MAXIMES
OF
REASON:
OR,
THE REASON OF THE
COMMON LAW
OF
ENGLAND.

BY
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late of Grayes-Inn, Esq.

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MDCLVIII.
TO THE READER.

Am determined, the common Apologies (importunity of Friends, and written first for my private advantage,) shall have no room in this letter: It is more agreeable to my nature, to acknowledge that these leaves had their Principles and Origination from a meer design of Publick good: if anything shall appear gratefull, let the intention be encouraged; if there be defects, let Humanity be considered: If there be Errors, let frailty be pardoned: If my Labours may be hints and incitements to persons of larger abilities to expose to the World, the Nobler products of their more improved Reason, in discourses of this Nature, I shall...
To the Reader.

shall esteem my self recompenced above the damage of the sharpest censure.

It will not be of concernment to offer here my reflections upon the first Rudi-
ments of all Common-Wealths; being agreed that since our Nature and the Powers of our Souls were degraded in Adam; there is an abolute necessity that our Passions, and Exorbitancies should be charm'd and confin'd by Politick Combinations, Civil Appointments and Lawes; without these the World would be but an Arena sine Calce, a great Bedlam.

Tis without complement to my profession, when I affirm that this Nation was emi-

nently blessed with the choicest Compo-

sures; and had as great a share of wisdom in-

fused into the Fundamental and Archi-
tectonical principles, upon which our Go-

vernment is built, as any Society under

Heaven can boast of: Observe the harmony betwixt the Lawes and the Genius of the people, The Religious ties and sacred con-

finements of Royalty, the strict Guards set upon propriety, the flourishing wealth, and peaceful fruitions of those Estates with which our own Virtue or Industry, or the be-
To the Reader.

The benignity of Providence endowed us, all these are to be reckoned as the amiable fruits of those Sanctions which the wisdom of our Fore-fathers transmitted to us.

Now all Lawes that are Just and Prudent, ought to be viewed as Radii and Effluves from the Eternal Wisdom, having their Exemplar Cause and bright Idea in God himself: The mediate Author of these is humane Reason, exalted and purified by Learning and Experience, and enlightened by the Divine Spirit; I presume there is no fear of Socinians in Law, and that attempts may be made without danger, to discover how the vast multitude of Cases, that Follies, or Passions, or Necessities of men have obliged us to be acquainted with, are all accountable and reducible to some few Theses, which being prime Emanations and Grand Maximes of Reason, govern and resolve the subordinate Miscellanie of queries, and may serve for a Clue and Conduct, through the Labyrinth of that perplex variety; Saving us the labour of Charging our Memories with every particular, which in the result, is leas apt to profit, then to burden and confound us.

I do not despair but that every Student who
To the Reader.

who seriously intends to become his Gown, shall find some satisfaction in noting the same Key to open so many Locks; when he sees such a number of Cases obeying, one ruling Axiosme, attesting its Supremacy, as they are strung upon the thread of the same Reason: But whatever the success be, if my Lord Verulam speaks true, that it deserves praise to make wishes that are not absurd, it will easily be granted, that when such Wishes are pursued with endeavours, if they merit nothing else, they may certainly lay claim to pardon.

Edmond Wingate.

An Advertisement to the Reader.

COURTEOUS READER,

Be pleased to mend with thy pen the numbers of some pages in this Book: namely, from folio 132, to folio 325, and then will the Table at the end of this Book exactly agree with the printed pages, which otherwise in those folios will be too short.
THE ORDER
Of the Maximes of Reason;
Or the Reason of the
COMMON LAW
OF
ENGLAND.

S

I. S

ratio est, quae pro Religione facta. It is the highest Reason that Maxims;

makes for Religion.

II. Hic et hodie, qui sit in humanum, ubi negligenter Doctrina. But From This Day,

mane Laws never succeed well, where Divine Rites are neglected.

III. To such Laws as have Warrant in holy Scripture, our Law gives

with credence, &c. contr.

IV. The Jurisdiction of the Ecclesiastical Law, ought to be bounded

by the Common Law,

V. Dies Dominicus, non est juridicus,

VI. Gravior est divinum, quam Temporalem laudem Majestatem,

VII. The Law disfavoureth an Excommunicate person,

VIII. The Rules from Grammar are infinite, in the Etymology of Gram-

Words, and in the construction of them; what their nature is single,

what jointed with others, &c.

IX. In conjunctio vis partis positae in disjunctivo, opposiit aestem partem

est verum.

X. Words in Construction must be referred to the next Antecedent,

where the matter itself doth not hinder it.

XI. The Law delighteth in apt Expressions,

XII. Nominis nest, perit cognitio verum.

XIII. Nulla Grammatica, non vitat chartam.

XIV. Quod est in latere, est et in Cortice.

XV. Tota interpretatio fienda est, ut sustineretur judicium & inconvenientia, &

suscipiat ut illorum.

XVI. Quae in verbis nulla est ambiguitas, id in nulla expositione contra verba

textus fienda est.

XVII. Maledicta expositione est, quae corrumpe textum.

XVIII. Nulla subtilitas in legi reprobatur.

XIX. Cessante
Sane causa, cessat effectus, 
demoto impedimento, emergit alio, & e contr.

XXXII. Cuius est dare, ejus est disponere
XXXIII. Utra posse, non est esse, & vice versa
XXXIV. Nemo potest plus juris ad alium transvere quam in se habet

XXV. Things are construed according to that which was the cause

of them

XXXVI. Derivata Potestas, non potest esse major primitiva
XXXVII. Nunc quodque Dissoluitur eo modo, quo Colligatur est: Nihil tam
conveniens naturali, aquitati, unamqueque disolvit eo ligamine quo ligavit.

XXVIII. Things grounded upon an evil void beginning, cannot have
good perfection

XXX IX. Quod non habet Principium, non habet finem

XXX. He that claimeth Paramonta thing, shall never take benefit,
nor hurt by it

XXXI. Things are to be Construed, secundum subjiciam materiae

XXXII. According to the End
XXXIII. Qui adimit medium, dirimit finem
XXXIV. According to the effect

XXXV. He that cannot have, or performe the effect or consequence
of a thing, shall not have the thing it selfe

XXXVI. Non officii Conatus, nisi sequatur effectus
XXXVII. Aeta exteriort, indicat interiorem secreta
XXXVIII. Inutilis Labor, & sine fructa, non est effectus Legis, & e contr.

XXXIX. Lex non Precipit inutilitatem
LX. Deinde Fundamentum fallit opus, & e contr.
LXI. Things incident are adherent to their Superiors or Principalls

LXII. Quod tacite intelligitur, de esse non videtur
LXIII. Things by reason of another, are in the same plight

LXIV. Personall things, cannot be done by another
LXV. They cannot be granted, or transferred over as matters of
pleasure, ease, truth, and authority

LXVI. They being once suspended, or discharged for a time, are for e-
ver after Extinct

LXVII. They dye with the person
LXVIII. Things do enure diversly according to the diversity of the
time

LXIX. Quod prins est temporis, potius est iure
L. According to the diversity of the same person

M. According to the diversity of severall persons

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XC. How the Law tendereth Ages,

XCI. The Law in things, respecteth every thing according to worthiness,

The Law. XCI. It respecteth life and liberty most, and the person above the possessions,

XCVII. It is disposed things in the retality, more then thoso in the personality,

XCVIII. It respecteth Freehold and Inheritance more then it doth Chattels,

XCIX. It respecteth matters of Record more then other transactions,

XC. It respecteth Conveyances by Livery, and which pass Estates of the land, then thoso that pass by Grant, or are belonging to, or illusing out of land,

XCII. It respecteth a matter in the right more then a matter in possession,

XCIII. It is disposed in the same manner where the right is equall,

XCIV. It respecteth matters of profit and Interest largely of pleasure, skill, trust, authority, and limitation strictly,

C. Therefore these may be Countermandants, so cannot thoso,

CI. It respecteth matter of substance more then matter of circumstance,

CII. For memory and solemnity, substances are to be express under circumstances,

CIII. It respecteth things executed and done more then Executory, and do,

CIV. Possibility of things,

CV. Therefore nothing to be void, which by possibility may be made good,

CVI. Id certum est, quod certum reddi potest,

CVII. Res non per se invicem sed per pecuniam est imantur, & non pecunia, per

The Law. CVIII. It favoureth mutuall recompence,

CIX. De minimis non Curat Lex,

CX. It yeildeth favour in actions when there is no damage of them, 1. Necessity,

CXI. 2. Conveniency,

CXII. 3. Conformity,

CXIII. 4. Colour,

CXIV. It prizeth the Acts of God and of the Law, more then those done by the party,

CXV. Utriusque fortior, est dispetto Legis, quam hominis,

CXVI. It reputeth that a man will deal for his own advantage best,

CXVII. Therefore it believeth against the party whatsoever is to his prejudice,

CXVIII. When severall remedies are given, the party to whom the Law giveth them hath election which he will take,

CXIX. Cujus
CXIX. Cujus est divisio, alterius est Ele delio.

CXX. Nemo probibetur pluribus defensionibus uti.

CXXI. Consequitur tollit Errorum.

CXXII. Volunti non sit injuria.

CXXIII. Quilibet potest remanire juri, per se introduido.

CXXIV. Omnium Retributio retro-trabat, & mandato sic licentia aquiparatur.

CXXV. Nemo tenetur accusare seipsum.

CXXVI. Nec se infortunii, & periculis exponere.

CXXVII. Countenancest things done more in the time of Peace, then in the time of War.

CXXVIII. It countenancest things done in the day, more then in the night.

CXXIX. 1. Sometimes a whole day is sufficient.

CXXX. 2. Sometimes a whole yeare.

CXXXI. 3. Sometimes to the last part of the day.

CXXXII. 4. When no time is limited, the Law appointeth the most convenient time.

CXXXIII. The third Offence is esteemed most heinous.

CXXXIV. The place ought to be convenient.

CXXXV. The Law favoureth Charity.

CXXXVI. De mortuis nil nisi bonum.

CXXXVII. It hateth malice and oppression.

CXXXIX. It hateth Vice.

CXL. Interest Reipubl. ne maleficia remanent impunita.

CXLI. It favoureth Justice and Right.

CXLII. That which is not tortious in itself cannot be tortious to any.

CXLIII. Interst Reipubl. ne Curia Domini Regis, desicerat in Jus titia.

CXLIV. It favoureth common Right.

CXLV. It suffereth things against Principles of Law, rather then the party be without remedy.

CXLVI. It hateth wrong.

CXLVII. None shall take benefit or advantage of their own wrong.

CXLVIII. The Law of it self prejudiceth no man.

CXLIX. Especially for things which cannot be imputed to their owne folly or neglect.

CL. Nemo debet rem suum sine salto, vel deficit suo amittere.

CLI. It driveth not a man to shew, take notice of, or do that which by intention he knowes not, or should, or cannot do.

CLII. Nor to do that which were in vain for him to do.

CLIII. Non licet, quod dispenso licet.

CLIV. It favoureth truth, faith, and certainty.

CLV. It disfavoureth impossibilities.

CLVI. Non cogit ad impossibilita, & impotentia excusat Legem.

CLVII. It disfavoureth falsehood, fraud, and covin.

CLVIII. Jus, & fraud, nunquam cohabitant.

CLIX. Quando aliquid prohibetur fieri, ex directo prohibetur, & per obliquis.
CLX. Rectum est Index suii, & obliqui,
CLXI. It disfavoureth Improbabilities,
CLXII. It disfavoureth Uncertainties, by the which the truth may be
inveighed,
CLXIII. Impersonalitas non conclusit, nec ligat,
CLXIV. Generale, nihil certi implicat,
CLXV. Dolus versus in generalibus,
CLXVI. 1. Variance,
CLXVII. 2. Contrariety and Repugnancy, 638. and therefore
CLXVIII. 3. It will not drive a man to justify or shew that which he
goeth about to defeat, or makes against him,
CLXIX. Non potest adduci exceptione ejusdem rei, cujus petitur dissolutio,
CLXX. None shall take exception to an Error, or Act, which operateth
to his own advantage,
CLXXI. Nemo tenetur armare adversarium suum contra se,
CLXXII. It favoureth diligence, and therefore hateth folly and negli-
gence,
CLXXIII. Nigligentia semper habet infortunium Comitem,
CLXXIV. Vigilantes non Dormientibus Leges subveniant,
CLXXV. It favoureth speedily of mens Caules,
CLXXVI. It hateth Delays,
CLXXVII. It hateth unnecessary Circumstances: And Frustra sit per pla-
ra, quod fieri potest per paciorea,
CLXXVIII. Expedit Reipublica uj sit finis Litium
CLXXIX. Circuit of Action
CLXXX. Matter of Vexation
CLXXXI. Pendentite Lite, nihil innovetur
CLXXXII. Unfitness, and multiplicity of Suits
CLXXXIII. It construeth things with equity and moderation
CLXXXIV. It restraineth a general Act, or Rule, and sometimes a par-
ticular Contract, if it be mischievous or inconvenient
CLXXXV. Nemo bis punitur, pro cedem reliquo
CLXXXVI. It flyeth, and preventeth all occasions of Evill
CLXXXVII. It moderate the stricknesse of the Law it selfe
CLXXXVIII. Verba semper accipiend a sunt in mitoriis levi,
CLXXXIX. It construeth things according to common possibility or In-
tendment
CKC. Stabit Presumptio donec probetur in Contrarium
CKCI. Aedes quae frequentius accident, jura adaptantur
CKCII. Frequentia Aedum multum operatur,
CKCIII. It alwayes construeth things to the best,
CKCIV. Every Act to be lawfull when it standeth indifferent, whether it
should be lawfull or not,
CKCV. Non præstat impedimentum, quod de jure non sortitur effeclum,
CKCVI. Praetextu liciti non debit admittit illicitem,
CKCIVII. It favoureth things for the Common-wealth,
CKCVIII. It favoureth publick Commerce,
CKCIX. It favoureth Honour and Order,
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CCIX. The wife is of the same condition with her husband, 764
CCX. They cannot sue one another, or make any Grant one to ano- 765
ther, or the like,
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takest the whole,
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CCXIV. Her will ought to become his will, and to be subject unto it, 770

Maximes.
Maximes of Reason:  
OR,  
THE REASON OF  
THE COMMON LAW  
OF  
ENGLAND.

Laws are divided into Native and Positive:  
Native are such Laws as are in us of themselves, and are therefore unchangeable and not to be abrogated: These are likewise twofold, viz. The law of Nature, and the Law of Reason. 

The Law of Nature is that Law, which God at the time of the Creation of man infused into his heart; his preservation and direction: This is that Law, which is called Lex xerna, or the Moral Law, asadministeth common principles of good and evil, as that men should live peaceably together; that we should not do that to another, which we would not have another do to us; Summ cuique strictures; That Justice should be duly administered to all, and the like: This was termed by the Ancient Philosophers Original Justice, which in Adams innocences was cleare and lightsome, but since his fall (both in himselfe and his posteritie) much darkened and incumbered with original sinne. This is also the Law, whereof Saint Paul makes mention in his Epistle to the Romans, where he saith, When the Gentiles, which have not the Law, do by nature the things contained in the Law; These, having not the Law, are a Law unto themselves, which shew the work of the Law written in their hearts, 

Col. i. 13. 14. in Calvin's cate.  
Deut. xxi.  
Acts. 
Rom. i. 14. 15.
The Reason of

hearts, their conscience also bearing witness, and their thoughts in the mean while accusing or excusing one another.

The Law of Reason is that Law, which deduceth conclusions from known Principles by ratiocination or discourse of some reason, which Principles are termed Rules or Maximes of Reason.

Positive Laws are such Laws, as are framed by the light of the two former, for the regular Government of some particular Common Wealth; And therefore these Laws are sundry and divers according to the several constitutions of particular places and Countries: of this sort is the Common Law of England, which being the Principal Law of this Nation, and receiving its light (principal) from the Law of Reason, is many times directed and controlled by the Rules and Maximes thereof: Some of these Maximes, some are taken out of foreign Sciences, as Theologie, Grammar, Logique, Physiques, Moral Philosophy, Politicks and Oeconomicus: The rest are proper to the Law itself, as Law-constructions and Fictions in Law; All which will more plainly appear by the Precepts and Examples hereafter following.
I Maximes of Reason
taken out of
THEOLOGIE.

1 Summa Ratio est, quae pro Religione facta. It is the highe-
Reason that makes for Religion.

Statutes which refer to the Abso-
lation of Ecclesiastical li-
ings, bind the King, though not
named.

1 Ecclesiastical Statutes bind not the King, unless he be
particularly named, yet the King is included within
the general words of 13 El. 10, which prohibit Ec-
clesiastical persons to make grants of their Livings;
because the Parliament which made that Statute, anjudged such
grants to be causes of dilapidations, and decay of spiritual livings,
and hospitality, and of the utter impoverishment of successors, In-
cumbents in the same; whereas it would necessarily follow decay
of true Religion, and the spiritual worship of God: For it is
recorded in History, that amongst the ten Persecutions, which
the Primitive Church suffered, there were two the most grievous,
the one under Diocletian, the other under Julian the Apostate; the Art ende-
avored to destroy all the Preachers of the Word of God
(occidit omnes Presbyteros) but notwithstanding that Religion
flourished (for saeculis Martyrum et sementem Ecclesiae) yet that was a
grievous Persecution; But the Persecution under the other (viz.
Julian) was much more grievous and dangerous, because (as the
History saith) occidit Presbyterium; for it robbed the Church, and
spoiled spiritual persons of their revenues; And therupon ensues great
ignorance in Religion, and the service of God, and therefore great de-
cy of the Christian profession; for none will apply himself, or his
children, or any other committed to his charge, to the Duty of Di-
vinity, when after long and painful Study they had noth-. thing to
live upon. See more in the Books at large.

2 The Secular of a Patronage or Vicarage is liable to be in Abre-
ance, and this was provided by the prudence and wisdom of the Law;
for that the Patron and Vicar have a curam animarum, and were bound
to celebrate Divine Service, and administer the Sacraments, and there-
fore no act of the persecutor should make a discontinuance to take

Co. 1. 8. 14. 46.
In the case of Ecclesiastical
persons.

Co. 1. 3. 50. a
Magdalen Col-
lege: Cai.

Co. 1. 3. 54. b
In the Bishop
of Winchester's
Cai.
away the entry of the successors, and to vest him to a real action, whereby he should be vestigium of maintenance in the mean time.

3. Upon consideration of all the Haunts of the Law, this universality is well observed by Sir Edw. Cooke, that a Parson or Vicar, for the benefit of the Church, and his successors, is in some cases admitted in the Law to have a free simple qualification; but to do any thing to the prejudice of his successor in many cases the Law adjudges him to have it

Ecclesiastical persons cannot
injure the Church.

The Parson or Vicar ought to be Person as alice.

Not to be removed after
instituition by a common
person, nor after induc
by the King.

The Reason of

Max. 1.

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Ecclesiastical persons cannot
injure the Church.

The Parson or Vicar ought to be Person as alice.

Not to be removed after
instituition by a common
person, nor after induc
by the King.
though not named, because it concerns the Church and Religion.

Where a Juris usum is brought against several tenants by several summons in the writ, it may be taken against one tenant only, for that parcel, and after against the others: but if it is otherwise in an Action of Novel domicil, it is not in some special case.

In a Quare impedit, if the Plaintiff be non-suitor after appearance, the defendant shall make title, and have a writ to the Bishop: and this is peremptory to the Plaintiff, and is also a good barre in another Quare impedit: and the reason of this is, for that in this case the defendant (in favorum Ecclesiae) hath the said writ by judgment of the Court: and therefore the Incumbent; that comes in by that writ upon such non-suitor, shall never be removed, that being a flat barre as to that presentation: And the same Law and for the same reason it is in case of a discontinuance, &c.

In a Quare impedit against the Bishop it is not a good plea to allege, that the present is a Schismatica in general, but he ought to express Schism in particular, because it concerning the tere of souls is traversable, and requires more care and circumstence: It is otherwise for the putting a Canon out of his office; for there a general suggestion in the writ, that he is persona minus idonea, is enough, and not traversable. But the reason is, because this is but the keeper of the Rolls of the Crown; the other hath the tere and guard of souls.

There is a likewise concerning intire services to be reduced to the Lord, as a squire, hoste, or the like: for when they accrue to the sole benefit of the Lord, and to the charge of the tenant, if the Lord purchase part of the land, the whole service is thereby extant: but when such intire services are reduced to weeks of devotion, rent, or charity, as to marry a good virgin yearly (as you have it in 24 H. 8. Br. tenures 52), to find a Prioress in such a Church, &c. to provide instruments for such a Church (which tenure is in 33 H. 8. 6. In such case, albeit the Lord purchase part yet the inter services remains.

To a spiritual person that have a protection cum clausula nolumus to protect him, his goods, his farms, and their goods from the Kings purveyors and carriages. See the Stat. of 14 E. 3.

Before the Statute de articulis cleri cap. 15, he that concealed the schone tie could not have the privilege of Clergie, because he could not make his purgation; and although the Statute speaks only of Abjuration, and of an Approver, yet the Judges (in favorum Ecclesiae) extende it to all other confessions upon the arraignment of the offender.

If the Parson of a Church purchase a Panno with his Parish here, by this purchase and unity of possession, the Panno, which was titulable before, is now made non decamabilis, because he cannot pay tithes to himself; but if the Parson make a lease of his Parsonage and Rectory to a Stranger; in this case, the Parson himselfe shall pay tithes of his Panno to the Lessor of the Rectory, or if the Parson make testament of the Panno, the lessee shall pay tithes to the lessor; being Parson, because tithes cannot be extant in any unity of possession as rent charge may, which is taking out of lands; but tithes are due by the law of God or debito, for the maintenance and vantage of the occupier, in whatsoever hands the land comes, unless it be in his hands of the Parson himselfe: And therefore if the Parson let part of his Glebe land for years or life retaining rent, the lessee shall pay the Parson tithes, because they are due of common right, vide 35, indices 17.

2 Nun-
2 Nunquam prosperè succedunt res Humane, ubi neglignuntur Divinæ. Humane Affairs never succeed, where Divine Risèes are neglected.

Laches shall not prejudice an Infant.

1 Laches shall not prejudice an Infant, &c. but it shall be adjudged in him if he present not to a Church within 6 moneths; for the law repeatedly move the privilege of the Church (that the Cure may be tendered) than the privilege of Infancy.

2 §.1. of Religion ought not to appear at the Sheriffs turnes, not the least of any other without great cause, and if they be disstraine to come to them they may have a writ out of the Chancery for their discharge: All other clerks also within orders (though not benefices) have the like privilege: And the reason of this is, to the end they should attend their function.

A Parson ought to be resident.

3 I. S. brings an action of debt against I. Rector of T. in com. B. the defendant faith, that before the day of the writ purchased he dwell at B. in com. N. Er non allocans; for a Parson shall be intended by Law to be always resident upon his benefice for the cure of souls, which he hath there, and the Parson, who hath cure of souls and is a non-resident, non effet dispensator sed disfipator, non speculator sed speculans; and therefore no such thing shall be presumed.

The like.

4 A Parson to the end he may give his continual attendance upon that tace function, it is freed from all personal charges, that hinder him in his calling: And therefore he shall not be chosen Bailiff, Reede, Beadle, or other officer: Nor land annexed to his Church; And all this by the course of the Common Law: for the same reason it is, that if a Parson have a Patronage, and after take another benefice without a dispensation, the first benefice is void, and the Patron thereof may present; for this adovance is called a Cession, because the taking of the last makes him neglect the first.

