clauſum & domus præd' necnon loci in quibus tranſgreſ. præd' unde ipſe ſuperius ſe modo querit' fact' fuit, ſunt, & præd' tempore tranſgreſ. illius fact', fuer' unum meſuagium voc' **Barrowes**, octo acr' terr' voc' **le great Weſt field**, 4. acr' terr' voc' **Diggins holme**, & ſex acr' terr' voc' **Grove field**, cum pertin' in Paringdon' magna præd', alia quam præd' meſuagium & duæ acræ prati cum pertin' voc' **Nychols ten't**, in barra præd' Will. Cole ſuperius ſpec', Et hoc parat' eſt verificare, unde ex quo præd' Will. Cole ad tranſgreſ. præd' in ten'tis præd' cum pertin' de novo aſſign' fact' ſuperius non reſpond', idem Will. Throughgood, pet' judicium & dampna ſua occaſione tranſgreſ. illius ſibi adjudicari, &c. Et præd' Will. Cole quoad aliquam tranſgreſ. in præd' ten'tis de novo aſſign' ſuperius fieri ſuppoſit', dic quod præd' Will. Throughgood accionem ſuam præd' inde verſ. eum habere non debet, quia dicit quod diu ante præd' tempus tranſgreſ. præd' ſuperius fieri ſuppoſit', præd' Will. Throughgood fuit ſeiſitus de eiſdem ten'tis cum pertin' de (*a*) novo aſſign', in don'o ſuo ut de feodo: Et ſic inde ſeiſit' exiſtens ante præd' tempus quo, &c. quidam finis levavit in Cur' dominæ Reg. nunc, hic ſc. apud Weſtm' in Octab' S. Hillarii, anno regni ſui decimo, coram Jacobo Dyer, Richardo Weſton, Johanne Walſhe, & Richardo Harper tunc Juſtic'. Et poſtea a die Paſchæ in xv. dies tunc proxim' ſequent', conceſſ. & recordat' coram eiſdem Juſticiariis, & aliis dictæ dominæ Regi. fidelibus tunc ibi preſentibus, inter Will. Chicken & Elizabethæ uxorem ejus quer' & præd' Will. Throughgood & Agnetem uxorem ejus deforc', de tenementis præd' cum pertinentiis inter alia, per nomina unius meſuagii, unius gardini, quadraginta quinque acrarum terræ, quinq; acrarum prati, decem acrarum paſturæ, & quatuor acrarum boſci cum pertinentiis in Paringdon' magna & Roydon, unde placitum conventionis fum' fuit inter eos in eadem cur' hic, ſc'; Quod præd' Will. Throughgood &

(*a*) 8 Co. 145. a. poſt. 18. b.

Agnes

Agnes, recogn' tenementa præd' cum pertinentiis eſſe jus ipſius Will. Chicken, ut ill' que iidem Will. & Elizabetha habuerunt de dono præd' Will. Throughgood & Agnetis, & ill' remiſer' & quiet' clam' de ipſis Will. Throughgood & Agnete, & hered' ſuis pred' Will. Chicken & Elizabetha & hered' ipſius Willihelmi imperpetuum, qui quidem finis in forma præd' levatus, habitus & levatus fuit, ad uſum præd' Willih. Chicken & Elizabethæ, & heredum ipſius Willihelmi imperpetuum, virtute cujus quidem finis præd' Will. Chicken & Elizabethæ fuer' ſeiſiti de tenementis pred' cum pertinentiis, viz. predictus Will. Chicken in dominico ſuo ut de feodo, ac predict' Elizabetha in dominico ſuo ut de libero tenemento, pro termin' vitæ ſuæ, iidemque Will. & Elizab. ſic inde ſeiſi' exiſten', ante præd' tempus quo, &c. de eiſdem tenementis cum pertinentiis feoffaverunt quendam Edwardum Turner armigerum, habendum ſibi & hered' ſuis imperpetuum : virtute cujus feoffamenti præd' Edward' fuit de tenementis præd' cum pertinentiis ſeiſit' in dn'ico ſuo ut de feodo, per quod idem Will. Cole ut ſerviens ipſius Edwardi & per ejus preceptum, pred' tempore quo, &c. clauſum & domum præd', ut clauſum & domum ac ſolum & liberum tenementum ipſius Edwardi propr' fregit, & herbam pred' ut herbam ipſius Edwardi propriam in eiſdem tenementis cum pertinentiis de novo aſſign' tunc creſcen', cum averiis pred' depaſtus fuit conculcavit, & conſumpſit, prout ei bene licuit, & hoc parat' eſt verificare, unde petit judicium ſi pred' Will. Throughgood actionem ſuam præd' verſus eum haber' debeat, &c. Et præd' Will. Throughgood, quoad præd' pl'itum præd' Will. Cole ad tranſgreſ. præd' in tenementis præd' cum pertinentiis de novo aſſign' fact' ſuperius in barram inde placitat', dicit præd' ipſe per aliqua in eodem placito præallegat', ab actione ſua præd' inde habend' precludi non debet, quia dicit quod præd' finis habit' & levat' fuit ad opus & uſum pred' Will. Chicken & Elizabethæ, & hered' & aſſign' ipſius Will. Chicken, ſuper conditionem quod pred' Will. Chicken & Elizabetha, & hered' & aſſign' pred' Will. Chicken, bene & veraciter deliberarent & ſolverent eiſdem Will. Throughgood & Agnet', & execut' & aſſign' ſuis octo libras bone & legalis monete Angliæ, & duodecim modios tritici & duodecim modios braſii, apud manſionalem domum vocat' Barrowes in Paringdon' pred' annuatim, durantibus naturalibus vitis eorundem Will. Throughgood & Agnetis, & eorum alterius diutius viven', ad feſta ſancti Michaelis Archangeli & Annunciationis beatæ Mariæ virginis, per equales porciones : Ac etiam ſuper conditionem, quod præd' Will. Chicken & Elizabetha, heredes, executores, vel aſſign' ſui, ſolverent eiſdem Will. Throughgood & Agneti, execut', adminiſtratoribus, vel aſſign' ſuis ſeptuaginta

ginta ſex libras, treſdecim ſolidos, & quatuor denarios, conſimilis monetæ Angliæ, apud præd' manſionalem domum voc' Barrowes in forma ſequen' ſc. ad feſtum ſancti Michaelis Archangeli, in anno domini 1568. tres libras, ſex ſolidos, & octo denarios, & ſic extunc ad feſtum ſancti Michaelis Archangeli apud domum manſionalem præd' tres libras, ſex ſolidos, & octos denarios annuatim; quouſque præd' ſumma ſeptuaginta ſex librarum, treſdecim ſolidorum, & quatuor denariorum plenar' ſatisfact', & ſolut' foret. Et pro non ſolutione, factione, & performatione præd' conditionum ſecund' veram intentionem & ſignificationem conditionum, illarum præd' finis & cætera conveiantia premiſſorum tunc fiend' forent ad uſum & opus ipſorum Will. Throughgood & Agnetis, ut in eorum priori ſtatu, cujus quidem finis pretextu, præd' Will. Chicken & Elizabet. fuer' ſeiſiti de tenitis præd' cum pertinentiis de novo aſſign' inter alia, viz. præd' Will. in dominico ſuo ut de feodo, & præd' Elizabetha in dominico ſuo ut de libero tenemento pro termino vitæ ſuæ, ſuper conditiones præd'. Et ulterius idem Will. Throughgood proteſtando quod præd' Will. Chicken & Elizabetha non ſolverunt, fecerunt, ſeu performaverunt aliqua ſecundum formam & effectum conditionum præd': Pro placito dicit quod prædicti Will. Chicken & Elizabetha, ſeu eorum alter, non ſolverunt nec ſolvit eiſdem Will. Throughgood & Agneti, ſeu eorum alteri, quatuor libras, bonæ & legalis monetæ Angliæ ad feſtum ſancti Michaelis Archangeli, anno regni dominæ Reginæ nunc decimo octavo, quas eis ad idem feſtum ſolviſſe debuerunt, ſecundum formam & effectum præd' primæ conditionis, per quod idem Will. Throughgood, virtute finis præd', ac vigore cujuſdam actus de uſibus in poſſeſſionem transferend', in Parliamento domini Henr. nuper Regis Angliæ octavi, apud Weſtmon' in com' Midd', quarto die Februarii, anno regni ſui viceſimo ſeptimo, tent', edit', & proviſ. fuit ſeiſit' de tenementis præd' cum pertinentiis de novo aſſign' inter alia in dominico ſuo ut de feodo & in tenementa præd' de novo aſſign' intravit, ipſoq; Will. ſic inde ſeiſit' exiſten', præd' Will. Cole die & anno in narratione præd' ſuperius ſpec', vi & armis, &c. clauſum & domum ipſius Will. Throughgood in præd' tenementis de novo aſſign' fregit, & herbam præd' ibidem tunc creſcen' cum averiis præd' depaſtus fuit, conculcavit, & conſumpſit, prout ipſe ſuperius verſ. eum queritur. Et hoc parat' eſt verificare, unde ex quo præd' Will. Cole tranſgreſ. præd' in eiſdem tenementis de novo aſſign' factam ſuperius cogn', idem Will. Throughgood petit judicium & dampna ſua, occaſione tranſgr. illius ſibi adjudicari, &c. Et præd' Will. Cole proteſtando quod præd' finis non fuit levatus ad uſum prædictorum Will. Chicken & Elizabethæ ſuper conditio-

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nes præd', prout præd' Will. Throughgood ſuperius allegavit: Pro placito dicit, quod poſt finem prædictum levatum, ſcilicet ſecundo die Septembris, Anno regni dominæ Reginæ nunc decimo octavo, apud Paringdon magnam prædictam prædictus Willihelmus Throughgood per ſcriptum ſuum relaxationis, quod idem Willihelmus Cole ſigillo prædict' Will. Throughgood ſignat' hic in curia profert, cujus dat' eſt eiſdem die & anno, per nomen Will. Throughgood de Hunſdon in comitat' Hertford **Peoman**, remiſit, relaxavit, & pro ſe & heredibus ſuis imperpetuum quiet' clamavit, pref. Will. Chicken per nomen Will. Chicken de Hunſdon prædicta **Peoman**, omnes & omnimod' conditiones, ingreſſiones pro conditionibus fractis, & demand' quæcunque ab initio mundi uſque diem dat' ſcripti relaxationis illius. Et hoc parat' eſt verificare, unde ut prius pet' judicium, & quod præd' Will. Throughgood ab actione ſua præd' verſus eum habend' preclud', &c. Et præd' Will. Throughgood dicit, quod ipſe eſt homo laicus & minime literatus, ac quod tempore confectionis pred' ſcripti relaxationis ſuperius fieri ſuppoſit', diverſ. arrerag' pred' annual ſolutionum ſuperius recitat' in forma pred' ſolvend' aretro fuer', quodq; præd' ſcriptum relaxationis adtunc ſibi lectum & declarat' fuit, quaſi ſcriptum acquietanciæ omnium arrearagiorum denariorum ſibi in forma præd' ſolvend' adtunc eidem Will. Throughgood aretro exiſten', & non ſolut' tantum; per quod idem Will. Throughgood credens ſcriptum illud fuiſſe ſcriptum acquietanciæ de arreragiis denariorum præd' tantum, ſcriptum illud præf. Will. Chicken ſigillavit & deliberavit, & ſic idem Will. Throughgood dicit, quod idem ſcriptum in curia hic prolat' continens in ſe ipſum Will. Throughgood remiſiſſe, relaxaſſe, & pro ſe & hæred' ſuis imperpetuum quietum clamaſſe præf. Will. Chicken, omnes & omnimod' conditiones, ingreſſiones pro conditionibus fractis, & demand' quaſcunq; ab initio mundi, uſq; diem datus ſcripti relaxacionis illius non eſt fact' ſuum. Et hoc petit quod inquiratur per patriam. Et præd' Will. Cole ſimiliter. Ideo Prec' eſt vic' quod venire fac' hic a die S. Trinitatis in tres ſeptimanas xii. &c. per quos, &c. Et qui nec, &c. Ad recogn', &c. Quia tam, &c. Poſtea continuat' proceſſ. int' partes præd' de præd' placito, per Jurat' poſit' inde int' eos in reſpect' hic uſq; ad hunc diem, ſc. in Craſtinum S. Martini, anno regni dominæ reginæ nunc xxv. Et modo hic ad hunc diem venerunt tam præd' Will. Throughgood, quam præd' Will. Cole per attorn' ſuos pred', & Jur' inde impanellat' exacti ſimiliter venerunt, qui ad veritat' de premiſſ. dicend' electi, triat' & jurat' dicunt ſuper ſacrament' ſuum, quod præd' Will. Throughgood eſt homo laicus & minime literatus, quodq; diverſa arreragia annualia ſolutionum pred' pref. Will. Throughgood pred' tem-

pore confectionis pred' ſcripti relaxationis aretro fuer' inſolut', ac etiam quod idem ſcript' relaxationis tempore ſigillationis inde non fuit lectum pref. Will. Throughgood, ſed quod poſtquam quidam Thom. Warde incepiſſet ſcript' illud legere pref. Willihelm. Throughgood, quidam Jo. Warde ſcript' illud extra manus pred' Thom. antequam primam lineam inde legiſſet eripuit, dicen' pref. Will. Throughgood hæc verba Anglicana ſequen', viz. **Goodman Throughgood you are a Man unlearned, I will declare it unto you, and make you underſtand it better than you can by hearing it read.** Et poſtea pred' J. Warde pred' ſcript' relaxationis pref. Will. Throughgood adtunc & ibidem declaravit in Anglicanis verbis ſequen', **Goodman Throughgood, the Effect of it is this, That you do releaſe to Will. Chicken all the Arrearages of Rent that he doth owe you, and no otherwiſe, and then you ſhall have your Land again,** tenementa præd' de novo aſſign' innuendo: Ad quod præd' Will. Throughgood adtunc reſpond' in Anglicanis verbis ſequen', viz. **If it be no otherwiſe, I am content.** Et ſuper hoc idem Will. Throughgood verbis præd' Joh. Warde fidem adhibens ſcriptum illud relaxationis tunc & ibid' ſigillavit, & pref. Will. Chicken deliberavit. Sed utrum ſuper tota materia pred' in forma pred' comperta, dictum ſcriptum relaxationis ſit, & in lege adjudicari debeat, factum præd' Will. Throughgood necne, Jur' præd' penitus ignorant, & inde petunt adviſamentum Juſtic' & cur' hic: Et ſi ſuper tota materia præd' in forma præd' compert' videbitur eiſdem Juſtic' hic quod ſcript' illud non ſit, nec in lege adjudicari debeat factum præd' Will. Throughgood, tunc iidem Jur' dicunt ſuper ſacramentum ſuum, quod præd' ſcriptum relaxationis non eſt factum præd' Will. Throughgood prout idem Will. ſuperius allegavit. Et aſſid' dampna ejuſdem Will. Throughgood occaſione tranſgreſ. præd' ultra miſ. & cuſtag' ſua per ipſum circa ſectam ſuam in hac parte appoſit' ad xx. s. & pro miſ. & cuſtag' ſuis ad xii. d. Et ſi ſuper tota materia præd' in forma præd' comperta, videbitur Juſtic' hic quod ſcriptum præd' ſit & in lege adjudicari debeat factum præd' Will. Throughgood, tunc iidem Jur' dicunt ſuper ſacramentum ſuum, quod præd' ſcriptum relaxationis eſt factum præd' Will. Throughgood, prout præd' Will. Cole ſuperius allegavit. Et quia Juſtic' hic ſe adviſare volunt de & ſuper præmiſſis, priuſquam judicium inde reddant, dies dat' eſt partibus præd' hic uſq; in octabis S. Hillarii de audiend' inde judicio ſuo, eo quod iidem Juſtic' hic inde nondum &c. Ad quem diem hic ven' tam præd' Will. Throughgood quam præd' Will. Cole per attorn' ſuos præd'. Et quia Juſtic' hic ulterius ſe adviſare volunt de & ſuper præmiſſis priuſquam judicium inde reddant, dies ulterius dat'

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eſt partibus præd' hic uſq; a die Paſchæ in xv. dies, de audiendo inde judicio ſuo, eo quod iidem Juſtic' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Will. Throughgood, quam præd' Will. Cole per attorn' ſuos præd'. Et quia Juſtic' hic ulterius ſe adviſare volunt de & ſuper premiſſis priuſquam judicium inde reddant, dies ulterius dat' eſt partibus præd' hic uſq; in Craſtino S. Trinitas de audiend' inde judicio ſuo, eo quod iidem Juſtic' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Will. Throughgood, quam præd' Will. Cole per attorn' ſuos præd', Et ſuper hoc viſis præmiſſ. & per Juſtic' hic plene intellectis, conc' eſt quod præd' Will. Throughgood recuperet verſus præf. Will. Cole dampna ſua præd' ad xxi. s. per Jur' præd' in forma præd' aſſeſſa, necnon xxiii. li. & x. & ix. s. eidem Will. Throughgood ad requiſitionem ſuam pro miſ. & cuſtagiis ſuis præd', per cur' hic de incremento adjudicat', quæ quidem dampna in toto ſe atting', ad xx. & v. li. Et præd' Will. Cole capiatur, &c.

Trin. 26 Eliz.

In the Common Pleas, *Rot.* 928.

THROUGHGOOD's *Caſe.*

Filmer,

Throughgood (*a*) brought an Action of Treſpaſs for breaking of his Cloſe againſt *Cole* Defendant, who pleaded, That long Time before the Treſpaſs, the Plaintiff releaſed to one *William Chicken*, all Demands whatſoever, *&c.* whoſe Eſtate in the Land the Defendant hath, and juſtified the Treſpaſs. The Plaintiff ſaid, That he was a Lay-man, not lettered, and that at the Time of the ſaid Releaſe made, divers Arrearages of an Annuity were due to him by the ſaid *William Chicken*, and that the ſaid Writing of Releaſe was read and declared to him as a Writing of Acquittance for thoſe Arrearages only; and that he (giving Credit thereunto) did ſeal and deliver the ſame to the ſaid *William Chicken*, and ſo, not his Deed, upon which Iſſue was joined; and the Jury found a ſpecial Verdict to this Effect: That is to ſay, That the Plaintiff was a Lay-man, not lettered, and that divers Arrearages of the ſaid Annuity were behind, and that the Writing was never read to him; but after that one *Thomas Ward* had begun to read it to the Plaintiff, and before he had read a Line of the Writing, one *William Ward* took the Writing out of his Hands, ſaying to the Plaintiff, Goodman *Throughgood*, you are a Man (*b*) unlearned, and I will declare it unto you, and make you underſtand it better than you can by hearing of it read; And then ſaid further to him, Goodman *Throughgood*, the Effect of it is this, That you do releaſe to *William Chicken* all the Arrearages of Rent that he doth owe you, and no otherwiſe, and then you ſhall have your Land again: To which the Plaintiff ſaid, If it be no (*c*) otherwiſe I am content; and thereupon the Plaintiff giving Credit to the ſaid *William Ward*, delivered the ſaid Releaſe to the ſaid *William Chicken*, and whether this, upon the whole

(*a*) Moor 148. 1 And. 129.

(*b*) 1 And. 129. Moor 148.

(*c*) 1 And. 129. Moor 148.

Matter, be the Plaintiff's Deed, the Jury refer to the Court, *&c.* And it was adjudged, That it was not the (*a*) Plaintiff's Deed; and in this Caſe three Points were reſolved: Firſt, That although the Party to whom the Writing is made, or other by his Procurement, doth not read the Writing, but a Stranger of his own Head read it in other Words than in Truth it is, yet it ſhall not bind the Party who delivereth it; for it is not material who readeth the Writing, ſo as he who maketh it be a (*b*) Layman, and being not lettered, be (without any Coving in himſelf) deceived; and that is proved by the uſual Form of Pleading in ſuch Caſe, that is to ſay, That he was a Layman, and not learned, and that the Deed was read unto him in other Words, *&c.* generally, without ſhewing by whom it was read. And if a Stranger, (*c*) menace *A.* to make a Deed to *B.* *A.* ſhall avoid the Deed which he made by ſuch Threats, as well as if *B.* himſelf had threatned him, as it is adjudged. 45 *E.* 3. 6. *a. Vid.* 39 *H.* 6. 36. *a.*

(*a*) Moor 148. 1 And. 129.

(*b*) 11 Co. 27. 9 H. 5. 15. a. Br. non eſt factum 8. Hob. 96.

(*c*) Fits. dures 10. Statham dures 20. Br. dures & Manaſſe *&c.*

(*d*) 1 Jones 314. Antea 3. a.

Secondly, That (*d*) ſuch Layman, not learned, is not bound to deliver the Deed, if there be not one preſent which can read the Deed unto him in ſuch Language that he who ſhould make the Deed may underſtand it; and that is the Reaſon, that if it be read to him in other Words than are contained in the Writing, it ſhall not bind the Party who delivereth it, for it is at the Peril of the Party to whom the Writing is made, that the true Effect and Purport of the Writing be declared, if it be required; (*e*) but if the Party who ſhould deliver the Deed, doth not require it, he ſhall be bound by the Deed, although it be penned againſt his Meaning.

(*e*) Moor 184.

Thirdly, Although the Writing be not read to the Party, yet if the Effect be declared to him in other (*f*) Form than is contained in the Writing, and upon that he deliver it, he ſhall avoid the Deed; for it is all one in Law to read it in other Words, and to declare the Effect thereof in other Manner than is contained in the Writing, if the Party who maketh the Writing (being not learned) deſire one to read the Writing to him, and he read it, or declare the Effect thereof to him in other Manner than the Writing doth Purport, it (unleſs there be Covin betwixt them) ſhall not bind him.

(*f*) Moor 184. 2 Rol. 28. 4 Leon. 63. Plowd. 66. b. 15 E. 4. 18. b. Hob. 96. 11 Co. 27. b. 12 Co. 89.

Trin. 27 Reginæ Elizabethæ, *Rotulo* 1354.

RADFORD,

ALias prout patet Termino Paſchæ, anno regni dominæ Reginæ nunc 27. Rotul' 1056. continetur ſic, Eſſex ſſ. Richardus Barnard de magna Braxſted in com' pred' Yeoman, ſum' fuit ad reſpondendum Johanni Wiſeman de placito quod reddat ei decem & octo lib. quas ei debet & injuſte detinet &c. Et unde idem Johannes per Apollinem Playne attorn' ſuum dicit, quod cum quidam Thomas Wiſeman fuiſſet ſeiſitus de & in Inſula de Oſey cum pertin' in magna Totham in com' pred' in dominico ſuo ut de feodo, & ſic inde ſeiſitus exiſtens, eandem Inſulam cum pertin' tenuit de domina Regina nunc, ut de manerio ſuo de Eaſtgreenwich in com' Kanc' in libero ſocagio, viz. per fidelitatem tantum. idemque Thomas ſic inde ſeiſitus exiſtens, 15 die Octobris, anno regni dominæ Reginæ nunc 19. apud magnam Totham pred' dimiſit unam medietatem pred' Inſulæ pref. Richardo, habend' & occupand' eandem medietatem cum pertin' eidem Richardo a feſto S. Michaelis Archangeli tunc ultimo, preterito, uſq; finem & terminum viginti & unius annorum extunc proxim' ſequen' & plenarie complend': Reddendo & ſolvend' inde annuatim pref. Thomæ, hered' & aſſign' ſuis, triginta & ſex libras legalis monetæ Angliæ, ad duos anni terminos, viz. ad feſta Nativitatis S. Joh. Baptiſtæ, & natalis d'ni per equales porciones ſolvend', virtute cujus dimiſſionis præd' Richardus in medietat' predict' cum pertin' intravit & fuit & adhuc eſt inde poſſeſſionat', Et ſic inde poſſeſſionat' exiſten', ac prædict' Thoma de reverſione ejuſd' medietatis ut de feodo & jure ac de altero medietate Inſulæ præd' in dominico ſuo ut de feodo ſeiſit' exiſten', Idem Thomas habuit exitum Williel' filium & hered' ſuum apparentem, & predictus Willihelmus habuit exitum Johan-

nem filium & hered' ſuum apparen', & poſtea predict' Willihelmus apud magnam Totham pred' obiit, predictoque Thoma de reverſione unius medietatis Inſulæ pred' ac de altera medietate ejuſdem Inſulæ cum pertin' in forma pred' ſeiſito exiſten', idem Tho' ſic inde ſeiſitus exiſten', viceſimo die Novembris, anno Regni dominæ Reginæ nunc viceſimo tertio, apud magnam Totham pred' condidit teſtamentum & ultimam voluntatem ſua in ſcriptis, & per eadem voluit & legavit cuidam Tho. Wiſeman filio ſuo, pred' reverſionem pred' unius medietatis Inſulæ pred', ac alteram medietatem ejuſd' Inſulæ: habend' ſibi & heredibus maſculis de corpore ſuo legitime procreat', & pro defectu talis exit', remanere inde rectis heredibus ipſius Thomæ Wiſeman patris imperpetuum. Ac poſtea idem Thomas Wiſeman pater apud magnam Totham pred' obiit de talibus ſtat' ſuis pred' de pred' reverſione unius medietatis Inſulæ pred', ac de & in pred' altera medietate ejuſdem Inſulæ cum pertin' ſeiſitus, poſt cujus mortem pred' Thomas Wiſeman filius in unam medietatem Inſulæ pred' intravit, & fuit inde ſeiſitus in dominico ſuo ut de feodo talliat', ac ſeiſitus de pred' reverſione alterius medietatis ejuſdem Inſulæ ut de feodo talliat', videlicet ſibi & heredibus maſculis de corpore ſuo legitime procreat', reverſione inde pred' Johanni, ut conſanguineo & hered' pred' Tho. Wiſeman patris ſpectanti, videlicet ut filio & heredi Willihelmi Wiſeman defunct', filii & heredis pred' Tho. patris: predictoq; Tho. Wiſeman filio ſic inde ſeiſit' exiſten', ac pred' Johanne conſanguineo & hered' predicti Thomæ patris de reverſione inde ut de feodo & jure ſeiſit' exiſten', idem Johannes ſexto die Maii, ann' regni dominæ Reginæ nunc viceſimo quarto apud magnam Totham pred' per quandam Indenturam ſuam, geren' dat' eiſdem die & anno, fact' inter ipſum Johannem Wiſeman per nomen Johan' Wiſeman interioris Templi London' generoſi, conſanguinei & proximi hered' Th. Wiſeman nuper de Northend' infra parochiam de Mutchwalthum in com' Eſſex Armigeri defunct' ex una parte, Et quoſdam Antonium Everard, Johannem Mead, & Johannem Sorrel, per nomina Antonii Everard de interiori Templo London' Generoſi, Johannis Mead de magna Eaſton in com' Eſſex, Generoſi, & Johannis Sorrel de Styſted in pred' Com' Eſſex, Generoſi, ex altera parte, ac in Cur' ipſius dominæ Reginæ nunc ad placita coram ipſa Regina tenend' infra ſex menſes tunc proxim' ſequen' ſecundum formam ſtatuti in hujuſmodi caſu nuper edit' & proviſ. debito modo de recordo irrotulat'. Et cujus alteram partem ſigillis ipſorum Antonii, Joh. Mead & Joh. Sorrel ſignat', idem Johannes Wiſeman hic in Curia profert, cujus dat' eſt eodem ſexto die Maii, anno viceſimo quarto ſupradicto, teſtan' quod

pred'

pred' Johannes Wiſeman tam in conſideratione, & ad intention' quod omnia & omnimod' maneria, meſuagia, terras, tenement' & hereditamenta, cum omnibus & ſingulis pertin' deberent & poſſint imperpetuum impoſter' continuare, remanere, & eſſe, ad voluntatem & bene placitum Dei, in genere, nomine, ſive ſanguine ipſius Joh. Wiſeman, quam pro diverſis aliis bonis conſiderationib' ipſum Joh. Wiſeman tunc ſpecialiter moventibus, conveniſſet, & conceſſiſſet, pro ſeipſo, heredibus execut' adminiſtrat' & aſſignat' ſuis, ad & cum pref. Antonio Everard, Joh. Mead, & Joh. Sorrel, hered' executoribus & adminiſtratoribus ſuis, & hered' execut' & adminiſtratoribus cujuſlibet eorum per eandem Indenturam, quod ipſe idem J. Wiſeman hered' & aſſign' ſui, deberent, & voluiſſent immediate extunc impoſterum ſtare, & eſſe ſeiſit', de & in reverſione & reverſionibus remanere & remaneribus omnium & ſingulorum maner' terrar' tenement' & hereditament' preantea mentionat' ad uſum ipſius J. Wiſeman & hered' maſculor' de corpore ſuo legitime procreator', & pro defectu talis exit' ad uſum W. Wiſeman fratris ejuſdem J. Wiſeman, & heredum maſculorum de corpore ipſius Wilhelmi legitime procreatorum, & pro defectu talis exitus ab uſum T. Wiſeman alteri' fratris ipſius Joh. Wiſeman, & heredum maſculorum de corpore ipſius Thomæ legitime procreatorum, & pro defectu talis exitus ad uſum hered' de corpore Willihelmi Wiſeman patris ipſius Johannis Wiſeman, & heredum de corporibus eorum legitime procreatorum, & pro defectu talis exitus ad uſum hered' de corpore pred' T. Wiſeman defunct', & heredum de corporibus eorum legitime procreatorum, & pro defectu talis exitus ad uſum dominæ Reginæ nunc, & hered' & ſucceſſor' dictæ dominæ Reginæ Regum & Reginarum hujus regni Ang. imperpetuum, prout per eandem Indenturam inter alia plenius liquet & apararet, virtute cujus quidem Indenturæ, ac vigore cujuſdam Actus in Parliamento dominæ H. nuper Regis Ang. 8. apud Weſt. in comitatu Midd' 4. die Februarii, anno regni ſui 27. de uſibus in poſſeſſionem transferend' tunc tent', edit', idem Johannes Wiſeman fuit ſeiſit' de reverſione totius Inſulæ pred' ut de feod' talliat' & jure, Et pro defect' talis exitus remanere inde pref. Willihelmo Wiſeman fratri ejuſdem Johannis Wiſeman, & hered' maſculis de corpore ipſius Wilhelmi legitime procreatis, Et pro defectu talis exit' ad uſum pred' Thomæ Wiſeman alterius fratris pred' Johannis Wiſeman & hered' maſculorum de corpore ipſius Thomæ legitime procreatorum, Et pro defectu talis exitus remanere inde hered' de corpore pred' Willihelmi Wiſeman patris & hered' de corporibus eorum legitime procreand': Et pro defectu talis exitus

remanere inde hered' de corpore predict' Tho. Wiſeman defuncti & hered' de corporibus eorum legitime procreand'; Et pro defect' talis exitus remanere inde dic' dom' Reg. nunc heredibus & ſucceſſoribus Reg. & Reginis hujus regni Ang. ſpectan': Predictoque Joh. de pred' Reverſione totius Inſulæ pred' ut de feodo talliat' & jure in forma pred' ſeiſit' exiſten' remanere inde ulterius in forma pred' ſpectan', pred' T. Wiſeman filius, poſtea, ſc. 15. die Julii, anno regni dictæ dominæ Reginæ nunc 26. apud magnam Totham pred' obiit ſine herede maſculo de corpore ſuo legitime procreat', poſt cujus mortem idem Johannes in unam medietatem Inſulæ pred' cum pertin' intravit, & fuit & adhuc eſt ſeiſitus in dominico ſuo ut de feodo talliato, ac ſimiliter idem Johannes fuit & adhuc ſeiſitus exiſtit de pred' reverſione alterius medietatis ejuſdem Inſulæ ut de feodo talliato & jure; Et ſic inde ſeiſito exiſten', ac pred' Richardo de eadem altera medietate ejuſdem Inſulæ cum pertin' in forma pred' poſſeſſionat' exiſten', pred' decem & octo libræ de redditu pred' pro dimid' unius anni finit' ad feſtum natalis domini, anno regni dominæ Reginæ nunc 27. eidem Joh. aretro fuerunt & adhuc exiſtunt non ſolut', per quod actio accrevit eidem Johanni, ad exigend' & habend' de pref. Richardo pred' decem & octo libras pred' tamen Ric. licet ſepius requiſit', pred' decem & octo libras eidem Joh. nondum reddidit, ſed ill' ei hucuſq; reddere contradixit, & adhuc contradic'; unde dic' quod deteriorat' eſt, & dampnum habet ad valentiam xx. li. Et inde produc' ſectam, &c. Et pred' R. Barnard per J. Cooke attornatum ſuum, venit & defendit vim & injuriam quando &c. Et dicit quod pred' Johannes Wiſeman actionem ſuam pred' verſus eum habere non debet, quia dicit quod bene & verum eſt, quod pred' Thomas Wiſeman pater fuit ſeiſitus de Inſula pred' cum pertinentiis in dominico ſuo ut de feodo, ac quod idem Thomas dimiſit eidem Richardo Barnard medietatem Inſulæ pred' cum pertinentiis, ac quod pred' Thom' Wiſeman pater per pred' teſtamentum ut ultimam voluntatem ſua voluit & legavit præf. Thom' Wiſeman, filio, pred' reverſionem pred' unius medietatis Inſulæ pred', ac alteram medietatem ejuſdem Inſulæ in forma pred'; ac quod pred' Thomas Wiſeman filius virtute legationis illius, fuit ſeiſitus de una medietate Inſulæ pred' in dominico ſuo ut de feodo talliato, videlicet ſibi & heredibus maſculis de corpore ſuo legitime procreat', ac de reverſione alterius medietatis inde in dominico ſuo ut de feodo talliato & jure, videlicet ſibi & hered' maſculis de corpore ſuo legitime procreat', prout pred' Joh. Wiſeman per narrationem ſuam pred' ſuperius ſuppon', Sed idem Ric. Barnard

ulterius

ulterius dicit quod pred' Thoma Wiſeman filio de una medietate Inſulæ pred', ac de reverſione alterius medietatis inde in forma pred' ſeiſito exiſten', quidam Joh. Godfrey ix. die Junii, anno regni dictæ dominæ Reginæ nunc 26. proſecut' fuit extra Cur' Cancellariæ dictæ dominæ Reginæ nunc in eadem Cur' Cancellariæ apud Weſtmonaſterium predict' tunc exiſten', quoddam breve dictæ dominæ Reginæ de Ingreſſu ſuper diſſeiſinam in le Poſt verſus præf. Thomam Wiſeman filium, per nomen Thomæ Wiſeman, Generoſi, de Inſula pred' cum pertin' inter alia tunc Vic' pred' Com' Eſſex directum, per quod quidem breve dicta domina Regina nunc eidem tunc Vicecomiti præcepit, quod idem tunc Vicecomes præciperet, præf. Thomæ Wiſeman filio, quod juſte & ſine dilatione redderet præf. Joh. Godfrey Inſulam pred' cum pertinen', inter alia per nomen manerii de Mockinghall cum pertinen' ac viginti & duorum meſuagiorum, trium columbar', viginti & duorum gardinorum, quadringentarum & triginta acrarum ter', centum ſexaginta & duarum acrarum prati, quadragintarum & ſexaginta acrarum paſturæ, viginti & duarum acrarum boſci, centum & decem acrarum jampnorum & bruar', decem acrarum moræ, quadringentarum acrarum mariſci, & quinquaginta ſolidat' reddit' cum pertinen' in Barlinge magna, Stanbrigge magna, Wakering parva, Wakeringe, Leighe, Shoplande, Rochford, Prittelwel, Benifleet, Fowlnes, Althorp, Thunderſley, Hadley, Baddowe magna, Totham magna, & Gouldhauger, quæ clam' fuiſſe jus & hereditatem ſuam: Et in quæ idem T. Wiſeman tunc non habuit ingreſſum niſi poſt diſſeiſinam quam Hugo Hunt inde injuſte & ſine judicio feciſſet præf. J. Godfrey infra 30. annos tunc ultimos elapſos ut. tunc dixit. Et unde tunc querebatur quod pred' T. Wiſeman filius ei tunc deforc': Et niſi feciſſet, Et pred' Joh. Godfrey tunc feciſſet ipſum tunc vic' ſecur' de clamore ſuo proſequendo, tunc ſummon' per bonos ſummon' pred' T. Wiſeman filium quod eſſet coram Juſtic' dictæ dominæ Reginæ hic, ſc. apud Weſtm' pred' a die S. Trinitatis in xv. dies tunc proxim' ſequen', oſtenſ. quare non feciſſet. Et quod idem tunc Vic' haberet tunc ibi ſummon' & breve illud. Ad quam quid' quindenam S. Trinitatis coram Edmundo Anderſon milite, & ſociis ſuis tunc Juſtic' dictæ dom. Reginæ nunc de banco, hic venit tam pred' Joh. Godfrey, quam pred' T. Wiſeman filius in propriis perſonis ſuis; Et T. Lucas miles tunc vic' pred' com' Eſſex retorn' tunc hic breve pred' ſibi in forma pred' directum, in omnibus ſervit' & executum; viz. quod predictus Joh. Godfrey inveniſſet eidem tunc vic'

pleg. de proſ. breve ſuum predictum, ſc. Jo. Doo, & R. Roo: Et quod predictus T. Wiſeman filius ſummonit' fuit per Johannem Den, & R. Fen: Super quo pred' Johannes Godfrey in propria perſona ſua in eadem curia hic narrando ſuper brevi ſuo predicto, tunc petiit verſ. predictum Thomam Wiſeman filium, Manerium, Tenementa, & reddit' predicta cum pertinentiis, ut jus & hereditatem ſuam; Et in que idem Thomas tunc non habuit Ingreſſum, niſi poſt diſſeiſinam quam Hugo Hunt inde injuſte & ſine judicio fecit pref. Joh. infra triginta annos tunc ultimos elapſos. Et unde tunc dixit quod ipſemet fuit ſeiſitus de Manerio, Tenementis, & reddit' predictis cum pertinentiis, in dominico ſuo ut de feodo & jure, tempore pacis, tempore dominæ Reginæ nunc capiendo inde expleſ. ad valenciam, &c. Et in que, &c. Et inde tunc produxit ſectam, &c. Et pred' Th. Wiſeman filius in propria perſona ſua tunc defend' jus ſuum quando, &c. Et voc' inde ad warr' David. Howell, qui tunc preſens fuit in eadem curia in propria perſona ſua, & gratis manerium, tenementa, & reddit' predicta cum pertinentiis ei tunc warr', ſuper quo pred' J. Godfrey tunc petiit verſ. ipſum David. tunc tenen' per warr' ſuam manerium, tenementa, & reddit' predicta cum pertin' in forma pred', &c. Et unde tunc dixit quod ipſemet fuit ſeiſitus de manerio, tenementis, & redd' pred' cum pertinentiis, in dominico ſuo ut de feodo, & jure, tempore pacis tempore domine reg. nunc capiendo inde expleſ. ad valentiam, &c. & in que, &c. Et inde tunc produxit ſect', &c. Et pred' D. Howell tenens per warr' ſuam tunc defend' jus ſuum quando, &c. Et tunc dixit quod pred' Hugo non diſſeiſivit pref. J. Godfrey de manerio, tenementis, & redd' pred' cum pertinen', prout idem Joh. per breve & narrationem ſua pred' tunc ſuperius ſuppon': Et de hoc tunc poſuit ſe ſuper patriam. Et pred' J. Godfrey tunc petiit licentiam inde interloquendi: Et tunc habuit, &c. Et idem Joh. reveniebat in ead' curia illo eod' termino in propria perſona ſua, Et pred' David licet tunc ſolemnit' exact' fuit tunc non reveniebat, ſed in contempt' cur' tunc receſſit & default' fecit, per quod tunc conceſſ. fuit in ead' curia, quod pred' J. Godfrey recuperet ſeiſinam ſuam verſus pref. T. Wiſeman filium de maner', tenementis, & redd' pred' cum pertinentiis. Et quod idem Thomas haberet de terra pred' David' ad valentiam, &c. Et quod idem David tunc eſſet in miſericordia, &c. Super quo pred' Johannes Godfrey tunc petiit breve dicte domine regine vic' Com' pred' dirigend' de habere faciend' ei plenariam ſeiſinam de manerio, tenementis,

nementis, & reddit' pred' cum pertinentiis; Et quod ei tunc conceſſum fuit retornabile hic indilate, &c. Et poſtea ſcilicet octavo die Julii illo eodem Termino, venit in eodem curia pred' Johannes Godfrey in propria perſona ſua: Et pred' Thomas Lucas tunc vic' Com' Eſſex tunc hic mand', quod ipſe virtute brevis illius ſibi direct' quarto die Julii tunc ultimo preterito, habere fec' pref. Johanni Godfrey, plenariam ſeiſinam de manerio tenementis & reddit' pred' cum pertinentiis, prout per breve illud ſibi preceptum fuit, que quidem recuperatio & executio ſuperinde in forma pred' profecuta & habita fuit ad uſum pred' T. Wiſeman filii & hered' ſuorum imperpetuum: Virtute cujus ac vigore ejuſdem ſtatuti in Parliamento domini H. nuper regis Ang. octavi apud Weſt' pred', quarto die Februarii, anno regni ſui viceſimo ſeptimo de uſibus in poſſeſſionem transferend' tent', edit, & proviſ. idem T. Wiſeman filius fuit ſeiſitus de pred' reverſione unius medietatis Inſule pred' cum pertinentiis inter alia, in dominico ſuo ut de feodo & jure; Et ſic inde ſeiſitus exiſtens apud magnam Totham pred' obiit de tali ſtatu ſuo inde ſeiſitus, poſt cujus mortem pred' reverſio unius medietatis Inſulæ pred' cum pertinentiis inter alia deſcend' quibuſdam Eliz. modo uxori Richardi Jennins, & Dorotheæ Wiſeman, ut ſororibus & hered' pred' T. Wiſeman filii, quæ quidem Elizabetha & Dorothea adhuc ſuperſtites & in plena vita exiſtunt, videlicet, apud magnam Totham pred'. Et hoc paratus eſt verificare, unde petit judicium ſi pred' Johannes Wiſeman actionem ſuam pred' verſus eum habere debeat, &c. Et ſuper hoc pred' Johannes Wiſeman petit licentiam inde interloquendi hic uſque in craſtino S. Trinitatis, Et habet, &c. Idem dies dat' eſt pref. Richardo hic, &c. Et pred' Johannes Wiſeman dic', quod ipſe per aliqua preallegat' ab actione ſua pred' habend' precludi non debet, quia dic' quod diu ante recuperationem pred' de tenementis pred' cum pertinentiis in forma pred' habit', per quandam actum in Parliamento domini H. nuper reg. Ang. 8. patris domine reg. nunc prechariſſimi apud Weſt. in com' Midd' 22. die Januarii, anno regni ſui 34. inchoat', & ibm' tunc ten't', ac poſtea per diverſas prorogationes continuat' uſque duodecim diem Maii, anno regni ejuſdem nuper regis H. octavi triceſimo quinto tent', edit', inter cetera inactitat' fuit authoritate ejuſdem Parliamenti, quod ubi diverſi nobiliſſimorum progenitor' ejuſd' nuper Regis H. 8. & ſpecialit' idem nuper Rex precipue liberaliter ſupra omnes alios dediſſet, conceſſiſſet, ſeu aliter providiſſet ejus vel eorum dilectis & bonis ſervientibus & ſubditis, tam nobilibus quam aliis,

aliis, maneria, meſuagia, terras, tenementa, reddit', ſervicia, & hereditamenta ſibi & hered' maſculis de corporibus ſuis, ſive hered' de corporibus ſuis legitime procreat' intenden', ad tempus talium donor' non ſolum proferre & exaltare illos donatos voc' **Donees**; verum etiam heredes ſuos in ſanguine de corporibus ſuis ſecundum limitationem donor' pred' ad intention' quod recompenſatio pro ſerviciis illorum donatorum voc' **Donees**, potuiſſent non ſolum eſſe beneficium pro perſonis ſuis ſed ſempiternum proficuum & commoditat', ad & pro hered' de corporibus ſuis provenien', per que tales heredes haberent in ſpirituali memoria & quotidiana remembranc' proficuum quod ipſi habuiſſent & accepiſſent, per ſervitium anteceſſor' ſuor' fact' regibus hujus regni Ang. & exinde melius excitari ad faciend' conſimile ſervicium, ſereniſſimis dominis ſuis ſicuti debit' allegian' ſuis pertinent. Et quia diverſi tales donat' voc' **Donees** in talliat' & eor' heredes, quotidie ante tempus editionis actus pred' permiſerunt per eorum aſſenſ. falſas & fictas recuperationes fore habit' verſus eos cum communi vocare ſive alit', de maneriis, meſuag', terris, tenementis vel hereditamentis, ſic dat' conceſſ. ſive proviſ. in talliat' per pred' dominum regem, vel nobiles progenitores ſuos ut ſuprad' eſt, ad intention' per fraudem covinam & medium indebit' non ſolum obligare & defraudare heredes ſuos inheritabiles per limitation' talium donorum: verum etiam pred' dominum regem de prerogativa, warda, prima ſeiſina, & aliis rectis ſuis ratione cujus queſtiones & diverſitat' opinionum ante tempus editionus actus pred' ſurrexerunt, & tempore editionis ejuſdem actus, utrum tales fict' & falſæ recuperationes verſ. tales tenentes in talliato per eorum conſenſum de terris tenementis vel hereditamentis, de quibus reverſionis vel remaner' eſſent in domino rege ad tempus talium recuperationis vel recuperationum habit' debuiſſent poſt mortem tenentis in talliato obligare heredes in talliato vel non, pro plena declaratione ejuſd' ac amovere & extinguere deinceps diverſitates opinionum in hujuſmodi caſibus inactitat' fuit per eundem actum, quod nulla talis ficta recuperatio extunc impoſterum habend' per aſſenſum partium verſ. tales tenentem vel tenentes in talliat', aliquorum terrarum tenementorum vel hereditamentor' quorum reverſio vel remanere ad tempus talis recuperationis ſic habend' eſſent in domino rege, obligaret ſive concluderent heredes in talliato, utrum aliqua conditio vel vocare forent in aliqua tali ficta recuperatione vel non, ſed quod poſt mortem cujuſlibet talis tenentis in talliat' verſus quem aliqua talis

recuperatio

recuperatio habito foret, heredes in talliato poſſint intrare, habere, & gaudere terr', tenementa, & hereditamenta ſic recuperat', ſecundum formam doni in talliato, pred' recuperatione ſive aliqua alia re ſive rebus extunc impoſter' habend' vel fiend', per vel verſ. aliquem talem tenentem in talliat' in contrarium non obſtant'. Et ulterius per eundem Actum authoritate ejuſdem Parliamenti inactitat' fuit, quod heres cujuſlibet talis tenentis in talliat' verſ. quem aliqua talis ficta recuperatio habita foret, nullum caperet advantagium pro aliqua recompenſatione in valore verſus vocare, nec heredes ſuos, prout per eundem Actum inter alia plenius liquet & apparet. Et idem Johannes ulterius dicit, quod pred' Thoma ſic de pred' una medietate Inſulæ pred', ac de reverſione alterius medietatis inde in forma pred' ſeiſit' exiſten', recuperatio predict' in forma pred' per pred' Johannem Godfrey verſus prefatum Thomam Wiſeman filium habita & executa fuit contra formam ſtatuti pred', & hoc paratus eſt verificare, unde petit judicium & debitum ſuum pred', una cum dampnis ſuis occaſione detentionis debiti illius ſibi adjudicari, &c. Et pred' Richardus Barnard dicit quod predictum placitum pred' Johannis Wiſeman ſuperius replicando placitat', ac materia in eodem content' minus ſufficien' in lege exiſtunt ad ipſum Johannem ad actionem ſuam predictam verſus eundem Richardum habendum manu tenend', quodque ipſe ad placitum illud modo & forma predict' placitat' neceſſe non habet, nec per legem terræ tenetur reſpondere: Et hoc paratus eſt verificare, unde pro defectu ſufficien' replicationis predicti Johannis in hac parte idem Richardus petit judicium, & quod pred' Johannis ab actione ſua pred' verſus eum habend' precludat', &c. Et pred' Joh. Wiſeman ex quo ipſe ſufficien' materiam ad actionem ſuam pred' verſus pref. Richardum habend' manutenend' ſuperius replicand' allegavit, quam ipſe parat' eſt verificare, quam quidem materiam pred' Richardus non dedic', nec ad eam aliqualiter reſpond' ſed verificationem illam admittere omnino recuſat, ut prius petit judicium & debitum ſuum pred', una cum dampnis ſuis occaſione detentionis debiti illius ſibi adjudicari, &c. Et quia Juſticiar' hic ſe adviſare volunt de & ſuper premiſſis priuſquam judicium inde reddant, dies datus eſt partibus pred' hic uſque in Octabis Sancti Michaelis, de audiendo inde judicio ſuo, eo quod Juſticiar' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Johannes Wiſeman quam pred' Richardus Barnard per attornatos ſuos pred', ſuper quo viſo pred' placito pred' Johannis Wiſeman ſuperius replican' placitat' & per Juſtic' hic plenius

nius intellect', videtur eiſdem Juſtic' hic quod placitum illud ac materia in eodem content' minus ſufficient' in lege exiſtunt ad ipſum Joh. actionem ſuam pred' verſus pref. Richardum habend' manutenend' : Ideo conceſſ. eſt quod pred' Johannes nihil capiat per breve ſuum pred', ſed ſit in miſericordia pro falſo clamore ſuo, Et quod pred' Richardus eat inde ſine die, &c.

Trin.

Trin: 27 Eliz:

In the Common Pleas, *Rot.* 1354.

WISEMAN's *Caſe.*

BEtween (*a*) *Wiſeman* Plaintiff, and *Bernard* Defendant in Debt, upon a Leaſe for Years, the Caſe was ſuch, Tenant in Tail of certain Land, the Remainder in Fee; he in Remainder, by Deed indented and enrolled, in Conſideration, and to the Intent, as well that all his Lands and Tenements for ever after ſhould continue and remain in his Family, Name, and Blood, as for other good Conſiderations, doth covenant, That he himſelf will ſtand ſeized of all his Lands, *&c.* to the Uſe of himſelf, and of the Heirs Males of his Body begotten, and after to the Uſe of divers of his Brothers in Tail, and for Default of ſuch Iſſue, to the Uſe of the Queen, her Heirs and Succeſſors, Kings and Queens of this our Realm; and afterwards the Tenant in Tail in Poſſeſſion, doth ſuffer a common Recovery with Voucher; and whether this ſhall be a Bar to the Iſſue in Tail, was the Queſtion: And it was adjudged, That the iſſue in Tail by this Recovery was barred. And in this Caſe ſix Points were reſolved.

(a) Moor 195. 1 Anderſ. 140.

1. That no Uſe by the ſaid Indenture was raiſed to (*b*) the Queen; for the Words, that is to ſay, for other good Conſiderations, are too (*c*) general to raiſe any Uſe, as it hath been adjudged, without ſpecial Averment, that valuable or other good Conſideration was given.

(b) Carter 146. 1 Anderſ. 141. 143. Moor 195.
(c) 1 Co. 176. a. b. 2 Rol. 786. Cr. El. 394. Cr. Jac. 175. Cart. 138. 140.

2. The Conſideration that the Land ſhall (*d*) remain in the Name and Blood, notwithſtanding the Uſe limited to the Queen, is for the Benefit and Preſervation of the Eſtates in Tail, as well againſt Diſcontinuances, as againſt Bars, as it was ſaid, it was reſolved to be no Conſideration to raiſe the Uſe to the Queen, for there wanteth *Quid pro quo, &c. & contractus dicitur quaſi actus contra actum.*

(d) Cr. Jac. 168. Carter 146.

3. Admitting the Covenantor had ſaid in his Indenture,

ture, In Conſideration that the Queen is the Head of the Commonwealth, and hath the Care and Charge as well to preſerve the Peace of the Realm, as to repeal foreign Hoſtility (which is implied in the Word Queen) yet this is not a good Conſideration to raiſe an Uſe for the Cauſe aforeſaid, for there wanteth *Quid pro quo*, and Kings *ex Officio* ought to govern and preſerve the Subjects in Peace and Tranquillity.

4. It was reſolved, that admitting the Conſiderations had been ſufficient to raiſe the Uſe to the Queen, yet it doth not (*a*) preſerve the Eſtate Tail in Poſſeſſion by Force of the Act of (*b*) 34 *H.* 8. for no Eſtate Tail is preſerved by the ſaid Act, unleſs the Eſtate Tail be created by the King's Letters Patents, or the Eſtate Tail be by the King's Proviſion, and not where the Eſtate Tail is of the Gift or Creation of a common Perſon without the King's Proviſion; and the ſame appeareth fully by the Preamble of the Act. And note Reader, this Word (*c*) (ſuch) through the whole Body of the Act which couples it with the Preamble, which extends only to Gifts made by the King or by the King's Proviſion. And it was no Miſchief at the Common Law (as it appeareth by the Preamble) that the Donees of common Perſons ſhould bar their Iſſues. See the Statute of 32 *H.* 8. *cap.* 26. that a Fine levied by Tenant in Tail ſhall bar his Iſſue, unleſs the Eſtate Tail be created by the King's Letters Patents: And ſo the Statute of 34 *H.* 8. doth preſerve no Eſtate, unleſs it be of the King's Gift, or by the King's Proviſion. Alſo the Queen doth not loſe any primer Seiſin, or Livery, when the Eſtate Tail is of the Gift of a common Perſon, as ſhe loſeth when her Donees are barred by Recovery, ſo the Diſadvantage to the Queen is not equal, and therefore without Queſtion it ſhall not be taken by Equity. And in this Caſe it was ſaid, that if one makes a Gift in Tail, and afterwards the Crown (*d*) deſcends to him, this Gift is out of the Statute, for it was made by a Subject. So if the Anceſtor of the King who was not King makes a Gift in Tail, and afterwards the (*e*) Reverſion deſcends to the King, ſuch Gift is out of the ſaid Statute; for the Words of the Preamble are, *Whereby ſuch Heirs ſhould have in ſpecial Memory*, &c. *the Profit that they have and take by the Service of their Anceſtors done to the Kings of this Realm*; By which it appearerh that the Intent of the Act was not to extend to the Gift of any Anceſtor of the King who was not King. Alſo there is more Miſchief to the Subject in one Caſe than in the other. For by the Limitation of the Remainder to the King, the Meſnalties of the Subjects are in Suſpence, or extinct, by which they loſe their Eſcheats, Wards, Heriots, Reliefs, &c. but no ſuch Miſchief is in the King's Gifts. Alſo by ſuch ſecret and unknown Limitations of the Remainder to the Queen, Purchaſers are deceived, and the Tenant in Tail in Poſſeſſion deprived

(*a*) Moor 115. 195. 1 Anderſ. 46, 47, 142, 143. Cr. Car. 430. Plow. 555. a. Yelv. 149. Noy 132. Co. Lit. 372. b. 3 Leon. 57. Poſtea 52. a. 4 Leon. 40. Benl. in Kelw. 213. a. b. O. Benl. 32. Benl. in Aſh. 26. N. Benl. 223. pl. 254. 8 Co. 77. b.

(*b*) 34 & 35 H. 8. cap. 20. 10 Co. 37. a. 1 Anderſ. 46, 141. 2 Co. 52. a. 6 Co. 55. a. Hob. 299. 2 Rol. Rep. 417.

(*c*) 2 Rol. Rep. 108.

(*d*) Co. Lit. 372. b.

(*e*) Co. Lit. 372. b.

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(*c*) 2 Rol. Rep. 108.

(*d*) Co. Lit. 372. b.

(*e*) Co. Lit. 372. b.

of the Power which the Law giveth unto him to cut off the Remainder, but when the King maketh the Gift in Tail there is no ſuch Miſchief.

5. It was reſolved, that the true Interpretation of theſe Words (*whereof the (a) Reverſion or Remainder at the Time of ſuch Recovery had ſhall be in the King*, &c.) is, where the King createth the Eſtate Tail by his Letters Patents, reſerving the Reverſion; or when the King, in Conſideration of Money, or of Aſſurance of other Lands, or for other Conſideration, procureth a Subject to make a Gift in Tail to one of his Servants or Subjects, for Recompence of Service or other Conſideration, the (*b*) Remainder to the King; And therefore, where the Preamble of the ſaid Act ſaith, *Where the King*, &c. *hath given*, &c. *or otherwiſe provided to his Servants or Subjects*; theſe Words, (*Reverſion to the King*) in the Body of the Act, have Reference to the Gift of the King mentioned in the Preamble: And theſe Words, (*Remainder to the King*) in the Body of the Act, refer to Proviſion mentioned in the Preamble made by the King, when he procureth a Subject to make the Gift with the Remainder to him, and ſo the Body of the Act well (*c*) expounded by the Preamble.

(*a*) Co. Lit. 372. b. 8 Co. 77. b.

(*b*) Co. Lit. 372. b.

(*c*) 2 Rol. Rep. 410.

6. It was reſolved, that before the Statute of 34 *H.* 8. a common Recovery did bar (*d*) the Eſtate Tail which was created by the King's Letters Patents, whereof the Reverſion did continue in the King. And with this Reſolution agreeth 33 *H.* 8. *tit. Recovery in Value.* 31 *Br.* and 29 *H.* 8. 32 *Dier. pl.* 1.

(*d*) Co. Lit. 335. a. 372. b. 1 Anderſ. 171. Raym. 349. 1 Leon. 85. Cro. Car. 430.

Mich.

Mich. 28 & 29 Eliz.

In the Common Pleas.

LANE's *Case*.

(a) Godb. 101. pl. 117. 1 Anderſon 191. 1 Leon 170. Goldſb. 34.

BEtween *(a) Smith* Plaintiff and *Lane* Defendant in the Common Pleas, the Caſe in Effect was ſuch: The King ſeiſed of a Manor in Fee in the Right of his Crown, by his Steward granted Copyhold Lands Parcel of the Manor to one by Copy of Court Roll according to the Cuſtom of the Manor in Fee. And afterwards the King by his Letters Patents under the Exchequer Seal made a Leaſe of thoſe Lands for 21 Years to another who granted his Term to the Copyholder: And afterwards the Queen that now is, (reciting the ſaid Leaſe for Years) *(b)* granted the Reverſion in Fee: The Term of 21 Years expired, the Patentee of the Reverſion entred upon the Copyholder, and if his Entry was lawful or not was the Queſtion. And it was adjudg'd that his Entry was *(c)* lawful. And in this Caſe three Points were reſolv'd unanimouſly by the whole Court.

(b) Cr. Car. 22.

(c) 1 Leon. 170.

1. That although by the Common Law no Grant of any Land by the King is available or pleadable but under the *(d)* Great Seal of *England*, and although in this Caſe it was not alledged, That in the Exchequer the common Courſe of the Court was to make ſuch Leaſes under the Seal of the Court; yet it was adjudged, that the ſaid Leaſe under the Exchequer *(e)* Seal was good, and that by the common Uſage of the *(f)* Court of Exchequer; for the *(g)* Cuſtoms and Courſes of every of the King's Courts are as a Law, and the Common Law for the Univerſality thereof doth take Notice of them, and it is not neceſſary to alledge in Pleading any Uſage or Preſcription to warrant the ſame. And ſo it is holden in *L.* 5 *E.* 4. 1. *a.* & 11 *E.* 4. 2. *b.* that the Courſe of a Court is a Law; and in 2 *R.* 3. 9 *b.* it is holden that *(h)* every Court of *Weſtminſter* ought to take Notice of the Cuſtoms of the other Courts,

(d) 2 Rol. 182.

(e) 1 Leon 170. Cr. Car. 513. 528. Cr. Jac. 109. 1 Rol. 524. 2 Rol. 182.

(f) Plowd. 230. b.

(g) Bridgman 21. 4 Co. 93. b. 9 Co. 30. b. Hardr. 340.

(h) 1 Rol. 524. Cr. Car. 179, 445. 513. 528. Cr. Jac. 68. Cro. Eliz. 502 544. 1 Rol. Rep. 106. 1 Sand. 73, 133.

Courts, *(a)* otherwiſe of Courts *in patria*. And *vide* 8 *H.* 6. 34. & *Br. Leaſes* 71. where it is ſaid, The Order of the Exchequer is to make their Leaſes by this Word *(b) Committimus* ſuch Lands, *Habendum*, *&c. Reddendum* ſuch Rent or Farm, *&c.* this is a good Leaſe there by ancient Uſage. By which it appeareth, that the ancient Uſage maketh a Leaſe to be good and available in Law; and if ſuch Leaſes ſhould not be good, great Miſchief would enſue, for an infinite Number of Leaſes and Grants under the Exchequer Seal would be otherwiſe declared void, and a great Number of Grants of Reverſions expectant upon Leaſes under the Exchequer Seal would be alſo void: For if the King granteth a Reverſion where he hath a Poſſeſſion, his Grant is void. And the Judges in general Caſes have great Reſpect and Conſideration that their Judgments ſhall not impeach the Eſtates and Inheritances of many Men againſt ancient and common Approbation. In a Patent of King *Hen.* 7. four Letters, *viz. (c) H. R. F. H.* of the firſt Words were left out intending afterwards *propter honorem* to be drawn and limmed with Gold, but the Great Seal was put to the Grant leaving out the ſaid Letters. And yet the Patent was adjudged good for the Multitude of Preſidents.

(a) 1 Rol. 524. Noy 90. Latch. 180. b.

(b) 4 Inſt. 112. Hardres 340.

(c) Dyer 342. pl. 33. 9 Co. 48. a. Stiles 302. Godb. 415.

Note Reader, In every Commiſſion to make Leaſes under the Great Seal there is a ſpecial Grant, that Leaſes made by the Commiſſioners under the Seal of the Exchequer, *&c.* ſhall be good, but that was not touch'd in this Caſe, nor do I think it was material; for if the Leaſes were not good for the Cauſes aforeſaid, certainly the ſaid Clauſe in the Commiſſion would not remedy it.

2. It was reſolved that by the Acceptance of the Term by the Copyholder, the Copyhold Eſtate was *(d)* determined, as well as if the Copyholder had accepted immediately a Leaſe for Years of his Copyhold, as hath been adjudged in *(e) Hide's* Caſe; for it is the ſame Reaſon in both Caſes, *viz.* that a Copyhold Intereſt and Eſtate for Years of one and the ſame Land cannot ſtand together in one and the ſame Perſon at the ſame Time, without confounding the Leſſer. Alſo they are of divers Natures, and therefore they cannot ſtand together in one and the ſame Perſon.

(d) 1 Rol. 510. Cr. Jac. 84. Noy. 12. Godb. 161. 153. 4 Co. 31. a. b. Cr. Car. 521. Cr. El. 7. Moor 185. Savil 70. 3 Bulſtr. 81. 1 Brownlow 32. 2 Sid. 140. 1 Anderſ. 191. 1 Leon. 170.

(e) 4 Co. 31. b. Moor 185.

3. That the *(f)* Severance of the Freehold and Inheritance of the Land holden by Copy of the Manor, hath not extinguiſhed or determined the Copyhold Eſtate; for notwithſtanding his Eſtate is taken but for an Eſtate *(g)* at Will, yet the Cuſtom hath ſo eſtabliſhed the Copyholder's Eſtate, that he is not removeable at the Lord's Will, ſo long as he performs the Cuſtoms and Services, and by the ſame Reaſon the Lord can-

(f) 4 Co. 24. b. 26. b. Hob. 181. Cr. Jac. 126. 573. 2 Rol. 510. 8 Co. 64. a.

(g) 4 Co. 21. a. 24. b. 8 Co. 64. a. Lit. Sect. 77. Co. Lit. 60. b. 3 Co. 8. a. 6 Co. 37. b. Cr. Car. 45. Hetl. 6. 9 Co. 107. a. Moor 60, 61.

cannot determine his Intereſt by any Act that he can do, and ſo it hath been adjudged divers Times in the King's Bench: But becauſe the Eſtate of the Copyholder was determined by the Acceptance of the Leaſe for Years it was adjudged againſt the Copyholder.

Note Reader, The Law to ſeveral Purpoſes and Intents taketh Notice of divers of the King's Seals. 1. Of the Great Seal. 2. Of the Seal of the Exchequer, as appeareth before. 3. Of the Privy Seal: *F. N. B.* 26. *b.* The King may grant to one to make *(a)* Attorney by his Letters Patents under his Privy Seal, and therewith agreeth 37 *H.* 6. 27. *b.* and the King may command under his Privy Seal that one do not go beyond the Sea *(b)* out of the Realm, as appeareth by *F. N. B.* 85. *a.* But it is holden in 35 *H.* 6. *a.* that a *(c)* Protection or Warrant of an Eſſoin is worth nothing under the Privy Seal. And it appeareth by the Statute *de (d) Articulis ſuper chartas cap.* 6. that no Writ ſhall be ſealed with the Petit Seal.

(a) 2 Rol. 183.

(b) 2 Rol. 183. 11 Co. 92. a. Dyer 128. pl. 61. 165. pl. 6. 176. pl. 30. Moor 675. 2 Inſt. 54. Jenk. Cent. 220.

(c) 2 Rol. 183. Co. Lit. 131. a. Br. Protect. 13. 35 H. 6. 2. a.

(d) 2 Inſt. 555, 556. Moor 476.