Tithes due onely to the Parson of common right.

5 So the end that Religion may not be neglected, but preferred and daily increased the Common Law giveth to the Parson (of common right) the tenth of all manner of punctures, which are called Dimes, or Liptes, the due payment whereof, toucheth much to the continuance and establishment of the true Religion, and the true worship of God; And therefore albeit a mere lay man may prescribe in modo decimandi, yet he cannot so doe in non decimando; because he is but in special cases capable of tithes at the Common Law; and therefore without special matter the same shall not be intended, that he hath any lawful discharge; And for this cause at the Church at Law (although it may have lawful commencement) the law will not suffer such prescription in that case, nor put it to the trial of lay men, who will perhaps rather refrain their performances for their private benefit, than give the Church the duties, that belong to her. Vide infra 126. 11.

6 The Inhabitants of a Town (without any custom) may make ordinances or by laws for separation of the Church, and in that case the greater part shall bins all the rest without any Custom, the Chamberlain of Lononds calle.

By-Lawes.

3 To such Lawes as have warrant in holy Scripture, our Law given credence, & contra.

Outlawed persons had capitae Lupinæ.

1 In the reign of King Alfred, and until a good while after the Conquest no man could have been outlawed but for treason, and then the out-later person was liable to have Caput Lupinum, because he might be put to death by any man, as a Wolf that hateful beast might; and in ancient
ancient time the head of either of them being brought to the chief place of the County or Franchise where they were killed, the party so killing them was to have a Mark for his pains: Popeye in the beginning of the reigns of E. 3. it was resolved by the Judges (for avoiding of inhumanity and exclusion of Christian blood) that it could not be lawful for any man, but the Sheriff's only (and that upon lawful warrant) to put to death any outlawed person, though it were for felonies, in pain to suffer death, as in case of killing another man.

2 It was lawful for any man to put to death a man attainted of a Prelate, because he was also without the King's protection, and therefore subject to be destroyed as the King's enemy: but this was taken away by the wholesome of Queen Eliz. and her Parliament (5 El. 1.) as a liberty not becoming a Christian Common-wealth.

3 The Law of England for removing of Lepers (by the writ de leproso amovendo) from the society of men to some solitary place is grounded upon the law of God. Lev. 13. 44.; 45.; 46. Numb. 5. 1.; 2.

4 In Chalmeley's case in the 2 Rep. fol. 71. where a reverson expectant upon an Estate in tail was granted to one for the life of the tenant in tail, it was said, that by possibility this grant for life may take effect; so tenant in tail having no issue may become a spouse and enter into religion, and then the grantee may have it during his natural life: but it was there resolved, that such Spuritions and religious protection shall not be premeditated in law.

5 If a Statute be made directly against the Law of God, as it it would be, that none should give Alms to any, in what necessitate he were, or the like, such Statute ought to be annulled both.

6 Such Canons, Constitutions, Diversities, and Synods produced, as have been all over by general consent and custom within the Realme, are not contrariant or repugnant to the Laws, Statutes and Customs of the Realme, nor to the damage or hurt of the Kings Prerogative royal, are still in force within this Realme, as the Kings Ecclesiastical Laws of the same.

4 The Jurisdiction of the Ecclesiastical Law, ought to be bounded by the Common Law.

The Spiritual Laws mentioned in Litleton (Sect. 648) are such
Ecclesiastical Laws as are allowed by the Laws of this Realme,
viz. which are not against the Common Law (whereof the Kings
prerogative is a principal part) nor against the Statutes or customs of the Realme, and (regularly) according to such Ecclesiastical Laws the Spiritual and other Ecclesiastical Judges do proceed in causes within their Conscience, and this Jurisdiction was to be retained by the Ancient Common Laws of the Realme, as declared by Act of Parliament.

5 Dies Dominicus non est juridicus.

The Lords day.

Prune.

Fests.

1 In all the four terms the Lords day is not Dies juridicus, for that ought to be consecrated to divine service.

2 No plea shall be taken Quinta Pascha, because it is always the Lords-day, but shall be quidem quinta Pascha.

3 Upon a fine levied with proclamation according to the Statute of 41. 7. 24. If any of the premonitions be made on the Lords day, all the premonitions are pronunciatus, for the Judges may not sit upon that
that day, being a day exempt from such business, by the Common
Law, for the solemnity of it, to the intent that all people may apply
themselves that day to prayer and serving of God.

3 If a waft of Scire facias out of the Common place beare Teste upon
the Lords day, it is error, because it is not dies dominicus in Barce.

4 No sale upon the Lords day shall be into a sale in Market overt sale,
to alter the properties.

6 Gravius est divinam quam Temporalem Iedere maje-sta-

1 Regularly, a man shall (by the Common law) have the benefit
of Clergie for any felonie; Howbeit, if a felon be also an Heretique,
Infe, Sarazen or Infidel, he shall not have it.

2 Heresie is an offence committed against the Majestie of God by a
Heretic, presumptuous oppugning of an Article of Faith, or the like; And therefore
(at the Common law) this offence was punished by a more terrible
and grievous male, than any other felony whatsoever, (and indeed
than Creation it selfe,) viz. by fire and faggot: Howbeit, to determine
what is Heresie, falls not within the Containce of temporal
Courts, but is wholly left to the Ecclesiastical Jurisdiction; for it appears
by the writ de hereticco commbendo, that (at the Common law)
before an Heretique could be committed to the Lay-power to be burnt,
he was to be convicted in a Provincial Synod before the Archbishop
and his Clergie, and then if he did either refuse to adjure the heresie,
or having adjured it, upon a relapse were convicted again by such a
Synod of that or any other heresie, he was then delivered to the secular
power to be punished by fire and faggot, and no Sacrament could privi-
ledge him: Howbeit by the Statute of 3 H. 4. 15. any Bishop had
power to do as much within his Diocese, and if the Sheriffs were
present at his convocation, the Bishop might deliver him to the Sheriffs
to be burnt, and that without the Kings will; but that Statute was
repealed by 25 H. 3. cap. 14. and thereby that offence made presentable
at Sheriffs Earne: and Lest, and from thence to be certificed to the
Dinimarie, which Statute the 25 H. 8. was also repealed by
1 E. 6. 12. from which time until 12 P.M. 6. (which revived 2 H. 4.
15.) an hereticke was punishable at the Common Law as above is
expressed: but by 1 El. 1 the Statute of 3, 2 P.M. was repealed, and
then by 1 El. the Queenes Commissioners (heretofore called the High
Commission Court) had power to adjurge of heresie, but they were there-
by also restrained to adjurse nothing Heresie, but what was so adjur-
ged by the holy Scriptures, the four first General Councils, or the Parliament
with the assent of the Clergie in their Convocation: Howbeit at this
day the Jurisdiction of Bishops being taken away, and that clause
of 1 El. repealed by a later Act, it remains (at present) there is no law
to punish that offence. See more concerning heresies in the Statutes of
5 R. 2. 5. 2 H. 5. 7. 31 H. 8. 14. and 34 H. 8. 1, being all repealed by
fol. 17. and Doct. and Sud. L. 2. cap. 29. Howbeit, observe, that the
said Statutes made in the reignes of H. 4. and H. 5. were chiefly in-
tented against such as did then begin to discover the Prdes, Lucres,
and errors of the Church of Rome, and in division were termed Lollards,
as you may read at large in the Book of Martyrs; and elsewhere in di-
verse other authors, as Steven, Brightman, etc.

3 One part of the Judges oath is, that they shall not deny right, though
it be by command from the King, which if they breake, they will be
foune
found guilty Late Majestatis divine: And therefore in such case they ought rather to disobey the King's commands than thereby incure the high displeasure of Almighty God, to. Gravius et divinam, etc. And to the end that the Judges might be the better protected from this danger, the prudence of former times hath ordained divers Laws, whereby the Judges have power to proceed, notwithstanding any command from the King to the contrary, no, though it be under the Great or Privy Seal: And therefore if the King write to the Judges to proceed against an Affair, because the defendant is in his service, yet the Judges ought to proceed, and not to ceaze for any such letter: For likewise in an Affair the Bishop certifies Halkard, and the King's letter is sent to the Judges to cease, because the certificate was suspicious, notwithstanding which letter they take the Affair: And afterwars, altho' the Chancellor reversed the taking of the Affair in the Council, because they obeyed not the letter, yet notwithstanding that the Judges gave Judgement upon the Affair: And in power the tenant was suspicion, and had further day given, at which the King sends a letter to ceaze the tenants appearance, alleging that he was at Callis in his service. Howbeit the Judges gave no regard to it, but proceeded notwithstanding that letter.

4. The Sheriff also, who is but an Officer or Minister to the Supreme Courts of Justice, ought not to be set from the due execution and return of writs directed unto him notwithstanding any command to the contrary from the King; seal he likewise incure the like danger by breaking his oath: And therefore we read in 14 E. 3. that N. de B. being attains of William with force, an Esgliscis went forth against him to the Sheriff: Wherein, the King, the King, had certified him by writ, that he had pardoned the trespass and imprisonment, commanding him that he should believe, and that therefore he had not executed the writ: Whereupon faith Wilby, the writ ought not to have been sent to us, that we might have commanded the Sheriff to ceaze, for the Sheriff ought not to any such writ to have ceased to serve the Esgliscis without commandment from the same Court, out of which it issued, and thereupon the Sheriff was amerced, and another Esgliscis issued out: The Escheator also ought not to be set from the execution of his office, notwithstanding any such command to the contrary from the King: And therefore we find in 1 Eliz. That after the death of the Lord Powes a Mandamus being directed to the Escheator of Salop to find the office, he takes the presentment of the Jurp in piper, and adjourns them over to another day to take it in Parchment and by Invention, before which day the Queen sends a Superedeas at the suit of one Herkyn and his wife, And it was adjudged, that the Escheator ought not to have obeyed that Superedeas.

7 The Law disfavoureth an excommunicate person.

1. It is a good plea in abatement of a writ to say, that the Plaintiff is excommunicate. Docc. & S. 1, cap. 6.

2. The old Books have said, that if a man be excommunicate, he ought not to serve of a Jurie.

3. A Jew born in England took wife a Jew born also in England, the husband was converted to the Christian faith, purchased lands, and erected another, and died, the wife bought a writ of Power, but was barred thereof, and the reason presists in the record is this, Quia vero contra judicium eft, quod ipsa doctem pecar vel habet de tenemento, quod fuit virius ex quo in conversione sua soluit cum eo adhocracy, & cum eo convertitur.

4. End.
The Reason of

4. Infidels are accounted in Law to be perpetual enemies, with whom a Christian ought to have no peace, but perpetual enmity and hostility, according to that of the Apostle, 2 Cor. 6. 15. Quae autem concordia Christo cum Belial? aut quis potius fideli cum infidel? And the Law faith, Judeo Christianum nullum serviat mancipium, nefas enim est quem Christus redemit Blasphemum Christi in servitutis vinculis detinere: Regn. 282. Infideles sunt Christi & Christianorum inimici, and herewith agrees the book in 1 H. 8. fol. 4. where it is holden, that a Pagan cannot have or maintain any action at all; and upon this ground there is a diversity between the Conquest of a Country of a Christian Prince, and the Conquest of a Country of an Infidel; so if a Prince obtains a Christian Country by Conquest, seeing that he hath vice & necis potestatem, he may at his pleasure alter and change the Laws of that Nation; but until he do make an alteration, the ancient Laws thereof shall remain: Whereas if a Christian Prince should conquer a Country of an Infidel, and bring them under subjection, there ipso facto the Laws of the Infidel are abrogated; so they be not only against Christianitie, but against the Law of God and nature, contained in the Decalogue: And in that case until certain Laws be established amongst them, the Prince by himself or such Judges as he shall appoint, shall judge them and their causes according to natural equity and original Justice, in such sort as Kings in ancient time did within their Kingdoms, before any certain municipal Laws were established: But where a Prince hath the Government of a Nation by descent, seeing that by the Laws of the Nation he both inherit that Authority, he cannot change the Laws thereof without the content of the People assembled in Parliament.
II Maximes of Reason: taken from Grammar.

8 The Rules from Grammar are infinite, in the Erymologie o words; and in the Construction of them, what their nature is single, what joyned with others, &c.

If a man maketh a Lease for yeares reserving a rent, with a condition, that if the rent be behind, the Lessee shall re-enter, and take the profits, until thereof he be satisfied; in this case the profits shall be accounted as parcel of the satisfaction, and during the time that he so taketh the profits, he shall not have an action of debt for the rent, for the satisfaction whereof he to taketh the profits: but if the condition be, that he shall take the profits, until he be satisfied and paid of the rent (without laying thereof) or to the like effect, there the profits shall be accounted no part of the satisfaction, but onely to the tenant the Lessee to pay it, and until he be satisfied he shall take the plus to his owne use.

3 A lease be made, Habendum sibi ad die consentiendi, the ay of the making is excused; for (a) vel (ab) is dictio significativa primi termini à quo, sic dictio (utque) termini ad quem, & (a) vel (ab) accipitur exclusivamente. Vide infra 12. & Max. 34. 2.

3 Possessio, is derived from Pos and sedeo, because be that is in possession may fit down in reposo and quiet; so also seintia is derived from sedendo, for until he hath sitia all is Labor, Dolor, & vexatio spiritus; but when he hath sentia, he may fit down at rest: Howbeit Quere, whether or no possesio be derived of Poss and sedeo, because he that hath possession fits downe lift, and seintia seems to be derived of the French word leifer, which signifies to lay hold on.

4 Tempus semetprime being spoken in the singular number as appears in the Dictionaries signifies half a year or six months, viz. such six moneths, qui conficint dimidium annii, there is a great diversity in our common speech between a Twelve-moneth (being the singular number) whi
The Reason of

Max. 8.

a whole yeare according to the Calender, and twelve moneths (in the plural number) which will be computed according to 36 pages for every moneth. Vide 31. 13.

5 A. devieth to B. 100 Sheep and ten Bullocks, and 10 l. Milking and pasture yearly out of his lands: here the last (and) disposes the rent from the Sheep and Bullocks: It is otherwise; if he had devised them thus, 100 Sheep, ten Bullocks, and 10 l. yearly; for then the (and) conveyeth them all together, and then they are all to be paid yearly out of the lands.

6 Words, which pait under the name of Latin, are of four sorts, the first is good and congruous Latin allowed by Bramarians: And this (without question) is within the Statute of 36 E. 3. 15, which obnains, that all pleas shall be entered and recorded in Latin. The second sort are such words as those, Mesloagium, Tottum, Gardinum, Brera, Jampna, &c. These and the like are allowed not only in Pless, but also in original writings; for these are such words as are known to the pages of the law, and are also within the Statute of 36 E. 3. such words as are called words of Art, and are frequent also in other Sciences, as amongst the Civilians, Repralia, Feuda, Shopa, Sollaris, &c. Who use many times to explicate them by Anglice, &c., as Sollaria anglice Ware-houses: The Physicians also use Brothium for broth, and the like: The third sort is false and incongruous Latin, this shall abate an original writ, but shall not make a Judicial writ; count, pleasing, or judgement fictious (for false Latin shall in such cases be a menace:) And therefore (a fortiori) such Latin is false English shall not prevent a grant of lands, when the intention of the parties may appear, as in a bill as born, Octoginta, Septuaginta, Viginti, Sexaginta, or the like, shall be taken for Octoginta, Septuaginta, Viginti, Sexagesenete &c. Also when there is no Latin for a word, as for a Stupor, Velvet, &c. Scrapia, Velvecum, &c. may be used, because they have the connotation of Latin, so also Operimentum for a Ramp: Howbeit, in such case (for explanation fake) it will be also to insert the word Anglice, as Operimentum anglice a Ramp, Dias virgatas velatis, anglica, of velatis, &c. The fourth and last sort are intolerable words, as in a case of a Replinun, P. 36 El Gawus cafe, Vturum for Virum, glasse; pet (in that case) the Court did incline only to adjudg it false Latin, because it has the connotation of Latin, and the Court was sufficiently ascertained, that glasse was meant by it.

7 If I give you a quart of wine, you shall not have the quart-pot, but if I give you a Poghead of wine, you shall have the Poghead; for the phrase of the language explicith the intent; so 11 acres belonging to a Settlement will sufficiently declare, which 11 acres are meant, although land is not properly said to belong to an house, but the house to land.

8 Note, in Docwras cafe, 27 H. 8. 18. 1, in Littl. cap. conditions, 14. El. Dyer 311, 4, and 5. P. M. Dyer 152, that this word Provisto makes a condition: But when the Provisto depends upon another sentence, or hath reference to another part of the deed, it never makes a condition, but a qualifacation of limitation of the sentence, or part of the deed, unto which it refers; as in 5 El. 22, inter Eyre and Orme, a notable case: in 7 H. 6 a lease without impeachment of waste, provided, that he shall not make voluntary waste: In Littl. Sec. 220. A grant of rent charge, provided, that the grantor shall not charge his person: Tramingtons cafe in the K. B. P. 16. El. Rot. 273 there a Provisto tending to a qualification, and to explain a precedent sentence; makes not a condition: And 3. 4. P. M. 150. Parkers cafe; a Provisto amounts to a covenant fee 28 H. 8. Dyer. 13 b.

9 Other.
9 Three were bound in an obligation thus, Obligatus nos & utrumque nostrum pe + pro toto & in solido. The question was, whether or not this obligation was federal: and one of the Judges was of opinion that it was not federal; because utrumque is properly of two, viz., both; and it should have been quemlibet nostrum, &c. when more than two are bound: Notwithstanding the Court that the obligation was good and federal. Vide 3:12.

Confirmation.

10 If the dillector confirm the estate of the dillector, though it be but for an hour he shall have a lawful estate in theimple for ever, quia confirmare est firmamentum.

Exposition of dillector.

11 If the King as a common person grant omnia illa messuagia in tenura Johannis Browne schout in Wells, whereas in truth they lie in D. In this case, because the grant is general and is restrained to a certaine Towne, the Patentee or Grantee shall not have any lands out of that Towne, unto which the generallitie of the grant referres, and this case is the stronger, because of the Pronouns illa, omnia illa messuagia &c. makes necessary reference as well to the townes, as to the tenure of I. B. To that neither tale, the general grant is void; for illa is not satisfied, until the sentence be ended, and illa governs the whole sentence to the full point. Vide infra max. 10, cap. 5.

Commencement of a lease.

12 Inventures of bennife were necessitie hearing date the 26 of May Anno 25. Eliz. to have and to hold for three years from henceforth and the Inventures were delivred at 4 of the clock in the afternoon of the 20 day of June Anno producto Eliz. In this case, from henceforth shall be accounted from the time of the delivery of the Inventures, and not by any computation from the date, for from henceforth, is as much as to say, from the making, or from the time of the delivery of the Inventures, or a consecution previous; because the consecution of making of the Lease commencteth by the delivery; and these words from henceforth or any other words of the Inventures are not of any force or effect until the delivery, Quia traditio facti locutus innum. Vide dicta 2.

In Coniunctione separat utrumique, in disjunctiva sufficit alteram partem esse veram.

Conjunction.

1 If lands be given in talle upon condition, that if the tenant alien in talle, fee tail, or for terme of life &c. and also all the issues of tenant in talle dite without issue, that then it shall be in talle for the bond; and his heires to re-enter, so here, the right of the intale may this way (after miscontinuance) be preserved to the flow in talle (if any be) so that upon entry of the bond; and his heires the estate talle shall not be defeated for such condition. And yet in this case if the tenant in talle or his heires make any miscontinuance, he in the revenuer of his heires after the estate talle determined (too default of talle) may enter into the land by force of that condition, and shall not be put in his formedon in reverer. Note, that here Littleton both properly make prices of the condition in the conjunctive, 1 viz., that the tenant in talle should alien, &c. and all the issues die, &c. for if a gift in talle be made to a man and the heires of his body, and if he die without heires of his body, that then the bond; and his heires shall re-enter, this is a bond condition; for when the talle talle, the estate determined by expresse limitation, and (consequently) the abiding of the condition to defeat that, which is determined by the limitation of the estate, is void; and in this case the wife of the bond shall be endorsed. And therefore Littleton to make the condition good, added an alteration, which amounted to a wrong, and restrained not the alteration only (for then presently upon the alteration the bond), &c.

max. 9. the Common Law.
might re-enter and defeat the estate taile) but addeth, and die without
issue, to the end that the right of the estate might be preserved, and
not defeated by the condition, but might be recovered againe by the
issue in taille in a Formedon.

2 Note, that in a condition consisting of divers parts, in the copu-
lative (as above in the case of Lideton) both parts must be perform-
ed; but otherwise it is, when the condition is in the disjunctive; for
in disjunctive subjicit alterum esse verum, what then if the condition; of
limitation be both in the copulative and disjunctive, as if a man make a
lease to the husband and wife; for the term of 21 years, if the hus-
band & wife 03 any child betwene them so long live, and then the wife
die without issue, shall the lease continue; determine during the
life of the husband. The answer is, that it shall continue; for the
disjunctive reference to the whole, and disjunctly not only the latter
part as to the child, but also to the barn and feme; so as the fence is,
if the barn, feme, 03 any child shall so long live. So if an use be limited
2 Kote, the statute consists of divers parts, in the con-

3 In Aworry exception was taken to the barre, because where
the aoovant had alledged by matter in fact, that the office (for which
the annuitie was due) had been granted to such person 03 persons as
pleased the Bishop of Saron, &e. the defendant in his barre had plea-
sed in the negative, that the said office has not been granted but for
the life of one, &e. and therefore the defendant ought to have concluded,
&c. &c. &c. whereas he concluded all his plea with, &c. &c. &c. Fed non allocatur; for the
Aovant alledged not that the said office had been granted, &c. to
divers persons, but to such person 03 persons as pleased the Bishop; &c.
in disjunctive subjicit alterum esse verum; so that the defendant did not
trave if what the Aovant had alledged.

4 The Statute of 26 H. 3. (for the payment of Subsidies to Per-
chance) is in the disjunctive, viz. the subsidy not paid, 03 the Cal-
ledor not agreed with; And therefore if either of these be done the in-
tent of the Statute is performed.

5 The Statute of 26 H. 3. is in the disjunctive, viz. that every
Person, &c. which before they enter upon their beneficiary do not satis-
face, content 03 pay, 03 compound or agree to pay to the
King the arre-fruits; &c. Shall be taken as Intruders; And there-
fore although they do not pay down the arre-fruits immediately, but
gave to pay them, 03 (as the Common seal) give bond for them, it
is sufficient.

6 A Merchant having paid custom for certain Cloaths, shipt them
for beyond-sea, in the tempest the Particlers (for the Salvesguard of them-

Dyer 43. 32.

&c. 30 H. 3.

Courtesie con-
cceled.
10 Words in construction must be referred to the next antecedent, where the matter it self doth not hinder it.

**Remainder where good or void.**

1. If a man gives land to A & hereditibus de corpore suo, the remainder to B in forma practica, that is a good estate to B, because in forma practica both include the other; but if a man leteth lands to A, for life, the remainder to B, in tail, the remainder to C in forma practica, this last remainder is void for the uncertainty; howbeit if the remainder had been, the remainder to C, in eadem forma, this had been a good estate tail; so, Idem temer proximo antecedentem referatur.