4. The Law taketh Notice alſo of the *(e)* Privy Signet, *vide* *F. N. B.* 85. *a.* That the Privy Signet is ſufficient to prohibit one to go beyond the Sea. And ſee a Record in the Exchequer, *Hil.* 1 *E.* 4. *ex parte Rememoratoris dom' Reginæ Rot.* *(f)* 14. that the Diſcharge under the Privy Signet of a Debt due by the Sheriff of *London* was not ſufficient, but it ought to have been under the Privy Seal, and then it had been a good Diſcharge in Law.

(e) 2 Rol. 183. 11 Co. 92. a.

(f) 2 Rol. 183. 11 Co. 92. Moor 476.

Know, Reader, that of ſmall Things (as the Caſe at Bar was) and to poor Men, Leaſes have been made under the Exchequer Seal, as appeareth by many old Precedents before and in the Time of King *E.* 3. and by infinite Precedents after to this Day: And ſuch Leaſes made according to the ſaid Precedents have been allowed good. And there were three Cauſes of the Beginning of the Uſage. 1. For the Multiplicity, that every poor Man ſhall not be driven for ſuch infinite Number of Leaſes to ſue for Cottages to the King, and other ſmall Things to paſs by the King's ſigning, the Privy Signet, Privy Seal, or Great Seal. 2. For Neceſſity, leſt if a poor Subject ſhould be driven to ſuch a tedious Suit, the Land would lie many Times without a Tenant to the King's Damage. 3. For the Impoſſibility, becauſe many Times the Subject was not able, nor the Thing leaſed of Value to paſs the Great Seal. But to you who are Rich, my Advice is to paſs your Leaſes under the Great Seal for that is the ſure Way.

Paſc.

Paſchæ 31 Reginæ Eliz.

Rotulo 1151.

BROOKER.

CHriſtopherus Marton nuper de Marton in com' præ- Ebor. ſſ.
dict' armiger, attachiat' fuit ad reſpondend' Anthonio Baldwin, de pl'ito quare vi & armis clauſum ipſius Antho. apud Marton fregit, & blada ſua ad valentiam decem librar' ib'm nuper creſcen' pedibus ambulando conculcavit & conſumpſit; Et alia enormia ei intulit, ad grave dampnum ipſius Antho. & contra pacem dominæ reginæ nunc, &c. Et unde idem Anthonius per Robertum Somerſcale attornat' ſuum queritur, quod prædict' Chriſtopherus decimo die Septembris anno regni domini reginæ nunc triceſimo, vi & armis, &c. clauſum ipſius Anth. apud Marton fregit, & blada, viz. avenas ſuas ad valentiam, &c. ib'm nuper creſcen' pedibus ambulando conculcavit & conſumpſit, & alia enormia, &c. ad grave dampnum, &c. Et contra pacem, &c. unde dicit qd' deteriorat' eſt, & dampnum habet ad valentiam viginti librarum. Et inde producit ſectam, &c. Et predictus Chriſtopherus per Willihelmum Burton Attornatum ſuum, venit & defendit vim & injur' quando, &c. Et quoad venire vi & armis dic' qd' ipſe in nullo eſt inde culpabil', & de hoc pon' ſe ſuper patriam. Et pred' Anth. ſimiliter. Et quoad reſid' tranſgr' pred' ſuperius fieri ſuppoſit', idem Chriſtofer' dic' qd' pred' Anth. actionem ſuam pred' verſus eum habere non debet, quia dicit quod clauſum predict', necnon loci in quibus ſupponitur tranſgreſſ. predict' fieri, ſunt & predicto tempore quo ſupponitur tranſgreſſ. prædictam fieri, fuerunt decem acr' terr' vocat' Bromfield, cum pertin' in Marton predicta, que quidem decem acræ terræ cum p'rtin' ſunt & predicto tempore quo, &c. fuer', ſolum & liberum tenementum ipſius Chriſtoferi, per quod idem Chriſtoferus

predicto tempore quo, &c. clauſum predict', ut clauſum ac ſolum & liberum tenementum ipſius Chriſtoferi propr' in eiſdem decem acris terræ cum pertin' fregit, & blada predict' ut blada ipſius Chriſtoferi propr' in eiſdem decem acris terræ cum pertin' ut ſuper ſolo & libero tenemento ipſius Chriſtoferi propr' ib'm tunc creſcen' pedibus ambulando conculcavit, & conſumpſit, prout ei bene licuit. Et hoc parat' eſt verificare, unde pet' judic' ſi prædict' Anthon. action' ſuam predict' verſus eum habere debeat, &c. Et predict' Anthon. dicit quod ipſe per aliqua preallegat' ab actione ſua predict' habendum precludi non debet, quia dic' quod clauſum predict' necnon loci in quibus tranſgreſſ. predict' unde ipſe ſuperius ſe modo queritur fact' fuit, ſunt, & predict' tempore tranſgreſſ. predict' fact' fuerunt quatuor acris terræ cum pertin' voc' **Scarhil ſet, and Waterſey myer** in Marton predict', alias quam predict' decem acræ terræ voc' **Bromfield**, cum pertin', in barr' pred' Chriſtof. ſuperius ſpec'. Et hoc parat' eſt verificare, unde ex quo predict' Chriſtof. ad tranſgreſſ. predict' in predictis 4. acris terræ cum pertinen' ſuperius de novo aſſign' fact' ſuperius non reſpondend' idem Anthon. pet' judic' & dampna ſua occaſione tranſgreſſ. illius ſibi adjudicari, &c. Et predict' Chriſtof. quoad aliquam tranſgreſſ. in predict' 4. acris terræ cum pertin' de novo aſſign' ſuperius fieri ſuppoſit, dic' quod ipſe in nullo eſt inde culpabilis, prout predict' Anthon. ſuperius verſus eum querit', & de hoc pon' ſe ſuper patriam. Et pred' Anthon. ſimiliter. Ideo precept' eſt vic' quod venire fac' hic in craſtino ſanctæ Trinit' xii. &c. per quos, &c. Et qui nec, &c. Ad recogn', &c. Quia tam, &c. Ad quam diem hic ven' patres, &c. Et vic' non miſit breve, Ideo ſicut prius prec' eſt vic', quod venire fac' hic a die ſanct. Trin. in tres ſeptimanas xii. &c. Ad recogn' in form' predict', &c. Ad quem diem Jur' inter partes predict' de predict' pl'ito poſit' fuit inter eas in reſpect' hic uſq; ad hunc diem, ſcil. in octab. ſanct. Mich. tunc proxim' ſequen', niſi Juſtic' dominæ reg. ad aſſiſas in com' predict' capiend' aſſign' per form' ſtatui, &c. die Lunæ, 14. die Julii prox' preterit', apud Caſtrum Ebor' in com' pred' prius veniſſent. Et modo hic ad hunc diem ven' tam predict' Anthon. quam predict' Chriſt' per attornatos ſuos predict' & prefat' Juſtic' ad aſſiſas coram quibus, &c. miſ. hic recordum ſuum in hæc verba. Poſtea die & loco infra content' coram Joh. Clench uno Juſtic' dominæ reg. ad pl'ita coram ipſa Regina tenend' aſſign', & Thom. Walmeſley uno Juſtic' ipſius dom' Reginæ de banco Juſtic' dictæ dominæ Reginæ ad aſſiſas in com' Eborum capiend' aſſign' per form' ſtat', &c. ven' tam infranominat' Anthon. Baldwin, quam infra ſcript' Chriſto' Marton per attornatum ſuum infra content',

Devant f. 6. a. 2 Co. 146. 2.

tent', & Jur' Jurat' unde infra fit mentio exact' quidam eorum, videl't, Willihelmus Wharton de Dunkeſwick gen', Adam Wyre de Ayrton Yeoman, J. Browne de Pathorne Yeoman, Radulphus Walker de Bolton gen', Thom' Preſton de Whengille Yeoman, & Hen. Laycocke de Felliface Yeoman, ven', & in Jur' predict' jurat' exiſtunt: Et quia reſid' Jur' ejuſdem jurat' non comperuer', ideo alii de circumſtantib' per vic' com' predict' ad hoc elect' ad requiſitionem, predict' Anthonii, ac per mandat' Juſtic' predict' de novo apponunt': Quorum nomina panell' infraſcript' affilant' ſecundum formam ſtatut' in hujuſmodi caſu edit' & proviſ. Ac Jurat' ſic de novo appoſit' modo comparen', viz. Gabriel Greene, W. Newby, J. Hawton, J. Brorey, J. Craven, & W. Richardſon, ven', qui ad veritatem de infracontent' ſimul cum aliis Jurat' predict' primo impanellat' & jurat' dicend' electi, triati, & jurati, dicunt ſuper ſacramentum ſuum, quod diu ante infraſcriptum temp' quo ſupponitur tranſgreſſ. infraſcript' fieri, predict' quatuor acræ terræ cum pertinentiis in quibus, &c. fuerunt parcellæ poſſeſſionum nuper Monaſterii ſive priorat' de Balton in Craven; Quod quidem Richardus nuper Prior priorat' ſive Monaſter' predict', fuit ſeiſit' de uno tenemento, meſuagio, ſive firma voc' Ungthorpe in parochia de Marton in Craven unde infraſcript' 4. acræ terræ cum pertin' interius de novo aſſign' ſunt, & infraſcript' tempore quo, &c. fuerunt parcell', in dominico ſuo ut de feodo, in jure Monaſter' ſui predict', Et ſic inde ſeiſit' exiſten' idem nuper prior cum aſſenſu ejuſdem loci convent', 26. die Decembris, anno regni domini Henrici nuper Regis Angliæ octavi viceſimo quinto, per quandam Indenturam ſigillo communi prædict' Prioris & convent' ſigillat', eiſdem Jurat' in eviden' oſtenſ. dimiſer' predict' tenementum, meſuagium, & firmam, unde infraſcript' quatuor acræ terræ cum pertin' adtunc fuerunt & adhuc ſunt parcell', cuidam Hugoni Baldwin & Agneti uxori ejus; Habendum & tenendum eidem Hugoni & aſſign' ſuis, a dat' Indentur' predict' uſq; ad finem & terminum trigint' & unius annorum plenar' complend': virtute cujus dimiſſionis, iidem Hugo & Agnes in predict' quatuor acras terræ cum pertin' in quibus, &c. intraver' & fuer' inde poſſeſſionat', reverſione inde pref. Priori & ſucceſſoribus ſuis: predictiſq; Hugone & Agnet' ſic de predict' quatuor acr' terræ cum pertin' in quibus, &c. pro termino predict' poſſeſſionat' exiſten' reverſione inde pref. nuper Priori in forma predict' ſpectan', per quendam actum in Parliamento ipſius nuper Regis H. octavi apud Weſt. in com' Midd' 28. die Aprilis, anno regni ſui tricesimo primo inchoat', & continuat' uſq; viceſimum octavum diem Junii tunc proxim' ſequen', & ibidem tunc

tent', inter alia ordinat' & ſtabilit' exiſtit per ipſum nuper Regem & dominos ſpiritual' & temporal', ac communitatem in eodem Parliamento tunc aſſemblat', quod idem nuper Rex haberet, teneret, poſſideret, & gauderet ſibi, hered', & ſucceſſoribus ſuis, omnia & ſingula talia nuper Monaſteria, Abbathias, Priorat', domos monal', Collegia, & Hoſpitalia, domos firm', ac alios eccleſiaſticos & religioſos domus & locos quorumcunq; gener', naturar', qualitat', ſive diverſitat' ornamentor' regul', profeſſion', ſeu ordinum, ill' vel eor' aliquod eſſent nominat', cognit', ſeu vocat', quæ poſt 4. diem Februarii, anno regni predict' nuper regis 27. fuiſſet diſſolut' ſuppreſſ. renunciat', relict', forisfact', ſurſum reddit' aut aliquo modo devent' regiæ celſitudini, & per eandem auctoritat', & in conſimili modo haberet, teneret, poſſideret, & gauderet omnia ſcitus, circuitus, procinct', maneria, dominia, grangia, meſuagia, terr', tenementa, prata, paſtur', reddit', reverſiones, ſervitia, boſcos, decimas, pentiones, porciones, rectorias appropriat', vicarias, eccleſias, capell', advocationes, nominationes, pr'onat', annuitates, jura, intereſſe, intrationes, conditiones, co'inas, letas, cur', libert', privilegia, franchef. ac alia quecunq; hereditamenta quæ pertinuerunt ſeu ſpectaverunt pred' nuper Monaſteriis, Abbathiis, Priorat', domib' monal', collegiis, domib' firm', ac aliis religioſis & eccleſiaſticis domib', & locis, aut eor' alicui, in tam largis & amplis modo & forma, prout nuper abbas, priores, abbiſſæ, prioriſſæ, ac alii eccleſiaſtici gubernatores vel gubernatrices ib'm nuper monaſter', abbat', priorat' domorum, ſive locor' ad tempus predict' diſſolutionis, ſuppreſſionis, renunciationis, forisfact', ſurſum redditionis, vel aliquo alio modo devent' eorund' ad regiam celſitudin' poſt 4. diem Feb. ſupraſpec'. Et ulteri' mactitat' exiſtit auctoritate predict', quod non ſolum omnia predict' nuper monaſteria, abb' priorat' domos monal', collegia, hoſpital', domos firm', ac religioſi & eccleſiaſtici domos, & loci ſcitus, circuit', procinctus, man'ia, dominia, grang', meſuag' terr', ten'ta, prata, paſt', redd', reverſiones, ſervitia, & omnia alia premiſſa abinde immediate & proſecut': ſed etiam omnia alia monaſter', abb' priorat', domos monal', collegia, hoſpitalia, domos firm', ac omnes alii religioſi & eccleſiaſtici dom' & loci qui impoſterum contingerent diſſolvi, ſupprimi, renunciari, relinqui, foriſfieri, ſurſum reddi, aut per aliquem alium medium devenire regiæ celſitudini: Ac etiam omnia ſcitus, circuitus, procinct', maneria, grang' meſuag' terr', ten'ta, prata, paſtur', reddit', reverſiones, ſervitia, boſci, decimæ, pentiones, portiones, rectoriæ appropriat', vicarie eccleſiæ, capellæ, advocationes, nominat', patronat', annuitates, jura, intereſſe, intrationes, conditiones, communia, let', cur', libertates, privilegia,

privilegia, francheſiæ, ac alia hereditamenta quæcunq; fuerunt ſpectan' ſive pertin' eiſdem, aut eorum alicui quandocunq; & tam ut eſſent ſic diſſolut' ſuppreſſa renunciat' relict' forisfact' fuit per aliquem aliud medium devent' Regiæ celſitudini eſſent veſtit' & adjudicat', authoritate ejuſdem Parliamenti in vera actuali & reali ſeiſina & poſſeſſione ejuſdem nuper Regis, hered' & ſucceſſor' ſuorum imperpetuum, in ſtatu & conditione quæ adtunc fuerunt, & quemadmodum omnia predict' Monaſteria, Abbathia, priorat', domos monal', collegia & hoſpitalia domos firm', ac omnes alii religioſi & eccleſiaſtici domus & loci ſic diſſolut', ſuppreſſa, renunciat', relict', forisfact', ſurſum reddit', aut devent' regiæ ſelſitudini, ut predict' exiſtit, quam etiam pred' Monaſteria, Abbathia, Priorat', domus monalium, collegia, hoſpitalia, domus firm', ac alii religioſi & eccleſiaſtici dom' & loci quæ tunc impoſterum contingerent fore diſſolut', ſuppreſſa, renunciat' relict', forisfact', ſurſum reddit', vel devent' regiæ ſelſitudini, ſcitus circuitus, procinctus, maneria, dominia, grangie, terr', tenementa, ac cetera premiſſa quecunq; fuerunt in eodem actu ſpecialiter & perticulariter recitat', nominat', & expreſſa per expreſſa verba nomina facultatis & ſuis naturis generalibus & qualitatibus, prout in eodem actu inter alia plenius liquet: Et iidem Jur' ulterius dicunt ſuper ſc'rum ſuum quod predict' Monaſterium ſive priorat' de Boulton predict' poſt predict' quartum diem Februarii, anno viceſimo ſeptimo ſupradicto, ſc. 11. die Junii, anno regni ipſius nuper Regis 31. ſupradict' diſſolut' fuit: Pretextu cujus diſſolutionis ac vigore ſtatuti pred', predict' nuper Rex fuit ſeiſit' de predict' Monaſterio ſive Priorat' de Boulton predict', ac de reverſione predict' 4. acr' terræ cum pertin' inter alia in dominico ſuo ut de feodo in jure coronæ ſuæ Angliæ. Et quod predict' meſuagia & tenementa vocat' **Ungthorpe**, & predict' quatuor acræ terræ cum pertin' in quibus, &c. tempore diſſolutionis predict' fuer' parcell' poſſeſſionum predict' Monaſterii ſive Priorat': Idemq; nuper Rex ſic inde ſeiſit' exiſten', tertio die April' anno regni ſui, triceſimo tertio, per literas ſuas patentes magno ſigillo ſuo Angl' ſigillat' Jur' predict' in evidenc' oſtenſ. dedit & conceſſit Henrico nuper com' Cumberl' totum predict' tenementum, meſuagium, & firmam cum pertinentiis vocat' **Ungthorpe**, unde infraſcript' quatuor acr' terræ cum pertin' adjacen' fuer' & adhuc ſunt parcell': Habendum eidem nuper Comiti hered' & aſſignat' ſuis imperpetuum: Quarum quidem literarum paten' prætextu idem nuper Comes fuit inter alia ſeiſit' de reverſione predict' tenementi, meſuagii, ac firmæ cum pertin', unde predict' 4. acr' terræ cum pertin' in quib', &c. tunc fuerunt & adhuc ſunt parcel' in d'nico ſuo ut de feodo; predictiſq; Hugone &

Agnete pro præd' termino annor' in forma predict' poſſeſſionat' exiſten', reverſione inde pref. Comiti & hæredibus ſuis ſpectan', predict' Hugo obiit de predict' quatuor acris terræ cum pertin' in quibus, &c. in forma pred' poſſeſſionat', ac predict' Agnes ipſum Hugonem ſupervixit, & fuit de eiſdem quatuor acr' terræ cum pertin' in quibus, &c. ſola poſſeſſionat' per jus accreſcend', &c. predictaq; Agnet' ſic inde poſſeſſionat' exiſten' reverſione inde pref. nuper Comiti in forma predict' ſpectan', idem nuper Comes fecit, ſigillavit, & deliberavit quandam Indenturam ut factum ſuum de predict' quatuor acris terræ cum pertin' in quibus, &c. inter alia, cujus tenor ſequitur in hæc verba.

This Indenture made the x. Day of September, in the Year of our Lord God 1545. and in the 37. Year of the Reign of our Sovereign Lord Henry the 8. by the Grace of God, King of England, France and Ireland, Defender of the Faith, and in the Earth the ſupreme Head of the Church of Eng. & Irel. Betwixt the Rt. Noble Lord Henry Earl of Cumberland, Lord of thonor of Shipton, Lord Weſtmoreland and Neſſton, of the one Party, and Agnes Baldwin of Ungthorpe Widow, and Anthony Baldwin on the other Party, witneſſeth, That the ſame Earl for the Sum of lviii l. xiii s. iiii d. Sterling at the Day of the Date hereof by the ſaid Agnes and Anthony paid to the ſaid Earl, whereof the ſaid Earl knowledgeth himſelf to be truly contented and paid, and the ſaid Agnes and Anthony their Heirs and Executors, thereof, and of every Part thereof to be diſcharged and acquitted for ever, hath covenanted, granted, demiſed, and letten to Farm, and by theſe Preſents covenanteth, granteth, demiſeth, and letteth to Farm to the ſame Agnes and Anthony, and to the Heirs of the ſame Anthony, the ſaid Tenement, Weaſe, or Ferme, called Ungthorpe in the Pariſh of Parton in Craven in the County of Yorke, together with the Cloſures, Feedings, Paſtures, Arrable Land, Meadow, Woods, Waters, Common of Paſture in the Moors of Eaſt and Weſt Parton, Common of Turbary, with free Paſſage to and fro the ſame Common of Eſton, a Ground or Meadow called Todholme, lying in the demean Cloſes of Parton Hall, and all Houſes, Barns, Boons, and Buildings to the ſame Tenement or Farm called Ungthorpe belonging, or in any wiſe heretofore appertaining, now and of old Time being of the only yearly Rent of liii s. 4 d. To have and to hold the ſame Tenement or Farm called Ungthorpe, with all

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and ſingular the Premiſſes with the Appurtenances, to the ſame Agnes and Anthony, and to the Heirs of the ſame Anthony from the Date hereof to the End and Term of 99 Years, next and immediately following, and fully to be compleat and ended, and ſo from 99 Years to 99 Years, till ſuch Time as 300 Years be ſpent, fully finiſhed, and expired, without Impeachment of any Manner of Waſte, in as ample, free, and large Manner as ever Nicholas Simſon, Hugh Baldwin, the ſaid Agnes Baldwin, or any other Tenant or Farmer of the ſaid Tenement or Meſe of Ungthorpe, with all and ſingular the Premiſſes with the Appurtenances ever occupied or might have occupied the ſame, without Impediment, Let, Diſturbance, Denial, Contradiction, or Reſiſtance of the ſame Earl or of his Heirs and Aſſigns, or of any other Officer, Farmer or Farmers of the ſame Earls, of the Manor or Capital Meſe called Warton Hall for the Time being, or of any other, at or by Will, Aſſent, Conſent, or Sufferance of the ſame Earl, his Heirs or Aſſigns; And further, The ſame Agnes and Anthony covenanteth and granteth by theſe Preſents, for them and for the Heirs of the ſaid Anthony, to and with the ſame Earl, that they the ſame Agnes and Anthony, and the Heirs of the ſame Anthony ſhall yearly during the ſaid Term at the Feaſt of St. Michael the Archangel, and within forty Days after, for certain urgent Conſiderations, content and pay, or cauſe to be contented and paid to the ſaid Earl his Heirs and Aſſigns, as well a Penny ſeparately by itſelf as v. s. iiii. d. in a groſs and intire Sum if it be asked, for the which Payment of the ſaid ſingle Penny, and of the ſaid v s. iiii d. Sterl. the ſaid Earl covenanteth and granteth for him his Heirs and Aſſigns, to and with the ſaid Agnes and Anthony to diſcharge and ſave Harmleſs from Time to Time all the ſaid Land and Tenements, and the ſaid Agnes and Anthony, and the Heirs of the ſame Anthony, as well of and for the Payment of the ſaid Penny, as for the Payment of the Sum of v s. iiii d. as of all other Suits, Exactions, Boons, Greſſoins, Fines, Cuſtoms, and all other Impoſitions or Demands whatſoever they be, concerning the ſame Meſe or Tenement called Ungthorpe, and all other the Premiſſes with the Appurtenances, during the ſaid Term now granted, or any Term hereafter by Force of this Indenture to be

granted

granted by the Earl and his Heirs, as well against our Sovereign Lord the King and his Heirs, as against all other Person and Persons whatsoever they be. And furthermore the said Earl covenanteth to and with the said Agnes and Anthony by these Presents, that he the said Earl his Heirs and Assigns, shall at the End and Term of 300 Years make and cause to be made to the Heirs or Assigns of the said Anthony a like Dimission and Lease of the said Meale or Tenement and all other the Premisses with the Appurtenances if it be asked, for so many more Years as is contained in this Lease, and the same Lease to be of like Force, Effect, and Strength in the Law as this present is without any Covin, Fraud, Collusion, Denier, or Male-Engine, but truly and faithfully according to the true Purport and Meaning of these Indentures. In witness whereof the Parties above to these Indentures interchangeably have set their Seals, the Day and Year abovesaid.

Et iidem Jurator' ulterius dicunt supra sacr'um suum, quod nulla liberacio aut seisina tenementorum predict' aut alicujus inde parcel' liberat' fuit prefat' Agneti & Anthonio sive eorum alteri super Indenturam predict', quodque pred' Agnes & Anthonius habuerunt & tenuerunt tenement' mesuag' & firmam predict' cum pertin' unde predict' quatuor acr' terræ cum pertinen' in quibus, &c. sunt & adtunc fuer' parcel' prout lex in hoc casu postulat, iidemq; Agnes & Anthonius sic habentes tenent' tenement' mesuagium & firmam predict' cum pertin' unde predict' 4. acr' terræ in quibus, &c. sunt & adtunc fuer' parcel eadem Agnes ultimo die Octobris anno dicte domine Reg. nunc' quinto, apud Marton predict' in com' predict' obiit; Ac predict' Anthonius ipsam supervixit, & continuavit possession' tenement' mesuag' & firme predict' cum pertin' unde predict' quatuor acre terre cum pertin' in quibus, &c. sunt parcell' & percepit exitus inde, & habuit, occupavit, & tenuit tenement' mesuag' & firmam predict' unde predict' quatuor acræ terræ cum pertin' in quibus, &c. cum pertin' sunt parcel', de tali statu & interesse prout lex in hoc casu postulat: ipse que habens, occupans, & tenens, tenement' mesuag' & firmam predict' unde infrascript' quatuor acr' terr' sunt parcell', predict' Henr' nuper Comes Cumb' obiit habens exitum Georgium modo Com' Cumb' filium & hered' suum. Et idem Georgius Comes Cumb' intravit in tenement' predict', & postea sc. decimo septimo die Aprilis anno regni dicte domine Regine nunc vicesimo quarto, feoffavit præfat' Christoferum Marton de predict' quatuor' acr' terr' cum pertinen'

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in quibus, &c. inter alia, habendum eidem Chriſtofero & hered' ſuis imperpetuum ; Ac quod predict' Antho. tempore confect' feoffamenti predict' ac poſt feoffament' illud fact' hucuſq; continuavit poſſeſſionem tam de predict' quatuor acr' terræ cum pertinentiis, quam de meſuagio & reſid' tenement' & firmæ predict' : Sed Jurator' tamen ulterius dicunt, quod ante feoffament' predictum predictus reddit' pref. Henr' nuper Comiti Cumb' & hered' ſuis per Indentur' predict' conceſſ. tam pref. Henr' Comiti Cumb' in vita ſua, & poſt mortem ipſius nuper Comitis predict' Georgio modo Comiti Cumb' quam pref. Chriſtofero Marton poſt feoffamentum predictum per predict' Anthonium ſolut' fuit. Et iidem Jurator' ulterius dic' ſuper ſacramentum ſuum, quod predict' Chriſtoferus die & anno in narratione infraſcript' ſpec', intravit in predict' quatuor acras terræ cum pertinentiis in quibus, &c. ſuper poſſeſſionem predict' Anthonii, ac avenas infraſcript' ibidem tunc creſcen' pedibus ambulando conculcavit & conſumpſit prout predict' Anthonius interius verſus eum queritur. Sed utrum ſuper tota materia predict' per ipſos Jurator' in forma predict' compert' predict' intracio predict' Chriſtoferi in predict' quatuor acris terræ cum pertinentiis in quibus, &c. ſit bona & legitima intracio necne iidem Jurator' penitus ignorant, & petunt inde adviſamentum & diſcretion' Juſticiar' & Curiæ hic. Et ſi ſuper tota materia predict' per ipſos Jurator' in forma predict' compert' videbitur Juſtic' & Curiæ hic quod predict' intracio predict' Chriſtoferi non ſit bona & legitima intracio in lege in predict' quatuor acras terræ ſuper poſſeſſionem predict' Anthonii, tunc iidem Jurator' dicunt ſuper ſacramentum ſuum quod predict' Chriſtoferus eſt culpabilis de tranſgreſſion' in predictis quatuor acris terræ interius de novo aſſign', prout predict' Anthonius interius verſus eum queritur, & tunc aſſident dampna ipſius Anthonii occaſione tranſgreſſionis illius ultra miſ. & cuſtag' ſua per ipſum circa ſectam ſuam in hac parte appoſit' ad xx. s. & pro miſ. & cuſtag' il' ad quadraginta ſolidos. Et ſi ſuper tota materia predict' videbitur Juſtic' & Curiæ hic quod predict' intracio predict' Chriſtoferi in predict' quatuor acras terræ interius de novo aſſignat' ſuper poſſeſſionem predict' Anthonii ſit bona & legitima intracio in lege, tunc iidem Jurator' dicunt ſuper ſacramentum ſuum quod predict' Chriſtoferus non eſt culpabilis de tranſgreſſione infraſcript' in infraſcriptis quatuor acris terræ interius de novo aſſign'. Et quia Juſtic' hic ſe adviſare volunt, de & ſuper premiſſis priuſquam judicium inde reddant, dies datus eſt partibus predict' hic uſq; in octabis ſancti Hillarii, de audiendo inde judicio ſuo, eo quod iidem Juſticiar' hic inde nondum, &c. Ad

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quem diem hic vener' tam predict' Anthonius, quam pred' Chriſtoferus per attornat' ſuos pred'. Et ſuper hoc viſis omnibus & ſingulis premiſſis, & per Juſtic' hic plenius intellectis, conc' eſt quod pred' Anthonius recuperet verſ. pref. Chriſtoferum dampna ſua pred' ad ſexaginta ſolidos per Juratores pred' in forma pred' aſſeſſ. necnon undecim libras ſex ſolidos & octo denarios eidem Anthonio ad requiſitionem ſuam pro miſis & cuſtag' ſuis pred' per Cur' hic de increment' adjudicat'. Quæ quidem dampna in toto ſe attingunt ad quatuordecim libras ſex ſolidos & octo denarios. Et pred' Chriſtoferus capiat', &c.

Paſc.

Paſc. 31 Eliz.

In the Common Pleas, Rotul. 1151.

BALDWIN's *Caſe*.

BEtween *Baldwin* and *Morton* in Treſpaſs in the County of *York*, and adjudged in the Common Pleas, the Caſe was ſuch; the Prior of *Boulton*, *Anno* 25 *H.* 8. with the Aſſent of his Covenant by Indenture demiſed the Land in Queſtion to *Hugh Baldwin* and *Anne* his Wife for 21 Years. And afterwards the Priories by Surrender, *&c.* came to King *H.* 8. and after *Hugh Baldwin* died, King *H.* 8. *Anno* 33. granted the Land in Queſtion to *Henry* Earl of *Cumberland* and his Heirs, who 37 *H.* 8. by his Indenture covenanted, granted, demiſed and to Farm let the ſaid Land to the ſaid *Anne*, and to one *Anthony Baldwin* her Son, and to the Heirs of the ſaid *Anthony*: *Habendum* to them from the Date of the ſame Indenture until the End of 99 Years, and ſo from 99 Years to 99 Years, until 300 Years be expired without Impeachment of Waſte in as ample and large Manner and Form as the ſaid *Hugh* and *Anne*, or any Tenant or Farmer ever had or enjoyed the ſame. And the Leſſee covenanted to pay during the ſaid Term 5*s.* 8*d.* if it were demanded: And the Leſſor covenanted that he, his Heirs and Aſſigns, at the End of the ſaid Term of 300 Years, would make unto the Heirs and Aſſigns of the ſaid *Anthony Baldwin* ſuch Leaſe for other 300 Years, *&c.* And the Jury found, that no Livery and Seiſin was made to the ſaid *Anthony* or *Anne* according to the ſaid Indenture; *Anne* died, and *Anthony* ſurvived,

(a) 1 And. 223. Owen 40. Palm. 33. Hardres 149.

vived, *Henry* Earl of *Cumberland* died, *George* his Son and Heir, *Anno* 14. *Eliz.* did enfeoff the Defendant thereof; the ſaid *Anthony* at the Time of the Feoffment being in Poſſeſſion of the ſaid Land, upon whom the Defendant entred, upon which Entry the ſaid *Anthony Baldwin* brought this Action of Treſpaſs. And the Doubt in this Caſe was, If for as much as the Fee Simple was limited and expreſſed by the Premiſſes, to *Anthony* and his Heirs, if the Limitation of the Term for Years in the *(a) Habendum* were contrary and repugnant to the Premiſſes. And firſt it appeareth, That the Intent of the Parties was, that but a Term ſhould paſs; for in the Premiſſes the Parties uſe the uſual Words of a Leaſe, *ſcil.* grant, demiſe, and to Farm let, and a certain Term for Years is limited by the *Habendum*; alſo it is limited without *(b)* Impeachment of Waſte; alſo the Leſſee binds himſelf by Covenant to pay the Rent during the Term; And the Leſſor covenants, that a new Leaſe ſhall be made at the End of the Term, and that the Leſſees ſhall enjoy the Land, *&c.* as other Farmers, *&c.* had enjoyed the ſame. Then ſuch Conſtruction ſhall be always made, that the *(c)* Intent of the Parties ſhall take Effect, if the ſame by any Conſtruction may ſtand with the Rule of Law; And it was objected, that the Rule of Law was, That an *(d) Habendum* being contrary or repugnant to the Premiſſes is void, and the Premiſſes ſhall ſtand: As if a Man by Deed give Lands by the Premiſſes to one and his Heirs, *Habendum* to him for his Life, this *Habendum* is void, becauſe a Fee Simple is expreſſed in the Premiſſes, and but an Eſtate for Life in the *Habendum*, which is repugnant and void, which Caſe was agreed on all Sides. But it was adjudged by *Anderſon* Chief Juſtice, *Windham*, *Periam* and *Walmſly* Juſtices, that the *Habendum* in the Caſe at Bar was not repugnant; and that by the ſaid Demiſe both the Leſſees had a Leaſe for Years therein expreſſed; and in this Caſe theſe Differences were taken and agreed for good Law.

(a) 2 Sid. 78. 2 Co. 50. a. 52. a. 55. a. b. 5 Co. 94. a. b. 8 Co. 56. b. 93. b. 154. b. 9 Co. 47. a. 48. a. 10 Co. 107. b. Co. Lit. 21. a. 2 Rol. 65, 66, 67.

(b) 2 Inſt. 146. 4 Co. 63. a. 9 Co. 5. a. 11 Co. 82. b. 83. a. Co. Lit. 220. a. 3 E. 3. 44. Dyer 10. Pl. 37. 1 Bulſt. 136. Moor. 317.

(c) 1 Co. 85. a. Co. Lit. 314. b. Lit. Rep. 187.

(d) Hob. 171. Cr. El. 255. Winch. 92.

1. When to Things which take their Eſſence and Effect by the Delivery of the Deed without other Ceremony, and which lie in Grant, there in ſuch Limitation as in the Caſe at Bar, the *Habendum* was repugnant and void. As if a Man grant Rent, or Common, *&c.* out of his Land by the Premiſſes of the Deed to one and his Heirs, *Habendum* to the Grantee for Years or for Life, the *Habendum* is repugnant, for a Fee paſſeth by the Premiſſes by the Delivery of the Deed, and therefore the *Habendum* for Years or Life is void.

2. If

2. If one by Deed grant a Rent in *esse*, or a Seignory in the Premisses to one and his Heirs, *Habendum* to the Grantee for Years, or Life; although another Thing or Ceremony is requisite, that is to say, (Attornment) besides the Delivery of the Deed, yet for as much as the Thing lieth in Grant, and both Estates that is to say, as well the Estate in Fee, as the Estate for Years or for Life ought to have one and the same Ceremony, that is to say, (Attornment) to pass it, as a Seignory, *&c.* and for this Cause the *Habendum* in such Case is repugnant and void.

3. When a Man gives Land by Deed in Fee by the Premisses, *Habendum* to the Lessee for Life, there the *Habendum* is void, as hath been said; for one and the same Ceremony, *scil.* Livery is requisite to both the Estates; and therefore when Livery is made according to the Form and Effect of the Deed, it shall be taken strongest against the Feoffor, and more for the Advantage of the Feoffee, and the *Habendum* in such Case is void, and till Livery be made the Feoffee hath but at Will. *(a)* 13 H. 7. 23. b. 24. a. Plow. 153. a. Perk. §. 162. Davis 46. a. antea 23. b.

4. When to the Estate limited by the Premisses a Ceremony is requisite to the Perfection of the Estate, and to the Estate limited by the *Habendum*, nothing is required to the Perfection and Essence thereof but only the Delivery of the Deed, there, although the *Habendum* be of lesser Estate than is mentioned in the Premisses, the *Habendum* shall stand, as in the Case at the Bar: To the Fee Simple limited by the Premisses, it is repuisite to have Livery and Seisin; and till Livery be made nothing shall pass but an Estate at Will (if the Deed had not gone further) and therefore the *Habendum* for Years is good presently by the Delivery of the Deed, and so it appeareth it was the Intent of the Party that it should take Effect by the Livery of the Deed for Years.

Note, Reader, a Difference between an Estate in the Premisses implied, *(b)* and an Estate expressed; for if *A.* grant a Rent to *B.* generally, the same by Implication and Construction of Law is an Estate for Life; but if the *Habendum* be for Years, it is good, and shall qualify the Generality and Implication of the Premisses. And note in the Case at Bar, the *Habendum* cannot be good to *Anne* only, and void to *Anthony*, for *(c) Maledicta expositio quæ corrumpit textum.* Also it is to be observed, that although *Anne Baldwin* had an Estate for Years in Possession, and had sole and lawful Possession and *Anthony* nothing, and *(b)* Hob. 171. 8 Co. 154. b. Winch 92. Perk. §. 167, 174. Co. Lit. 183. a. b. 190. b. Postea 55. a. *(c)* 4 Co. 35. a. b. 8 Co. 56. b. 154. b. 3 Bulst. 105, 107, 108. 1 Rol. Rep. 315.

and therefore it might be objected, that this Deed ſhould enure to *Anne* only by Way of Confirmation or Releaſe, yet it was adjudged that the Leaſe was good to both, *ſcil.* to *Anthony* and *Anne*, for ſo are the Words and the Intention of the Parties; and theſe Words, And to the Heirs of *Anthony*, upon Conſideration of the whole Deed are void, and both Leſſees had a good Eſtate for Years. And if Livery of Seiſin had been made to the Leſſees, it had not altered the Caſe, for it was a Leaſe for Years at the Beginning; and Judgment was given for the Plaintiff.

1 Anderſon 224.

Trin.

Trin. 31 *Eliz.*

The Caſe of BANKRUPTS

Gregory Smith, Cullamor, and other good Merchants of *London,* brought an Action upon the Caſe upon Trover and Converſion of divers Goods in *London* againſt *Thomas Mills,* and upon Not guilty pleaded, the Jury gave a Special Verdict to this Effect: *John Cook* of *Spalding* was poſſeſſed of the ſame Goods, and exerciſing the Trade of Buying and Selling 30 *Januarii* 29 *Eliz.* became a Bankrupt, and abſented himſelf *ſecundum formam Statuti* (which was found at large) and the ſaid 30 *Januarii* was indebted to the Plaintiffs, being Subjects born, in 273 *l.* 12 *d. pro Merchandizis per quemlibet eorum prius venditis*; and then alſo was indebted to *Rob. Tibnam,* being alſo a Subject born, in 64 *l.* Afterwards 12 *Febr.* 29 *Eliz.* the Plaintiffs exhibited a Petition to the Lord Chancellor to have a Commiſſion upon the Statute of Bankrupts, and 17 *Feb.* 29 *Eliz.* a Commiſſion was granted, according to the ſaid Statute, under the Great Seal, to *William Watſon* and others. And afterwards 21 *Feb.* 29 *Eliz. John Cook* gave and delivered the ſaid Goods to *Tibnam* in Satisfaction of Part of his ſaid due Debt, the Goods being of the Value of 24 *l.* And afterwards *ultimo Martii* 29 *Eliz.* the Commiſſioners by Deed indented ſold to the Plaintiffs jointly the ſaid Goods, and at the ſame Time the ſaid *Mills* then Factor to *Tibnam in ea parte* refuſed to come in as Creditor, but claimed the ſaid Goods as the proper Goods of his Maſter by the Gift aforeſaid; and afterwards the Goods came to the Defendant's Hands and he converted them; but whether the Sale of the ſaid Commiſſioners, notwithſtanding the ſaid Gift and Delivery to *Tibnam* be good or not, that was the Doubt referred to the Conſideration of the Court. And Judgment was given by *Wray* Chief

Moor 594

13 El. c. 7.

Chief Justice, and the whole Court for the Plaintiffs. And in this Case divers Points were resolved:

* 1 Sider. 272. Moor 594. pl. 805.

1. That the said * Sale made by the said Commissioners was good; and because the Doubt rose only upon the Words and Intent of the Statute of 13 *Eliz. cap.* 7. the Court considered the several Parts and Branches thereof. First, The Act describes a Bankrupt, and whom he defrauds, *scil.* the Creditors. 2. To whom the Creditors should complain for Relief, *scil.* to the Lord Chancellor. 3. How and by what Way Relief and Remedy is provided, *scil.* by Force of a Commission under the Great Seal, *&c.* 4. The Authority of the Commissioners, *scil.* to sell, *&c.* that is to say, (*a*) *to every one of the Creditors a Portion, Rate and Rate like according to the Quantity of his or their Debt.* So that the Intent of the Makers of the said Act expressed in plain Words was to relieve the Creditors of the Bankrupt equally, and that there should be an equal and rateable Proportion observed in the Distribution of the Bankrupt's Goods amongst the Creditors, having Regard to the Quantity of their several Debts, so that one should not prevent the other, but all should be in *æquali jure.* And so we see in divers Cases, as well at the Common Law as upon the like Statutes, such Constructions have been made; for, as *Cato* saith, (*b*) *Ipsæ etenim leges cupiunt ut jure regantur:* And therefore it is held in 35 *H.* 8. *tit. Testaments, Br.* 19. (*c*) a Man holdeth three Manors of three several Lords by Knights Service, each Manor of equal Value, he cannot devise two Manors and leave the Third to descend according to the generality of the Words of the Acts of (*d*) 32 & 34 *H.* 8. of Wills, for then he should prejudice the other two Lords, but by a favourable and equal Construction he can devise but two Parts of each Manor, so that Equality between them shall be observed. And in 4 *E.* 3. *Assize* * 178, the Lord of a Town cannot improve it all, leaving sufficient Common in the Lands of other Lords within the Statute of *Merton,* (*e*) *cap.* 4. And so in Cases at the Common Law an Equality is required, as in 11 *H.* 7. 12. *b.* (*f*) a Man binds himself in an Obligation and his Heirs, and hath Heirs and Lands on the Part of his Father, and on the Part of his Mother, both Heirs shall be equally charged, 48 *E.* 3. 5. *a. b.* in Dower if the (*g*) Heir be vouched in three several Wards within the same County, he shall not have Execution against one only, but all shall be equally charged. (*h*) 29 *E.* 3. 39. the like Case. So here in our Case there ought to be an equal Distribution *secundum quantitatem debitorum suorum*; but if after the Debtor becomes a Bankrupt, he may prefer one (who peradventure hath least Need) and defeat and Defraud many other poor Men of their true Debts, it

(*a*) 8 Co. 98. *b.*

(*b*) 5 Co. 100. a. 8 Co. 152. a. 9 Co. 123. b. Co. Lit. 10. a. 48. a. 166. b. 174. b. 271. b.

(*c*) 5 Co. 100. a. 2 Bulstr. 15. Br. N. C. 275.

(*d*) Vide Co. Lit. 111. b. 32 H. 8. c. 1. 34 H. 8. c. 5.

* 5 Co. 100. a.

(*e*) 4 Co. 37. a.

(*f*) 3 Co. 13. a. 14. a. 5 Co. 100. a. Co. Lit. 376. b. 386. b. Hob. 25. 3 Bulstr. 318. Cr. Jac. 218.

11 E. 3. Det. 7.

(*g*) 3 Co. 13. a. 14. a. Br. Dower. 98. Statham Tower 18. Fitz. Voucher 76. Br. Voucher. 38.

(*h*) 5 Co. 100. a.

it would be unequal and unconscionable, and a great Defect in the Law, if after that he hath utterly discredited himself by becoming a Bankrupt, the Law should credit him to make Distribution of his Goods to whom he pleased, being a Bankrupt Man, and of no Credit; but the Law as hath been said before, hath appointed certain Commissioners of Indifferency and Credit to make the Distribution of his Goods, *To every one of his Creditors Rate and Rate like a Portion according to the Quantity of their Debts* as the Statute speaketh. Also the Case is stronger because this Gift is an Assignment of the Bankrupt after the Commission awarded under the Great Seal, which Commission is Matter of Record, whereof every one may take Conusance. Judg. Resol. on the Stat. p. 99. 130.

Lastly and principally, the Court relied upon other Words in the Act, *scil. And that every Direction, Bargain and Sale,* &c. *done by the Persons so authorized, as is aforesaid in Form aforesaid, shall be good and effectual in Law,* &c. *against the said Offender,* &c. *and against all other Persons claiming by, from, or under such Offender by any Act had, made, or done, after any such Person shall become Bankrupt,* &c. So that in as much as this Assignment and Delivery of the said Goods was after the said *Cook* became Bankrupt, notwithstanding that, the Commissioners may well sell them. And the Court resolved, that the Proviso concerning Gifts and Grants *bona fide* makes no Gift or Grant good which the Bankrupt makes after he becomes Bankrupt, but excludes them out of the Penalty inflicted by the same Proviso. And divers Exceptions were taken to the Verdict by the Defendant's Council. Judg. Res. 121.

1. That it was not found, that the said Sale by the Commissioners of the said Goods was by Deed inrolled, as they objected the Words of the said Act require: But to that it was answered and resolved by the Court, That the Words of the Act concerning Inrolment of the Deed coming next after these Words, *Goods and Chattels*, are, *or otherwise to order the same for true Satisfaction and Payment,* &c. *and that every Direction, Order,* &c. *shall be good and effectual*, so this Sale without Deed inrolled is good enough. 1 Vent. 360. Goodwin Bank. 118. Judg. Res. 145.

2. It was objected, that it was not found that the Commissioners had first seen the Goods before their Sale, for the Words of the Act are, *scil. to be searched, viewed,* &c. To that it was answered and resolved, that the said Words, *Or otherwise to order,* &c. *and that every Direction,* &c. refer it to the Discretion of the Commissioners, and peradventure they cannot come to the Sight of them.

3. That the Commissioners ought to make several Distributions to the several Creditors, and not to make a joint Sale or Assignment to several Creditors; for if Judg. Res. 149, 150. 156. 157.

he owed *A.* 20 *l.* *B.* 20 *l.* and *C.* 5 *l.* a Joint-Sale or Aſſignment to *A. B.* and *C.* is not according to the Power given to the Commiſſioners by the ſaid Act; for the Act limits them to make Diſpoſition amongſt the Creditors, *&c. to every one a Portion Rate and Rate like according to the Quantity of their Debts*; but in this Caſe he who hath the leaſt Debt ſhall have as great Intereſt in the Goods as he who hath the greateſt, and ſo ſuch Aſſignment in the ſaid Caſe put of ſeveral Debts is void, *quod fuit conceſſum per Curiam.* But to that it was anſwered and reſolved by the Court, that in the Caſe at the Bar, it appears by the Verdict, that the Debt due to the Plaintiffs was joint, for they found *ut ſupra*, that the ſaid *John Cook* was indebted to the Plaintiffs in 273 *l.* 12 *d.* which ſhall be intended a Joint-Debt, and ſo the Sale good in the Caſe at the Bar.

Judg. Reſ. 156, 157.

4. That for as much as the Words of the Act are, *To (a) every of the ſaid Creditors a Portion, Rate and Rate like*, Diſtribution ought to be made to all the Creditors: But here it appears that the ſaid *Tibnam* was a Creditor, and 64 *l.* due to him, and yet nothing is allotted or aſſigned to him, ſo the Sale is void. To that it was anſwered and reſolved by the Court, that in this Caſe the Factor of the ſaid *Tibnam in ea parte* refuſed to come in as a Creditor, but claimed all the Goods: And this Act gives Benefit to thoſe who will enquire and come in as *(b)* Creditors, and not to thoſe who either out of Obſtinacy refuſe, or through Careleſneſs neglect to come before the Commiſſioners and pray the Benefit of the ſaid Statute; for *(c) vigilantibus & non dormientibus jura ſubveniunt*, for otherwiſe a Debt might be concealed, or a Creditor might abſent himſelf, and ſo avoid all the Proceedings of the Commiſſioners by Force of the ſaid Act. And every Creditor may take Notice of the Commiſſion, being Matter *(d)* of Record as is aforeſaid; and ſo no Inconvenience can happen to any Creditor who will be vigilant; but great Inconvenience will follow, and the whole Effect of the Act be overthrown, if other Conſtruction ſhould be made.

(a) 8 Co. 98. b.

(b) 8 Co. 98. a. Hob. 287. Hutt. 37, 38. Cr. Jac. 202.

(c) 4 Co. 10. b. 32. b. 2 Inſt. 690. 1 Sid. 53. Palm. 157.

(d) Goodw. Bankr. 48.

Paſch.

Paſchæ 22 Elizabethæ Reginæ, *Rotulo* 738.

FILMER,

THomas Bettiſworth ſum' fuit ad reſpond' Johan' Hayward de placito quare cepit averia ipſius Johannis, & ea injuſte detinuit contra vad' & pleg. &c. Et unde idem Johannes per Johannem Comber attorn' ſuum queritur quod pred' Thomas viceſimo octavo die Octobris anno regni dominæ Reginæ nunc decimo nono, apud Iping in quodam loco voc' Raynolds cepit averia, viz. duas vaccas ipſius Johannis, & ea injuſte detinuit contra vad' & pleg. quouſque, &c. unde dicit quod deteriorat' eſt & dampnum habet ad valentiam x. l. & inde producit ſectam, &c. Et pred' Thomas per Johan. Trot attorn' ſuum ven' & defend' vim & injur' quando, &c. Et bene advocat captionem averiorum pred' in pred' loco in quo, &c. Et juſte, &c. quia dicit quod idem locus in quo ſupponitur captionem averiorum pred' fieri continet & pred' tempore captionis pred' ſuperius fieri ſuppoſit' continebat in ſe unam acr' & dimid' terr' cum pertin' in Iping pred', quodque diu ante pred' tempus quo, &c. quidem Johan' Bettiſworth fuit ſeiſitus de & in uno meſuagio, uno gardino duodecim acris terræ, & una acr' boſci cum pertin' in Iping predict' unde predict' locus in quo, &c. eſt & predict' tempore quo, &c. necnon a tempore cujus contrarii memoria hominum non exiſtit fuit parcella, in dominico ſuo ut de feodo, & ſic inde ſeiſitus exiſtens idem Johannes diu ante predict' tempus quo, &c. ſcilicet viceſimo die Martii anno regni dominæ Reginæ nunc undecimo apud Iping predict' per quandum Indenturam factam inter prefat' Johannem Bettiſworth ex una parte, & predict' Johannem Hayward per nomen Johannis Hayward de eiſdem parochia & Com' Husbandman ex altera parte, dimiſit, conceſſit, & ad firm' tradid' pref. Johan' Hayward tenement' Eſſex ſs.

tenement' predict' cum pertinentiis unde, &c. Habend' & tenend' eadem tenement' cum pertin' unde, &c. eidem Johan' Hayward & aſſign' ſuis, a feſto Annunciationis beatæ Mariæ virginis tunc proxim' ſequen' uſque finem & terminum viginti & unius annorum extunc proxim' ſequen' & plenar' complend': Reddend' & ſolvend' inde annuatim durant' dicto termino pref. Johan' Bettiſworth & aſſign' ſuis duodecim denarios ad feſtum ſancti Michaelis Archangeli, vel infra decem dies proxim' poſt idem feſtum; virtute cui' dimiſſionis idem Johan' Hayward in tenement' pred' cum pertin' intravit & fuit inde poſſeſſionat', reverſione inde pref. Johan' Bettiſworth & hered' ſuis ſpectan', ipſoque Johanne Hayward ſic de tenementis predict cum pertinen unde, &c. poſſeſſionat' exiſten', ac pred' Johan' Bettiſworth de reverſione inde ac de reddit' pred' in dominico ſuo ut de feodo ſeiſit' exiſten', idem Johan' Bettiſworth ante predict' tempus quo, &c. ſcilicet tertio die Januarii anno regni dominæ Reginæ nunc decimo nono apud Iping predict' obiit de tali ſtatu ſuo de predict' reverſione tenementorum predict' cum pertinentiis unde, &c. ac reddit' predict' ſeiſit' ſine herede de corpore ſuo exeun', poſt cujus mortem ead' reverſio tenementor' predict' cum pertin' unde, &c. deſcendebat eidem Tho' Bettiſworth ut fratri & hered' predict' Johan' Bettiſworth, per quod idem Thomas fuit ſeiſit' de predict' reverſione tenementorum predict' cum pertin' unde, &c. ac de redditu predict' in dominico ſuo ut de feodo: Et quia xii. d. de redd' predict' pro uno anno integro poſt mortem predict' Johan' Bettiſworth finit' ad feſtum Sancti Michaelis Archangeli, anno regni dominæ Reginæ nunc 19. eidem Thom' predict' tempore quo &c. aretro exiterunt non ſolut', idem Thomas bene advocat captionem averior' predictorum in predicto loco in quo, &c. ut in parcella tenement' predict' cum pertin' pref. Johan' Hayward in forma predict' dimiſſorum, & juſte, &c. pro pred' xii. d. de reddit' predict' eidem Thomæ ſic aretro exiſten', &c. Et predict' Johan' Hayward dicit quod predict' Thomas ratione preallegat' captionem averiorum predictorum in predict' loco in quo, &c. juſtam advocare non debet, quia dic' quod bene & verum eſt quod predict' Johan' Bettiſworth fuit ſeiſit' de tenementis predict cum pertin' unde, &c. in dominico ſuo ut de feodo, & ſic inde ſeiſit' exiſten' dimiſit eidem Johan' Hayward tenement' predict' cum pertin' unde, &c. habend' & tenend' eidem Johan. Hayward pro predict' termino predict' viginti & unius annor' prout pred' Thomas ſuperius allegavit: Sed idem Johan' Hayward dic' quod predict' Johan' Bettiſworth de reverſione tenement' predict' cum pertin' unde, &c. in dominico ſuo ut feodo in forma predict' ſeiſit' exiſten' ante predict' temp' quo, &c.

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in tenement' pred' cum pertin' unde, &c. ſuper poſſeſſion' ipſius Johann' Hayward inde intravit & ipſum Johan' a poſſeſſione ſua inde expulit & amovit, & immediate poſtea de eiſdem tenement' cum pertin' unde, &c. feoffavit quend' W. Bettiſworth, habend' & tenend' ead' tenementa cum pertin' unde, &c. eidem Will' hered' & aſſign' ſuis imperpetuum: virtute cujus quidem feoffament' pred' Will' fuit ſeiſit' de eiſdem tenementis cum pertin' unde, &c. in dominico ſuo ut de feodo, ſuper cujus quidem Will' Bettiſworth poſſeſſion' inde idem Johan' Hayward poſtea & ante pred' tempus quo, &c. clam' terminum ſuum pred' de & in tenementis illis cum pertin' unde, &c. in ead' tenementa cum pertin' unde, &c. reintravit & fuit inde poſſeſſionat', & ſic inde poſſeſſionat' exiſten' idem Johan' Hayward ante pred' tempus quo, &c. poſuit averia pred' in predictum locum in quo, &c. ad herbam in eodem tunc creſcen' depaſcend', quæ quidem averia fuer' in eodem loco in quo, &c. herbam in eod' tunc creſcen' depaſcend' quouſque pred' Thomas die & anno in narratione pred ſuperius ſpec' apud Iping predictam in pred' loco voc' Raynolds cepit ead' averia ipſius Johan' Hayward & ea injuſte detinuit cont' vad' & pleg. quouſque, &c. prout ipſe ſuperius verſus eum queritur, abſque hoc quod pred' Johan' Bettiſworth obiit de reverſione tenementorum pred' cum pertin' unde, &c. Ac de reddit' pred' ſeiſit' prout pred' Thomas ſuper' allegavit, & hoc parat' eſt verificare unde ex quo pred' Thomas captionem averior' pred' in pred' loco in quo, &c. ſuperius cogn' idem Johannes Hayward petit judicium & dampna ſua occaſione captionis & injuſtæ detentionis averiorum illorum ſibi adjudicare, &c. Et pred' Thomas ut prius dic' quod pred' Johan' Bettiſworth obiit de reverſione tenementor' pred' cum pertinen' unde, &c. Ac de reddit' pred' ſeiſit' prout ipſe ſuperius allegavit, & de hoc ponit ſe ſuper patriam, & pred' Johan' Hayward ſimiliter, Ideo prec' eſt vic' quod ven' fac' hic a die Paſc. in quinque ſeptimanas xii. &c. per quos, &c. Et qui nec, &c. ad recogn', &c. quia tam, &c. ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut pri' prec' eſt vic' quod ven' fac' hic in craſtino S. Trin. xii. &c. ad recogn' in forma pred' &c. Ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut pri' prec' eſt vic' quod ven' fac' hic in craſtino S. Martini xii. &c. Ad recogn' in forma pred', &c. Ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut pri' prec' eſt vic' quod ven' fac' hic in octabis S. Hill.' xii. &c. ad recogn' in form' pred, &c. ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo

ſicut pri' prec' eſt vic' quod ven' fac' hic a die Paſc. in xv. dies, xii. &c. ad recogn' in forma pred', &c. ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut pri' prec' eſt vic' quod ven' fac' hic in craſtino S. Trin. xii. &c. ad recogn' in forma pred', &c. Ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut pri' prec' eſt vic' quod ven' fac' hic in craſtino S. Martini xii. &c. Ad recogn' in forma pred', &c. Ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut pri' prec' eſt vic' quod ven' fac' in Octabis S. Hillarii xii. &c. ad recogn' in forma pred', &c. ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut pri' prec' eſt vic' quod ven' fac' hic a die Paſc. in xv. dies xii. &c. ad recogn' in forma pred', &c. ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo, ſicut pri' prec' eſt vic' quod ven' fac' hic in craſtino S. Trin. xii. &c. ad recogn' in forma pred', &c. ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut pri' prec' eſt vic' quod ven' fac' hic in craſtino S. Martini xii. &c. ad recogn' in forma pred', &c. Ante quem diem loquela pred' adjorn' fuit per breve dominæ Reginæ de communi adjorn' a Weſt. in Com' Midd' uſque Caſtrum Hertford in Com' Hertf. ad quem quidem craſtinum S. Martini hic ſcilicet apud Caſtrum pred' ven' partes, &c. Et vic' non miſit breve, Ideo ſicut pri' prec' eſt vic' quod venire fac' hic in Octabis S. Hillari xii. &c. ad recogn' in forma pred', &c. Ante quem diem loquela pred' adjorn' fuit per breve dominæ Reginæ de communi adjornam' a pred Caſtro Hertford in Com' Hertf. uſque Weſt. pred' in pred' Com' Midd' uſque ad eaſdem Octabis S. Hillarii, &c. ad quem diem hic ſcilicet apud Weſt. pred' ven' partes, &c. Et vic' non miſit breve, Ideo ſicut pri' prec' eſt vic' quod venire faciat hic a die Paſc. in xv. dies xii. &c. ad recogn' in forma predicta, &c. Ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut prius prec' eſt vic' quod venire faciat hic in craſtino S. Trinitatis xii. &c. ad recogn' in forma pred', &c. Ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut prius prec' eſt vic' quod ven' faciat hic in Octabis Sancti Michaelis xii. &c. ad recogn' in forma predict', &c. Ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut prius prec' eſt vic' quod venire faciat hic in Octabis Sancti Hillarii xii. &c. ad recogn' in forma predict', &c. Ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut prius præc' eſt vic' quod venire faciat hic a die Paſchæ in xv. dies xii. &c. ad recogn' in forma predicta, &c. Ad quem diem hic ven' partes, &c. Et vic' non miſit

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breve, Ideo ſicut prius prec' eſt vic' quod venire fac' hic in craſtino ſanctæ Trinit' 12. &c. ad recogn' in forma predict', &c. Ad quem diem hic ven' partes, &c. Et vic' non miſ' breve, Ideo ſicut prius prec' eſt vic' quod venire fac' hic in octab. ſancti Mich. 12. &c. ad recogn' in forma predict', &c. Ad quem diem hic ven' partes, &c. Et vic' non miſ. breve, Ideo ſicut prius prec' eſt vic' quod venire fac' hic in octabis ſanct. Hill' xii. &c. ad recogn' in forma pred', &c. Ad quem diem hic venerunt partes, &c. Et vic' non miſ. breve, Ideo ſicut prius prec' eſt vic' quod ven' fac' hic a die Paſchæ in xv. dies xii. &c. ad recogn' in form' predict', &c. Ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut prius prec' eſt vic' quod venire faciat hic in craſtino ſanct. Trin. 12. &c. ad recogn' in forma predicta, &c. Ad quem diem hic ven' partes, &c. Et vic' non miſ. breve, Ideo ſicut prius prec' eſt vic' quod venire fac' hic in octab. ſancti Mic. 12. &c. ad recogn' in forma predict', &c. Ad quem diem hic venerunt partes, &c. Et vic' non miſ. breve, Ideo ſic' prius prec' eſt vicecom' quod venire faciat hic in octab. ſancti Hillar. 12. &c. ad recogn' in forma predict', &c. Ad quem diem hic ven' partes, &c. Et vic' non miſ. breve, Ideo ſicut prius prec' eſt vic' quod venire fac' hic a die Paſch. in xv. dies 12. &c. ad recogn' in forma predicta. Ad quem diem hic venerunt partes, &c. Et vic' non miſ. breve, Ideo ſicut prius prec', eſt vicecom' quod venire faciat hic in craſtino ſanctæ Trinitat' 12. &c. ad recogn' in forma predicta, &c. Ad quem diem hic venerunt part' &c. Et vic' non miſ. breve, Ideo ſicut prius prec' eſt vic' quod venire faciat hic in octabis ſancti Michael. 12. &c. Ad recogn' in forma pred', &c. Ad quem diem hic venerunt partes, &c. Et vic' non miſ. breve, Ideo ſicut prius prec' eſt vic' quod venire faciat hic in octabis ſancti Hill' 12. &c. ad recogn' in forma pred', &c. Ad quem diem hic venerunt partes, &c. Et vic' non miſ. breve, Ideo ſicut prius prec' eſt vic' quod venire faciat hic a die Paſc. in xv. dies 12. &c. ad recogn' in forma predict', &c. Ad quem diem hic venerunt partes, &c. Et vic' non miſ. breve, Ideo ſicut prius prec' eſt vic' quod venire faciat hic in craſtino ſanctæ Trin' 12. &c. ad recogn' in forma predicta, &c. Ad quem diem hic ven' partes, &c. Et vic' non miſ. breve, Ideo ſicut prius prec' eſt vic' quod venire faciat hic in octabis ſancti Micha. 12. &c. ad recogn' in forma predicta, &c. Ad quem diem hic ven' partes, &c. Et vic' non miſ. breve, Ideo ſicut prius prec' eſt vic' quod venire faciat hic in octab. ſancti Hillar' 12. &c. ad recogn' in forma pred', &c. Ad quem diem hic venerunt partes, &c. Et vic' non miſ. breve, Ideo ſicut prius prec' eſt vic' quod venire fac' hic a die Paſch. in xv. dies 12. &c. ad recogn' in forma predicta, &c.

Ad quem diem hic venerunt partes, &c. Et vic' non miſ. breve, Ideo ſicut prius prec' eſt vic' quod venire fac' hic in craſtino ſanct. Trin. xii. &c. ad recogn' in forma predict', &c. Ad quem diem hic venerunt partes, &c. Et vic' non miſ. breve, Ideo ſicut prius prec' eſt vicecom' quod ven' fac' hic in octab. ſancti Mich. xii. &c. ad recogn' in form' pred', &c. Ad quem diem hic ven' partes, &c. Et vic' non miſit breve, Ideo ſicut prius prec' eſt vic' quod venire faciat hic in octab. ſancti Hill' 12. &c. ad recogn' in forma predicta, &c. Poſtea continuat' proceſſ. inter partes predictas de predicto placito per Jur' poſit' inde inter eas in reſpect. hic uſque ad hunc diem ſcil't in octab. ſancti Michaelis, anno regni dom' reginæ nunc triceſimo primo, niſi Juſt' dominæ reginæ ad Aſſiſas in comitatu predicto capiend' aſſign' per formam ſtatuti, &c. die Veneris viceſimo ſeptimo die Junii proxim' preterit' apud Eſtringſted in comit' pred' prius veniſſent. Et modo hic ad hunc diem ven' tam pred' Johann' Hayward quam pred' Thomas Bettiſworth per Attornatos ſuos predictos, Et prefat' Juſt' ad aſſiſas coram quibus, &c. miſ. hic record' ſuum in hæc verba. Poſtea die & loco infracontent' coram Roberto Clarke uno Baron' dom' reginæ ſcaccarii ſui, & Johanne Puckering uno ſervien' dominæ reginæ ad legem Juſt. ipſius dom' reginæ ad aſſiſas in comit' Suſſex capiend' aſſign' per formam ſtatuti, &c. ven' tam infranominat' Johannes Hayward per Willielmum Siday Attorn' ſuum, quam infraſcript' Tho' Bettiſworth per Johann' Lyons Attorn' ſuum, Et Jur' jurat' unde infra fit mentio exact' quidam eorum, viz. Edwardus Pickham, Willihelm. Ayles, Thom. Perley, Willihelmus Grevit, Edmundus Grey, Jo. Locke, Johannes Capron, & Johannes Andrew venerunt, Et in jurat' ill' jur' exiſtunt, Et quia reſid' Jur' jurat' illius non comparver', Ideo alii de circumſtantibus per vic' electi ad requiſitionem pref. Thomæ Bettiſworth, ac per mandat' Juſticiariorum predict' de novo apponuntur, quorum nomina panello infraſcript' affilant' ſecundum formam ſtatuti in hujuſmodi caſu nuper edit' & proviſ. Ac quidam Jur' ſic de novo appoſit', viz. Johann' Pitte, Thomas Baily, Wilhemus Leefe, & Thom' Aylewin ven', qui ad veritatem de infra content' ſimul cum Jur' predictis prius impanellat' & jurat' dicend' electi triat' & jurat', dic' ſuper ſacr'm ſuum quod quidem Joh' Bettiſworth fuit ſeiſit' in dominico ſuo ut de feodo, de & infraſcript' meſuag' cum gardino, 12. acr' terr', & una acra boſci cum pertin' in Iping infraſcript', unde infraſcript' locus in quo, &c. eſt & infraſcript' tempore quo, &c. necnon a tempore cujus contr' memoria hominum non exiſtit fuit parcella: Et ulterius Jur' predict' dicunt ſuper ſacr'm ſuum pred', quod predict' locus

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in quo, &c. continet & pred' tempore quo, &c. continebat in ſe unam acram & dimid' unius acræ terr', & voc' per nomen de **Reynolds**, & eſt & pred' tempore quo, &c. necnon a tempor' cujus contrar' memoria hominum non exiſtit fuit ſeperale clauſum per ſe ſeparat' incluſ. Et ulterius Jur' pred' dic' ſuper ſacrament' ſuum quod pred' Johann' Bettiſworth ſic inde ut prefert' ſeiſit' exiſten', poſtea ſcilicet viceſimo die Martii, anno regni dictæ d'næ reginæ nunc undecim' apud Iping pred' per Indent' ſuam infraſcript' factam inter pref' Johannem Bettiſworth ex una parte, & pred' Johann' Hayward ex altera parte, dimiſit, conceſſit, & ad firmam tradidit pref. Johann' Hayward ten'ta pred' cum pertin' unde, &c. Habend' & tenend' eadem ten'ta cum pertin' unde, &c. pref. Johann' Hayward & aſſign' ſuis a feſto Annunc' beatæ Mar' virginis tunc prox' ſequent', uſque finem & termin' 21. annorum prox' ſequent' & plenar' complend': Reddend' & ſolvend' inde annuatim duran' d'co termino pref. Johann' Bettiſworth & aſſign' ſuis 12. denatios ad feſtum ſancti Michael' Archang', vel infra decem dies prox' poſt idem feſtum, virtute cujus quidem dimiſſion' idem Johann' Haward in ten'ta pred' cum pertin' unde, &c. intravit & fuit inde poſſeſſionat', reverſione inde pref. Johann' Bettiſworth & hered' ſuis ſpect', ipſoque Johann' Hayward ſic de ten'tis pred' cum pertin' unde, &c. poſſeſſionat' exiſten', & pred' Johann' Bettiſworth de reverſione inde ac de redditu pred' ſeiſit' exiſten' in dominico ſuo ut de feodo, Idem Johann' Bettiſworth in pred' clauſum in quo', &c. voc' **Reynolds**, in poſſeſſione pref. Johann' Hayward intravit, ac ib'm immediate poſtea quoddam factum continen' feoffamentum de ten'tis pred' cum pertinentiis unde, &c. cuidam Will'o Bettiſworth hæredibus & aſſign' ſuis imperpet', ut factum ſuum ſigillavit & deliberavit; Ac ulterius Jur' pred' dic' ſuper ſacr'm ſuum pred', quod immediate poſt ſigillationem & deliberationem fact' feoffam'ti pred' poſſeſſio & ſeiſina ſuper fact' feoffament' ill' dat' & deliber' fuit per pred' Johann' Bettiſworth pref. Will Bettiſworth, in & ſuper pred' clauſo voc' **Reynolds** in quo, &c. nec pref. Johann' Hayward nec aliquo alio pro eo tempore dict' poſſeſſionis & ſeiſinæ dat' & deliberat' in eodem clauſo exiſten', virtute quorum idem Will' Bettiſworth in ten'ta pred' cum pertin' unde, &c intravit, & inde fuit ſeiſit' prout lex poſtulat; Et ulterius Jur' pred' dic' ſuper ſacr'm ſuum pred', quod pred' Johann' Hayward tempore poſſeſſion' & ſeiſinæ pred' dat' & deliber' fuit in meſuag' & reſid' tenementorum pred' cum pertin' virtute dimiſſ. pred' ſibi inde factæ, Ac quod poſtea & ante pred' tempus quo, &c. pred' Johann' Hayward in pred' clauſum vocat' **Reynolds** cum pertin' in quo, &c. reintravit, clamans eund' clauſum

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virtute dimiſſionis pred' ſibi in forma pred' fact'. Et ulterius Jur' pred' dic' ſuper ſacr'm ſuum pred', quod poſtea & ante pred' tempus quo, &c. ſcil't 3. die Januarii anno regni dict' dom' reg' nunc decimo nono idem Johann' Bettiſworth apud Iping pred' obiit ſine exit' de corpore ſuo exeunt' : Et quod pred' Thom. Bettiſworth eſt ejus frater & hæres propinquior : Sed utrum ſuper tota materia pred' in forma pred' comperta poſſeſſio & ſeiſina modo & forma pred' dat' & deliberat', de & in pred' clauſo voc' Reynolds in quo, &c. ſit, ſive in legi adjudicari debeat bona & legitima poſſeſſ. & ſeiſin pro pred' clauſo voc' Reynolds in quo, &c. Jur' pred' penitus ignorant, & inde pet' adviſament' Juſtic' dict' dom' reginæ. Et ſi ſuper tota materia pred' in forma pred' comperta, videbitur Juſtic' dict' dom' reg' quod pred' poſſeſſ. & ſeiſina modo & form' pred' dat' & deliber' de & in pred' clauſ. voc' Reynolds, ſit ſive in lege adjudicari debeat bona & legit' poſſeſſ. & ſeiſin' pred' clauſi voc' Reynolds in quo, &c. cum pertin', &c. tunc Jur' pred' dic' ſuper ſacr'm ſuum pred' quod pred' Johann' Bettiſworth non obiit de reverſione omnium tenement' infraſcript' cum pertin' unde, &c. nec de reddit' infraſcript' ſeiſit', prout pred' Johann' Hayward interius pro ſe allegavit, & tunc aſſid' dampna ipſius Johan' Hayward occaſione infraſpec' ultra miſ. & cuſtag. ſua per ipſum circa ſect' ſuam in hac parte appoſit' ad 4 denar', & pro miſ. & cuſtag' illis ad duos denar' : Sed ſi ſuper tota materia pred' in forma pred' comperta videbitur Juſt' dictæ dom' reginæ quod pred' poſſeſſio & ſeiſina modo & forma pred' dat' & deliberat' de & in pred' clauſo vocat' Reynolds in quo, &c. non ſit nec in lege adjudicari debeat bona & legit' poſſeſſ. & ſeiſina pro pred' clauſo voc' Reynolds in quo, &c. tunc Jur' pred' dic' ſuper ſacr'm ſuum, quod pred' Johann' Bettiſworth obiit de reverſione tenement' pred' cum pertin' unde, &c. ac de reddit' pred' ſeiſit', prout pred' Tho' Bettiſworth interius pro ſe allegavit, & tunc aſſid' dampna ipſius Tho' Bettiſworth occaſione infraſpec' ultr' miſ' & cuſtag' ſua per ipſum circa ſect' ſuam in hac parte appoſit' ad 4 denarios ; Et pro miſis & cuſtag' illis ad duos denarios. Et quia Juſt' hic ſe adviſare volunt de & ſuper premiſſ. priuſquam judicium inde reddant, dies dat' eſt partibus pred' hic uſque in octab. ſancti Hill' de audiendo inde judic' ſuo, eo quod iidem Juſtic' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Johann' Hayward quam pred' Tho' Bettiſworth per attornat' ſuos pred' : Et quia Juſt' hic ulterius ſe adviſare volunt de & ſuper premiſſ. priuſquam judicium inde reddant, dies ulterius dat' eſt partibus pred' hic uſque a die Paſch. in xv. dies de audiend' inde judic' ſuo, eo quod Juſt' hic inde nondum, &c. Ad quem diem hic ven'

tam

tam pred' Johann' Hayward, quam pred' Thom' Bettiſworth per attornatos ſuos pred', Et quia Juſtic' hic ulterius ſe adviſare volunt de & ſuper premiſſis priuſquam judicium inde reddant, dies ulterius dat' eſt partibus pred' hic uſque in craſtino S. Trinitatis de audiendo inde judicio ſuo, eo quod iidem Juſtic' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Johann' Hayward, quam pred' Tho' Bettiſworth per attornat' ſuos pred', Et quia Juſtic' hic ulterius ſe adviſare volunt de & ſuper premiſſis priuſquam judic' inde redd', dies ulterius dat' eſt partibus pred' hic uſque in octabis S. Michaelis de audiendo inde judic' ſuo, eo quod iidem Juſtic' hic inde nondum, &c: Ad quem diem hic ven' tam pred' Johan' Hayward quam pred' Tho' Bettiſworth per attorn' ſuos pred', Et quia Juſtic' hic ulterius ſe adviſare volunt de & ſuper premiſ. priuſquam judic' inde redd', dies ulterius dat' eſt partibus pred' hic uſque in octabis S. Hillarii de audiendo inde judic' ſuo, eo quod iidem Juſtic' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Jo. Hayward quam pred' Tho' Bettiſworth per attornat' ſuos pred', Et quia Juſtic' hic ulterius ſed adviſare volunt de & ſuper premiſſis priuſquam judic' inde redd', dies ulterius dat' eſt partibus pred' hic uſque a die Paſchæ in xv. dies de audiendo inde judic' ſuo, eo quod iidem Juſtic' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Johann' Hayward quam pred' Tho' Bettiſworth per attornat' ſuos pred', Et quia Juſtic' hic ulterius ſe adviſare volunt de & ſuper premiſſis priuſquam judic' inde redd', dies ulterius dat' eſt partibus pred' hic uſque in craſtino S. Trinitatis de audiendo in judic' ſuo, eo quod iidem Juſtic' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Johannes quam pred' Thomas per attornatos ſuos pred'. Et ſuper hoc viſis premiſſis, & per Juſtic' hic plene intellectis: Conceſſ. eſt quod pred' Johannes nihil capiat per breve ſuum pred', ſed ſit in miſericordia pro falſo clamore ſuo; Et pred' Thomas eat inde ſine die, &c. Et habeat retorn' averiorum pred' detinend' ſibi irrepleg' imperpetuum, Et qualiter, &c. Vic' conſtare fac' hic in octabis S. Michaelis, &c. Conceſſ. eſt quod pred' Thomas recuperet verſus pref. Johannem dampna ſua pred' ad ſex denarios per Jur' pred' in forma pred' aſſeſſ. necnon undecim libras, decem & novem ſolidos & ſex denarios eidem Thomæ ad requiſitionem ſuam pro miſis cuſtagiis ſuis pred' per Cur' hic de incremento adjudicat': Quæ quidem dampna in toto ſe atting' ad 12. l'.

Paſchæ

Paſch. 22 Eliz. Rot. 738. *and adjudged in the Common Pleas* Trinit. 33 Eliz.

BETTISWORTH's *Caſe.*

Moor 250. 2 Rol. 4. Co. Lit. 48. b.

IN a Replevin between *Hayward* and *Bettiſworth* in the Common Pleas, which began *Paſch.* 22 *Eliz. Rot.* 738. the Caſe was ſuch: A Leaſe for Years was made of a Houſe, of a Cloſe called *Reynolds*, and of divers other Lands in *Dale*, which Cloſe called *Reynolds* was incloſed and ſevered by itſelf; and afterwards the Leſſee being in the Houſe, the Leſſor entred into the Cloſe and made a Feoffment of the Houſe and of all the Land ſo demiſed, and made Livery in the ſaid Cloſe, the Leſſee continuing in the ſaid Houſe, and not put out thereof, and afterwards the Leſſee re-enter'd into the ſaid Cloſe, and if this was a good Feoffment and Livery of Seiſin of the ſaid Cloſe, the Leſſee nor any other for him being upon the Cloſe, was the Doubt. And it was adjudged that the (*a*) Livery and Seiſin was void, as well for the Cloſe as for the Houſe and the other Lands ſo demiſed. For when a Meſſuage with Land is entirely demiſed, the Meſſuage is the Principal, for that ſerves for the Habitation of Man, and in (*b*) a *Præcipe* ſhall be firſt demanded as the more worthy before Land; and the Demand for (*c*) Rent Arear ſhall be at the Houſe as the moſt principal and notorious Thing. So that the Meſſuage being more worthy, and the Principal, and the Land but as Acceſſary, without Queſtion the Poſſeſſion of the Houſe is a good Poſſeſſion of the Land demiſed with it.

(*a*) Dyer 18. pl. 106. 2 Brownl. 230. Cr. El. 322. 2 Rol. 4. Co. Lit. 48. b.

(*b*) F. N. B. f. 2. c. Co. Lit. 4. a.

(*c*) Co. Lit. 201. b.

Secondly, The Leſſee cannot be upon every Parcel of the Land for the Preſervation and Continuance of his Poſſeſſion, for it may be that (*d*) divers Parcels of the Lands demiſed lie in ſeveral Places, and diſtinct one from the other by ſeveral Diſtances; and therefore it is but reaſonable, that his Continuance, not only in the Houſe, but alſo upon any other Part of the Land demiſed ſhall be a good Poſſeſſion

(*d*) Cr. El. 322. Co. Lit. 48. b.

Poſſeſſion of the Reſidue. And ſo it was reſolved by the whole Court.

Thirdly, Peradventure the Leſſee durſt not for Fear of Force, *&c.* be upon the Land to preſerve his Poſſeſſion, but his Houſe is his (*a*) Caſtle which he may by Law ſafely keep, and therefore the Caſe of the Houſe is ſtronger. And this Difference was taken when a Man lawfully departs with his Poſſeſſion, and when a Man keeps his Poſſeſſion againſt an unlawful and torcious Entry. For when a Man makes a Feoffment of a (*b*) Meſſuage *cum pertinentiis*, he departs with nothing thereby but what is Parcel of the Houſe, *ſcil.* the Buildings, (*c*) Curtilage, and Garden; but in the Caſe at Bar the Keeping of the Poſſeſſion of the Houſe or any Part of the Thing demiſed againſt a torcious Entry and Expulſion by the Leſſor is not only a Poſſeſſion of all that which might paſs by the Name of the Houſe or of ſuch Parcel, (*d*) but of all Lands, *&c.* which are demiſed by one entire Demiſe in one and the ſame County for the Reaſons and Cauſes aforeſaid. And it is not material whether the Thing where the Livery was made be within the View or not; but if the Leſſee for Years in the ſame Caſe make a Leaſe for a (*e*) certain Term of any Parcel, and ſo divides the Poſſeſſion thereof from the Reſidue, if of ſuch Parcel ſo ſevered Livery be made, the Poſſeſſion in the Reſidue by the firſt Leſſee is not any impediment to the Livery of this Parcel; otherwiſe if the Leſſee makes a Leaſe (*f*) at Will of any Parcel, for there his Poſſeſſion of the Reſidue ſhall hinder the Livery made in ſuch Parcel. And with this Judgment agreed all the other Judges and Serjeants of *Serjeants Inn* in *Fleetſtreet*.

(*a*) 5 Co. 91. b. 7 Co. 6. a. Cro. El. 753. 8 Co. 126. a. 11 Co. 82. a. 1 Bulſtr. 146.

(*b*) Plowd. 186. 21 H. 8. Br. Feoffment 23. 31 H. 8. Br. Leaſes 55.

(*c*) Co. Lit. 5.

(*d*) Co. Lit. 48. b.

(*e*) 2 Rol. 4.

(*f*) 2 Rol. 4. Dyer 18. b. pl. 106.

Ter.

Ter. Mich. 36 & 37 Elizab.

DODDINGTON's *Case.*

Poph. 60. 2 Rol. 51. Cr. El. 368.

William Hall brought an Ejectment againſt *John Peart* and *James Peart*, on a Demiſe made by *William Doddington* of Lands in the Pariſh of *Dynder* in the County of *Somerſet* 16 *Martii* 24 *Eliz.* for ſeven Years, from the Feaſt of St. *Michael* then paſt; and upon Not guilty plea d, the Jury gave a ſpecial Verdict to this Effect: King *Hen.* 8. was ſeiſed of the Scite of the late Hoſpital of St. *John* of *Wells* in the ſaid County of *Somerſet*, and of all the Lands and Tenements appertaining to the ſaid late Hoſpital (whereof the Tenements aforeſaid, in which, *&c.* were Parcel) and that the Tenements aforeſaid, in which, *&c.* lay in the Pariſh of *Dynder*, and are diſtant from the City of *Wells*, and from the Suburbs and Liberty thereof by the Space of a League; And afterwards the ſaid King, by his Letters Patents bearing Date 26 *Martii*, 36 of his Reign, under the Great Seal *(ex certa ſcientia & mero motu ſuis) & in conſideratione de* 300 l. *dedit & conceſſit Johanni Aylworth & Radulpho Duckinfield, omnia & ſingula illa meſſuagia, tofta, cottagia, terras, tenementa, ædificia, & gardina ſua quæcunque cum pertinentiis tunc vel nuper in ſeparalibus tenuris ſive occupationibus Thomæ Gibbes, Johannis Brown* (and divers others by ſpecial Names) *ſcituat', jacent' ſeu exiſten' in Civitate Wells in dicto Com' Somerſet, ac in ſuburbiis ejuſdem Civitatis & extra eand' Civitatem infra juriſdictionem & libertat' ejuſdem Civitatis dicto nuper Prioratui ſive Hoſpitali dudum ſpectant' & pertinent', qua quidem meſſuagia, tofta, &c. in dicta Civitate Wells ac ſuburbiis dicto nuper Hoſpitali ſpectant' tunc extendebantur ad clarum annuum valorem* 40 l. 3 s. 8 d. *Habendum & tenendum omnia & ſingula premiſſa præfato*

præfato Jo. A. & Ra. D. & hæredibus ſuis, ad opus & uſum prædict' J. A. & hæredum ſuorum. And the Jury further found, that at the Time of the Particular made by the Auditor of the ſaid late King upon which the ſaid Grant was made, and at the Time of the Grant aforeſaid, the ſaid *John Brown* was Tenant of the Tenements aforeſaid, in which, *&c.* for the yearly Rent of 6*s.* 8*d.* which *John Brown* was named in the ſaid Particular, and that he paid the ſaid Rent. And the Jury found that the ſaid *John Brown* at the Time of the ſaid Particular and Grant was Farmer of the Tenements in which, *&c.* and had not any other Lands Parcel of the ſaid late Hoſpital in *Wells*, but only the Tenements in which, *&c.* And that the ſaid Rent of 6*s.* 8*d.* was Parcel of the Value of the ſaid 40*l.* 3*s.* 8*d.* mentioned in the ſaid Particular, and in the ſaid Letters Patents. And that the ſaid *John Ayleworth* died, and that *Aſhton Aylew.* his Son and Heir demiſed the Tenements aforeſaid to the Defendants for their Lives. And that the Queen that now is 5 *Jul.* 30 of her Reign, granted to *Edw. Borough* the Reſidue of the Tenements appertaining to the ſaid late Hoſpital not granted to *Jo. A.* and *Ra. D.* who by Deed enrolled ſold them to the ſaid *William Doddington*, who leaſed them to the Plaintiff, *prout*, *&c.* upon whom the Defendants entred. And if their Entry was lawful or not was the Queſtion. And in this Caſe two Points were moved:

1. Whether this Grant of the King was good by the Common Law or not.

2. If it was void by the Common Law, whether the Statute of (*a*) 34 *H.* 8. *cap.* 21. hath made it good.

(*a*) Raſtal Patents 12. Cr. Jac. 50, 51. Godb. 416. 422. Moor 45. 421. Poph. 60. 34 & 35 H. 8. c. 21. 2 Rol. Rep. 273. 274. 355, 356, 359. Dyer 87. pl. 101. 129. pl. 65. 331. pl. 22. (*b*) Cr. Car. 473. 548. 2 Rol. 54, 55. Moor 45. 881. Cr. El. 299. 368. Cr. Jac. 22, 34. 48, 680. 1 Anderſon 148. 3 Leon. 162, 235. 1 Leon 21. 3 Co. 10. a. Carter 154. Plowd. 191. b. 10 Co. 113. a. Dyer 50. pl. 6, 7, 8, 87. pl. 101. 124. pl. 65. 2 Bulſtr. 178. Godbolt 416. Hob. 171. Goldſb. 23, 24. 10 Co. 113. a.

And as to the firſt Point it was reſolved by *Popham* Chief Juſtice, *Clench*, *Gawdy*, and *Fenner* Juſtices, that the Grant was void by the Common Law, as this Caſe is, as well in the Caſe of a common Perſon as in the Caſe of the King. For as to that, the Point is but thus, the King or a common Perſon grants *omnia illa meſuagia in tenura Johannis Brown, ſituat' in Well', nuper Prioratui de W. ſpectant'*, and in (*b*) Truth the Lands lie in *D.* in this Caſe, becauſe the Grant is general, and is reſtrained to a certain Town, the Patentee or Grantee ſhall not have any Lands out of the Town to which the Generality of the Grant doth refer. And this Caſe is the ſtronger by Reaſon of this Pronoun (*c*) (*illa*) for *omnia illa meſuagia*, *&c.* makes ſuch a neceſſary Reference as well to the Town as to the Tenure of *John Brown*, that if one or the other fail, the general Grant is void; for (*illa*) is not ſatisfied till the Sentence is ended, and (*illa*) governs all the Sentence till the full Stop. Wherefore it was unanimouſly agreed by the whole Court, (*d*) that this

(*c*) 4 Co. 35. a. Poph. 60. Cr. Jac. 48. Moor 755. 3 Keb. 413, 414. Hard. 225. 2 Rol. Rep. 118. Godb. 423. (*d*) 2 Rol. Rep. 275. Poph. 60.

this Grant was void by the Common Law. But the greater Doubt was conceived upon the ſecond Point; for the ſaid Act of 34 *H.* 8. makes all Letters Patents which ſhall be made within ſeven Years after good, *notwithſtanding the miſ-naming of any Town wherein the Honours, Manors,* &c. *granted do lie.* And it was ſaid, that here the Town was miſ-named, for the Tenements lay in *D.* and are ſuppoſed by the Patent to lie in *W.* and ſo the Town is miſtaken. And to this Purpoſe the Book in 3 *Mar. Dier* 129. *b.* was cited, (*a*) *Heydon's* Caſe, where it is conceived that the Miſpriſion of the Town and of the Name of the Tenant alſo are remedied by the ſaid Act. And in this Caſe at the Bar it appears that the Tenements in the Tenure of *J. B.* were contained within the Particular, and were Parcel of the Value mentioned in the Letters Patents which *John Aleworth* and *Ra. D.* purchaſed of the King. And by the Letters Patents all Lands in the Tenure of *J. B. &c.* are granted, as appears before. And ſo it appears as it was objected, That it was the King's Intent to paſs them, and the King was not deceived in his Grant, for they were Parcel of the Value which the Patentees purchaſed, and the King hath accepted a Conſideration of Money from the Patentees for the ſame.

(*a*) Dyer 129. pl. 65. Godb. 422. pl. 491. 2 Rol. Rep. 360. 3 Leon. 162. 1 Anderſon 148. Goldſb. 23, 24.

But it was reſolved by the whole Court, that notwithſtanding theſe Lands were in the Tenure of *J. B.* for the Rent of 6*s.* 8*d.* and were Parcel of the Value mentioned in the Letters Patents; and if this Miſpriſion of the Town be not remedied by the ſaid Act, the Patentees ſhould loſe ſo much of their Value as was in the Tenure of *J. B.* and the ſaid Grant of all the Lands in the Tenure of *J. B.* ſhould by the Miſpriſion of the Town only be utterly void; yet the ſaid Grant was not remedied by the ſaid Act. And Difference was taken between a general Grant as our Caſe is, and a Grant which comprehends (*b*) convenient Certainty: For ſuch general Grants are not remedied by the ſaid Statute, nor by any other Act of Confirmation of Letters Patents, but ſuch Grants only which comprehend convenient Certainty, and that for two Reaſons:

(*b*) 3 Co. 10. a. Moor 45. Dyer 50. pl. 6, 7, 8.

1. Becauſe (*c*) *generale nihil certum implicat*; For if a common Perſon be (*d*) bound to deviſe or grant all his Lands in the Tenure of *J. B.* in *W.* the Obligor may ſay, that he hath not any Lands there, for *generale nihil ponit*: and with that agreeth the Book in 21 *E.* 4. If a Man be bound to be Nonſuit in all Actions which he hath againſt him in the Common Pleas, he may ſay, he had no Action there; otherwiſe if the Condition be particular, *ſcil.* that he ſhall be Nonſuit in a *Formedon, &c.* So that it appears, that

(*c*) 2 Rol. Rep. 360. 3 Keb. 414. 2 Sid. 36. 8 Co. 98. a.

(*d*) 1 Rol. 872. Cr. El. 362. 2 Rol. Rep. 83. Poph. 114, 115. Owen 112, 111. Moor 406. Dall. 28. 1 Rol. Rep. 408.

that general Words do not imply any Certainty, nor ſhall conclude any Perſon to ſay that he had nothing there. And the Difference between general Grants and particular, appears in *Plow. Comm.* in (*a*) *Worteſley's* Caſe 191. (*b*) 20 *Aſſ.* 8. 9 *H.* 6. *fol.* 11, 12. (*c*) 2 *Edw.* 4. 27. Then for as much as the Eſſence of this general Grant in the Caſe at Bar depends upon the Town, if the Town be miſtaken nothing is granted. And in this Caſe it cannot be ſaid that the Town in which the Tenements lie, as the Statute ſpeaketh, is miſnamed; for no Tenements are granted or mentioned to be granted by theſe Letters Patents, becauſe the general Grant being entire was referred to a Falſity, it cannot be conſtrued to extend to any Lands or Tenements, and therefore it cannot be ſaid, that the Town in which the Lands lay, *&c.* is miſnamed.

(*a*) Cr. Car. 473.
(*b*) Fitz Aſſize 217. Br. Grant 69.
(*c*) Plow. 395. a. Fitz Releaſe 11. Br. Releaſe 46. Br. Grant 92.

Secondly, Great Inconvenience will follow, if ſuch general Grants ſhall be remedied by the ſaid Act; for ſuppoſe, That the King being ſeiſed of 1000 Acres of Land of the yearly Value of 100 *per Ann.* in *D.* in the County of *N.* Parcel of the Poſſeſſions of the late Priory of *N.* and one will deſire the King to grant to him all his Lands in *F.* in the County of *S.* appertaining to the ſaid Priory, and in Truth the King hath nothing in *F.* and becauſe none of his Officers can find any Lands there appertaining to the King, he was the more eaſily induced to make the Grant. But in ſuch Caſe, if by ſuch Conſtruction all the Land which the King hath in *D.* in the County of *N.* ſhall paſs it would be inconvenient. For as it is ſaid, (*d*) *Doloſus verſatur in generalibus*; and the King and all his Officers would be by ſuch Conſtruction utterly deceived. And therefore when the general Words of the Patent do not comprehend Content, Number, Nature, Quality, certain Name, nor any convenient Certainty of the Land, but the Town is the principal Thing which reſtrains the Generality of the Grant, and reduces it to a Certainty, it would be dangerous to extend the ſame out of the Town compriſed in the Grant by any Conſtruction upon the ſaid Statute. But it is otherwiſe when the Grant doth comprehend any convenient Certainty, as of a Manor, Farm, Land known by a certain Name, or containing ſo many Acres, *&c.* ſo as there may appear in the Letters Patents ſome convenient Certainty of the Thing which the King intended to paſs, for there the ſaid Act doth remedy it, and the King cannot in ſuch Caſe be deceived. And as to the (*f*) Particular, the Judges in this Caſe did not give any Regard to it, for in

(*d*) 3 Co. 81. a. 1 Roll. Rep. 157. 2 Bulſtr. 226. Moor 321.
(*e*) Cr. Jac. 34.
(*f*) Hob. 111.

this Case they ought to ground their Judgment upon the Letters Patents, and not upon the Particular, for the Particular is *prima intentio Regis*, and the Letters Patents are *ultima intentio Regis*. And to this Purpose the Book in 16 *Eliz. Dyer* 331. was cited, where the Judges took no Regard to the (*a*) Particular. But note, The principal Case there is not to be likened to the Case at Bar; for there the Words of the Letters Patent are satisfied, but not in this Case, and therefore the greater Doubt was conceived upon it; but the said Case of 16 *Eliz.* was agreed to be good Law by the whole Court. And afterwards Judgment was given for the Plaintiff.

(*a*) Dyer 331. pl. 22. Hob. 111.

Note Reader, It is the most sure Way for the Patentee to express in the King's Grant before the general Words as much as he can in certain. *Vide* 38 *H.* 6. 38. *b.* a Difference between a special Confirmation by Parliament and a general one. And the Attorney General and others were of Council with the Plaintiff, and *Godfrey* and others with the Defendants.

Pasch.

Paſch. 37 Eliz.

In the Court of Wards.

Sir ROWLAND HEYWARD's *Caſe.*

SIR *Rowland (a) Heyward* Knight ſeiſed in Fee of the Manors of *Doddington*, alias *Ditton*, *Round Acton*, and *Wenlock* in the County of *Salop*, and of divers other Lands and Tenements, whereof Part was in Demean, Part in Leaſe for Years with Rent reſerved, and Part in Copyhold, by Indenture dated 2 *die Septembris*, *Anno* 34 *Reginæ Eliz.* in Conſideration of a certain Sum of Money paid to him by *Richard Warren*, *Edward Pilſworth*, and *William Cotton*, demiſed, *(b)* granted, bargained and ſold to the ſaid *Warren*, *Pilſworth* and *Cotton*, the ſaid Manors, Lands, Tenements, and the Reverſions and Remainders of them, with all Rents reſerved upon any Demiſe, to have and to hold to them and their Aſſigns preſently after the Deceaſe of the ſaid Sir *Rowland Heyward*, for the Term of 17 Years, yielding to the Heirs of Sir *Rowland* a Red Roſe at the Feaſt of St. *John Baptiſt*; which Indenture was acknowledged to be enrolled, and afterwards the ſaid Sir *Rowland* by another Indenture covenanted with *Thomas Fanſhaw* and others to ſtand ſeiſed of the Premiſſes to the Uſe of himſelf and the Heirs of his Body; And no Attornment was ever made to the ſaid *Warren*, *Pilſworth* or *Cotton*. And afterwards Sir *Rowland* died ſeiſed of the Premiſſes, his Heir within Age, and left a third Part to deſcend to his Heir: In the Court of Wards the Queſtion was, Whether *Warren* and the other Leſſees ſhould have the Demeans, and the Rents of the Copyholders by the Demiſe, as an Intereſt at the Common Law, and the Rents of the Leſſees for Years by Bar-

(a) 2 Anderſ. 202. pl. 19. Poph. 95. 5 Co. 40. a. Hob. 159.

(b) 1 Siderfin 26.

gain and Sale by the Statute of 27 *H.* 8. without Attornment; or whether any Attornment by the Common Law was requiſite at all to this future Intereſt, or whether the Bargainees ſhould have (*a*) Election to take it by the Bargain and Sale *in toto*, or by the Demiſe *in toto*, notwithſtanding their general Entry; or whether the Intereſt which paſſed as an Intereſt at Common Law ſhould be preferred before the raiſing of an Uſe. And after many Arguments and great Deliberation, it was reſolved by *Popham* and *Anderſon* Chief Juſtices, and the whole Court of Wards:

(*a*) 4 Co. 74. a.

Firſt, If it ſhould paſs as a future Intereſt at the Common Law, there ought to be Attornment of the Leſſees for Years, and the Attornment in this Caſe ought to be in the (*b*) Life of Sir *Rowland* which is before the Intereſt commences. But if a Man makes a Leaſe of a Manor to begin at a Day to come, the Tenants may attorn either before or after the Day, ſo as the Attornment be in the Life of the Parties. And in the Caſe at Bar, becauſe there was not any Attornment of the Leſſees for Years in the Life of Sir *Rowland Heyward*, it was reſolved, that if they take this Intereſt as a Demiſe at Common Law, they ſhould not have the ſaid Rents reſerved upon the ſaid Leaſes for Years.

(*b*) Vaughan 46. 1 Co. 104. b. 155. b. Lit. Sect. 551. 568. Co. Lit. 151. b. 309. a. b. 315. a. 316. a. 9. E. 4. 29. a. 40. Aſſ. 19. Br. Attornment 55.

Secondly, That it ought to take Effect (*c*) intirely as a Demiſe at Common Law, or intirely by Bargain and Sale by raiſing of an Uſe, and not for Part by the Common Law, and for other Part by raiſing of an Uſe, for by that the Manor would be diſmembered, which would be againſt the expreſs Demiſe and Bargain; for both Parties agree that a Manor ſhould be wholly demiſed and bargained, and a Manor accepted by the Leſſee without any Fraction or Diviſion thereof.

(*c*) Moor 496. Cr. Car. 290. 2 Brownl. 52. Hob. 159. Lit. Rep. 279.

Thirdly, It was reſolved, that in this Caſe *Warren*, *Pilſworth*, and *Cotton*, had (*d*) Election to take it, either by Demiſe at Common Law, or by Bargain and Sale; for although at the Common Law, if (*e*) *Ceſtuy que uſe* and his Feoffees join in a Feoffment, Grant, or Demiſe generally, it ſhall by Conſtruction of Law be the Feoffment, Grant or Demiſe of the Feoffees who were Owners of the Lands, and who paſs the Eſtate by Common Law, and not by *Ceſtuy que uſe* who hath nothing but a Truſt and Confidence, and who derives only his Authority by the Statute of (*f*) 1 *R.* 3. as it is agreed in 21 *H.* 7. and the Common Law ſhall be in ſuch Caſe by its own Conſtruction preferred; yet when a Man ſeiſed of Land in Fee, for Money demiſes, grants, bargains and ſells his Land for Years, he who is Owner of the Land by his expreſs Grant, gives Election to the Leſſee to take it by the one Way or the other, for he hath ſole Power to paſs it by Demiſe or by Bargain; And therefore the Law will not make Conſtruction againſt ſuch expreſs Grant, and namely

(*d*) 2 Rol. 787. Hob. 159. 1 Jones 206. Poph. 95. 2 Anderſ. 203. 2 Inſt. 671, 672. Poſtea 37. b. 1 Brownl. 142. Yelvert. 123, 124. 1 Mod. Rep. 176. 8 Co. 93. b. 94. a.

(*e*) Co. Lit. 49. a. 2 Rol. Abr. 64. pl. 6.

(*f*) 1 R. 3. cap. 1.

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in this Case, when it will trench to the Prejudice of the Lessees; for if the Law should enforce them to take it by Demise, then they would lose the Rents reserved upon the said Leases for Years; for it was agreed, if this Interest should take Effect by Bargain and Sale, then an (a) Attornment is not necessary; for the Statute of 27 *H.* 8. *cap.* 10. of Uses, doth execute the Possession to it. And the Statute of 27 *H.* 8. *cap.* 16. of Enrolments doth not extend to it, becaus no Estate of Freehold passes, but (b) only an Estate for Years. Also at this Day the Use and Interest pass in a Manner *uno flatu* together in an Instant.

(a) Co. Lit. 309. b. Cr. El. 285. 5 Co. 113. a. 6 Co. 68. b. 69. a. 8 Co. 94. a.

(b) 2 Rol. Rep. 204. 2 Inst. 671. 8 Co. 94. a.

Fourthly, It was resolved, that this (c) Election doth remain to them, notwithstanding the Alteration of the Estate by the second Indenture, and notwithstanding the Death of the Lessor, and notwithstanding also the Queen was entitled to the Wardship of the Heir, as appears before; for they had an (d) Interest in them presently, which they before Election might assign over, and which the Executors of the Survivor should have, although they all died before Election; for here is not Election to claim one of two several Things by one and the same Title, but to claim one and the same Thing by one of the two several Titles; for where the Things are several, nothing passes before Election, and the Election ought to be precedent; but when one and the same Thing shall pass, there it passeth presently, and the Election of the Title may be subsequent; and therefore if I have three Horses, and I give you one of my Horses, in this Case Election ought to be made in the Life of the Parties, for in as much as (e) none of the Horses is given in certain, the Certainty, and thereby the Property begins by Election. And with that agreeth 10 *Eliz.* 281. (f) *Bullock's* Case; The Bp. of *Sarum* having a great Wood of 1000 Acres (called *Berewood*) enfeoffed another of an House and 17 Acres Parcel of the Wood, and made Livery in the House, none of the Wood passed before Election, and therefore his Heir shall not make Election: But when one only Thing is granted, and the Party hath Election to take it in one Manner or another, there the Interest vests presently, and it shall be always in the Election of the Grantee or his Executors at any Time to elect in what Manner and Degree he will claim it: As if I grant you a Rent of 40 *s.* out of my Manor of *D.* for Years, you shall have in this Case but one Sum of 40 *s.* but you shall have Election to take it in what Manner and Degree you will, that is to say, (g) either as a Rent-charge to charge the Manor by Distress, or to charge the Person of the Grantor in a Writ of Annuity, and therefore the Interest passeth presently, and you or your Executors at any Time shall make Election at your Pleasure, and in the mean time the Law will not determine it one way or

(c) 1 Jones 206.

(d) Co. Lit. 145. a.

(e) C. Lit. 145. a.

(f) 1 Rol. Abr. 725. 1 Jones 136. Hob. 174. 222. 1 Anderf. 11. 13. Dyer 280, 281. pl. 17, 18, 19, 20. Moor 81, 82, &c. N. Ben. 148. pl. 206. 1 Rol. Rep. 187. 2 Rol. Abr. 11.

(g) Co. Lit. 144. b. 145. a. F. N. B. 152. a. Plow. 13. a.

other. And therefore it was reſolved by all the Juſtices of *England*, and afterwards adjudged in the Common Pleas in a Writ of Annuity between *George* (*a*) *Fulwood*, Gent. Plaintiff, and *William Ward*, Gent. Defendant, where the Caſe was: That *William Ward* being Tenant for Years determinable upon the Life of *Thomas* Lord *Paget* of a Barn and certain Tithes in *Stretton* in the County of *Stafford*, granted a Rent of 10 *l. per Ann.* by his Deed bearing Date 30 *Junii* 29 *Eliz.* out of the ſaid Barn and Tithes to *George Fulwood* for 15 Years, with Clauſe of Diſtreſs; and afterwards 32 *Eliz.* the Lord *Paget* died, and the Writ of (*b*) Annuity was maintainable for the Arrearages after the Death of the Lord *Paget*, for there was not Election to have one of two ſeveral Things, but to have one Sum in one Degree as a Rent-charge, or in another as an Annuity: And therefore preſently by the Grant the Thing veſted in the Grantee, and his Election doth always remain, either to make it a Thing real to charge the Land, or a perſonal Thing to charge the Perſon. And there in the principal Caſe the Act of God, *ſcil.* the Death of the L. *Paget* by which the Rent-charge was determined, was no Determination of the (*c*) Annuity. So in the principal Caſe, Election being given to the ſaid Leſſees to have one and the ſame Thing by one Means or another, there the Leſſees have the Intereſt veſted in them preſently, and Election doth always remain in them in what Manner they will take it. But when Election is given to (*d*) ſeveral Perſons, there nothing veſts before Election, and the firſt Election ſhall ſtand. As if a Man makes a Leaſe for Life of two Acres, the Remainder of one Acre to *I. S.* and of the other Acre to *I. N.* he who firſt makes Election ſhall enjoy the one Acre, and thereby the other Acre hath veſted in the other. And it was ſaid, If a Man gives (*e*) two Acres to another, *Habendum* one Acre to him in Fee, and the other Acre to him in Tail, and he aliens both and hath Iſſue and dies, in this Caſe the Iſſue may bring a *Formedon in diſcender*, for which acre he will, for the Election is not determined by his Death: for an Eſtate paſſes preſently by the Livery, and the Iſſue ſhall take by Deſcent. But in the Caſe of 10 *Eliz.* 281 (*f*) *Bullock's* Caſe, if the Heir of the Feoffee ſhould make the Election, he would be in as a Purchaſer, for there nothing paſſed of the 17 Acres to the Feoffee before Election, and by the Law he cannot be a (*g*) Purchaſer; for there theſe Words (*h*) (his Heirs) were Words of Limitation. So note Reader theſe Differences concerning Election.

1. When (*i*) nothing paſſeth to the Feoffee or Grantee before the Election, to have one Thing or the other, there the Election ought to be made in the Life of the Parties, and the Heir or Executor cannot make the Election.

(*a*) Moor 301. Co. Lit. 148. a. 349. a. 2 Anderſ. 1. Poph. 86.

(*b*) Co. Lit. 349. a.

(*c*) Co. Lit. 148. a. 349. a.

(*d*) Co. Lit. 145. a.

(*e*) Moor 85.

(*f*) Moor 81. Hob. 174. 1 Anderſ. 11. Dyer 280, 281. pl. 17, 18, &c. Antea 56. a.

(*g*) Moor 86, 84.

(*h*) 1 Co. 95. b. 104. a. 105. b.

(*i*) Co. Lit. 145. a.

tion. But (*a*) when an Estate or Interest passeth presently to the Feoffee, Donee or Grantee, there Election may be made by them, or by their Heirs or Executors. (*a*) Co. Lit. 145. a.

2. When a (*b*) Thing passeth to the Donee, or Grantee, and the Donee or Grantee hath Election in what Manner or Degree he will take it, there the Interest passeth presently, and the Party, his Heirs or Executors may make Election when they will. (*b*) Co. Lit. 145. a.

3. When Election is given to (*c*) several Persons, there the first Election made by any of the Parties shall stand. (*c*) Co. Lit. 145. b.

4. In case Election be given of two several Things, always he who is the first Agent, and who ought to do the first Act shall have the Election. As if a Man (*e*) grant a Rent of 20 *s.* or a Robe to one and his Heirs, the Grantor shall have the Election, for he is the first Agent by Payment of the one, or Delivery of the other. (*f*) So if a Man makes a Lease yielding Rent, or a Robe, the Lessee shall have the Election, *causa qua supra*. And with that agree the Books 9 *E.* 4. 36. *b.* 13 *E.* 4. 4. *b.* *L.* 5 *E.* 4. 6. *b.* 11 *E.* 3. (*g*) *Annuity* 27. 11 *Ass.* 8. 29 *Ass.* 55. 3 *E.* 3. *Assize* 175. 43 *E.* 3. *Barre* 194. But if I give you one of my (*h*) Horses in my Stable, there you shall have Election, for you shall be the first Agent by Taking or Seizure of one of them, 2. *H.* 7. 23. *a.* And if one grant to another 20 Loads of Hasel, or 20 Loads of Maple to be taken in his Wood of *D.* there the Grantee shall have Election, for he ought to do the first Act, *scil.* to cut and take it. (*d*) Co. Lit. 145. b. Dyer 108. pl. 32. 1 Rol. Rep. 446. (*e*) Co. Lit. 145. b. (*f*) Co. Lit. 145. b. Plowd. 13. a. (*g*) 5 Co. 40. a. (*h*) Dyer 91. pl. 11. 2 H. 7. 13. a. Co. Lit. 145. a. Plowd. 13. a. Moor 83. Perk. Sect. 74. Br. Done 19. 21 H. 7. 18. b. Co. Lit. 145. b.

5. When the Things granted are (*i*) annual Things and are to have Continuance, there the Election remains to the Grantor (in Case where the Law gives him Election) as well after the Day as before; otherwise when the Things are to be performed *unica vice*. And therefore, if I grant to another for Life an Annuity (*k*) or a Robe at the Feast of *Easter*, and both are behind, the Grantee ought to bring his Writ of Annuity in the Disjunctive, for if he should bring his Writ of Annuity for one only and recover, this Judgment would determine the Election for ever; for he should never have a Writ (*l*) of Annuity after, but a (*m*) *Scire facias* upon the said Judgment; which Reason *Fitzherbert* in his *N. B.* not observing, held Opinion contrary. But if I (*n*) contract with you to pay you 20 *s.* or a Robe at the Feast of *Easter*, after the Feast you shall bring Debt for the one or the other, *Vide* 9 *E.* 4. 36. *b.* 13 *E.* 4. 4. *b.* and the Books before. (*i*) Co. Lit. 145. a. (*k*) Co. Lit. 145. a. (*l*) 1 Rol. 229. Co. Lit. 145. a. 6 Co. 45. a. (*m*) F. N. B. 122. E. 1. Rol. 229. Co. Lit. 145. a. (*n*) Co. Lit. 145. F. N. B. 152. h. Dyer 18. pl. 104. Kelw. 78. a.

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Co. Lit. 145. a. 6. The Feoffee by his Act and Wrong may loſe his Election, and give it to the Feoffor; as if one enfeoff another of two Acres, to have and to hold, one for Life, the Co. Lit. 145. a. other in Tail, and he before Election makes a Feoffment of both, in this Caſe the Feoffor ſhall enter into which Acre he will for the Act and Tort of the Feoffee.

7. Although the Leſſees in the Caſe in queſtion have enter'd generally, yet they may afterwards elect either to take by the Demiſe, or by the Bargain and Sale, for their general Entry cannot be any Determination of the Election, no more than if one be Executor and Deviſee of a Term and he entereth generally, it is no Determination of his Election; Antea 35. b. And after the Leſſees made their Election to take it by Bargain and Sale, and thereupon they had the Rents reſerved upon the Leaſes for Years, which otherwiſe they could not have.

Paſc.

Paſc. 38 Eliz:

MEmorandum quod alias ſcil' termino ſancti Michaelis ultim' præterito coram domina Regina apud Weſtmonaſterium ven' Robert' Wright qui tam pro domin' Regina quam pro ſe ipſo ſequitur per Thom' Webbe Jun' attorn' ſuum. Et protulit hic in cur' dict' dom' reginæ tunc ibidem quandam billam ſuam verſus Johannem Wright executorem teſtamenti & ultimæ voluntatis Nichol' Wright defunct' nuper dum vixit firmarii (ut aſſeruit) Rectoriæ Eccleſiæ parochialis de Eaſtmeon, alias dict' Eaſtmeane Winton' dioc' Cantuarien' que provinc' in cuſtod' Marr' &c. de placito tranſgreſſ. & Contemptus verſ. eos qui proſequunt' in cur' Chriſtianitatis contra prohibition' regiam prius inde in contrar' direct' & deliberat'. Et ſunt pleg' de proſ. ſcil' Jo' Doo, & Richard' Roo quæ quidem billa ſequit' in hæc verba, ſſ. South. ſſ. Robertus Wright qui tam pro domina regina quam pro ſeipſo ſequitur, querit' de Johann' Wright executore teſtamenti & ultim' voluntatis Nicholai Wright defunct' nuper dum vixit firmarii (ut aſſeruit) Rectoriæ Eccleſiæ parochialis de Eaſtmeon alias dict' Eaſtmeane Winton' dioceſ. Cantuarien' que provinc' in cuſtod' Marr' Mareſc' dom' reg' coram ipſa regin' exiſten' de placito quare ſequut' eſt in cur' Chriſtianitatis poſt prohibitionem regiam prius in contrarium inde direct' & deliberat', pro eo viz. quod cum omnia & ſingula placita & cognitiones placitorum de quibuſcunque conceſſionibus dimiſſionibus ſeu contract' infra hoc reg' Ang' emergen' habitis vel factis, ac hujuſmodi conceſſionum ſeu dimiſſion' validitate in lege cæteraque hujuſmodi placita & cognitiones placitorum dummodo non ſint de teſtament'

South'.

ment' vel matrimonio ad dictam domin' reginam nunc & coronam ſuam regiam ſpecialiter pertineant, ac per leges terr' hujus regni Angliæ & non per Jura ſeu cenſur' Eccleſiaſticas triari terminari & diſcuti debeant, & ſemper hactenus conſueverunt & debuerunt: Cumque Stephanus permiſſione divina nuper Winton' Epiſcopus quarto die Julii anno regni domini Henrici nuper regis Angliæ octavi triceſimo octavo, ſeiſitus fuiſſet in dominico ſuo ut de feodo jure nuper Epiſcopatus ſui prædicti de & in manerio de Eaſtmeon in comitatu Southampton, unde unum capital' meſuagium cum pertinentiis vocat' **the Scite of the Manor of Eaſtmeon**, octingent' acræ terræ quadragint' acr' prati, mille acr' paſtur' & quadragint' acr' boſci cum pertinen' in Eaſtmeon in comitatu prædicto (exiſten' terr' dominicalibus manerii prædicti) adtunc & a tempore cujus contrarii memoria hominum non exiſtit, fuerunt & adhuc ſunt parcell' ac etiam de & in uno meſuagio cum pertinentiis in Eaſtmeon præd' exiſten' domo manſional' manerii illius; Cumque idem Stephanus & omnes prædeceſſores ſui Epiſcopi Epiſcopat' prædicti pro tempore exiſten' ſeiſit' de maner' præd' & cæteris præmiſſis cum pertinentiis, ſcitum manerii prædicti & capitale meſuagium prædictum, ac terr' dominical' præd' cum pertinentiis a tempore cujus contrarii memoria hominum non exiſtit, per ſe, firmar' & tenent' ſuos inde, & cujuſlibet inde parcell' pro termino annorum ſeu ad voluntatem tenuerunt & gaviſi fuerunt exonerat', acquietat', immun', & privilegiat', de & a ſolutione decimarum quarumcunque, de, in, vel ſuper capitali meſſuagio prædicto & terr' dominicalibus prædict' cum pertinentiis, & qualibet ſeu aliqua' inde parcella annuatim quoviſmodo per totum tempus prædictum creſcen', contingen', renovan', ſeu provenien' præfatoque Stephan' nuper Epiſcopo præd' de capitali meſuagio prædicto & terr' dominicalibus prædictis cum pertinentiis in forma prædicta ſeiſit' exiſten', ac eadem habente & tenente exonerat', acquietat', immun', & privilegiat', de & a ſolutione decimarum quarumcunque, de, in, vel ſuper capitali meſuagio prædicto & cæteris præmiſſis cum pertinentiis, ſeu aliqua inde parcella creſcen', renovan', ſeu quoquo modo contingen', idem Stephan' prædicto quarto die Julii, anno regni dicti nuper regis Henrici octavi triceſimo octavo, apud Eaſtmeon in comitatu prædict' per quandam Indenturam ſuam, ſigillo ſuo Epiſcopali ſigillat', Curiæque dictæ dominæ reg' nunc hic prolat' geren' dat' eiſdem die & anno dimiſit cuidam Robert' Wright avo ipſius Roberti modo querent' medietat' terr' dominical' prædict' cum pertinentiis, per nomen omnium

um terrarum dominicalium manet' de Eaſtmeon prædict' de antiquo pertin', cum omnibus domibus, ſtabulis, horreis, & ædificiis ſuper medietat' prædict' tunc & ab antiquo, ſcituat', jacen', & exiſten' cum pertinentiis, quæ quidem medietas adtunc jacuit in campis ex parte Auſtrali villæ de Eaſtmeon prædict' una cum pratis, paſcuis, & paſturis, clauſuris, viis, ſemetis, & aliis ſuis pertinentiis una cum firma quadringent' Muttonum vocat' Weathers, precii capital' ſexdecem denariorum, quadringent' ovium matricium præcii capital' ſexdecem denariorum: Habendum & occupandum medietat' illam tenementorum prædict' cum pertinentiis in forma prædict' dimiſſ. præfato Roberto Wright avo & aſſignatis ſuis, a feſto Sancti Michaelis Archangeli, anno domini milleſimo quingenteſimo ſeptuageſimo quinto, uſque finem & terminum quadragint' annorum extunc proxim' ſequen' & plenarie complend' & finiend': Reddendo inde annuatim durante termino prædict' præfato Stephano nuper Epiſcopo prædict' & ſucceſſoribus ſuis ad ſcaccarium ſuum de Wolveſley in Winton' in Comitatu Southampton tunc exiſten' decem libras & decem ſolidos legalis monetæ Angliæ, ad feſta Paſchæ & Sancti Michaelis Archangeli per equales porciones ſolvend'; Et pro firma prædicta prædict' quadraginta Muttonum, & quadraginta ovium matricium, undecem libras treſdecem ſolidos & quatuor denarios, ſolvend' ad feſtum Sancti Petri quod dicitur ad Vincula pro capital' Muttonibus tres denarios, & pro capital' ovium matricium quatuor denarios, prout per eandem Indenturam inter alia plenius liquet & apparet; Quam quidem Indenturam dimiſſionis præfato Roberto Wright avo in forma prædicta fact', ac omnia & ſingula in eadem content' poſtea ſcilicet 20. die Julii, anno 38. ſupradicto Willihelmus Kingſmel adtunc Decanus Eccleſiæ Cathedralis Sanctæ Trinitatis Winton' prædict', & Capitulum ejuſdem loci apud Winton' prædictam, videlicet in domo ſua capitulari ibidem per quoddam ſcriptum ſuum confirmationis ſigillo ſuo Capitulari ſigillat' in vita præfat' Stephani tunc Winton' Epiſcopi prædicti exiſten', ac in vita præfati Roberti Wright avi modo defunct' ratificaverunt & confirmaverunt, prout per ſcript' confirmationis illius geren' dat' die & anno ultimo ſupradicto inter alia plenius liquet & apparet: virtute quarum quidem dimiſſionis & confirmationis idem Robertus Wright avus fuit de intereſſe prædicti termini, de & in prædicta medietate terrarum dominicalium prædict' cum pertinentiis in forma prædicta dimiſſ. poſſeſſion', præfatoque Roberto avo de prædict' intereſſe termini prædict'

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de & in medietet' prædict' terr' dominicalium prædict' cum pertinentiis in forma prædict' dimiſſ. poſſeſſion' exiſten', idem Robert' Wright avus 14. die Auguſti, anno domini milleſimo quingenteſimo quinquageſimo octavo, apud Eaſtmeon predictam condidit Teſtamentum & ultimam voluntatem ſuam in ſcriptis. Et per idem Teſtamentum ſuum conſtituit & ordinavit Margaretam tunc uxorem ejus & Nicholaum Wright filium ſuum juniorem fore executores ſuos Teſtamenti illius. Et per idem Teſtamentum ſuum dedit & legavit totum intereſſe ſuum prædict', de & in medietate prædict' terr' dominicalium prædictarum ſic ut præfertur dimiſſ. cum pertinentiis tunc ventur' cuidam Edward' Wright ſeniori filio præfati Roberti avi, Et poſtea præfatus Robert' Wright avus apud Eaſtmeon predictam obiit de intereſſe ſuo prædicto; de & in tenementis prædictis cum pertinentiis præfato Robert' Wright avo in forma prædicta dimiſſ. poſſeſſion', poſt cujus mortem præfata Margareta & Nicholaus onus executionis Teſtamenti illius prædict' apud Eaſtmeon prædictam ſuper ſe acceptaverunt, iidemque Executores apud Eaſtmeon prædictam eidem Edward' Wright conſenſum ſuum dederunt, quod præfatus Edward' Wright haberet & gauderet ſibi & aſſignatis ſuis intereſſe prædictum prædicti termini annorum, de & in medietat' prædict' terr' dominicalium prædict' cum pertinentiis præfato Robert' Wright avo in forma prædicta dimiſſ. virtute cujus idem Edwardus fuit de intereſſe illo termini prædict' poſſeſſion', Et ſic inde poſſeſſion' exiſten' idem Edwardus 10. die Julii, anno domini milleſimo quingenteſimo ſexageſimo tertio, apud Eaſtmeon prædictam condidit Teſtamentum & ultimam voluntatem ſua in ſcriptis. Et per idem Teſtamentum ſuum conſtituit & ordinavit Agnetem tunc uxorem ſuam fore ſolam executricem ſuam Teſtamenti illius. Et per idem Teſtamentum ſuum dedit & legavit totum intereſſe ſuum prædictum de & in medietate prædict' terr' dominicalium præd' ſic ut præfertur dimiſſ. cum pertinentiis præfato Robert' Wright modo queren' uni filiorum ipſius Edwardi. Et poſtea præfatus Edward' Wright apud Eaſtmeon præd' obiit de intereſſe ſuo prædict' de & in medietate prædict' terrarum dominicalium prædict' cum pertinentiis in forma prædict' dimiſſ. poſſeſſion', poſt cujus mortem præfat' Agnes onus executionis Teſtamenti prædict' Edwardi apud Eaſtmeon prædict' ſuper ſe acceptavit, eademque executrix apud Eaſtmeon prædictam eidem Roberto conſenſum dedit, quod ipſe idem Robertus Wright haberet & gauderet ſibi & aſſignatis ſuis intereſſe termini prædict'

dict', de & in præd' medietate terrarum dominicalium præd' cum pertinentiis in forma prædict' dimiſſ. virtute cujus idem Robertus Wright modo querens fuit de intereſſe termini præd' de & in medietate præd' terrarum dominicalium præd' cum pertinentiis poſſeſſionat' uſque craſtin' feſti ſancti Michaelis Archangeli, anno domini milleſimo quingenteſimo ſeptuageſimo quinto, quo quidem craſtino præd' feſti ſancti Michaelis Archangeli, anno domini milleſimo quingenteſimo ſeptuageſimo quinto ſupradicto, idem Robertus Wright modo quer' in præd' medietat' terrar' dominicalium præd' cum pertinentiis intravit, & fuit inde poſſeſſionat', Et ſic inde poſſeſſionat' exiſten', eandem medietat' cum pertinen' habuit, tenuit, & occupavit, ac modo habet & occupat, & habere & occupare debuit & debet, de & a ſolutione decimar' quarumcunque de, in, vel ſuper medietat' præd' terr' dominicalium præd' cum pertin', ſeu aliqua inde parcell' annuatim quoviſmodo creſcen', contingen', renovan', ſive provenien' occaſione præd' ſuperius in hac parte allegat', penitus exonerat', acquierat', immun', & privilegiat', ratione preſcription' & privileg' præd'; Cumque per ſtatutum in Parliamento domini Ed. nuper Regis Angliæ ſexti tent' apud Weſt' in Com' Midd' 4. die Novembris, anno regni ſui ſecundo, inter alia inactitat' exiſtit authoritate Parliamenti illius, quod nulla perſona vel perſonæ ſectaretur vel ſectarentur, aut aliter compellaretur vel compellarentur reddere, dare, vel ſolvere aliquas decimas pro aliquibus maneriis, tenementis, vel Hæreditamentis quæ per leges & ſtatut' hujus Regni Ang' vel per aliqua privilegia ſive preſcriptionem non fuerunt onerabilia cum ſolutione aliquarum hujuſmodi decimarum, vel quæ exonerat' fuerunt per aliquam compoſition' realem, prout per Actum illum inter al' plenius liquet & apparet: præd' tamen Nic. Wright in vita ſua prætenden' ſe fore firmarium Rectoriæ Eccleſiæ parochialis præd', prætextu & virtute cujuſdam dimiſſionis ſibi inde 10. Maii, anno regni dictæ dominæ Reginæ nunc 32. per Thomam permiſſione divina tunc Epiſcopum Winton' pro termino viginti & unius annorum fier' ſuppoſit', ac ea occaſione falſo ſupponen' decimas quaſcunque in & ſuper prædict' medietat' terr' dominical' præd' cum pertin' præf. R. Wright avo, in forma prædict' dimiſſ. provenien' & conting' eidem Nic. Wright virtute dimiſſionis præd' ſibi in forma prædicta fieri ſuppoſit' ſpectare & pertinere, ubi revera idem Robertus modo querens medietatem præd' terrarum dominicalium præd', virtute dimiſſionis præd' præf. Roberto Wright avo in forma prædict' fact', ac ratione immunitatis

munitatis privileg' & actus præd' ſuperius ſpecificat', exonerat', acquietat' immun' & privilegiat' de & a ſolution' decimarum quarumcunque ſuper inde creſcen', habere, tenere, & gaudere debuit, durant' termino prædicto præfato Roberto Wright avo in forma præd' conceſſ. præmiſſor' non ignorans, machinans dictam dominam Reginam nunc & Coronam ſuam Regiam exhæreditare, cognitionemque placit' quæ ad dictam dominam Reginam nunc & Coronam ſuam Regiam & non ad Curiam Chriſtianitatis pertinet ad aliud examen in Curia Chriſtianitatis trahere ſupponens Indentur' dimiſſionis præd' prefato Roberto Wright avo in forma præd' fact', & ſcriptum confirmationis præd', necnon ſtatum ipſius Roberti modo queren' præd' de & in medietat' præd' terr' dominicalium prædictarum cum pertinentiis præfato Roberto avo de decimis præd' in forma prædicta exonerat' habit' & fact' fore vacuum, & in lege invalid': ubi revera Indentura dimiſſionis & ſcriptum confirmationis ill', ac etiam ſtatus ipſius Roberti modo quer' præd' de & in medietate prædicta terr' dominicalium præd' cum pertinentiis, præfato Roberto avo in forma prædicta dimiſſ. ſicut prefertur de decimis exonerat' bona, valida, & effectual' in lege exiſtunt, ac ubi revera dimiſſio illa præfato Nicholao in form' præd' fieri allegat' ſi quæ fuerit penitus vacua & inſufficiens in lege quoad aliquas decimas, de, in, & ſuper medietat' præd' terrarum dominicalium prædictarum creſcen' ſive renovan' exiſtit eundem Robertum Wright modo quer' in Curia Chriſtianitatis coram venerabili & egregio viro magiſtro Willihelmo Awbrey legum Doctore Curiæ audien' Cantaur' cauſarum & negotiorum auditorum legitime deputat', de & pro ſubtractione & non ſolutione decimarum tritici, hordei, piſarum & avenarum, de, in, & ſuper prædicta medietat' terrarum dominicalium præd' anno domini milleſimo quingenteſimo nonageſimo, creſcen', renovan', provenien', & contingen', necnon de & pro ſubtractione & non ſolutione decimarum Lanæ & Agnorum ex ovibus ipſius Roberti Wright modo querent', de, in, & ſuper præd' medietate terrarum dominicalium præd' anno domini ſupradicto cuſtodit' nact' & provenien' necnon decimarum pomorum ipſius Rob. Wright modo quer' de, in, & ſuper præd' medietat' terr' dominicalium præd', anno dom' ſupradic' creſcen' nact' & proven' 8. die Octobris, anno regni dictæ dom' Reg' nunc 32. apud Eaſtmeon præd' in com' præd' traxit in placitum; prædictuſq; Nicholaus eund' Robertum