**Release.**

2. M. disputeth to N. Omniamodas actiones tam reales quam personales, fidelis, quarelas, & demanda quaestiones, nec non totam domum sua ac titulum & actionem dosi fidei contingente, post mortem Sc. viri sui de ali-quibus terris & teneimentis suis in te, quæ vel quas illa praebat Sc. vel executores sui velius ipsum Sc. &c. Here, the words of Relation (Quæ vel quas) do referre as well to the special words Dowers, &c. as to the general words Actions, &c. and Demands; so it would be against reason, that they should referre to the general words, which are more remote, and not to the words of qualification, which are nearer unto them.

**Pretended rights.**

3. The Statute of 32 H. 8. 9. provides, that none shall buy rights of titles in land, unless such person, &e. have beene in possession of it, or of the reversion as remainder of it, or have taken the rents and profits of it by the space of one whole yeares next before; Here, these words by the space of one whole yeares, shall be onely referred to the sentence next before viz. the taking of the rents and profits.

**Abbay Lands.**

4. The Statute of 31 H. 8. 13. ordains, that farmers of Abbey lands, which had then Leases in being, should enjoy them for 21 yeares from the time of the making of such leases, if to many yeares were therein limited; or else they should enjoy them for so many yeares, as in such lease 21 leases were expressed, so that the 21 leases exceede not 21 yeares; Here, this last sentence, so that, &c. relates to the clause next going before it, and not to the Act; Ad proximam antecedens fiat relation.

**Alienation of an entail.**

5. Sir Th. Cheyney in 1 El. 2d. 5th. to H. his sonne, and to the heires male of his body, remainder to Th. Cheyney of D. and the heires male of his body upon condition, that he or they or any of them shall not discontinue: The question was, whether or no H. the sonne was included within these words he or they; And it was resolved by Wray and Anderson after conference had with other Judges, that those words should not be referred to the grant made to H. the sonne, but only to the grant made to Th. Ch. of D.

**Takes.**

6. In S, El. grantto I. S. Totam illam portionem decimarum, &c. in L. in com, N. cum omnibus alius deeditus suis quibuscunque in L. in dict. com, N. sum vel nuper in occupatione I. C. Here, these last words nunc vel nuper, &c. referre to the whole sentence, and not to the later part of it; only, viz. cum omnibus alius, &c. Because the Act words are Totam illam portionem Decimarum, &c. So that this pronounse illam is not satisfied, until you come to the last

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**The reference of illam.**

Co. Inst. part 1, 20.b.
Co. ibid. 48.b.
Co. 18, 14.b., Alabam Cafe.
Pl. Co. 11 b. in Partridge's cafe.
Pl. Co. 18, 11.a, Fulkerson's cafe.
Co. 1, 6.b., The Lord Cheyney cafe.
Co. 1, 41, 5.2, Bomeo cafe.
The Reason of

Max. 11.

end of the sentence: This Conjunction cum omnibus aliis, &c. couples the last words with the former, and makes the subsequent words refer to the whole sentence, Vide supra. 8 Cai. 11.

An Indictment found in this manner; that Eliz. but in pace, &c. Indictment:
quoque A. vir praefatus Eliz. de D. in com. S. yeoman did kill her, is good;
for the addition yeoman must necessarily refer to the husband because a woman cannot be a yeoman: But an Indictment, Quoque Alicia S. de D. in com. S. uxor I. S. Spinther, &c. is not good again Alice S.,
for there Spinther being an indistinct addition both to man and woman must refer to I. S. being the next antecedent, and to the woman hath no addition; so likewise an indictment against I. S. servien I. D. de D. in com. Midd. yeoman, is not good; for serviant is no addition and yeoman, refereth to the master, which is the next antecedent.

A man makes a lease for life, the remainder in tail, the remainder to I. S. in forma predicta, this shall not refer to the estate, which is the next before, but to the first estate because there wants the word heire to cause him to have an estate tail.

A man is bound to abide the award of I. S. who awards, that the one party shall pay before such a lease tis, to the other, and that then the other shall make him a release. This word then shall not be referred to the lease, but to the time of payment of the money.

In a Ciui in vita brought by a sons, the writ is, Cui ipsa in vita sua. Contradiscre non, &c. this word ipsa shall not be referred to proximum antecedens viz. ipsa, but to the baron.

The Law delighteth in apt expressions.

2 Wholesome a Confirmation both enlarge or give an estate of Inheritance there ought to be apt words (as Liti. expresteth them Sect. 513) used for the same.

3 Judges ought to know the intention of the parties by certain and sensible words, which are agreeable and consonant to the Rules of Law; and therefore if land be given by deed to two, to have and to hold to them & hereditibus, this is polite for the insensibility and uncertainty; And albeit they have a clause of warranty to them and to their heirs, this shall not make the first words, which are uncertain and without sense, to be of force and effect in law, although his intent appears; for his intent ought to be declared by words certain and consonant to law.

4 If one faith thus, unto another, I do here demit unto you my Improper house for term of your life: this is a good beginning, if actual liberty of words, make accordingly, or if he use apt words, which may amount to so much; but without liberty of such words, such a demit both amount but to a lease at will, Vide Throughgood's cafe Co. 1. 137. b.

5 In Sir Anthony Mildmayes case it was obserb'd, that in the Provi-

CO. 1. 57. a. in Corbis. Co. 1. 6. 16. a. Sharp's Cafe. Co. 6. 45. a. Comp. 1 Compend. But for there (to restrain the tenant in tail from alienation) found at large

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by the special verdict, there were more than a thousand words, whereas (in our books) when the tenant in tail was restrained from alienation, there were under twelve words: Hence suit candida illius atatis fides & simplicitas, qua pauculis lineis omnia fidei firmamenta posuerunt.

It may be also observed, that the Statutes made before the reign of H. 8. were short and concise, but from his time (especially from the twentieth year of his reign) they are much more prolix and voluminous, whereas Laws and Precepts ought to be short and significant, to the end they may be easily understood, and the better retained in the memory, according to that of Epaminus in his religious Colloquy, Praeclara pauca vide disserere, quam multis cum radio decorare; And that of Horace;

Quicquid praecipies esto Brevis, ut citò dicas. 
Percipiant animi dociles, tencantique fideles.

6 A Prescription to have all wild Swans, which are ferae naturae, and not marked, insignificant, & frequent, within such a Creek, is insufficient; so is also such a prescription for a Warren, viz. to have all Phelans and Partridges insignificant, ingin. & frequent, within such a Manor, but he ought to say, that he hath Free warren of them within the Manor; for albeit they be insignificant, & within the Manor, yet he cannot have them Jur Privilegi, but only so long as they are within that place: Nowbeit a Prescription thus alleged is good, viz. that within such a Creek there hath been time out of mind, & a game of wild Swans not marked, insignificant, &c. And then to prescribe, that such an Abbot and all his predecessors, &c. have always used to have and take to their plantations and some of the said wild Swans, and their signs within the said Creek; such a prescription (I say) is good, for albeit Swans are Royal fowls, yet this way a man may prescribe in them, because that may have lawful beginning, viz. by the Kings grant.

7 The form of a writ of debt shall be sometimes in the debt and detainer; and sometimes in the detainer only, and then if it be the debt it shall abate: It shall be always in the debt and detainer, when he that makes the bargain contract of borroweth the money, &c. to whom the obligation is made, byings an action against him that is bound, &c. to party to the bargain contract of borrowings, and also when the action is brought for money: But if a man sell 30 quarters of wheat for an horse, here he bring a writ of debt for the horse; the writ shall be in the detainer only: And the Rule of the Register is, quod in brevi debito, de cattalis munquam dicitur quod ei debit. Also if a writ of debt be brought by executors upon a suit due to them called, the writ shall be, quod eis detiner, and not debt & detiner, because they were not partie to the contract: so likewise if a writ of debt be brought against executors by the creditor upon a suit by their called, the writ shall be quod ei detiner, and not debt & detiner, albeit he demand money, as 20 l. 20 any other sum.

8 In a writ of amittit the form is Quem ei deb iter, when anything that is not money is demanded. It is otherwise in an action of debt, viz. if it be for money, the demand shall be in the debt, but if it be for any thing else, it shall be in the detainer and not in the debt: And in debt also if a man demand money and ten quarters of wheat, then the form of the writ shall be, Precipe A. quod justiti, &c. reddat B. decem libras, &c. quas ei debet, & decem quarteria frumenti: quas ei injuste detiner &c.

9 If a man be taken in execution by the Sheriff upon a ca. &c. and
The Reason of

Max. 12, 13.

If a person claims that he is the owner of property, he must prove his claim. A statute states that a writ of Customes and services is in the right of the party, then the onus of proof rests with the owner of the property, and the burden is on the owner to prove his claim. If the owner fails to prove his claim, the property is regarded as belonging to the person who has the right. Therefore, the property cannot be claimed by another party under the statute, even if they have a claim.
amount to an affirmative; for, Negatio definit negationem, & ambo faciunt affirmativum; yet the Law that principally respects substance both judges the Possesso to be a negative according to the intent of the Parties, and not according to Grammatical construction, to the end the Possesso may take effect: Howbeit observe that in Greek and French a double negative maketh the negation more forcible; And therefore Quere, whether Littleton being much acquainted with the Law-French doth not express that Latin according to the French Phrases.

3 False Orthography aut grammatica non virtat concessioem, & semper illa numerus & termini abbreviatio, accipiendus est, ut concepsio non sit intentio: and therefore if the King grant Tit. ill. Maner. de D. & C. taut be (in truth) but one Hammas, then those abbreviations for ill. Maner. shall be taken in the singular number for in that ill. Maner; but if they be in truth two distinct Hammas, then they shall be taken in the plural number, for in that ill. Maner. for otherwise the grant would be void, In 32 E. 32. A Scire facias rehearsed, that a fine was levied in de maneris B. & H. and the conclusion was Quare prædixm Manerium de B. & H. inge cisus est, and it was adjudged good with argument, that B. and H. were (individually) but one Hamma.

4 Letters Patent made to John Pertson and Willim Took de officio unus Auditorum curis tux Vardorum, was adjudged good; for, albeit the Statute enacts, that there shall be two persons which shall be called Auditor of the Lands, &c. so as there shall be two persons and they called two officers, yet it is but one office, and they are both but unus officiaris, and to the Statute it selfe faith; Those two persons called Auditor shall be called the fourth officer of that Court; And therefore the grant de officio unus Auditoris, 02 unus Auditorum is good enough; The like case is adjudged in 9 E. 4. 1. upon the grant de officio unus Clericorum de Corona in Cancellaria, &c. according to the Rule Mala grammatica, &c.

5 An Indictment in Court shall not be quitted for false Latin or false Orthographie, so that a proper Latin word may be known by it, as Praefato, Regias, Mamilla, Diffamo, distinxiu, for Praefato, Mamilla, Defamo, Dehino, &c.


1 Although by the words of the Statute of Wills, 2. cap. 4. upon a recovery by default against aaron and fema, quod eri deforciens is not allowed them, because the aaron is not properly tenant for life; but aaron only in the right of his wife, and therefore out of the words of that Statute; yet the contrary hath been often adjudged; so 2. the Law of England respects the effect and substance of the matter, and not every nitice of some of circumstances; Atspices juris non sunt jura, sic parum different, quæ concordant.

2 A man sold of lands in fee levied a fine to the use of himselfe for life, and after to the use of his wife, and the heirs male of her body by him begotten for her jointure, and had five male, and afterwards he and his wife levied a fine in suffer a common recovery; the husband and wife died, the five male entered by force of the Statute of 11 H. 7. 30. this was no discontinuance to barre the five male, but his entry was adjudged lawful, and yet this case is out of the letter of that Statute; for he neither levied the fine, &c. being sole, nor with any other after taken husband, but it is by her fine with her husband, that made the Jointure.

B A man is seized of lands in right of his wife, and they two levied a fine, and the counties grants and renders the land to the husband
and wife in special cases, the remainder to the right heirs of the wife; they have since, the husband deth, the wife taken another husband, and they two live a fine in fee, and the issue enthrone, this is directly within the letter of the Statute of 11 H. 7. 20. And yet it is
out of the meaning thereof, because the state of the land moved from the wife, so as it was the purchase of the husband in letter, and not in meaning.

Co. ibid. 38b.

4 By the letter of the Statute of Gloucester 6 E. 1. cap. 3. A fine levies by the husband alone of the wives land shall barre the heirs, for the Statute fames to intend all alienations except by the, because it is there said, whereof no fine is levied in the Kings Court; Howbeit by the meaning of that Statute the heirs shall not be barred, for such a fine would work a wrong to the wife, but the fine meant by the Statute is a fine levies by the husband and wife together, for such a fine is lawful and worked no wrong, and a fine by the husband only would work the same mischief, for which the Statute ouvines remark, and therefore shall not barre the heir, though it be with warrant, unless the heir beables by descent, &c.

5 Done in title is restrained by a particular Act of Parliament, quod non faceret aliqui non cum cunctos, &c. hact. &c. nisi pro jurtur. Here, if the ancient reворtion was of gold, he cannot reserve silver, if two farms were anciently let to several tenants for several rents, he cannot let them both to one man for one little rent, nor witniece part of the farm removing rent pro rata, by reserve it payable at two feasts, when it was before payable at one feast: Howbeit, he may reserve eight bushels of wheat, instead of a quarter reserved before; for they are all one in quality, value, and nature.

6 The change of the name of a thing cannot alter the thing itself, but the new name may be used by the owner in controversies, practices, &c., without prejudice; And therefore in Sir Moyle Finches case in the 3. Rep. it was agreed, that Exceter-house in the Strand, and Douce-house in Fleet-street having then within three years before gained those names, might be well enough known to their neighbours by the same names, and distinguished from all other houses, and might also by those names be demanded in practices, &c., to a practice lodged out of a Spanno in comm. Bedd. by the name of the Spanno of Aisle, whereas it was borne formerly and was still called Aisle-gate; here, the tenant, after the view, demanded judgement of the will, unto which the tenant said, the Spanno put in view was also known by the name of Aisle; and it was agreed, that such a name gotten by the knowledge of the Country is sufficient, without the true and proper names, so in this sense it is true: De nomine proprio non est quia domini, dum in substantia non erat, quia nomine mutabilius funt, res autem immobiles.

Co. l. 5. b.
The Lord

Mansfield cafe.

41 E. 3. tit.
Main. de
briefe. 49.
H. 6. 32.

Co. l. 8. b.

in Mariel Tre-
isms: eic.

Co. l. 8. a.
in Alexander
Powter's cafe.

The Reason of 
Max. 10.

Difcontinu-
ance.

Warraity no
barre.

Reversation
of rent.

Change of
names.

Covin.

House-burning.

7 Albet Civit. of its title and ex vi termini, ought to be between this, yet when it is coupled with fraud, which may be committed by one alone, the Court shall adjudge upon the matter, and not upon the Act by which the fraud is committed, for Pleinique dum proprius verborum attenditur, sendis verborum amittitur.

8 The Statute of 23 H. 8. 1. takes away Clergie from the Houle-
burner; the Statute of 1 B. 6. 14. gives the benefit of Clergie to all
soldiers, face only to Purser, Posthorn, Margrave, Robberie, 
House-healing, and Sacrilege, so as House-burning being in this statute caulis omnium, such an offender himself thereby to be allowed
his Clergie: Nevertheless, because the Statute of 25 H. 8. 3. takes
away Clergie from the Houle-burner, that Sarvedith made, challenge-
above
The Common Law.

above 19, 20, asundereth not directly, albeit the offence be committed in another county then where the offender is tried; and likewise because the Statute of 4. and 5. P. and M. 4. takes away Clergymen from the accessories of that offence; it is adjudged, that according to the intention of the makers of the Statute of 1 E. 6. Hooling-buming is included within the meaning of that Act, although it is a personal law and quite left out of the letter of the same Act.

9 In 17 El. Dyer, 32a, 42. "The four first letters in the name and style of H. 7, viz. H. R. A. F. (to) Henricus Rex Angliae, Franciae, &c. were left out of his Letters patents made to Simon Digby, yet adjudged good; Ann in the 38 H. 6. 53. A count, in which it was alleged, that T. W. resgnavi, &c. in manu J. Episcopi, &c. & leti illius Ordinarii, and exception was taken, because it was not in manus Johannis Episcopi, (being the Letter J.) Ignifled nothing; but yet the Count was adjudged good.

10 The Statute of Gloucester cap. 5. which gives an action of want against the Libel for life or years, which is not against them at the Common Law (speaking of one that holdseth for terms of years in the plural number, and yet it appeared by Littkenon Sect. 67. that although it be a penal Law, whereby treble damages and the place wasted shall be recovered, yet a tenant for half a year being within the same mischief, shall also be within the same remedy, although it be out of the letter of that Law. Vide Pl. Co. 109. b. & sequent.

Indictment.

11 False Latin shall not quash an Indictment or a Count; for although it is original writ shall abate false Latin (as it is spoken in 9 H. 7, 16. 2 H. 4. 8. 44. E. 3. 18. to E. 3. 1.) yet Judicial writs of a fine shall not be impeached for false Latin, as is held in 9 E. 3. The same Laws of an Indictment as pretest regime for pretest, manilla for manilla. &c. Vide supra 13, 4.

12 In the 14 of E. 3. the King grants license to found in Oxford, an Hall under the name of the Hall of the Scholars of Oxford, the Founder calls it the Hall of the Queen; They present to a Church by the name of Provost, Fellows and Scholars of the College of the Queen in the Universitie of Oxford: "The Incumbent beves the Recitice, which they continue by the name of Provost, Fellows, and Scholars of the Hall or College of the Queen in the Universitie of Oxford: Notwithstonding these variances y pretestment and confirmation are both good for a small variance is not to purpose, if the description be such that no other can be intended, as Abbot Richard grants by the name of Richard.

15 "Falsus interpretaio sentenda est, non interixed absurdum & inconveniens, quin judicium fac illorum in.

Pluralties of Benefices.

11 By the Statutes of 31 H. 3. 132 if a Person or Ulcer having one benefice with care of souls (being worth eight pounds per annum or above) take another, and be instituted in the possession of the same, even the first shall be void; Here: albeit the Statute failing plainly instituted and instituted; yet if he be guilty instituted into the shall lose the first: before induction: and this is in regard of the great inconvenience, that would arise, if the first benefice should not be void by institution to the second by force of the said Act: for then none may be instituted to divers benefices with care, the great charge thereof it is not possible for one to discharge, and yet none can be presented to any of them, which would be inconvenient.
Sir Andrew Corber deviseth some of his lams to Richard Corber and others, until 8co l. shall be levied and received out of the profits of them (besides all charges) to be employed to the preferment of his two daughters Marg. and Mary; Robert Corber suzyme and heir seals the will, enters into the lands, and enjoys them five years and dies, after whose death (the will being discovered) Richard Corber enters into the lands and causeth 640 l. and implopes them according to the will; but the question here arising was, whether the profits, taken by Robert Corber, and which the devisers might have taken, shall be accounted parcel of the summe of 8co l. And in this case it was resolved, that albeit the words be, until the summe of 8co l. shall be levied, &c., yet it is as much in law as if the words had been, shall or may be levied: And it was also held in case of a lease, or limitative of use, until such a summe shall be levied; that was as much to lay as, until such a sum may be levied, for otherwise great mischief would ensue; because in as much as he in reversion or remainder shall not enter until the sum be levied, it shall be in the power of those who are appointed to relieve it, to deferre the levying of it, and so to exclude him in the reversion or remainder from taking the profits of the land for ever which would be inconvenient.

3. If a Baron retains two Chaplains according to the Statute of 21 H. 8. 1. and they purchase dispensation, and are advanced according to the Statute; here, if the Baron disharge one of them from his service; he cannot retain another during the life of the Chaplain discharged; for by that means he may advance as many Chaplains as he will, even without number, by which the Statute would be frustrated. A like case to this was adjudged in C. B. 28 El. and after affirmed in B. R. in a witt of error.

2. A female sole makes a lease at will, and after takes Baron; here, the will is not determined by the intermarriage; for albeit the female by taking the baron hath submitted her selfe to the will of her husband as her head; yet in as much as it may be prejudicial to the husband to have the lease determine (for then he would lose the rent payable at the next rent day after the marriage) and because it will rather tend to the benefit, than to the prejudice of the same, if the lease continue; and also for that it may be a great prejudice to husbands who marry women, that have tenants at will, to the issue of their rents; for these causes it was resolved, that without express matter done by the husband after the marriage to determine the will, it shall not determine.

5. Sir Th. Cheyney, so, to H. his sons and the heires male of his booke, the remainder to Th. Ch. of D. and the heires male of his booke, with condition, that he or they or any of them shall not discontinue, 4c., the question was whether T. Ch. should be received to prove by witnesses, that it was the intent of the deviser to include his sonne within these words he or they; and it was resolved by Wray and Anderson upon conference, with other Judges, that he shall not; for the construction of wills ought to be collected out of the words of the will in writing and not by collateral avortments without, because that would be subject to much inconvenience; so as much as it would not then be possible for any man to know by the written words of the will, what Construction to make, or what advice to give, when whatsoever shall be in that case some may be contrived by collateral avortments out the will.

6. If a man be dethes by two and releasteth to one of them, he shall hold his Companion out; but if tenant for life be dethes by two and he releasteth to one of them, this shall come to them both.
for he to whom the release is made hath a longer estate than he that releaseth; and therefore the release cannot enure to him alone to hold out his Companion; for then would the release enure by way of entry and grant of his estate, and (consequently) the billets to whom the release is made would become tenant for life and the reversion revealed in the Lettis, which strange transmutation and change of estates in this case the Law will not suffer.

7 If a man grant lands to A. in fee, upon condition that if he alien in fee, his estate shall cease and be void, and that immediately from thenceforth the estate of the land shall remain to B. and his heirs; here the estate to A. is good, and he may lawfully alien not withstanding the condition; for his estate being an estate of Inheritance inamens and tenements, it cannot cease or be void before it be defeated by entry, and then if this remainder should be good it must give an entry upon the alienation unto him that had no right before, which would be inconvenient and against the express rule of Law, because an entry cannot be given to a stranger to avoid a voidable act, as appears by Littleton in his Chapter of Conditions.

8 Because Littleton saith (Sect 123) that the Guardian in Socage shall render an account of the marriage money to the heir or his executors; here, from this word executors some have collected, that an Infant at the age of 14 may make a will; but the meaning of Littleton in that place is, that if the marriage be accomplished the age of 18 years, he may then make a will and constitute executors to administer his goods and chattels; for at that age he hath power by the Law to make a will, and these words are to be understood as they may stand with Law and Reason.