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modo quer' in cur' Chriſtianitatis præd' coram præf. Judice ſpirituali occaſione præd' comparere & eidem Nicholao de & in præmiſſis reſpondere eo modo validitat' in lege Indentur' dimiſſion' præd' per præfatum Stephanum nuper Epiſcopum prædictum in forma prædicta fact' ac confirmationem prædict' necnon ſtatum ipſius Rob' modo quer' prædict' de & in prædict' medietat' terr' dominicalium præd' cum pertinentiis præfato Roberto Wright avo in forma præd' dimiſ. ac decim' inde provenien' in cur' Chriſtianitat' ill' trahere & terminare cauſare min' juſte aſtrixit, quod quidem placitum per appellationem in hac part' habitam & fact' a prædict' curia audien' Cantuar' coram venerabil' & egregiis viris Roberto Forthe, Thoma Binge, Johanne Lloyd, Thoma Legge, & Richardo Swale legum doctoribus Judicib' in hac parte delegat' debite remot' fuit ac in cur' Chriſtianitatis coram eiſdem Judicibus delegat' vel eorum aliquo apud Eaſtmeon prædict' adhuc pendet indeciſum, ac licet idem Rob. modo quer' Indentur' dimiſſionis præd' ac ſcriptum confirmationis præd' ac ſtatum ipſius Roberti modo quer' prædict' de & in prædictam medietatem terr' domicalium præd' de decimis prædictis exonerat' cum pertinen' præfat' Roberto Wright avo in forma præd' dimiſ. ac aliam materiam ſuperius in hac part' content' tam in præd' cur' Chriſtianitatis coram præf. Willihelmo Awbrey Judice ſpirituali antedicto quam in prædicta curia Chriſtianitat' coram Judicibus delegat' antedict' in exoneratione ſua in præmiſ. ſepius oſtendit placitavit & allegavit, ac ſigillationem & deliberationem Indentur' dimiſſionis & ſcripti confirmationis præd' ac reſid' mater' in hac parte content' ex part' ipſius Rob. Wright modo quer' in præmiſſis in hac parte allegat' ſecundum legem terræ hujus Regni Angliæ inevitabili veritate & teſtimonio probare obtulit, dictus tamen Judex cur' audienc' prædict' ac prædict' Judices delegat' in præd' cur' Chriſtianitatis coram eis placitum allegationem & probationem illam admittere penitus recuſaverunt & eorum quilibet recuſavit; Poſteaq; appellum prædictum ſic penden' in præd' cur' Chriſtianitatis coram Judic' delegat' antedict', prædict' Nicholaus Wright apud Eaſtmeon prædict' condidit Teſtament' & ultimam voluntatem ſuam in ſcriptis, & inde Jo. Wright executorem ſuum teſtamenti illius conſtituit & ordinavit, & poſtea ibidem obiit, poſt cujus mortem præd' Joh. Wright onus executionis teſtamenti præd' ac proſecutionem appelli prædicti in cauſa præd' ſuper ſe ſuſcepit; Poſteaq; prædict' Jo. Wright executor antedictus eundem Robe. modo quer' in prædict' cur' Chriſtianitatis coram præf. Judicibus delegat'

apud Eaſtmeon prædict' occaſione præd' comparere minus juſte aſtrinxit, ac eundem Robert. modo quer' de & in premiſſis condempnare, ac ad decimas præd' in prædictis ſeperalibus cur' Chriſtianitatis in forma præd' petit' ei ſolvend' compellere per definitivam dictæ cur' delegat' ſentenc' totis ſuis viribus adhuc conat' & indies machinatur; Ac licet breve dictæ dominæ reginæ de prohibitione præſ. Judicibus delegat' ac aliis Judicibus in ea parte competen' duodecimo die Jul', anno regni dictæ dominæ reginæ nunc triceſimo ſeptimo apud Eaſtmeon prædictam in contrarium inde direct' & deliberatum fuit, idem tamen Johan' Wright placitum prædictum poſt prohibition' regiam prius in contrarium inde in forma prædict' direct' & deliberat', ſcilicet primo die Octob. anno regni dictæ dominæ reginæ nunc triceſimo ſeptimo apud Eaſtmeon prædict' in com' præd' ulterius profecut' fuit, & in placito illo proceſſit dicto brevi dictæ dom' reginæ de prohibitione præſ. Judic' ſpiritual' prius in contrarium inde in forma prædicta direct' & deliberat' in aliquo non obſtant' in dictæ domin' reginæ nunc contemptum & ipſius Roberti modo quer' dampnum prejudicium depauperationem & gravamen manifeſt', ac contra form' & effectum præſcriptionis privileg' & actus prædictor', unde idem Robertus modo quer' dicit quod ipſe deteriorat' eſt & dampn' habet ad valentiam quadraginta marcar', & inde tam pro dicta domina Regina quam pro ſeipſo produc' ſectam, &c. Et modo ad hunc diem ſcilicet diem Mercurii prox' poſt Quinden' Paſchæ iſto eodem termino, uſque quem diem prædictus Johannes Wright habuit licentiam ad billam prædict' interloquendi, Et tunc ad reſpodend', &c. coram domina regina apud Weſtm' venit tam prædictus Robert. Wright per attornat' ſuum prædictum, quam prædictus Johannes Wright per Stephanum Worley attorn' ſuum, & idem Johannes defend' vim & injur', quando, &c. Et omnem contemptum & quicquid, &c. Et dicit quod ipſe non profecut' fuit placitum præd' in cur' Chriſtianitatis præd' poſt prohibitionem regiam ei prius in contrar' directam & deliber' modo & form' prout præd' Rob. Wright qui tam, &c. ſuperius verſus eum querit'. Et de hoc pon' ſe ſuper patriam, Et prædict' Robertus qui tam, &c. ſimiliter, &c. Sed pro Conſultatione in hac parte habend' idem Johann' proteſtand' non cognoſcendo aliqua per præd' Rob. ſuperius allegat' fore vera, pro placito idem Jo. dicit quod bene & verum eſt quod præd' Rob. in præd'. Cur' Chriſtianitatis coram præfat. Judicibus delegat' oſtendebat placitabat & allegabat quod præd' Steph. nuper Epiſcopus Winton' præd' quarto die Jul' anno

no triceſimo octavo ſupradicto fuit ſeiſitus de præd' manerio de Eſtmeon cum pertinen' in prædict' Comitatu Southt' unde prædictum capitale meſſuagium cum pertin' vocat' **the Scite of the Manor of Eaſtmeon**, octingent' acræ terræ, quinquagint' acr' prati, mille acr' paſturæ, & quadringent' acr' boſci, cum pertin' in Eſtmeon præd' exiſten' terr' dominical' maner' præd' adtunc & a toto tempore præd' fuerunt parcel', ac etiam de & in prædict' meſſuagio cum pertinen' in Eſtmeon præd' exiſten' domo manſional' maner' præd' in dominico ſuo ut de feod' in jure nuper Epiſcopat' ſui præd'; Ac quod idem Stephanus & omnes prædeceſſ. ſui Epiſcopi Epiſcopatus præd' pro tempore exiſten' ſeiſit' de manerio præd' & cæter' premiſſ. cum pertin' a toto tempore præd' pro ſe firmar' & tenentibus ſuis inde & cujuſlibet inde parcella pro termin' annor' ſeu ad volunt' tenuiſſent & gaviſi fuiſſent eiſd' exonerat' acquietat' immun' & privilegiat' de & a ſolutione quarumcunq; decimar' de, in vel ſuper præd' capitali meſſuagio & terr' d'nicalibus præd' cum pertinen' quamlibet inde parcellam annuatim quoviſmodo per totum tempus prædictum creſcen' contingen' & renovan' ſive provenien', quodq; præfat. nuper Epiſcopus de capital' meſſ. præd' & terris dominicalibus præd' cum pertin' in forma præd' ſeiſit' exiſten', ac eadem habens & tenens exoner', acquietat', immun', & privilegiat' de & a ſolutione decimar' quarumcunque in vel ſuper capital' meſſuagium præd' & cætera præmiſſa cum pertin' ſeu aliquam inde parcell' creſcen', renovan', ſeu quoquo modo contingen' præd' quarto die Julii anno regni prædict' nuper regis Henrici octavi triceſimo octavo ſupradict', apud Eſtmeon præd' per præd' Indenturam ſuam ſigillo ſuo Epiſcopali ſigill' geren' dat' eiſdem die & anno dimiſit præf. Rob. Wright avo præd' Robert. medietatem terrarum dominicalium præd' cum pertin' per nomen omnium terrar' d'nicalium manerii de Eſtmeon præd' de antiquo pertin' cum omnibus domibus, ſtabulis, horreis, & edific' ſuper medietat' præd' tunc & ab antiquo ſcituat', jacen', & exiſten' cum pertin', quæ quidem medietas adtunc jacuit in campis ex parte Auſtrali præd' villæ de Eſtmeon prædict' Habend' & occupend' medietatem illam cum pertin' præfat. Roberto Wright avo & aſſignatis ſuis a præd' feſto ſancti Michaelis Archangeli quod tunc eſſet in anno domini milleſimo quingenteſimo ſeptuageſimo quinto, uſque finem termini quadraginta annorum extunc proxim' ſequent' & plenarie complend'; Ac quod poſtea ſcilicet præd' viceſimo die Jul' anno 38. ſupradicto præd' Willihelmus Kingſmil tunc Decanus prædict' Eccleſiæ Cathedralis Sanctæ Trinitatis Winton', & Capitul'

pitul' ejuſdem loci apud Winton' prædict' in domo capitulari ſua ibidem per ſcriptum ſuum prædict' ſigillo capitulari ſuo prædicto ſigillat' in vita prædicti nuper Epiſcopi, ac in vita præd' Ro. Wright avi confirmaverunt, & ratificaverunt, ac quod idem Rober. Wright virtute dimiſſionis & confirmationis præd' fuit de intereſſe termini prædicti de & in medietat' præd' cum pertinent' poſſeſſionat', & ſic inde poſſeſſionat' exiſten' præd' quarto decim' die Aug. anno d'ni milleſimo quingenteſimo quinquageſimo octavo ſupradicto, apud Eaſtmeon præd' condidit teſtamentum ſuum in ſcriptis, & per idem teſtamentum ſuum conſtituit prædictos Margar' & Nicho. Wright executores ſuos, & per idem teſtamentum ſuum dedit & legavit totum intereſſe ſuum prædict' de & in medietate præd' cum pertinen' præd' Edwardo Wright filio præd' Roberti avi, & poſtea apud Eaſtmeon præd' obiit de intereſſe ſuo præd' in forma præd' poſſeſſionat', poſt cujus mort' præd' Edwardus per aſſenſum executorum præd' fuit de intereſſe præd' termini annor' de & in medietat. præd' cum pertin' poſſeſſionat', ac quod idem Edwardus ſic inde poſſeſſionatus exiſten' præd' 11. die Jul', anno domini milleſimo quingenteſimo ſexageſimo tertio ſupradicto, apud Eaſtmeon præd' condidit teſtamentum ſuum in ſcriptis, & per idem teſtamentum ſuum conſtituit quandam Agnetem tunc uxorem ejus executricem ſuam teſtamenti ſui præd' & per idem teſtament' ſuum dedit & legavit totum intereſſe ſuum præd' de & in medietat' præd' cum pertin' præd' Roberto Wright modo quer', & poſtea ibid' obiit de intereſſe ſuo præd' de & in medietat' præd' cum pertin' in form' præd' poſſeſſionat', ac quod præd' Robertus modo quer' per conſenſum præd' Agnetis onus executionis teſtamenti prædicti ſuper ſe ſuſcipien' fuit de intereſſe termini præd' de & in medietat' prædict' cum pertin' poſſeſſion' uſq; feſtum ſancti Micha. Archangel. anno d'ni milleſimo quingenteſimo ſeptuageſimo quinto, immedietate poſt quod quidem feſtum idem Rob. in medietat' præd' cum pertin' intravit & fuit inde poſſeſſionat', ac quod idem Rober. ſic inde poſſeſſionat' exiſten' eadem tenementa cum pertin' ſimilit' habuiſſet & occupaſſet ac habere & occupare debuit de & a ſolutione decimar' quarumcunq; de, in vel ſuper medietatem præd' cum pertin' ſeu aliquam inde parcellam annuat' quoviſmod' creſcen' contingen' renovan' ſive provenien' occaſione præd' ſuperius allegat' penitus exonerat' acquietat' immun' & privilegiat' ratione præſcriptionis & privileg' præd' ac vigore ſtatuti præd' in prædicto Parliamento præd' nuper regis Edwardi ſexti apud Weſt' prædict' prædicto quarto die Novemb' anno regni ſui ſecundo de ſolutione decimar' tunc edit'

prout

prout præd' R. Wright modo quer' ſuperius allegavit: Sed idem J. Wright ulterius dicit quod præd' Judices delegati in præd' cur' coram eis placitum & allegationes præd' R. Wright modo quer' præd' allocaverunt ac probationes inde per eundem Robertum oblat' acceptaverunt & admiſſerunt, abſq; hoc quod præd' Judices delegati in prædict' cur' Chriſtianitatis coram eis placitum allegationes & probationes præd' R. Wright modo quer' præd' admittere recuſaverunt, modo & forma prout præd' Rob. modo quer' ſuperius allegavit, & hoc paratus eſt verificare, unde petit Judicium & breve dictæ dominæ Reginæ de Conſultatione, ſibi in hac parte concedi, &c. Et præd' R. Wright modo quer' dicit quod per aliqua per præd' J. Wright ſuperius placitando allegat' idem Johannes breve dict' dominæ Regin' de Conſultatione habere minime debet, Quia dicit quod placitum præd' per ipſum Johannem modo & forma præd' ſuperius placitat' materiaq; in eodem content' minus ſufficien' in lege exiſtit ad præd' breve dict' dominæ Reginæ de Conſultatione impetrand', ad quod idem Robertus neceſſe non habet nec per legem terræ tenetur aliquo modo reſpondere, unde pro defectu ſufficien' reſponſionis in hac parte idem Robertus petit judicium & dampna ſua præd' occaſione præd' ſibi adjudicari, &c. Et præd' J. Wright dicit quod placitum præd' per ipſum Johannem modo & forma præd' ſuperius placitat', materiaq; in eodem content' bona & ſufficien' in lege exiſtunt ad præd' breve dictæ dominæ Reginæ de Conſultatione impetrand', quod quidem placitum materiamq; in eodem content' idem Johann' paratus eſt verificare & probare prout Cur', &c. Et quia præd' Robertus ad placitum illud non reſpond' nec illud hucuſq; aliqualiter dedic', idem Johannes ut prius petit Judicium & breve dict' dominæ Reginæ de Conſultatione in hac parte ſibi concedi, &c. Et quia Cur' dominæ Reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde dat' eſt partibus præd' coram domina Regina apud Weſt' uſque diem proxim' poſt de Judicio ſuode & ſuper præmiſſis audiendo, &c. Eo quod Cur' dominæ Reginæ hic inde nondum, &c.

Paſch. 38 Eliz.

The Biſhop of WINCHESTER's *Caſe.*

(a) Cr. El. 475. 511. 2 Rol. 653. 11 Co. 14. b. Godb. 183. Moor 429, 531.

IN a Prohibition between *Robert (a) Wright* Plaintiff, and *John Wright* Defendant, which began *Paſch.* 38 *Eliz. Rot.* 628. the Caſe was ſuch; the Plaintiff ſhewed, That *Stephen Gardiner*, Biſhop of *Wincheſter*, the 4th Day of *July*, 38 *H.* 8. was ſeized of the Manor of *Eaſtmean* in *Eaſtmean* in the County of *Southampton*, in the Right of his Biſhoprick; and that the ſaid *(b)* Biſhop, and all his Predeceſſors of the ſaid Biſhoprick ſeized of the ſaid Mannor had holden and enjoyed the Scite of the ſaid Mannor, and all the Demeans of the ſaid Mannor, *a Tempore cujus, &c.* for him, his Tenants and Farmers, for Years, or at Will, *exonerat' acquietat' & privilegiat' de & a ſolutione decimarum quarumcunque de, in vel ſuper præd' ſcit' & terr' dominic' & qualibet ſeu aliqua inde parcel' annuatim quoviſmodo per totum tempus præd' creſcent', contingent', ſive renovant'.* And the Plaintiff conveyed to himſelf an Intereſt for Years in Parcel of the Demeans of the ſaid Mannor, by the Demiſe of the ſaid Biſhop; And that the Defendant being Farmer of the Rectory of *Eaſtmean*, had libelled againſt him for Tithes growing within Parcel of the Demeans of the ſaid Mannor, before the Judges Delegates, and although the Plaintiff had ſhewed all the Matter, and pleaded the ſame before them, and offered with inevitable Proof to prove it, yet *prædicti Judices delegati in prædict' Cur' Chriſtianitatis coram eis placitum allegationes & probationes prædict' Roberti Wright admittere recuſaverunt.* The Defendant to have a Conſultation, confeſſed that the ſaid Plaintiff had alledged all the Matter aforeſaid before the Judges Delegates, and that the Judges Delegates allowed the Plea and Allegation of the Plaintiff, and admitted him to his Proof thereof, *abſq; hoc quod præd' Judices delegati in*

(b) Doctrin. Placit. 104.

Curia

Curia Chriſtianitatis coram eis placitum allegationes & probationes prædict' Roberti Wright admittere recuſaverunt. And upon this Plea the Plaintiff's Council did demurr in Law; and in this Caſe three Points were moved: 1. Whether the ſaid Preſcription for diſcharge of Tithes, was good or not. 2. Whether the Plaintiff, being a Lay-man, ſhou'd take Benefit thereof. 3. Whether the ſaid traverſe was good or no. And as to the firſt Point, three Things were conſidered: 1. Who were by the Common Law capable of Tithes in Pernancy, and who not. 2. Who was capable of a Diſcharge of Tithes at the Common Law, and who not. 3. How he who was capable of a Diſcharge, might be diſcharged of Tithes, *ſcil.* either by Preſcription, or by Compoſition, *&c.*

As to the firſt it was reſolved, That none by the Common Law had Capacity to take Tithes, but only ſpiritual Perſons, or a mixt Perſon, and regularly no meer Lay-man was at the *(a)* Common Law capable of them, unleſs in ſpecial Caſes; for no Layman but in ſpecial Caſes, could *(b)* ſue for them at the Common Law in the ſpiritual Court, *ſcil.* for the Subtraction of them. See the Books in 7 *E.* 3. 5. 11 *Aſſ.* 9. 44 *E.* 3. 5. *b.* 10 *H.* 7. 18. *a.* & 7 *E.* 6. *(c) Dyer* 84. and the Books in 43 *E.* 3. 34. *a.* & 44 *E.* 3. 39. *a. b.* that a Farmer of a Parſon may ſue for Tithes; but it appears that ſuch Farmer was a *(d)* ſpiritual Man, as Vicar, *&c.* And ſo it was ſaid by ſome are all the other Books in 31 *H.* 6. 11. *a.* 35 *H.* 6. 39. *a. b.* 2 *E.* 4. 15. *a. b.* 6 *E.* 3. 4. *a. b.* 12 *H.* 7. 24. *b.* (in which in truth there are but Opinions) to be intended: And if the Common Law had generally enabled a Lay-man to be capable of Tithes, the Common Law would have given him Remedy for the Recovery of them; but regularly a *(e)* Lay-man had no Remedy for the Subſtraction of Tithes, 'till the Statute of *(f)* 32 *H.* 8. *cap.* 7. But ſee 22 *Aſſ.* 75. that the King was capable of Tithes at the Common Law, for he was *(g) perſona mixta*, and his *(h)* Patentee alſo by his Prerogative, as it there appears.

As to the ſecond Point it was reſolved, That a meer Layman who was not *(i)* capable of Tithes in Pernancy, was notwithſtanding capable of a *(k)* Diſcharge of Tithes at the Common Law in his own Land, as well as a ſpiritual Man; for by the Common Law, the Parſon, Patron, and Ordinary might *(l)* have diſcharged a Pariſhioner of Tithes in his Land, *&c.* or the Pariſhioner might have *(m)* given Part of his Land to the Parſon for a diſcharge of Tithes in the Reſidue. And for Proof thereof ſee the Book in 8 *E.* 4. 14. *a. b.* and *Regiſter* 38. where it appears that a Layman might be diſcharged of Tithes at the Common Law; but a Layman might be diſcharged of Tithes at the Common Law by Grant, or Compoſition, as it appears in the ſaid Books, but not by Preſcription to be diſcharged of Tithes; for it is commonly ſaid in our Books, that he may preſcribe

(a) Cr. El. 512.
(b) Co. Lit. 159. a. 5 Co. 16. a. Cawdry's Caſe. Br. diſme. 9.
(c) Cr. Jac. 438. Moor 531. Dyer 84. Pl. 84.
(d) Poſtea 44. b.
(e) Cr. El. 512.
(f) Co. Lit. 159. a. 13 Co. 15. 1 Mod. Rep. 260.
(g) Cr. Car. 423. 1 Rol. 655. 657. Davis 4. a. 10 H. 7. 18. a. Cawly 6. Cr. El. 599. 785. 5 Co. 28. a. Cawdry's Caſe. 11 Co. 70. a. 13 Co. 17. Hob. 297. 1 Jones 387.
(h) Cr. Car. 94. 423. Cr. El. 512. 785. 1 Rol. Abr. 655. Hetl. 60. 1 Jones 387. Noy 132.
(i) 1 Jones 184.
(k) Cr. El. 512.
(l) Cro. Jac. 455. Hob. 297.
(m) F. N. B. 41. G. Hob. 297. Cr. El. 512. Cr. Car. 423. 1 Jones 368, 369. Moor 913.

(a) Hob. 297. Davis 6. b. 13 Co. 16. 1 Jones 369. 1 Rol. 653.

(a) *in modo decimandi*, but not *in non decimando*, and the Reason thereof is, because he is not, but in special Cases, capable of Tithes at the Common Law, and therefore without special Matter shewed, it shall not be intended that he hath any lawful Discharge. And for this Reason, in Favour of Holy Church, although it might have a lawful Beginning, the Law will not suffer such Prescription in this Case, to put it to the Trial of Laymen, who will rather strain their Consciences for their private Benefit, than yield to the Church the Duties which belong to it. And the Law had great Policy therein, for the Decay of the Revenues of Men of Holy Church, in the End, will be the Overthrow of the Service of God, and of his Religion. And therefore it is recorded

(b) 11 Co. 70. a.

in History, That there were (amongst others) (b) two grevious Persecutions, one under *Diocletian*, the other under *Julian*, sirnamed *Apostata*; for it is recorded, That one of them intending to have rooted out all the Professors and Preachers of the Word of God, *occidit omnes Presbyteros*, but notwithstanding that, Religion flourished, for *sanguis Martyrum est semen Ecclesiæ*; and yet the same was a fearful and grievous Persecution: But the Persecution under the other was more grievous and dangerous, because (as the

(c) 1 Rol. Rep. 164. 11 Co. 70. a. Hob. 308.

History saith) *ipse occidit* (c) *Presbyterium*, for he robbed the Church, and spoiled spiritual Persons of their Revenues,

(d) Hob. 297.

and took all from them whereon they might live; and thereupon in short Time did follow great Ignorance of the true

(e) 1 Rol. 653. 11 Co. 14. b. Cr. Car. 423. Hob. 297. Postea 48. b.

Religion and Service of God, and thereby great decay of the Christian Profession; for none will apply themselves, or their Sons, or any other who he hath in Charge, to the Study of Divinity, when they shall have, after long and painful Study, nothing to live upon. And it was said, That if a Prescription in *non decimando* should be suffered, the (d) Church would rather lose than gain in these Days. And for this Reason such Prescription was not allowable. But a spiritual Person who was capable of Tithes at the Common Law in Pernancy, may prescribe to be (e) discharged of Tithes generally; for as he may prescribe to have a Portion of Tithes in the Land of another, so he may prescribe to discharge his own Lands of Tithes; for it is commonly said in our Books, That before the Council of *Lateran*, (f) every Man might have given his Tithes to any Ecclesiastical Person he would, and that appears by the Books aforesaid. And note, It is recited by the Statute of (g) 2 *E.* 6. *cap.* 13. that Land may be discharged of Tithes by Prescription, but that cannot be in Case of a Layman, *Ergo* it ought to be in Case of a spiritual Man. *Vide* 10 *Eliz. Dyer* 277. The (h) Orders of the *Cistercians*, *Templars*, and *Hospitularii*, were discharged of Tithes *sub modo*, *scil. quamdiu propriis manibus excoluntur*, *&c.* and 18 *Eliz. Dyer* (i) 340. And as to the second Point, the same dependeth upon the first, for if the Lands of the Bishop

(f) Dyer 277. pl. 60. 2 Brown. 21. Moor 532. 2 Inst 652. 2 Co. 47. b. Cr. El. 579. Palm. 119. 1 Leon. 332. Cr. Jac. 454. 559.

(g) 2 & 3 E. 6. c. 13.

(h) Dyer 349. pl. 16. Postea 48. a. Cr. El. 511. 13 Co. 18. Hob. 44 Palm. 119.

(i) Hob. 296. Cr. Eliz. 511. Moor 436. 530. 1 Jones 368, 369. 44 E. 3. 5. b. Br. dismes 1. 21. 10 H. 7. 18. a. Dyer 84. pl. 84. Godolph. Abridg. 354. 7 E. 3. 5. per Parn, 44. Ass. pl. 25. Cr. Jac. 454. 559. Selden de decimis 292. 2 Inst. 641, 646. Degg's Parf. 219.

were discharged in his Hands absolutely by Prescription, then the demising thereof to a Layman, cannot make the same (*a*) chargeable which was discharged before; and in that it may be more beneficial to the Bishop, for in respect of that he might reserve the greater Rent, &c. And as to the third Point, it was resolved, That the traverse was insufficient, for as it is said in (*b*) 8 *E.* 4. 14. *a.* the spiritual Court will not allow any Plea in discharge of Tithes, and therefore the Refusal in such Case, is not material, for the Party may have a Prohibition before any such Plea pleaded by him in discharge of Tithes, and therefore in such Cases the Allegation of the Refusal of the Ecclesiastical Judge, are rather Words of Course than of Effect and Substance; but in some Case the Refusal is (*c*) traversable, as it was adjudged *M.* 30 & 31 *Eliz.* in this Court, between (*d*) *Morris* and *Eaton*, where the Case was, That *Morris* was sued by *Eaton* in the Spiritual Court for Tithes; *Morris* alledged there, That *Eaton* had not read the Articles according to the Statute, and that the Ecclesiastical Judge did refuse to allow the same; and this Refusal was traversable by the Judgment of the Court, for otherwise, upon such Surmise, all Matters might be prohibited in the Spiritual Court, although the Spiritual Judge do all that belongeth to Law and Justice. And in the same Case, the Party grieved may have Remedy by his Appeal; but in the other Case of discharge of Tithes, or *de modo Decimandi*, the (*e*) Judges of our Law well know, that the Ecclesiastical Judges will not allow such Allegation, and so is the Difference. Note Reader, A Man may prescribe, That he and all those whose Estate he hath in the Manor of *Dale*, *in Dale a tempore cujus*, *&c.* have paid to the Parson of *Dale* for the Time being, a certain Pension yearly, for Maintenance of Divine Service there, in Contentation of all Tithes renewing or arising within the same Manor: And further prescribe, That he, and all those whose Estate he hath in the said Manor, Time out of Mind, have used in respect of the said Pension so paid the Parson, to have all the Tithes accruing and arising within the said Mannor, or any Part thereof, *scil.* of all Lands holden of the said Mannor, or Parcel thereof: And such Prescription was adjudged good in the King's Bench, *M.* 39 & 40 *Eliz. Rot.* 199. in an Action upon the Case between *Pilot* (*f*) and *Hern*, in which Case two Points were resolved for good Law. 1. That in such special Case, a Lay Person, Owner of the said Mannor, shall sue for the Tithes upon the special Matter aforesaid in the Spiritual Court, for it shall be intended at the Beginning, the Lord was seized of the whole Mannor before the Tenancies were derived thereout, and then by

(*a*) Cr. El. 785. Cro. Car. 94, 422, 423. 1 Rol. 633. Antea 44. 2. Hob. 42. 309. Yelv. 2. 3. Noy 132. Moor 618, 619, 1 Jones 376. Godb. 185.

(*b*) Hard. 406. Cro. El. 511. 512. Dyer 79. pl. 49. 13 Co. 18, 38, 46.

(*c*) Cro. El. 511.

(*d*) 6 Co. 29. b. Cro. El. 511. 680 Herl. 87. Hob. 168.

(*e*) Cro. El. 511.

(*f*) Cro. El. 599. 785. Cro. Jac. 501. 1 Sand. 142. Lane 17. Moor 483. 589. Hob. 42. 297. Degg. Pars. 224.

by Compoſition or other lawful Means, the Lord ſhould have all the Tithes within the Mannor for the ſaid Penſion paid to the Parſon; and the Law intendeth, that at the Beginning it was for the Maintenance of Divine Service, and *pro bono Eccleſiæ*, the Reaſon of which Intendment is the continual Uſage, *a tempore cujus, &c.* It was reſolved, That upon this ſpecial Matter alledged, a Man may have Tithes as (*a*) appurtenant to a Mannor; for he preſcribeth by a *Que* Eſtate in the Mannor, and therefore cannot have them in groſs. But it was adjudged in (*b*) *Winchcomb*'s Caſe, in this Court, in a Prohibition *Hill.* 35 *Eliz.* That a Man cannot preſcribe generally in him and all thoſe whoſe Eſtate he hath in ſuch Mannor, to have any Tithes appertaining to the ſame; for without ſuch ſpecial Matter ſhewed, Tithes which are ſpiritual Things, and due *jure Divino*, for the Subſtraction of which, Remedy lieth only in the Spiritual Court, and no Remedy at the Common Law, cannot be Parcel or appurtenant to a Mannor, or any other temporal Inheritance. And the Attorney General was of Council with the Plaintiff, and *Walter* of the *Inner-Temple* with the Defendant.

(*a*) Cro. El. 599.

(*b*) Cro. El. 233. 763.

Trin.

Trin. 38 Eliz. Reg

The Archbiſhop of CANTERBURY's *Caſe.*

IN a Prohibition in the *King's-Bench*, between *Green* and *Balſer*, the Caſe was, There was a religious College in *Maidſtone*, to which the Rectory of *Maidſtone* was impropriate. And the ſaid College had divers Lands and Tenements within the ſaid Pariſh of *Maidſtone*, and all was given to the King by the Statute of 1 *E.* 6. And afterwards the Rectory was conveyed to the Biſhop of *Canterbury*, and the Lands, Parcel of the Poſſeſſion of the ſaid College, were conveyed to the Lord *Cobham*; and now the Farmer of the Lord *Cobham* brought a Prohibition againſt *Balſer*, Farmer of the ſaid Rectory, to *Whitgift*, Archbiſhop of *Canterbury*, and in his Prohibition he alledged the Branch of the Statute of 31 *H.* 8. concerning diſcharge of Tithes, and ſhewed, That the Maſter of the ſaid College was ſeized of the ſaid Lands, and of the ſaid Rectory, *ſimul & ſemel*, as well at the Time of the making of the Act of 31 *H.* 8. as at the making of the ſaid Act of 1 *E.* 6. and held them diſcharged of Tithes; and ſhewed the ſaid Act of 1 *E.* 6. by which the ſaid College was given to King *E.* 6. and thereupon the Defendant did demur in Law. And in this Caſe divers Queſtions were moved. Moor 420. 534. 1 Jones 4. 31 H. 8. cap. 13. 1 E. 6. cap. 14.

1. Whether the ſaid College came to the King as well by the Statute of 31 *H.* 8. as by the Statute of 1 *E.* 6. for if this College came to the King by the Statute of 31 *H.* 8. then without Queſtion the ſaid Branch of the ſaid Act concerning diſcharge of Tithes, extends to it: And it was objected by the Plaintiff's Council, That the Words of the ſaid Act are general, *ſc. That all Monaſteries*, &c. *Colleges*, &c. *which hereafter ſhall happen to be diſſolved*, &c. *or by any other Means*

Means come to the King's Highneſs, &c. *ſhall be veſted, deemed, and judged by Authority of this Parliament in the very actual and real Poſſeſſion of the King*, &c. And when this College came to the King by the Statute of 1 *E.* 6. it came to the King within theſe Words of the Act *(by any means.)* But it was anſwered by the Defendant's Council, and reſolved by the Court, That that could not be, for (*a*) ſeveral Reaſons.

(*a*) Hob. 310.

1. When the Statute ſpeaks of Diſſolution, Renouncing, Relinquiſhing, Forfeiture, giving up, *&c.* which are (*b*) inferiour Means, by which ſuch religious Houſes came to the King, then the ſaid latter Words *(or by any other Means)* cannot be intended of an Act of Parliament; which is the higheſt Manner of Conveyance that can be; and therefore the Makers of the Act would have put that in the Beginning, and not in the End, after other inferiour Conveyances, if they had intended to extend the Act thereunto. But theſe Words *(by any other Means)* are to be ſo expounded, *ſcil.* by any other ſuch inferiour Means. As it hath been adjudged, That Biſhops are not included within the Statute of 13 *Eliz. cap.* 10. for the Statute beginneth with (*c*) Colleges, Deans and Chapters, Parſons, Vicars, and concludes with theſe Words, *And others having ſpiritual Promotions*; theſe latter Words do not include Biſhops, *cauſa qua ſupra.* So the Statute of *Weſt.* 2. *cap.* 41. the Words of which are, *Statuit Rex, quod ſi Abbates, Priores, cuſtodes Hoſpital' & aliarum domorum religioſarum, &c.* Theſe latter Words do not include Biſhops, as it is holden 1 & 2 *Phil. & Mar. Dyer* 100. for the (*d*) Cauſe aforeſaid.

(*b*) Cro. Jac. 58. Raym. 62. Hard. 442. 2 Inſt. 137. 457. 478. 629. 1 Leon. 277. Dyer 109. pl. 38. Godb. 395. Latch. 89.

(*c*) Goldſb. 171. pl. 102. Godb. 393. 1 Jones 186.

(*d*) Dyer 109. pl. 38. 1 Jones 185.

2. The ſaid Clauſe of 31 *H.* 8. That the ſaid religious Houſes ſhall be in the King by Authority of the ſame Act; and the Statute of 1 *E.* 6. enacts, That all Colleges, *&c.* ſhall be by Authority of this Parliament, adjudged and deemed in the actual and real Poſſeſſion of the King, ſo that the (*e*) latter Parliament being of as high a Nature as the firſt was, and providing by expreſs Words, That the Colleges ſhall be, by Authority of the ſaid Act, in the actual Poſſeſſion of the King, the ſaid College cannot come to the King by the Act of 31 *H.* 8. It is ſaid in 29 *H.* 8. *Parliament & Statutes Br.* (*f*) If Lands be given to Tenant in Tail in Fee, his Iſſue cannot be remitted, for the latter Act doth take away the Statute *de Donis, &c.* 3. The uſual Form of pleading of them, which came to the King by the Statute of 1 *E.* 6. and by the Act of 31 *H.* 8. doth manifeſt the Law clearly, *ſcil.* to plead Surrender or Relinquiſhment, &c. *virtute cujus ac vigore* of the Statute of 31 *H.* 8. the King was ſeized, but to (*g*) plead the Act of 1 *E.* 6. of Chauntries, *virtute cujus ac vigore* of the Statute of 31 *H.* 8. was never heard or ſeen, and for all theſe Cauſes it was reſolved, That this College came to the King by the Act of 1 *E.* 6. and not by the Act of 31 *H.* 8.

(*e*) 4 Inſt. 42.

(*f*) Br. Parliam. & Statutes 73.

(*g*) Hob. 310.

The 2d Queſtion was, Foraſmuch as the ſaid College came to the King by the Act of 1 *E.* 6. and not by the Act of 31 *H.* 8.

Whether the ſaid Branch of diſcharge of Thithes, extends to ſuch Colleges which came to the King by any other Act, and not by the Act of 31 *H.* 8. and it was objected, That the ſaid Branch ſhould extend to Colleges which came to the King by any other Act, for it was ſaid, That although the Preamble of the ſaid Branch ſaith, *The late Monaſteries*, &c. yet this is not literally to be underſtood of Monaſteries only which were diſſolved before the Act, for (*late*) is to be conſtrued according to the Body of the Act, *ſc.* of thoſe which were diſſolved before, or which ſhould come to the King afterwards by the ſaid Act, ſo that when they are diſſolved, and in the King by Force of this Act, this Act may call them (*late*) *quod fuit conceſſum per Curiam.* Alſo they ſaid, That the Words of the Branch it ſelf are general, *ſcil. any Monaſteries*, &c. *Colleges*, &c. without any Limitation, ſo that they conceived, That the Words of the ſaid Branch made for them, and that this Clauſe of Diſcharge ſhould extend to all Monaſteries, *&c.* Colleges, *&c. quæcunque*, by what Means ſoever they came to the King; and they ſaid, That the Intent of the Act was ſo, for the Intent of the Act was to benefit the King, and to make the Subject more deſirous of purchaſing them, *&c.* Againſt which it was ſaid by the Defendant's Council, and reſolved by the Court, That neither the Words, nor the Meaning of the ſaid Branch, did extend to any Monaſteries, *&c.* but to thoſe (*a*) only, which came to the King by the Act of 31 *H.* 8. for it would be abſurd, That the Branch of the Act of 31 *H.* 8. ſhould extend to a future Act of Parliament, which the Makers of the Act of 31 *H.* 8. without the Spirit of Prophecy, could have no Foreknowledge of; but this Clauſe of Diſcharge of Tithes, ſhall extend only to thoſe Poſſeſſions which came to the King by the ſame Act. And where it was ſaid, That the firſt Words of the Branch were general, the ſame is true, but the Concluſion of that Branch is, *In as large and ample Manner as the late Abbots*, &c. So that (*late*) being ſo intended, as it hath been agreed on the other Side, *ſcil.* only of religious Houſes which came to the King by 31 *H.* 8. It is clear, that that Branch cannot extend to this College which came to the King by the Act of 1. *E.* 6.

(*a*) 1 Jones 4. 371, 185. Cro. Jac. 608. Hob. 309. Moor 420.

The 3d Queſtion was, admitting that the ſaid College had come to the King by the Statute of 31 *H.* 8. Whether ſuch general Allegation of Unity of Poſſeſſion of the Rectory and of the Lands in it, was ſufficient; and it was reſolved by the Court, That it was not ſufficient; for no Unity of Poſſeſſion ſhall be ſufficient within the ſame Act, but a lawful and perpetual Unity of Poſſeſſion Time out of Mind, as it was adjudged *M.* 34 & 35 *Eliz.* in a Prohibition between (*b*) *Valentine Knightly*, Eſquire, Plaintiff, and *William Spencer*, Eſquire, Defendant, where the Caſe was ſuch, The Plaintiff in the Prohibition ſhewed, That *Phillip Abbot*, of *Eveſham*, and all his Predeceſſors, Time out of Mind, were ſeized as well of the Rectory impropriate of

(*b*) 1 Leon 331. Lit. Rep. 14. Lane 17. Moor 534. 2 Bulſtr. 20. 240. 2 Bro. 25. Poſtea 48. a.

Badby cum Newnam in the County of *Northampton*, as of the Mannor of *Badby cum Newnam*, in *Badby* aforesaid, in his Demean, as of Fee, in the Right of his Monastery, *simul & semel*, until the Suppression of the same Monastery, *quodque ratione inde*, the said Abbot, and all his Predecessors, until the Dissolution of the same Monastery had held the said Mannor discharged from the Payment of Tithes, until the Dissolution of the same House, and shewed the Branch of the Statute of 31 *H.* 8. concerning dicharge from the Payment of Tithes, and conveyed the said Mannor to *Knightly*, and the said Rectory to *Spencer*, who libelled in the Spiritual Court for Tithes of the Demeans of the said Mannor, against *Knightly*, who upon the Matter aforesaid brought the Prohibition, and it was adjudged, That the Prohibition was maintainable; For the said Branch of the Act of 31 *H.* 8. was made to prevent two Mischiefs, one, That otherwise all the (*a*) Impropriations of Rectories to Houses of Religion, had been disappropriate; for if the Body to which the Rectory is appropriated, had been dissolved, the Impropriation to such Body had been dissolved also, as appears by 3 *E.* 3. 21 *E.* 14. 1. *a.* 21 *H.* 7. 4. *b.* *F. N. B.* 33. *k. l.* Another Mischief was, That whereas many religious Persons were discharged from the Payment of Tithes, some by their (*b*) Order, as the *Cistercians*, *Templars*, *Hospitallers* of St. *John's* of *Jerusalem*, as appears by 10 *Eliz.* *Dyer.* 277. Some by Prescription, some by Composition, some by the Pope's Bulls, *&c.* And the greater Part of religious Houses, as the said Abby of *Evesham* was, were founded before the Council of *Lateran*; and before Time of Memory, it would be infinite, and in a Manner impossible by any Search to find all the Discharges and Immunities which such religious Houses had, And for this Reason also the said Branch was made. And the great Doubt in the said Case, was conceived upon this Word (*Discharge*) for it was said, That (*c*) Unity of Possession was not any Discharge of Tithes, and by Consequence was not such Discharge as was within the Intent of the said Act. And for the Force of this Word (*Discharge*) 18 *E.* 3. *Bar.* 247. 35 *H.* 6. 10. *b.* 22 *E.* 4. 40. *b.* & 6 *H.* 7. 10. *b.* were cited. But as to that, it was resolved by the Court:

1. That the (*d*) Statute doth not say Discharge of Tithes, but Discharge of Payment of Tithes.

2. The Statute doth not say, Discharge of Payment of Tithes absolutely, but as freely as the Abbot, *&c.* held it at the Day of Dissolution, and then this Word (*Discharge*) being referred to a certain Time, may be intended of a Suspension by Unity. As if a Man seized of a Rent disseises the Tenant of the Land, and makes a Feoffment with Warranty, the Feoffee shall (*e*) vouch as of Land discharged of the Rent, and yet the Rent was but suspended, but

(*a*) Hob. 308.

(*b*) Hob. 296, 297. 309. Cro. Jac. 454, 559. 608. Dyer 277. pl. 60. Antea 44. *b.* Moor 532. 913. 2 Inst. 652. Cro. El. 579. 2 Brownl. 25. Palm. 119. 1 Leon. 332. Latch. 90, 91.

(*c*) 11 Co. 10. *a.* 14 *b.* Moor 50. 218. pl. 356. 532, 533, 534. 1 Jones 3. Hob. 44, 298. 309, 311. 32 H. 8. Br. dismes 17. Dav. 6. *a.* Br. N. C. 178. Dall. 50. pl. 14. 2 Bulstr. 184. Noy 35. 132. 1 Leon. 248. 332. 334. 335. 4 Leon. 47. Cro. Jac. 452, 453. 608. Dyer 43. pl. 21. Sav. 62.

(*d*) 11 Co. 14. *b.* Hob. 298.

(*e*) 2 Rol. 745.

but every Suspension is a Discharge for a time, and the Discharge being referred to the Time of the Warranty, extends to the Suspension. *Quod vide* 30 *E.* 3. 30. 3 *H.* 7. 4. *a.* 21 *H.* 7. 9. *a. b. F. N. B.* 135. *e.*

3. The Statute saith, *as freely as the Abbot*, &c. *retained the same.* And it was said, That it was the Intent (*a*) of the King, and of the Makers of the Act, to discharge the Land of Payment of Tithes in such Case of Unity of Possession, being a general Case to (*b*) induce Purchasers the rather to purchase the Land for greater Prices.

(*a*) Cro. Jac. 559. b. 11 Co. 14.

(*b*) Bridgm. 34.

4. For (*c*) the infinite Impossibility, and the impossible Infiniteness as hath been said, all the Discharges which such religious Houses had, could not be known; and the same Construction was made in this Court, *Hill.* 24 *Eliz.* in a Prohibition between (*d*) *John Rose* and *William Gurling*, for Tithes in *Flixton* in the County of *Suffolk*. See 18 *Eliz. Dyer* (*e*) 349. the Parson of *Peykirk*'s Case. And it was likewise resolved in the said Case of (*f*) *Knightly*, That nothing could be traversed but the Unity, for (*g*) *ratione inde*, *&c.* is but the Conclusion and the Judgment of the Law upon the precedent Matter; but it was also resolved, That if before the Dissolution the Farmers of the Demeans had (*h*) paid Tithes, *&c.* to the Abbot, *&c.* then the Intendment of the Law by the Reason of the said Unity of Possession (which ought to be Time out of Mind) that the Land was discharged of the Payment of Tithes, will not hold Place. For as *Bracton* saith, (*i*) *Stabitur presumptioni donec probetur in contrarium.* But if the Lands were always occupied by the Abbots, or demised over, and no Tithes at any Time paid for the same before the Act, although the Land be conveyed to one, and the Rectory to another, yet the Land is discharged of the Payment of Tithes: And if the Farmers of the Demeans had paid Tithes before the Act, the same should be pleaded by the Defendant in the Prohibition, and Issue thereupon might be taken, as it was in the like Case, *Trin.* 38. *Eliz.* in this Court, between *Edward Grevil* Esquire, Possessor of the Demeans of the Mannor of (*k*) *Nasing* in the County of *Essex*, Plaintiff, and *Martin Trot*, Proprietor of the Rectory of *Nasing*, Defendant, where against such Unity of Possession in Manner and Form aforesaid, alledged by the Plaintiff in the Abbot of *Waltham* and his Predecessors, *&c.* in the Rectory and Demeans, and with like Conclusion as aforesaid: The Defendant alledged Payment of Tithes by the Farmers of the said Demeans (without any (*l*) traverse by the Rule of the Court) and Issue was joined thereupon, and it was tried against *Trot*, and therefore the Prohibition stood. And it was likewise resolved, That although the Plaintiff in the Case at Bar alledged, That the Master of the said College, at the Time of the making of the said Act of 1 *E.* 6. held them discharged

(*c*) 9 Co. 25. a. 11 Co. 14. b. Hob. 298. Bridgm. 34.

(*d*) Co. Ent. nu. 4.

(*e*) Antea 44. b. Dyer 349. pl. 16. Hob. 44. Palm. 119. Cro. El. 511. 13 Co. 18.

(*f*) Antea 47. a.

(*g*) 11 Co. 10. a. Hard. 70. Hob. 298. 1 Leon. 333.

(*h*) Cro. El. 29. 584. 585. Moor 530. 534. Doct. pla. 251.

(*i*) Cro. Jac. 453. 559. 11 Co. 14. b.

(*k*) 4 Co. 71. b. 5 Co. 7. b. Cawdry's Case. 6 Co. 73. b. Co. Lit. 373. b. 2 Bulst. 314. Hob. 298.

(*l*) Hob. 298.

discharged of Tithes; and although the Lands of such religious Persons may be (*a*) discharged of Tithes by Prescription, as it hath been late adjudged in the Case of one *Wright* in this Court, or by Composition, *&c.* yet such general Allegation that he was discharged of Tithes, was not sufficient, without shewing how he was discharged, either by Prescription, Composition, or other lawful Means. But if the Land had come to the King by the Statute of 31 *H.* 8. then (*b*) by Force of the said Branch of Discharge of the Payment of Tithes, such general Allegation, that such Prior, *&c.* held the Land at the Time of the Dissolution of the said Priory discharged of the Payment of Tithes, without shewing how, had been sufficient, and so is the common Use in Prohibitions.

(*a*) 1 Rol. 653. 11 Co. 14. b. Cro. Car. 423. Hob. 297. Antea. 44. b.

(*b*) Hob. 300. 9. Co. 26. a. Cro. Car. 543. Bridg. 142. Godb. 398.

The Fourth Question in the Case at Bar was, Whether any House which was Ecclesiastical, and not Religious, as Bishops, Deans and Chapters, Archdeacons, and the like, shall be within the Act of 31 *H.* 8. for no House within the Act of 31 *H.* 8. is said Religious, but such which was regular, and which consisted of such Persons as had professed themselves, and vowed three Things, that is to say, Obedience, voluntary Poverty, and perpetual Chastity; and those are called in our Law, dead Persons in Law. For after such Profession their Heirs shall have their Lands, and their Executors or Administrators their Goods, and that was called *Mors civilis*, which was the Reason that when a Lease for Life was made, always the *Habendum* was, To have and to hold to him *durante vita sua naturali*, for it was then taken, that if the *Habendum* had been *durante vita sua* (without saying *naturali*) the civil Death, that is to say, the Entry into Religion had determined it. But it was resolved by the Court, That no Ecclesiastical House, if it be not (*c*) Religious, is within the Act of 31 *H.* 8. for divers Reasons.

(*c*) Co. Lit. 342. a. 1 Jones 185.

1. The Words of the Act are always through the whole Act in the copulative, *Religious and Ecclesiastical*, so that if it be Ecclesiastical only, it is out of the Act.

2. The Makers of the Act gave the King as well those Religious and Ecclesiastical Houses as were dissolved, &c. as those which should be afterwards dissolved, but none were dissolved before the Act, but only Religious Houses, and no House Ecclesiastical only; for no Bishoprick, Deanary, Archdeaconry, *&c.* or such like Ecclesiastical and Secular Corporation was dissolved before; therefore no Ecclesiastical House which was not Religious, (which after the Act shall be dissolved) was within the Intent and Meaning of the said Act.

Thirdly, It is enacted by the Statute of 31 *H.* 8. that (*d*) all Religious and Ecclesiastical Houses, which after shall be dissolved, *&c.* shall be in the actual Possession of the King, in the same State and Condition as they were at the

(*d*) Dyer 231. pl. 1. 1 Co. 47. a. 10 Co. 55. b. Ben. in Kelw. 211. pl. 19. Ben. in Ash. pl. 19. N. Benl. 132. pl. 195.

the Time of the making of the ſaid Act, upon which Clauſe of the Statute it was adjudged, *Paſch.* 5 *Eliz. Rot.* 129. reported by Serjeant *Bendloes*. And *Mic.* 6 & 7 *Eliz. Dyer* 231. and *Plow. Comm.* 207. (*a*) That if an Abbot after the ſaid Act grants the next Avoidance of an Advowſon, or makes a Leaſe for Years, and afterwards ſurrenders, ſo that by the Act, the Poſſeſſions of the Abby ought to be in the King, in the ſame State and Condition as they were at the Time of the making of the Act; and at the Time of making of the Act, the Land and the Advowſon were diſcharged of all Intereſts, for this Reaſon it was adjudged in both Caſes, That the Leaſe and the grant were void by the ſaid Act. But if a Dean and Chapter, and other ſuch Eccleſiaſtical and Secular Corporations ſhould be within the ſaid Act, then if they ſhould ſurrender their Poſſeſſions, they would avoid all their own Grants and Leaſes, which would be dangerous. And that was one principal Reaſon that the Colleges, Chanteries, *&c.* which came to the King by the Acts of 37 *H.* 8. or 1 *E.* 6. ſhould not veſt in the King by the Act of 31 *H.* 8. for the Miſchief before, for avoiding of their Leaſes, Grants, *&c.* And to conclude this Point, it was held in the Common Pleas in *Parret's* Caſe, concerning the Priory of *Frideſwide*, that if the Houſe be not religious and regular, that it is not within the Act of 31 *H.* 8.

(*a*) Dyer 231. pl. 1. 1 Co. 47. a. 10 Co. 55. b. Ben. in Kelw. 211. pl. 19. Benl. in Aſh. pl. 19. N. Ben. 132. pl. 195.

And as to the Opinion of 10 *Eliz. Dyer* 280. (*b*) *Corbet's* Caſe, concerning the Priory of *Norwich*, it ſeems that that differs much from other Deans and Chapters, for the Dean and Chapter of *Norwich* was once religious, for they were Prior and Convent before; and yet that Caſe was denied by *Popham* Chief Juſtice, and ſome other of the Judges, for the Reaſons and Cauſes aforeſaid.

(*b*) Dyer 280. pl. 11, 12, 13.

Fifthly, It was held by the Court, That although it is provided by the Statute of 1 *E.* 6. that the King ſhall have the Lands of the Colleges, *&c. in as ample and large Manner as the ſaid Prieſts, Wardens*, &c. *had or enjoyed the ſame*, that theſe general Words ſhould not diſcharge the Land of any Tithes, for they are not iſſuing out of Land, but are Things diſtinct from the Land. For as the Book is in 42 *E.* 3. 13. *a.* the Prior ſhall have (*c*) Tithes of Land againſt his own Feoffment of the ſame Land; and it is no good Cauſe of Prohibition to alledge Unity of Poſſeſſion in a College which came to the King by the Statute of 1 *E.* 6. as a Man may by the Statute of 31 *H.* 8. in an Abbot, Prior, *&c.* as is aforeſaid; for the Statute of 1 *E.* 6. hath no ſuch Clauſe of

(*c*) Cro. Jac. 362. 452. 1 Co. 111. a. 11 Co. 13. b. 1 Rol. 655. 2 Rol. 57. 2 Bulſt. 183, 184. Styles 279. Owen 39, 40. Moor 47. 50, 219. 532. 910. Dall. 50. Dav. 6. a. Noy 35. 132. Br. N. C. 178. Dyer 43. pl. 21. Cro. El. 161. 479. Degge 226. Hetl. 31.

of Diſcharge of Payment of Tithes, as the Statute of 31 *H.* 8. hath. And therefore ſuch perpetual Unity, as hath been ſaid before, will not ſerve upon this Act of 1 *E.* 6. And afterwards a Conſultation was granted: And another Conſultation was granted the ſame Term in another Prohibition ſued upon the ſame Matter, between *Green* and *Buſſken.* And *Laurence Tanfield* and others were of the Council with the Plaintiff, and the Attorney-General and others with the Defendant.

Paſch.

Paſch. 39 Eliz. Reg.

In the Exchequer.

Sir HUGH CHOLMLEY's *Caſe.*

SIR *Hugh Cholmley* Debtor to the Queen, brought an Action of Treſpaſs in the Exchequer againſt *Randal Hamner* and others, *Quare clauſum fregit* in *Bettifield* in the County of *Flint*, *quo minus*, *&c.* And upon Not guilty pleaded, the Jury gave a ſpecial Verdict to this Effect; *Thomas Holford* had Iſſue two Sons, *Chriſtopher* his elder, and *George* his younger Son; *Chriſtopher* had Iſſue *Mary*, Wife of the ſaid Sir *Hugh Cholmley* now Plaintiff; and that the ſaid *Thomas Holford* was ſeiſed in Fee of the Land in Queſtion amongſt others; and he and *Jane* his Wife, and *Chriſtopher* their elder Son, did levy a Fine of the ſaid Land 7 *Eliz.* to *John Warren* and *Thomas Stanley*, *&c.* to the Uſe of the ſaid *Thomas Holford* for Life, and afterwards to the Uſe of the ſaid *Chriſtopher* and the Heirs Males of his Body, and afterwards to the Uſe of the ſaid *George*, and to the Heirs Males of his Body, *&c.* and afterwards to the Uſe of the right Heirs of the ſaid *Thomas*. And afterwards, that is to ſay, in *Sept.* 11 *Eliz.* the ſaid *Thomas Holford* died; 23 *Jan.* 12 *Eliz.* the ſaid *George* by Indenture between him and *John Warren* inrolled within ſix Months in the Chancery for 20 *l.* bargained and ſold the Tenements aforeſaid; and all his Eſtate, Right, Title and Intereſt in them to the ſaid *John Warren*, to have and to hold the Tenements aforeſaid and all his Eſtate, Right, Title, and Intereſt in them to the ſaid *John Warren* for the Life of the ſaid *Chriſtopher*, and after his Death the Remainder to the Queen, her Heirs and Succeſſors for ever, upon Con-

Moor 342. 2 Rol. Rep. 60.

Condition that the Eſtate ſhould be void upon Tender of 20 *l.* at the Chapel of the Rolls to the ſaid *Warren*, or to the Queen, her Heirs or Succeſſors; 14 *Martii* 12 *Eliz.* the ſaid *Chriſtopher* did enfeoff Sir *Hugh Cholmley*, the Plaintiff's Father and others, to the Uſe of them and their Heirs, and 17 *Aprilis* 12 *Eliz.* at the great Seſſions held within the ſaid County of *Flint*, a common Recovery was had againſt the ſaid Feoffees, who vouched to Warranty the ſaid *Chriſtopher*, who vouched over the common *(a)* Vouchee, and Execution was had accordingly, which was to the Uſe of *Chriſtopher* and his Heirs. And afterwards, that is to ſay, 21 *Novemb.* 14 *Eliz. George Holford* tendred 20 *l.* to *Warren* at the Chapel of the Rolls, which he received. After which Tender, the Queen, by her Letter Patents bearing Date 14 *Decemb.* 14 *Eliz.* reciting the Grant made by the ſaid *George Holford* to *Warren*, the Remainder to her upon the Condition aforeſaid; and that the ſaid Grant and Remainder to her was by Fraud and Covin, *&c. prout nobis ſatis liquet*, the Queen *ex certa ſcientia & mero motu* granted the Remainder which ſhe had in the Tenements aforeſaid to the ſaid *Chriſtopher* in Fee. And afterwards 15 *Decemb.* 14 *Eliz. George Holford*, by Indenture delivered at *Weſtminſter* and inrolled within ſix Months in the Chancery, bargained and ſold to *John Bruin* the Tenements aforeſaid, to have and to hold for the Term of *Chriſtopher*'s Life, the Remainder to the Queen in Fee upon Condition to ceaſe upon Tender of 30 *s.* at St. *Dunſtan*'s Church, *&c.* to which Grant 18 *Decemb.* 14 *Eliz. Bruin* agreed; and afterwards 4 *Feb.* 14 *Eliz.* another Recovery with *(b)* double Voucher, in which the ſaid *Chriſtopher* was vouched again was ſuffered; which Recovery was to the Uſe of the ſaid *Chriſtopher* and his Heirs, *Anno* 19 *Eliz. Chriſtopher* died without Iſſue Male, 27 *Jan.* 23. *Eliz. George* paid the 30 *s.* to *Bruin* according to the ſaid Condition which was found by Inquiſition, found by Virtue of a Commiſſion under the Great Seal of *England*, upon which the ſaid *George* ſhewed his Title to the Court; and, upon ſhewing his Right, it was awarded *quod Manus Dominæ Reginæ amoveantur*. And thereupon the Defendants, by the Commandment of the ſaid *George*, entred upon the Plaintiff, who claimed in the Right of his Wife, whereupon the Plaintiff brought his Action of Treſpaſs; and whether the Entry of the ſaid *George* was lawful or not, was the Queſtion.

(a) 1 Co. 62. a. Co. Lit. 372. b.

(b) Co. Lit. 372.

And after many Arguments at the Bar, the Caſe was argued at the Bench by *Ewens*, *Clark*, and *Periam* Chief Baron. And it was unanimouſly agreed by them, that the Entry of *George Holford* was not lawful, wherefore Judgment was

was given for the Plaintiff. And in this Case divers Points were unanimously resolved by the Court.

1. That the Remainder limited to the Queen after the Death of *Christopher*, was void for three Reasons:

1. Because *Warren*, who was Party to the first Indenture, took nothing; and by Consequence the Queen, who is not Party to the Indenture, but named by Way of Remainder (*a*) after the *Habendum*, the particular Estate being void, shall take nothing; for the Estate which is limited to *Warren* is for the Life of *Christopher*. And as to this Point the Case is such, *Christopher* being Tenant in Tail, the Remainder to *George* in Tail; *George*, by Deed indented and inrolled, doth bargain and sell his Remainder to *Warren* for the Life of *Christopher*; this Grant is void, because it can never take Effect in Possession, nor can the Grantee ever have any Benefit thereof: And therefore a Difference (*b*) was taken between such Grant of a Reversion and the said Grant of a Remainder; for the Grant of a (*c*) Reversion during the Life of a Tenant in Tail is good, because he shall have the (*d*) Services which the Tenant in Tail ought to do during the Life of the Tenant in Tail; but such Grant of a Remainder can never to any Purpose take Effect, and therefore it is void. Moreover, a manifest Difference appears between this Case at Bar and a (*e*) Lease to *Christopher* for his Life, the Remainder to another for the Life of *Christopher*, for by Possibility the Remainder may take Effect; *scil.* If the Tenant for Life makes a Feoffment in Fee, or commits any Forfeiture, he in the Remainder, may enter for the Forfeiture; and that is proved by the Book in 41 *E.* 3. *Fitz. Waft* 83. and (*f*) (*remanere dicitur quasi terra remanens*) that cannot be when a Remainder cannot by any Possibility fall into Possession. For a Remainder ought to vest in Estate, during the (*g*) particular Estate, and ought to take Effect in Possession when the particular Estate ends, for *vana est illa potentia quæ nunquam venit in actum.* It was objected, that *Christopher* might enter into Religion, and then might *Warren* enter during his natural Life, for as much as *Christopher* had no Issue Male. But as to that it was answered and resolved, that such Possibility (*h*) of Profession shall not make the Remainder good for two Reasons:

(*a*) Co. Lit. 22. a. 26. b. 378. b. Cr. Jac. 434. Popham 125. 126.
(*b*) Yelv. 149.
(*c*) 11 Co. 70. b.
(*d*) Yelv. 149.
(*e*) Plowd. 422. a. Moor 344. Winch. 55. 1 Sand. 151.
(*f*) Yelv. 149. Co. Lit. 143. a.
(*g*) 1 Co. 66. b. 129. b. 130. a. 134. b. 135. b. 3 Co. 21. a. Raym. 54, 13. 2 Anderf. 37. Moor 104.
(*h*) 11 Co. 70. b.

1. Because it is such a remote Possibility as shall not be intended by a common Intendment to happen; but (*i*) a Possibility which shall make a Remainder good, ought to be a common Possibility, and *potentia propinqua*, as Death, or Death without Issue, or Coverture, or the like. And therefore as the Logician saith, *Potentia est duplex, remota & propinqua, 9 H.* 6. 24. *b.* the Remainder to a (*k*) Corporation which is not at the Time of the Limitation of the Remainder is void, although

(*i*) Co. Lit. 20. b. 25. b. 10 Co. 50. b. 2 Rol. Rep. 129.
(*k*) Winch. 55. Moor 104. Hob. 33. 4 Leon 223. Co. Lit. 264. a. Dall. 31. 1 Roll. Rep. 254.

although ſuch be erected during the particular Eſtate, for it was *potentia remota*: And this Difference plainly appears in a common Caſe in our Books. If a Leaſe be made for Life, the (*a*) Remainder to the right Heirs of *J. S.* This is good; for, by common Poſſibility, *J. S.* may die during the Life of the Tenant for Life: But if at the Time of the Limitation of the Remainder there is no ſuch (*b*) *J. S.* but during the Life of the Tenant for Life *J. S.* is born and dies, his Heir ſhall never take as it is agreed in 2 *H.* 7. 13. *b.* And in (*c*) 10 *E.* 3. 46. the Caſe was, That upon a Fine levied to *R.* he granted and rendred the Tenements to one *I.* and *Florence* his Wife for their Lives, the Remainder to (*d*) *G.* Son of *I.* in Tail, the Remainder to the Right Heirs of *I.* and in Truth at the Time of the Fine levied, *I.* had not any Son named *G.* but afterwards he had a Son named *G.* and died: And in a *Præcipe* againſt *Florence*, it was adjudged that *G.* ſhould not take the Remainder in Tail, becauſe he was not born at the Time of the Fine levied, but long after, wherefore another, who was right Heir to *I.* by Judgment of the Court, was received; for when *I.* had not any Son named *G.* at the Time of the Fine levied, the Law will not ſuppoſe that he will afterwards have a Son named *G.* for that is *potentia remota*. Note Reader, A (*e*) Difference between a Remainder limited by a particular Name, and by a general Name; for a Remainder limited by a general Name may be good, although the Perſon be not *in eſſe* at the Time of the Remainder limited: As if a Leaſe for Life be made, the (*f*) Remainder to the right Heirs of *J. S.* who is alive, this Remainder may be good, and yet he hath no Heir at the Time of the Remainder limited. The ſame Law of a Remainder *primogenito filio*. But a Remainder limited in (*g*) particular by Name of Baptiſm and Sirname is not good, if the Perſon be not *in eſſe*. It is held in 7 *E.* 3. that if the Advowſon of the Church of *D.* be granted to the Parſon of *D.* and his Succeſſors, it is void as to the Succeſſor, becauſe the Succeſſor who ought to take it, can never have any Benefit by Way of Preſentation.

(*a*) Br. Done 22. Br. Grant 151. Raym. 144. Co. Lit. 343. a. Winch. 55. 2 Anderſ. 37. Moor 104. Perk. Sect. 52. Poph. 82. 9 H. 6. 24. a. Hob. 33. 3 Co. 20. a. 10 Co. 50. b. 51. a.

(*b*) Hob. 33. 1 Rol. Rep. 254. Br. Done 22. Br. Grant 151.

(*c*) 10 E. 3. 45. a. b. 46. a.

(*d*) 1 Rol. Rep. 254. Moor 104.

(*e*) Moor. 104.

(*f*) 3 Co. 20. a. Raym. 144. 2 Anderſ. 37. Winch. 55. Moor 104. Co. Lit. 343. a. Poph 82. Perk. Sect. 52. Hob. 33. 9 H. 6. 24 a. 10 Co. 50. b. 51. a.

(*g*) 1 Rol. Rep. 254. Moor 104.

The ſecond Reaſon why the Remainder to the Queen is void, was becauſe the Law will never adjudge a Grant good by Reaſon of a Poſſibility or Expectation of a Thing which is againſt Law, for that is *potentia remotiſſima & vana*, which by Intendment of Law *nunquam venit in actum*.

Thirdly, The Remainder to the Queen is void, becauſe *George* having a Remainder in Tail, hath granted all his Eſtate to *Warren*, *Habendum* all his Eſtate during the Life of *Chriſtopher*, the Remainder to the Queen, in which Caſe, when he hath granted all his Eſtate to *Warren*, he (*h*) cannot limit any Remainder

(*h*) Moor 344.

Remainder thereof to the Queen; for a Remainder is but a Remnant of the Eſtate of the Grantor, and the Queen cannot have any Remnant of the Eſtate of *George*, when he having a Remainder in Tail has granted all his Eſtate to *Warren*. And *Littleton*, *fol.* 145, ſaith, That in ſuch Caſe the Eſtate Tail is in *(a)* Abeyance. And 19 *H.* 6. 60. *a.* it is ſaid, That if *(b)* Tenant in Tail be attainted of Felony, and the King after Office found ſeiſeth, the Eſtate Tail is in Suſpence. And *vide* 13 *H.* 7. 10. *a.* if *(c)* there be Tenant for Life, the Remainder in Tail, if he in Remainder in Tail releaſe to Tenant for Life all his Right, it puts the Eſtate Tail ſo in Abeyance, that no Right remains in him who releaſes to have an Action of Waſte; for in the ſame Caſe, by his Releaſe, he hath put all his Eſtate out of him.

(a) Lit. Sect. 649. Lit. 146. a. 3 Co. 84. b.
(b) Godb. 442.
(c) Godb. 442.