9 The Statute of Gloucester in 6 E. 1. cap. 3. doth declare, that where the tenant by the Curtelle alien his wife's Inheritance with warrant, if a lesse descend to the heir, he shall be barred for the value of the Inheritance so descended, and if lands after descent, that then the tenant shall recover against the heir of the eldest of his mother, viz. out of the residue of his mothers lands so much as the afects afterwards descended shall amount unto; Here, albeit at the making of the said Act (being in 1 E. 1.) there were no entailment lands (for all Inheritance then was (viz. before Wilm. 2. being 13 E. 1.) the same absolute or conditional) yet entailment lands are since taken to be within the equity of the said Act of Gloucester, but not to remain or recover (as in case of the simple lands) the lands entail'd, but only the lands which should to descend; because otherwise there would be occasion of new suits and contentions, which would be inconvenient; for if the tenant after ales descended might retain or recover the lands entailed, then if the ales were aliened, the issue inheritable to the estate taking might by writ of Formedon in Declerem recover the entail'd lands again, which would begat a new suit and no way answer the intention of the said Act, being taught a good provision for the simple lands, but not for lands entail'd without such a construction by equity, as aforesaid; And therefore in case of entail'd lands to aliened with warrant, the tenant shall have a Scire facias out of the rolls of the Justices, before whom the suit depends, to recover the lands descended according to the provision of the said Act of Gloucester, which prevents the aforesaid inconvenience, and in just and proportionable equity agrees with the case of the simple lands, and the Intention of the said Act. Vide infra 178. 22. and 38. 5.
The Reason of

Law) four things are to be considered: 1 What the Common Law was before the making of the Statute: 2 What was the mischief and detriment for which the Common Law did not provide: 3 What remedy the Parliament hath resolved and appointed to cure that disease of the Common-wealth: 4 The true reason of the remedy:

And then it is always the office of the Judges to make such construction, as may repel the mischief, and advance the remedy; and also to supppose such subtle inventions and easions, as may continue the mischief, & pro privato commodo; and to add force and life to the cure and remedy, according to the true intention of the makers of the Act pro bono publico: Am upon this ground in Heydons case in the 3 Reprot the Statute of 31 H. 8. cap. 13. of Monasteries was by all the Barons of the Chequeur aledged (by the general words thereof) to extend to Copibolds & Cukomaria estates; and by them this Rule was then also agreed, That when an Act of Parliament alters the service, tenure, interest of the land, or other thing in prejudice of the Law, or of the Custome of the Spannoz, or in prejudice of the tenant, there the general words of such an Act shall not extend to Copibolds; but when the Act is generally made for the common good and no prejudice may accrue by reason of the alteration of any interest, rent, service, tenure, or custome of the Spannoz: In such cases many times Copibold and Cukomaria estates are within the general purview of such Acts.

16 Quothes in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressi sende.

1 If a rent be granted out of the Spannoz of Dale, and the grantor shall grant over, that if the rent be behind, the grantee shall restrain for the same in the Spannoz of Sale, this is no grant of rent, only but a penalty in the Spannoz of Sale, one reason thereof is, because the Law needs not to make construction, that this grant amount to a grant of a rent, for here the rent is expressly granted to be making out of the Spannoz of Dale, and the parties have expressly limited, out of what land the rent shall issue, and upon what land the distress shall be taken, and the Law will not make an exposition against the express and intention of the parties, when this way Lands with the Rule of law.

2 A grant to B. Habendum tenementa praedita from Chiff., Grant in futuro.

3 A cessed of Land in fee, grants a rent out of it with clause of distress to B. for the life of C. and dies, the here lets the land (thus charged) to D. for life, the remainder to E. in fee, the rent is behind for divers perces in the life of D. who dies, and also C. B. distresses him in the remainder for all the arrears and incurred in the life of D. In this case, he in the remainder shall be charged with them by the last branch of the Statute of 32 H. 8. 37, by which an action of debt is given to the tenant pur auter vie after the death of Celluy que vie against the tenant in demelie (who ought to have paid the rent when it was first due) and against his executors and administrators; and also that
that he shall distrain for the same arrearages upon such lands, &c.; out of which the said rents, &c., are issuing in such manner and forme as he ought or might have done if Colly que vice had been alive. Here, (I say) the latter part of this branch both expressly charge him in the remainder with the payment of the arrearages; And the Judges in that case fail, that they ought not to make any interpretation against the express letter of the Statute: for nothing can so well express the intent of the makers of an Act, as the direct words themselves (for index animi ternro) and it will be dangerous to give libertie to make construction in any case against the express words, when the intent of the makers appears not to the contrary, and when no inconvenience may happen upon it: And therefore in such cases, A verbi legis non est recedendum.

Devis. 4. Land was devisd to A. for life, the remainder to B. and the heires of his house, the remainder to C. and his wife and after their diletate to their children; C. and his wife having then issue a sonne and a daughter: And after the division, also A. dies and B. dies without issue. C. also and his wife die, and the sonne hath issue a daughter and dies: Here, the question was, whether the sonne of the sonne should have the land, or no: And it was resolved, that the should not, because in this case at the Common Law C. and his wife had but an estate for life with remainder to their children for life, and then the cause of reason why they by the will should have an estate to life, is only grounded upon the intent of the director: However, it was resolved, that such an intent ought to be manifested and certaine; and not obscure and doubtful, because it will not then admit of any strained conception farther than the words themselves no import by a proper and genuine interpretation according to the Rules of Law.

Tales de circumstantibus shall not be granted in an Act; by the Statute of 35 H. 8. 6. because by the express words of that Act they are only granted in every will of Habeas corpus &c. diverting with Nisi prius, and no exposition can in this case be made against express words; fo3 v peripatus est ssa expostioque corrigit veterrin texet.

7. If hello tenant for life take husband, who makes will, and the same dies: Here, the husband is not punishable for that will, because the Statute of Glosset. 6 E. r. cap. 5. is thus restit in the writ of will, Quare cum de communi, &c. proviun sit, quod non liceat alciui voluntatem &c. facere de terris, &c. ab huius deminis ad terminum viae vel annorum, &c. So that the land being not demised to the husband, but he holding it only for her life and in her right, he shall not be chargeable for will after the death of the wife, by the express words of the Act, as it is restit in that writ.

Devis. 8. A devise of land by will is good without Probar, because the Statute of this donations only that it shall be in writing, and enioys no Probar; and therefore if it be in writing and proved by witnesses, it is good without Probar.

Tail of the King. 9. If tenant in tail of the gift of the King, the reduction to the King expectant, is diissered, and the devisee live a life, and five years passe, this will barre the other tail, notwithstanding the

Proviso
The Reason of

17 Maleficitiæ, expugicio, quæ corruampli textum.

1. The Earl of Cumberland sues the Earl of Carnarvon and the Earl of Oxford for

2. Grants to the King are restrained by the general words of

3. Exception was taken to an Indictment, because it was laid to

4. Indictment.
2. In a conveyance of lands in Kent certain lands lying in Beamston were excepted by the name of the Manor of Beamston, whereas it had (indeed) formerly been a Manor; but was none of that time, yet was it adjudged to be well excepted. And in the Argument of this point it was said, that the Law favours not advantages of mis-naming, otherwise than as the strict rule of Law requires, nor not in writs, which may be abated and new ones purchased, much less in grants or other conveyances, in which case they cannot have new ones; and therefore it too be joined in a writ, the one shall not plead the Misnomer of the other, as it is agreed in 14 H. 6. 3. In an action against baron and tene, albeit they are one person in Law, yet the one shall not plead the Misnomer of the other, so in trespass in Heidenheit at W. the defendant pleads (in respect of Misnomer) that it was neither Tower, Hamblet, or place known; the Plaintiff replied, it was without knowing in certaine, either that it was a Tower, hamlet, or place known. And all this in detention of new and dilatory exceptions.

3. Cook, Chief Justice of the C. Pl. in the Case of Rutlands case in 8 Rep. 6 Jac. complained together with the other Judges of the same Court, that then of late time divers nice and trained contrivances of Letters Patents had been made, and many of them upon light grounds had been brought in question, with purpose to subvert the force and effect of them, which Practice (said they) did much tend to the dishonour of the King and wrong of the subject, and was clearly against the true reason and ancient Rule of Law, as did manifestly appear in all their Books, because such nice and captious pretence of certainty, confounds true and legal certainty.

4. In Mackallies case in the 9 Rep. exception was taken to the indictment, which said, in Curia dicti Domini Regis in computatorio suo situato in Parochia fancti Michaelis in Woodstreet London, and did not plead in what Parish the said Parish was; but it was not allowed; for (as it was shown in 7 H. 6. 36. b.) every Ward in London is as an hundred in the Country, and every Parish in London as a town in the hundred; and it is not necessary to declare in what hundred a town is, neither yet in what Ward a Parish is; and therefore such nicety is to be avoided as needless. Vide plus ibidem.

5. Exception was taken against the confirmation of the Charter of Queens College in Oxford, anno 8 Jac. because it was sub nomine Aula Regine, whereas the Charter it selfe was Aula Scholarium Regine but not allowed; So in 17 E. 3. 48. one was named Burgenis de novo castro super Tinnam, and the exception was taken, that a Burgess ought to be of a certain Town and not of a Castle, but it was not allowed; for the ancient Sages of the Law did always reject such niceties concerning appellations and names, when the thing intended might be thereby well enough known and distinguished.

D 2   III. Max.
III Maximes of Reason: taken out of LOGICKE.

19 Cessante causa cessat effectus.

If land holden of I. S. be given to an Abbot and his successor (or to any other Corporation) in this case if the Abbot and all the Coerent die so that the body Politique is dissolved, the Donor shall have again the land and not the Lord by Elcheate; because in the case of a body Politique the estate is vested in their politque capacity, created by the policy of man, and therefore the Law doth annex a condition in Law to every such gift and grant, that if such body Politique be dissolved, the Donor or Grantor shall re-enter; so that the cause of the gift or grant is lost; but no such condition is annexed to the estate in its simple vested in any man in his natural capacity, but in case where the Donor or Grantor reserved to him a tenure, and then the Law both imply a condition in Law by way of Elcheate.

2 This wife shall be endowed of the lands, &c. of her husband, if the marriage continue till his death; but if the husband and wife be divorced à vinculo matrimonii, as in case of precontract, contamination, affinity or the like (but not à mensa & thoro' only), as for adultery the Dover sealeth, Fot, ubi nullam matrimunum, ibi nulla dos. See Dyer 12. a.

3 For the rent be the last day of the term, the lessee cannot be estranged, because the term is ended; and therefore there is no reason to reserve the last half years rent at the seal of St. John Baptists before the end of the term; so as, if the rent be not then paid, he may be estranged between that and Michaelmas following.

4 If a man takes a lease for years of his own land by deed invented, the etoppel doth not continue after the term ended; so by making of the lease the etoppel both grow, and consequently by the end of the lease the etoppel determines; and that part of the Invention which belonged to the Lessee, both after the term ended, belong.
The Reason of

Max. 19.

to the Letter, which should not be, if the expele continued. Vide 40, 33.

Co. ibid. 76 a. 1

5 If after the Lord hath the warship of the boye and land, the Lord both releaze to the Infant his right in the Seignior, or the Seignior descended to the Infant, he shall be out of warde both for the boye and land; for he was in warde in respect he was not able to do those services which he ought to do to his Lord, which now are extinct, and Cellante caula, cellular caustatum: And Littleton faith, that tenure by Knight-serveice was extint unto it warde, marriage se. So as there must of necessity be a tenure continuing; So likewise (if the Com- nudo) in a Statute merchant be in execution and his land also, and the Comnudo releaze to him all debts, this shall discharge the execution: For the debt was the cause of the execution, and of the continuance of it, till the debt be satisfied, and therefore the discharge of the debt, which is the cause, discharge of the execution, which is the effect.

Co. ibid. 76 b. 3

6 If the tenant makes a testament in fee of lands holden by Knights- service, to the use of the seofee and his heires, until the seofee pay unto the seofee, or his heires, an hundred pounds at a time and place limited; The seofee deth, his heire within age, the Lord shall have the warship of the boye and lands of the heire of the seofee, but if he shall be conditionable; so he cannot have a more absolute interest in the warship, than the heire hath in the tenantise: Therefore if the seofee pay the money at the day and place, and entereth into the land, in this case the warship both of the boye and lands is divested; because the Lord hath no absolute interest in either of them, but that interest, which he hath, both depend upon the performance of; not performance of the condition.

Linl. § 103.

Co. ibid. 79 b. 4

7 Littleton tells us, that by the Statute of Weit, 1. cap. 32. If a heire female be within the age of 14 yeares, and not married at the time of the death of her ancestors, then the Lord shall have the warshipt of the land held of him, until her age of 16 yeares, to the two within those two last yeares he may tenen her convenient marriage: yet (in this case) if the Lord before the age of 14 granted the warship of the boye, the granter thereof cannot enjoy the benefit of the two yeares, because he cannot hold the land over; and the Lord, which hath the warship of the land onely, shall also lose the benefit of the two yeares, because he hath the lands onely; and cannot tender any marriage; Therefore (in this case) the heire female shall enter into her land at her age of 14 yeares; So if a tenant holdeth of one Lord by prioritie, and of another by posteriority and deth, his heire female within the age of 14 yeares, the Lord by posteriority had the lands but until her age of 14 yeares, because the marriage belongeth not to him; Also, if the Lord married the heire female within the two yeares, her husband and the land presently after the marriage enter into the lands: Fo2, cellante caula; cellular caustatum; & cellante racione legis, cellular beneficium legis.

Co. ibid. 104 a. 9, 103 b. 1.

8 Where there is Homage Ancestral between an Abbot and Co- vent, and their tenant, If that boye be once dissolved, though a new boynise of the same name, and all the possessions be granted to them; yet the Homage Ancestral is gone. So it is likewise, if a man in his natural capacity holds by Homage Ancestral, and sells the land to another, although he repurchase the land again, yet is the Homage Ancestral dissolved.

Co. ibid. 104 a. 9.

9 If Homage be due to be done by the tenant, if the tenant affor- en the land to another, the Alienor cannot be compelled to do Hom- mage.

The Scipiony, or extint, the Warship pertinent.

The town performs, the Warship pertinent.

The Warship of the body leved from the land, cannot have the benefit of the two years after 14.

Honour an- fire after alienation, gone.

The Land being aliened, the Homage is gone.
10. The cause of an amerciament in a plea real, personal of mist (where the King is to have no title) is for that the tenant or defendant ought to remove the demand (as he is commanded by the King's writ) the first day: which if he do, he shall not be amerced; so that by the delay, that the tenant or defendant both use, he shall be amerced: And albeit the amerciament cannot be imposed, no the King shall intitulate thereunto, unless judgement be given, because by the judgement the wrong is altered, yet a pardon before judgment, shall, after Judgment given, discharge the party, because the original cause, viz. the delay, is pardoned.

11. If a wife marry a free-man, she is privileged during the coverture, but not absolutely enthrall'd; for if her husband die, she is a wife again.

12. If a Juror (after his return) selleth away his land, or the, for whose life, or his wife in whose right he holdeth it, or if an entry be made up in his land for a condition broken, so as his freehold is determined; in any of these cases he may be challenge for insufficiency of free-hold; for when his land is gone, his life to offend, to have his lands wasted, and the like, &c. (which is one of the reasons of Law) is also taken away.

13. If a man come to distraint for Damage slanted, and to the beasts in his fole, and the owner shall them out on purpose before the distraint taken, the owner of the fole cannot then distrain them, and if he doth, the owner of the cattle may rescue them; for the Easterly must be damage slanted at the time of the distress.

14. If one coparcener die, her part shall descend to her Issue, and one precise shall lie against them, and this is proper under this Juris, derived from one common Ancestors: so, if a man hath thus two daughters, and is disposed, and the daughters have done any die, the heirs shall join in a precise; likewise, the issues of two coparceners, which in by several descent, being dissisted, shall joints in an Issue: but where in the same case, if the two daughters had been actually seized, and had been dissisted, after their decease the issues shall not join; because (as to that purpose) the united juris is sever'd: for now, several rights descend to them from several Ancestors: and yet when they have severally recovered, they are coparceners again, and one precise lyeth against them, and release made by one of them to the other is good.

15. If lands given in frank-marriage be impeached, the tenant shall not have apye against the other parcellers; but if the put the land into Hootspur, we shall have it; for, then the lands are become as other lands, which descended from the common Ancestors.

16. If a tenant by damage Ancestors make a testament in fee upon Constitution, and enthrall for the Constitution broken, it shall be never held by damage Ancestors again: so it is, if a Cophold eleventh, and the Lord make the testament in fee upon Constitution, and enthrall for the condition broken, it shall never be Cophold again; because (in both these cases) the custom or prescription (which supported, and was the cause of the tenure) is interrupted, and that being once broken, is become senseless.

17. If a man grant an annuity per una aera terrae, if the acre of land be: evidenced by an elder title, the annuity shall cease; so if it be pro decemis, and the grantee be disburbed, so pro consilio, so quad pro consilio, and the grantee refuse to give counsel, the annuity shall in these cases cease; likewise, if a woman give lands to a man and his children caul matrimonii prelocuti; in this case if the man refuse to marry her, the shall have the land again to her and her heirs; but it is otherwise in case of a man.
The Reason of
Max. 19.

18 If a dissentor make a gift in tail, and theDonee discontinueth the fee, and after dissent the discontinueth, and vieth settled; this dissent shall not take away the entry of the dissentor; for the dissent of the Feu simple is vanished and gone by the Remitter, and albeit the issue be in force of the estate tail, yet the Donee shall not settle of that estate, and of necessity there must be a dying settled.

19 When the degrees are past so as a will of Entry in the P of both lps, yet by event it may be brought within the degrees again, as if the dissentor enfeoff A, who enfeoff B, who enfeoff C, &c. if the dissentor die selles, and the land descends to A, and from him to B, and from him to C. Now are the degrees past, and yet if C enfeoff A, or B, now is it brought within the degrees again.

20 If the eldest sonne hath male and vieth, and after his decease the younger sonne or his heir entereth, and many descents cass in his lines; yet may the heirs of the eldest sonne enter, in respect of the privyty of blood, and of the same claim by one title; But if the younger sonne make a feoffment in fe, and the feoffe done setles, that descent shall take away the entry of the eldest; in respect that the privyty of blood faileth.

21 If an action of tain be brought by Baron and some in remainder in special tals, and (hanging the writ) the writ vieth without issue: the writ shall abate; because every kind of action of tain must be had in execution.

22 If the bovile of a man be taken in execution upon a C. and the Plaintiff releaseth all actions, yet shall he still remaine in execution; but if he releaseth all debts, duties or judgments, he is to be discharged of the execution; because the debt, or the dutie, or the judgement (which is the cause of the execution) is discharged.

23 The Reason that Littleton giveth of the difference between a rent service and a rent charge is, that in rent service the abovly shall always be made upon the person, but in rent charge never upon the person, but upon the Land charged; Now here it may be said, that this reason is taken away by the Statute of 21 H. 8. 19. For by that Statute the Lord need not appoint for any rent or service upon any person in certaine, and then by Littleton reason there waxeth no privitie to the attonement of a Seigniour, for (say they) Celiacana causa & ratione legis, celfiatex; As at the Common Law no adue was grantable of a Stranger to an Abowtie; because the Abowtie was made of a certaine person; but now the Abowtie being made by the said Act of 21 H. 8. upon no person; therefore the reason of the Law being changed, the Law it selfe is also changes, and consequently in an Abowtie, according to that Act, and shall be granted of any man, and the like in many other cases; which cause is granted to be good Law: But albeit the Lord (as hath been saide) may take benefit of the Statute, yet may he abow still at his election upon the person of his tenant; and albeit the manner of the Abowtie be altered, yet the privitie (which is the true cause of the said difference) remaineth as to an Attonement.

24 If the reversion of Little be given to life be granted, and Little for life assigne over his estate, the Little cannot attorne, but the attornment of the Assignee is good, because (as Littleton faith) it is supposed that the tenant of the land do attorne, and after the attornment there is no tenure of attendance, &c. between the Little and him in reversion; to like wise if Little for life assigned over his estate upon condition, he having nothing in him but a condition shall not attorne, but the assignee may attorne, because he is tenant of the land.

25 Tenant Upon alienation the grante shall be tenant.
25 Tenant in tail after possibility of issue extinct shall not be compelled to attornce, for the inheritance, which was once in him; but his assignee shall be compelled to attornce, because then that privity is lost; the assignee having in him only a bare estate for life.

Quercia (being verified à querendo) properly concernseth personal actions, or mist at the highest; for the Plaintiff in them is called Quercia: and yet if a man release all quercas, it is as beneficath as all actions; for by it all actions both real and personal are released; because by the release of all quercas all causes of actions are released, albeit no act be then depending for the same.

It is a general rule, that when the grant by fine is defeasible, there the tenant shall not be compelled to attornce; As if an infant being settled of a reversion, leived a fine thereof, this is defeasible by will of error during his minority; and therefore in this case the tenant shall not be compelled to attornce to likewise it before the Statutes of H. 7. 24. and 32 H. 8. 36. a tenant in tail had leived a fine, the tenant could not have been compelled to attornce, because it was defeasible by the fine in tails: But those Statutes have given a farther strength to fines to barre the fine in tails; and therefore the reason of the Common Law being thereby taken away, the tenant in this case shall be compelled to attornce, as it was adjudg'd in Justice Windham's case.

A discontinuance reduced.

28 A. maketh a gift in tail to B. who maketh a gift in tail to C., C. maketh a settlment in fee, and dith withouit issue, B. hath issue and dith; the issue of B. shall enter; for albeit the settlment of C. did discontinue the reversion of the fee simple, which B. had gained upon the estate by tale made to C., yet could it not discontinue the right of entail, which B. had, that being discontinued before; And therefore when C. dith without issue, then did the discontinuance of the estate tail of B. (which palled by his liberty) cease, and consequently the entry of the issue of B. is lawful.

29 Tenant in tails makes a lease for the life of the Lessor, and after tells the reversion to a Stranger, the tenant for life dith, the grantee of the reversion enters in the life of the tenant in tails, this as a discontinuance in tail, and here if the tenant in tails die, his issue cannot enter, but is put to his Formedon, because the estate was executed in the granting of the reversion in the life of the tenant in tails; but in this case if the lessor for life dith, the tenant in tails, the entry of the issue had been lawfull; because by the death of the Lessor the discontinuance was determined, and consequently the grant made of the reversion, gained upon that discontinuance, is void also.

30 When estates of lands, &c. which were discontinuances, are defeated, the discontinuances themselves are also defeated: As if the husband be settled of land in right of his wife, and make settlment of fee upon condition, and die; here, if afterwards the heir enters upon the estate for the condition broken, the entry of the issue is con- gruable upon the heirs; because by the entry of the heirs for the condition broken the discontinuance is defeated.

31 If tenant in tails makes a lease for life whereby he gaineth a new reversion, if tenant for life surrender, the estate for life being voided, the reversion gained by buying in banished and gone, and he is tenant in tails again, against the opinion obiter of Portington in 31 H. 8. 53.

32 If B. purchaseth an Adovason, and suffereth an usurpation, and of moneyeth to pay, and after the usurper granteth the Adovason to
B. and his heirs, B. n. 166; his heir is not remitted, because his right to the Lewlae was remitted, viz. a right without an action; for a remitter can never settle, but upon a right receivable by act.

33 If a recovery had been had against tenant for life by default before the Statute of Wills, 21. cap. 4, he was (at the Common Law) remitted; because he could not have a writ of Right in respect of the devisee of his estate: But there (then) if a fema Leve for life of a house had left by default, and had after taken husband, and the recovery had let the house to the baron and feme for their two lives, in this case the fema could not have then remitted, because her estate was remitted, as above said: But now since that Statute the lad in that case be remitted, because the property now regate her estate by a Quid ei deforecat, given by that Statute: for when an Act of Parliament or a custom doth alter the reason or cause of the Common Law, thereby the Common Law itself is also altered: Alterata causa & ratione legis, aleator et lex, & cessante causa & ratione legis, cessat & lex.

34 A. encloses B. with warrantee; here A. shall have the writings which comprehend the demesne, and not B. because if B. be displeased, A. may be baulched; But if B. spite without heire, the warrantee made to B. is violated, and A. cannot be baulched; And therefore in this case the writings belong to the Lord by esbat.

35 In case of common of v eviction one Commons may inclose against another; for he that hath such a common cannot put his cattle into the land of another, but he ought to put them into his own land where they have common, and if they keep into the other ground, he is owner of trespass, by tenor of the ancient usage, which the Law allows to take away suits, which may arise, if actions shall be brought for every such trespass, when no separation or inclosure is betwixt the Commons. For, cestant causa, cestant effectus.

36 When a man makes a lease for life of years, the Leve hath but a special interest of property in the trees (which are great timber) as things annexed to the land, so long as they remain annexed and if: but if the Leve by any other futter, from the land, the property and interest of the Leve is thereby determined, and the Leve may take them as things which were part of his inheritance, and in which the interest of the Leve is determined.

37 If the battle of gods, as of a hole, & kill them, the Hole or shall have a general action of trespasses against him; because by the killing of them, the privacy is determined, which restrained the action of trespasses in that case.

38 If the Leve makes theft, and before any action brought reparke the place walked, and after the Leve does an action of theft, the action is not maintainable; for the jurors ought to fix the walk, and cestant causa.

39 When the rent within age is made Knight after tender of marriage made unto him, although, while he is yet within age, he marry elsewhere, yet he shall not pay the forsetiture of the marriage: for, by marrying of him Knight he is out of the ward and cívility of the Lord; because after he is knight, he ought to be far juris, and to employ himselfe in feats of armes to defend the Kingdom, &c. And none that pay the forsetiture of marriage, but he that after retali marrieth himselfe during the time that he is in wardship: But wethet the Lord shall immediatly after his Knighthood have a writ de valoremargiis, such as in like case is used to be had after the heirs full age of 21 years.

40 Satis
40 Since the Statute of 12 E. r, which incorporated Wales into England, and makes it parcel of England in possession, no protection, Quia moritur in Wallia, will now live; because Wales is now within the Realm of England.

41 Sir Everard Digby by act executed in his life conveyed his lands to the use of himself; life with divers remainders over, and then was attainted and executed for the Powder-Treasuror; the question was whether ward of the body of the third part of the lands should accrue to the King by force of the Statutes of the 32 and 24 H. 8. And it was resolved, that there could be neither wardship nor primerefsin in that case; because there could be no heir; for although there may be wardship and primerefsin, where there is no descent (as in case when a man grants all his lands (helden) by deed executed in his life) yet there can be no wardship or primefsin, but where there is an heir, by reason of whom alone those rights accrue to the King.

42 During the minority of the heir a writ of Dover lyeth against the Guardian, he may enjoin the same without suit; if he please: but after full age, although he holds the land over for the value of the marriage, yet no writ of Dover lyeth against him, neither can he enjoin her; because after the full age of the heir he is no longer guardian.

43 In Allison de nulans, or Quod Permitat prostrernere, &e. It is a good plea, that the Plaintiff himself, (either before the writ purchased, or hanging the writ) hath abated the nuisance.

44 If there be tenant in tail to him and the heirs males of his body the remainder in fee to another, of land helden by Knight-Service in Capite, and that is also helden of other lands in socage in fee, and by his will in writing he devieth all his socage lands and dies without issue male; in this case the worldly is good for all the socage land; for the estate of the land helden determines by his death, so that there was not any cause of ward at the Common Law, so it is likewise, if the estate of the land helden be defeated for a condition broken after the death of the tenant.

45 If I. grant the Hammock of D. except the wood, by this the soile if selles is excepted; but if I. except all my trees growing upon land or picture out of any wood; these being the exception of the trees the soil if selles is not excepted; But sufficient nutriment is reserved out of the land to sustain the vegetative life of the trees; for without that the trees, which are excepted, cannot subsist; but if the Lessee cut them, and by the licence of the Lessee root them up, in this case the Lessee shall have the soile; for extantane causa cessat eftetus.

46 If a man be falsely indicted of felonie, and after by Act of Parliament a general pardon is granted of felonies, &e. Here, the party shall not have a writ of conspiracie, although he shall plead to the indictment and is acquitt, and will not plead the Act, &e. because his life was never put in jeopardy (which indeed ought to be the cause and ground of the action of conspiracie) the felonie being pardoned by the Act.

47 If a man recover outrageous damages by verdict, and releasethereof in the judgment, and hath only judgment of the respite, the defendant shall not have attainder for those damages, which are so releasethereof.

48 If a man have goods delivered unto him to deliver over to another, and afterwards a writ of detinue is brought against him, by him, that hath right to have the goods, &c. Here, if the defendant, hanging the action, deliver the goods over to him, unto whom they were given.
The Reason of

Fitz. 139. 2.
Mich. 34. E. 1.

52 If a woman be Warden of the Fleet, and one implosth here
marieht the woman, which is Warden; this shall be judged an
escape in the woman, and the law adjudgeth the prisoner to be at large,
because he cannot be jawfully imploston but under a Warden, and
he cannot be properly conceived under the word of his wife; and
therefore in that case the law adjudgeth him to be at large. So if the
Warden of the Fleet (who hath his office in 6) die letters, his sonne
and heiire being then prisoner there, and the office descends upon
him being in prison; here the law will adjudge him out of prison,
even though he hath letters upon his legs, he being then without yard, it
being impossible that he should keep himselfe in prison.

53 If a Justice in Peace of one County purlihe one into another
County for felony committed in the County where he is Justice, and he
takes him in the other County; in this case he is his prisoner in the
County where he takes him, and ought there to be imploston, and
he cannot fend or convey him to the Goal of the County where he
committed the felony, so he is not his prisoner there, and being out of
his p'per County his authority cealeth as to that other County:
So if the Sarswall hold plea of a thing done out of the pcrge, or the
Admiral of a thing done in the body of the County, it shall be void;
for their authority extend to a certaine place, and within a certain
precedence, and not elsewhere; and if he which takes Sanctuaries
also, any man may take him; because he hath lost his privilege.

54 If the Constable of a Reconnaissance (according to the Statute of
23 H. 8. cap. 6) sell several parts of his lands to several feoffees, refer-
ing also part thereof to himselfe, if execution be laid against his
part, in an Audita quaerela he shall not compel any of the feoffees
to contribute; And therefore by the same reason the purchase of part
by the Constable shall not discharge the execution; for the execution of
the Constable shall be discharged in consideration that he will be contribu-
tory if he were Feoffee and not Constable, and then in as much as
he shall not be contributory, if he were Constable and not Feoffee, his
purchase of part shall not discharge the execution, being Constable, quid
elsemore causa, &c.

55 If the King have given land to an Abbot and his successors to
hold by Knight Service, this had been good, and the Abbot should
have borne homage and found a man, &c. or have pale escarage; But
there was no wardship or reliefs or other incident belonging there-
to; yet if the Abbot with the assent of his covent had conveyed the
land to a natural man and his heirs, now wardship and reliefs, and
other incidents belonged of common right to the tenure: And to it is,
if the King give lands to a Major and Community and their
successors to be held by Knight Service; in this case the Patentees

Lands held by
Corporations
in Knights
Service.
A. 59 The King granteth to one or two of them, he that hath the se simple shall not have an action of tenement upon the statute of Gloucester against the Jointenant for life, but the heir shall maintain an action of wafre against him upon that statute: so that (in this case) the heir shall maintain that action, which the Ancestor could not.

B. 58 If the husband alien his land, and then the wife is attainted of felony, now is the disabled, but if she be produced before the death of the husband, the shall be endowed: Also if the sonne endow his wife at her age of seven years exalienis partes, if the before the death of her husband attaine to the age of nine yeares, the dowter is good.

Office, and Rent.

59 The King granteth to one or two of them, he that hath the se simple shall not have an action of tenement upon the statute of Gloucester against the Jointenant for life, but the heir shall maintain an action of wafre against him upon that statute: so that (in this case) the heir shall maintain that action, which the Ancestor could not.

A. 60 The executor or husband (after the death of the wife guards an in Sodage) shall not retain the wardship; for the guardian hath not to his owne use, but for the benefit of the heir, and the executor or husband by common interdiction bare not such affection to the Infant, as the testator of his wife did, which was the cause, that the law gave them the wardship.

B. 61 If a stroke be given the first day of May, and the King pardon him the second day of May all felonies and misdeemans; the party smitten with the third day of May, to as this is no felony till after the pardon; yet is the felony pardoned; for the misdeemans being parbones, all things purifying it are also pardoned.

Livery.

62 The King hath a Ward pur caue de garde, and after make the Liberty to the first Ward, the second Ward shall not sue Livery.

Coparceners.

63 If two coparceners make a lease reserving a rent, they shall have this rent in common; as they have the reversion: But if afterwards they grant the reversion, excepting the rent, they shall be from henceforth Jointenants of the rent.

Challenge.

64 It is no principale Challenge to a heriot, that he hath married the parties mother; if he be dead without issue; for the cause of favour is removed.

Entry.

65 If an Infant tenant in tale make a settlement in fee, and die, his issue may enter; but if after the settlement made he be attainted of felony, and death, the entry of the issue is taken away, for his entry is not lawful in respect of his estate onely, but of his blood also; which is corrupted; and therefore in that case he is within his Formemon.

Villain.

66 Si mulier ferra copulata su liber, &c. pars habebit hereditatem, & mater nullam domen, quia morno viro suo liber nov. redit in pristinum statum servit.
The Reason of

servitus, nisi heres ei domum fecerit de gratia. Co. Inst. Pl. 1, 123.

Co. Inst. pars 1
174. 1.
67 If one coparcener maketh settlement in fee, and after her sett-
fee is impleaded, and voucheth the deed, he may have side of her
Coparcener to besign of a warranty paramount; but never to recover
pro rata against her by force of the warrant in law upon the partition
so, by her alienation the usitas juris, that was betwixt them, is
severed, and the same dismissets her selfs to have any part of the land,
as coparcener; and as coparcener the must recover pro rata upon the warrant
in law, so not at all.

Co. Inst. pars 1
2. 1.
68 If an alien purchase lands, &c. upon an office found the King
shall have them, yet being a Merchant he may take an house, and
keep it so long as he useth commerce, and for that purpose; but when
he leaves so to do, dies, or departs the Realm, the King shall have
them.

Dyer 13, 61.
28 H. 8.
69 A man makes his executoros and enter into religion, and after
is resigned: If this case he shall have againe all his goods, which
his executoros have not spent; for, celante causa, &c.

Dyer 57, 61.
25 H. 8.
70 Celui who for term of life (since the Stat. of R. 3.) makes a
lease for the term of the life of the lessor, and dies: In this case, the
estate of the Lessor is determined, and he is (after the death of Celui
que ufe) only tenant at sufferance. The Lo, Zouch’s case.

20 Remoto impedimento emergit actio, & contra.

Co. Inst. pars 1
118. 2.
1. If the defendant plead an outlay, in the Plaintiff, in disability
of his person, and the Plaintiff after that plea pleaded, purchase a
charter of Pardon, because the charter hath restored him to the law,
the defendant shall answer: So note, the disability abateth not the
right, but disability the Plaintiff, until he obtained a charter of
Pardon.

Co. ibid. 133. b.
3. Excommunication may be pleaded in disability of the person: yet
if the defendant or Plaintiff purchase letters of absolution and new
them to the Court, he may have a re-summons or re-attachment upon
his original, according to the nature of his writ.

9 H. 7, 17.
Co. ibid. 138. b.
2. If a dissing make a gift in tale, and the donee hath issue and
dieoth selfed, now is the entry of the dissing taken away: but if the
issue die without issue, so as the estate fall which descended is spent,
the entry of the dissing is revived, and he may enter upon him in the
regress or remainder.

13 H. 4, 8 & 9.
33 H. 4, 5, b.
per. Nolle.
24 H. 6, 11, a.
per. Curiam.

Co. ibid.
3. If there be grandfather father and some dissiseth one and enke-
offseth the grandfather, who dieth selfed, and the land dissiseth to
the father, now is the entry of the dissiseth taken away, but if the
father dieth selfed, and the land dissiseth to the sonne; here, is the
entry of the dissiseth revived, and he may enter upon the sonne, who
shall take no advantage of the dissiseth, because he did the wrong unto
the dissiseth.

4. If a dissiseth make a Lease to an Infant for life, and he is dissis-
set and a descent cast, the Infant enters, the entry of the dissiseth is
lawful upon him.

Co. ibid. 445. b.
1. If the mulier entereth upon the Balkard, and the Balkard recove-
reth the land in an assize against the mulier, now is the interruption
avoided, and if the Balkard die selfed, this shall barre the mulier.

Lit. 1. 507.
& 408.

6. If I am dissiseth by an infant within age, who aliens to another
in fee, and the alienes die selfed, and the tenements descem, to his
heir, the Infant being still within age, here, my entry is taken a-
way.
way: but if the infant within age enter upon the heire, that is by
by descent (as he well may because the descent was eatt during his no-
age) then may I well enter upon the vellatior, because the infants
entry party vguated that descent.

7 If I be disfilled and the disfilet makes a testament in fee upon
condition, and the testment dies sealed of that estate: Here, I cannot
enter upon the heire of the testment: But if the condition be broken,
then the testment both therefor enter upon the heire: Now may I
well enter, because by the entry of the testment the descent was utterly
vulated.

8 If a man inherits take baron and they have a sune, and the
baron die, and the takes another baron, and the second baron lets
the land, that he hath in right of his wife, to another for terms of
his life, and after the sune dies; and then the tenant for life surrenders his
estate to the second baron: Littleton makes a Queere, whether the issue
of the sune may enter during the life of the tenant for life, but after
his death he holds it clear he may: and my Lord Cook proves it plainly,
that he may also enter upon the baron immediately after the sur-
render.

Co. ibid. 4. 4. Co. ibid. 4. 5.

9 A collateral warranty doth not give a right, but only binds the
right to long as the same continue: and therefore if the collateral
warranty be determined, removed, or defeated, the right is again
revived: as in this example, If tenant in tail hath made two sones; and
wicke the tite in fee, and the second sone relieves by his
will to the uncontinue, binding himself and his heires with warrant-
y, etc. and after the tenant in tail dies, and the second sone dies
without issue; here, the eldest sone is barred to have any recovery by
writ of Formedon, because the warranty of the second brother is collat-
eral with him, as much as he can by no means convey unto himself
(by wise of the entail) any descet by that brother, and there-
fore as to the eldest brother it is collateral warranty: But in
this case if thevoved brother his without issue, then may the younger
brother well have his writ de Formedon in defender, and shall recover
the land; because the warranty of the second brother is lineal to the
youngest sonne, or as much as he might have conveyed unto him-
selfe (by possibility) the estate by his second brother, in case he had
survived the eldest.

Co. ibid. 37. 38. Co. ibid. 37. 47.

10 If tenant in tail lets land to a man for term of his life, the re-
mainder to another: see, and a collateral warranty confirnes the
estate of the tenant for terms of life, and binds himselfe and his heirs
to warranty to the terms of the life of the tenant for life; and dies;
and the tenant in tail hath made two sons; in this case, the sone is bar-
red of his writ of Formedon during the life of the tenant for life; be
cause of this collateral warranty determined upon him; but after
the death of the tenant for life, the sone may have that writ, if he
please.

Co. 5. 76. 7. Page 92. 9. Ef. 9. 11. Ef. 1. 17. 6. See also
The Earl of
Bedford's case.

11 If tenant in tail lets land to a man for term of his life, the remain-
dier in the, and the tenant for life makes writ in the same, and after
he be the remainder for the vie, an action or suit is maintainable by
him in the remainder; see the writ made by the life of the tenant
for life; for it is obvious, where both the remainder for life (after
the tenant's decease, too) warranted his estate to him in the remainder
or reversion in the writ. For Remot Impediment.

12 If tenant in tail lets land in saeure makes Leases, not warrant-
ed by the Seators of 3 Hel. 3. 26. and dies, his heires under age
in this case, although the king in right of the heire may absolv
those Leases for his time; yet after the king's decease determined,
the
The Reason of

Co. ibid.

13 If a Bishop make a Lease, not warranted by the Statute (to be by a Bishop, that his successor may avoid it and dies) the King shall avoid the Lease during the vacancy of the Bishoprick; but after the Kings interest determines, if the successor accepts the rent, the Lease is made good again.

Co.1.8.71.b.4

14 Land is given to Baron and Feme and to the heirs of their two bodies, the Baron makes a settlement in fee, and having issue of the Feme dies, the Feme also before entry dies; here, the estate tail is discontinued, so that the issue cannot enter; but in this case if the Feme had entered and reconveyed the estate tail, then had the discontinuance been purged, and the estate tail had been thereby released in the Feme, and would have from her determined upon the issue, and to his entry has been conjugable.

Fiz.18.b,

15 A man shall not have execution against the Kings debt, that hath a Protection, because the King ought to be paid first; yet if the Plaintiff will undertake to pay the Kings debt, he shall have Judgment and execution for both the debts.

Co.1nfl. pars 1

16 If the husband alien his land, and then the wife is attainted of fornication, now is the husband; but if the be pardoned before the death of the husband, then is the again entitled to her wont of Dower.

Co. ibid.46.a.4

17 If tenant in fee take wife, and make a Lease for peace and estate, the issue is easement, the tail avoid the lease, but after her decease, the lease shall be in force again.

Co. ibid.13.2.3

18 Regularly; if the Lord sue against his villain a. Precipe quod reddat, &c. that is a manumission; yet if tenant in tail of a Squire, whereunto a villain is accessory, unless the recovery of the Squire and dower, the issue shall have a Formedon against the villain, and after the recovery of the Squire he shall seize the villain, and the bringing of the Formedon shall work no manumission; for that he could not seize him, till he had recovered the Squire, which was the principal; and at the time of the vest brought he was as villain.

Co. ibid.59.a.2

19 If land be held by Knight-service be given to an Abbot and his successors; albeit he holdeth the lands by Knight-service, and shall find a man conveniently arranged for the warre. &c. yet upon his death ward, marriage, or relive is due to the Lord; Provided, if the Abbot with the consent of his Covent allies the lands to a man and his heirs, there is then ward, marriage and relive revived.

Out. § 63.

20 If the baron be leived of land in right of his wife, and makes settlement in fee upon condition and die; if the lease be afterward broken upon the issue, the entry of the issue is conjugable upon the heir; because by the entry of the heir the discontinuance was defeated.

Co. ibid.174.a.4

21 If there be two Coparceners, and one of them makes settlement in fee of her part to a stranger with warranty, if the feeholder be afterwiser, he cannot have, side of the other Coparcener to deraign the warranty paramount, but he may touch the feeholder, and the map have side to deraign the warranty paramount: And yet if there be two Coparceners, and they make partition, and the one of the messeefees his share and heir apparent and die; in this case, if the somne be implicated, albeit he be in by the testament of his mother, yet shall he pay in side of the other Coparcener to have the warranty paramount; for upon the descent the warranty between the mother and the sone is by law annulled, and then he is in the same condition, as if the tenements had descended upon him.

22 Vide
23. If the gift be to his own children, vide M. 28, 39, &c. &c.

24. If there be a grand-father, father, and son, and the father disfavors the grand-father, and makes a settlement in fee, the grandfather with the father against his own settlement shall not enter, but if he die his sons shall enter; for remote impediment, &c.

Co. ibid. 265, &c.

25. A. was disposed for felony, and B. of the residuary of A. A. El. isoues himself, and is outlawed, was taken, and put himself upon the Inquest was found guilty, whereupon B. was attained and hung, and the Lord entered as in his escheate, and after A. came and released the outlawry, and pleading to the felony was found not guilty, and was acquitted, whereupon the heir brings a Mandancier against the Lord, he escheat, who comes and themes all this matter, unto which it was agreed in Law, whereupon it was awarded, that the heir of B. should recover fields of the land, for if B. had been alive, he should have gone quit by the acquittal of A, because he could not be a Recover of a felon, when A. was not so: Any remote impediment, &c. Vide plus ubi supra.

21. Things are construed according to this, which was the cause thereof: Vide 31. 9.

26. A man may have an estate, for life determinable at will; as if the King both grant an estate to one at will, and also grant a rent to him for the exercise of his office for terms of life, this is determinable upon the determination of the office, which occasions the grant of the rent, 19. 59.
5 If a man make a Lease for three of a Shilling this cannot be done without deed, neither can the Lessee assign it over without deed, because it derives out of a Freedom that is in Grant, which indeed is the material cause of the grant: but a Warrandship is an original chattel (during the minority) without out of a freedom, and therefore as the Law createth without deed, so may it also be assigned over without deed.

6 Upon a judgment in debt, the Plaintiff shall not have speculati on, but only of that land, which the defendant had at the time of the judgment; because the action was brought in respect of the person, and not in respect of the land: But if an action of debt be brought against the heirs, and he is seized, hanged the debt; yet shall the land, which he had at the time of the Original purchased, be charged: for that the action was brought against the heir in respect of the land.

7 If a man be not told, the land itself, which he had at the time of the amerciament alleged, shall be charged, and not that, which he had at the finding of the pledges; for the amerciament is not in respect of the land, but for his want of profession, which was a defect in his person: But the fines of a Juror shall be levied upon his Estates; albeit they were not lost before the Testament; because he was returned and he was in respect of the land.

8 A tenure of the King in Capite, is said to be a tenure of the King, 'as of his Crown, that is, as he is King.' And therefore if one holdeth land of a common person in gross as of his person, and not of any maner, etc. and this Regentio be granted to the King (pea, though it be by attainder of treason) he holdeth of the person of the King, but not in Capite; because the original tenure was not created by the King. Vide infra M. 25, ca. 10.

9 If the cause of challenge alleged by the Plaintiff against the Sheriff be partiality to either party, any processe shall be once awarded for such partiality, though there be a new Sheriff, yet processe shall never be awarded to him, but to the Comoners; and therefore in that case the entry is, 'In quod vicecomes se non introxitat: But if the cause of Challenge be, for that the Sheriff was tenant to either party, or the like, in that case the processe shall be directed to the new Sheriff, and not to the Comoners.'

10 If the Lord come to distrain cattle, which he shall then within his lie: and the tenant or any other to prevent the Lord to distrain, drives the cattle out of the Lord's lie, into some other place not within his lie; yet may the Lord himself follow and distrain the cattle, and the tenant cannot make recovery: But if the Lord comming to distrain has no view of the cattle within his lie, though the tenant driveth them off purposely, or if the cattle of themselves after the view goe out of the lie, or if the tenant after the view remove them for any other cause, then to prevent the Lord of his distrain then cannot the Lord distrain them out of his lie: and if he doth the tenant may make rebellion.

11 If there be three Componers, and they make partition, and one of them grant 10s. per annum out of her part, to her two sisters and their heirs for estate of partition; the grantees are not joint tenants of this rent, but the rent is in nature of coparcenary, and after the death of the one grantee the moiety of the rent shall descend to her live in course of coparcenary, and not survive to the other; so if the rent both come in recompence of the land, and therefore shall enuise the nature thereof; if the grant had been made to them two of a rent of 20s. viz. to the one 10s. to the other 10s. yet that they have the rent
rent in suite of coparcenary, and shall also join in action for the
same. Co. I. 5. 6. 2. Cales of Leases. Justice Wingham
cases.

12 If two Coparceners by deed intestated alien both their parts to
another lease, retiring to them two and there being a rent out of
the land; in this case, they shall not be joint-tenants of that rent, but
shall have in course of coparcenary; because their right in the land,
out of which the rent is derived, was in coparcenary.

13 If two tenants in Common by diltile, each of them shall
have a separate estate for his moiety because they claim and are tendered
by several titles; but if 20 joint-tenants be divided, they shall have
but one, and in all their names; because they have but one joint
title.

14 If there be three joint-tenants, and one released to one of his
companions all his parts, and after the other two are divided
of the whole; In this case, the two others shall have one moiety to
their names (as) the two parts; because at the time of the division
they held them by a joint title; but as to the other third part, he
to whom the release was made, ought to have a separate estate
in his own name; because that part he is tenant in common and
had title to it by some of the relations, and not only by force of his
Jointure.