It was agreed, *Hill.* 35 *Eliz.* in *(d)* *Blitheman's* Caſe, That if Tenant in Tail in Conſideration of paternal Love, covenants by Deed to ſtand ſeiſed to the Uſe of himſelf for his own Life, and after his Death to the Uſe of his eldeſt Son in Tail; and after this Covenant the Covenantor marries and dies, the Wife ſhall be endowed; for when Tenant in Tail hath limited the Uſe to himſelf for the Term of his own Life, he cannot limit any Remainder over, for an Eſtate for his own *(e)* Life is as long as he can limit by the Law, and therefore the Limitation of the Remainder is void. Wherefore it was concluded, that upon Conſideration of the firſt Point *Warren* had nothing. And upon Conſideration of this latter Point, if he ſhould take *omnino*, he would take *(f)* *nimium*, and by Conſequence the Remainder to the Queen is void *quacunque via data*. And it was agreed that the Limitation to *Warren* by the *Habendum* for the Life of *Chriſtopher*, was void and repugnant.

(d) 1 Anderſ. 291. Moor 345. 683. Lit. Rep. 122. Yelv. 51. Cr. El. 279, 280. Noy 46. 2 Rol. Rep. 70. Godb. 442. Dyer 55. pl. 3. in Marg.
(e) 1 Co. 44. a. Co. Lit. 331. a. 332. a. Godb. 442, 443. Moor 414, 413. Lit. Sect. 613.
(f) Moor 344.

2. Admitting the Remainder to the Queen was good, yet it was reſolved, that the common Recovery did bar the Eſtate of *Warren*, and by Conſequence the Condition alſo during his Life; and therefore as to this Point the Caſe is but thus: A Man makes a Gift in Tail, the Remainder in Fee; he, in Remainder, grants his Remainder to another for Life; the Remainder to the Queen in Fee upon Condition *ut ſupra*, Tenant in Tail ſuffers a common Recovery, if this Recovery ſhall bar the Eſtate of Tenant for Life in Remainder, and the Condition alſo is the Queſtion. And it was reſolved, that the Recovery doth bar not only the Eſtate Tail, but alſo the Eſtate for Life of *Warren*, although the *(g)* Remainder of the Fee was in the Queen, for it is out of the Statute of *(h)* 34 *H.* 8. becauſe the Eſtate Tail was not of the Queen's Gift, nor of any of her Anceſtors, Kings of *England*, as it hath

(g) Antea 15. b. Moor 115, 195. 345. 1 Anderſ. 469, 47, 142, 143. Cr. Car. 430. Plowd. 555. a. Yelv. 149. Noy 132. Co. Lit. 372. b. 3 Leon 57. 4 Leon 40. Benl. in Kelw. 213. a. b. O. Benl. 32. Benl. in Alh. 26. N. Benl. 223. pl. 254.
(h) 34 & 35 H. 8. c. 20. 10 Co. 37. a.

hath been adjudged *Mich.* 15 & 16 *Eliz. in Partitione facienda, inter Jackſon & (a) Drury*; & 27 *Eliz. in Communi Banco, inter (b) Wiſeman & Jennings*. And if the Eſtate of *Warren* be bound and barred, the Condition annexed to his Eſtate is barred alſo during his Life. And therefore if one gives Lands in Tail, and afterwards grants the Reverſion upon Condition; if the Tenant in Tail ſuffers a Common Recovery, it bars the Reverſion and Condition alſo. And therefore it was adjudged *Mich.* 34 & 35 *Eliz.* between *(c) Gately* and *Hunt*, being an Exchequer Chamber Caſe, by all the Judges of *England*, That if he in the Reverſion with a Remainder expectant upon an Eſtate Tail grants a Rent Charge, or Common, or makes a Leaſe for Years, or acknowledges a Statute, and afterwards Tenant in Tail ſuffers a common Recovery and dies without Iſſue, the Poſſeſſion of the Recoveror ſhall not be ſubject to the Charges, Leaſes, or Statutes of him in the Remainder.

(a) Moor 115. pl. 258. 3 Leon 37. Ca. 84. 1 Anderſ. 48. ca. 115. Benl in Kelw. 213. pl. 26. Benl. in Ann. 26. Benl. 32. pl. 132. N. Benl. 223 pl. 254.

(b) 2 Co. 15. a. b. Moor 195. 345. 1 Anderſ. 140, 141.

(c) Moor 154, 345. 1 Co. 61. b. 62. a. b. Poph. 5. Bendl. Cent. 250. 4 Leon 150. 1 Anderſ. 282. Goldſb. 5. 10 Co. 42. b. 2 Rol. Rep. 221. 1 Co. 127. b. 128. a. 3 Keb. 288, 289. Winch. 41. Noy 10. Palm. 139.

1. Becauſe the Recoveror, ſo long as the Recovery remains in Force, is in under the Eſtate of Tenant in Tail, which Eſtate was not ſubject to any of the ſaid Incumbrances of him in the Remainder: For ſuppoſe, that before the Recovery Tenant in Tail had made a Leaſe for Years, or acknowledged a Statute, and afterwards had ſuffered the Recovery, and died without Iſſue, without Queſtion the Poſſeſſion of the Recoveror ſhall be ſubject to the Leaſe and Statute of the Tenant in Tail, and ſhall not be ſubject to the Leaſes and Statutes of him in Remainder alſo, for then there would be Confuſion. Alſo the Charges of him in Remainder or Reverſion cannot take Effect in Poſſeſſion 'till the Remainder or Reverſion comes in Poſſeſſion, and that cannot happen after the Recovery. The ſame Law of a Condition annex'd to a Reverſion or Remainder for the Reaſons aforeſaid; then this Payment to *Warren* cannot deveſt the Remainder out of the Queen for three Reaſons:

1. Becauſe the Condition during the Life of *Warren* was diſcharged.

2. Becauſe he who takes Benefit of a Condition ought to have the whole Eſtate given reveſted in him as in his *(d)* firſt Eſtate, and that cannot be here; for the Eſtate for Life of *Warren* was barred by the Recovery: Alſo the Tender to *Warren* was to the Intent to reveſt his Eſtate, and that cannot be when his Eſtate was barred, and cannot be reveſted, for which Cauſe this Payment cannot deveſt the Remainder out of the Queen.

(d) Co. Lit. 202. a. 1 Co. 86. b. 4 Co. 120. b. 1 Rol. 474. Cr. El. 641.

A third Point was argued by the Defendants Counſel, That there needed not in this Caſe any *(e)* Office or *Monſtrance de droit* to deveſt the Remainder out of the Queen by Force of the Condition, for the Condition is performed by one Subject to another Subject by Matter *in pais*, and in as much as the Eſtate for Life cannot be reveſted by Force of the Condi-

(e) 2 Rol. 215. Cr. Eliz. 641. Moor 546.

tion, unleſs the whole Eſtate to which the Condition trencheth be defeated, therefore for Neceſſity, and by Operation of Law, the Eſtate for Life being defeated, the Remainder to the Queen, which depends upon it, ſhall be defeated alſo; as in 49 *E.* 3. in *Iſabel* (*a*) *Goodcheap*'s Caſe. One deviſed Houſes in *London*, deviſable by Cuſtom, and held of the King in Tail, and if the Donee died without Iſſue, that the Land ſhould be ſold by his Executors, and died; the Deviſee died without Iſſue, now the Land is eſcheated to the King, yet the Bargain and Sale of the Executors ſhall deveſt the King's Eſtate for Neceſſity, and that without Petition, or *Monſtrance de droit*; and alſo their Vendee is in by the Deviſor, paramount the Eſcheat: So the Bargainor in this Caſe ſhall be in of his ancient Eſtate paramount the Remainder to the Queen. 25 *E.* 3. 48. *a.* (*b*) If a Diſſeiſor, or one who hath no Title makes a Leaſe for Life, the Remainder to the Queen; if the Diſſeiſee, or he who hath good Right, recovers againſt Tenant for Life, and entreth, the Queen's Remainder ſhall be thereby defeated; otherwiſe if the Recovery be by (*c*) feigned or no Title, there the Queen's Remainder is not touched; and *Plow. Comm.* 553, *a. b.* agrees therewith. So if Tenant in Tail grants the Land to the King in Fee with Warranty, and the King grants it for Life, Tenant in Tail dies, and the Iſſue in Tail recovers in a *Formedon* againſt Tenant for Life, the King's Eſtate ſhall be defeated, as it appears by (*d*) 7 *R.* 2. *Aide del Roy* 61. 22 *E.* 3, 7. *acc.* And ſo it was ſaid, if the Diſſeiſee in ſuch Caſe enters, it ſhall defeat the King's Remainder. See *Plow. Comm.* (*e*) 489. *a.* And note there the principal Caſe of the Lord *Lovel*: An Eſtate veſted in the King ſhall be defeated by Force of a Condition, by an Act in Law, without Office or *Monſtrans de droit*: And mark there the Caſes of Remitter put in the End of the Caſe. Againſt which it was argued by the Plaintiff's Counſel, That admitting the Remainder to the Queen to be good, that this Tender *in pais* to a Subject ſhall not deveſt the Remainder out of the Queen. For as *Bracton* ſaith, (*f*) *Nihil tam conveniens eſt naturali æquitati unumquodque diſſolvi eo ligamine quo ligatum eſt*: And as no Eſtate can be veſted in the Queen without Matter of Record, ſo no Eſtate can be deveſted out of her (*g*) without Matter of Record. See *Plow. Comm.* 553. *a. b.* in *Walſingham*'s Caſe, and *Plow. Comm.* 380. *Nevil*'s Caſe, (*h*) 12 *H.* 7. and many other Books. And it was ſaid, that when an Eſtate ſhall be deveſted out of a common Perſon, and veſted in another, without Action, Entry, or Claim, it ſhall be deveſted out of the King without Petition or *Monſtrans de droit*, as it is agreed *Plow. Com.* 489. *a.* in the Lord *Lovel*'s Caſe cited by the other Side; but when in the Caſe of a common Perſon the Eſtate ſhall not be deveſted out of him without Action, Entry, or Claim; there it ſhall not be deveſted out of the King without Petition or *Monſtrans de droit*,

(*a*) Lit. Rep. 123. Godb. 443. Cr. El. 640. 8 Co. 76. b. 49 E. 3. 16. a. b. Br. Eſcheat 32. Br. Deviſe 10. Fitz. Deviſe 8. Plowd. 259. a. 4 Co. 58. a. Raym. 83. 29 Aſſ. 31. Hard. 13, 14. Swinb. 335. 2 Rol. Rep. 351. Poſtea 53. b.

(*b*) Co. Lit. 241. a. 354. b. Cr. El. 640. 1 Co. 16. a.

(*c*) Co. Lit. 354. b. 1 Co. 16. a.

(*d*) Co. Lit. 354. b. 4. Co. 59. b.

(*e*) Hob. 348.

(*f*) 4 Co. 57. b. 5 Co. 26. a. 6 Co. 43. b. 2 Inſt. 359, 573. Davis 33. b.

(*g*) Cro. Eliz. 641. Moor 346. Kelw. 7. b.

(*h*) 12 H. 7. 21.

&c. And the principal Case in *Plowden*'s Commentaries in the Case of the L. *Lovel* was well agreed; for there, by Force of the Condition, if it had been in the Case of a common Person, the Estate gained by Escheat should be devested by Act in Law without Entry or Claim: And so and for the same Reason the Cases of Remitter, and the Case in (*a*) 49 *E.* 3. were well agreed. And also for as much as the Executors in 49 *E.* 3. had but a Power, they had no other Mean but only to sell, for they could not have a Petition, *Monstrans de droit*, or other Remedy. But in this Case, G. *Halford*, the Grantor, had clear and apparent Remedy, either by Petition or *Monstrans de droit*. And it was said, that the Queen's Remainder did so privilege the Estate of the Tenant for Life that the Grantor could not enter upon the Tenant for Life. And it was said, if Land upon Condition comes to the Queen, the Condition is broken; the Queen makes a Lease for Life, he who hath the Condition cannot enter, but ought to have a Petition or *Monstrans de droit*, *&c.* and that appears in the Book in (*b*) 9 *H.* 4. 4. *a. b.* A Man bound in a Statute conveys Land to the King, who leases for Life, the Conusee shall not extend upon the Possession of the Tenant for Life. And it was said, if the Cases put before, when he who hath Right doth recover against Tenant for Life, the Reversion or Remainder being to the King by (*c*) defeasible Title shall devest the King's Estate, should be granted, yet they are not to be compared to our Case; for in our Case, the Party himself, who hath conveyed the Land lawfully to the King, would now defeat the Estate which himself hath made by Entry, which, as was said, he cannot do; but when a Disseisor conveys Land to the King, and the King grants it over for Life, there, if the Disseisee, who is a meer Stranger, by his Entry or Action, shall devest the King's defeasible Title, yet it is not to be resembled to our Case. But this Point was not (*d*) resolved, for the Barons gave Judgment upon the other Points.

(*a*) 49 E. 3. 16. a. b. Antea 53. a.

(*b*) Br. Petition 9. Br. Statute Merchant 11. Br. Entrie congeable 21. Fitz. Petition 15.

(*c*) Co. Lit. 354. b. Cr. El. 640.

(*d*) 2 Rol. Rep. 60.

But it was agreed in this Case, although the Remainder passed by Bargain and Sale, so as in Judgment of Law an Use passed first, and although it was of a Thing which lieth in Grant and not in Livery; and that the Words of the Condition are, that upon Payment of the Money, that the Estate shall cease and shall be void, yet the Estate shall not be revested in the Grantor without Claim; for the Estate of Inheritance cannot be determined by Condition (*e*) without Entry or Claim. In *Newis* and *Scholastica*'s Case in *Plow. Comm.* 413, Difference is taken between a Condition and a Limitation; for a Limitation shall determine an Estate without Entry or Claim, otherwise of a Condition. See *Browning* and *Beston*'s Case, 133 & 136. Another Difference is taken between a Rent *in esse* granted upon Condition, and a Rent newly created granted upon

(*e*) Moor 292, 345, 346. Co. Lit. 214. b. 218. a. 1 Co. 94. b.

Condition. And although an (*f*) Uſe at Common Law might have ceaſed without Claim, yet now the Uſe is transferred to the Poſſeſſion; for the Pleading is, (*g*) *vigore Statuti*, &c. *de uſibus in poſſeſſionem transferendis*, ſo that now ſince the Statute, to ſuch Qualities to which Eſtates by the Common Law are ſubject, to ſuch (*a*) Qualities Uſes are ſubject, for the Uſe is transferred and incorporated to the Poſſeſſion. And Baron *Ewens* ſaid, That upon this Reaſon it was adjudged in the King's Bench, that where one by Deed indented and enrolled, bargained and ſold Land to another, and his Heirs rendring Rent, that the (*b*) Reſervation was good; for now the Uſe and the Poſſeſſion paſs *tanquam uno flatu*, and therefore it is all one with a Grant of the Land itſelf; for if the Uſe ſhould paſs firſt, then Rent cannot be reſerved out of the Uſe, and then the Reſervation of the Rent would be void. Alſo it was reſolved, that this Claim of the Remainder, by Force of the Condition, ought to have been made upon the Land, and that Claim made out of the Land was not ſufficient. And therefore the ſaid Bargain and Sale to *Bruyn* by Deed indented, being made at *Weſtminſter* out of the Land, could not in this Caſe enure to two Effects: *ſcil.* Firſt, to make a Claim, and then to paſs the Remainder, as it was objected by the Defendant's Counſel. See *Litt.* 40. If a Villain purchaſe a Reverſion, the (*c*) Claim by the Lord ought to be made upon the Land. And the Book 15 *Aſſ.* 12. is good Law; that a Diſtreſs upon the Land after a Condition broken, amounts to a Claim of the Seigniory, to which it was annexed. So it was concluded, firſt, becauſe the Remainder to the Queen was void, by Conſequence the ſaid common Recovery hath barred the Remainder to *George*, and by Conſequence the Plaintiff claiming under the Recovery, ought to have Judgment to recover. Secondly, Admitting the Remainder good to the Queen, and that the Condition was not diſcharged during *Warren*'s Life; and that the Remainder to the Queen ſhall be defeated without Petition or *Monſtrans de droit*, yet the ſame is not determined 'till Claim made upon the Land, and then the Grant of the Queen is good, and the ſecond Grant of *G. Holford* to the Queen is void, and by Conſequence the ſecond Recovery is a good Bar. But againſt the Grant, by the Letters Patents, divers Objections were made by the Defendant's Counſel.

(*f*) 6 Co. 34. a. 3 Co. 34. 2. 3 Co. 27. 2.

(*g*) 27 H. 8. c. 10.

(*a*) Co. Lit. 23. a. 1 Co. 137. b. 138. a. 6 Co. 34. a.

(*b*) Co. Lit. 144. a. Cr. El. 595. 2 Rol. 448. 2 Inſt. 673.

(*c*) Co. Lit. 119. a. Co. Lit. 179. Perkins, S. 29. Moor 346.

1. For as much as the Queen recites that the ſaid Bargain and Sale to *Warren*, the Remainder to the Queen was upon Fraud and Covin, and it was not found that it was upon Fraud and Covin, It was ſaid, that the Patent was void, becauſe the Queen was deceived in her Grant, and then admitting the Remainder to the Queen to be good, the Land doth yet remain in the Queen, and then the Defendant not guilty to the Plaintiff.

(d) Lane 12. Secondly, The Queen recites her Eſtate to be upon (d) Condition, and in Truth at the Time of the Making of the Letters Patents, the Condition was diſcharged during the Life of *Warren*. And for this Cauſe alſo the Patent was void, becauſe the Queen alſo in that was deceived. For, peradventure, if the Queen had known that her Eſtate was diſcharged of the Condition during the Life of *Warren*, and had not been ſubject to the Pleaſure of G. *Holford* to be revoked when he would, the Queen would not have granted it. As to the firſt Objection, it was reſolved, that the Grant is good notwithſtanding that, for three Reaſons:

1. Whether it was upon Fraud or no, was not anything Material; for if the Recital be of a Thing which ſounds to the Queen's Profit, and is falſe, that may make the Patent void. But (a) Recital of a Matter *in pais*, and not of Record, which is paſt, not material nor valuable, ſhall not impeach the Grant.

(a) Lane 109. Cr. Eliz. 641.

Secondly, It appears to be Covenous, and need not be averred; for it appears to be made upon a Condition to be defeated at his Will, and the Intent and Purpoſe of it was to prevent *Chriſtopher* of his Birthright, *ſcil.* of his Power which he had to cut off the Remainder to *George* by a common Recovery.

Thirdly, The Queen recites it to be upon Fraud *prout nobis ſatis liquet*, and the Letters Patents are *ex certa ſcientia & mero motu*, ſo that the Queen takes ſpecial Knowledge thereof, and it cometh not upon the Suggeſtion of the Party. And as to the ſecond Objection againſt the Grant, it was reſolved, That notwithſtanding that, the Patent is good: For the Queen's Recital is true; for at firſt the ſaid Bargain and Sale was Conditional as it was recited, and it is not affirmed by the Recital that it doth ſo remain. Alſo the Condition might be determined by Matter *in pais*, *ſcil.* by Releaſe to *Warren*, or by many other Ways; ſo that it would be hard for the Patentee to take Knowledge thereof; and a Thing which may be done or performed by Matter *in pais* need not be recited. *Warberton*, Serjeant at Law, the Attorney-General, and *Harris* of *Lincoln's Inn*, were of Counſel with the Plaintiff; And *Williams*, Serjeant at Law, *Dampport* and others, with the Defendant.

(b) 6 Co. 55. b. Lane 12, 13. Moor 164.

Mich.

Mich. 39 & 40 Eliz.

BUCKLER's *Case.*

THE Case between (*a*) *Buckler* and *Harvis* in the Common Pleas, which began *Trinit.* 37 *Eliz.* was such: *In Ejectione firmæ*, it was found by special Verdict, That *Buckler* was Tenant for Life, the Remainder over in Fee; Tenant for Life made a Lease for four Years, in *March* 20 *Eliz.* the Lessee entred, Tenant for Life granted *tenementa prædicta* to *C. Habendum tenementa prædicta* from the Feast of the Nativity of St. *John* the Baptist next following for Life, after the said Feast the Lessee for Years attorned; the Years expired, *C.* entred and made a Lease at Will to *D.* to whom the Tenant for Life levied a Fine *come ceo, &c.* he in Remainder in Fee entred, and made a Lease to the Plaintiff, the Tenant at Will entred upon him, and he brought the *Ejectione firmæ.* And Judgment was given for the Plaintiff. And in this Case five Points were resolved.

(*a*) 2 Anders. 29. Moor 423. El. 450, 585.

1. That the Grant to *C.* was void; for the Law will make Construction upon the (*b*) whole Grant; and an Estate of Freehold cannot commence in (*c*) *futuro.* And the *Habendum* in this Case is not contrary to the Premisses; for no certain Estate is contained in the Premisses, but generally the Land given and granted, which might be qualified by the *Habendum* to an Estate for Years, or at Will. For the Office of the (*d*) Premisses of a Deed of Feoffment is to express the Grantor, Grantee, and Thing to be granted, and the Office of the (*e*) *Habendum* is to limit the Estate: So that the general Implication of the Estate which shall pass by Construction of Law by the Premisses, is always controlled and

(*b*) 3 Co. 59. b. Godb. 324.
(*c*) 2 Anders. 29. Moor 393, 394. 423, 424, 881. Cr. El. 29, 254, 255, 450, 585. Cr. Car. 547, 548. Cr. Jac. 376, 563. 1 Jones 437. Godb. 265, 451. 1 Rol. Rep. 109, 110, 138, 253, 254, 256, 261. 4 Leon 8. Co. Lit. 48. b. 2 Rol. 10, 66. 11 Co. 77. a. 78. a. Br. Grant. 60. Br. Parent 29. Palm. 29, 30. 5 Co. 94. b. 2 Bulst. 272, 273, 274, 275, 303. Hob. 171. Bridgm. 108, 109. Hetley 23. 2 Brownl. 299, 300.
(*d*) Co. Lit. 6. a. 9 Co. 47. b. 2 Rol. 65. 10 Co. 107. b.
(*e*) Co. Lit. 6. a.

(a) 2 Co. 24. 2. Plowd. 153. 2. Dall. 30. pl. 10, 1 Leon 10, 11. 3 Co. 154. b. (b) Cr. El. 25. 89. Co. Lit. 183. a. b. Hob. 172. Palm. 381. 1 Rol. 65. Moor 26.

and (a) qualified by the *Habendum*. As a Leaſe to (b) two, *Habendum* to one for Life, the Remainder to the other for Life, will alter the general Implication of Joint-tenancy of the Freehold, which without any *Habendum* would be made. And although the *Habendum* be void, and ſo in Effect as no *Habendum*, yet no Eſtate ſhall paſs by Implication of Law againſt the expreſs Limitation of the Party, although his Limitation be void; and ſo was it adjudged in the King's Bench between (c) *Hegge* and *Croſs* for Houſes in *London*, *M.* 33 & 34 *Eliz. in Ejectione firmæ*.

(c) Cr. El. 254, 255. Cr. Jac. 376 Co. Lit. 48. b. 2 Bulſt. 274. Hob. 171. 1 Rol. Rep. 254. Moor 881. 2 Rol. 10, 66. (d) Cr. Jac. 563.

Secondly, That the Grant being void at the Beginning, the (d) Attornment after Midſummer would not make the Reverſion paſs; For *quod* (e) *ab initio non valet, tractu temporis non convaleſcet.*

(e) Cr. El. 585. Co. Lit. 35. a. 4 Co. 2. b. 90. a. 10 Co. 62. a. Cawley 214. 8 Co. 135. b. Davis 32. a. 2 Bulſt. 304, 305. 3 Bulſt. 192. (f) Cr. El. 451. Cr. Car. 306, 388. Lit. Rep. 298, 373. Cr. Jac. 660. 1 Jones 316. (g) Co. Lit. 49. a.

Thirdly, When *C.* entreth by Colour of this void Grant, he is a (f) Diſſeiſor. And a Difference was taken betwixt a Grant made by Agreement of the Parties which ſtands not with the Rules of Law, and which never can by any ſubſequent Act, as by Livery, or Attornment, be made good, and a Grant good at the Beginning, but to have its Perfection by a ſubſequent Ceremony. As in Caſe of a Charter of Feoffment, if the Feoffee entreth before Livery, he is no Diſſeiſor, for the Charter is good; and the Agreement of the Parties accords with the Law, and it may be made good by Livery of Seiſin (g) ſubſequent. Note, There is Difference between a good Beginning or a Foundation capable of a Building, and a bad one, which wanteth Foundation, upon which no Building can ſtand.

(h) Co. Lit. 252. a.

Fourthly, It was agreed, that if the Fine had been levied (h) to the Diſſeiſor himſelf *come ceo, &c.* he who had the Right of Remainder might enter for the Forfeiture;

(i) Co. Lit. 252.

for it was agreed, that the (i) Right of a particular Eſtate might be forfeited, and Entry given thereby to him who had but a Right to the Remainder: As if Leſſee for Years be ouſted, or Leſſee for Life be Diſſeiſed, and the Leſſee for Years brings an Aſſiſe, or other real Action, and the Leſſee for Life brings a Writ of Right, it is a Forfeiture of their Right; and he who hath but a Right of Reverſion may enter for the Forfeiture.

(k) 2 Anderſ. 29, 30. Cr. El. 450, 451. 586. Moor 424.

Fifthly, It was agreed, that in the Caſe at Bar, the Fine levied to the Tenant at Will was a (k) Forfeiture, and he who had the Right of Remainder might enter upon the Tenant at Will, and by that purge the Diſſeiſin; And the Tenant for Life, and the Tenant at Will alſo, ſhall be (l) eſtopped to ſay (m) *quod partes finis nihil habuerunt*, and of ſuch Eſtoppels which are by Matter of Record, and trench to the Diſ-enheriſon of them in the Reverſion or Remainder, they ſhall take Advantage although they be not Parties to it, as of an (n) Aid Prayer of a Stranger,

(l) Cr. El. 586. (m) Co. Lit. 252. a. (n) Co. Lit. 252. a. 10 H. 7. 20. b.

or

or by (*a*) Acceptance of a Fine *ſur Conuſans de droit come ceo, &c.* Although he in the Reverſion or Remainder be not Party to the Record, yet he is privy in Eſtate to take Advantage of any Forfeiture by any Matter of Record done to his Diſ-enheriſon.

(*a*) 1 Rol. 852. Co. Lit. 252. a. Dyer 148. pl. 79. 9 Co. 106. b. 1 Mod. Rep. 117. 3 Keb. 687. 688. 1 H. 7. 12. a. b.

Sixthly, It was ſaid, that if the (*b*) Diſſeiſee levy a Fine to a Stranger, that in this Caſe the Diſſeiſor ſhall retain the Land for ever; for the Diſſeiſee, againſt his own Fine, cannot claim the Land, and the Conuſee cannot enter; for the Right which the Conuſor had cannot be tranſerred to him; but, by the Fine, the Right is extinct; whereof the Diſſeiſor ſhall take Advantage.

(*b*) Cr. Car. 306, 484. Co. Lit. 49. a. 1 Jones 316, 398. Goldſb. 162. 1 Rol. 865. E. pl. 3.

Trin.

Trin. 31 *Eliz.* Rot. 750.

BECKWITH's *Case.*

RADFORD,

Co. Ent. 603. pl. 18. 4 Leon. 38. 1 Anderſ. 164. 2 Anderſ. 78. Moor 196. Gold. 12, 67. Godbolt 180. Palm. 214.

IN a Replevin between *Colgate* and *Blithe*, of the Taking, *&c.* in a Place called *Ryecroft* in *Fooldſtray* in the County of *Lancaſter*; the Defendant made Conuſans as Baily to *Robert Beckwith*, becauſe *Elizabeth Beckwith*, his Mother, was ſeiſed in Fee, and died ſeiſed, whereby it deſcended to him as to her Son and Heir, who entred and was ſeiſed; and for Damage-feaſant, the Defendant, as Baily to the ſaid *Robert*, did diſtrain, *&c.* In bar of which Avowry, the Plaintiff ſaid, That to ſay that the ſaid *Elizabeth* died ſeiſed in Fee, the Defendant ſhall not be received, for long Time before the Diſtreſs, *&c.* the ſaid *Elizabeth* was ſeiſed in Fee, and took to Huſband *Chriſtopher Kenne*, who levied a Fine to the Uſe of the ſaid *Chriſtopher Kenne*, and the ſaid *Elizabeth* his Wife for their Lives, and afterwards to the Uſe of the Conuſees for their Lives, to the Intent that they ſhould ſuffer the ſaid *Robert Beckwith* to take the Profits of the Tenements in which, *&c.* for his Life, with divers Remainders over, *&c.* Againſt which the Defendant ſaid, that the ſaid Fine was levied to the Uſe of the ſaid *Elizabeth* in Fee, without that, that it was levied to the Uſe of the ſaid *Chriſtopher* and *Elizabeth* for their Lives, *ut ſupra*; And the Jurors found a ſpecial Verdict to this Effect: *Chriſtopher Kenne* and *Elizabeth* his Wife were ſeiſed of the Tenements aforeſaid, in Fee in the Right of the ſaid *Elizabeth*; And that an Indenture was made by the ſaid *Elizabeth* without the Aſſent of her Huſband, between her, by the Name of *Elizabeth Beckwith*, one of the Daughters and Heirs of *Roger Cholmley*, Knight, on the one Part, and *Will. Vaviſour* and other Conuſees in the ſaid Fine on the other Part, bearing Date the

the 14th Day of *March*, in the 14th Year of the Reign of our Sovereign Lady the Queen that now is, (which ſhe ſealed and delivered as her Deed in *Auguſt* after, without the Aſſent of her Huſband) by which Indenture the ſaid *Elizabeth* alone limited and declared the Uſes of a Fine which afterwards ſhould be levied, to be in Form following: That is to ſay, To the Uſe of the ſaid *Elizabeth* for Life without (*a*) Impeachment of Waſte, and afterwards to the Uſe of the Conuſees for their Lives, and afterwards to ſuch Uſes as in the Replication is alledged: And it was further found, that the ſaid *Chriſtopher Kenne*, after the Marriage and before the Fine levied, made another Indenture without the Conſent of *Elizabeth* his Wife, bearing Date the 13th of *February*, in the 22d Year of the ſaid Queen's Reign, by which it was mentioned, That the ſaid Indenture was made between the ſaid *Chriſtopher* and *Elizabeth* his Wife on the one Part, and one *Robert Wrote*, *Nicholas Brook*, and others, of other Part; Which Indenture was ſealed and delivered by the ſaid *Chriſtopher* only as his Deed. By which Indenture it was declared, That the Uſes of the ſaid Fine ſhould be to the Uſe of the ſaid *Chriſtopher* and *Elizabeth* for their Lives without Impeachment of Waſte, and afterwards to the Uſe of the Conuſees, as in the Replication was alledged. And further it was found, That afterwards the ſaid Fine mentioned in the ſaid Bar was levied by the ſaid Huſband and Wife of the Tenements aforeſaid to the ſaid Conuſees mentioned in the Indenture of the Wife, and that there were no other Uſes of this Fine. And whether upon the whole Matter aforeſaid, the ſaid Fine was levied to the Uſe of the ſaid *Chriſtopher* and *Elizabeth* for their Lives was the Queſtion. And it was adjudged, that (*b*) both the ſaid Limitations and Declarations of the Uſes in both the Indentures were void, and that the ſaid Fine was by Conſtruction of Law to the Uſe of the ſaid *Elizabeth* and her Heirs as if no Uſe had been declared. And in this Caſe theſe Points were reſolved:

(*a*) 2 Co. 23. b. 4 Co. 63. a. 9 Co. 9. a. 11 Co. 82. b. 83. a. 1 Rol. Rep. 182. Co. Lit. 220. a. Dyer 10. pl. 37. 1 Bulſtr. 136.

(*b*) 1 Anderſ. 164.

1. If Huſband and Wife levy a Fine of the Land whereof they are ſeiſed in the Right of the Wife, and the Huſband only declares the Uſe of the Fine, this Declaration of the Uſe ſhall bind the Wife (*c*) if her Diſ-aſſent doth not appear, although her Aſſent to the Declaration of the Uſes cannot appear. For when ſhe joins with her Huſband in the Fine, it ſhall be intended, if the contrary cannot appear, that ſhe joined alſo with him in Agreement in the Declaration of the Uſes of the Fine.

(*c*) Goldſb. 68, 69, 70. 2 Rol. 792. Godb. 180. Moor 197. 2 Ander. 78. Owen 6.

Secondly, It was reſolved, That if Huſband and Wife ſell the Wife's Land to another for Money by Word, and afterwards levy a Fine to the Vendee and his Heirs, in this Caſe it is good, and ſhall bind the Wife without any Writing proving her Aſſent, *a multo fortiori* when the uſe is declared

(*d*) 4 Leon. 89, 90. 2 Rol. 792. 1 Ander. 164. Goldſb. 14. Moor 22.

by the Husband's Deed, and no other declared by the Wife, it shall bind; *Vide* 12 *El. Dyer* 290. (*a*) Husband and Wife were seized of a Tenement in *London* to them and to the Heirs of the Husband, and the Husband covenanted by Indenture, in Consideration of 20 *l.* That he and his Wife would suffer a Recovery by Writ of Right according to the Custom of *London*, which binds as a Fine at Common Law, and that the Recovery should be to the Use of the Recoverors, until they had made a good and sufficient Lease by Indenture, for Forty Years, and after the making of the said Lease, then to the Use of the Husband and Wife, and the Heirs of the Husband, and the Recovery was had accordingly; And the Opinion of all the Judges was, That the Lease was good, and not defeasable by the Wife who survived her Husband, and so was the Opinion of all the Justices in the King's Bench, and yet in such Case the Husband was only Party to the Deed, which declared the Uses, and notwithstanding it bound the Wife for the Reason aforesaid.

(*a*) Goldsb. 14. 69. 1 Rol. 388. 2 Rol. 798. 4 Leon. 90. Noy 122. Jenkin's Cent. 238. Dyer 290. pl. 61.

Thirdly, it was resolved, That every one may declare and dispose the Use of the Land, according to the Estate which he hath in the Land, for the Declaration and Disposition of the Use doth follow the Ownership of the Land, as (*b*) the Shadow followeth the Body, and now by the Statute of 27 *H.* 8. the Shadow or the (*c*) Accessary draweth to it the Body and the Principal, that is to say, The Use draweth to it the Estate of the Land, and therefore in all Reason the Owner of the Land ought to limit the Use, for by it the Estate of the Land it self shall be transferred to the Use; and therefore in the principal Case, the Wife alone, although she is Owner of the Land, yet forasmuch as she is *sub potestate viri*, (*d*) she cannot in respect of her Coverture, without her Husband, limit the Use; and on the other Side, the Husband, who hath not any Estate in his own Right, cannot against the Agreement of the Wife, limit the Use, for he is not Owner of the Land: So one is not *sui juris*, and hath the Estate, and the other is *sui juris*, and hath not the Estate, and therefore when they differ in the Limitation, it is void. And it is to be noted, That when Husband and Wife levy a Fine of the Wife's Land, the whole Estate passeth from the Wife, and the Conusee is in by the Wife only; and if the Fine be reversed for the Nonage of the Wife, the whole Estate which passed by the Fine, shall be restored to the Wife presently, for the whole Estate passed from the Wife, as it was adjudged in the King's-Bench, in (*e*) *Worsley*'s Case: And therefore it would be against all Reason, that the Husband, against the Agreement of the Wife, should limit the Uses of the Wife's Land. And if the Husband may declare the Use of his Wife's Land, great Inconvenience would follow, and Wives might be disinherited and deceived by their Husbands, which would be inconvenient: As if they perswade their

(*b*) Goldsb. 68.

(*c*) 10 Co. 42. b.

(*d*) 1 Anders. 164. Goldsb. 13, 15. 67, 68, 69. Moor 197. 4 Leon. 89, 90. Winch. 104.

(*e*) 1 Rol. 748. Cr. Eliz. 129. Postea 77. b. Owen 21. 1 Leon. 114, 115. Bridgm. 73.

their Wives, that the Uſes ſhall be in one Form, and thereby draw them to conſent to levy a Fine, and afterwards the Huſband alone declares other Uſes, varying altogether from the Uſes to which the Wife agreed, and ſo deceive and diſinherit their Wives; And truly, if the Law requires ſuch Ceremony of ſecret (*a*) Examination of married Women before a Judge, touching their voluntary and free Aſſent as if ſhe was Sole, it would be againſt Reaſon, that the Huſband ſhould againſt the Aſſent of the Wife, diſpoſe of the Uſe of the Wife's Land, which is all the Fruit of the Land now. And it was ſaid, If an (*b*) Infant levies a Fine, and declares the Uſe of it, this Declaration ſhall bind him as long as the Fine remains in Force; for in as much as he hath been admitted by the Judges as a Man of full Age to levy a Fine, the Law as long as the Fine remains in Force, will permit him to limit the Uſe thereof, ſo of a Man *non compos mentis*.

(*a*) Hob. 225.

(*b*) 10 Co. 42. b. Goldſb. 13. Hob. 224. 4 Leon. 89. Moor 22. Winch. 104, 106. 1 Jones 390. Bridgm. 75.

Fourthly, It was reſolved, That although the Variance was in the firſt particular Uſe (the Wife limiting it to herſelf only for her Life, and the Huſband limiting it to him and his Wife for their Lives) and all the other Uſes in Remainder limited in both the Indentures, are according to both their Conſents, yet all the Uſes are void: But if there be two (*c*) Jointenants, or two having ſeveral Eſtates, join in a Fine, and one declares the Uſe in one Manner, and the other in another Manner, the ſame is good for each of their Parts, for the Declaration of the Uſe ſhall be directed and governed according to their Eſtates and Intereſts; but between Huſband and Wife, the Eſtate is only in the Wife, and ſo the Difference. But if the Huſband and Wife agree in the Limitation of the Uſe of part of the Land, and vary in the Limitation of the Reſidue of the Land, it is good for Part, and void for the Reſidue.

(*c*) Goldſb. 15. 4 Leon. 90. Latch. 82. Noy 77. Palm. 405.

So note Reader, a Difference between Variance, touching the Limitation of the Uſe of Part of the Eſtate of the Land, and touching the Limitation of the Uſe of Part of the Land it ſelf. And it was ſaid, If a Man at this Day ſeized of Land on the Part of the (*d*) Mother, makes a Feoffment in Fee, without Conſideration, he ſhall be ſeized as he was before on the Part of the Mother. And if there be two Jointenants, one for Life, and the other in Fee, and they levy a Fine without Declaration of any Uſe, the Uſe ſhall be to them of the ſame Eſtate as they had before in the Land. So if *A.* (*e*) Tenant for Life, and *B.* in Reverſion or Remainder, levy a Fine generally, the Uſe ſhall be to *A.* for Life, the Reverſion or Remainder to *B.* in Fee, for each grants that which he may lawfully grant, and each ſhall have the Uſe which the Law veſts in them, according to the Eſtate which they convey over

(*d*) Dall. 61. pl. 14. Goldſb. 69. 1 Co. 127. a. b. 100. b. 2 Rol. 780. Dyer 134. pl. 9. Co. Lit. 23. a. 1 Co. 88. a. Hob. 31. 13 Co. 56. 8 Co. 54. b. 5 E. 4. 7. b. Fitz. Subpœna 2. Br. Diſcent. 11. 7 H. 6. 4. b. Br. Feoffment al uſe 32.

(*e*) Goldſb. 15. 70.

If *A.* ſeized in Fee of an Acree of Land, and he and *B.* levy a Fine of it to another without Conſideration, the Uſe implied ſhall be to *A.* only and his Heirs; for an (*a*) Uſe which is but a Truſt and Confidence, and a Thing in Equity and Conſcience ſhall be by Operation of Law to him who in Truth was (*b*) Owner of the Land, without having Regard to Eſtoppels or Concluſions, which are averſe to Truth and Equity. So it was adjudged in the principal Caſe. When Huſband and Wife levy a Fine without (*c*) Declaration of any Uſe (which was ſufficient in Law) the Law ſhall reveſt the Uſe in the Wife only, becauſe the Eſtate of the Land paſſes only from her, and the Huſband joins with her but for Conformity.

(*a*) Bac. Left. iur 27 H. 8. 5, 6, 7, 8, &c. 1 Co. 101. b. 112. a. 121. b. 127. a. 140. a. 6 Co. 64. b. 7 Co. 13. b. 34. b. Poſtea 78. b. Co. Lit. 272. b. (*b*) Palm. 214. (*c*) 1 Anderſ. 164. 2 Ander. 78. Moor. 197. Goldib. 68, 69. 9 Co. 126. b. Godb. 180. Poſtea 77. b.

Note Reader, Although the Huſband may diſpoſe of the Wife's Lands during the Overture, yet in this Caſe, for the Reaſons and Cauſes aforeſaid, his Declaration was meerly void, *quod nota.*

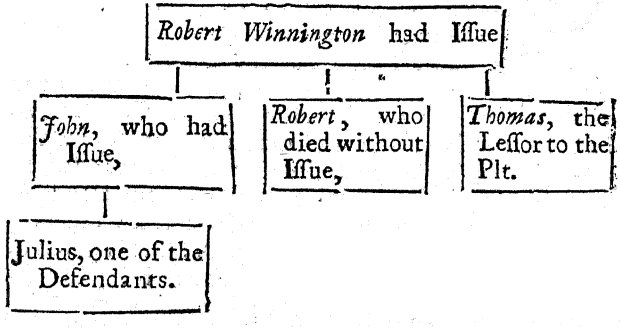
Trin.

Mich. 40 & 41 Eliz.

In the King's Bench.

JULIUS WINNINGTON's *Caſe.*

James Pilkington brought an *Ejectione firmæ* againſt *Julius Winnington*, upon a Demiſe made by *Thomas Winnington*, of a Houſe and Land in *Bincheesin* the County of *Cheſter*, before the Judge there, and upon Not guilty pleaded, the Jurors gave a ſpecial Verdict to this Effect; and for the better Manifeſtation of the Caſe, this Pedigree is to be obſerved. Co. Ent. 225. pl. 1. Jenk. Cent. 253.



Robert the Father was ſeized of the Tenements in which, &c. in Fee, and thereof did enfeoff by Deed indented, 1 *Eliz. Richard Birket* to have and to hold to him and his Heirs, upon Condition, That the Feoffee or his Heirs, ſhould reinfeoff the Feoffor for Life, the Remainder to *John* his Son and Heir apparent, and his Heirs, by Force whereof the ſaid Feoffee was thereof ſeized in Fee, *poſt quod quidem Feoffamentum*, the Jury found that the Feoffor entred, and took the Profits *abſque contradictione, ſive agreamento* of the Feoffee; and afterwards, 11 *Eliz.* the Feoffor

by Deed indented made a Leaſe to *D.* and *P.* for Twenty one Years, and yet the Feoffor continued in Poſſeſſion. *Birket* the Feoffee, 19 *Eliz.* acknowledged a Statute Staple to one *J.* The Feoffor, 24 *Eliz* did enfeoff divers Perſons to the Uſe of himſelf for Life, the Remainder to *Robert*, the ſecond Son in Tail, the Remainder to *Thomas* his third Son in Tail. The Feoffor, 27 *Eliz.* died, *Birket* the Feoffee, after his Death, entred and enfeoffed *John* the eldeſt Son and his Heirs. *Robert* the ſecond Son died without Iſſue, *John* had Iſſue *Julius*, and died. *Thomas* entred, and made the Leaſe to the Plaintiff, upon whom *Julius* entred, and ejected him, *Et ſi, &c.* And upon this ſpecial Verdict Sir *Richard Shutlewoth*, Juſtice of *Cheſter*, gave Judgment for the Defendant, upon which the Plaintiff brought a Writ of Error in the King's Bench. And in this Caſe theſe Points were moved and reſolved by the whole Court.

Firſt, When the Feoffor entred after the Feoffment, and took the Profits, and made a Leaſe for Years; upon all this Matter the Law doth adjudge it (*a*) a Diſſeiſin, although the Intent of the Parties was, That the Feoffee ſhould make a Demiſe to him for the Term of his Life: For this Entry by Wrong, and taking of the Profits without the Agreement of the Feoffee, is a Diſſeiſin. And the Caſe is the ſtronger, becauſe he took upon him as the Owner of the Land to make a Leaſe.

(*a*) Cr. Car. 303, 304.

Secondly, It was agreed, That when he made the Leaſe for Years by Deed indented, he thereby diſpenſed with the Condition during the Term, ſo that during the Term he could not for any Cauſe take Advantage of the Condition.

Thirdly, When the Feoffor (*b*) diſſeiſeth the Feoffee upon Condition, and during the Diſſeiſin, the Feoffee acknowledged a Statute or Recognizance, the ſame is no (*c*) Diſability in him, or any Cauſe for the Feoffor to re-enter; for the Feoffee having but a Right, the Poſſeſſion in the Hands of the Diſſeiſor is not ſubject to his Statute or Recognizance, and therefore no Cauſe of Entry for any Diſability is given to the Feoffor in this Caſe: But when the Feoffee being in Poſſeſſion takes a Wife, or grants a Rent Charge, or acknowledges a Statute, there the Land is preſently ſubject to the Title of Dower, and charged with the Rent or Statute: But when the Feoffee is (*d*) diſſeiſed, and takes a Wife, or acknowledges a Statute, there the Land is not bound with it. And although it was ſtrongly objected, That it was not poſſible that the Feoffee could perform the Condition, unleſs he enters, and if he enters the Land is charged, ſo he hath diſabled himſelf to perform the Condition; yet it was reſolved, That it was not any Diſability until he enter in *facto*, ſo that the Poſſeſſion of the Land be charged. But (*e*) if the Wife dies, or the Conuſee releaſes the Statute, then the Feoffee might well enter and perform the Condition without any

(*b*) Co. Lit. 222. a.
(*c*) 1 Co. 25. b. Perkins Sect. 801. Co. Lit. 221. a. b. 222. a. 13 H. 7. 23. b. Br. Condition 217. 44. Aſſ. 26. 20 H. 6. 34. b. 5 Co. 21. a. Cr. El. 450. 479. Hard. 396. Lit. Sect. 357, 358. 2 Anderſ. 18. Moor 452, 453. Hutt. 48. 1 Rol. 447, 448. 3 Co. 29. a. b. 10 Co. 49. b. 1 Rol. Rep. 168. Br. Condition 26.
(*d*) Co. Lit. 222. a.
(*e*) Co. Lit. 222. a.

any Diſability; then when the Feoffor made a Feoffment over, he extinguiſhed the Condition, ſo that when the Feoffee entred and enfeoffed *John* the eldeſt Son, he had a good and rightful Eſtate in the Land which deſcended to the Defendant; and ſo the Judgment given by Sir *Richard Shuttleworth* was affirmed. The Attorney-General and *Tanfield*, were of Council with the Plaintiff, and *Hesket*, Attorney of the Court of Wards, and *Damport* with the Defendant.

Hill. 41 Eliz.

In the Common Pleas.

WISCOT's *Caſe.*

Cr. El. 470. 481. 3 Keb. 327.

IN an *Ejectione firmæ*, between *Giles* Plaintiff, upon a Demiſe made to him by the Huſband and Wife, and *Wiſcot* Defendant, upon the General Iſſue a Special Verdict was found, upon which the Caſe was ſuch: *A.* Tenant for Life, (*a*) 2 Sand. 386. the Remainder to *B.* and three others (*a*) for Life, the Reverſion to *C.* and his Heirs Expectant, *C.* levied a Fine *Sur conuſans de droit come ceo, &c.* to *A.* and *B.* to the Uſe of *A.* for Life, and after his Death, to the Uſe of *B.* in Fee, *A.* died, and afterwards *B.* died; and whether the Jointure was ſevered or not, ſo that after the Death of *A.* *B.* was Tenant in common, was the Queſtion. And it was reſolved, That the Jointure was ſevered, and this Difference taken, (*b*) 2 Sand. 387. Co. Lit. 182. a. b. Raym. 36. Dyer 12. pl. 57. Lit. Sect. 283. 2 Jones 137. when the Fee is limited by one (*b*) and the ſame Conveyance, there the one may have Fee-ſimple, and the other an Eſtate for Life jointly; but when they are (*c*) firſt Tenants for Life, and afterwards one of them doth get the Fee-ſimple, or the Fee-ſimple doth deſcend to one, there the (*c*) Cr. Eliz. 470. 1 Rol. 933, 934. 2 Sand. 386, 387. Raym. 413. Jointure is ſevered. As if a Man makes an Eſtate to three, and to the Heirs of one of them, there one of them hath Fee-ſimple, and yet the Jointure doth continue, for all is but one entire Eſtate created at one and the ſame Time, and therefore the Fee-ſimple cannot merge the Jointure, which took Effect with the Creation of the Remainder in Fee; but when three are Jointenants for Life, and afterwards one purchaſeth the Fee, or the Fee deſcends to him, there the Fee-ſimple merges the Eſtate for Life, for the

the Eſtate for Life was in *eſſe* before, and might be merged or ſurrendred, and ſo cannot the Eſtate for Life in the firſt Caſe. But in the ſame Caſe, that is to ſay, when an Eſtate is made to three, and to the Heirs of one of them, and he who hath the Fee dies, and one of the Survivors purchaſes the Remainder, the Jointure is ſevered, *cauſa qua ſupra*; And when one Tenant for Life purchaſes the Reverſion in Fee, if the Jointure ſhould remain, he would have a Reverſion in Fee, and an Eſtate for Life alſo in Part, which Reverſion in Fee he might grant over, and his Eſtate for Life would remain in Part, which would be abſurd and againſt Reaſon; for in the firſt Caſe, when an Eſtate is made to three, and to the Heirs of one, he who hath the Fee cannot (*a*) grant over his Remainder, and continue in himſelf an Eſtate for Life, as it is held in 12 *E.* 4. 2. *b.* But if there be Tenant in Tail, the Remainder to his right Heirs, he may grant his Remainder over, or deviſe it, as it is held in (*b*) 27 *Aſſ.* 60. for an Eſtate Tail cannot be merged nor ſurrendred, nor extinguiſhed by Acceſſion of a greater Eſtate. *Vide* 42 *E.* 3. 9. *b.* 29 *H.* 8. *Mortdaunceſter* 59. 11 *H.* 4. 55. *b.* & 31 *E.* 3. *Scire facias* 19. by the better Opinion of all the Books, he who had the Fee died, and afterwards Tenant for Life died, it is at the (*c*) Election of the Heir to have a *Mortdaunceſter*, (which proves that his Anceſtor died ſeized of the Fee) or a *Scire facias*, or a *Formedon* in remainder at his Pleaſure. It is agreed 39 *H.* 6. 2. *b.* if the Reverſion be (*d*) granted to Tenant for Life, and another in Fee, the Reverſion is extinct for a Moiety, for Tenant for Life cannot purchaſe or get the Reverſion or Remainder of the ſame Land, but the Eſtate for Life will be merged, having regard to the Eſtate which he hath gotten in the Reverſion.

(*a*) Co. Lit. 182. b. Raym. 40.

(*b*) Br. N. C. 115. Br. Aſſ. 275. Br. Deviſe 42. Br. Titles 28.

(*c*) Co. Lit. 184. a.

(*d*) 1 Rol. 933. Co. Lit. 182. b. Raym. 36.

Note Reader, It ſeems by the Reſolution of this Caſe, That if (*e*) Tenant for Life, grants his Eſtate to him in Reverſion and a Stranger, that it is a Surrender for one Moiety, for it appears here, That by getting of the Reverſion, and the particular Eſtate at ſeveral Times, the Reverſion expectant upon his particular Eſtate for Life, cannot remain diſtinct in him, and grantable over, but the one ſhall merge the other, and Benefit of Survivorſhip not regarded, as it appears by the Caſe at Bar, and ſo the Doubt in (*f*) 7 *H.* 6. well reſolved as I think. And then it was moved in Arreſt of Judgment, That the Leaſe was made by the Huſband and Wife generally, without alledging it to be by (*g*) Deed, as it ought to be, as appears *Dyer* 1 *Mar.* 91. *b.* *Vide* 26 *H.* 8. 2. *a.* 15 *E.*

(*e*) 1 Rol. 934. 935. Co. Lit. 182. b. 2 Rol. Rep. 473.

(*f*) 7 H. 6. 2. b.

(*g*) Cr. El. 438. 481. 656. 708. Cr. Car. 527. Doctrin. placit. 176. Palm. 268.

Hutton 55. 102. Winch. 34. 1 Leon. 192. 204. 4 Leon. 50. Say. 110. 1 Rol. Rep. 402. Plowd. 431. a. Cr. Jac. 563. 3 Co. 21. b. Dyer 91. pl. 13.

(a) Cro. El. 482. (b) Cr. El. 438. (c) Cr. El. 482. (d) Cr. El. 482. (e) Antea 61. a.

(a) 15 *E.* 4. 18. *a.* & 21 *H.* 6. 24. *b.* But upon a Sight of a Judgment given *Trin.* 36 *Eliz.* in the King's Bench, between *Bateman* and *Allen*, *Rot.* 339. and of another Preſident ſhewed by *Brownlow* chief Prothonotary, between (c) *Moſely* and *Guilbert*, *Paſch.* 33. *Eliz.* in the Common Pleas, and of another Judgment between (d) *Digges* and *Withers*, in the King's Bench, in all which Precedents Judgment was given for the Plaintiff upon a Demiſe made by the Huſband and Wife, without alledging it to be by (e) Deed: Upon the View of which Precedents Judgment was given in the Caſe at Bar for the Plaintiff.

Michael

De Termino Sancti Michaelis Anno Regni Dominæ Elizabethæ nunc Reginæ Angl' 36 & 37. Rotul. 136.

MEmorand' quod alias ſcil' termino Paſch. ultimo præterito coram dom' Reg. apud Weſtm' ven' Will' Rud per Michaelem Bland attorn' ſuum. Et protulit hic in cur' dict' dom' regin' tunc ib'm quand' billam ſuam verſ. Edw' Tooker in cuſtod' Marr', &c. de pl'ito tranſg'. Et ſunt pleg' de proſ. ſc. Jo. Doo, & R. Roo. Quæ quidem billa ſequit' in hæc verba, ſſ. Devon' ſſ. Willihelmus Rud querit' de Edward' Tooker in cuſtod' Marr' Mareſc' domin' reg' coram ipſa reg' exiſten', de eo quod ipſe primo die Aprilis anno reg' dom' Eliz. nunc regin' Angliæ triceſimo ſexto, vi & armis, &c. clauſum & domum ipſius Willihelmi voc' **Berton Land**, alias **the Barton of Sprecombe** apud Morthoe in comitatu præd' fregit & intravit & herbam ſuam de valenc' centum marcarum in clauſo prædicto adtunc nuper creſcen' cum quibuſdam averiis, viz. equis, bobus, vaccis, porcis, & bibentibus depaſt' fuit conculcavit & conſumpſit, Et alia enormia ei intulit contra pacem dict' domin' reg' nunc, ad dampn' ipſius Wil. cent' libr', Et inde produc' ſect', &c. Et modo ad hunc diem, ſc. diem Merc. proxim' poſt Octab' ſancti Michael' iſto eodem termin', uſq; quem diem præd' Edwardus habuit licenc' ad billam præd' interloquendi, & tunc ad reſpondend', &c. coram dom' regin' apud Weſtm' ven' tam præd' Will. per attorn' ſuum præd', quam præſ. Edward. per Johannem Halſtaffe attor' ſuum. Et idem Edward. defend' vim & injur' quando, &c. Et dic' quod ipſe non eſt inde culpabilis. Et de hoc ponit ſe ſuper patriam. Et præd' Will. ſimilit', &c. Ideo ven' inde Jur' coram domina regina, apud Weſtm' die Veneris proxim' poſt quindenam ſancti Hillarii. Et qui nec, &c. Ad recogn', &c. Quia tam, &c. Idem dies dat' eſt part' præd' ib'm, &c. Poſtea continuat' inde proceſſ. inter part' præd' de pl'ito præd' per Jur' poſit' inde inter eas in reſpect' coram dom' reg' apud Weſtm' uſque diem Mercurii prox' poſt quindenam Paſc' tunc prox' ſequen', Niſi Juſt' dom' reg' ad Aſſiſas in comitatu præd' Devon' ſſ.

cap iend',

capiend' aſſign' prius die Lunæ decimo die Martii apud caſtrum Exon. in com' præd' per form' ſtatuti, &c. ven' pro defectu Jur', &c. Ad quem diem coram dom' regina apud Weſtm' ven' partes præd' per attornat' ſuos prædictos, Et præf. Juſt' ad Aſſiſas coram quibus, &c. miſerunt hic recordum ſuum coram eis habitum in hæc verba. ſſ. Poſtea die, & loco infracontent' coram Edmundo Anderſon Milite capitali Juſtic' dom' reginæ de banco, & Thoma Walmeſley uno Juſt' dictæ dom' reginæ de banco Juſtic' ejuſdem dom' reginæ ad Aſſiſas in com' Devon' capiend' aſſign' per formam ſtatuti, &c. ven' tam infranominat' Willihelmus Rud per Eraſmum Forde attorn' ſuum, quam infraſcript' Edwardus Tooker per Thomam Clayton attor' ſuum: Et Jur' jurat' unde infra fit mentio exact' quidam eorum, viz. David Matacot de Saint Gyles, Johannes Hayman de Shelbery, Johannes Hooper de Weſtdowne, Richardus Clyeff de Chaxford, Johan' Row de eadem, & Johannes Hole de Dreweſteynton venerunt, & in Juratam præd' jurati exiſtunt: Et quia reſid' Jur' ejuſdem juratæ non comperuer'; Ideo alii de circumſtan' per Vic' Com' præd' ad hoc electi ad requiſitionem præd' Will' Rud, Ac per mandat' Juſtic' prædictorum de novo apponuntur, quorum nomina panello infraſcr' affilantur ſecundum form' ſtatuti in hujuſmodi caſu nuper edit' & proviſ. Ac Jur' ſic de novo appoſit', viz. Georgius Snell, Johannes Barnacot, Johan' Shute, Georgius Slade, Will' Killand, & Chriſtopherus Cheeke exact' ſimiliter vener', qui ad veritatem de infracontent' ſimul cum aliis Jur' præd' prius impannellat' & jurat' dicend', electi, triati, & jurati, dicunt ſuper ſacrament' ſuum quod ante infraſcr' tempus quo ſupponit' tranſgr. infraſpec' fieri, quidam Johan' Arundell armiger fuit ſeiſitus de tenement' infraſcript' cum pertin' in quibus ſupponit' tranſgr' infraſpec' fieri in dominico ſuo ut de feod', Et ſic inde ſeiſit' exiſten', poſtea & ante infraſcr' tempus quo, &c. ſc. tertio die Jul' anno regni dom' Hen' nuper Reg' Ang' octavi triceſimo, dimiſit cuidam Johan' Tooker ac infranominat' Will'mo Rud tenement' infraſcript' cum pertin' in quibus, &c. inter alia, Habendum & tenendum eiſdem Johan' Tooker & Willielmo Rud pro termino vitarum eorundem Johannis & Willihelmi, & alterius eorum diutius viven', virtute cujus dimiſſionis iidem Johan' Tooker & Willihelmus Rud fuer' ſeiſit' de tenementis infraſcript' cum pertin' in quibus, &c. in d'nico ſuo ut de liber' tenemento pro termino vitarum eorundem Johan' & Willihelmi & alterius eorum diutius viven', Et ſic inde ſeiſit' exiſten', ac præd' Johann' Arundel de reverſione tenementor' infraſcr' cum pertin' in quibus, &c. ſeiſit' exiſten', Idem Johan' Arundell poſtea

&

& ante infraſcr' tempus quo, &c. apud Morthoe infraſcript' de tali ſtatu ſuo obiit inde ſeiſit', poſt cujus Mortem præd' reverſio tenementorum infraſcr' cum pertin' in quibus, &c. inter alia deſcendebat cuidam Joh' Arundell Militi, ut filio & hæred' prædicti Johan' Arundell, per quod idem Johan' Arundell Miles fuit ſeiſitus de prædicta reverſione tenementorum infraſcr' cum pertin' in quibus, &c. inter alia ut de feodo, & ſic inde ſeiſit' exiſten', poſtea & ante infraſcript' tempus quo, &c. ſc. 20. die Septembris, anno regni dominæ Reginæ nunc 10. apud Morthoe infraſcr' per quoddam ſcriptum ſuum indentat', cujus altera pars ſigillo præd' Johan' Arundell Milit' ſignat' Jurat' præd' in evidentiis oſten' fuit, cujus dat' eſt eiſdem die & ann' conceſſit reverſionem tenentor' infraſcr' cum pertin' in quibus, &c. inter alia eidem Edward' Tooker: Habendum & tenendum eandem reverſionem tenementorum infraſcr' cum pertinentiis in quibus, &c. inter alia eidem Edward' Tooker pro termino vitæ ſuæ, cum poſt mortem, receſſ. ſurſumreddition', vel forisfacturam præd' Johan' Tooker & Will' Rud acceder', prout per idem ſcriptum Indentat' inter alia plenius appareret: Ad quam quidem conceſſionem reverſionis tenementorum infraſcript' cum pertinentiis in quibus, &c. inter alia eidem Edward' per præf. Johan' Arundell Militem in forma præd' factam, præd' Joh' Tooker exiſten' tenen' tenementorum infraſcr' cum pertinentiis in quibus, &c. pro termino vitæ ſuæ conjunctim cum præf. W. Rud poſtea & ante infraſcr' tempus quo, &c. apud Morthoe infraſcr', ſe præf. Edwardo inde attornavit & agreavit quorum quidem conceſſionis reverſionis præd' ac attornamenti & agreamenti præd' prætextu, præd' Edwardus fuit ſeiſit' de reverſione tenementorum infraſcr' cum pertinentiis in quibus, &c. prout lex poſtulat ut de libero tenemento pro termino vitæ ſuæ: Et ſic inde ſeiſit' exiſten', ac præd' Johan' Tooker & Willihelm' Rud de tenementis infraſcript' cum pertinentiis in quibus, &c. inter alia ſeiſit' exiſten', idem Johan' Tooker poſtea & ante infraſcript' tempus quo, &c. ſcilicet 14. die Decembris, anno regni dictæ dominæ Reginæ nunc 31. apud Morthoe infraſcript' fec' præfat' Edwardo Tooker quoddam ſcriptum ſurſumredditionis de tenementis infraſcript' cum pertinentiis in quibus, &c. inter alia, quod Jurat' prædictis in evidentiis oſtenſ. fuit, cujus tenor ſequitur in hæc verba.

To all Chriſtian People to whom this preſent Writing ſhall come' J. Tooker of Morthoe in the County of Devon Yeoman, ſendeth Greeting in our Lord God Everlaſting. Whereas the ſaid John Tooker and Wil. Rud, have and do hold

hold jointly for Term of their Lives, and the Life of the longeſt Liver of them, all that Capital Meſſuage and Lands, Tenements and Hereditaments, called Barton Land, in the Mannor of Sprecombe, or Parcel of the ſaid Mannor, and all thoſe Lands, Tenements, and Hereditaments, with the Appurtenances in Hokeſmill, with the Paſture of Hokeſwood, and common of Paſture upon Hokeſdowne, Parcel of the ſaid Mannor of the Demiſe and Grant of J. Arundell Eſquire, as by the Deed of the Demiſe and Grant thereof made by the ſaid J. Arundel at large, and plainly it doth and may appear: Now know ye, that the ſaid J. Tooker, for divers and ſundry Cauſes and Conſiderations him moving, doth by theſe Preſents ſurrender and yield up unto E. Tooker, the Son of the ſaid J. Tooker, to whom the Reverſion of all and ſingular the Premiſſes is granted and doth belong for Term of the Life of the ſaid Edward, all his Eſtate, Title and Intereſt in and to the Premiſſes, and in and to every Part and Parcel thereof, in as large and ample Manner as he the ſaid John Tooker can or may ſurrender the ſame. In Witneſs whereof the ſaid J. Tooker to theſe Preſents hath ſet his Seal. Given the xiv. Day of December, in the xxxi. Year of the Reign of our Sovereigne Lady Elizabeth, By the Grace of God, of England, France, and Ireland, Queen, Defender of the Faith, &c.