Coparceners.

15 If two Coparceners have laid each of them a name, and the
same before partition are divided: in this case they shall join
an Action; for, although they claim by several titles in respect of the
several-separate from their mothers, yet in as much as the land
entirely descends from their grandparents to their mothers, they are
in law accompanied in possession, and their possession (in
particular) is vested, but with them; and consequently they have
but one Name.

Tenants in common.

16 In real and mist cases, no joint-tenants in common shall join in action,
because they have several interests, and claim by several titles;
but they shall have actions personal, jointly in all their names, as an
action of trespass, of assault on the existence of their names,
and in this case also the existence takes place; because these
actions are found in the personality, and not in the reality; and the
trespass and damage done unto them (which indeed is the cause of the
action) is joint; and therefore ought to be jointly prosecuted, and
shall also, jointly survive; and the same Rule is to Coper
are.

Mortgage.

17 If the lessee in mortgage before the hire-payment, which
should be made unto him, make his executors and/or; and his heirs
enters into the land as he ought to. It is in this case that the
order ought to pay the money on the pay appoints to the executors,
and not in the heir of the lessee; because the money rests in the
lessee, in the nature of a duty, and shall be insolvable,
that the estate was made by reason of the coming of the
money by the lessee, in respect of some other party.

Amuse mans.

18 In criminal cases, as shooting at the answer of a man
man shall not be imposed to him; but in these cases, A. is not
in fact, the heir of the lessee, and he is said to be A. the lessee.
Plowd. 151, 152. Therefore, his malice being the cause thereof, any
not his intention, he is execrable. C. L. 4. 124, 125. Beverley's Cases.

Laws, and

19 Likewise, that if a man having title to enter into lands,
does not do it for the sake of beating, passionate, or beating; then
he ought to appear before the land, as he was, to make his claim;
and in this case every claim or fear is not entitled; for it must con

...
The Reason of

Mack. 2.

cerele the duty of his position, or of his bringing his goods, or of taking away or keeping his goods, are not sufficient causes to make him forbear to make his entry or claim upon the land, unless he has received the same against, or (at least) damages to the tenant at his own and upon the tenant's part. And here also, though the tenant do not believe the period, yet it must not be a true state, but must, in this respect, be a sufficient cause to be attended by reason of the owner's act, as if the whole party be in that in the law with respect.

Kant. 346.

Discontinuance of an estate.

21. Whereas this is said upon that upon a recovery was by default in an action of Want against a tenant in Dower or by the court's or other default, because it is not the cause of the judgment; for the defendant and the tenant there goeth for a writ to enquire de mortis his; and in that state, the tenant that no writ was done; as in an assize, albeit it be awarded by default, yet may the tenant give evidence; and the Recognizors of the Heirs may and be the tenant. And therefore, in these of the like cases, the tenant or defendant non amitit per deedium, (as the intenutus dicit), having the F.N.B. in the point: Evertitale others within the contrary; because albeit in the suit of want judgment is not given upon the default, yet the default is the principal, and the cause of awarding the writ to enquire of the want; as in an assize the rather; and the Law always hath respect to the main and principal cause of a thing, from whence it takes the first rise and going.

Joly-tenants, and tenants in common.

L. 5. 652.

22. Whereas Joly-tenants to Coparceners have one and the same remedy: if the one enter, the other shall enter also; but where the remedies be several, there it is otherwise; As if two Joly-tenants to Coparceners house in a real action, where their entry is not lawful, and the one is summoned and sworn, and the other perjury and recovered the duty; the other Joly-tenant to Coparcener shall enter and take the said duty, etc.; because their remedy was one; and the same law where the Coparceners, and they are not, and a tenant is not, and they have the said duty; the other shall not enter with her, because their remedies were severable; and yet when both have recovered, they are Coparceners again: So if two Joly-tenants of Hans (the son of full age: the other under age) be dispossessed, etc. And the whole house lasts much longer than enter, the one of the Joly-tenants being infinitely young, and after that he comes to full age the heir of the dispossessed tills the lands to the same Joly-tenants for their two years: His (the tenant's, of the duty to him within age, because his entry was sufficient; and the other Joly-tenant hath an estate by life in the house many by force of the lease, because his entry was taken by possession on the said lease in Lecener sect. 496. F. A. and B. Joly-tenants
the Common Law

23. If A. de B. be killed on an Assize, and P. de G. stirs into the same house, clapping it to him and his heirs, and which a testament thereof with warranty to certain distressed in the Country to be maintainable by them; by reason whether A. de B. were not laid in the house, but goes out; this is warranty that begins by will; because that testament was the cause why A. de B. left the possession of the same house.

24. If a subject make a gift in tail, the remainder to the King in fee; Albert the fourth of the Stature of 35 H. 8, cap. 29, he (whereof the remainder or remainder, at the time of such recovery had, shall be in the King; sc. petting the estate, the estate may be barred by a Common recovery; so likewise it Prince H. some of H. 7, had made a gift in tail the remainder to H. 7, in fee, which remainders by the death of H. 7, had descended to H. 8. So as he had the remainder by descent; yet in this case, if a Common recovery would have barred the estate, it.

25. Popham Chief Justice said, it was adjudged in Sande his case, that no time now due to the Lord's estate upon another, without admittance: For the admittance is the cause of the fine, and it after the tenant to pay it, that is a forfeiture. Now if it was also resolved by Wray and Periam, and in a case before Sir Nicholas Bacon and Hatman.

26. If a Clerk be presented to a Bishop to be admitted to a Bishops, and he refuse him in presence of insufficiency or other reasons; in place, the Bishop ought to allay some particular crime of; cause why he did not admit him; and not generally, quid pro idoneus, quod ei committendus, obtrusus, inveteratus, or the like; For although he belong not to the Bishop's Court to determine actions of heretics; yet the original cause of the suit being matter, whereas the Bishop's Court, by reason of the cause of the heretics, for which the petitioner is related, ought to be allayed in certain, to the intent that the Bishop's Court may confute with churches, to know whether it be the crime of no, and if the party be dead, it thereupon the party, which is so, in.

27. If a man to follow the other goods into the Court; and if they be brought by the plaintiffs, he called a tenant by common right, in case of, or where the defendant, and hence before, that the tenant was the cause of the right; so if the goods of any land be followed, only by reason of this, without more, thence may have such goods to be settled by prescription; as he may have tried, whereby, forfeiture, that, but in such wise as bona fide were not followed, until the right be lawfully proved upon search, and because things settled by matter of record cannot be claimed by prescription, which is a matter in suit; for this cause, they cannot be acquired by prescription.

28. Deodands are the goods, which cause the death of the party.
46

The Reason of

Matt. 7:3

Deodands not

forthright by

prescription in

England.

Trial of a w

done in Fr.

Co. ibid. 110.

b.4

M. 30, & 31.
El.
Co l.6,47,b.
Dowdall cafe.
Co.infr. pars. 1

s65,b.

Co.7,6,24.
Caluin's cafe.

Co.17,15,3.
Laurence, tcle.
Co.1,25,4.
Butler's cafe.

written by subscription, and are not forset, until it be found upon

coad, that they wore the marks of his death, and therefore they cannot

be taken by prescription no more than born fugitivum, for which

Vide supra.

29. In an action upon the case upon Allum, the Plaintiff

counts, that the defendant, after he had a

week, that such a Ship should fail

from Melcombe Regis, put in Abilv: in France lately without violence, &c.

and that the Ship being afterwards was arrested by the King of

France, upon the Kings of some within the Kings of France, &c.

And this was joined whether the Ship was so arrested or not,

now Chief Justice in London, it was found for the Plaint.

and in arrest of judgement it was moved, that this ship arising

merly from a place, which was out of the Realm, could not be

tried, and that if it might be tried in England, the trial should be by

a Jury taken out of Melcombe, because by common intention they might

be better acquainted with the same. But it was resolved, that,

though it be true, that where the contract and the performance there-

of are both of them done to be done beyond seas, there will want tri-

al in our Laws; yet in this case the Allum, which is the ground and

original cause of the action, being made at London, the trial thereof

must be there also. The like case was adjudged in P. 38.

El. betwixt Hugh Gynge Plaintiff, and Evangelist Constantine Defen-

30. It is neither Grum nor Solum, but Ligantia and Obedience, that

makes the subject bound, for enemies should come into the Realm,

and possess a town or fort, and have there that title is not sub-

ject to the King of England; although he be born upon his foes, and

under his subordination, because he was not born under the ligantia of

a subiect, nor under the protection of the King, &c. And therefore when

S'-piano, Ferrara de Guerra, and Emanuel Lewis Timoco, two Portugals

born, coming into England under Eu. El. false connex, and liv-

ing here under her protection, joined with Dona Lopez in treason

within this Realm against her Person; In that case two points

were resolved; 1 That their insubordination ought to begin, that they

intend to treason contra Dominam Reginam, &c. omitting that lawful

(natural Dominam) and ought to conclude contra ligantia sue de-

bition. But it is an alien enemy come to invade this Realm, and be

taken in warre, he cannot be indicted of treason; for the insubordination

cannot conclude contra ligantia sue debition, because he never was in

the Kings Protection, not neither did any manner of ligantia unto

him but military only, &c. And therefore such an alien enemy shall

be put to death by the Law of Nature. But, as it was in the case of Perkin

Warbeck, Anno 15 ii. 7. who by the opinion of the Judges was to

be executed by Partial Law, which was done accordingly.

32. Albert, Sire E. James tooke upon him the Crown of England,

a Politian in Scotland (fay of his paternity) be the heir of A House

of Scotland, and by his birth legitimated in England, to that

he may inherit Laurens, was, &c. a natural born subject; yet he is

none of the Persons of Nobility of England; For his natural ligantia

and obedience was by the Law of Nature, made him a subiect and

an alien within England: But that subjection maketh him not noble

within England; because Nobility had its original by the Kings

Creation, and not of nature.

29 Vide 3 El. 2. Lit. Mile. 446. In debt is a man count of a lease

for premises in one County; of land in another County, he ought to bring

his action in the County where the Lease was made, and not where

the laundes, for the contract made by the Lords is the ground of 

caute of the action.
The action is bad, where the cause begins.

V. and a
of right of
ward, to be
brought in
where the
land lies.

If a Lease be made in one County, and the land lies in another, the action of waste shall be brought where the land lies, and not where the Lease was made, although the tenure be past; for the land and damages, or damages only for the waste, which is local, shall be recovered; and are the ground and cause of the suit. So also in all actions real, if any issue arise upon the land, or in any action, in which the possession of the land, or a thing local, or that which arose upon the land by reason thereof, is to be recovered, all these shall be brought in the County where the land lies; As in a suit of right of ward of land, or a suit of intimation of ward, they shall be brought in the County where the land lies, although the refusal or the settling be in another County; Likewise in a suit of right of ward of the body only, that shall be brought in the County where the land lies; so it is in the right and disadvantages of the land: But the suit of Rerishment of ward shall be brought where the Rerishment was, and not where the land is, or where the cause is carried; for that action is founded upon the Rerishment, &c. 35 H. 6. 14. 22 R. 2. Bac. 937. & 11 Eliz. Dyer, 289.

If the Common of the Town of A. and of the Town of B. are adjacent, and ought to have common promised the one with the other because of viciosity, and within the Town of A. there are fifty acres of Common, and in the Town of B. 100 acres of Common; In this case the Inhabitants of the Town of A. cannot put more cattle into their Common of 50 acres than it will well keep without any respect at all to the Common within the Town of B. necessario; for the original cause of this condition by reason of discomfort was not for profit but to prevent suits in Champion Countries for the reciprocal escapes of the one Town into the other.

In all cases when an interest or estate commences upon a Condition precedent, be the Condition or Act to be performed by the Plaintiff or Defendant in any other, or be the condition in the affirmative of the negative; there the Plaintiff ought to shew it in his Count, and overcome the performance of it; for there the interest or estate commences in him by the performance of the Condition, and is not in him till the Condition be performed; but it is otherwise when the interest or estate partly presently and works in the grantee, and is to be defeated by matter ex post facto, on Condition subsequent, be the Condition or Act to be performed by the Plaintiff or Defendant in any other, and be the Condition in the affirmative of the negative; there the Plaintiff may count generally without showing the performance of it; and it shall be pleaded by him that will take advantage of the Condition or matter ex post facto; for every one ought to allowance that which makes for him, and is for his advantage, but none that be compelled to prove that which makes against him. Vide infra 27. 10.

The Lord of a Copyhold Manor, within which the Copyholders might by custom lay the timber trees for cutters and necessary repairs
pate of fences, &c., makes a race thereof to A. for 21 years, excepting the timber trees: A Tophold tenant having lands upon which such timber grew, surrenders his estate to another, who was admitted by A. the Lease of the Pannage, and lets the trees for necessary repair of fences: How the question was, whether the Tophold tenant being admitted by A. who had no interest in the trees by reason of the exception, had power to let them, because Nemo poecil plus juris ad alium transerit, quain ipsis habet: And it was resolved that he might lawfully let them, because the state of a Topholder is not derived out of the estate of interest of the Lord of the Pannage (for the Lord is but as it were an Instrument to confer the grant of the Tophold) but the Custome of the Pannage (after the grant is made) is that, which established and makes it irre to the General: So that although the grant be irrevocable, yet the title of the Topholder to the profit of the trees is ancient, and so ancient, that by force of the Custome it exceeds the memory of man. Vide Co. 4. 27 b. Taverners cafe, &c., Vide 30. 23. 13.

38 Gore (the husband of Agnes) being sick, Roper the father of Agnes procures an Election of Martin the Apothecary by the advice of Doctor Grey into which Agnes secretly puts Rat's-bane to poison her husband, and the 18 of May gives part thereof to her husband, who thereupon became very sick. Roper also and another eating part thereof became very sick; at last Martin (being taken for making the Election in that manuer) the 21 of May去世, and also eats part thereof, and dies the next day: And it was resolved by all the Juges of England that this was murder in Agnes, and that this case did not differ from Sanders cafe in the Commentaries, although Martin by stirring it made the poison more efficace; for the stirring, &c., without putting in the poison could not be the cause of his death; and the Law joynes the murderous intention of Agnes in putting the poison into the Election to kill her husband with the event, which inferred thereupon, viz., the death of Martin; for the putting in of the poison to be the cause, and the poisoning and death of Martin was the event, Quia evenus eii qui ex causa sequatur, & dicuntur evenus, quia e caussa evenum. So if A. puts poison into wine with an intention to kill B. and C., conception to be lager, Ferreis it, drinks it, and dies, this is murder in A. It is otherwise where Rat's-bane is laid with an intention to kill rats, and one takes it; eats it and dies; for there was no dangerous intention.

40 Upon grant of a Pannage; attornment of an infant (being tenant of the same Pannage) is good, and in a Per quod servita against an infant, that hath the tenancy by descent, he shall not have his age, because at sic the Lord departed with the land in consideration that the tenant should have of him, performe services, pay a yearly rent, &c., and the tenant is in law taken tenant parvaliae, because the Law presumes that he hath benefit and ability above the services which he doth, and the rent which he pays to the Lord. And therefore it is against the reason and purpose of the creation of the tenance, that, when the heir hath the tenancy parvaliae by descent, he should not pay the annual rent, &c., which was reserved upon the Creation of the tenancy: And this is the reason, that the heir of the tenant, who hath the tenancy by descent, may be disfranchised for the rent, &c., arising during the minority, and that not therefore have his age, &c., An infant that do his service, &c.,

Trespass for common, &c.,

Col. 421.

a Brownes cafe.

Col. 9. 31.

Agnes Gore cafe.

Mowd 474.

Col. 9. 13. 2.

Conyers cafe.

Col. 19. 113. 2.

Maryes cafe.
sufficient per tosum idem tempus amissit; &c. So that if the trespasser be so little that he hath not any loss, but that still sufficient remains to for him to depaupert his cattle: In that case the Common Law shall not take the Strangers Cattle damage taken, neither that he have any action for it: but the tenant of the soil may in that case have an action. Do if a servant be beaten, the Master shall not have an action for that battery, except that by reason thereof he lost his servants service; but the servant for every slight battery may have an action; and the cause of this diversity is, for that the Master received no damage by the personal battery of his servant, but by reason of a per quod, & per quod servitium, &c. amissit; So that the original Act is not the cause of his action, but the consequent upon it, viz. the loss of his service; and the same reason holds in the case of a Common Law, as above said.

42. Quando diverdi desiderantur actus ad aliquem tantum perticientem, plus resipic lectionum origine, quia cujusque rei possitima pars et principium: And therefore if A. possess of a Lease for the term of 500 years, for the remainder to C. and the heirs of his body, and makes B. his executor, and dies, and after B. is possess of the Lease, C. relieves to B. all his right in the terms; In this case, although it was observed, that the release was void, because C. at the time of the release, had no estate in him, but only a possibility, the whole estate and terms of years being in B. so that after the death of B. C. might enter upon the Lease again without knowing the release; yet it was resolved, that C. by that release had extinguished all his right and title in the term, and had lost it in B. because the devise by A. and the assign of B. the executor (appearing by his acceptance of the release) for the original and fundamental cause of the interest of C. and the estate of B. in a but a means to bring the Lease in possession, and gives nothing at all; for that the whole interest accrues by the devise, and is executed by the assign of the executor, and therefore C. had not only a possibility, but like wise such an interest as might well be rejected &c. But in that case a grant to C. by a Stranger had been void.

43. Every Statute, Ordinance, and Provision, which is to be made by force of the Commission of Devisers ought to consist of 4 causes.
1. The Material cause, which is the substance. 2. The Formal cause, and that is the manner with convenient circumstance. 3. The Efficient cause, and that is their authority according to their Commission. 4. The Final cause, and that is pro bono publico, & nunquam pro privato.
The consideration whereof will be as to many Sea-marks to direct the Commissioners how to erect in the execution of their charge, and how to over the liberty which is given them by the Statute of 23 H. 8. 5. viz. to make such Ordinances, &c, according to their own wifedomes and discretions, &c. which words are meant and ought to be interpreted, according to Law and Justice; For every Judge or Commissioner ought to have two grains quidem, viz. unus lapidem, nec sit iniquitas, & alenum conscientiam, nec sit diabolus; An discretion is well described to be, secre per legem quid sit iustitum.

44. In a Diet, a line of 6 li. put upon all the Jurors jointly, by the Diet (because they would not present a thing, which by the omne of the same) they ought to present) is not only imposed, but ought to have been assessed upon them severally; so that the cause, which occasioned the line, is federal; because the refusal of each of them is federal and personal, and the refusal of one is not the refusal of another; and therefore if some of them refused, and the rest received to present, only those that refused are to be fined, &c.

45. In a man takes beats damage infant, and the other offers intelligence,
The Reason of

Max. 21.

cient annuums, and he restored, ec. Here it is a relieving, ec. for the Heirs, he shall recover damages only for the demise of
them, and not for their taking; for that the cause of taking them was
lawful.

Fitz. 79.b.

45 The Peace ought not be granted against any without good cause;
and therefore by the ancient courts of the Law the party complain-
ing used to make oath before a Master of the Chancery, that he was
in fear, of some corporal damage, and did not take that oath for
malice against his adversary: the like ought to be observed by the Ju-
lices of the Kings-Bench, and of Peace.

Fitz. 95.d.

46 If a man winne another's money with False Dice, he that is de-
ceived may have an action of Decet against the party to recovering:
And in this case although the Defendant do not entice the Plaintiff
to play, yet it is evident he may well maintain that action against the
Defendant; because the excitation to play at dice, is not the cause of
the action, but the casing of the false dice, by which he wonne the
money, ec.

Fitz. 104.1.

47 If a man acknowledge a Statute Staple, or Statute Merchant
by dures, ec. he may have an Audience quarels to avoid it, because the im-
prisonment was the cause thereof.

Plowd. 19.2.

48 If a man by dures be compelled to seal a bond, he shall avow
it: So if a man's arm be dazled by compulsion, and by that oc-
casion the weapon in his hand kills another, that is not felony:
Likewise if an infant under the years of discretion, or a man de-
non sane memory, kill a man, they shall be excused, because their
ignorance, and not any wicked intention was the cause there-
of.


49 If one retain another to serve a year for 20 l. wages; here, if the
servant demand the 20 l. he ought to show that the time is past,
viz. that the years is expired, and he ought to plead certain, because
his action is given in respect of the year past, and of a thing done in
time, and the time is parcel of the cause of the demand, and precises
the demand.

Plowd. 98.1.

50 An Oliver's case in the Commentaries, those that stood by and as-
serted the Murders, were as well principals, as those that killed
him; because the number of them them present, and ready to strike
him, shall be adjudged the cause of his terror, and of the abatement
of his courage, and an occasion to make him desist and defending
himself, and by consequent that terror was the cause of receiving
his wounds, and the wounding the cause of his death.

Plowd. 98.1.

51 Amongst the matters of the Crown in the Commentaries, others
persons having a malicious intention to murder Doctor kills, killed
his servant unto whom they bare no former malice; yet was it ad-
judged Murder, because of their murderous intention, which was
the cause of his death; it is otherwise when one having no malicious
intent, joins himself with others, that commit a murder, for that is but
Han-daughter in him, that is suddeynly joynes with them,


52 A man makes me swear to bring him money to such a place:
oe else he will kill me, I bring it accordingly, this is felony. So
if he make me swear to surrender my estate unto him, and I so do
afterwards, this is a withain to me.

14 Ali. Pl. 10.

53 Due imprisonment till be content to make an Obligation at an-
other place; and afterwards he doth, being at Large; yet he shall
avoid it by dures of imprisonment.

Finch 10.

54 Outlawry in trespass is not forfeiture of land, as Outlawry
of felony is; for although the not appearing be the cause of Outlaw-

3 E. 3. 84.

10 Finch 10.

The like.

Outlawry in
trespass in for-
feiture.
A man and a tenant have a viltein, and afterwards enter memes, and the vilteine purchased land, they shall not have the land by entities, but by moties joyntly or in Common, as they had the viltein.

If one boltier goes to another, and after the Bolti; releaseth to the Boltie all actions, the Boltie dies, in a writ of Detinue brought against his executor, they shall not take advantage of that release; for that determineth by the death of the Boltie, and the action given against the executors is a new action (although of the same nature) grounded upon their own determiner.

A rent charge be granted to A. and B. and their heites, A. dieth, the Boltie of the Grantor, who sueth a Replevin, A. as ownereth for himself and maketh Complaince for B. A. dieth and B. surdeth, Here B. shall not afterwards have a writ of Annuity, for the election and assotur for the rent of A. barret B. of any election to make it an annuity, albeit he attenteth not to the assotur; because in that case the act of one join-tenant barreteth the other, and the election takes his rise from several causes, viz. the land or the person; and therefore when the election once being upon the land, it cannot afterwards charge the person: It is otherwise when a man may have election to have several remedies for a thing, that is merely personal or merely real from the beginning: As if a man may have an action of accomp, or an action of debt at his pleasure, and he bringseth in an action of accomp, and appears to it, and after is non-lute, yet may be have an action of debt afterwards because both actions charge the person: The like Law is of an Allie, or of a writ of Entry in the nature of an Allie, and the like.

In an action of accomp against a receipt upon a receipt of money by the hand of another person for accomp render (unless it be by the hands of his wife or Commoigne) the defendant shall not wage his law; because the receipt is the ground of the action, which yet not in privity between the Plaintiff and Defendant, but in the notice of a third person, and such a receipt is not traversable: But in an action of debt upon an arbitration, and in an action of Detinue by the bailment of another's hand, the Defendant shall wage his Law, because the Debtor and the Detinue is the ground of those actions, and the contract of bailment, though it be by another hand, is but the conveyance and not traversable.