Et ulterius Jur' præd' dicunt ſuper ſacrament' ſuum præd' quod præd' Johan' Tooker poſtea & ante infraſcr' tempus quo, &c. apud Morthoe infraſcr' obiit, quodque præd' Edwardus poſtea ſc. infraſcr' primo die Aprilis, anno regni dictæ dom' reg' nunc 36. infraſpec'. clam' habere & occupare tenementa infraſcr' cum pertin' in quibus, &c. inter alia in communi cum præf. Will' Rud, virtute prædicti ſcripti ſurſumreddition' ſibi per præf. Johan' Tooker in forma præd' facti in tenementa infraſcr' cum pertin' in quibus, &c. ſuper poſſeſſion' præd' Will', &c. intravit, & herbam infraſpec' ad valenc', &c. in clauſo infraſcr' adtunc creſcen' cum averiis infraſcr' depaſtus fuit conculcavit & conſumpſit, prout præd' Will' Rud interius verſ. eum queritur: Sed utrum ſuper tota materia præd' informa præd' comperta, præd' intratio præd' Edwardi in tenementa infraſcript' cum pertin' in quibus, &c. ſit bona & legitima intratio in lege necnon iidem Jur' penitus ignorant; Et inde pet' adviſament' & conſiderat' cur', &c. Et ſi ſuper tota materia præd' in forma præd' comperta, videbitur Juſtic' & cur' hic quod prædicta intratio præd'

præd' Edwardi in tenementa infraſcript' cum pertin' in quib', &c. in & ſuper poſſeſſion', præd' Willihelmi Rud inde non ſit bona & legalis intratio in lege, tunc iidem Jur' dicunt ſuper ſacramentum ſuum quod præd' Edw' Tooker eſt culpabilis de tranſgr' infraſpec', prout præd' Will' Rud interius verſ. eum queritur; Et aſſid' dampn' ipſius Will' Rud occaſione tranſg' infraſpec' ultra miſ. & cuſtag' ſua per ipſum circa ſectam ſuam in hac parte appoſit' ad 6 d. & pro miſ. & cuſtag' illis ad 20 s. Et ſi ſuper tota materia præd' in forma præd' comperta videbitur Juſtic' & cur' hic quod præd' intratio præd' Edward' in tenementa infraſcr' cum pertin' in quibus, &c. in & ſuper poſſeſſion' præd' Will' inde ſit bona & legalis intratio in lege, tunc iidem Jur' dic' ſuper ſacrament' ſuum præd' quod præd' Edward' non eſt culpabilis de tranſg' infraſpec' prout idem Edward' interius allegavit. Et quia cur' dict' dom' Reginæ hic de judicio ſuo de & ſuper præmiſſ. reddend' nondum adviſatur, dies inde dat' eſt partibus præd' coram domina Regina apud Weſtm' uſque diem Sabbat' proxim' poſt octab' S. Michaelis de judicio ſuo de & ſuper præmiſſ. audiendo, eo quod curia dominæ Reginæ hic inde nondum, &c. Ad quem diem coram domina Regina apud Weſtm' præd' ven' partes præd' per attornat' ſuos præd, Et quia cur' dom' Reginæ hic de judicio ſuo de & ſuper præmiſſ. reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus præd' coram domina Regina apud Weſtm' prædictum uſque diem Lunæ proxim' poſt octab' S. Hillarii de judicio ſuo de & ſuper præmiſſis audiendo, &c. eo quod cur' dominæ Reginæ hic inde nondum, &c. Ad quem diem coram domina Regina apud Weſtm' prædictum ven' partes prædictæ per attornat' ſuos prædictos, Et quia cur' dominæ Reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus præd' coram dom' Regina apud Weſtm' præd' uſque diem Mercurii proxim' poſt xv. Paſchæ de judicio ſuo de & ſuper præmiſſis audiendo, &c. eo quod cur' dom' Regin' hic inde nondum, &c. Ad quem diem coram dom' Regina apud Weſtm' præd' ven' partes præd' per attornat' ſuos præd', Et quia cur' dominæ Reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus præd' coram domina Regina apud Weſtm' præd' uſq; diem Veneris proxim' poſt craſtin' S. Trin' de judicio ſuo de & ſuper præmiſ. audiendo &c. eo quod cur' dom' Reg' hic inde nondum, &c. Ad quem diem coram dom' Reg' apud Weſtm' præd' ven' partes præd' per attor' ſuos præd', Et quia cur' dom' Reg' hic de judicio ſuo de & ſuper præmiſ. reddendo nondum adviſatur, dies inde ulterius

ulterius dat' eſt partibus prædict' coram Domina Regina apud Weſtm' prædictum uſque diem Veneris proximum poſt craſtinum S. Trinitatis de judicio ſuo, de & ſuper præmiſſ. audiendo, eo quod Cur' dom' Reginæ hic inde nondum, &c. Ad quem diem coram domina Regina apud Weſtm' ven' partes prædict' per attornat' ſuos prædictos, Et quia Cur' dictæ dominæ Reginæ hic de judicio ſuo de & ſuper præmiſſ. reddend' nondum adviſatur, dies inde ulterius dat' eſt partibus prædict' coram domina Regina apud Weſtm' prædictum uſque diem Sabbat' proxim' poſt Octab' S. Michaelis de judicio ſuo de & ſuper præmiſſ. audiendo, eo quod Curia dominæ Reginæ hic inde nondum, &c. Ad quem diem coram domina Regina apud Weſtm' prædict' ven' partes prædict' per attornat' ſuos prædict', Et quia Cur' Dominæ Reginæ hic de judicio ſuo de & ſuper præmiſſ. reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus prædict' coram domina Regina apud Weſtm' prædictum uſque diem Lunæ proxim' poſt Octab. S. Hillarii de judicio ſuo de & ſuper præmiſſis audiendo, eo quod cur' dominæ Reginæ hic inde nondum, &c. Ad quem diem coram domina Regina apud Weſtm' prædictum ven' partes prædictæ per attornat' ſuos prædictos, Et quia cur' Dominæ Reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus prædict' coram domina Regina apud Weſtm' prædict' uſque diem Mercurii proxim' poſt xv. Paſchæ de judicio ſuo de & ſuper præmiſſis audiendo, eo quod cur' dominæ Reginæ hic inde nondum, &c. Ad quem diem coram domina Regina apud Weſtm' prædict' ven' partes prædict' per attornat' ſuos prædict', Et quia cur' dominæ Reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus prædict' coram domina Regina apud Weſtm' prædict' uſque diem Veneris proxim' poſt craſtin' S. Trin' de judicio ſuo de & ſuper præmiſſis audiendo, eo quod cur' dominæ Reginæ hic inde nondum, &c. Ad quem diem coram domina Regina apud Weſtm' prædict' ven' partes prædict' per attornat' ſuos prædict', Et quia cur' dominæ Reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus prædict' coram domina regina apud Weſtm' prædict' uſque diem Lunæ proxim' poſt Octab' S. Michaelis de judicio ſuo de & ſuper præmiſſis audiendo, eo quod cur' dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Weſtm' prædict' ven' partes prædict' per attornat' ſuos prædict', Et quia cur' dominæ reginæ hic de judicio ſuo de & ſuper præmiſſ. reddendo nond' adviſatur, dies inde ulter' dat' eſt partibus præd' coram dom' reg' apud Weſtm' præd' uſq; diem Lunæ proxim' poſt Octab. S. Hill' de judicio ſuo de

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& ſuper præmiſſis audiendo, eo quod Cur' dictæ dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Weſtm' prædict' ven' partes prædict' per attornatos ſuos prædictos, Et quia Cur' dominæ reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus præd' coram domina regina apud Weſtm' prædictum uſque diem Mercurii proxim' poſt xv. Paſchæ de judicio ſuo de & ſuper præmiſſis audiendo, eo quod curia dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Weſtm' prædict' ven' partes prædict' per attorn' ſuos prædict', Et quia curia dict' dom' reg' hic de judicio ſuo de & ſuper præmiſſ. reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus præd' coram domina regina apud Weſtm' prædictum uſque diem Veneris proxim' poſt craſtinum S. Trinitat' de judicio ſuo de & ſuper præmiſſis audiendo, eo quod cur' dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Weſtm' prædictum ven' partes prædictæ per attornat' ſuos prædict', Et quia cur' dict' dom' reg' hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus prædict' coram domina regina apud Weſtm' prædict' uſque diem Lunæ proxim' poſt octab. S. Michaelis de judicio ſuo de & ſuper præmiſſis audiendo, eo quod cur' dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Weſtm' prædict' ven' partes prædict' per attornat' ſuos prædict', Et quia cur' dominæ reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus prædict' coram domina regina apud Weſtm' prædict' uſque diem Martis proxim' poſt octab. S. Hill' de judicio ſuo de & ſuper præmiſſis audiendo, eo quod cur' dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Weſtm' prædict' ven' partes prædict per attorn' ſuos prædict' Et quia cur' dict' dom' reg' hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus prædict' coram domina regina apud Weſtm' prædictum uſque diem Mercurii proxim' poſt quinden' Paſchæ de judicio ſuo de & ſuper præmiſſis audiendo, eo quod cur' dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Weſt' præd' ven' partes prædict' per attornat' ſuos prædictos, Et quia curia dominæ reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus prædict' coram domina regina apud Weſtm' prædict' uſque diem vener' proxim' poſt craſtinum S. Trin' de judicio ſuo de & ſuper præmiſſis audiendo, eo quod cur' dom' reg' hic inde nond', &c. Ad quem diem cor' dom' reg' apud Weſt' præd' ven' partes prædict' per attornatos ſuos præd', Et quia cur' dictæ do-

minæ reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus prædict' coram domina regina apud Weſtm' prædictum uſque diem Martis proxim' poſt octab. S. Michaelis de judicio ſuo de & ſuper premiſſis audiendo, eo quod curia dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Weſtm' prædict' ven' partes prædict' per attornat' ſuos præd', Et quia curia dictæ dominæ reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus præd' coram domina regina apud Weſtm' prædictum uſque diem Mercurii proxim' poſt octab. S. Hillarii de judicio ſuo de & ſuper præmiſſis audiendo, eo quod curia dominæ reginæ hic inde nondum. Ad quem diem coram domina regina apud Weſtm' prædictum ven' partes prædictæ per attornat' ſuos præd', Et quia curia dictæ dominæ reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus præd' coram domina regina apud Weſtm' præd' uſque diem Mercurii proxim' poſt xv. Paſchæ de judicio ſuo de & ſuper præmiſſis audiendo, eo quod curia dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Weſtm' præd' ven' partes prædict' per attornat' ſuos prædict', Et quia curia dominæ reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus præd' coram domina regina apud Weſtm' præd' uſque diem Veneris proxim' poſt craſtinum S. Trinitat' de judicio ſuo de & ſuper præmiſſis audiendo, eo quod curia dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Weſtm' præd' ven' partes præd' per attornat' ſuos præd', Et quia curia dictæ dominæ reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus prædict' coram domina regina apud Weſtm' prædictum uſque diem Jovis proxim' poſt octabas Sanct' Michaelis de judicio ſuo de & ſuper præmiſſis audiendo, eo quod curia dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Weſt' præd' ven' partes præd' per attornat' ſuos prædictos, Et quia curia dominæ reginæ hic de judicio ſuo de & ſuper præmiſſis reddendo nondum adviſatur, dies inde ulterius dat' eſt partibus prædict' coram domina regina apud Weſtm' prædict' uſque diem Veneris proxim' poſt octab. S. Hillarii de judicio ſuo de & ſuper præmiſſis audiendo, eo quod curia dominæ reginæ hic inde nondum, &c. Ad quem diem coram dominæ reginæ apud

Weſtm'

Weſtm' præd' venerunt partes præd' per attorn' ſuos præd': Super quo viſ. & per curiam dictæ dominæ reginæ nunc hic plenius intellectis omnibus & ſingulis præmiſſ. maturaq; deliberatione inde habita, pro eo quod videtur eidem curiæ dictæ dominæ reginæ & Juſtic' hic quod præd' intracio præd' Edw. in tenement' præd' cum pertin' in quibus, &c. in & ſuper poſſeſſionem præd' Wil. inde ſit bona & legalis intracio in lege: Ideo conceſſum eſt quod præd' Will. nihil capiat per billam ſuam prædictam, ſed pro falſo clam' ſuo ſit inde in miſericordia. Et præd' Edw. eat inde ſine die.

Hill. 43 Eliz. Reg.

TOOKER's *Case.*

Cro. El. 737, 802

IN an Action of Treſpaſs for breaking of his Cloſe, in the King's Bench, between *William Rud* Plaintiff and *Edward Tooker* Defendant, which began *Mich.* 36 & 37 *Eliz. Rot.* 136. upon Not guilty pleaded, a ſpecial Verdict was found, and upon the whole Matter the Caſe was ſhortly ſuch: *John Arundel*, Eſq; was ſeiſed of the Barton of *Sprecomb* in *Morthoe* in the County of *Devon* in Fee, and demiſed it to *John Tooker* and to the ſaid *William Rud* for the Term of their Lives, and died; after whoſe Death the Reverſion deſcended to Sir *John Arundel*, as his Son and Heir, who by Deed indented granted to the ſaid *Edward Tooker* the Reverſion of the ſaid Barton for Term of his Life, to which Grant, the ſaid *John Tooker* then being jointly ſeiſed of the ſaid Barton, with the ſaid *William Rud*, did attorn; And afterwards the ſaid *John Tooker*, by his Deed, ſurrendred to the ſaid *Edward Tooker* all his Eſtate, Title, and Intereſt in the ſaid Barton, and died: The ſaid *Edward Tooker* entred into the ſaid Barton, claiming to hold in common with the ſaid *William Rud*, and whether his Entry was lawful or not, was the Queſtion. And the Point was, whether by the Attornment of one Tenant for Life, the Reverſion was veſted in *Edward Tooker* or not. For if the Attornment of one doth not veſt the Reverſion in him, then the Surrender aforeſaid made to him was void. And after many Arguments at the Bar by the Parties Counſel, and at the Bench by the Juſtices, Judgment was given againſt the Plaintiff. And in this Caſe two Points were reſolved by the Court.

(a) Cro. El. 802. Co. Lit. 310. a. 315. a. Lit. Sect. 566.

Firſt, That the Attornment of one (*a*) Tenant for Life ſhall veſt the whole Reverſion in the Grantee for divers Reaſons, becauſe the Eſtate of Joint-Leſſees is intire; for

(b) Cro. El. 802.

every Joint-Tenant is ſeiſed *per* (*b*) *my & per tout*, and by Conſequence the Reverſion which is dependant and expectant upon ſuch Eſtate is intire alſo.

Secondly,

Secondly, The Attornment is a lawful Act: 3. The Attornment doth not paſs any (*a*) Intereſt from him who attorns, but only perfects a Grant made by another. See 7 *H.* 6. 34. 8 *E.* 3. 38. *Fitz. Dower* 110. 10 *E.* 2. *Dower* 139. If one (*b*) Joint-Tenant aſſign Dower, it is good. So Dower aſſigned by an Abator or (*c*) Diſſeiſor ſhall not be avoided by the Diſſeiſee, as it is agreed in 12 *Aſſ.* 20. for theſe are lawful Acts. So it was ſaid by the ſame Reaſon: If a (*d*) Diſſeiſor attorns or gives Seiſin to the Grantee of a Seigniory, it ſhall bind the Diſſeiſee, yet the Grantee of the Seigniory cannot compel the Diſſeiſor to attorn to him, or to give him Seiſin, if he had not Seiſin before within Time of Limitation. See for that 8 *H.* 6. 17. 8 *Aſſ.* 16. 8 *E.* 3. 52. 11 *H.* 4. 29. 39 *H.* 6. 2. *b.* And it was ſaid, if the Leſſor, Diſſeiſes his two Leſſees for Life, and enfeoffs another, and one (*e*) Leſſee re-enters, this Act of the one is an Attornment in Law by both. *Ergo*, an expreſs Attornment of one ſhall bind both. So if one Joint-Tenant gives Seiſin of the Rent to the Lord, it ſhall bind his Companion, as it is agreed in 39 *H.* 6. 2. *b.* If a Leaſe be made to two, and afterwards the Reverſion is granted to one of them, and he (*f*) accepts the Deed, *Baldwin* 28 *H.* 8. *Dyer* 12. *b.* held it a good Attornment in Law for both; which Opinion was affirmed for good Law by *Popham* Chief Juſtice and the whole Court. And in 4 *E.* 3. 22. *b.* in *Holland*'s Caſe it is ſaid, That the Attornment of one Joint-Tenant is the Attornment of the other. *Littleton* Ch. *Attornment* 129, holdeth, That if there be Lord and two (*g*) Joint-Tenants by certain Services, and the Seigniory is granted over, and one Joint-Tenant attorns, it is as good as if both had attorned, becauſe the Seigniory is intire; which Opinion of *Littleton* in his (*h*) Book (which is the Ornament of the Common Law, and the moſt perfect and abſolute Work that was ever written in any human Science) the Court did prefer before the ſudden Opinions in 39 *H.* 6. 2. *b.* & 32 *E.* 3. (*i*) *Quid juris clamat* 5. But if the Reverſion of two Tenants for Life, or the Rent, or Seigniory of two Joint-Tenants be granted by Fine, there in a *Quid juris clamat*, *Quem reddidum reddit*, or *Per quæ ſervitia* againſt ſuch Joint-Tenants, the one ſhall not be ſuffered to attorn without his Companion for two Reaſons:

(*a*) 9 Co. 85.
(*b*) Co. Lit. 34. b. 35. a. Bridgm. 130.
(*c*) Co. Lit. 357. b. 5 Co. 30. b. 6 Co. 58. a. Br. Dower 59. Br. Aſſiſe 181. Br. Damages 96.
(*d*) Co. Lit. 311. b.
(*e*) Co. Lit. 309. a.
(*f*) 3 Leon 279. Dyer 12. pl. 57. Cr. El. 802. Lit. Sect. 559. Lit. fol. 127. b.
(*g*) Co. Lit. 315. a. Lit. Sect. 566. Lit. f. 128. b.
(*h*) Præf. Co. Lit. Co. Lit. 311. a.
(*i*) Cro. Eliz. 737.

1. Becauſe the Plaintiff ought to have Attornment in the ſame Manner as he himſelf hath demanded it, as it is held in 9 *H.* 6. 31. *b.*

2. If one attorns only, he may prejudice his Companion: as if he will not (*k*) claim to be unpuniſhed for Waſte, or a Condition to have Fee, or future Term, *&c.* for upon a general Attornment in a Court of Record, the Leſſee ſhall loſe all Advantages which are not claimed

(*k*) 9 Co. 85. b. Co. Lit. 320. b.

of Record; for the Queſtion is demanded of him, *Quid juris clamat?* And therefore he ſhall not have more than he claims of Record; and for this Cauſe one Joint-Tenant only ſhall not be ſuffered to attorn of Record for the manifeſt Prejudice which might accrue to his Companion if it ſhould be the Attornment of both. But in the Caſe of a Grant by Deed, no ſuch Prejudice can happen, and therefore the Attornment of one ſhall bind both, becauſe it cannot prejudice his Companion. So, and for the ſame Cauſe, if one (*a*) Joint-Tenant attorns *in pais* to the Conuſee where the Grant is by Fine, it ſhall bind both. And in Proof that the Reverſion in the Caſe at Bar was intire, to follow the Reaſon of *Littleton*, it was ſaid, If (*b*) Huſband and Wife be Joint-Tenants for Life, and the Leſſor grants the Reverſion of the Land which the Huſband holdeth for Life, the Grant is void; as it is agreed in 13 *E.* 3. *Grants* 63. The ſame Law as it was agreed by *Popham* Chief Juſtice, and the whole Court of two Joint-Tenants Leſſees. See 32 *E.* 3. *Quid juris clamat* 5. So if a (*c*) Man holds three Acres by 12*d.* and the Lord grants the Services of the third Acre, the Grant is void; as it is agreed in 27 *E.* 3. 79. and 7 *E.* 4. 25. *a.*

(*a*) 1 Rol. 302. f. 3. Co. Lit. 315. a. Cro. El. 737.

(*b*) Plowd. 162. b. Br. Grants 137. Br. Joint-Tenants 63.

(*c*) Fitz. Grant. 19. Plowd. 162. b.

(*d*) Co. Lit. 309. b. 6 Co. 69. a. Dyer 302. pl. 43. Poph. 68. b. 5 Co. 113. b.

Secondly, It was reſolved by the Court, that if the Tenant having perfect (*d*) Notice of the Grant (as he by Law ought to have, as it was agreed in *Vivian's* Caſe 13 *Eliz. Dyer* 302.) there, if the Tenant gives his Aſſent, or attorns for any Part, it is good for (*e*) the whole, for in as much as an Attornment is but an Aſſent to perfect the Grant of another, he who attorns cannot apportion, divide, or alter the Grant, but the Attornment ought to be according to the Grant; and therefore if he attorns in Part, it ſhall not be taken void, but ſhall be taken ſtrongeſt againſt him, and ſhall be in Law an Attornment for the whole, and herewith agrees *Littleton Attorn.* 127. And therefore if a (*f*) Reverſion or Seigniory be granted to two, and the Tenant attorns to one of them, it is good to both againſt the Opinion of *Huſſey* and *Danvers*, 11 *H.* 7. 12. *b.* So if the (*g*) Reverſion of 3 Acres be granted, and the Leſſee attorns for one of them, it is good for all, *vi.* 18 *E.* 3. *Variance* 63. and 22 *E.* 3. 18. So if a Reverſion be granted for 40 Years, and the Leſſee attorns for Part of the Years, it is good for all. So if it be granted for Life, (*h*) with divers Remainders over, if the Leſſee attorns to the Grantee for Life only, yet it ſhall enure to all in the Remainder. But if a Reverſion be granted for Life, the Remainder in Fee by Deed, and the Grantee for Life (*i*) dies, the Attornment to him in the Remainder is void, for it is not according to the Grant: Otherwiſe, if the Grant was by (*k*) Fine, for there, by the Fine, the Eſtate was veſted in them, and the Attornment was only to make Privity; but if the Reverſion be granted to two, and one dies, there the At-

(*e*) Co. Lit. 309. b. 314. a.

(*f*) Co. Lit. 310. a.

(*g*) Co. Lit. 309. b.

(*h*) Co. Lit. 310. a.

(*i*) Co. Lit. 309. a. b. 310. a. Lane 36. 1 Co. 104. b. 155. b. 9 E. 4. 39. a. Lit. Sect. 551, 568. Br. Attornment 55. Br. Diſſeiſin & Diſſeiſor 61.

(*k*) 2 Rol. Rep. 2.

tornment to the Survivor is good. So if (*a*) a Reversion be granted to *J. S.* and *Ja. G.* and afterwards they intermarry, and the Tenant attorns, now they shall not have Moieties according to the Purport of the Grant, but that is by the Act of the Grantees themselves. And if the Lessee attorns upon any Condit. subsequent, the (*b*) Condition is void; for if the Reversion be once vested, it cannot be devested by any Condition annexed to the Attornment, because the Grantee is not in by him, but by the Grantor; but if one attorns upon a Condition precedent, there it is no Attornment till the Condition be performed. But in all the Cases aforesaid, if the Tenant hath Notice that the Seigniory was granted but to one, or that the Reversion was granted but of one Acre, or that the Reversion was granted for fewer Years, or that the Reversion was granted for Life only with no Remainder over, there general Attornment without true Notice of the Grant, is void; for the usual Pleading (the sure Oracle of Law) is, (*c*) to which Grant he attorned; and therefore if he hath no Notice of the Grant, or if he hath not true Notice of the Grant, which is all one, his Assent which he gives to that, which in Truth was but Part of the Grant, the Law (which abhors Falsity) will not construe it to be an Attornment to the true Grant. And *Popham*, C. J. said, that every Act done by one Joint-Tenant in (*d*) Benefit of himself and his Companion, is good; as (*e*) Payment of Rent, *&c.* to the Lord by one, doth discharge the other: But one Joint-Tenant cannot prejudice his Companion as to (*f*) any Matter of Inheritance or Freehold, but as to the Profits of the Freehold, the one may prejudice the other; for there is a Privity and Trust between Joint-Tenants, and therefore if one takes all the (*g*) Profits of the Land, or the whole Rent, *&c.* the other hath no Remedy; for it was his Folly to join himself in Estate with such a Person as would break the Trust. And he said, if (*h*) two Joint-Lords and Tenants be by Knights Service, and the Tenant dies, his Heir within Age, now the Lords have Election either to seise the Ward, or to distrain for the Services, and so wave the Wardship, as it is agreed in 1 *E.* 3. But he said, if one Lord seises the Ward, and the other Lord distrains for the Services, he who first seised or distrained, shall bind the other. Also in personal Actions, one Joint-Tenant may release all; but if the Personalty be mixed with the Reality, it is otherwise, as in Assise by two, the (*i*) Release of all Actions personal by one, is no Bar against the other; for although the Assise is an Action mix'd in the Reality and Personalty, yet (*k*) *omne majus trahit ad se minus*, as it is adjudged in 30 *H.* 6. *Bar.* 59. So in a Writ of (*l*) Right of Ward for the Body brought by two, the Release of the one shall not prejudice the other, but shall give his Companion the whole Ward, as it is held in

(*a*) Plow. 483. Co. Lit. 187. b. 310. a.

(*b*) 5 Co. 81. a. b. 9 Co. 85. b. Co. Lit. 274. b. 297. a. 300. b. 1 Rol. 412. M. 1.

(*c*) Co. Lit. 309.

(*d*) Cr. El. 803. Bridgman 129.

(*e*) Bridgm. 129.

(*f*) Cr. El. 737. 803.

(*g*) Cro. El. 803. Bridgm. 129.

(*h*) Cro. El. 803. Bridgm. 129.

(*i*) 5 Co. 97. b. 2 Rol. 411. Co. Lit. 285. a. 18 E. 3. 14. a.

(*k*) Co. Lit. 52. b. 285. a. 5 Co. 115. a. 6 Co. 43. b. 1 Bulst. 105. 2 Bulst. 48. 3 Inst. 109.

(*l*) Fitz. Gard. 190. Br. Gard. 13. Co. Lit. 285. a. Br. Severance. 5.

45 *E.* 3. 10. *a.* & 30 *H.* 6. *Bar.* 59. But in an Action of Waſte brought by two, the Releaſe of one ſhall bar the other, as it is held in (*a*) 9 *H.* 5. 15. *a. per Curiam.* for in Waſte the Perſonalty is the Principal. But note, Reader, If in a (*b*) *Quid juris clamat*, the Defendant, as to Parcel, is ready to attorn; and, as to the Reſidue, claims Fee; there he ſhall be admitted to attorn for Parcel, becauſe he ſhall never attorn for the Reſidue; for if it be found with the Plaintiff, he ſhall enter for the (*c*) Forfeiture; and if it be found with the Defendant, he ſhall never attorn, but when to Parcel he is ready to attorn; and as to the Reſidue, (*d*) pleads ſuch a Plea, that if it be found againſt him, he ſhall attorn; There the Attornment ſhall not be taken by Parcels, 11 *H.* 4. 57. *a. b.* 11 *R.* 2. *b. Attornment* 9. 22 *E.* 3. 18. *b.* And it is true, that to every Attornment, true Notice of the Grant is requiſite; but it is to be underſtood, that there is a Notice in Fact and a Notice in Law; For in ſome Caſes the Law will imply Notice without any expreſs Notice given by any Perſon, as in the Caſe of *Littleton*, *Attornment* 130. If he (*f*) in the Reverſion ouſts his Leſſee for Life, and makes a Feoffment in Fee, and the Leſſee re-enters, it is a good Attornment; and yet perhaps he had not Notice neither of the Feoffment nor of the Eſtate given by the Feoffment. And *Littleton* gives two Reaſons for it.

(a) Br. Waſte 73. Waſte 171. N. B. 147. Quid juris 33, 53. Quid juris Br. Attornment 50.

(b) 1 Rol. 853.

(c) 1 Rol. 299.

(d) Antea 67. b. Co. Lit. 309. b. 5 Co. 113. b. 6 Co. 69. a. Dyer 302. pl. 43.

(e) Co. Lit. 318, b. 319. a. Lit. Sect. 576.

1. Becauſe the Leſſee by Law ſhould not be ignorant (Note, the Law implies Notice) of Feoffments which are made of and upon the ſame Land.

2. By his Re-entry, he cauſed the Reverſion to be to him to whom the Feoffment was made, who was ſeiſed in Demeſn, and had not any Reverſion before. And with *Littleton* agrees the whole Court in 9 *H.* 6. 16. *a. b.* And that the Argeement of the Leſſee there pleaded upon his Re-entry was not material, for without it the Juſtices were agreed, that the Reverſion and the Rent were in the Feoffee, and 18 *E.* 3. *Feoffments & Faits* 62. *acc. per Wilby & omnes*, And although *prima facie* in 2 *H.* 5. 4. *a. b.* the Court thought it was not an Attornment; yet afterwards in 5 *H.* 5. 12. *a. b.* it is adjudged, that the (*g*) Re-entry is a good Attornment, and that the Action of Waſte brought by the Feoffee was maintenable, 46 *E.* 3. 30. *b.* & 34 *H.* 6. 6. *b. acc.* And there it is ſaid, that if the Leſſee for Life recovers in Aſſiſe againſt the Feoffee, it ſhall not be an Attornment.

(g) Co. Lit. 318. b.

And

And if the Tenant hath Notice of the Grant by a Stranger, he may attorn, and aſſent to the Grant in the Abſence of the Grantee, and *Popham* Chief Juſtice ſaid, it had been ſo adjudged againſt the Opinion in 28 *H.* 8. *Br. Attornment* 40.

Cr. Car. 441. 1 Rol. 295. 300. Co. Lit. 310. a. 3 Leon. 17. pl. 40. 4 Leon. 23. pl. 73. 1 Jones 366, 377.

And note Reader, a Difference between an Attornment, which is an Agreement, for that may be made in the Abſence of the Grantee, but in Caſe of a Diſagreement, that ought to be made to the Party himſelf, as appears in *Wheeler's* Caſe, 14 *H.* 8. 23. *a. b.* And the Reaſon and Cauſe of the Difference is, becauſe in Caſe of Diſagreement, the Party might perſwade and move the other by Reaſon, by Entreaty, or other Means to give his Conſent or Good-will; and therefore the Law requires that the Diſagreement be made to the Party for the Prejudice which otherwiſe might happen to him; but in the Caſe of Conſent, (and namely in Caſe of Attornment, which is to veſt and perfect the Eſtate of the Grantee, and ſo for his Benefit) there it being made in his Abſence, is as well as if it were made in his Preſence.

Hill.

Hill. 43 Eliz. Reg.

In the Common Pleas.

The Lord CROMWEL's *Caſe.*

Jenk. Cent. 252. Moor 105, 471. 1 Anderſ. 17, 230. 2 Anderſ. 69. Cr. El. 891. Yelv. 3. Noy 44. N. Benl. 201. pl. 239. Dyer 311. pl. 83. 2 Bulſtr. 251, 255.

IN an Aſſiſe brought by *Edward* Lord *Cromwel* againſt *Edward Andrewes* of *Gray's Inn*, Eſq; and others, of Lands and Tenements in *Alaxton* in the County of *Leiceſter*, upon *nul tort nul diſſeiſin* pleaded, the Recognitors of the Aſſiſe gave a ſpecial Verdict to this Effect: *John Blunt*, Eſq; ſeiſed of the Manor of *Alaxton* in the County of *Leiceſter*, whereof the Lands and Tenements put in View are Parcel, to which Manor the Advowſon of the Church of *Alaxton* was appendant, by Deed indented 10 *Aprilis*, 1 & 2 *Phil.* & *Mar.* between him and *Anthony Andrewes*, (Father of the ſaid *Edw.*) did grant, bargain, and ſell the ſaid Manor, with the Appurtenances, by the Name of the Manor of *Alaxton*, and of the Advowſon of *Alaxton*, appendant to the ſaid Manor, to *Anthony Andrewes*, To have and to hold to him and his Heirs, to the Uſe of him and his Heirs in the ſame Manner and Form as afterwards in the ſaid Indenture is mentioned. And *Blunt*, by the ſaid Indenture covenanted, that the Manor was of the Value of 42 *l. per Ann.* and that he was thereof Owner of an Eſtate of Inheritance, and that it ſhould be diſcharged of Incumbrances, except Leaſes, upon which the ancient Rent was reſerved. And further, *Blunt* covenanted that he would permit *William Rud* and *Richard Elſon* to recover by common Recovery the ſaid Manor, with the Appurtenances, againſt him; which Recovery ſhould be to the Uſes and Intents following, *ſcil.* To the Uſe of *Anthony Andrewes* and his Heirs, rendring for the ſaid Manor, with the Appurtenances, 42 *l. per Annum*, to have and receive to *Blunt* and

and his Heirs, at two Feaſts, *&c.* according to the Covenants in the Indenture, and 10 *l. Nomine pœnæ*, and Diſtreſs for both. And further it was covenanted and agreed by the ſame Indenture between the ſaid Parties, and each covenanted and granted, with the other, in Manner and Form following, that is to ſay, as well for the Aſſurance of the ſaid Manor, with the Appurtenances, to *Anthony Andrewes* and his Heirs, as of the ſaid Rent to *Blunt* and his Heirs: That *Blunt* before *Eaſter* then next following ſhould levy a Fine of the ſaid Manor, with the Appurtenances, to *Anthony Andrewes* and his Heirs; and that by the ſame Fine *Anthony Andrewes* ſhould render a Rent of 42 *l.* in Fee, payable at two Feaſts, with *Nomine pœnæ* and Diſtreſs. Provided always that the ſaid *Anthony Andrewes* ſhall by his Deed ſufficient in the Law, give the Advowſon and Parſonage of the ſaid Church to the ſaid *John Blunt*, during his Life, and if it happen not void in his Life, then one Turn to his Executors. And further it was covenanted and agreed by the ſame Indenture, between the ſaid Parties, and the ſaid *Anthony Andrewes* covenanted with the ſaid *Blunt* to give *Blunt* 840 *l.* for the ſaid Rent and Patronage, to be paid within a Year after Notice that he would ſell it; the Notice to be 7 Years after the ſaid Sale. And further it was covenanted, granted, and agreed, between the ſaid Parties, by the ſame Indenture, That all Manner of Eſtates, Aſſurances and Conveyances after to be made and conveyed of the ſaid Manor and other the Premiſſes, ſhould be to the Uſes and Intents comprized in that Indenture, and to no other Uſe or Intent; and that is the Order, Courſe, and Effect of all the Cov'ts and Clauſes of the ſaid Indent.

And afterward *Ter. Paſch.* next following, a Recovery was had by *Rud* and *Elſon* againſt *Blunt* of the ſaid Manor, with the Appurtenances, according to the ſaid Indenture. By Force of which, *Anthony Andrewes* was ſeiſed of the ſaid Manor, with the Appurtenances, (*prout lex poſtulat.*) And afterwards *Octab. Mich.* 2 *&* 3 *Phil. & Mar. Blunt* and *Ant. Andrewes* levied a Fine to *Richard Perkins* and his Heirs, of the ſaid Manor, with the Appurtenances, and he granted and rendred a Rent of 42 *l. per Ann.* out of the ſaid Manor to *Blunt* in Tail, with the Rem'der to the L. *Montjoy*, in Fee, with Clauſe of Diſtreſs and *nomine pœnæ*, to be pd as the 1ſt Rent was limited to be paid, and granted and rendred the Manor, with the Advowſon, to *Anth. Andrewes*, in Fee, and Proclamations were made according to the Statute. And further it was found by the Recognitors of the Aſſiſe, that this Fine was not levied for a new Sum of Money, or upon any new Conſid. but was levied to the Uſes in the Indenture mentioned. *Anth. Andrewes*, in his Life, did not grant the Advowſon according to the Indent. and afterwards *Anth. Andrewes* dyed;

ed; and after his Death, and in the Life of *Blunt*, the Church became void; *Edw. Andrewes*, Son and Heir of *Anth. Andrewes*, entred into the ſaid Manor; *Blunt* did not requeſt *Anth. Andrewes*, in his Life, to grant him the ſaid Advowſon according to the ſaid Proviſo, *Blunt* entred into the ſaid Manor for the Condition broken. And 6 *Dec.* 16 *Eliz.* in Conſid. of 848 *l.* by Deed indented and inrolled in the Com. Pleas, granted, bargained, and ſold the ſaid Manor, with the Advowſon, to *Henry* L. *Cromwel*, in Fee, by Force whereof he entred, upon whom the ſaid *Edw. Andrewes* entred; and afterwards *Henry* L. *Cromwel* dyed, and the ſaid *Edw.* L. *Cromwel* his Son and Heir entred upon the ſaid *Edw. Andrewes*, who, with the other Defendants by his Commandment, entred upon him, and put him out of Poſſeſſion; And whether this Entry was a Diſſeiſin to the Plaintiff, or not, was the Queſtion.

And this Caſe was oftentimes argued in the Com. Pleas by *Yelverton*, *Glanvill*, and *Williams*, Serjeants on the Plaintiff's Part, and by *Drew* the Queen's Serj. and others, on the Defendant's Part. And afterwards it was argued *Mich.* 39 & 40 *Eliz.* by the Lord *Anderſon*, *Walmſley*, *Beamond*, and *Owen*, Juſtices, at two ſeveral Days, in the Com. Pleas, and the Court was divided in Opinion. And thereupon the Caſe was argued before all the Judges of *England* in the Excheq. Chamber by *Williams*, Serj. and *Coke*, Attorn. Gen. for the Plaintiff, and by *Flemming*, Sollicit. Gen. and *Francis Bacon*, for the Defend. And afterwards the Caſe was openly argued in the Excheq. Chamber by all the Juſtices of the one Bench and of the other, and by the Barons of the Exchequer. And it was there reſolved, that Judgment ſhould be given for the Plaintiff. And *Mich.* 42 & 43 *Eliz.* Judgment was given by the Juſtices of the Com. Pleas according to the ſaid Reſolution. And for avoiding Prolixity, I will omit all the Arguments at the Bar, and report only thoſe Matters in Law that were reſolved by the Juſtices in this Caſe, and the Reaſons and Cauſes of their Judgment: Four Matters were reſolved in this Caſe:

First, That the ſaid Proviſo makes a Condition; for the Law hath not appointed any (a) Place in a Deed proper or peculiar to a Condition, but its Place is where the Parties pleaſe. And it appears by *Littleton*, that (b) *Proviſo* is as apt a Word to make an Eſtate conditional, as *ſub Conditione*, or any other Word of Condition; But notwithſtanding that, when this Word (Proviſo) ſhall make an Eſtate or Intereſt conditional, three Things are to be obſerved: 1. That the Proviſo do not depend upon another Sentence, nor participate thereof, but ſtand originally of itſelf. 2. That the Proviſo be the Word of the Bargainor, Feoffor, Donor, &c. 3. That it be Compulſory to enforce the Bargainee, (c) Feoffee, Donee, &c. to do an Act; and becauſe they all con-

(a) 2 Rol. Rep. 356. Godb. 418. 1 Jones 169.

(b) Lit. Sect. 329. Co. Lit. 203. b. Cr. Car. 129. Lit. fol. 75. a. 1 Rol. 518.

(c) Palm. 496.

cur in this Caſe, it was reſolved that it was a Condition in what Place ſoever it be placed: But that this Proviſo ſhould not make a Condition in the Caſe at Bar, divers Objections were made.

1. That the Indent. in which the Condit. is contained was not inrolled, ſo that no Eſtate paſſed by it; and then (as it was object.) the Condition cannot be annexed to an Eſtate which was afterwards convey'd by the Recov. for the Indent. was ſealed and delivered in *Feb.* and the Recov. paſſed in *Eaſt.* Term, and the Condition could not precede the Eſtate, but a Condition ought to be in the ſame Conveyance, or comprized in another Deed delivered *(a)* at the ſame Time, as the Books are agreed in 17 *Aſſ.* 2. & 43 *Aſſ.* for *(b) Quæ incontinenti fiunt, ineſſe videntur*. 2. It was object. that *Andrewes* had nothing by the Ind'res but Cov'ts of *Blunt*'s Part, and therefore it would be equal to conſtrue it, that *Blunt* ſhould have like Remedy; *ſcil.* Cov'ts on *Andrewes* Part. 3. It was object. that the precedent Sentence, as it appears before, is to this Effect: And further it is cov'ted and agreed between the ſaid Parties, and each of them cov'teth with the other in Manner and Form following: And then the Fine upon Grant and Render is appointed; and immediately after that, the Proviſo is added; and next after the Proviſo, this Clauſe followeth. And further it is cov'ted and agreed between the ſaid Parties, containing a Cov't for Purchaſe of the Rent. And it was ſaid, that *(c) ex antecedent' & conſequent' fit optima interpret'*; but it appears by the precedent Clauſe, that all that ſhall follow after it ſhall be but Cov'ts; for it is ſaid, that each cov'ts, with the other, in Manner and Form following; ſo that by the expreſs Words and Intent of the Parties, all that follows ſhall be but Cov'ts; but the Proviſo follows, and therefore ſhall be but a Cov't. Then the ſubſequent Sentence explains it alſo; for there it is ſaid, And further it is cov'ted and granted between the Parties, *&c.* *Ergo*, the next Clauſe before was but a Cov't, for ſo much this Word (further) implies. 4. It was object. that if the Proviſo ſhall be a Condit. it ſhall refer to the Clauſe next precedent, *ſcil.* to the Fine to be levied according to the Purport of the Cov't next before, and not to the Rec'ry, which is more remote and diſtinct from it by the Interpoſition of the ſaid Cov't concerning the Fine, *Et (d) ad proximum antecedens fiat relatio niſi impediatur ſententia.*

(a) Plowd. 133. a. b. 137. a. b. (b) Co. Lit. 272. a.

(c) Winch. 74. 3 Bulſtr. 65, 168. 1 Rol. Rep. 375. Lit. Rep. 63. Poph. 211.

(d) Raym. 505. Lit. Rep. 187. Hardres 77.

As to the firſt Object. it was anſwered and reſolved, That the Intent of the Parties was not that the Eſtate ſhould paſs by the Bargain and Sale, but that the Eſtate ſhould be conveyed by the Recovery; and that the Indentures ſhould direct the Uſes and Intents as well of the Rec'ry, as of all other Conveyances after to be made: Then it is apt and natural that the

the Indentures which direct the Uſes which cannot be raiſed till the Recovery be had and executed, ſhould comprehend the Conditions and Limitations annexed to the Uſes; and as well as the Indentures may direct the Uſes of the Recovery ſubſequent, ſo may they declare the Conditions and Limitations annexed to the ſame Uſes: And the Statute of 27 *H.* 8. (*a*) doth execute the Eſtate according to the Manner, Condition, and Quality of the Uſe, ſo that by Force of the ſaid Act, the Eſtate itſelf is conditional, and that is approved by the general Allowance and Experience in all the Conveyances of the whole Realm.

(*a*) Co. Lit. 187. b. Poſtea 72. b. 1 Co. 102. b.

As to the ſecond Objection, it was anſwered and reſolved. That it was not unjuſt or unequal that the Bargainor ſhould annex ſuch Condition as pleaſed him to the Eſtate of the Land, for the Land moved from him, *Et cujus eſt dare, ejus eſt diſponere*, and the Bargainee hath accepted it.

As to the third Objection, it was anſwered and reſolved, that neither the Precedent nor the ſubſequent Covenant takes away the Force of the Proviſo; for altho' Words of Covenant had been contained in the ſame Clauſe of the Proviſo itſelf, yet the Proviſo being, in Judgment of Law, a Word of Condition, ſhall not loſe its Force. And therefore it hath been adjudged, between (*b*) *Simpſon* and *Titterel*, in the Common Pleas, where the Caſe was, That Serj. *Benloes* 13 *Nov.* 26 *Eliz.* demiſed to *Titterel* certain Lands in *Eſſex* for 40 Years: Provided always, and it is covenanted and agreed between the ſaid Parties, that the Leſſee, *&c.* ſhould not alien, and it was adjudged, that it was a Condition by Force of the Proviſo, and a Covenant alſo by Force of the other Words. Alſo it was adjudged in the King's Bench, *Paſch.* 39 *Eliz. Rot.* 351. between *Henry* Earl of (*c*) *Pembroke*, Plaintiff, and Sir *Henry Barkley*, Knight, and *Symons* Defendants; And the Caſe was, that the Earl of *Pembroke* granted the Office of Lieutenantſhip of the Weſt Part of the Forreſt of *Fronſelwood* in the County of *Somerſet*, to Sir *Morice Barkley*, (Father of the ſaid Sir *Henry*) in Tail, Provided always, and the ſaid Sir *Morice Barkley* for him, *&c.* doth covenant and grant to and with the ſaid Earl, that neither he the ſaid Sir *Morice*, nor any of the Heirs Males of his Body, ſhall cut down any Wood growing upon any Part of the Premiſſes; And it was reſolved by all the Judges of *England*, upon Argument before them at *Serjeant's Inn*, that although the Proviſo was coupled with the expreſs Covenant of the Grantee, and every Condition ought to be created by the Words of the Grantor, Donor, Feoffor, *&c.* yet, in the Judgment of Law, this Word (Proviſo) was a Condition created by the Grantor, although all the reſt of the Sentence was the Words of the Grantee, for

(*b*) Cr. Eliz. 242. 1 Rol. 410. Gold. 116. 2 Anderſ. 72. Moor 707. Co. Lit. 203. b. Cr. El. 385. 1 Anderſ. 267. Winch 36. Lane 109.

(*c*) 2 Anderſ. 20. Moor 706. Poph. 116. Goldſb. 130. Cr. El. 384, 486, 560. Hardres 49. Lane 57. 109.

for Proviſo being an apt Word of Condition, the ſame Sentence contains the Words of the Grantor purporting a Condition, and the Words of the Grantee comprehending a Covenant; which Judgment was afterwards reverſed in the Exchequer Chamber for a Defect in the Declaration, but not for the Matter in Law, for that was reſolved by all the Juſtices. And in the Caſe at Bar, the Special *Habendum* was obſerved, *ſcil.* To have and to hold to *Andrewes* and his Heirs, in the ſame Manner and Form as afterwards in the Indenture is mentioned; by which it appears, that the Intent of the Parties was, that the Eſtate of *Andrewes* ſhould be *ſub modo*, which it would not be, if the ſaid Proviſo makes not a Condition, or a conditional Limitation, as *Popham* Chief Juſtice called it. Note, In this Caſe 27 *H.* 8. 18. *a.* (*a*) *Dockwray*'s Caſe, *Littleton*, *Chap. Conditions*, (*b*) 14 *Eliz. Dyer* (*c*) 311. 4 & 5 *Phil. & Mar. Dyer* (*d*) 152, that this Word (*e*) (Proviſo) makes a Condition, but when a Proviſo depends upon another Sentence, or hath Reference to another Part of the Deed, it never makes a Condition, but a Qualification or Limitation of the Sentence, or Part of the Deed to which it is referred. As in 5 *Eliz. Dyer* 221. *b. inter Ayer & Ome*, a notable Caſe. 7 *H.* 6. a (*f*) Leaſe without Impeachment of Waſte, Proviſo that he ſhall not do voluntary Waſte, *Litt. Chap. Rents. f.* 48. *a. b.* A Grant of a Rent-Charge, (*g*) Proviſo that the Grantee ſhall not charge his Perſon. *Tramington*'s Caſe in the King's Bench, 4 *Paſch.* 16 *Eliz. Rot.* 273, there a Proviſo tending to qualify and explain a Sentence Precedent, doth not make a Condition 3 & 4 *Phil. & Mar. Dyer* 150, (*h*) *Parker*'s Caſe. Proviſo amounts to a Covenant, 28 *H.* 8. *Dyer* (*i*) 13. *b.*

(*a*) Cr. Eliz. 245. 4 Leon. 71.
(*b*) Lit. Sect. 329. Co. Lit. 203. b.
(*c*) Dyer 311. pl. 83.
(*d*) Dyer 152. pl. 7. 4 Co. 120. b. Cr. El. 757, 816.
(*e*) Cr. El. 73, 242. Co. Lit. 203. b. Moor 51. 52. 106. 2 Leon. 128, 225. 4 Leon. 70, 71, 72, 73. 10 Co. 42. a.
(*f*) 2 Anderſ. 71. 4 Leon. 71, 72, 73. 2 Leon. 128, 129. 3 Leon. 225. 9 H. 6. 35. a. Plowd. 135. b. Dyer 47. pl. 11. Bridgm. 102.
(*g*) 2 Leon 128. 3 Leon. 225. Lit. Sect. 220. 4 Leon. 71. Co. Lit. 146. a.
(*h*) Dyer 150. pl. 83. 1 Co. 155. a. Moor 247. 480. 1 Rol. 518, 848. 1 Anderſ. 19. Hob. 35. Yelv. 9. 3 Leon. 22. 154. 4 Leon. 194. Noy 14. Cr. El. 841. 1 Rol. Rep. 359. 3 Bulſt. 163.
(*i*) Dyer 13. pl. 65. Co. Lit. 203. b. 10 Co. 42. a.

Note, Reader, The Caſe in 35 *H.* 8. *Br. Condit.* 195, commonly cited to prove that a Proviſo doth not make a Condition when it comes *inter alias conventiones*, doth not warrant it, but if it be well obſerved, the Opinion there is good Law, and ſtands well with this Judgment. For there it is ſaid, *Nota pro lege*, that a Proviſo put (*hoc eſt*, to be performed or not done) upon the Part of the Leſſee, upon the Words of the *Habendum*, makes a Condition, yet contrary of a Proviſo (to be performed or not done) on the Part of the Leſſor: As if it be covenanted in the Indenture, that the Leſſee ſhall make the Reparations, *Proviſo ſemper*, that the Leſſor ſhall find great Timber, it is not a Condition; *nec per aliquos* is it a Condition when it comes *inter alias conventiones*, upon the Part of the Leſſee, altho' it is covenanted after the *Habendum*, and after the *Reddendum*, that the Leſſee ſhall ſcour the Ditches, or the like, *Proviſo ſemper* that the Leſſee ſhall carry the Dung to ſuch a Field, it is not a Condition to forfeit the Leaſe, (and it is true, for it depends upon the precedent Covenant, and without the precedent Covenant could not ſtand) contrary if ſuch

Proviſo be put immediately after the *Habendum* which makes the Eſtate, or after the *Reddendum*, (and true it is alſo, for then in Regard it ſtands upon itſelf, and doth not depend upon a precedent Clauſe, it makes a Condition) and all this is good Law, and ſtands well with the Reſolution of the ſaid Juſtices, and ſo the *Quære* which *Brook* made there is now reſolved, and made without Queſtion.

As to the 4th Object. it was anſwered and reſolved, That the Proviſo being a Condition ought to do the proper Office of a Condition, and that is to make the Eſtate conditional, and therefore in what Place ſoever it be put, it having the Force of a Condition, ſhall have Refer. to the Eſtate, and ſhall be annexed to it; And it was ſaid, *Quod Proviſo eſt providere præſentia & futura, & non præterita.* The 2d Point which was reſolved by the Juſtices was, that after the Rec'ry ſuffered, the Stat. of *(a)* 27 *H.* 8. did execute the Eſtate of the ſaid Manor to *Andrewes*, according to the Limitation of the Uſe directed by the ſaid Indentures ſubject to the ſaid Condition or Proviſo: And alſo by Force of another Clauſe of the ſaid Act, created a Rent of 42 *l. per An.* in *Blunt* and his Heirs, for it is provided by a ſpecial Branch of the ſaid Act of 27 *H.* 8. as followeth: That where divers Perſons ſtand and be ſeiſed of and in Lands, *&c.* in Fee Simple, or otherwiſe, to the Uſe and Intent that ſome other Perſon and Perſons ſhall have and perceive yearly to his or their Heirs, one annual Rent out of the ſame Lands, *&c.* in every ſuch Caſe ſuch Perſon, *&c.* be adjudged in Poſſeſſion and Seiſin of the ſame Rent, *&c.* as if a ſufficient Grant, *&c.* had been made, *&c.* by ſuch as were or ſhall be ſeiſed to ſuch Uſe or Intent, *&c.* 20 *Eliz. Dyer* 362. *b. acc.* And altho' in the Caſe at Bar the Uſe of the Recovery was firſt limited by the Ind'res to *Andrewes* and his Heirs, and then came the Clauſe, Yielding for the ſaid Manor 42 *l. per An.* to *Blunt* and his Heirs; and altho' it was objected that the Rent ought to be limited out of the Eſtate of the Rec'rors, and not out of the Poſſeſſion which *Andrewes* had executed to him by the Stat. according to the Uſe limited to him by the Ind're, yet it was agreed that *Blunt* ſhould have the ſaid *(b)* Rent by Force of the ſaid Clauſe of the Act of 27 *H.* 8. for the Intent of the Parties appears, that *Blunt* ſhould have the Rent, and then the Law will make ſuch *(c)* Conſtruction, notwithſtanding the *Reddendum* comes after the Limitation of the Uſe, that he ſhall pay it who by Law ought to pay it, *ut (d) res magis valeat quam pereat.*

Thirdly, It was reſolved, that the Fine levied to *Perkins* by *Blunt* and *Andrewes*, hath not extinguiſhed the ſaid Condition, and that was the great Queſtion and Doubt of the Caſe; and altho' it is true as the Philoſopher ſaith, *Quod fucatus error nuda veritate in multis eſt probabilior, & ſæpenumero rationibus*

(a) Co. Lit. 187. b. Vaughan 52. Antea 71. b.

(b) 1 Jones 179. Dyer 362. pl. 21. 1 Co. 47. b. 137. a N. Benl. 215. pl. 299. 1 Anderſ. 51, 52, 338.

(c) 5 Co. 8. a.

(d) 1 Co. 76. a. 8 Co. 95. b. 3 Keb. 288. 2 Jones 69. 5 Co. 55. b. 1 Mod. Rep. 109.

rationibus vincit veritatem error, and altho' as much was objected againſt the Condition as the Art and Wit of any Man could invent or imagine, yet it was reſolved that the Condition remained for many notable Reaſons; and all the Objections were well and fully anſwered and ſatisfied. Firſt, Becauſe by the general Covenant it is declared, that all Manner of Eſtates, Aſſurances, and Conveyances after to be made of the ſaid Manor ſhould be to the Uſes and Intents compriſed in the ſame Indent. and to no other Uſe or Intent; within which Covenant the Fine levied to *Perkins* is included, for that is one Manner of Eſtate, Conveyance and Aſſurance, and therefore ought to be to the Uſe and Intent of the Indenture; and the Uſe and Intent of the Indenture was, that the Condition ſhould remain, and that the Eſtate of *Anth. Andrewes* ſhould be ſubject to the ſame Proviſo; and therefore the firſt general Reaſon of their Reſolution was, that by the Com. Law the fine was ſo directed by the general Covenant to have ſuch ſpecial Operation according to the Intent of the Parties in this Caſe, of a common Aſſurance, that the Condition ſhould not be touched thereby, but that the Fine ſhould extinguiſh all other Rights and Titles to the Manor, ſaving the ſaid Condition only, which ſhould not be extinguiſhed thereby; and that is proved by the (*a*) like Caſes at the Com. Law. And therefore in 9 *E.* 3. 1. *b.* & (*b*) 12 *E.* 4. 3. the Lord, by Deed, may releaſe all his Right in the Land, ſaving to him his Rent. So 2 *E.* 2. (*c*) *Voucher* 108, one may enter into the Warranty, ſaving to him his Rent; And 50 *E.* 3, 12. *b.* a Man may enter into Warranty, ſaving to him his Condition. And *Putnam's* Caſe, 4 & 5 *Phil.* & *Mar. Dyer* 157, was cited; where (*d*) *Putnam*, by Deed intended, did enfeoff *Duncombe* and his Heirs of the Manor of *Duncombe*, rendring to *Putnam* and his Heirs a Rent with a Clauſe of Diſtreſs, and for Non-payment a Re-entry, and by another Indenture of the ſame Date, *Putnam* covenanted with *Duncombe* to levy a Fine of the ſaid Manor before ſuch a Feaſt, *&c.* which Fine ſhould be to the Uſes, Intents, Purpoſes and Conditions expreſſed in the former Indenture, and to no other, and afterwards the Fine was levied accordingly by *Putnam* to *Duncombe come ceo*, *&c.* with uſual Words of Releaſe of all his Right. And it was reſolved, that neither the Condition nor the Rent were touched by the Fine levied of the Land by reaſon of the former Indenture which ruled the Fine: And there it is ſaid, that it is like a Releaſe made by the Lord to the Tenant of the Land *Salvo ſibi dominio*: and all this appears in the Reports of the Lord *Dyer*: The like Judgment was given *Trin.* 23 *Eliz.* as the Lord *Dyer* there reports *per opinionem omnium Juſticiar' de banco*, upon Evidence to a Jury in *Eſſex*, between *Tuſſer* Plaint. and others Defend'ts, notwithſtanding a general Entry into the War-

(*a*) Moor 298.
(*b*) 12 E. 4. 11. a. Fitz. Releaſe 16. 2 Perk. Sect. 647. Br. Releaſe 55.
(*c*) 2 E. 2. Vouch. 208.
(*d*) Moor 106, 107 384, 472. 2 Anderſ. 85, 87. Dyer 157. pl. 28, 29. 2 Rol. Rep. 246. 3 Keb. 38, 537. Palm. 250, 506. Winch. 111. Poſtea 73. b. 74. a. 78. a. b. 1 Anderſ. 18.
(*e*) Dyer 157. pl. 30.

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ranty by *Bradborne* and his Wife upon a Voucher in a Writ of Entry in the Poſt, and the Iſſue was *utrum recuperatio prædt' fuit ad opus & uſum dict'* the Rec'ror *tantum, &c.* but *ad uſum etiam*, that a Rent reſerved by the Huſband and Wife by Fine before the Rec'ry by them to *Tuſſer* levied, ſhould be aſſured to *Bradborne* and his Wife in Fee, and not to be extinguiſhed; upon which *propter opinionem Curiæ Tuſſer* was nonſuit. So there it appears by the Opinion of the Court, that the Aſſent and Agreement of the Parties did preſerve the Rent, notwithſtanding the general Entry into the War'ty; and by the ſpecial Agreement of the Parties, the Rec'ry is ſo directed, that the Rent is not touched by the general Entry into the Warranty. And it was adjudged in the K's Bench *Trin.* 34 *Eliz.* between *(a) Clever* and *Childe*, *Rot.* 805, according to the Reſol. in *Putnam's* Caſe; and ſo and for the ſame Reaſon was it adjudged in this very Caſe now in Queſt. *Paſch.* 14 *Eliz. (b) Dyer* 311, in a *Quare impedit* for the Advowſon of *Alaxton*, that the Condition was not extinguiſhed by the ſaid Fine; ſo that as it is commonly ſaid, *(c) Modus & conventio vincunt legem*, and the Covenant and Agreem't of the Parties hath Power to raiſe an Uſe, as in *Bainton's* Caſe *Plow. Comm.* 2. To declare Uſes upon a Fine or Recovery, as common Experience hath allowed: 3. To preſerve Rents and Condit's, and to direct Fines or Rec'ries, *&c.* to enure to certain Purpoſes, as in *Putnam's* Caſe and other Caſes before cited.

(a) Cr. Eliz. 300 Poſtea 78. a.

(b) Dyer 311. pl. 83, 84. 2 Brownl. 52. 1 Anderſ. 17. Co. Ent. 499. Nu. 15. Moor 205. Yelv. 124. Poſtea 75. b.

(c) 12 Co. 71. Co. Lit. 19. a. 266. a. 180. a. 2 Roll. Rep. 332. 2 Sand. 167. Godb. 254. 1 Roll. Rep. 262. Winch. 48. 96. Heb. 40. Lit. Rep. 208.

Againſt which it was object. 1. That the Condition or Rent cannot be ſaved by the Indenture, for no ſaving can be in a collateral Deed or Record, but it ought to be ſaved in the ſame Deed or Record, as in the Caſes put before, where the Lord releaſes to the Tenant, it ought to be ſaved by a Saving in the ſame Deed, and not by any Covenant or Saving in any collateral Deed: And ſo the Books are in 50 *E.* 3. 12. 2 *&* 4 *E.* 2. *Voucher*, that a Man may enter into the War'ty, ſaving to himſelf his Rent or Action, but it ought to be in the ſame Record, for it cannot be ſaved in any collateral Record or Deed. And therefore if a Man by Deed covenants that he will make a Feoffment, and that the Feoffment ſhall be upon Condition, that if the Feoffee do not pay a certain Sum before ſuch a Feaſt that he ſhall re-enter; and afterwards he makes a Feoffment without comprehending any Condition in it, the Feoffment ſhall be abſolute, and ſhall not be ſubject to the Condition compriſed in the firſt Deed.

As to that it was anſwered and reſolved, 1. That the general Covenant ſhall rule and direct the Fine to have its Operation to extinguiſh his Right and Title whatſoever, ſaving the ſaid Condition, although the ſaving be not within the ſame Record, and that for divers Reaſons:

1. The Objection which hath been made, might have been made againſt the Reſolution of the Juſtices in the Time

of Queen *Mary*, in *Putnam's* Caſe, and of the Court of Common Pleas in this Queen's Time, in *Bradbury's* Caſe, *Clever's* Caſe, and in this very Caſe; for in all theſe Caſes it was agreed, That neither the Condition nor the Rent were extinguiſhed or touched, but continued, notwithſtanding the Fine *ſur conuſans de droit come ceo, &c.* and the general Entry into the Warranty; but it appears alſo in our Books, That it is not of Neceſſity that the Saving ſhould be always in the ſame Record or Deed, but in ſome Caſes it may be contained in (*a*) another Deed, although by Law it might have been ſaved in the ſame Deed or Record. As in (*b*) 17 *Aſſ.* 2. & (*c*) 43. *Aſſ.* 12. if the Diſſeiſee releaſe his Right to the Diſſeiſor, it may be defeated by a Condition contained in another Deed delivered at the ſame Time. So the ſame Law of a Saving. And *F. N. B.* 205. (*d*) if a Woman makes a Feoffment in Fee by Deed, rendring Rent, and hath another Deed to ſhew, that the Intent of the Feoffment was, That the Feoffee ſhould marry her, the ſame is good, and that by Reaſon of the collateral Deed, and ſhe may have a Writ of Entry *cauſa matrimonii prælocuti*, or ſhe may enter if ſhe will, and that is in the Caſe of a particular Aſſurance; but in the general Caſe of common Aſſurances, that is to ſay, in the Caſe of a common Recovery, he who enters into the Warranty may ſave his Rent, and yet if he enters into the Warranty generally, it may be ſaved by Covenant and Agreement, in an Indenture made before the Recovery, as it was agreed, as appears before in *Bradbury's* Caſe, and that in Favour of common Recoveries, which are the (*d*) common Aſſurances of the Land, the uſual Form of which ſhall not be altered by a ſpecial Manner of Entry, ſaving his Rent or Condition, but may be ſaved by an Indenture *dehors*: And Conveyances, which are uſed for common Aſſurances of Land, ſhall be expounded and conſtrued according to common Allowance, without prying into them with Eagles Eyes. And therefore *Paſch.* 35 *Eliz.* in *Dormer's* Caſe, it was adjudged in the King's-Bench, That a common Recovery might be had of an (*e*) Advowſon. So it was adjudged in the Exchequer in Sir *William Pelham's* Caſe, That if a common Recovery be ſuffered by Tenant for Life, it is a (*f*) Forfeiture of his Eſtate. And the Reaſon of both the ſaid Judgments was, Becauſe a common Recovery is by Uſage a common Conveyance, as a Fine or Feoffment, *&c.* And it is ſaid in *Plow. Comm.* in *Trevilian's* Caſe, 514. That in common Recoveries, the common Uſage and Intent of the Parties is to be reſpected; for a common Recovery had againſt (*g*) Huſband and Wife, ſhall bar the Wife of her Dower, and yet the Wife ſhall not have any Recompence in Value, and therefore in Strictneſs of Reaſon it is hard to be maintained, but common Uſage, and the (*h*) Intent of the Parties, makes it a Bar. And therefore it is wiſely ſaid of a Lawyer, *Non eſt recedendum a communi obſervantia, &*

Poſtea 78. a.

(*a*) Co. Lit. 146. b.
(*b*) Br. Condition 103. Antea 71. a. Br. Deſeaſans 6. Br. Releaſe 34.
(*c*) Br. Releaſe 39. 1 Rol. 414. Br. Deſeaſans 11. Br. Condition 115, 120.
(*d*) F. N. B. 205. k. Poſtea 75. a. b. Dyer 312. pl. 84. 8 E. 2. Entry 78. 2 Anderſ. 82. Palm. 507. Dyer 146, 147. pl. 71.

(*d*) 2 Rol. Rep. 216. 5 Co. 40. b.

(*e*) 5 Co. 40. Jenk. Cent. 257. Poph. 22, 23. 2 Rol. Rep. 67. Cr. Car. 270. 1 Mod. Rep. 250.
(*f*) Poph. 23. Co. Lit. 356. a. 362. a. 1 Co. 15. b. 3 Co. 4. b. 10 Co. 44. a. 2 Leon. 60, 67. 4 Leon. 123. 133. 1 Anderſ. 227. Poſtea 77. b. Moor 271. Vaughan 51. 2 Brownlow 170. 1 Rol. Rep. 304. 5 Co. 40. b.
(*g*) Poſtea 77. b. 78. a. 10 Co. 43. a. 1 Rol. 347. 2 Rol. 395. Palm. 226.
(*h*) Co. Lit. 314. b. Poſtea 76. a

minime mutanda sunt quæ certam interpretationem habuerunt. But the Case of the Fine in our Case, is stronger than the Case of the Recovery; for in the Case of a Recovery, the Vouchee may enter specially, saving his Action, Rent, Condition, *&c.* and yet because the Usage before this Time hath allowed it, it may be saved by Covenant and Agreement precedent, as it hath been said; but in the Case of a Fine, no Saving can be contained in it, and therefore for Necessity (and according to common Usage always allowed) it may be saved by the Direction and Rule of a precedent Covenant and Grant. And therefore it is adjudged in (*a*) 6 *R.* 2. *Estoppel* 2. That if a Man and his Wife enfeoff two by Deed, to have and to hold to them and their Heirs, and afterwards the Feoffor and his Wife levy a Fine *sur conusans de droit* to them, and the Heirs of one of them, that this is no Conclusion, but that both shall have the Fee-simple as they had before: And there *Skipwith*, Chief Justice of the Common Pleas, *ex assensu Belknap, & sociorum suorum*, gave four Reasons of their Judgment. 1. Because they had Fee before by the Feoffment, and therefore the Fine should enure but as a Release. 2. The Conusans to them, and the Heirs of one of them, *come ceo, &c.* might well stand with the Estate which they had before; for whereas the Fine acknowledgeth the Right of one (*Hoc est*, the Fee to one) it is true, for the Tenements were the Right of the one and other, *Ergo*, the Right of one. 3. We cannot take other Fines, for the Fee-simple ought to be determined in (*b*) one Person certain by the Fine. 4. The Fine is not executory but to extinguish the Right of the Wife only, wherefore it is no Estoppel. *Nota ex hoc*, That the precedent Feoffment doth rule and direct this subsequent Fine, and preserves the joint Estate in them of the Fee-simple, against the express Limitat. of the Fine: Also forasmuch as the Fine by Law cannot be levied in other Form, it shall be ruled and directed according to the precedent Agreement, and Estate made by the Parties, *pari ratione*, forasmuch as a Saving can't by Law be in the Fine, it may be directed and ruled by the precedent Agreement and Covenant of the Parties. So if two Parsons of two several Churches, by one Instrument in Writing, change their Benefices, by Way of Exchange, and to that Purpose resign them into the Hands of the Ord. and the Patrons present accordingly, and one of the Parsons is admitted, instituted and inducted, and the other is admitted and instituted, and dies before Induction, altho' the Induction of the other was absolute, yet it was directed by the precedent Agreement which was by way of Exchange, which ought to be executed on both Parts in the Life of the Parties; and the Institution and Induction cannot be upon express Condition, nor in other Form than was done, *vide* 45 *E.* 3. *Exchange* 10.

Secondly, It was answered, That in this Case the Bargain

(*a*) 6 R. 2. Estoppel. 211. Dyer 157. pl. 25. 10 Co. 96. a. 1 Bulstr. 164. Cr. Eliz. 917. 2 Rol. Rep. 473. Postea 77. b. 78. a.

(*b*) 5 Co. 38. b. 1 Leon. 62.

2 H. 4, 5. Fitz. Exchange 10.

and Sale, the Recovery and the Fine, although they be made, ſuffered, and levied at ſeveral Times, yet all of them by the mutual Agreement of the Parties, make but one and the ſame Aſſurance of one and the ſame Mannor, according to one and the ſame original Bargain and Contract, and therefore each of them doth tend to perfect the ſaid Bargain, none of them to deſtroy any Part of it, or to overthrow the true Intent and Meaning of the Parties in any Thing, but ſhall be taken as one and the ſame Aſſurance, made at one and the ſame Time. As if a Man makes a Leaſe by Indenture for Life, of Lands in ſeveral Counties, and makes Livery of the Land in one County, and then ſeveral Days after makes Livery in the other County, yet one entire Rent ſhall Iſſue out of the Lands in both Counties, and yet the Livery by which the Eſtate paſſed, was made at ſeveral Times, and therefore it might be argued, that preſently by the firſt Livery, the Rent ſhould iſſue out of that; but the Law will not adjudge by Parcels in Subverſion of the Intent and Agreement of the Parties, but when all Acts are done in Performance of the original Contract and Agreement of the Parties, the Law will judge upon the whole as executed at one and the ſame Time: So if a Man makes a Deed of Feoffment with Warranty, and delivers the Deed to the Feoffee, and afterwards at another Time makes Livery *ſecundum formam charta*, now the Warranty is good; and yet it may be objected, That when the Deed was delivered, no Eſtate paſſed to which the Warranty could be annex'd; nor no Eſtate was in the Feoffee upon which the Deed might enure as a Releaſe with Warranty, but the Deed which comprehended the Warranty took Effect preſently by the Delivery of the Deed before the Livery of Seiſin; and ſo by a nice Conſtruction upon Diſtinction of Time, the War'ty would be o'erthrown; but the War'ty is good for the Cauſe aforeſaid. And in theſe com. Aſſurances *praxis juriſperitorum* is to be obſerv'd, and the Sentence of *Theophraſtus* in *Met.* is true, (*b*) *Qui rationem in omnibus quærunt, rationem ſubvertunt*; and foraſmuch as the End of the Law is to Settle Repoſe, and make Peace betw. Man and Man, concerning their Poſſeſſ. *&c.* it wou'd be too dangerous a Thing to make any Conſtruction againſt the general Allowance in common Aſſurances, for thereupon would riſe infinite Contentions, Quarrels and Suits, which would be inconvenient. The 2d Object. which was made againſt it was, That this Fine was upon a Grant and a Render, and therefore without Writing could not be averred to be to an Uſe, for it imports a Conſider. in it ſelf, and therefore by naked Averment by Word, cannot be aver'd to be to any other Uſe or Intent than is comprized in the Fine it ſelf, but by Deed it may be: Alſo the finding of the Jury is not material, for their finding ought to be ſubmitted to the Judgm. of the Law as in *Amy Townſhend's* Caſe. *Plo. Com.* it is agreed. So holds *F. N. B.* 205. *k.* (*c*) If a Wom. makes a Feoffment in Fee, by Deed, rendring Rent, ſhe cannot by Word averr, That it was *cauſa matrimonii prælocuti*, for it appears by the Deed, That the Reſerva ion was the Cau e of the Feoffment,

5 Co. 79. b.

(*b*) Raym. 356.

(*c*) F. N. B. 205. k. Antea 74. a. Dyer 146, 147. pl. 71. 312. pl. 84. 8 E. 2. Entry 78. 2 Anderſon 62.

but if ſhe hath a Deed to ſhew, and prove that the Deed was to the Intent that he ſhould marry her, then ſhe may well maintain a Writ *cauſa matrimonii prælocuti*, but without a Deed ſhe cannot, as it is adjudg'd in 8 *E.* 2. *Entrie.* 78. ſee (*a*) 8 *Aſſ.* 34. and thereupon the Caſe of (*b*) *Wilks*, 1 *Eliz. Dyer*, and many other Caſes were cited to this Purpoſe; but they did rely upon the Opin. of the whole Court of Com. Pleas, 14 *E. Dyer* (*c*) 311. in this very Caſe, That without writing a Fine upon a Grant and Render cannot be averr'd to be to any other Uſe or Intent than the Fine it ſelf doth import: And then they objected in this Caſe, That foraſmuch as the Indentures which ſhould direct this Fine, were levied by *Blunt* and *Andrewes* to *Perkins*, who rendred a Rent to *Blunt*, and the Mannor to *Andrewes*, the ſaid Indentures could not declare any Uſe or Intent of the Land from *Perkins*, who is a Stranger to the Indentures, and of a Fine levied to him, by which he rendreth a Rent to one, and the Land to the other, as is aforeſaid, which cannot be directed by any naked Averment, for the expreſs Conſideration and Intent expreſſed in the Fine, and no Deed to which *Perkins* was not Party, can direct it, becauſe now, by the mutual Agreement of *Blunt*, who had the Condition and the Rent, and of *Andrewes* who had the Land, this Fine is levied to *Perkins*, by which they make him abſolute Owner of the Land, and that he ſhould render a Rent to *Blunt*, and the Mannor to *Andrewes*, ſo that now *Blunt* hath the Rent of the Grant of *Perkins*, and *Andrewes* hath the Mannor by the Grant and render of *Perkins* alſo, *Ergo*, the Eſtate of *Perkins* cannot be ſubject to any Uſe or Intent comprized in the Indentures made before between *Blunt* an *Andrewes*, but ought to have a Deed to which *Perkins* ſhall be Party, and this Objection was enforced by many Reaſons. 1. It was ſaid, That notwithſtanding the ſaid general Covenant, if *Blunt* and *Andrewes* had made a Feoffment, or levied a Fine upon any new Agreement or Conſideration, altho' ſuch new Agreement was only by Word, that the general Covenant ſhould not rule any Conveyance or Aſſurance made upon a new Conſideration and Agreement, and therefore if *Blunt* and *Andrewes* had enfeoffed *Perkins*, or levied a Fine to him for any Sum of Money, or other Conſideration, this Feoffment or Fine ſhould not be ruled or directed by the general Covenant, neither ſhould the general Covenant direct or rule any Conveyance, but thoſe which are made upon the firſt Conſideration, and in Performance of the firſt Bargain, and not for any new Conſideration, *quod fuit conceſſum*; then *a conceſſis*, they objected, That this Fine levied, imports in it ſelf a new Agreement and Conſiderat. and that for divers Cauſes. 1. This Fine, as it hath been ſaid, imports an expreſs Conſider. in it ſelf, *ſcil.* in Conſider. of the Fine levied by *B.* and *A.* to *Perkins*, he grants and renders a Rent to *B.* and the Mannor to *A.* and no Averment by Word ſhall be receiv'd to ſhew that this Fine was levied

(*a*) Br. Aſſiſe 140. Br. Condition 100.
(*b*) Dyer 169. pl. 21, 22. 1 Anderſ. 313. 2 Anderſ. 81. 136. 199, 200, 201. 1 Rol. Rep. 42.
(*c*) Antea 73. b. Dyer 311. pl. 83, 84. 2 Brownl. 52. Moor 105. 1 Anderſ. 17. 313. Co. Entr. 499. nu. 15. Yelv. 124.

levied to another Uſe or Intent than is contained in the Fine, ſo that the Manner of the Fine imports a new Agreement. 2. It is levied by both to a Stranger to the Indenture, whoſe Eſtate cannot be ſubject to the Declarations or Covenants made between *Blunt* and *And.* and this new Perſon makes a new Agreement. 3. The firſt Bargain and originalContract between the Parties, is altered in Subſtance and Effect; for by the firſt Bargain *Blunt* was to have a Rent of 42 *l.* to him and his Heirs, and by this Fine the Rent is rendred by *Perkins* to him in Tail, the Remainder over to a Stranger, ſo that this Eſtate Tail, which is new, and limited in Remainder to a new Perſon in Fee, doth manifeſt that there was a new Agreement between the Parties, and then *ex conſequenti* the ſaid Indentures cannot rule or guide the Intent or Uſe of this Fine, the Averment by Word cannot be by Law, and the finding of the Jury is not material, for here is a new Agreement of Record, and none will affirm, that there ſhall be two Rents to *Blunt*, one in Fee, and the other in Tail, for that would be againſt the Intent of the Parties, and againſt all Law and Reaſon. As to this, it was anſwered and reſolved, That it is true that a Fine upon a Grant and Render, unleſs it be in ſpecial Caſes, cannot be (*a*) averr'd by Word to be to another Uſe or Intent than it expreſſed in the Fine, Feoffment, or other Conveyance: But there is a Difference between an Uſe and a Conſideration, for when a Fine, Feoffment, or other Conveyance imports an expreſs Conſideration, a Man may averr by Word, another Conſideration, which ſtands with the Conſideration expreſſed; but the Parties cannot by Parol aver any other Uſe than is contain'd in the ſame Conveyance; alſo no Averment ſhall be againſt the Conſideration expreſſed. But yet in ſome Caſes a Fine upon a Grant and Render may be ruled and directed in Part by an Averment by Word. And that is when the original Bargain and Contract between the Parties is by Indenture or other Deed, as where it is agreed by Indenture, That a Fine ſhall be levied of certain Land, by the Name of certain Number of Acres to divers Perſons, and that they ſhall grant and render the Land again in Fee-ſimple, which ſhall be to certain Uſes; the Fine is levied of the Land, but ſome Variance is in the Number of the Acres comprized in the Fine, or the Fine is levied to one of the Parties only, who grants and renders the Land, ſo as there is Variance betwixt the Covenant and the Fine in Number and Perſon; and yet God forbid but that this Fine ſhall be averr'd to be to the Uſe of the Indentures, for the original Bargain and Agreement of the Parties was declared by Writing, and altho' ſome ſmall Variance be in Quantity, Perſon, Time, or the like, betwixt the Fine and the Indenture, yet the Law (which in common Conveyances hath great Reſpect and Regard to the (*b*) Intent of the Parties, and to the Subſtance and Effect of their original Bargain and

(*a*) Cr. Jac. 29. 1 Co. 176. a. 5 Co. 26. a. b. 68. b. 7 Co. 39. a. 9 Co. 10. a. b. 11 Co. 25. a. 1 Rol. Rep. 42. 2 Rol. Rep. 362, 363. Lane 119. 1 Ander. 313. 1 Brownlow 191. Moor 192. 1 Venr. 368. Dyer 147. a. pl. 72, 73.

(*b*) Co. Lit. 312. b. Poſtea 2. a.

Agreement) will ſuffer an Averment to agree the Fine and the Indenture, notwithſtanding theſe Petit Circumſtances of Number, Perſon, Time, and the like, when the Party avers that there was not any new Conſideration, nor any new Agreement between the Parties, but that the Fine was levied according to the Indenture, and to the Uſes and Intents contained therein: And it is agreeable to Juſtice and Equity, and eſpecially in common Aſſurances of Lands between Party and Party, that ſome petit Variance or Circumſtance ſhall not overthrow all the Subſtance and Agreement of the Parties in their Indentures, to the Diſinheriſon of one of them. And it was agreed in (*a*) *Taverner*'s Caſe, now lately referred to the Juſtices out of the Chancery, That if *A.* hath 10 Acres in *D.* and *B.* hath 10 Acres in the ſame Town, and *A.* levies a Fine to *B.* of 20 Acres, and *B.* grants and renders 20 Acres to *A.* in Fee, yet *A.* ſhall not have the 10 Acres of *B.* unleſs there was a ſpecial Agreement between them to ſuch Purpoſe, for otherwiſe the Conuſee ſhall be ſaid to render more than he received.

(*a*) 3 Bulſtr. 318. 1 Rol. Rep. 117.

And as to that which is ſaid, That *Perkins* is a Stranger to the Indenture, and that *Blunt* and *Andrewes* cannot limit the Uſe or Intent of the Land, which by the Fine was abſolutely the Inheritance of *Perkins*, and that *Perkins* only hath the Power to limit the Uſe, and to make a Diſpoſition of the Land and no other: To that it was anſwered and reſolved, That the Scope and Purpoſe of the Indenture, and of the original Agreement of the Parties was, That *Andrewes* ſhould have the Mannor, and *Blunt* a Rent out of it; now for Performance of it, it was adviſed, That both ſhould join in a Fine to *Perkins*, and that he ſhould render the Rent to *Blunt*, and the Mannor to *Andrewes*, ſo that it appears *Perkins* was but an Inſtrument to perform the original Agreement of the Parties, and had not any Power to limit any Uſe, or to make any other Diſpoſition of the Land than *Blunt* and *Andrewes* had directed him; for if he had not agreed to make the Render in the ſame Fine as it was deviſed by *Blunt* and *Andrewes*, they would never have levied the Fine to him; ſo that he is but an Inſtrument to perform the Agreement of the Parties, and all ſhall be ſaid to be done by the Order and Diſpoſition of *Andrewes* and *Blunt*, according to their original Bargain and Agreement; as the Caſe in 2 *Eliz. Dyer* 172. *Lane* held of the Mannor of *Walgrave* by Knight's Service, which Mannor was held over of the King *in Capite*, *Lane* levied a Fine of the Tenancy to one, who granted and rendred it to *Lane* for Life, the Remainder to his Wife for Life, the Remainder to the right Heirs of the Husband. And it was reſolved in the Court of Wards, That altho' the Wife was immediately in by the Render of the Conuſee, yet becauſe it appears that he was but an Inſtrument to render the Land as *Lane* ſhould direct him, it

(*b*) Dyer 172. pl. 12. 9 Co. 127. a.

was by the Judgment of the Law the Diſpoſition of the Husband for the Advancement of the Wife. And it appears, That *Perkins*, in the Caſe at the Bar, was but an Inſtrument to perform the original Contract and Agreement of the Parties, becauſe he had not any Power to overthrow the ſaid Contract and Agreement of the Parties, which will be more apparent, if firſt the Parts of the Fine, and then the Seiſin of *Perkins*, be examined and conſidered.

As to the firſt, If any Part of the Fine would deſtroy the Condition, it would be the conuſans of the Fine, for that is made by *Blunt* who hath the Condition, and by *Andrewes* who hath the Mannor: Suppoſe then, that *Perkins* had refuſed to make any Render, then it would be clear, that this Conuſans to *Perkins* might be directed by the firſt Covenants in the ſaid Indenture, although *Perkins* was a Stranger to it, and that is proved by the common Aſſurances. For if *A.* by Deed indented between him and *B.* bargains and ſells Land to *B.* and his Heirs, and it is covenanted between them, That *A.* ſhall levy a Fine to *B.* and that *C.* who is a Stranger to the Deed, ſhall recover the ſaid Land againſt *B.* in a common Recovery, which Recovery ſhall be to the Uſe of *B.* and his Heirs, this is good without Queſtion, for it hath been agreed by them who have argued on the contrary Part, That the ſaid Recoverers in the Caſe at Bar, although they were Strangers to the Indenture, yet their Eſtate was ſubject to the Uſes of the Indenture: And it is uſual, if Tenant in Tail, with Remainder, will bargain and ſell the Land by Deed indented and enrolled to his Friend and his Heirs, who ſuffers a common Recovery with (*a*) double Voucher, in which the Bargainor is vouched, and yet all that is to the Uſe of the Tenant in Tail and his Heirs, and ſo it is uſual to be averred; for now upon the Matter, the Bargainee is but an (*b*) Inſtrument to be Tenant to the *Præcipe* in the Recovery, which ſhall be ſuffered to bar the Eſtate Tail and all the Remainders, and the Bargain and Sale was only to this Purpoſe; then if no Render had been made, this Conuſans might have been ruled and directed by the Indenture: Then it is to be conſidered what (*c*) Seiſin *Perkins* had, and truly he had Seiſin but for an Inſtant, and only to this Purpoſe, to make the Render, for his Wife ſhall not be (*d*) endowed, nor the Land ſubject to his (*e*) Recognizances or Statutes; and the Render is to *Andrewes*, who was Party to the Indenture, ſo as the Render of *Perkins* cannot extinguiſh the Condition which *Blunt* had, but the Conuſans of *Blunt* ſhall extinguiſh it, if any Thing ſhall extinguiſh it, and his Conuſance is directed and ruled by the ſaid Indenture, becauſe *Blunt* at the Time of the making thereof, was abſolute Owner of the ſaid Mannor, and had abſolute Power to declare

(*a*) Co. Lit. 372. b.

(*b*) Vaugh. 42.

(*c*) Vaugh. 41.

(*d*) Cr. Jac. 615. Vaugh. 41. Co. Lit. 31. b.

(*e*) Vaugh. 41.

to

to what Uſes and Intents the ſaid Recovery, and all other Aſſurances (without a new Agreement as hath been ſaid) ſhall be. Alſo, although *Perkins* was a Stranger, yet the Render was to *Andrewes*, who was Party.

Further, it was ſaid, That in this Caſe *Blunt* joined with *Andrewes* in the Fine for Neceſſity; for if he had not been Party to the Fine, the Render of the Rent could not be made to him, ſo that for this ſpecial Purpoſe to have Aſſurance of the Rent by the Render of the Fine, he joined with *Andrewes*, ſo that he might ſhew the whole ſpecial Matter, by which it appears to what Intent and Purpoſe he joined in the Fine. And the fourth Reaſon of the ſaid Book of (*a*) *6 R. 2.* is to be obſerved. For there the Juſtices (to avoid an Eſtoppel) regard the Scope and Purpoſe of the Parties which levied the Fine; And although the Fine be of ſo high Nature that it will not ſuffer a bare Averment againſt the Purport and Conuſans of the Fine, yet when the Law requires one of Neceſſity, and for Conformity, to join with another in a Fine, the Law will ſuffer him to ſhew the Truth of the Matter, to avoid Prejudice and Concluſion: *Mich. 30 & 31 Eliz.* in a Writ of Error, between (*b*) *Worſely* and his Wife Plaintiff, and *Charnocke* Defendant, to reverſe a Fine levied by the Huſband and Wife, it was adjudged, That the Fine being reverſed for the Nonage of the Wife, the Huſband and Wife ſhould have preſent Reſtitution, and the Conuſee ſhould not keep the Land during the Coverture, and the Reaſon and Cauſe of the Judgment was, Becauſe when the Huſband and Wife join in a Fine, yet all the Eſtate paſſes from the Wife, and the Huſband joins of Neceſſity and for Conformity, and therefore the Law doth permit that the Truth of it be ſhewed, and that the whole Eſtate ſhall be reſtored to the Wife, during the Life of the Huſband, againſt the Opinion of *Cavendiſh*, 50 *E.* 3. 6. & *Hill.* 33 *Eliz.* in the ſame Court, and for the ſame Reaſon between *John* (*c*) *Harvey* Plaintiff, in an *Ejectione firmæ* againſt *Ralph Thomas* Defendant, for Lands in St. *Madryn* in the County of *Cornwall*, it was adjudged, That where the Huſband is ſeized of Land in the Right of his Wife, and the Huſband made a Leaſe to the Defendant for Twenty-one Years, and afterwards he and his Wife levied a Fine *ſur conuſans de droit come ceo, &c.* to *Thomas Saint Tawbyn*, and his Heirs, the Huſband died, that the Leaſe was ended by his Death, and the Conuſee ſhould avoid it, for the Huſband joined but for Conformity and Neceſſity: And there it was ſaid, That it was adjudged in the Common Pleas, That the Conuſee in ſuch Caſe ſhould avoid (*d*) the Charge or Statute, *&c.* of the Huſband after his Death, and the Caſe of *Eure & Snow Plowd. Com.* where a (*e*) Recovery is had

(*a*) 6 R. 2. Eſtoppel 211. Antea 74. b. Dyer 157. pl. 29. 10 Co. 96. a. Cr. El. 917. 1 Bulſtr. 164. 2 Rol. Rep. 473.

(*b*) Palm. 238. Cr. Jac. 482. 1 Leon. 114. Owen 21. Cr. El. 129. 1 Rol. 748. Bridgman 57. Antea 75. b.

(*c*) 1 Leon. 247. 4 Leon. 15. Cr. El. 216. 1 Rol. 388, 389. 1 Rol. Rep. 402. Cr. Jac. 399. 3 Bulſtr. 273.

(*d*) 1 Rol. 389. 1 Co. 76. a.

(*e*) 10 Co. 43. a. Antea 74. a. 1 Rol. 347. 2 Rol. 395. Palm. 226. Plow. 514.

had againſt the Huſband and Wife, of the Lands of the Huſband, whereof he is ſeized in Tail, with a Voucher over, the Intent and Purpoſe of joining of the Wife might be ſhewed; *ſcil.* to bar her of her Dower, and yet the whole Recompence in Value, ſhall go to the Iſſue in Tail; and the Caſe before, of (*a*) 6 *R.* 2. will ſerve alſo to this Purpoſe.

(*a*) 6 R. 2. Eſtoppel 211. Antea 74. b. 77. a.

And as to the Objection which hath been made, that foraſmuch as now the Rent is rendred in Tail, with Remainder over, that for this Cauſe the Fine doth import a new Agreement of Record; it was anſwered and reſolved, That as to the ancient Rent, it was extinct, becauſe another Rent of another Eſtate, and in another Manner, by the mutual Agreement of the Parties, was granted and rendred, for two *Blunt* ſhall not have; and the Eſtate Tail cannot be by expreſs Limitation to the (*b*) Uſe of another, as it appears 24 *H.* 8. *Br. Feoffm. al Uſes* 40. & 27 *H.* 8. 10. *a.* where it is ſaid, That ſo it was of late adjudged by the Advice of all the Juſtices, meaning the ſaid Reſolution in 24 *H.* 8. And according to that it is adjudged in Parliament, as appears by the Statute of (*c*) 1 *R.* 3. And ſo it was reſolved by the greater Part of the Juſtices in this Caſe; but although the Rent was altered, yet that is no Cauſe for an Alteration of the Eſtate of the Land, for the Jurors have found that there was not any new Conſideration or new Agreement for the Land, but that the Fine was to the Uſe and Intent of the firſt Indentures; and *Perkins*, *Andrewes*, or any other, hath not any Prejudice by it, for *Blunt* contents himſelf with an Eſtate Tail, in a Rent which was of ſuch Sum as he had in Fee before, and therefore appointed *Perkins* to limit the Remainder in Fee over to him that he nominated to him, but that is not any Reaſon to alter the Quality and Condition of the Eſtate of *Andrewes*; for *Blunt* hath not any Benefit, nor *Andrewes* any Prejudice by the Alteration of the Render of the Rent; and *Andrewes* hath not given any Conſideration to have an Eſtate abſolute, or to extinguiſh the Condition.

(*b*) Cr. Jac. 401. 3 Bulſtr. 184. 185. 2 Rol. 780. Co. Lit. 29. b. Godb. 269. 1 Rol. Rep. 332, 333, 385.

(*c*) 1 R. 3. cap. 1.

Another Reaſon to maintain the Reſolution in (*d*) *Putnam*'s Caſe, (*e*) *Bradbury*'s Caſe, and (*f*) *Clever*'s Caſe, was made upon the Statute of 27 *H.* 8. (*g*) of Uſes; for before that Statute, if *Blunt* had by Deed enfeoffed another of the Mannor, to the Intent that he himſelf ſhould have a Rent of 42 *l.* to him and his Heirs, and that the Feoffee ſhould ſtand ſeized to the Uſe of *Andrewes* and his Heirs, upon certain Conditions to be performed by *Andrewes*; and further, it was covenanted and agreed between the ſame Parties, That all Aſſurances after to be made, ſhould be to the Uſes and Intents of the ſame Indentures, and afterwards *Blunt* had levied a Fine accordingly; this Fine ſhould not extinguiſh the Rent or the Condition, for that would be againſt

(*d*) Antea 73. a.
(*e*) Antea 73. a.
(*f*) Antea 73. b.
(*g*) 27 H. 8. cap. 10.

againſt the original Agreement of the Parties, and the Fine which they intended to perfect the former Aſſurance, if the Rent or Condition ſhould be extinct, would deſtroy the Intent and Meaning of the Parties, which would be againſt Equity and Conſcience; and therefore the Rent or (*a*) Uſe, being but a Thing of Truſt and Confidence, for which there was not any Remedy but in a Court of Equity, ſhall not be extinguiſhed by ſuch Fine levied to former Uſes and Intents: Then if it ſhall not be extinct by the Common Law, now the Statute of 27 *H.* 8. doth execute the Poſſeſſion to the Uſe, in the ſame Manner, Quality and Condition as he had the Uſe.

(*a*) Bac. Lect. Sur 27 H. 8. 5, 6, 7, 8, &c. 1 Co. 101. b. 122. a. 121. b. 127. a. 140. a. 3 Co. 23. b. 34. b. 6 Co. 64. b. Co. Lit. 272. b. Antea 58. b.

And further, it was ſaid, That at the Common Law before the ſaid Act, if a Man had made a Feoffment by Deed indented to another rendring Rent, and with Condition to re-enter; and further, it was covenanted and agreed between the Parties, That notwithſtanding any Fine or other Conveyance made by the Feoffor to the Feoffee, by which the Rent and Condition ſhould be extinct, that the Feoffee and his Heirs ſhall be ſeized, to the Intent that they ſhall pay the like Rent, and to be ſeized of the Land upon the like Condition as before, in this Caſe, if the Feoffer had levied a Fine, or releaſed his Right, or made any other Conveyance to the Feoffee, by which the Rent and Condition was extinct, yet by the original Agreement of the Parties, a new Rent and a new Condition annexed to the Uſe of the Land ſhould riſe, and the Feoffor ſhould have Remedy in Equity preſently for the Rent: And when the Condition was broken, the Uſe of the Land ſhould be newly raiſed to the Feoffor by the Breach of the Condition, and by the original Agreement of the Parties, notwithſtanding his Releaſe, or other Conveyance; and that is touched and moved in (*b*) *Putman*'s Caſe in part cited before; and if that might have been done before the Statute, now the Poſſeſſion is executed to the Uſe by the ſaid Act, in the ſame Manner, Quality, and Condition as he had the Uſe; And therefore, altho' a Fine which enures by way of Releaſe, or which goes by *Mitter le droit*, or by way of Extinguiſhment, cannot be (without more) to an Uſe, no more than the ſurrender of a particular Eſtate may be, yet after ſuch Releaſe, which extinguiſhes the firſt Rent or Condition, another may be by original Agreement of the Parties then Owners of the Land, and who had the abſolute Diſpoſition to raiſe and direct it as is aforeſaid. And in this Caſe, *Popham* C. J. ſaid, That the Declarat. of the Uſe made by the Owner of the Land, ſhould be always preferred before the Declarat. of all other; and therefore if the Diſſeiſor and the Diſſeiſee levy a Fine, and the Diſſeiſee limit the Uſe to *A.* and the Conuſee of the Fine to the Uſe of *B.* and the Diſſeiſor to the Uſe of *C.* and *A.* limit the Uſe to one, the Recoveror to another, and the Vouchee to a third, the Limitation of *A.* ſhall ſtand.

(*b*) Antea 73. a.

1 Rol. 438, Moor 106.

Fourthly, It was reſolved, That by the Death of *Andrewes* the Condition was broken, for when the Feoffee

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or Grantee upon Condition is to make an Eſtate to the Feoffor or Grantor, and no Time is limited, regularly it is true, that the Feoffee hath Time to do it during his (*a*) Life, if the Feoffor or Grantor do not haſten it by Requeſt, and upon Requeſt and Day or Time limited when he will have it, the Feoffee or Grantee ought to make it accordingly; and if no Requeſt be made, and the Feoffee or Grantee, who ought to perform the Condition, dies, the Condition is broken, for he hath not performed the Condition within the Time preſcribed to him by the Law, which was during his (*b*) Life: But yet this general Rule doth admit of divers Exceptions and Limitations. For in this Caſe of an (*c*) Advowſon, *Andrewes* had not Time, during his Life, although no Requeſt was made, but upon Contingent, that is to ſay, If no Avoidance fell in the mean Time, for if the Grantee ſhould ſtay till the Avoidance falls, then *ipſo facto* the Condition is broken, becauſe *Blunt* cannot have all the Effect which by the Grant he ought to have, and that is, to have all the Preſentations during his Life, and the Advowſon is become in another Plight than it was: So if *A.* enfeoff *B.* 1 *Mail*, upon Condition that he grants to *B.* an Annuity or Rent during his Life, payable (*d*) yearly at the Feaſt of S. *Michael*, and the Annunciat. in this Caſe the Feoffee hath not Time during his Life, to make this Grant, but he ought to make it before the Feaſt of S. *Michael*, or (*e*) otherwiſe he will not have the Annuity or Rent during his Life. And that may be gathered upon the Book in 14 *E.* 3. *Det.* (*f*) 138. that in Caſe of a Grant of a Rent, he ſhall not have Time during his Life: And if two not married be (*g*) enfeoffed upon Condition to reinfeoff the Donor or Feoffor, *&c.* and one of them dies, yet the other may perform the Condition; but if he who ſurvives hath a Wife, then the Condition is broken, for if he ſhould make the Reinfeoffment, his Wife ſhould be endowed: And in all the ſaid Caſes, when the Condition is that the Feoffee ſhall make the Eſtate, and the Feoffee dies, there the Condition is broken, and none can perform it, for the Condition extends only to the Feoffee, but if the Condition be, That the (*h*) Feoffee or his Heirs ſhall make an Eſtate to the Feoffor, and no Day is limited, there, although the Feoffee dies, the Condition is not broken, for the Feoffee only is not bound by the Condition during his Life, to make the Feoffment, ſo as by his Death the Time appointed to perform the Condition ſhall be paſt, but the Condition doth extend alſo to his Heirs indefinite, without Limitation of Time, and the Condition in ſuch Caſe being without Limitation of Time or Perſon, cannot be broken by not making the Eſtate; but upon Requeſt made by the Feoffor and his Heirs, and with that agrees the Book in 3 & 4 *Phil. & Mar. Dyer* 138, 139. the Earl of *Surry*'s Caſe; for the Condition there (admitting it to be a Con-

(*a*) 1 Rol. 438. Co. Lit. 208. b. 218. b. 219. a. Moor 106. 472. 2 Anderſ. 73.

(*b*) Co. Lit. 219. a.

(*c*) 1 Rol. 438, 439. Moor 472. Co. Lit. 222. b. 2 Ander. 73.

(*d*) 1 Rol. Rep. 374. 1 Rol. 439.

(*e*) Co. Lit. 208. b. 1 Rol. Rep. 374.

(*f*) 1 Rol. Rep. 374. 1 Rol. 439.

(*g*) 1 Rol. 451.

(*h*) 1 Rol. 451. Co. Lit. 219. a.

dition) being without Limitation of Perſon and Time, was not to be performed before Requeſt: But in the Caſe at Bar, if a Day had been limited before which *Andrewes* by the Proviſo ſhould grant the Advowſon, there, if before the Day *Andrewes* had died, the Condition ſhould not be broken, for when the Parties by their (*a*) mutual Agreement, give a certain Time, within which the Condition ſhall be performed, and within that Time he who ought to perform it dies, ſo that the Condition becomes impoſſible by the Act of God, there the Eſtate doth remain (*b*) abſolutely diſcharged of the Condition. See 15 *H.* 7. 13. *a.* 33 *H.* 6. 26, 27. 9 *Eliz.* (*c*) *Dyer* 262. and Sir *Tho. Wrothe*'s Caſe, *Pl. Com.* 456. And therefore it is requiſite in ſuch Caſes, when a Day is limited, that the Condition do extend not only to the Feoffee or Feoffees, but alſo to their Heirs, for Fear of Death before the Day: As if one intends to enfeoff another, upon Condition that the Feoffee, before ſuch a Feaſt, or within a Year, *&c.* ſhall give back the Land to the Feoffor, *&c.* it is requiſite that the Condition be, That the Feoffee, or his Heirs, before ſuch Feaſt, *&c.* give back, *&c.* or otherwiſe, if the Feoffee dies before the Feaſt, the Condition is become impoſſible, and the Feoffor hath no Remedy by Law to compel the Heirs of the Feoffee to give back the Land.

(*a*) Co. Lit. 219. a.

(*b*) Co. Lit. 219. a.

(*c*) Dyer 262. pl. 30. Palm. 515. 549. 5 Co. 22. a. Cr. El. 398. Moor 342.

And another Difference was alſo agreed, When the Eſtate is to be made by the Condition to the Feoffee, and when to a (*d*) Stranger; for when the Eſtate is to be made to a Stranger, the Feoffee ought to make it within convenient Time, for he to whom the Feoffment is to be made, being a Stranger, need not make any Requeſt, as the Feoffor who is a Party, ought to do. And in ſuch Caſe, when a Stranger is to be enfeoffed, the Feoffee ought within convenient Time, to require the Stranger to appoint a Time when he will have the Feoffment made to him, and at that Time he ought to make it; and ſo the Feoffee ought to give Notice to the Stranger, and requeſt him to appoint a Time as is aforeſaid. And therewith agree 44 *E.* 3. 9. *a. b.* 9 *E.* 4. 22. *b.* 2 *E.* 4. 3. *b.* & 4. *a.* 19 *H.* 6. 67. *b.* 73. *a.* 76. *a.* And in the Caſe of *Littleton*, *fol.* 82. (*e*) where a Feoffment is made upon Condition that the Feoffee ſhall enfeoff many, *&c.* there it doth not appear that thoſe who ſhould be enfeoffed were Strangers, or if they were Strangers, whether they died before the Feoffee could enfeoff them.

(*d*) 6 Co. 31. a. Co. Lit. 208. b. 219. a. b. Hob. 51. 8 E. 4. 14. a. b.

(*e*) 1 Jones 181. Co. Lit. 218. b. 219. a b. 8 Co. 90. b. Br. Condition 33. Fitz. Condition 5. Lit. Sect. 352, 353.

And another (*f*) Difference was taken by ſome when the Feoffee dies, and when the Feoffor dies before any Eſtate made according to the Condition, in the one Caſe the Condition is broke, and in the other not. As if *A.* enfeoff *B.* upon Condition that *B.* ſhall give back the Land to *A.* and his Wife, and to the Heirs of their two Bodies begotten, the Remainder to *C.* in Fee, in this Caſe, if *B.* dies, the Condition is broke as is aforeſaid; but if *A.* dies, the Condition is not broke,

(*f*) Co. Lit. 219. b.

broke, for the Feoffee hath Time during his Life if he be not haſtned by Requeſt, by the Feoffor or his Heirs, *&c.* and that appears by *Litt. Chap. Condit. fol.* (*a*) 82. for in the ſame Caſe *Littl.* ſaith, that if ſuch Feoffee will not make ſuch Eſtate when he is reaſonably required by them who ought to have the Eſtate by Force of the Condition, then may the Feoffor or his Heirs enter, by which it appears, that as long as the Feoffee lives, the Condition cannot be broke by the Death of the Feoffor; For *Littleton* puts in his Caſe that the Feoffor, *&c.* was dead. But againſt that, 18 *Aſſ. pl. ult.* was cited, where the Caſe was, That the L. (*b*) *Clifford* held his Barony and the Sheriffwick of *Weſtmorland* of the King by grand Serjeanty *in Capite*, and the K. gave a Licence to the L. *Clifford* that he might thereof enfeoff ſeveral Chaplains in Fee, ſo that they gave back the ſame to the ſaid L. *Clifford* and the Heirs Males of his Body, the Remainder over. The L. *Clifford*, according to the ſaid Licence, did enfeoff the Chaplains; and before they had made the Re-gift accordingly, the Lord *Clifford* died, his Son and Heir within Age, and in Ward to the K. by reaſon of other Lands; and all the ſaid Matter was found by Writ of *Diem clauſit extremum*, and returned into the Chancery; out of which and of the Charter of Licence, a *Scire facias* iſſued againſt the ſaid Chaplains if they could ſay any Thing why the ſaid Lands ſo occupied by them in Diſ-heriſon of the Heir, and to toll the King's Wardſhip, ſhould not be ſeiſed into the K's Hands; who appeared and pleaded the K's Licence, and the Feoffment of the L. *Clifford*, and ſo they were the K's Tenants by his Licence; and as to the Re-inſeoffment, it was at their Will to do it; with that, that they were always ready to have made the Eſtate to the L. *Clifford* in his Life, and that he would have it by Fine, and thereupon brought a Writ of Covenant, and died pending the Writ; and after his Death they endowed the Wife of the L. *Clifford*, and were always ready, if they had the K's Licence, to make the Re-gift to the Son and Heir to make the Eſtate according to the Condition: And Judgment was given that the Tenements ſhould be ſeiſed into the K's Hands, and that he ſhould have the Profits thereof from the Death of the L. *Clifford*. But note, Reader, (as I conceive) the ſaid Judgment doth not (*c*) contradict the Opinion of *Littleton*, for *Sadlier*, who pronounced the Judgment, gave two Reaſons and Cauſes of the ſaid Judgment.

(*a*) Co. Lit. 218. b. Antea 79. b.

(*b*) 18 Aſſ. 18. Br. Condition 105. Co. Lit. 222. a. b. 6 Co. 74. a. 8 Co. 90. b. 91. a. 1 Rol. 438 Poſtea 81. a.

(*c*) 8 Co. 91. a.

1. Becauſe by the Licence of the King, which is here of Record, and by the Office alſo returned, it appears upon Record that the Chaplains had no other Eſtate than upon Condition.

2. That it appears by their Plea, that they had Time in the Life of the Lord *Clifford* to have performed the Condition; The Effect of the firſt Reaſon is, for as much as the

the Land was held *in Capite*, and the Licence was ſpecial to enfeoff the Chaplains, ſo as they gave back to the Feoffor in Tail, *&c.* if they had made the Gift in Tail to the Lord himſelf, they had purſued the Licence; but when the Lord himſelf died, they could not, by Force of the ſaid Licence, (which is always taken ſtrictly and ought to be purſued) make the Gift to his Son: Then for as much (as it appears by the 2d Reaſon) that they had Time in the Life of the L. *Clifford* to have performed it, and the not doing of it drew a Charge to the Heir to purchaſe a Licence, and perhaps the K. would never give Licence, and then the Eſtate would never (without Charge, and Cauſe of Seiſure for Want of Licence) be made, and all that in Default of the Feoffees who had Time to make it; and if they had purſued the Licence, they ought to have made the Re-gift to the Lord himſelf; and therefore it is as much as if the Feoffees had bound themſelves in a Stat. or Recogniſ. which after their Feoffment would charge the Land; ſo if they without Licence ſhould give it back to the Heir, his Lands ſhould be ſeiſed into the K's Hands for Alienation *(a)* without Licence; for this Cauſe the Entry of the Heir was lawful. And note, in the ſaid Caſe, that the Feoffees in their Plea ſaid, That they were always ready to have enfeoffed the Heir if they had had Licence ſo to do, by which it appears that the ſaid Licence did not warrant them to make the Gift to the Heir.

(a) Co. Lit. 222. b.

Alſo it is ſaid in the ſaid Caſe by *Hampton*, That if the King ſeiſe the Land, it ought to be in his own Right, and the Heirs of the L. *Clifford* diſ-inherited; for at that Time he thought, as it ſeems, that Land held by Grand Serjeanty, aliened without Licence, ſhould be forfeited to the King: For that ſee the Stat. *de Prærogativa Regis c.* 7. *(b) de Serjeantiis alienatis ſine licentia Regis conſuevit Rex arrentare hujuſmodi Serjeantis per rationabilem extentam inde faciendam.* And accordingly, I have ſeen a Precedent 26 *E.* 1. *Ex. Rememorat' dominæ Reginæ in Scaccario*, That Land in *Cheſterton*, in the County of *Warwick*, and *temp. E.* 1. of Lands in *Hadnet* in the County of *Salop*, were ſeiſed and granted in Fee, rendring Rent, by Juſtices in *Eyre*, for Alienation without Licence, for then Juſtices in *Eyre* might have granted ſuch Land in Fee, rendring Rent, as a Juſtice of a Foreſt (which in Effect, as to this Purpoſe, are Juſtices in *Eyre*) at this Day may of Lands encloſed within a Foreſt without the King's Leave. And *(c) Wilby*, in 14 *E.* 3. *Quare impedit* 54, ſaith, That if Lands held by Grand Serjeanty be aliened without Licence, they are forfeited by the Common Law, becauſe Service of Body cannot be transferred to another.

(b) Stamf. Prærog. 27. b.

(c) Stamf. Prærog. 29. a.

But note, Reader, at this Day it is without Queſtion, that Land held by Grand Serjeanty ſhall not be forfeited for Alienation without Licence; for if it were admitted

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that they were forfeited, as *Wilby* said at the Com. Law, yet it is declared contrary, and (a) remedied by the Act of 1 *E.* 3. *cap.* 12. by which it is provided, That whereas divers People of the Realm complain they are grieved by Reason that Lands and Tenements held of the King in chief, (as all which are held by Grand Serjeanty are) and aliened without Licence, have been held as Forfeit; hereafter, in such Case, a reasonable Fine shall be taken. And so at all Times after that Stat. when Land held by Grand Serjeanty hath been aliened without Licence, a Fine hath been taken, and no Seisure ever made for the Forfeiture; *Et (b) optimus legum interpres consuetudo.* And so it was held *M.* 38 & 39 *Eliz.* by the two Chief Justices *Popham* and *Anderson*, *Periam* Chief Baron, and several other Justices. And the Reason for which I collect the Land was held by Grand Serjeanty is, first, because the Book saith, that he aliened great Part of his Heritage, and the Sheriffwick of *Westmorland*, which is Parcel of his Barony; and every (c) Barony, in antient Time, was held by Grand (d) Serjeanty. 2dly. *Hampton* there (either forgetting the Stat. of 1 *E.* 3. or not conceiving it to extend to Land held by Grand Serj.) saith, That the K. seised in his own Right, and dis-inherited the Heirs, (*scil.* If an Estate shall be made without Licence) which, without Quest. by the express Letter of the Act of 1 *E.* 3. could not be, if it were held *in Capite* and not by Grand Serj. So it appears that the Book in 18 (e) *Ass.* is resolved upon other Reasons, and doth not oppose the Opinion of *Litt.* who, without Quest. had seen the said Book. And I perceiving the Book in 2 *H.* 4. 5. *b.* (f) to agree with *Litt.* caused Search to be made for the Record of the said Case: *Et inter recorda de Thesaur' recept' Scaccarii sub custodia Thesaur' & Camer' remanen' inter placit' de juratis & Ass. de ann.* 1 *H.* 4. *in Com. Devon.* the Record of the said Case was found; and the Case was, That *Robert French* brought an Assise against *William Dean* and *Thomasine* his Wife, and others, of his Freehold in *Chudleigh*, and the Assise was taken by Default, and a special Verdict found, that is to say, *Quod quidam Thomas Glasier fuit seisitus de præd' tenementis cum pertinentiis in eorum visu positis in dominico suo ut de feodo, & sic inde seisit' existens eadem tenementa cum pertinen' dedit & concessit quibusdam Jo. Prous & Rogero Cockshead, habend' sibi & hæredibus suis, sub conditione quod iidem Johannes & Rogerus ipsum Thomam & prædict' Thomasinam adtunc uxorem ipsius Thom' de eisdem tenementis reseoffarct, habend' eisdem Thomæ & Thomasinæ & hæredibus de corporibus suis exeuntibus, remanere rectis hæredibus ipsius Thomæ; virtute cujus iidem Johannes & Rogerus de tali statu*

(a) F. N. B. 175. a. 235. c. Stamf. Præ. 29. a. 2 Inst. 66. 1 Jones 111. Co. Lit. 43. b. 34 E. 3. 15.

(b) 10 Co. 70. b. 2 Inst. 18.

(c) Davis 62, 63.

(d) Jones 109, 111

(e) 18 Ass. 18. Antea 80. a. Br. Condition 105. 6 Co. 74. a. 8 Co. 90. b. 91. a. Co. Lit. 222. a. b.

(f) Fitz. Condition 5. Br. Condition 33. 1 Co. 137. b. 11 Co. 83. b. Postea 81. b. 1 Jones 181.

fuerunt inde ſeiſiti, & poſtea prædictus Thomas obiit ſine hærede de corpore ſuo & de corpore ipſius Thomaſinæ exeunt' abſque aliquo refeoffament' eiſdem Thom' & Thomaſ. juxta conditionem præd' fac', ſive per ipſum Thomam in vita ſua exact', poſt cujus mortem præd' Thomaſina cepit in virum præd' Will. Deane: Poſtmodumque iidem Will. Deane & Thomaſina petierunt a præfato Johanne & Rogero feoffamentum eidem Thomaſinæ de præd' tenementis juxta conditionem præd' fieri: Super quo iidem Johannes & Rogerus per quoddam ſcript' ſuum indentatum anno 14 *R.* 2. *conceſſerunt & confirmaverunt præfatis Willielmo Deane & Thomaſinæ præd' tenementa cum pertinentiis habend' & tenend' eiſdem Willielmo & Thomaſinæ, ad totam vitam ipſius Thomaſinæ, remanere inde rectis hæredibus præd' Thom' ſecundum formam conditionis præd': ſuper quo Johannes Vyen & Mariotta uxor ejus, in jure ipſius Mariottæ, ut ſororis & hæredis præd' Thomæ ſupponend' prædict' feoffamentum prædict' Will. Deane & Thomaſinæ de tenement' præd' in forma præd' factis fuiſſe contra formam conditionis præd' in tenementa illa intraverunt, & inde præd' Robertum French per cartam ſuam, &c. feoffaverunt, &c. virtute cujus idem Robertus in tenementa præd' intravit, & iidem Willielmus Deane & Thomaſina ipſum inde recenter amoveruntſ; Et ſi amotio illa diſſeiſina adjudicari debeat necne, dicunt quod ipſi omnino ignorant, & petunt diſcretionem Juſticiar', &c.* And Judgment was given againſt the Plaintiff.

Out of this Record, I obſerve four Things: Firſt, That in the ſpecial Verdict there is no Mention made at what Time the Feoffment was made upon Condition, ſo that (if the Time were material) it might appear how long Time was paſt between the Feoffment upon Condition and the Death of the Feoffor; and that anſwereth the Objection which ſome make, That in the ſaid Caſe of *Littleton*, it ſhall be intended, that thoſe to whom the Eſtate by the Condition ſhould be made, died preſently, ſo that the Feoffees had not convenient Time to make the Eſtate according to the Condition; for if the Law ſhould be ſuch, then the Time would be material, and by Conſequence, the Verdict, which found no Time, was imperfect, upon which no Judgment could be given. But the contrary appears by the ſaid Book of (a) 2 *H.* 4, 5. *b.* for there it appears, that by the Advice of all the Judges, Judgment was given againſt the Plaintiff, by which it appears, that the Death of the Feoffor, at what Time ſoever it be, is no Breach of the Condition, if no Requeſt were made by him, for ſo it appears by the ſaid Record.

(a) Antea 81. a. Fitz. Condition 5. Br. Condition 33. 1 Co. 137. b. 11 Co. 83. b. 1 Jones 181.

Co. Lit. 218. b. Secondly, That the Feoffees need not make the Eſtate either to the Feoffor in his Life, or to any other after his Death, until Requeſt made, and theref. the 2d Huſb. and his Wife made a Requeſt,

a Requeſt, as it is expreſly found by the Aſſiſe.

Thirdly, That although by the Law the Eſtate made to the Wife for her Life ought to have been without (*a*) Impeachment of Waſte, as appears by *Littleton*, *fol.* 82. and that the Wife is Covert, and it trencheth to her Prejudice; yet for as much as it was the Folly of the Wife, being ſole, to take ſuch a Huſband who would accept of ſuch Eſtate; and alſo becauſe the Eſtate for Life is the Subſtance of the Eſtate which ſhould be made by the Feoffee, and the Priviledge to be without (*b*) Impeachment of Waſte, is a Thing collateral, and only for the Benefit of the Huſband and Wife, the omitting of it being for the Benefit of the Heir of the Feoffor, is not any Breach of the Condition to give him Cauſe of Re-entry, for then the Wife would loſe her Eſtate alſo, which would not be reaſonable.

(*a*) Co. Lit. 219. b. Lit. Sect. 352. Jones 181.

(*b*) 2 Co. 23. a. 72. a. 4 Co. 63. a. 9 Co. 9. a. 11 Co. 82. b. 83. b. 1 Rol. Rep. 182. 2 Rol. Rep. 325. Moor 18. 317. 327. 2 Inſt. 146. Hob. 132 Poph. 193. 194. 195. Latch. 269. 270. Bridgm. 102. Dyer 47. pl. 11. Plowd. 132. b. Cro. Jac. 216. 2 Rol. 835. Herl. 77. Co. Lit. 220. a.

Fourthly, That although the moſt ſure Way had been that the Eſtate ſhould be made to the Wife alone, yet the Eſtate being made (*c*) to the ſecond Huſband and the Wife, for the Life of the Wife, it is no Breach of the Condition, for none is prejudiced thereby; And if the Eſtate had been made only to the Wife, the Huſband would have had as much Power and Benefit as he now hath, and therefore it is all one in Subſtance and Effect.

(*c*) Co. Lit. 219. b. 220. a.

De Termino Sancti Mich. Anno Regni Dominæ Elizab. nunc Reginæ Angliæ 41 & 42. Rot. 144.

MEmorand' quod alias ſcil. termino Paſchæ ultimo præterito coram domina regina apud Weſtm' ven' Georg' Stroude armiger, per Simon Spatchurſt attornat' ſuum. Et protulit hic in cur' dict' dom' reg' tunc ib'm quand' billam ſuam verſ. Radolphum Horſey milit', Richard' Veale, & Edward' Goore gener' in cuſtod' Marr', &c. de placito tranſgreſ. & eject' firm'. Et ſunt pleg. de proſ. ſcz' Jo. Doo, & Rich' Roo. Quæ quid' bill' ſequit' in hæc verba, ſſ. Dorc' ſſ. Georg' Stroude arm' querit' de Radulph' Horſey milit' Rich. Veale, & Edward' Goore gener' in cuſtod' Marr' Mareſc. dom' reg' coram ipſa reg' exiſten' pro eo, viz. quod cum quid. Will' Albert ſeptim' die April' anno reg' dom' Eliz' nunc reg' Ang' 41. apud Melcum in com' prædict' dimiſiſſet, conceſſiſſet, & ad firmam tradidiſſet præf. Georg' unum meſſuag' centum & viginti acr' terr', quadragint' acr' prati, ducent' acr' paſturæ, & cent' acr' jampn' & bruere cum pertin' in Melcum prædict' in com' prædict' Habend' & tenend' tenementa prædict' cum pertin' præf. Georg' & aſſign' ſuis, a feſto Annunc' beatæ Mar' virgin' tunc ultim' præterit' uſque finem & termin' ſex annor' & dimid' unius anni extunc prox' ſequen' plen' complend' & finiend': Virtute cujus quid' dimiſſ. idem Georg' in ten'ta prædict' cum pertin' intravit, & fuit inde poſſeſſ. quouſque prædict' Radulph' Horſey, Rich' Veale, & Edward' Goore, poſtea ſcz' undecimo die April' anno 41. ſuprad' vi & armis, &c. in ten'ta præd' cum pertin' ſuper poſſeſſ. ipſius G. inde intraver', & ipſum Georg' a firma ſua præd' inde term' ſuo præd' nondum finit' ejecer', expuler', & amover', & ipſum G. a poſſeſſione ſua inde extratenuer' & adhuc extratenent, & alia enormia ei intuler' contra pacem dict' dom' reg'. Et ad dampnum ipſius Geor' cent' libr'. Et inde produc' ſectam', &c. Et modo ad hunc diem ſcz. diem Martis prox' poſt octab. Sancti Michael' iſto eodem termino, uſque quem diem prædict' Rad' Horſey, R. Veale, & Edward'

Edward' Goore habuer' licenc' ad billam prædict' interloquend', & tunc ad reſpondend', &c. cor' dom' regina apud Weſtm' ven' tam præd' Georgius Stroude per attornat' ſuum præd' quam præd' Rad' Horſey, R. Veale, & E. Goore, per Jac' Hyde attornat' ſuum, & iidem Rad' Ric' & Edw' defend' vim' & injur' quando, &c. Et dicunt' q'd ipſi non ſunt inde culpab', & de hoc pon' ſe ſuper patriam. Et præd' Georg' Stroude ſil'ter, &c. Ideo ven' inde Jur' cor' dom' reg' apud Weſt' die Merc' proxim' poſt octab' S. Hill'. Et qui nec, &c. ad recogn', &c. Quia tam, &c. Idem dies dat' eſt partibus præd' ib'm, &c. ſſ. Poſtea continuat' inde proceſſu inter partes præd' de pl'to præd' per Jur' poſit' inde inter eas in reſpect' coram dom' reg' apud Weſtm' uſq; diem Merc' prox' poſt xv. Paſc' niſi Juſtic' dom' reg' ad Aſſiſ. in com' præd' capiend' aſſign' prius die Lunæ in tertia ſeptimana quadrageſimæ apud Dorc' in com' præd' per form' ſtatuti, &c. ven' pro defect' Jur', &c. Ad quem quid' diem Merc' coram dom' reg' apud Weſtm' ven' partes præd' per attorn' ſuos præd'; Et præf. Juſtic' ad Aſſiſ. cor' quibus, &c. miſ. hic record' ſuum cor' eis habitum in hæc verb' ſſ. Poſtea die & loco infracont' coram Tho' Walmeſley uno Juſtic' dom' reg' de banco, & E. Fenner uno Juſtic' dictæ dom' reg' ad pl'ita cor' ipſa dom' reg' tenend' aſſign' Juſtic' ejuſdem dom' reg' ad Aſſiſ. in com' Dorc' capiend' aſſign' per form' ſtatuti, &c. ven' tam infranomin' G. Stroude arm' per T. Clayton attorn' ſuum, quam infraſcr' R. Horſey miles, R. Veale, & E. Goore, per H. Collier attorn' ſuum: Et Jur' jurat' unde infra ſit mentio exact' quid' eorum ven', & quid' eorum non ven', prout patet in panello, &c. Et quid' eor' Jur' modo comparen', viz. R. Ham, T. Toomer, J. Burt, H. Harbyn gen', J. Yong gen' J. Butler gen', W. Wythington, J. Paine, & C. Dolling, in Jurat' præd' jurat' exiſtunt, Et quidam eorundem Jur' modo ſc' comparen', viz. Thom' Keate, E. Carter, R. Chip, H. Squib, & G. Frome, eo quod ipſi int' partes præd' ſuſpectuoſ. invent' exiſtunt a panel' illo penitus extrahunt'. Et quia reſid' Jur' ejuſdem jur' non comparuer' ideo alii de circumſtantibus per vic' com' præd' ad hoc elect' ad requiſic' præd' Geo' Stroude ac per mandat' Juſtic' præd' de novo apponunt', quor' nomina panello infraſcr' affilant' ſecund' form' ſtat' in hujuſmodi caſu inde nuper edit' & proviſ. Ac Jur' ſic de novo appoſit', viz. C. Jay, N. Browne, & T. Eyres exact' ſimil' ven', quia ad veritat' de infracont' ſimul cum aliis Jurat' præd' pri' impan' & jur' dicend', electi, triati, & jur', dic' ſuper ſacrament' ſuum quod ten'ta infraſ. cum' pertin' in quib' ſupponit' tranſg. & ejection' infraſcript' fieri, ſunt & a tempore cui' contrarii memor' hom' non exiſtit fuer' parcell' maner' de Nether Melcum, alias Mel-

cum Bingh. cum pertin', Et quod dict' maner' de Nether Melcum alias Melcum Bingh. cum pertin' unde, &c. jacet infra parochiam de Melcum in com' præd', quodque ante infraſcr' tempus quo ſupponit' tranſg' & ejection' infraſcr' fieri, quidam R. Bingh. ſen' fuit ſeiſit' de præd' maner' de Nether Melc', alias Melc' Bingh. cum pertin' unde, &c. in dominico ſuo ut de feodo. Et ſic inde ſeiſit' maner' illud cum pertin' tenuit de quodam Jo. Horſey Milit', ut de manerio ſuo de Over Melc' alias Horſeys Melcum, alias Sturges Melcum in com' præd' per ſervicium Militar', viz. per homagium, fidelitat', & ad ſcutagium dom' reg' 40s. cum accideret 2s. & ad plus, plus, &c. Et ad minus, minus, &c. Ipſoque R. Bingh. ſic inde ſeiſit' exiſten', ante infrac' tempus quo, &c. ſc' in craſtino S. Trin' an' regni dictæ dom' reg' nunc duodecimo, quidam finis levavit in curia dictæ dominæ reginæ apud Weſt' in com' Midd' cor' Jac' Dyer, Richardo Weſton, Ric' Harper, tunc Juſtic' dictæ dominæ reginæ de banco, & aliis dominæ reginæ fidelibus tunc ibi preſentibus, inter T. Buckley & H. Gawen gen' quer', & prædictum Ro. Bingh. ſen' deforc', de maner' de Nether Melcum, alias Melcum Bingh. præd' cum pertin' unde, &c. per nomina manerii de Nether Melcum, alias Bingham's Melcum cum pertin', ac quinque meſuag' quatuor toft', quatuor horreor', quinque gardinorum' duorum pomarior', centum & viginti acr' terr', triginta acr' prati, treſcent' acr' paſtur', octo acr' boſci, & viginti acr' jampnor' & bruere cum pertin' in Nether Melcum, alias Bingham's Melcum, unde placitum conventionis fum' fuit inter eos in eadem cur', ſc' quod præd' R. Bingh. recogn' præd' maner' & tenementa cum pertin' eſſe jus ipſius T. Buckley, ut illa quæ idem T. Buckley & H. Gawen habuer' de dono præd' Rob' Bingham: Et illa remiſit & quiet' clam' de ſe & hæred' ſuis præd' Tho. Buckley & Henr' Gawen, & hæred' ipſius Thomæ imperpetuum. Et præterea idem R. Bingh. conceſſit pro ſe & hæred' ſuis, quod ipſi warr' præd' T. Buckley & H. Gawen, & hæred' ipſius Thomæ prædict' maner' & tenementa cum pertin' contra omnes homines imperpetuum, cui' quidem finis tenor ſequitur in hæc verba. ſſ. Dorc' ſſ. Hæc eſt finalis concordia fact' in cur' dom' reg' apud Weſt' in craſtino S. Trin' anno regni Eliz. Dei gratia Ang' Franc' & Hib' reginæ fidei defenſ. &c. a conqueſtu duodecimo, coram Jac' Dyer, Ric' Weſton, & Ric' Harper Juſtic', & al' dom' reginæ fidel' tunc ibi preſentibus, inter T. Buckley, & H. Gawen gen' quer', & R. Bingh. ar' deforc' de maner' de Nether Melc' al' Bingh. Melc' cum pert': Ac de quinq; meſ. quat' toft', quat' horr', quinq' gard', duob' pomar' cent' & viginti acr' terr', trigint' acr' prati, centum

acr'

acr' paſtur', octo acr' boſci, & viginti acr' jampnor' & bruere cum pertin' in Nether Melc', alias Bingham's Melc' unde pl'tum convention' ſum' fuit int' eos in ead' cur', ſc. quod præd' Rob' recogn' præd' maner' & ten'ta cum pertin' eſſe jus ipſi' T. ut ill' quæ iid' T. & Henr' habuer' de don' præd' Rob'. Et ill' remiſ. & quiet' clam' de ſe & hæred' ſuis præd' Th. & H. & hæred' ipſius Th. imperpet'. Et præterea idem R. conceſſit pro ſe & hæred' ſuis, quod ipſi warr' præd' T. & H. & hæred' ipſius Th' præd' maner' & ten'ta cum pertin' cont' omnes homines imperpet'. Et pro hac recogn', remiſſione, quiet' clam' warr' fine & concord', iidem T. & H. dederunt præf. Rob' 150 l. ſterling. Quæ quid' finis de maner' & ten'tis præd' cum pertin' unde, &c. in form' præd' levat', habit' & levat' fuit ad uſus præd' R. B. ſen' & Jan' uxor' ejus, & hæred' ipſius R. imperpetuum. Virtute cujus ac vigore cujuſd' actus Parliament' de uſib' in poſſeſſion' transferend' fact' apud Weſt' anno regni H. nuper regis ang. octavi 27. edit' & proviſ. idem R. Bingh' ſen' & Jana fuer' ſeiſit' de maner' de Nether Melcum alias Bingham's Melc' præd' cum pertin' unde, &c. viz. eiſdem Rob' & Janæ & hæred' præd' Rob' imperpetuum. Et iidem Jur' ulterius dicunt ſuper ſacrum' ſuum præd' quod præd' Rob' Bingham ſen' ad tunc, ſc. fuit ſeiſit' in dominico ſuo ut de feodo, de & in maner', terr', & ten'tis voc Melcum Bingh. ſcitut' &, exiſten' in parochia de Toller' porcor' in præd' com' Dorc'. Prædictoq; Rob' ſic de maner' ac ten'tis illis, ac de præd' maner' de Nether Melcum alias Melcum Bingh. cum pertin' unde, &c. ſeiſit' exiſten', quidam finis levavit in cur' dict' dom', reg' nunc apud Weſt' præd' ante infrac' tempus quo, &c. ſc' in craſtino S Trin' anno regni dictæ dominæ reg' nunc 20. cor' J. Dyer, R. Manwood, R. Mounſon, & T. Meade, tunc Juſtic' ipſi' dom' reg' de banco, & aliis dict' dom' reg' fidelibus tunc ibi præſentibus, inter quoſd' R. Rogers militem, N. Turb. & J. Williams armig. tunc quer', & præd' R. Bingh. ſen' armig' tunc deforc', de dicto maner' de Nether Melcum alias Melc' Bingh. unde, &c. Ac de dicto maner' de Wolcum Bingh. cum pertin', per nomina maner' de Melc' Bingh. & Wolcombe Bingh. cum pertin': Necnon ſex meſuag. duor' toft', mille & treſcent' acr' terr' 300. acr' prati, 50. acr' paſt', 20. acr' boſci, & mill' acr' jampn' & bruere cum pertin' in Nether Melc' Toller' porcor', Mapowder, & Haſelbery Bryan in com' Dorc'. Et 8. meſ. 3. toft', 6. gardin', mille acr' terr', cent' acr' prati, 300. acr' paſt' & 300. acr' ja'pn' & bruere cum pert' in Codf. Mary Codf. P. Aſhton, Giff. Burdchalk, Alderb' Eaſt Grimſted, & Weſt Grimſted in com' Wilt' unde pl'it' convenc' ſum' fuit int' eos in ead' cur' ſc' quod R. Bingham ſen' recogn' præd' maner' & ten't' cum pertin' eſſe jus ipſius R. Ro. ut illa quæ iidem R. Rog. N. Turb. & J. Williams habuer'

habuer' de don'. præd' R. B. Et ill' remiſ. & quiet' clam' de ſe & hæred' ſuis præd' R. Rogers, Nic' Turbervile & J. Williams, & hæred' ipſius Ric' Rogers imperpet'. Et præterea idem R. Bingham conceſſit pro ſe & hæred' ſuis, quod ipſi' warr' præd' R. Rogers, Nic' Turbervile, & J. Williams, & hæred' ipſius Ric' Rogers præd' maner' & tenementa cum pertin' cont' præd' Rob' Bingham & hæred' ſuos imperpetuum: cujus quidem finis tenor ſequitur in hæc verba. Hæc eſt finalis concordia fact' in cur' dominæ reginæ apud Weſtm' in craſtino S. Trin', anno regni Eliz' Dei gratia Angliæ, Franciæ, & Hiberniæ Reginæ, fidei defenſor', &c. a conqueſtu 20. coram Jac' Dyer, Rog' Manwood. Rob' Mounſon, & Tho' Meade Juſtic', & aliis dominæ reginæ fidelibus tunc ibi præſentibus, inter R. Rogers militem, N. Turbervile armig' & Johan' Williams armig' quer', & Rob' Bingham ſen' armig' deforc' de maneriis de Melcum Bingham, & Wolcombe Bingham cum pertinen', necnon de ſex meſuag' duobus toftis, mille & treſcent' acr' terr', treſcent' acr' prati, quingent' acr' paſtur', viginti acr' boſci, & mille acr' jampnorum & bruere cum pertin' in Nether Melcum, Toller' porcor', Mapowder, & Haſelbery Bayan in com' Dorc'. Et de octo meſ. trib' toftis ſex gardinis, mille acr' terr', centum acr' prati, treſcent' acr' paſtur', & treſcent' acr' jampnor' & bruere cum pertin' in Codford Marie Codford, Peter Aſhton, Gifford, Burdchalke, Alderbury, Eaſt Grimſted, & Weſt Grimſted in com' Wiltſ. unde placitum convention' ſum' fuit int' eos in ead' cur', ſc. quod præd' Robertus recogn' præd' maneria & ten'ta cum pertin' eſſe jus ipſius Ric' ut ill' quæ iidem Ric' Nic' & Joh' habent de dono præd' Roberti. Et ill' remiſit & quiet' clam' de ſe & hæred' ſuis, præd' Ric' Nic' & Johanni, & hæred' ipſius Ric' imperpetuum, Et præterea idem Robertus conceſſit pro ſe & hæred' ſuis, quod ipſi' warr' præd' Rich' Nic' & Joh' & hæred' ipſius Ric' præd' maneria & ten'ta cum pertin' cont' præd' Robertum & hæredes ſuos imperpetuum. Et pro hac recogn', remiſſione, quiet' clam' warr', fine & concord', iidem Richard', Nic' & Joh' dederunt præd' Rober' octingent' viginti & ſex li. ſterling. Quæ quidem finis in form' præd' levat', habit' & levat' fuit de præd' maner' de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. ad uſum præd' R. B. ſen' pro termino vitæ ſuæ, & poſt ejus deceſſum ad uſum præd' R. B. tunc filii & hæred' apparen' ipſius R. B. ſen' & hæred' de corpore ſuo ſuper corpus Annæ tunc uxoris præd' R. B. filii procreand'. Et pro defectu talis exitus ad uſum rector' hæred' præd' R. B. ſen' imperpetuum. Ac de præd' maner' & tenementis voc' Wolcum Bingham cum pertin' ad uſum præd' R. Bingh. filii & præd' Annæ