Land is given to a man and his wife and the heites of their two bodites, and they have made a daughter, the wife dies, the husband takes another wife and hath this another daughter, and discontinueth the tail, and after discontinueth the discontinueth, and so dies tiseth; Here, the land shall descend to both the daughters; but yet they are not Coparceners because they are in by several Titles, viz. the eldest is remitted by force of the intail to the one moiety, and the other hath for simple by force of the descent from her father: but in this case, the eldest shall be the youngest by her action of Formedon.

If the heir of the part of the mother of land, whereunto a warranty is annexed, is impleaded and toucheth, and judgement is given against him, and for him to recover in value, and death before execution, the heir of the part of the mother shall sue execution to have in value against the toucher; for the effect ought to pursue the cause, and the recommence shall entice the loss.
The Reason of

Demands upon the land.

61 He that will take advantage of a re-entry for non payment of rent, must make demand of the same upon the land; because the land is the principal debtor; for the rent dueeth out of the land, and in an Assize for the rent the land shall be put in view; and if the land be viscid by a title paramount, the rent is abated, and after such abatement, the person of the Feoffee shall not be charged therewith; for the person of the Feoffor was only charged with the rent in respect of the grant out of the land, &c. Hovewer Homage, or any other special coposita service, must be done to the person of the Lord, and the tenant ought by the Law of convenience to seek him, to whom the services is to be done, in any place within England; for that and the like services are due and issue out of the land in respect of the person, &c.

F.N.B. 150d.

62 If a man recover in value against the baron by warranty of the ancestor, yet the same of the baron shall be endorsed, because the recovery was had by force of the warranty made, and not by reason of any signum title to the land.

Dyer 13.6.1.

63 If land be given in Frank-marriage, and after the Dowries are dissolved, the part by whom the cause of the Divorce was first moved, shall lose the land; as if the same were for it, the baron shall have it, &c contra. Tamen quere; for one book faith, that the land shall be divided between them, per Fitzherbert.

F.N.B. 211. p.

64 If a man be convinced in trepasso of debt upon an obligation, (where he denies his deed) at the suit of the partie, and after he is condemned is taken by Capias pro fine at the suit of the King, and committed to the Gaoler; here, if the Gaoler suffer him to escape, the party shall have an action of debt against the Gaoler for this condemnation, and yet he was not committed to him at his suit, but at the suit of the King: Hovewer, within the year after the condemnation and judgement given, this suit for the King shall serve as well for the party as for the King, because the King was entitled to it by the party for his suit and judgement was the cause of the Kings fine:

It is otherwise after the year, because it will be intended they are a

and then the party is put to his Seire facias, &c.

F.N.B. 245. d. 3.

65 If a Bastard eicne after the decease of the father enthrall, and the King falsify the land for some contempt supposed to be committed by the Bastard, and the Bastard dies, and his Fine is upon his petition referred to the possession, for that the forfeiture was without cause: In this case, the Mulier is barred for ever; for the possession of the King, when he hath no cause of forfeiture, shall be adjudged the possession of him, for whose cause he forfeited: But if after the death of the father the Mulier be found here and within age, and the King seizeth; In that case, the possession of the King is in right of the Mulier, and seizeth the actual possession in the Mulier, for that he was the cause, that occasioned the forfeiture, and consequently the Bastard eicne is in such case foreclosed of any right for ever: So it is likewise, when the King seizeth for a contempt or other offence of the father or any other ancestor; for in that case also, if the issue of the Bastard eicne upon a petition he referres; for that the forfeiture was without cause, the Mulier is not barred, for the Bastard could never enter, and consequently could gain no estate in the land, but the possession of the King shall be adjudged in the right of the Mulier, and the rather for that the father or other ancestor of the Mulier was the cause of the forfeiture.

Dyer 101. 3. 20.

66 If the King grant land by Charter probo hominibus ville de H- lington, reserving rent; this is a good and perpetual Corporation for that intent, but if the King release to give them the rent and se-forre, it

Kings Charter.
it lernes the Corporation is ipso facto dissolved, for the rent and farme were the cause of their incorporation.

22. Cujus est dare ejus est disponere.

1. A. bargains and sells the Mannors of D. (unto which an Ad\ 2.2. prius was appoynted) with the appurtenances unto B. and his heirs, provided always, that B. resign the Ab\ 2.1. povution to A. during his life; B. dies, not having resigned the Ab\ 2.0. povution to A. who enters for the Condition broken: Here, whereas it was amongst o\ 1. ther things objected, that this Proviso could not import a Condition, be\ 1. cause the Bargains both covenants with the Bargainor, \ 1. 1. and therefore the Bargains should also be understood only to Covenant \ 1. with the Bargainor; and so that Proviso alone to import a Covenant \ 1. and not a Condition: It was resolved, that it had the force of a Condition, \ 1. because it was not unjust or unequal; that the Bargainor, from whom the land moved, should answer what Condition sooner he pleased to the estate of the land; so Cujus est dare, &c.

2. If a man feysted of lands in fee makes settlement to the use of \ 2. such person and persons, and for such estate and estates, as he shall appoynt by his will; here, by operation of Law the use rests in the sc\ 2. scribe; and he is held of a qualified size, viz. until declaration and limitation be made according to his power; so also when a man makes settlement to the use of his heir will, he is in the mean time feysted to the use of himselfe and his heirs.

3. Legiania naturalis may be properly laid to be true & indefinite, \ 3. but Legiania acquista, may be limited according to the will of the \ 3. King that grants it, as to an alien and his heirs; or to him and his \ 3. heirs of his body; or to him for life only, or upon Condition, &c. for \ 3. Cujus est dare, &c.

4. If A. grants lands to B. for life, the remainder to C. for life, and \ 4. if C. die, living B. then they shall remain to D. for life: here, \ 4. although it was objected, that the remainder to D. was done, be\ 4. cause limited to commence upon a Condition, whereas none can take advantage but parties; yet it was assajnged good; For that God hath committed all worldly things to the order and dispose of men; So that when any both lawfully enjoy such things, he may order or command, or give them where, when, and how he pleasing according to his intention and meaning, so that his intent be not against Law, ag\ 4. gainst Reason, or repugnant: And therefore in this case when the Re\ 4. ntent appoints the remainder to the Defendant in a suit, his intent is plainly discovered thereby, and reason requires that his intent should be performed, viz. that the remainder should take effect in manner and form as he hath appointed.

5. If there be Lord, and Tenant, and the Lord holds by a Capon, \ 5. or an Egg, or 12 d. rent, Here the Lord shall not come to the land \ 5. and take a Capon, or Egg, or 12 d. being surier, although he find \ 5. it there, but the only remedy is to distrain for it; Howbeit in that \ 5. case if the Tenant have 20 Capons, 20 Eggs, or 205, or Silver, it \ 5. is in the power of the Tenant to give the Lord which Capon, Egg, \ 5. or twelve pence he pleasing: So that the liberty is not given to the \ 5. Lord to take, which of them he will; but to the Tenant, who is to pay \ 5. the thing.

6. The Leese covenants, that the Leese shall have sufficient Hogs\ 6. but, &c. by the assignment of the Leeses Bulldge: Here, it was \ 6. taken (by Baldwin and Fitzherbert) that the Leese might take such hogs
The Reason of Max. 23.

boots by the Common Law, and therefore that he might take them without assignment, because it is no more than what the Law gives the Leases privilege to do: but Shelley contra, because being in the Leases power to grant the leases upon what terms he pleased, the Lease shall be bound by it, albeit the covenant be in the Affirmative and only on the Leases part; and not in the Negative (by way of Covenant of Proviso) on the Leases part: For Modus & covenant vinctum legem, and the Leases accepted of the Leases upon those terms. Quere.

The uses of a fine or recovery may be declared by Incumbence or otherwise, as well after as before such fine or recovery; so to in Arthur Basset's case 3 4. P. M. the uses of a Recovery were by the Incumbences declared four years after the Recovery, and held good as

23 Ultra posse non est esse, & Vice Versa. A right or remainder after an entail no; after.

In the Earl of Bedford's case in the 7 Report, when movables
Leaves, being void for a time, shall be always abode, and when
not, this diversity was taken and resolved by the Court; viz, when the
interest of him, that makes the abasement, is but for part of the
terms; So that it appears there remains yet a residue, and when
he, that makes the abasement, abides all the interest, so that it
appears no residue can remain: As in the principal case there, which
was to this effect. Tenant in Tail of lands in Caprice makes Leases not
warranted by the Statute of 32 H. 8. 38. and dies, his heir under
age; Here, the King in right of the heir may avoid those Leases dur-
ing his time only; so, after the interest is determined, the heir
may make them good again by acceptance of the rent: So it is also
of a Subject, that is Guardian in Chivalry; Also if a Bishop since
the Statute of 32 El. let movables Leases and wie, the King during the
vacancy may avoid them; but the Successor may make them good
again by acceptance of the rent: But if the Patron of the Church
of D. grant the next avoidance to another, and after and before the
Statute of 32 El. the Patron, Patron and Ordinary make a Lease
for years renewing rent, and the Patron dies, the Chancellor presents
his Clerk, who is admitted, instituted and induced, and dies; this
lease was absolutely abode and could not stand good against the second
successor, etc.

If a man having land in which there is a Cole mine (not open)
lets the same to another for term of life of yeares, if the Lease
grant unto another all his interest in the land cum omnibus profic. &c.
(except & temper reservat, sibi & hereditibus suis tota benefic. et profic. Miner.

An exception

of great tim-

ber, Mines, &c.

void.
Max. 24. the Common Law.

Angi. Cole mine s prædiæ, parcel terræ ac omnibus arboribus Marcelli, &c. This exception is void, for by the exception of the positio of the Mine or of the Mine it is forfe the land is not excepted, and then (by consequent) he hath excepted that, which he cannot have or take: As if a man assigne over his terme, except the Timber-trees growing upon the land, or the marble, or the clay within the ground, this is void; for he cannot except a thing, which both not by Law belong unto him.

Where no in- us, no carry

4 If the Baron within age make testament in fee of his Mines land, and dies, his heire shall not enter to abode this testament, because nothing descended unto him from the Baron; so the Law both doth not respect what estate the Ancestor granted, but what estate he had before the grant, and what right or title the Ancestor left to descend to the heire: And therefore if a infant being tenant in taille make testament in fee, and die without issue, his collateral heire cannot enter to abode that testament; for although by his testament he granted the simple, yet, when he died without issue, nothing descended to the heire, in respect of which he might enter: So also if lands be given to one and the heires female of his body, and he hath issue a sonne, and makes testament in fee, and dies within age without issue female, the sonne shall not enter for the tail infancy, because no right in that case descended unto him: So likewise if an infant be tenant pur anter vie, and make testament in fee, Celtey que vie, vie, neither the infant nor his heire shall ever enter upon the seffes, but he in the reversion of remainder, &c.

Discontinu- ance.

5 An estate taille cannot be discontinued, but where he, that made the discontinuance, was once teizes by force of the taille (except it be by reason of warranty, &c.) according to the Rule in Philosophy, Omn- privato predioponi habiunm: for he cannot discontinue that, which he never had. Neither can a person discontinue the fee simple of his Patronage; because the issue it and right thereof was never in him.

Remainder of

6 If I grant a rent out of my land, the remainder in fee, this remain- er is void, because the rent was newly created by the grant, and not in effe before. In Colh. and Bivillhams case.

I cot. ex- tis.

7 A man makes a Lease for terme of life, and afterwards the Leesor makes a Lease of the same land for 20 years, rending rent, the terme to begin after the death of Leesa for life; afterwards Leesa for life grants his estate to the Leesor, who during the life of the tenant for life makes testament to a stranger in fee, who besides his recovery, and Leesa for life dies, and for the rent abatement was made by the recoverers, and the question was whether or not the rent was exting by the testament, and the better opinion limes to be, that it was not exting, because it was not in effe at the time of the testament made.

Abbo, &c.dis- chaim, barre to
the successor.

8 If an Abbot, Prio, Bishop, or other sole Corporation levie a Fine of acknowledge the Action in a Praecipe quod redact, the Successor shall be bound pro tempore, but he may have a Writ of Right, and recover the land: Howbeit in a Quo warranto at the suit of the King against an Abbot, Bishop, or, &c. for Franchises and Liberties, if the Abbo, &c. disclaims in them, this shall bind the Successor; So the wife of an Abbot, &c. acknowledge the Action in a Writ of Amity, this also shall bind the Successor, because he cannot take it in an higher Action, Vide supra M. r. case 4.

24 Nemo
Nemo potest plus juris ad alium transferre quam ipse habet.

The Reason of

Max. 24.

1 These words which are commonly put into releases, viz. (quoquis modo in futuro habere potest) are as void in Law; for no right passeth by a release but the right, which the released hath at the time of the release made; and therefore if there be father and sonne, and the father be released, and the sonne living (the father) released by his own to the disfellow all his right, which he hath or may have in the same tenements, without clause of Warrenty, &c. and after the father dieth, &c. The sonne may lawfully enter upon the possession of the disfellow; because he had no right at all at the time of the release made, all the right being then in the father; and therefore in this case after the decease of the father, the sonne may enter into the land against his own release; for, Nemo potest plus juris, &c.

2 If Tenant in Fee simple being disfellowed by two releases to one of his disfellows, he to whom the release is made hath but his Company; because the right of the disfellow, and the estate gained by the disfellow are of equal extent; viz. both in Fee simple: but if Tenant for life be disfellowed by two; and he release to one of them, this shall enure to them both; because Tenant for life by his release can but convey unto them his own estate: and by consequent he, to whom the release is made, hath a longer estate than he that released, and therefore such a release cannot enure to him alone, but hold out his companion; for then shall the release averse by way of entry or grant of his estate, and consequently the disfellow, to whom the release is made, should become Tenant for life and the reversion vested in the Leese, which change of estates in this case the Law will not suffer.

3 If two Join tenants in Fee simple be disfellowed by two, and one of the disfellows released to one of the disfellows all his right, he shall not hold out his companion; because he had but power to release a moiety.

4 If the Comitee of a fine before any attornment, be not indentured and inclosed, bargainated and settled the Seigniory to another; here the Bargaine shall not distriene, because the Bargaine could not do it.

5 If there be Lord and Tenant, and the Tenant make a Lease to a man for term of his life, saving the reversion to himselfe, and the Lord grant the Seigniory to the Tenant for life in fee, amie in the reversion attorne, as he ought, &c. In this case, some think, that the Tenant for life cannot grant the Seigniory over, because he took it suspended, and it was never in fee in him: but if the tenant make a Lease for life for 2 or 3 years to the Lord, there the Lord may grant it over, because the Seigniory was in fee in him, and the Fee simple of the Seigniory was not suspended; but if the Lord disfellow the Tenant, so the Tenant enforces the Lord upon Condition, there the whole estate in the Seigniory is suspended; and therefore in that case he cannot during the Grant over his Seigniory.

6 If Tenant in tail let this land to another for yeares; and after grants the reversion to a third person in fee, and the Tenant for yeares attornys to the Grantee, and the term is expired during the life of the Tenant in tail, whereupon the Grantee enters, and after the Tenant in tail hath lived and des; In this case, this grant
grant of the reversion makes no discontinuance, notwithstanding the
grant is executed in the life of the Tenant in tail; because at the time of the Lease made for terms of years, no new
fee simple was reverter in the Lease, but only the reversion of the
estate tail remained in him, in like sort as it did before the Lease
made.

If there be two Topn-tenants, and the one is of full age and the
other within age, and both they make a feoffment in fee, and he of
full age dies, the tenant shall not enter into the whole, but
shall enter or have a dem es futurum securum for the moiety only; because
no more could pass from him by the feoffment.

If an estray happen within the Manor of the wife, if the husband
before his decease, the wife upon his decease shall have it and not the
executors, because the property could not be in the husband before decease,
and therefore the executors could devise to themselves no title in it from the husband.

The heir not bound to warranty.

The heir shall never be bound to any express warranty, but
where the Ancestor was bound by the same warranty; for if the An-
cessor were not bound, it cannot descend upon the heir; and there-
fore if Tenant in tail feoffed of divisible lands, alien them in fee to
his brother, who afterwards divided the same lands to another with
warranty against him and his heires, and dies without issue; this
warranty shall not bece the heir in tail of his Formedon; because
this warranty did not descend to the issue in tail, for that the Uncle
of the issue in tail, was not himselfe bound to the warranty in his
life time, neither yet could he warrant the Lams in his life
size, in as much as the devise could not take effect till after his
death: Am now because the Uncle in his lifetime was not bound to
warranty, such warranty cannot descend from him to the issue in
tail, se. For nothing can descend from an Ancestor to his heir;
but that, which was first in the Ancestor: So likewise if a man
make feoffment in fee, and bind his heires to Warranty, this is
des, as to the heir; because the Ancestor himself was not bound, se;

Ye in the remaine in tail bargain and sells his land, and all his
estate, se. by adventure inrolled, se. to I. S. and his heirs male, se. to
have and hold for the life of the tenant in tail the remainder to Queen
Eliz. se. Here, the remainder to the Queen is void; for when he in the
remainder hath granted all his estate to I. S. he cannot limit any farther
remainder of it to the Queen; because a remainder is but a remain-
estate of the estate of the Grantor, and the Queen cannot have any such rem-
main of estate, when he had granted away all his estate before to I. S. And therefore
was agreed Hill. 35. El. in Blytheman's cafe, that if

tenant remaine in tail in consideration of catherly love covenant by Diana to
Paim feoffed to the use of himselfe for his owne life, and after his death
to the use of his eldest sonne in tail, and after this Covenant, the
Covenantor takes some and dies, in this case, the same shall be
en-dowed; for when tenant in tail hath limited the use to himselfe for
his own life, he cannot limit any remainder over, because an es-
estate for his own life is as long, as he himselfe can limit by the Law,
and therefore the limitation of the remainder is void, and by consequent
the Deover good, se;

The Baton feoffed to the use of himselfe and his wife for life,
and the heires of the body of the Baron dies; the issue in the life of the
same, then Tenant of the Frank-tenement (lost to the pleining
was) which shall be intemed by bishop, to no surrender of core-
ture was alienated. 4 H. 8. suffers a common recovery with single
bouche by agreement, that the recounfees shall antgoffe Lister and
others.
others to divers uses, and that the seim Hall relate to them with
Warranty, which was done accordingly: 11 H. 8. the seim dies, af-
ter that the seim vies, and afterwards the seim in the third degree en-
ters; The question was, whether the collateral warranty shall bind
for the recovery came not in question, because by the pleading it shall
be intendeit, that the seim was tessed by another Male then the intalle,
and to the Angel voucher not material) or whether the warranty shall be
annexed void by the Statute of 11 H. 7. 20. And in this case it was
resolved, that the warranty shall bind the Dem scant; and was not
void by that Statute; because when the seim issue, by the common
recovery (had against him by his own agreement) had disabled himselfe
to take benefit of the forfeiture given by the Statute, after his death
another issue claiming from him shall not take benefit of it; for if the
Ancestor, being in esse at the time of the forfeiture, could not enter,
much leas than any person, which was not in renum natura, nor
had the immediate interest, title, or inheritance at the time of the
forfeiture, ever enter or take benefit of that Act: And although there
were error in the recovery, yet the Warranty of the seim Hall barre
the seim issue of his writ of Error, because by his own act he had bar-
red himselfe of the entry, which the Statute prescribath; and the like
in effect was annadjed in Sir Geo. Brownes case, where the seim in tali
in the life of his mother, having the reversion in fee, leaveth a seim
without proclamations; for there the issue against his own issue could
not enter, although it was erroneous.

A release by
bail not good.

A release not
good.

Payment of
rent by a ter-
ner no feesin.
after the death of his wife, who in the mean time was to have the
occupation of it during her life, paying unto M. M. 7 l. per annum, and
he makes his wife his executrix and dies, the wife administrators, en-
ters, and pays the rent: Here, the payment of the rent by the exec-
utrix was sufficient attaint to the legacy, and then the having given
her assent to the first devise, it lay not in her power to barre him,
that was to have the future devise; so he could not transferre more
to another, then she had her selfe; because after that (by her assent)
he had executed the second devise, the could not afterwards other-
wise dispose of it to discharge other Legacies, Debts, or the like.

17 If A. possess of a term for 500 yeares devised it to B. to like
the remainder to C. and the heires of his body; in this case: C. du-
ring the life of B. cannot grant the remainder to another; because
the whole term is in B. and C. hath but an executory interest,
depending upon a possibility, viz. enjoy it after the death of B. But
here, (B. being executrix) a release of his interest to him is good. Vi-
de supra 21. 41.

18 If the Comitse of a Statute or Recognisance release to the
Tercenier all his right in the land; yet he shall sue execution;
because at the time of the release made he had no interest in the land;
so that the body is the Debtor, and not the land, but in respect of the
land, and the land is not charged with the debt before execution
was; So likewise a release of the fortune to the lessee of the father
in the life of the father, is utterly void; because the fortune hath no right
at all in the life of his father. Vide supra 1.

19 If two Jorn-tenants are (by Littleton) sued to be sold per my
& per tour, per can they not singly dispose of more, then the part, that
belongs unto them, as to enforce, give, or demeire, or to forfeit of
lots by default in a Precipe: So likewise if my volein and another
purchase lands to them two and their heires, I can but enter into the
moity; And where all the Jorn-tenants join in a foalment, every of
them in Judgment of Law both give but his respective part: So
if an Alien and a Subject purchase lands jointly, the King upon office
found shall have but a moity.

20 If two Jorn-tenants make a foalment in fee upon Comitision,
and doe to bishep thereof one of them shall enter into the whole, yet
he shall enter but into a moity, because no more in judgement of
law passed from him; And so it is also of a gift in tail, or a Lease
for life, 5c. Likewise, if two Jorn-tenants make a foalment in fee,
and one of the Feoffors dies, the Feoffor cannot plead a foalment from
the Survive of the whole; because each of them gave but his
part.

21 If a man grant a rent charge arising out of his land to another
for terms of his life, and after he confirms his estate in the said rent,
to hate and to hold to him in fee tails 03 in fee simple; this confir-
mation is void, as to enlarge his estate; because he, that confirme, had
not any reversion in the rent.

22 If the Parson of a Church charge the Glebe by his use, and
after the Patron and Ordinary confirms the same grant, in this case,
if the Patron be Tenant in fee simple, the grant is good: but if he
be both the Abodower only for life or in tailse, then shall the grant
stand no longer in force, than for his life, and the life of the Parson,
that granted it; And in this case if the Bishop be Patron, he cannot con-
sume alone, but the Deane and Chapter must confirm also; for
the Abodower or Patronage is parcel of the possession of the Bishop,
6c.
24 If the Donor in tail discontinue in se, and the Donor release to the Discontinuee and die, and after the issue in tail die, then recover the land against the Discontinuee; in this case, the issue in tail shall leave the reversion in the Discontinuee; for the issue in tail can recover but the estate tail one step, which descended unto him from his Father, and the Donor cannot have the reversion again against his own grant, and therefore (by consequent) it shall be left in the Discontinuee, &c.