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& hæred' de corpore ejuſdem Rob' Bingham filii ſuper corpus prædict' Annæ legitime procreand', & pro defectu talis exitus ad uſum rectorum hæred' præd' Rob' Bingham ſen' imperpetuum. Virtute cujus finis, ac vigore præd' actus parliament' de uſibus in poſſeſſion' transferend' edit' & proviſ. præd' Robert' Bingham ſen' fuit ſeiſit' de præd' maner' de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. in domin' ſuo ut de liber' tenement', pro termino vitæ ſuæ, remanere inde dict' Rob' Bingham jun' in feod' talliat', ſcz' ſibi & hæred' de corpore ſuo procreand' ſuper corpus dict' Annæ remaner' inde rectis hæredibus ipſius Rob' Bingham ſen' imperpet'. Et præterea præd' Rob' Bingham jun' & Anna uxor ejus fuer' ſeiſit' de præd' manerio, terr', & ten'tis voc' Melcum Bingham cum pertin', viz. idem Robertus Bingham jun' in dominico ſuo ut de feod' talliato, viz. ſibi & hæred' de corpore ſuo ſuper corpus præd' Annæ uxoris ſuæ legitime procreat', & præd' Anna in dominico ſuo ut de libro tenemento pro termino vitæ ſuæ, reman' inde rectis hæred' ipſius Ro' Bingham ſen' imperpet'. Et iidem Jur' ulter' dicunt ſuper ſacr'm ſuum præd' quod tempore levationis præd' ultim' recitat' finis per præd' Robert' Bingham ſen' in forma præd' h'iti, præd' Joh' Horſey fuit ſeiſit' de præd' manerio de Over Melcum, alias Horſeys Melcum, alias Sturges Melcum cum pertin' in d'nico ſuo ut de feodo; Ipſoq; Jo' Horſey ſic inde ſeiſit' exiſten', quidem finis levavit in cur' dict' dom' reg' nunc, apud caſtrum Hertf. in com' Hertf. poſtea & ante infraſ. tempus quo, &c. ſcz. in craſ. Animar', anno regni dictæ dom' reg' nunc viceſimo quarto, coram Edmundo Anderſon, Tho' Meade, Franciſco Windham, & Will' Periam, tunc Juſtic' ipſius dom' reg' de banco, & aliis dict' dom' reg' fidelibus tunc ibi preſentibus, inter quoſdam Henr' vicecom' Byndon, Ric' Rogers Militem, Hen. Aſhley Milit', Tho' Hayward, Geo' Trenchard, Johannem Strangwaies, Joh. Williams, Rich' Watkins, Tho' Mullens, Henr' Coker, Edward' S. Karke, Johan' Fitz James, & Georg' Gilbert armiger', tunc quer', & præd' Johan' Horſey Milit' tunc deforc', de dict' manerio de Over Melcum, al' Horſey Melcum, al' Sturges Melcum cum pertin', per nomina manerior um de Clyfton, Malank, Torneford, Nether Crompton, Bradford, Sherborn, Wike, Horſeys Melcum, alias Sturges Melcum cum pertin'. ac ducent' & quinquagint' meſſuagiorum, cent' toftor', decem molendinorum, decem columbar', trium mille acr' terr', duarum mille acr' prati, quinq; mille acr' paſtur', mille acr' boſci, trium mille acr' jampn' & bruere, & decem librat' reddit' cum pertin' in Yetmiſter Rime intrenſea, Thornford, Bradford, Beere Hacket, Hirborne, Lillington, Nether Crompton, Over Crompton,

Long

Long Burton, Oburne, Heyden, Upmelcombe, Nether Melcombe, Cheſelborne, Buckland, Pluſh, Mapowder, Mylton alias Middleton & Helton, ac Rectoria de Bradford cum pertin', necnon Advocation' Eccleſiar' de Melcombe, Nether Melcombe, Clyfton, Malancke, Torneford, Nether Compton, & Bradford in com' Dorc'. Et manerior' de Horſey & Peignes cum pertin'. Ac 20. meſſuagiorum, ſex toft', duorum molendinorum, duor' columbar', mill' acr' ter', ſexcent' acr' prati, mille & ducent' acr' paſtur', quadragint' acr' boſci, mille acr' jampnor' & bruere, & quadragint' ſolidat' reddit' cum pertin' in Bridgwater, Chilton, Bough, Stafford, Berwicke, Weſton, Bandrip, Peryſon, Chedſey, Wembdon, & Cannington in com' Somerſ. unde pl'itum convent' fuit inter eos in eadem cur', ſcil' quod præd' Jo. Horſey recogn' præd' maneria, rectoriam, tenement', & reddit' cum pertin' ac advocation' præd' eſſe jus ipſius Vicecom', ut ill' quæ iidem Vicecomes, Rich' Rogers, Henricus Aſhley, Thomas Howard, Georg. Trenchard, Joh' Strangwaies, Jo' Williams, Richardus Watkins, Thomæ Mullens, Henricus Coker, Edward' S. Karke, Johanni Fitz James, & Georg' Gilbert habuerunt de dono præd' Joh' Horſey. Et ill' remiſit & quiet' claim' de ſe & hæred' ſuis præd' Vicecomit', Rich' Rogers, Henr' Aſhley, Tho' Howard, Georgio Trenchard, Johanni Strangwaies, Johan' Williams, Richardo Watkins, Thomæ Mullins, Henrico Coker, Edwardo S. Karke, Joh' Fitz James, & Georgio Gilbert, & hæredibus ipſius Vicecom' imperpetuum. Et præterea idem Jo' Horſey conceſſit pro ſe & hæred' ſuis, quod ipſi' warr' præd' Vicecom', Richardo Rogers, Henrico Aſhley, Thom' Howard, Georgio Trenchard, Jo' Strangwaies, Joh' Williams, Rich' Watkins, Tho' Mullens, Henr' Coker, Edwardo S. Karke, Joh' Fitz James, & Georgio Gilbert, & hæred' ipſius Vicecom' præd' maneria, rectoriam, ten'ta, & reddit' cum pertin', ac Advocationem præd' contra omnes homines imperpetuum, cujus quidem finis tenor ſequitur in hæc verba. Hæc eſt finalis concordia facta in curia dominæ reginæ apud caſtrum Hertf. in craſtino Animarum, Anno reg' Eliz. dei gratia Angliæ, Franciæ, & Hiberniæ reginæ, fidei defenſor', &c. a conqueſtu viceſim' quarto, coram' Edmundo Anderſon milite, Thoma Meade, Franciſco Windam, & Willihelmo Periam Juſticiar', & aliis dominæ reginæ fidelibus tunc ibi preſentibus, inter Henricum Vicecomit' Byndon, Richardum Rogers militem, Henricum Aſhley militem, Thomam Howard armig', Georgium Trenchard armig', Joh' Strangwaies armiger', Johannem Williams armiger', Richardo Watkins armig', Thomam Mullens armiger', Henricum Coker armig', Edwardum

Edwardum S. Karke arm', Jo' Fitz James arm', & Georg' Gilbert arm' quer', & Joh' Horſey militem deforc', de maneriis de Clyſton, Malanke, Torneford Nether Compton, Bradford, Sherborne, Wike, Horſeys Melcum, alias Sturges Melcum cum pertinen' Ac de ducent' & quinquagint' meſſuagiis, cent' toftis, decem molendin', decem columbar', tribus mille acr' terr', duobus mille acr' prati quinque mille acr' jampn' & bruere, & decem librat' reddit cum pertin' in Yetmiſter Rime intrenſeca, Thornford, Bradford, Beere Hacket, Shirborne, Lillington, Nether Compton, Over Compton, Long Burton, Oburne, Heyden, Upmelcombe, Nether Melcombe, Chaſelborne, Buckland, Pluſh, Mapowder, Mylton, alias Middleton & Helton, ac de Rectoria de Bradford cum pertin', necnon de Advocation' Eccleſiar' de Melcombe, Nether Melcombe, Clyſton, Malancke, Torneford, Nether Compton, & Bradford in com' Dorc'. Et de maner' de Horſey & Peignes cum pertin'. Ac de 20. meſſuagiis, ſex toft', duobus molendinis, duobus columbar' mill' acr' terr', ſexagint' acr' prati, mill' & ducent' acr' paſtur', quadragint' acr' boſci, mille acr' jampnor' & bruere, & quadragint' ſolidat' reddit' cum pertin' in Bridgwater, Chilton, Bough, Stafford, Berwick, Weſton, Bandrip, Peryſon, Chedſey, Wembdon, & Canningto' in com' Somerſ. unde pl'itum convent' fum' fuit inter eos in eadem cur', ſcil' quod præd' Jo' Horſey recogn' præd' maneria, rectoriam, ten'ta, & reddit' cum pertin', ac advocation' præd' eſſe jus ipſius Vicec', ut ill' quæ iidem Vicecom', Richard', Henricus, Tho', Georg', Joh' Strangwaies, Jo' Williams, Richardus, Thomas, Henricus, Edwardus, Joh' Fitz James, & Georgius habent de dono præd' Joh' Horſey. Et ill' remiſer' & quiet' clam' de ſe & hæred' ſuis præd' Vicecomit', Richardo, Henr', Thom', Georgio, Johan' Strangwaies, Jo' Williams, Richardo, Thomæ, Henrico, Edwardo, Joh' Fitz James, & Georg' & hæred' ipſius Vicecom' imperpet'. Et præterea idem Joh' Horſey conceſſit pro ſe & hæred' ſuis, quod ipſi' warr' præd' Vicecom', Rich', Henrico, Thom', Georg', Joh' Strangwaies, Johan' Williams, Rich', Thomæ, Henrico, Edwardo, Joh', Fitz James, & Georgio, & hæred' ipſius Vicecom' præd' maneria, rectoriam, ten'ta, & reddit' cum pertin', ac Advocationem, præd' contra omnes homines imperpetuum. Et pro hac recog', remiſſ. quiet' clam', warr', fine, & concord', iidem Vicecom', Richardus, Henric', Thomas, Georgius, Johannes Strangwaies, Johannes Williams, Richard', Thomas Henricus, Edwardus, Johannes Fitz James, & Georgius dederunt prædicto Johan' Horſey duo mille ſexcent' & octogint' libr' ſterling': qui quidem finis in forma prædict' levat', habit' & levat' fuit de prædict' maner'

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& tenement' voc' Over Melcum, al's Horſeys Melcum, alias Sturges Melcombe cum pertin', ad uſum præd' Jo' Horſey & hæred' maſculor' de corpore ipſius Joh' Horſey legitim' procreat'. Et pro defectu tal' exit', ad uſum Edythæ nunc uxoris præd' Rad' Horſey pro termino vitæ ſuæ. Et poſt deceſſum præd' Edythæ, ad uſum præd' Rad' Horſey, & hæred' maſcul' ſuorum de corpore ſuo legitime procreat'. Et pro defectu talis exit' ad uſum Jaſp' Horſey, fratris præd' Rad' Horſey & hær' maſculor' de corpore ſuo legit' procreat'. Et pro defectu talis exit', ad uſum rectorum hæred' præd' Joh' Horſey imperpet': Virtute cujus, ac vigore præd' acti parliamenti de uſibus in poſſeſſion' transferend' edit' & proviſ. præd' Joh' Horſey fuit ſeiſit' de præd' maner' & tenementis voc' Over Melcum, alias Horſeys Melcum, alias Sturges Melcum, cum pertin' in dominic' ſuo ut de feodo talliato, viz. ſibi & hæred' maſc' de corpore ſuo legit' procreat', remanere inde præd' Edythæ pro termin' vitæ ſuæ, remanere inde præd' Rad' Horſey in feodo talliat', viz. ſibi & hæred' maſculis de corpore ſuo legit' procreat', remanere inde præd' Jaſper' Horſey in feodo talliato, ſcilicet ſibi & hæred' maſculis de corpore ſuo legitim' procreat', remanere inde ulterius rectis hæred' præd' Jo' Horſey imperpetuum. Et iidem Jur' ulterius dicunt ſuper ſacrament' ſuum præd', quod poſtea & antea infraſcript' tempus quo, &c. ſcz. viceſim' die Jan', anno regni dictæ dom' reginæ nunc viceſim' nono, præd' Robertus Bingham jun' & Anna apud Melcum præd' habuer' exit' inter eos legit' procreat' Richardum Bingham, filium & hæred' apparen' dicti Roberti Bingham jun'. Et quod præd' Robert' Bingham & Anna de præd' maner', terr', & ten'tis voc' Wolcombe Bingham, ſic ut præfertur ſeiſit' exiſten', reman' inde in forma præd' ſpectan'. Et præd' Rob' Bingham ſen' & Jana uxor ejus ſic ut præfert' de præd' maner' de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. ſeiſit' exiſten', reman' inde præf. Rob' Bingham jun', & hæred' de corpore ſuo ſuper corpus præd' Annæ legit' procreat', remanere inde rectis hæred' dict' Roberti Bingham ſen' ſpect', Idem Rob' Bingham jun' poſtea & ante infraſcr' tempus quo, &c. ſcilicet undecimo die Novembris, ann' regni dictæ dom' reg' nunc triceſimo, apud Melcum præd' obiit de tali ſtatu ſuo, de & in præmiſſ. ut præfert' ſeiſit'. Et prædicta Anna ipſum ſupervixit, & ſe tenuit intus in præd' manerio & ten'tis voc' Wolcombe Bingham, & fuit inde ſola ſeiſit' in d'nico ſuo ut de liber' ten't' pro term' vitæ ſuæ per jus accreſcendi: ac quod poſt mortem præd' Rob' Bingham jun', remanere præd' manerii de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. in feodo tall'

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deſcendebat præd' Ric' Bingham, ut filio & hæred' de corpore ipſius Rob' Bingham jun' ſuper corpus præd' Annæ procreat', eodem Ric' Bingham tempore mortis præd' Rob' Bingham jun' patris ſui infra ætatem exiſten', viz. ætatis unius annī & novem menſium & non ultra. Et quod præd' Anna de præd' manerio & tenementis voc' Wolcombe Bingham in forma præd' ſeiſit' exiſten', ac præd' Rob' Bingham ſen' & Jana de præd' manerio de Nether Melcum alias Melcum Bingham cum pertinentiis unde, &c. in forma præd' ſeiſit' exiſten', remanere inde in forma præd' ſpectan', eadem Anna poſtea & ante infraſcript' tempus quo, &c. ſc. primo die Maii, anno regni dictæ dominæ reginæ nunc 32. apud Melcum præd' cepit in virum quendam Joh' Stroude armigerum. Et iidem Jur' ulterius dicunt ſuper ſacrum' ſuum præd', quod tempore mortis præd' Rob' Bingham jun', & ante infraſcr' tempus quo, &c. præd' Joh' Horſey fuit ſeiſit' de præd' manerio de Over Melcum, alias Horſeys Melcum, alias Sturges Melcum cum pertinentiis in dominico ſuo ut de feod' talliato, viz. ſibi & hæred' maſcul' de corpore ſuo legitimè procreat' remanere inde ulterius in forma præd' ſpectan': Prædictoq; Joh' Horſey ſic inde ſeiſit' exiſten', quidam Jo. Popham Miles, capital' Juſtic' dict' dom' reg' ad pl'ita coram ipſa regina tenend' aſſign' per nomen Jo' Popham armig' Georg. Trenchard armig' & Edw' Gorge armig' ante infraſ. tempus quo, &c. ſc. 26. die Martii, anno regni dictæ dom' reg' nunc 31. extra cur' Cancell' ipſius dominæ reg' apud' Weſt' in com' Midd' tunc exiſten', proſequut' fuer' quodd' breve ipſius dom' reg' de ingreſſ. ſuper diſſeiſin' en le poſt verſ. præd' Joh' Horſey tunc tenen' liberi ten'ti præd' Manerii de Over Melcum, alias Sturges Melcum cum pertin' de eodem manerio, per nomina manerii de Horſeys Melcum, alias Sturges Melcum cum pertin', Ac decem meſſuag. treſcent' acr' terræ, ducent' acr' prati, quinque mille acr' paſt', treſcent' acr' boſci, & treſcent' acr' jampn' & bruere cum pertin' in Horſeys Melcum, alias Sturges Melcum, tunc vic' præd' com' Dorſ. direct', per quod quid' breve ead' dom' reg' nunc eidem tunc vic' Dorc. præcepit quod idem tunc vicecom' præciperet præf. Joh' Horſey, quod juſte & ſine dilatione redderit præd' J. Popham, Geo' Trenchard, & Edward' Gorge, præd' manerium de Horſeys Melcum, alias Sturges Melcum cum pertin', Ac præd' 10. meſſuag. treſcent' acr' terr', ducent' acr' prati, quinq; mille acr' paſtur', treſcent' acr' boſci, & treſcent' acr' jampnor' & bruere cum pertin' in Horſeys Melcum alias Sturges Melcum, quæ iidem Johan' Popham, Georg. Trenchard, & Edward' Gorge tunc clam' eſſe jus & hæred' ſuam, & in quæ idem Johan' Horſey non habet ingr' niſi poſt diſſeiſin', quam H. Hunt inde injuſte & ſine judicio

judicio feciſſet eiſdem Joh' Popham, Georg. Trenchard, & Edw' Gorge, infra triginta annos tunc ultim' elapſ. ut dixerunt. Et unde querebantur quod præd' J. Horſey eis deforc', & niſi feciſſet, Et iidem' Joh' Popham, Georg. Trenchard, & Edw' Gorge feciſſent ipſum tunc vic' ſecur' de clamor' ſuo proſ. tunc idem vic' ſum' per bonos ſummon' præd' J. Horſey, quod eſſet coram tunc Juſtic' dictæ dominæ reginæ de banco apud Weſt' præd' a die Paſc. in quindecim die tunc proxim' ſequen', oſtenſur' quare non feciſſet, Et quod idem tunc vic' haberet ibi tunc ſum' & breve illud. Ad quam quidem xv. Paſc' coram Edm' Anderſon Milit' & ſociis ſuis tunc Juſtic' ipſius dom' reg' de banco apud Weſt' præd' ven' tam præd' J. Popham, Georg' Trenchard, & Ed' Gorge in propriis perſonis ſuis, quam præd' Joh' Horſey per Joh' Willys attornat' ſuum. Et R. Frampton armig' tunc Vicecom' præd' comit' Dorc' adtunc ib'm retorn' breve præd' ſibi in forma præd' direct' in omnibus ſervit' & execut', viz. quod idem Jo' Popham, Georg' Trenchard, & Edw' Gorge, inveniſſent eidem tunc vic' pleg' de proſ. breve ill', viz. Joh' Doo, & Ric' Roo. Et quod præd' J. Horſey ſum' fuit per Joh' Den, & Ric' Fen. Et ſuper hoc iidem Jo' Popham, Georg. Trenchard, & Edw' Gorge narrand' verſus præf. Joh' Horſey ſuper brevi prædicto in propriis perſonis ſuis, & petierunt verſus ipſum Joh' Horſey maneria & tenementa præd' cum pertin' ut jus & hæreditatem ſuam, Et in quæ idem Joh' Horſey non habuit ingreſſum niſi poſt diſſeiſinam quam Hugo Hunt inde injuſte & ſine judicio fec' præfato Joh' Popham, Georg. Trenchard, & Edw' Gorge, infra triginta annos tunc ultim' elapſ. &c. Et unde tunc dixer' quod ipſimet fuerunt ſeiſit' de manerio & tenementis ill' cum pertinentiis in dominico ſuo ut de feodo & jure, tempore pacis, tempore dominæ reginæ nunc capiend' inde expleſ. ad valentiam. &c. Et in quæ, &c. Et inde tunc produxer' ſectam, &c. Et præd' J. Horſey tunc defend' jus ſuum quand', &c. Et vocat inde ad warr' David' Howel, qui tunc preſens fuit in eadem cur' in propria perſona ſua, & gratis manerium & tenementa præd' cum pertin' tunc ei warr', &c. Et ſuper hoc præd' Jo' Popham, G. Trenchard, & Edw' Gorge, tunc' pet' verſ. ipſum David' tenen' per warr' ſuam maneria & tenementa præd' cum pertinentiis in forma præd', &c. Et unde dixerunt quod ipſimet fuer' ſeiſit' de maner' & tenementis præd' cum pertin' in dominico ſuo ut de feodo & jure, tempore pacis, tempore dom' reg' nunc capiend' inde expleſ. ad valenc', &c. Et in quæ, &c. Et inde tunc produxer' ſectam, &c. Et præd' David tunc tenens per warrant' ſuam defend' jus ſuum quando, &c. Et dixit quod præd' Hugo non diſſeiſivit præd' Joh'

Popham

Popham, Georg' Trenchard, & Edw' Gorge, de manerio & tenementis præd' cum pertinentiis, prout iidem Joh' Popham, Georg. Trenchard, & Edw. Gorge per breve & narrationem ſuam prædict' ſuperius ſuppoſuer': Et de hoc pon' ſe ſuper patriam, &c. Et præd' Joh' Popham, Georg. Trenchard, & Edw' Gorge tunc petierunt licentiam inde interloquend': Et habuerunt, &c. Et poſtea iidem Joh' Popham, Georg. Trenchard, & Edw. Gorge, reven' in eadem cur' eodem termino in propriis perſonis ſuis. Et præd' David licet ſolempnit' exact' non reven', ſed in contempt' cur' tunc receſſit, & defalt' fecit: Ideo tunc per eandem cur' conceſſum fuit, quod præd' Joh. Popham, Georg. Trenchard, & Edw. Gorge recuperent ſeiſinam ſuam verſus præfatum Jo. Horſey, de manerio & tenementis præd' cum pertinentiis, Et quod idem Joh. Horſey habuerit de terr' præd' David' ad valenc', &c. Et idem David eſſet in mi'a, &c. Et ſuper hoc præd' Jo. Popham, Georg. Trenchard, & Edward. Gorge tunc petier' breve dictæ dominæ reginæ Vic' Dorſ. præd' dirigend' de He're fac' eis plenar' ſeiſinam de manerio & tenementis præd' cum pertinentiis, & eis tunc conceſſum fuit, retornabil' ib'm a die Paſchæ in quinque ſeptimanas tunc proxim' ſequen', &c. Ad quem diem coram præfato Edmundo Anderſon Milit' & ſociis ſuis tunc Juſtic' dictæ dominæ reginæ de banco, ſc. apud Weſt' præd' ven' præd' Joh. Popham, Georg. Trenchard, & Edw. Gorge in propriis perſonis ſuis. Et præf. Rob. Frampton armig' tunc Vicecom' præd' comit' Dorc. tunc mandavit, quod ipſe virtute brevis illius ſibi direct' 29. die Aprilis tunc ultim' præterit' he're fec' præf. Joh. Popham, Georg. Trenchard, & Edw. Gorge plenar' ſeiſinam de maner' & tenementis præd' cum pertinentiis, prout per breve illud ſibi præcept' fuit, cujus quidem recuperationis tenor ſequitur in hæc verb' ſſ. Dorc. ſſ. Joh. Popham arm' Georg. Trenchard armig' & Edw. Gorge armig. in propriis perſonis ſuis pet' verſus Joh. Horſey Milit', manerium de Horſeys Melcombe, alias Sturges Melcombe cum pertinentiis, Ac decem meſſuag' treſcent' acr' terræ, ducent' acr' prati, quinque mille acr' paſtur', treſcent' acr' boſci, & treſcent' acr' jampnor' & bruere cum pertinentiis in Horſey Melcum, alias Sturges Melcum, ut jus & hereditatem ſuam, Et in quæ idem Joh. Horſey non habuit ingreſſum niſi poſt diſſeiſinam quam Hugo Hunt inde injuſte & ſine judicio fec' præfato Joh. Popham, Georg. & Edw. infra triginta annos jam ult' elapſ. &c. Et unde dic' quod ipſimet fuerunt ſeiſit' de manerio & tenementis præd' cum pertinentiis in dominico ſuo ut de feodo & jure, tempore pacis, tempore dominæ reginæ nunc capiendo inde expleſ. ad valentiam, &c.

Et

Et in quæ, &c. Et inde produc' ſectam, &c. Et præd' Jo. Horſey per Joh. Willys attornat' ſuum, venit & defend' jus ſuum quando, &c. Et vocat inde ad warrant' David' Howel, qui preſens eſt hic in cur' in propria perſona ſua, & gratis manerium & tenementa præd' cum pertin' ei warr', &c. Et ſuper hoc præd' Jo. Popham, G. Trenchard, & Edw. Gorge, pet' verſ. ipſum David' tenen' per warr' ſuam manerium & tenementa præd' cum pertin' in form' præd', &c. Et unde dicunt quod ipſimet fuer' ſeiſit' de maner' & tenementis præd' cum pertin' in dominico ſuo ut de feodo & jure, tempore pacis, tempore dom' reg' nunc, capiend' inde expleſ. ad valent', &c. Et in quæ, &c. Et inde produc' ſectam, &c. Et præd' David tenen' per warr' ſuam, defend' jus ſuum quando, &c. Et dicit quod præd' Hugo non diſſeiſivit præf. Joh. Popham, Georg. & Edw. de manerio & tenementis præd cum pertin', prout iidem Joh. Georg. & Edw. per breve & narrationem ſua præd' ſuperi' ſuppon': Et de hoc pon' ſe ſuper patriam, &c. Et præd' Joh. Popham, Georg. & Edw. pet' licenc' inde interloquend'. Et habent, &c. Et poſtea iidem Joh. Georg. & Edw. reven' hic in cur' iſto eodem termino in propriis perſonis ſuis. Et præd' David licet ſolempniter exact' non reven', ſed in contempt' cur' receſſit, & defalt' fec': Ideo conc' eſt quod præd' Jo. Popham, Georg. & Edw. recuperent ſeiſam ſuam verſ. præf. Joh. Horſey de manerio & tenementis præd' cum pertin'. Et quod idem Johannes habeat de terr' præd' David' ad valenc', &c. Et idem David' in m'ia, &c. Et ſuper hoc præd' Joh. Popham, Georg. & Edw. pet' breve dominæ reginæ Vicecom' præd' dirigend' de He're fac' eis plenar' ſeiſinam de manerio & tenementis præd' cum pertinent', & eis conceditur, returnabil' hic a die Paſchæ in quinq; ſeptimanas, &c. Ad quem diem hic ven' præd' Joh. Popham, Georg. & Edw. in propriis perſonis ſuis. Et Vicecom', viz. Rob. Frampton armig' modo mand', quod ipſe virtute brevis illius ſibi directi 29. die Aprilis ultim' præterit' he're fec' præf. Joh. Popham, Georg. & Edw. plenar' ſeiſinam de maner' & tenementis præd' cum pertinen', prout per breve illud ſibi præcept' fuit, &c. Que quidem recuperatio in forma præd' habit', fuit habit' ad uſum præd' Joh. Horſey & Dorotheæ tunc uxor' ejus, & hæred' maſculor' de corpore ipſius Joh. Horſey legitim' procreat'. Et pro defectu talis exitus ad uſum præd' Rad. Horſey & Edythæ tunc uxoris ejus, & hæred' maſcul' de corpore ipſius Radulphi legitim' procreat'. Et pro defect' talis exitus ad uſum præd' Jaſp. Horſey, & hæred' maſculorum de corpore ipſius Jaſperi legitime procreat'. Et pro defectu tal' exit' ad uſum rector' hæred' præd' Jo. Horſey imperpetuum: Virtute cujus, ac vigore præd' act' Parl' de uſub' in poſſeſſio-

poſſeſſion' transferend' edit', præd' Joh. Horſey & Dorothea fuer' ſeiſit' de manerio illo cum pertin', viz. idem Johannes Horſey in dominic' ſuo ut de feodo talliato, viz. ſibi & hæred' maſculis de corpore ſuo legit' procreat', ac præd' Dorothea in dominico ſuo ut de libr' ten'to pro termino vitæ ſuæ, remanere inde in form' prædicta ſpectan'. Ipſiſq; Joh. & Doroth. ſic inde ſeiſit' exiſten', remanere ind' in forma præd' ſpectan', idem Jo. Horſey poſtea & ante infraſcript' tempus quo, &c. ſcilicet ſeptimo die Septembris, anno regni dictæ dom' reginæ nunc triceſimo primo ſupradicto apud Melcum præd' de tali ſtatu ſuo inde obiit ſeiſit' ſine exit' maſculo de corpore ſuo legit' procreat', & præd' Dorothea ipſum ſupervixit, & ſe tenuit intus in manerio illo cum pertin', & fuit inde ſola ſeiſit' in dominico ſuo ut de libero ten'to pro termino vitæ ſuæ per jus accreſcendi, remanere inde in forma præd' ſpectan'. Et quod Maria Arnold uxor Rich. Arnold armig', fuit una ſororum & cohær' præd' Joh. Horſey, & Reginald' Moone miles fuit alter cohæred' præd' Joh. Horſey, viz. filius & hæres Will. Moone milit' & Eliz. uxoris ejus al' ſororum ejuſdem Jo. Horſey. Et iidem Jurat' ulterius dicunt ſuper ſacr'um ſuum prædict', quod prædict' Dorothea de præd' manerio de Over Melcum, alias Horſeys Melcum, alias Sturges Melcum cum pertin' in form' prædict' ſeiſit' exiſten', poſtea & ante infraſcr' tempus quo, &c. ſcz. primo die Septembris, anno regni dict' dom' reg' nunc triceſimo ſecundo, apud Melcum præd' obiit de tali ſtatu ſuo inde ſeiſit', poſt cujus mortem prædict' Rad. Horſey & Edytha in prædict' manerium de Over Melcum, alias Horſeys Melcum, alias Sturges Melcum cum pertinentiis intraverunt, & fuer' inde ſeiſit' prout lex poſtulat. Et iidem jur' ulter' dicunt ſuper ſacr'um ſuum præd', quod præd' Robertus Bingham ſen' & Jana de præd' manerio de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. ſic ut præfertur pro termino vitar' ſuarum ſeiſit' exiſten', remanere inde in forma præd' ſpectan', idem Rob. Bingham ſen' poſtea & ante infraſcr' tempus quo, &c. ſcilicet undecimo die Januarii, anno reg' dict' dom' reginæ nunc triceſim' ſexto apud Melcum præd' obiit de tali ſtatu ſuo inde ſeiſit', dicto Rich. Bingham exiſten' conſanguineo & hæred' prædicti Roberti Bingham ſen', viz. filii & hæred' præd' Roberti Bingham jun', filii & hæred' prædict' Roberti Bingham ſen', & infra ætatem viginti & unius annorum, ſcz. ætatis octo annorum & non amplius; Et quod prædict' Richard. Bingham adhuc ſuperſtes & in plena vita exiſtit, viz. apud Melcum prædict': Et quod prædict' Jana prædictum Robertum Bingham ſen' ſupervixit & ſe tenuit intus in prædict' manerio,

de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. Et fuit inde ſola ſeiſit' in dominico ſuo ut de libero tenemento pro termin' vitæ ſuæ per jus accreſcendi, remanere inde in forma præd' prout lex poſtulat. Et quod præd' Jana de præd' manerio de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. in d'nico ſuo ut de libero tenemento pro termino vitæ ſuæ in forma præd' ſeiſit' exiſten', eadem Jana poſtea & ante infraſcr' tempus quo, &c. ſcz' ſecundo die Aprilis, anno regni dictæ dom' reg' nunc' quadrageſimo prim' apud Melcum præd' obiit de tali ſtatu ſuo inde ſeiſit', poſt cujus mortem & ante infraſcr' tempus quo, &c. prædict' Ra. Horſey, Rich. Veale, & Edw. Gore in tenementa infraſcr' cum pertinentiis intraver'. Et quod poſtea & ante infraſcr' tempus quo, &c. præd' Joh. Stroude & Anna uxor ejus, & Rich. Bingham in prædict' manerium de Nether Melcum, alias Melcum Bingham cum pertinentiis unde, &c. intraver', ut in jure prædict' Rich. Bingham: virtute cujus præd' Richard. Bingham fuit de & in præd' manerio cum pertinentiis unde, &c. ſeiſit' Et ſic inde ſeiſit' exiſten', poſtea & ante infraſcr' tempus quo, &c. ſcz' ſeptimo die Aprilis, anno regni dictæ domin' reg' nunc quadrageſ. primo ſupradict' prædict' Joh. Stroude & Anna uxor ejus, & Richard. Bingham, ſupra ten'ta infraſcr', per quoddam ſcript' ſuum ſigill' ſuis ſigillat', gerens dat' ſecundo die April' anno reg' dict' dom' reg' nunc quadrageſimo primo ſupradicto Jurator'q; prædictis in evidentiis oſtenſ. apud Melcum prædictam dimiſerunt prædictum maner' de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. infranominat' Willihel. Albert: Habend' & tenend' ſibi & aſſign' ſuis a feſto Annunciationis beat' Mariæ virg' tunc ultimo præterito ante datum ejuſd' ſcripti, pro termino 7. annorum extunc prox' & immediat' ſequent' plenar' complendor' & finiend': Reddendo inde annuat' durant' termin' præd' centum & quadragint' libr' per annum, ad feſtum S. Michaelis Archangeli, & Annunciation' beat' Mariæ virginis per equales portiones ſolvend'. Virtute cujus dimiſſ. præd' Will. Albert eodem ſeptimo die Aprilis, anno quadrageſimo primo ſupradict', in præd' manerium de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. intravit, & fuit inde poſſeſſionat' prout lex poſtulat. Et ſic inde poſſeſſ. exiſten', poſtea & ante infraſcr' tempus quo, &c. ſc. præd' ſeptimo die Aprilis ann' quadrageſ. primo ſupradict' præd' Willihel. Albert ſuper tenementa infraſcript' intravit, & dimiſit tenementa infraſcript' cum pertinentiis in quibus, &c. prædict' Georgio Stroude prout in narratione infraſcript' interius ſpecific': Virtute cujus prædict' Georgius Stroude prædict' ſeptimo die Aprilis, anno quadrageſimo primo

primo ſupradict' in ten'ta infraſcr' in narrac' infraſcr' mentionat' in quibus, intravit, & fuit inde poſſeſſionat' prout lex poſtulat, quouſq; præd' Rad. Horſey, Ric. Veale, & Edw. Gorge infraſcr'. 11. die April' anno quadrageſ. primo ſupradict' ſuper poſſeſſionem ipſius Georg. Stroude inde intraverunt, & ipſum G. a poſſeſſione ſua inde termino ſuo præd' nondum finit' ejecer', expuler', & amover' : Sed utrum ſuper tota materia præd' per Juratos præd' in forma præd' comperta, intracio præd' G. in ten'ta infraſcr' cum pertin' ſit licita necne, iidem Jur' pœnitus ignorant, Et petunt inde adviſament' curiæ hic, &c. Et ſi ſuper tota materia præd' per Jur' præd' in forma præd' comperta, videbitur cur' hic, &c. quod intratio præd' G. Stroude in ten'ta infraſcr' cum pertin' ſit licita, tunc iidem Jurat' dicunt ſuper ſacram' ſuum præd', quod præd' Ra. Horſey, Ric. Veale, & Edw. Gorge ſunt culpabiles de tranſgreſſ. & ejectione infraſcript', prout præd' Georg. Stroude interius verſ. eos queritur, Et tunc aſſid' dampn' ipſius G. Stroude occaſione tranſgreſſ. & ejectionis infraſcr' ultra miſ. & cuſtag' ſua per ipſum circa ſectam ſuam in hac parte appoſit' ad duos ſolidos, & pro miſ. & cuſtag' ill' ad xx. s. Et ſi ſuper tota materia præd' per Jurat' præd' in forma præd' comperta, videbiter cur' hic, &c. quod intratio præd' G. Stroude in ten'ta infraſcript' cum pertin' non ſit licita, tunc iidem Jurat' dicunt ſuper ſacr'um ſuum præd' quod præd' Ra. Horſey, Ric. Veale, & Edward. Gore non ſunt culpab' de tranſgreſſ. & ejectione infraſcript' prout præd' Ra. Horſey, Ric. Veale, & Edw. Gorge interius allegaverunt : Et quia cur' dictæ dominæ reginæ hic de judicio ſuo de & ſuper præmiſſ. reddendo nondum adviſatur, dies inde dat' eſt partibus præd' coram domina regina apud Weſtm' uſq; diem Veneris prox' poſt craſtinum S. Trin' de judicio ſuo inde audiendo, eo quod curia dictæ dom' reg' hic inde nondum, &c. Ad quem diem coram dom' reg' apud Weſtm' ven' partes præd' per Attornatos ſuos præd', Et quia curia dom' reg' hic de judicio ſuo de & ſuper præmiſſ. reddend' nondum adviſatur, dies inde dat' eſt partibus præd' coram domina regina apud Weſtmonaſt' uſque diem Jovis prox' poſt' Octab' S. Mich' de judicio ſuo inde audiendo, eo quod curia dict' dom' reginæ hic inde nondum, &c. Ad quem diem coram dom' reg' apud Weſtm' venerunt partes præd' per attorn' ſuos præd', Et quia curia dom' reg' de judicio ſuo de & ſuper præmiſſ. reddendo nondum adviſatur, dies inde dat' eſt partibus prædict' coram dom' reg' apud Weſt'

uſque diem Veneris prox' poſt octab' Sanctæ Hillarii de judicio ſuo inde audiendo, eo quod cur' dict' dominæ reginæ hic inde nondum, &c. Ad quem diem coram dom' reg' apud Weſt' venerunt partes præd' per attornat' ſuos præd'. Et quia curia dictæ dom' reg' hic de judicio ſuo de & ſuper præmiſſ. reddend' nondum adviſat', dies inde dat' eſt partibus præd' coram dom' regina apud Weſtm' uſq; diem Mercurii prox' poſt xv. Paſch' de judicio ſuo inde audiendo, eo quod curia dictæ dom' reg' hic inde nond', &c. Ad quem diem coram dom' reg' apud Weſt' vener' partes præd' per attorn' ſuos præd', Et quia curia dom' reg' hic de judicio ſuo de & ſuper præmiſſ. reddendo nondum adviſatur, dies inde dat' eſt partibus præd' coram dom' reg' apud Weſt' uſq; diem Vener' prox' poſt craſtin' S. Trin' de judicio ſuo inde audiendo, eo quod cur' dictæ dom' reg' hic inde nondum, &c. Ad quem diem coram dom' reg' apud Weſt' vener' part' præd' per attornat' ſuos præd' : Super quo viſ. & per curiam dom' reg' nunc hic plenius intellect' omnibus & ſingul' præmiſ. maturaq; deliberatione ſuper inde habita. Conc' eſt quod præd' G. Stroude recuperet verſ. præd' Ra. Horſey, Ric. Veale, & Edw. Gorge, terminum ſuum præd' de & in ten'tis præd', de & in narrac' præd' ſpec' cum pertin' adhuc ventur', & dampna ſua prædict' per Jur' prædict' in forma prædict' aſſeſſ. Necnon duodecim libr' pro miſ. & cuſtag' ſuis præd' eidem G. Stroude, per curiam dictæ dom' reg' hic ex aſſenſu ſuo de incr'o adjudicat'. Quæ quidem dampna in toto ſe attingunt ad 13. lib. & 2. s. Et præd' Ra. Horſey, Ric. Veale, & Edw. Gorge capiantur, &c.

Trin.

Trin. 43 Eliz. *Which began* Mich. 41 & 42 Eliz. Rot. 144.

BINGHAM's *Caſe adjudg'd in the* King's Bench.

IN an *Ejectione firmæ*, between *George Stroude*, Eſquire, Plaintiff, upon a Demiſe made by *William Albert* againſt Sir *Raphe Horſey*, Knight, and others Defendants, upon the general Iſſue, a Special Verdict was found to this Effect; *Robert Bingham* the Grandfather, *Robert Bingham* the Father, *Richard Bingham* the Son, within Age. *Robert Bingham* the Grandfather, held the Mannor of *Binghams Melcum*, of Sir *John Horſey*, Knight, as of his Mannor of *Horſeys Melcum*, by Knight's Service. And *Anno* 12 *Eliz.* levied a Fine of the ſaid Mannor of *Binghams Melcum*, to the Uſe of himſelf, and *Jane* his Wife, and of the Heirs of the ſaid *Rob.* the Grandfather: 20 *Eliz.* the ſaid *Robert* the Grandfather levied another Fine of the ſaid Mannor of *Binghams Melcum*, to the Uſe of himſelf for Life, and after to the Uſe of *Robert* the Father (being his Son and Heir apparent) in Tail, and for Default of ſuch Iſſue, to the Uſe of the right Heirs of the Grandfather: *Robert* the Father, 30 *Eliz.* died, *Richard* his Son and Heir then, and yet within Age, by which the Remainder in Tail deſcended to him. 31 *Eliz.* Sir *John Horſey* ſuffered a common Recovery of his Mannor of *Horſeys Melcum*, to the Uſe of himſelf and *Dorothy* his Wife, in Tail, and after to the Uſe of the Defend. Sir *Raphe Horſey*, and *Edyth* his Wife, in Tail, and after to the Uſe of the right Heirs of Sir *John*. 32 *El.* Sir *John*, and *Dorothy* his Wife dying without Iſſue, Sir *Raphe*, the Defend. entred into the Man. of *Horſeys*

Jenk. Cent. 167 Moor 607.

Horſeys Melcum; 36 *Eliz.* *Robert Bingham* the Grandfather died, by which the Reverſion in Fee deſcended to *Richard* the Son; 41 *Eliz.* *Jane*, Wife of *Robert Bingham* the Father died, *Richard Bingham*, within Age, entred into the ſaid Mannor of *Binghams Melcum*, and made a Leaſe of Part of the Demeans thereof to *Albert*, by Deed indented for Seven Years, yielding 40 *l.* Rent *per Annum*, who demiſed to the ſaid *George Stroude*, who entred, upon whom Sir *Raphe*, and the other Defendants, entred, againſt whom the Plaintiff brought the *Ejectione firmæ* for Part of the Demeans of the ſaid Mannor of *Binghams Melcum*: And upon great Deliberation and Conference had with divers other Juſtices, Judgment was given for the Plaintiff. And in this Caſe four Points were reſolved.

Firſt, When *Robert Bingham* the Grandfather, 20 *Eliz.* levied a Fine to the Uſe of himſelf and *Jane* his Wife, for Life, and after to the Uſe of *Robert* the Father, in Tail, and after to the Uſe of the right Heirs of the Grandfather, the Grandfather had a Fee Expectant upon the Eſtate Tail, as a *(a)* Reverſion, and not as a Remainder. And therewith agree 32 *H.* 8. *Br. Garde* 93. *(b)* 4 *H.* 6. *Br. tit. Done & Remainder* 15. 28 *H.* 8. *Dyer* 7. *(c)* *Bucknam's* Caſe. And ſo it was adjudged, *Trin.* 31 *Eliz.* in the King's-Bench, between *Fenwick* and *Mytford*, where the Caſe was, That *Anthony Mytford*, ſeized of Land in Fee, levied a Fine thereof to the Uſe of *Margaret Mytford* for Life, and after to the Uſe of *Jaſper Mytford*, in Tail, and after to the Uſe of the Right Heirs of the ſaid *Anthony*; and afterwards Tenant in Tail died without Iſſue. *Anthony*, in the Life of *Margaret*, made a Leaſe to one *Robert Holtman* for a 1000 Years, and died, and if this Leaſe were good or not againſt his Heir, was the Queſtion. And it was adjudged, That the Leaſe was good, for *Anthony* had it as a Reverſion. And ſo it was reſolved in the like Caſe by all the Judges of *England*, in the Caſe of the Earl of *(d)* *Bedford* in the Court of Wards.

Secondly, It was reſolved, That Sir *Raphe Horſey* ſhould not have the Wardſhip of the Land, becauſe a Reverſion in Fee is expectant upon it, and the Reverſion is immediately held of the Lord, and not the Eſtate Tail: But it was objected, That in this Caſe, by the Death of *Robert* the Grandfather, the Reverſion in Fee deſcended to *Richard*, who is alſo the Heir of the Donee in Tail, and the Land is held by Knight's Service, and ought to be in Ward to ſome, or otherwiſe many Lords may be defeated of the Wardſhip of Lands held of them: and *Richard* cannot hold the Eſtate Tail

(a) 3 Leon. 25. 54. B. N. C. 186. Moor 608.
(b) 4 H. 6. 21, 22, &c. Br. Tenure 21.
(c) Bockenham's Caſe. Co. Lit. 13. a. 22. b. 1 Leon 182. 3 Leon. 25, 54. 1 Anderſ. 2, 288, 289. Hob. 27, 280. N. Benl. 16, 17. Cr. El. 321. Moor 284, 285, 310. 2 Rol. Rep. 105. Raym. 229. 1 Mod. Rep. 98, 237, 238. 3 Keb. 122, 177, 178, 179, 240, 241, 317, 339. 1 Vent. 373, 375, 377. Jenk. Cen. 267.
(d) 1 Co. 130. a. Poph. 3, 82. Moor 371, 718, 719. Jenk. Cent. 248. 2 And. 197. 2 Rol. 418, 791. Raym. 83.

Tail of himſelf, and therefore Sir *Raphe Horſey* in this Caſe, ſhall have the Wardſhip of the Land. As if Tenant by Knight's Service make a Gift in Tail, and afterwards releaſes to the Donee and his Heirs, now the Donee hath the Eſtate Tail, and the Reverſion expectant; in that Caſe, if the Donee dies, his Iſſue within Age, the Lord ſhall have the Wardſhip of the Body and of the Land: And in Proof thereof, the Book in 38 *E.* 3. 7. *b.* was cited, where in a Writ of Ward of the Land and of the Heir of *R. C.* the Defendant pleaded, That *R. C.* levied a Fine to the Defendant, *come ceo, &c.* who granted and rendred the Land to him in Tail, ſaving the Reverſion to the Defendant, and ſo *R. C.* the Donee, held of him: To which the Plaintiff replied, That the Defendant releaſed to *R. C.* all his Right, and ſo *R. C.* became his Tenant: To which the Defendant, by way of Rejoinder, ſaid, That he did not releaſe, and tendered Iſſue: And it was held no good Iſſue, wherefore he ſaid he did not releaſe, but continued his Eſtate all Times in Tail, by Force of the Fine, and thereupon Iſſue was taken; and upon that it was inferred, That foraſmuch as the Writ of Ward was brought as well for the Land as for the Heir, that the Replication would not be good, unleſs the Lord ſhould have the Wardſhip of the Land in the ſame Caſe: But the Court, upon Conſideration of the ſaid Book, gave no great Regard to it, as well becauſe the ſaid Point, as to the Wardſhip of the Land, was not moved in the Caſe, as becauſe it appeared by the joining of the Iſſue, that it was pretended that by the Releaſe the Eſtate Tail was extinct, for the Iſſue is, Whether he continued his Eſtate Tail by Force of the Fine, and that without Queſtion he did, although the Releaſe were made. Note Reader, If the ſaid Book were agreed to be Law, yet it is not to be likened to the Caſe at Bar, for when the Donor doth releaſe to the Donee in Tail, the ſame doth enure by increaſing of his Eſtate. And therefore if the Law ſhould be, That the Lord in the ſame Caſe ſhould have the Wardſhip of the Heir and Land of the Donee, for as much as the Heir claims both the Eſtates by Deſcent from one and the ſame Anceſtor: Yet in the Caſe at the Bar, when the Donee hath an Eſtate Tail by Deſcent from his Father, and the Reverſion as Heir to his Grandfather; and ſo two diſtinct Eſtates deſcend to him from two ſeveral Anceſtors, the Land ſhall not be in Ward to the Lord, for the Father held the Eſtate in Tail of the Grandfather, and the Grandfather his Reverſion of the Lord. But it was held by the whole Court, That if Tenant in Tail be with the Reverſ. expectant to him and his Heirs, of Lands held by Kts Service, of a common Perſon, and afterwards he dies, his Heir within Age, he ſhall be in Ward for his Body, but the Lord ſhall not have the Wardſhip of the Land, for the Reverſion is held immed. of him, and not the Eſtate Tail. And if he grants over the Rever. he ſhall hold the Eſt. T. of his Grant. and altho' the

2 Inſt. 505.

Co. Lit. 78. a.

9 Co. 126. b. Plow. Com. 296. b.

Seigniory of the Eſtate Tail is ſuſpended, yet the Donee hath two diſtinct Eſtates in him, that is to ſay, the Eſtate Tail, and the Reverſion in Fee; and the Reverſion is as a Meſnalty betwixt the Lord and the Donee, and it cannot be ſaid, that in this and other the like Caſes, the Lord may be defeated of the Wardſhip of the Land, foraſmuch as the Law doth not give in ſuch Caſes any Wardſhip of the Land to the Lord, and the Law doth Wrong to no Man. But if it were admitted, that the Tenure between the Donee and him in the Reverſion, by the Unity were determined, yet nothing ſhall be held of the Lord but the Reverſion, and in ſome Caſe, the Donee in Tail ſhall hold of no Body; for where the Tenant of the Archbiſhop of *Canterbury* made a Gift in Tail, the Remainder to the King in Fee, the Donee (*a*) held of no Body, as it was held 4 & 5 *Phil. & Mar. Dyer* 154.

(*a*) Dyer 154. pl. 18. Co. Lit. 152. b. Goldſb. 149. 2 Rol. 514.

Thirdly, it was reſolved, That if the Caſe were admitted that *Rob.* the Grandfather was Tenant for Life, the Remaind. to *Rob.* the Fath. in Tail, the Remaind. to *Rob.* the Father in Fee, and *Rob.* the Fath. had Iſſue *Rich.* within Age, and died, and afterward Sir *John Horſey* the Lord, conveyed the Seignory to Sir *Raphe*, the Defend. and afterwards *Rob.* the Grandf. died, that Sir *Raphe* the Defend. ſhall not have the (*b*) Wardſhip of *Richard*, becauſe *Robert* the Father held not of him (nor of any of his Anceſtors, whoſe Heir he is) the Day of his (*c*) Death, nor was the Land within the Fee or Seigniory of Sir *Raphe*, or any of his Anceſtors, whoſe Heir he is, at the Time of the Death of the ſaid *Robert* the Son; and a Man ſhall never have the Wardſhip of the Heir, when the Land was not in his Fee or Seigniory, or of ſome of his Anceſtors, at the Time of the Death of the Tenant, and that is well proved by the Words of the Writ of Ward, that is to ſay, *Præcipe quod reddat cuſtodiam terræ & hæredis C. quæ ad ipſum pertinet, eo quod C. terram illam de eo tenuit die quo obiit.* And of ſuch Effect are the Words of the Writs of (*d*) *Diem clauſit extremum*, and *Mandamus*. And altho' (*e*) during the Life of the Tenant for Life, the Heir of him in Remainder ſhall not be in Ward, becauſe the Tenant for Life is Tenant to the Lord Paramount, and the Lord ſhall not have the Wardſhip ſo long as he hath a Tenant for Life; yet the Death of the Tenant for Life is not the Cauſe of the Wardſhip, but is a Removal of the Impediment for which for the Time he was not in Ward: As it was held *Paſch. 39 Eliz.* in the Com. Pleas, in a Writ of Waſte betwixt (*f*) *Paget* and *Cary*, That if there be Tenant for Life, the Remaind. for Life, the Remaind. in Fee, and the Tenant for Life commits Waſte, and he in Remaind. for Life dies, now he in the Remaind. in Fee, ſhall have a Writ of Waſte, for the mean Eſtate for Life which was a the Impediment, is now removed. Alſo it was ſaid, when to

(*b*) 9 Co. 129. b.

(*c*) 10 Co. 84. b.

(*d*) F. N. B. 251. k.

(*e*) F. N. B. 142. b.

(*f*) 5 Co. 76. b. 10 Co. 44. b. 11 Co. 81. b. Moor 18. 1 Jones 51. F. N. B. 58. c. 59. h. Cr. Jac. 688. 50 E. 3 4. a. 2 Rol. 829. 2 Inſt. 301. Lit. Rep. 256. Co. Lit. 54. a.

the

the Perfection or Conſummation of a Thing (a) two Acci- dents are requiſite, and one happens in the Time of one, and the other in the Time of another, in ſuch Caſe, neither the one nor the other ſhall take Benefit of it, becauſe both do not happen in the Time of any them, and both are re quiſite to the Conſummation of the Thing. As if Lord and Tenant be by certain Rent, and the Tenant (b) ceaſes for a Year, and then the Lord grants over his Seigniory, and then the Tenant ceaſes for another Year, in this Caſe none of them ſhall take Benefit of this Ceſſer, *quod fuit conceſſum*.

(a) 3 Bulſtr. 253.

(b) 3 Bulſtr. 253. Palm. 417.

And a Caſe was adjudged in this Court, *Trinit.* 25 *Eliz.* in (c) *Lacy*'s Caſe, That whereas *Lacy* ſtruck *Peacock*, and gave him a mortal Wound upon the Sea, of which *Peacock* died at *Scarborough* in the County of *York*, and *Lacy* was diſcharged of it, for thoſe of the County of *York* could not enquire of his Death, without Enquiry of the Stroke, and of the Blow they could not enquire, becauſe it was not given within any County; and thoſe of the Admiral Juriſdiction, could not as of a Felony, enquire of the Stroke, without Enquiry of the Death, and they could not enquire of the Death, becauſe it was *infra corpus comitatus*: And it was ſaid, when divers Accidents are requiſite to the Conſummation of a Thing, the Law in many Caſes will rather reſpect the (d) original Cauſe than any other. As 6 *E.* 3. 41. if a Man (e) preſent to the Church of another in the Time of War, and thereupon the Preſentee is inſtituted and inducted in the Time of Peace, the Law gives ſuch Regard to the original Act, that is to ſay, the Preſentment, that all that follows thereupon, although it were in Time of Peace, ſhall be avoided, And now, upon the whole Matter, this Uſurpation ſhall be conſtrued to be in Time of War, and ſhall not put the right Patron out of Poſſeſſion. And ſo, and upon the ſame Reaſon was (f) *Shelly*'s Caſe adjudged in this Court. And it appears alſo by the Caſe of Dower, in 4 *H.* 8. and cited in 5 *Eliz. Dyer* 224. if the Huſband levies a Fine with Proclamations, and dies, and five Years paſs after his Death, the (g) Wife is barred of her Dower, againſt the Opinion in *Plow. Com.* 373. for although to the Conſummation of Dower three Things are requiſite, that is to ſay, Marriage, Seiſin, and the Death of the Huſband; and although at the Time of the Fine levied, her Title was not conſummate, yet the Law reſpects the firſt and original Cauſes, *ſcil.* Marriage and Seiſin. So in the Caſe at Bar, it may be ſaid, That the Law ſhall rather reſpect the Death of him in the Remainder, and the Deſcent from him to one within Age, which is the original Cauſe of the Wardſhip, than the Death of the Tenant for Life, which is but *cauſa ſine qua non*, and rather a Removal of the Impediment, as hath been ſaid, than a Cauſe. But it was reſolved, as it hath been

(c) 1 Leon. 270. 13 Co. 53. 3 Inſt. 48, 113. Moor 121, 122. 5 Co. 107. 1 Rol. Rep. 139. 1 Bulſtr. 203. Dalt. Juſt. 340. 2 Brownl. 34.

(d) 1 Co. 106. b. 99. b. 3 Bulſtr. 257. 1 Jones 428. Cr. Jac. 512.

(e) 1 Jones 428. 1 Co. 99. b. 2 Rol. 351. 1 Mod. Rep. 230. 6 E. 3. 41. b. F. N. B. 31. J. Darreign Preſentment 4. 7 E. 3. Darreign Preſentment 2. 18 E. 2. Quare Impedit 175.

(f) Co. Lit. 249. b. 344. b. 6 Co. 30. a. 1 Co. 99. b. 106. b.

(g) Dyer 72. pl. 3. 224. pl. 28. Moor 53. 10 Co. 49. b. 2 Rol. Rep. 409. Goldsb. 148. Co. Lit. 326. a. 3 Leon. 221. 3 Inſt. 216. 8 Co. 72. b. 1 Rol. Rep. 160.

(h) Co. Lit. 31. a. 32. a. Plowd. 373. a.

been ſaid, That neither the one nor the other, for the Cauſe aforeſaid, in this Caſe ſhall have the Wardſhip.

2 Rol. Rep. 13. And it was ſaid, If there be Tenant for Life, the Remaind. in Fee of a Seigniory, and Tenant for Life, the Remaind. in Fee of the Tenancy held by Knight's Service, if he in Remainder of the Tenancy dies, his Heir within Age, and afterwards Tenant for Life of the Seigniory dies, he in Remainder in Fee of the Seigniory, ſhall have the Wardſhip, becauſe the Land at the Time of the Death of the Tenant in Remainder, was in his Fee and Seigniory: So, and for the ſame Reaſon, if there be Tenant for Life, the Remainder in Fee of Lands held *ut ſupra*, and the Lord grants his Seigniory for Life, and afterwards he in Remainder in Fee dies, his Heir within Age, and afterwards the Grantee for Life of the Seigniory dies, and then the Tenant for Life dies, he in Reverſion of the Seigniory ſhall have the Wardſhip: So if he in Remainder dies, his Heir within Age, *ut ſupra*, and afterwards the Lord dies, and then the Tenant for Life dies, the Heir of the Lord in this Caſe ſhall have the Wardſhip, for an Act in Law ſhall not prejudice any one; and his Executor cannot have it, for it was not a Chattel veſted in the Teſtator. And of ſuch Opinion as to this third Point in the principal Caſe, were Sir *Edw. Anderſon*, and *Walmeſley*, Juſtices of the Com. Pleas, upon Conference with them, as the Lord C. J. *Popham* reported.

Fourthly, It was reſolv'd, That Sir *Ralph*, the Defendant, ſhould not have two Parts of the Lands by the Statutes of 32 & 34 *H.* 8. For altho' *Robert* the Grandfather had limited the Uſe to *Rob.* the Father, which is within the ſaid Statutes, yet when *Rob.* the Father died, in the Life of the Grandfather, now

Co. Lit. 78. a. 9 Co. 132. a. the ſaid Statutes do not extend further, for the Heir of the Father who is in by Deſcent, ſhall be in Ward by the Com. Law, and not by the ſaid Statutes. And if the Statute ſhall extend to the Son and Heir of him in Remaind. *pari ratione*, it ſhall extend to all the Heirs of him in Remaind. *in infinitum*. As if a a com. Perſon be Lord, and there be Tenant by Knight's Service, and the Tenant makes a Gift in Tail to his younger Son, and dies, and the Reverſion deſcends to the elder, in this Caſe, *hac vice*, the L. ſhall have the Wardſh. of two Parts of the Land of the Donee: But if the Donee dies, now the elder Son, having the Reverſ. ſhall have the Ward. of the Heir of the Donee,

Co. Lit. 78. a. 8 Co. 165. a. 9 Co. 132. a. and the Statutes do not extend but only to the Child firſt advanced, if he ſurvives the Father, and be then Owner of the Land. For if the Father conveys the Land to the Uſe of any of his Sons, and the Son ſo advanced, aliens or makes any Eſtate of the Land *bona fide*, in the Life of the Father, now the King, or the Lord of whom the Land is held, ſhall not have the Wardſhip by Force of the ſaid Statutes; for the Statutes are expounded to give two Parts to the King or the Lord, when the

Advancement

Advancement continues in the Perſon advanced, without Alteration either by Act in Law, as by Deſcent, or by Act of the Party, as by Conveyance.

The ſame Law when Land is conveyed for the (a) Advancement of the Tenant's Wife, or for Payment of his Debts, if after the Land be aliened *bona fide* before the Death of the Tenant, the King nor other Lord ſhall have any Wardſhip. And ſo was the Statute of (b) *Marlebridge, Cap. 6. de hiis autem qui primogenit', &c. feoffare ſolent, &c.* expounded: For if (c) the Father had enfeoffed his Son, yet if the Son in his Father's Life had aliened *bona fide*, it was out of the Remedy of that Statute, and in ſuch Caſe the Lord ſhall not have the Wardſhip, as appears by 33 *H. 6.* 16. in *Andrew Woodcock's* Caſe. So in the ſame Caſe, if the Son had died in the Life of his Father: But otherwiſe it is, if the Conveyance made by the Son be made after the Death of the Tenant, for then the Lord had once cauſe of Wardſhip, and therefore the Alienation after that, ſhall not toll his Benefit.

(a) Co. Lit. 78. a. 111. b. 2 Inſt. 112. 10 Co. 82. b. 83. a. 8 Co. 164. a. b.

(b) 8 Co. 164. b. 2 Inſt. 109, 110.

(c) Dyer 9. b. pl. 27. 33 H. 6. 14. b. 15, 16. 1 Co. 122. a.

Alſo for another Reaſon, Sir *Ralph* cannot take Benefit of the Conveyance to the Uſe of the Son, becauſe *Robert* the Father hath conveyed the Land to the Uſe of his Wife for Life, who ſurvived him, and ſo the Statute once ſatisfied. *Vid.* 14 *Eliz. Dyer* (d) 308. *Accord.* And ſo it was reſolved in the Caſe of (e) *Northcote, Paſch.* 32 *Eliz.* in the Court of Wards, That if the King by Force of the ſaid Statutes, be entituled to have two Parts of the Land conveyed to one Son in Tail after his Death without Iſſue, he ſhall not have the Benefit of the Statute againagainſt any other Son in Remainder: And ſo the Doubt in (f) *Shaw's* Caſe, 2 & 3 *Phil. & Mar. Dyer* (g) 130. is adjudged and reſolved. The Attorney General, *John Doderidge, John Strode*, and others, were of Council with the Plaintiff: And *Laurence Tanfield, Laurence Hyde*, and others, with the Defendant.

(d) Dyer 308. pl. 74. 10 Co. 80. b. 82, a. Co. Lit. 78. a.

(e) Co. Lit. 78. a. 9 Co. 129. b.

(f) Moor 608.

(g) 3 Bulſtr. 254, 257. Moor 608.

Caſuum

Caſuum iſtius Libri ſeries.

FINIS.