25 If an Alien cometh into England and hath issue two sons, these two sons are indigenous Subjects borne; because they are borne within the Realm: howbeit, if one of them purchase lands in se, and marry without issue, his brother shall not be his heir; for there was never any inheritable blood between the father and them, and where the issue can by no possibility be heir to the father, the one of them shall not be heir to the other: and therefore some have held, that if a man, after he be attainted of treason, or felony, have issue two sons, that the one of them cannot be heir to the other; because they could not be heir to the father, for that they never had any inheritable blood in them, &c.

26 If Lessee for life make a Deed of solvency, and a Letter of Attorney to the Lessor to make Liberty, and the Lessor makes Liberty accordingly, notwithstanding the Lessor shall enter for the solvency, because the Lessor for life had a Freeholdment in him; whereas, on the Liberty might work; but if Lessee for yeares makes a solvency in se; and a Letter of Attorney to the Lessor to make Liberty, and he make Liberty accordingly, this Liberty shall bind the Lessor, and shall not be avoided by him; for the Lessor cannot (in this case) make Liberty as Attorney to the Lessee, because the Lessee had no Freehold, whereof to make Liberty, but all the Freehold was in the Lessor.

27 A man sellith of devisable land before the Statute of Uses, makes a Lease for yeares renting rent, and deviseth that rent to a Stranger and his issue, and the Stranger is lessee of the rent and dies; in this case, the executors, are not the heiress of the deviser, but have the rent; because the rent was but a chattel in the deviser.

28 If there be Lessee and Lessee, and the Lessor sells all his trees growing in such a close; here, nothing passeth to the Lessee; for albeit the Lessor had a general property in them, yet the special property thereof is in the Lessee; because the wood and trees are parcel of the Lease, who shall by force of his Lease have the packs and fruit thereof, as also the branches, and leppings for fuel and mending of fences: and therefore if the Lessor sell trees without the licence of will of the Lessor, a good action of trespass against the Lessee against him: so likewise in 5 H. 4. 39. the heir in Chivalry being in ward, sells trees in the land in ward, and the Guardian brings trespass against him; and he pleads the special matter in bars, sed non allocutum per curiam, &c.
the Common Law.

25 Things are confirmed according to that, which was the beginning of them. Vide Max. 63. 21.

1 Tenants after possibility of issue extinte; although upon the matter he be but a Tenant for life, yet hath he 8 privileges incident to his estate, which the Law abovesaid to a bare Tenant for life; in respect of the inheritance, which was once in him, which privileges you may see, Co. Inst. part 1. 128. a. 2.

2 If a woman Tenant in tail general taketh an husband and bath issue, which issue bith, and the wife bith also without any other issue; there, albeit the estate in tail be determined, yet shall the husband be Tenant by the Courtelle; because he was intitled to be Tenant per Legem Anglie at first (upon having the issue) before the estate in tail was spent. And although in this case the estate be not confinniate until the death of the wife, yet it hath such a beginning after issue had in the life of the wife, as is respected in Law for divers purposes; for after issue be shall do homage alone, and is become Tenant to the Lord, and the Award shall be made upon the husband in the life of the wife; 2 after issue 2 the husband maketh a seident in fee, and the wife bith, the seident shall hold it during the life of the husband, and the heirs of the wife shall not during his life recover it in a suit in vie; for it could not be a fosility; because the estate, at the time of the seident, was an estate of tenancy by the Courtelle, and not confinniate: And it is anguaged in 29 E. 3. that the Tenant by the Courtelle cannot claim by a Devise, and waive the estate of his tenancy by the Courtelle, because (faith the Book) the Feofoal commenced in him before the Devises for term of his life.

3 When the King makes Voyage Royal into Scotland to subdue the Scots, the Law accomplisheth the beginning of the forty days to be after the King arrieth into the foraigne Nation, for then the Warr be begitten; and till he come there, he and his host are lain to go towards the Warrs, and no military service is to be done, till the King and his host come thither.

4 If one hath land of a common person in gross as of his person, and not of any Hamon, &c. and this heiniently eleedeth to the King (yes, though it be by attainer of Regalion) he be burcheth of the person of the King, but not in Capiei; because the original tenure was not created by the King. 3 E. 3. B. tenures 94. 30 H. 8. 43. 38 H. 8. B. 575. 46.

5 In case of Coparceners, sometimes the descent is in Stirpes, viz. to Stocks and Kins, and sometimes in Capia, to Heads; As if a man hath issue two daughters and bith; this descent is in Capia, viz. that each daughter shall inherit alike, as Linelton faith, sect. 341. But if a man hath issue two daughters, and the eldest daughter hath issue this daughters, and the youngest but one daughter; at these four shall inherit, but the daughter of the youngest shall have as much as the three daughters of the eldest, Rationes Stirpiium, in respect of thei mothers estate, from which theirs tok beginning, and not Ration Capium; for in judgment of Law every daughter hath a seident Stock to Rot. So if a man hath issue two daughters, and the eldest daughter hath issue issue sisters sons and sisters daughters, and the youngest hath issue issue daughters, the eldest sons of the eldest daughter shall only inherit, and all the daughters of the youngest; for this also is not in Capia, but in Stirpes; and in this case the eldest son is Coparcener.
6 The Lands in Frank-mariage to be put into Hotchpot, and the Lands in Fe simple subj'd be sold, ought to move from one and the same person: so if they moved from several Ancestors; they cannot be put into Hotchpot; for,

7 If Lands be given to a man and a woman and their heirs before marriage, the husband and wife have motives between them; but if it be after marriage, each of them taketh the whole; And therefore in this last case, if the husband be attained of Creason, or falsely away the land, after her husband's death, she shall recover the whole; as it fell out in the case of William Ocle, who was attained for murdering, E. 2. Finch. 41.

8 In a Mortgage the agreement precedent ought to guide the payment subsequent, and therefore in case the feoffee die, and it is agreed between the feodors and the executor of the feoffee, that at the day and place the whole sum shall be paid, and that afterwars some part thereof shall be restored; this is no performance of the Condition; for hereby the state shall not be devolved out of the heir, which is a third person; without a true and effectual payment, and not by a Mock and colour of payment. Co. l. 5, 96. Goodale's case.

9 Littleton's faith, that a descent, which happens upon the disabilities entering into Religion, shall not take away the entry of the heir: yet his entry into Religion is not the cause of the descent, but his possession; so as he enters into Religion, yet before he be proconf. no descent can happen. But in this case the Law both respect the original act, and that is his entry into Religion, which was his own act, and whereupon the profession followed, by which profession the descent happened; for, Cuijusque rei potissima pars, principium est, And againe, Origio dei impedit debet; and therefore Littleton attributeth the cause of the descent rather to the disabilities entering into Religion, which was the first act to procure a descent, than to his profession, which followed thereupon.

10 To prevent the barring of an estate tate, when the reversion is in the King, according to the Stat. 35 H. 8. 19. It is necessary that the estate shall be created by a King, and not by any Subject, albeit the King be his heir to the reversion: And therefore if the Duke of Lancaster had made a gift in tail, and the reversion descended to the King, yet was not that estate restrained by that Statute, and so of the like, Co. l. 5, 15, 16, in Wifemans case, Vide 21. 8.

11 If a servant (departed out of his Master's service) kill his Master upon a maleit that he bare him, whilst he was his servant, it is petty Creason, Finch 10.

12 A creates a Shop upon the Kings Frechold, the King grants the land to B. in fee. A, before entry or seizure of the Shop by the Kings Patentee, contineth the possession and worth felled: This is no descent to toll the Patentee entry; For by his first creating of the Shop he could gains nothing against the King, Finch 11.

13 It was laid in Bingham's case in the 2 Report, that when divers accidents are requisite to the consummation of a thing, the Law in many cases respects rather the beginning and original cause, then any thing else. As in 6 E. 3. 41. if a man present to another man Church in the time of wars, and thereupon the presence is admitted, instituted, and sustained in time of peace; Here, the Law gives such
the Common Law.

In this regard to the original, viz. the presentation, that all which follows thereupon, although it be done in time of peace, shall be avoided: Am upon the same reason was Shelley's case adjudged in the 1 Report fol. 106.

4 If land be given to Baron and Feme, and to the heirs of these two bodies engerged, and the Baron alone suffers a common recovery, this shall not bind the estate taken; And albeit in this case the Baron, which suffers the recovery inherits the Feme, that is not material; for the Law will adjudge upon the case, as it was at the time of the recovery.

5 If land be given to a man and his heirs to hold by socage during his life, and after his death to hold by Knight-service; Here shall be no ward, because the tenant by Knight-service begins in the common, and the Father during his life holds by socage: And in convert, if lands be given to a man and his heirs to hold by Knight-service during life, and after his death in socage; Here likewise shall be no ward, because immediately upon the death of the tenant, the Knight-service determines; and then also the tenure in socage begins in the common.

6 If the common purchased land, and lotted the same to his father for term of peace, the father enfeoffes another in fee, and binds himselfe and his heirs to warranty, the father dies, by which the warranty descends to the land; and warranty shall not barre the common from his estate; or recovery by will, because this warranty begins by will, that if the father of any other ancestor be tenant at will, by Custode, by tenure separata, or Security, and make testament with warranty as adventurer, or such warranty shall not barre, because it begins by will, or testamentary.

7 The beginning of common appentant by the ancient Law was in this manner; when the Lord of a Barony did enfeoffe a man of arable land to hold of him in socage, viz. per servitum Soce (as every such tenure, as Littleton hath, was) the feoffe or manum- nendum servitum Soce, was to have Common in the Lords feudal for such necessary mouths, as were to plow and compile his land; and therefore such Common appentant was of common right, and begins by operation of Law, and in favor of tillage; so that none need prescribe in it: as it is held in 4 H. 6. and 22 H. 6. as a man should, if it were against common right. And this is the reason, that it be usuall appentant to ancient arable land, Hide and Gaire, and many other Holtes, Dren, Cotres, and Sheep, whereas the first two tend to till the land, the other to compasse it: And therefore it is against the nature of such Common to be appentant to Sheadow or Pasture, and if a man will prescribe to have Common belonging to a Holte, Meadow and Pasture, this cannot be Common appentant, but appenteant; unless he having Common appentant belonging to land, hath of late time a peradventure built an house upon it, and converted it to Sheadow and Pasture for his convenience, and the better advancement of tillage, which was the original cause of the Common. For in this case the Common remains appentant, and it shall be intended in respect of the continual usage of the Common in such manner, that at the beginning all was arable; but in passing he ought to prescribe to have it appentant to the land, &c.
The Reason of

The Baronets of Montague in her widow-hood retains one Cartmel to be her Chaplain, according to the Stat...
was not such dower before in the Garland of the Crown; here, by the
acception of them againe to the Crown, they are not extint, nor
the apperance of them ferred from the possessions: As it is "A faire,
Market, Planting, Lot, Parks, Warren, or the like: are apperant to
Spannors, or in gross; and after they come againe to the
King, they remaine (as they were before) in use not laboured in the
Crown; for at first they were created, and newly created by the
King, and were not in use before, time and usage hasting made them
apperant: And this diversitie was agreed per tumam Curnum, 11 H. 4.
5. 15 E. 4. 7. 4 E. 3. 42. 10. H. 7. 21.

22 When an ancient grant is general, obscure, or ambiguous, it
shall not be now interpreted, as a Charter made at this day; but it
shall be construed, as the law was taken at the time, when
such ancient Charter was made, and according to the ancient al-
lowance upon record, 33 Hen. 6. 22. 10 Hen. 7. 13. & 14. 16 Hen. 7. 9.
12 Hen. 4. 12. 14 Hen. 6. 12. 33 Hen. 5. 54. 9 Hen. 7. 11. 6 E. 3. 54
& 55. 7 E. 3. 49. & 41. 18 E. 3; Confoence. 39. 34. Aff. 14. 40. Aff.
21.

Coparener

23 If there be two Coparceners, and the one disiceth the other,
and the Disiceth bringeth an Action, or if the one Coparener recover
against the other in a Nuper obit; 02 a rationalib parle, it hath been fals
by some, that the Judgement shall be, that the Demandant shall recov
and hold in seueralty: but Britton is to the contrary; for he faith,
E t afcuns des parceners fut enger ou duftuve de sefinde per fems autres parc-
cners; Un ou plusors, 02 diflfi viadua affile per seuerale pleynite fur les parc-
cners, & recovers; Mes veny a tener en severaly, mes en comune, felor
ceo que evant le fit; E tf deux parceners ou plusors foyier diffisies per les au-
tres parceners, cchefon parcener avera sa affile en sevarale, & recourect
a tene en comune, & tout iufit terra juge on tout otros breifs de posfession
ento parceners, &c. And this is certey reasonable; for the must have her
Judgement according to her plaiut, and that was of a moity, and
not of any thing in severalty, and the Sheriffs cannot have any
Warrant to make any partition in severalty; 02 by petes; 02
Warrant.

24 If one Zon-tenant or Tenant in Common disiceth another, and
the Disiceth bring his Affile for the moity; in this case, though the
Plaintiff payeth it, yet no Judgement shall be given to hold in se-
veralty; for then at the Common Law (before the Statutes of 31 H. 3.
cap. r. and 32 H. 8. cap. 32. by which they are compellable to make
partition) there might be been by compulsion of Law a partition
between Zon-tenants and Tenants in Common; but that could not
be; because by the Rule of Law the Plaints must have Judgement
according to his plaint and demand, which was of a moity, and not
of any thing in severalty.

25 If a man make a testiment in is upon Condition that the Feoffe
before such a day shall re-entendee the Feoff, and the Feoffe take
wife, entered into Religion and is Ieoff, 02 make testiment in is, in
all these cases the Feoff may enter presently before the day,
year, albeit before the day the wife we, the Feoffe be perained 02
take back the estate; for in all these cases that disability in the Feoffe
gives to the Feoffe present advantage of re-entry; for the Feoffe
being once disabled is ever disabled: Howbeit, it is otherwise in the
case of the Feoffe; for if a man make a testiment in is upon Con-
dition, that if the Feoffe or his heirs pay a summe of money be-
fore such a day, and the Feoffe commits Breach, is attainted, and
executed, now is there a disability on the part of the Feoffe, for he
 hath no heire, but if the heires be restored before the day, he may per-

Feoff, Feoff,

Feoff,

Feoff,

Feoff,
The Reason of

26. A derived power cannot be greater than that, from which it is derived. Derivata potestas non potest esse major primitiva.

Co. Inst. par. 1
162 b. 4.

1 If there be Lord and Tenant, and the rent is behind, and the Lord grant away his Seigniory and die, the executors shall have no remedy for these arrearages; because the Seignior himself had no remedy for them, when he died in respect of his grant; and the words of the Statute of 32 H. 8. 37. (which gives remedy for the recovery of arrearages of rent) are these (in like manner as the Teller might or ought to have done.) Et sic de finibus.

Co. ibid. 164 a.
4.

2 If a man hath issue two daughters, and the eldest hath issue three daughters, and the youngest only one daughter; here, all these shall inherit, but the three daughters of the eldest shall have no more, than the daughter of the youngest, viz. a moiety; because they can enjoy no more, than the woman to have, through whom they claim, and that is but a moiety. Et sic supra 25. 5.

Lit. I. § 435.

3 The Attorney of one that is distessed cannot make claim out from the land, if the Seignior himselfe hath gone to the land. Finch 11.

Lit. § 582.
Co. ibid. 311 b.
1.
Sir Moyle Fincher case.
Co. 66 b. 3.

4 If there be Lord and Tenant, and the Lord grants his Seigniory by fine to another in fee; here, without attornment nothing pleaseth; And therefore in this case if the Comtie die before attornment, his heir shall not have it; for the heir shall not be in any better estate, than his Ancestor was, from whom he derives his title; So also it is, if the Comtie of a fine before attornment bargain and sell the Seigniory by Dato inventis and consent, the Bargainer shall not, disfrain; because the Bargainer, from whom the Seigniory moved never assaum possession.

28 Ass. Pl. 4.

5 The Bailiff of a Dillethen shall not lay, that the Plaintiff never had any thing in the land; for the Painter himselfe shall not have that plea; because he is not Tenant of the Fre-hold. Finch 11.

2 E. 4. 16.

6 The servant shall not stop to lay, the Fre-hold is his Painter, by recovery against his Painter, though the servant himselfe be a stranger to it; for he shall not be in better condition than he, in whose right he claimeth. Finch 11.

7 A.
7 A. is Tenant in tail, remainder to B. in tail, B. grants a rent charge. A. sues a common recovery, and dies without issue; here, the Grants of the rent shall not have it, because he cannot satisfy the recovery, being suffered by one that could not be chargeable with the rent; so if B. in the remainder cannot do it, may lose the Grant that claims under B.

8 If a man by Covin dissole the Discontinue of Tenant in tail with an intent to enforse the time in tail, being within age, although the Infant was not conscious of the Covin: yet shall he not be remitted; because the Infant, that is in by him, who acted the Covin, shall be in the same plight with him, that performed the covenant act.

9 Gulleth hath to estalisheth and fixed the estate of the Copiholder, that by the levence of the Inheritance of the Copihold from the Namor, the estate it selfe is not destroy: For, in as much as the Lord him selfe cannot out the Copiholder, much leste shall he, that claims under do it.

10 If the sonne be Lord and the father Tenant by certaine rent, the rent is arrear, the Tenant dies and the tenancie descend to the sonne; in this case if the sonne also dies, the executors of the sonne shall not have an action of debt for the arrearages incurred in the sonne's life; because the sonne himselfe by no possibility could have such an action: for that the tenure was altogether in the real, and the Tenant could not be charged in any personal action for those arrearages.

11 If A. hath rent service of rent charge in fee, of for life, and the rent is arrear, and after A. grants the rent to another, and the Tenant attorns; and after A. dies: if in this case, the executors of A. shall not recover the arrearages by force of the Statute of 32 H. 8. cap. 27. For by the grant, the over arrearages were lost, and were not due to the Testator at the time of his death, and the Statute saith, the executors shall recover them, as in as large and ample manner as the said Testator might or ought to have recovered them, &c.

12 A. remeth a leafe to B. for years, wherein there is a Cole Spine not openes; here, if B. open the Spine, it is void; and therefor if after the Spine is open B. assigne his terme to C. and C. taketh the benefit of the Spine, C. also committed mock, albeit the Spine was open before; so Deriva poetales non poecet elle major primativa.

13 If a Leafe for life 97 years he made remyng rent, &c. and after the reversion is granted to B. by fine, and before attomation B. relinqueth 97 out of the Leafe, and enforces C. the Leafe re-enters, this shall not amount to an attomation in Law, to make pialty to C. and so, to enable him to vestraine for rent; so he shall not be in better estate than his Fevse; but it is otherwise, if the Leafe has appositle attomation to the Fevse, Co. I. 6. 68. Sir Moile Finches cafe.

14 If a Feme seid of lands duramce viduicite, make a Leafe for 97 years, and the Leafe is for the rent, and afterwards the Feme, that made the Leafe, takes Baron; here, the Leafe shall not have the graine; for although his estate be determined by the act of a stranger, yet he shall not be in better estate than his Leafe, from whom he derives his interest.

15 If Tenant in tail cannot renew the estate tails longer than the estate tails

16 If Tenant in tail make a Leafe for lives according to the Statute of 33 Hen. 8. 28. and after die without issue, this Leafe being voided out of the estate tail, shall not continue longer than the estate tail (against the opinion in Dies, 33 Hen. 8. fol. 48.)
The Reason of

68

For, Cessante flau primitivo cesser & derivatus.

16 The Ordinary hath not power to give authority to another to sell the goods of the said; because he himself hath not any such authority. 9 El. Dyer 255. Co. 1. q. 39. a. Henfield's case.

17 A Copiholder may surrender by Attorney; but then that Attorney must pursue the manner and form of the surrender in all points according to the Custom, as the Copiholder himselfe ought to do; as if the surrender ought to be done by the two, or by any other thing of in any other manner, the Attorney ought to observe it accordingly: for his power shall not exceed the power of the Copiholder; that gives him his authority.

18 In the 11 Report, one reason why the grant of the Monopoly of making Cards to Edward Darece was adjudged void, because he had no skill to make them; and therefore, albeit the grant referred to his Deputies, and that he might appoint Deputies, which might be expert; yet if the Grantee himselfe was expert, and to the grant void as to him, he shall not make any Deputy to supply his place; because, Quod per me non possit, nec per alium.

27 Things are dissolved, as they be contracted. Unumquodque difficiitum eo modo, quo constitutum est: Nihil tam convenientius naturali aequitati, unumquodque dissolvit eo ligamine quo ligatum est.

1 Bracton saith, that words original (both formed and of course), which are extant in the Register, had this great authority by Act of Parliament, and therefore without an Act of Parliament they cannot be altered or changed, which is proved by Wilm. 2. cap. 24. whereby remedie is provided in many cases. Bracton's words are these, 'Sunt quae dam brevia formata in suis calibus; & quaedam de curis, quae consilio torum regni sunt approbata, quae quidem mutari non possunt, atque cuncta dom contra voluntate, &c. Co. 1. 48. a. John Webbes case.

2 If after a Protection is allowed, the Defendant in the Court, not going to the Service, for which he was retained, above a convenient time after he had the Protection, or otherwise require from the same Service, upon Information thereof to the Lord Chanceller, he shall repeat the Protection in that case by another Innoticium, but a Protection shall not be avoided by a bare attenuation of the party in that case; because the recio of the Protection must be avowed by matter of a high nature.

3 If a man maketh a testament in the 3d Life ad scendiendo, 02 ca intemine, 02 ad effusum, 02 ad proprium, that the Wills shall do, 02 shall not do such an act, none of these words make the estate of the land conditional: for in Judgment of Law they are words of Condition to make an estate of inheritance of Freethode desisible, which took effect by Lawy (except it be in the Kings case), or in the case of a will; But if a Lease for yeares be made with such a clause, 02 thus, Quod non heret, to the Lessor, darevendere, vel concedere tamum & ubi peram forisضرب, this submits to make the Lease for yeares desisible, and to turn it into charge in Queen Elizabeth's time in the Court of Co. A. and the reason of the Court was, That a Lease for yeares was but a contract, which may begin by word, and may be void by word of disolution.

4 If a man make a gift in tail of a Lease, for the upon Composition, that if the Donee or Letter goeth not to Rome before such a day the Gift 02; Lease shall cease 02 be void, the Grantor of the reversion shall never Where one estate shall cease upon condition, & where not.
never take advantage of this Condition, because the estate cannot
create before an entry; but if the Lease had been but 10 years; then
the Grantee might have taken advantage of the like Condition; be-
cause the lease for 10 years ipso facto by the breach of the Condition
without any entry was void; for a Lease for 10 years may begin with-
out Ceremony, and so may end without Ceremony; but an estate of
Freehold can neither begin nor end without Ceremony. Co. 1. 3. 64.
b. 4. and 6. 3. 1. Pennants case.

1. Rents, Avoysoms, Conditions, Reversions, Remainders, and
all other things, that lie in grant, as they cannot be granted withou
Dey, to fall they not be surrendered without Dey.
2. An Obligation or other matter in writing cannot be discharg
by an agreement by uses, Finch 11. Doc. and Stud. 11. cap. 12. Vide
infra 25.

In an Annuity growing by prescription rien arrear is a goal
plea; for this prescription is a matter in fact: but in an Annuity
by Deyn it is no goal plea, without viewing an Acquittance.

8. When a man avoids the Kings Title by as high a matter of Re-
coy as the King claimed, he may have it by way of Plea, without
being driven to his Petition, though the King is entitled by double
matter of Recovery: As one is attainted of Creation by Parliament,
and an office finds his lands, whereby the King seizeth them, the par-
ty may allege restitution by Parliament, and a repeal of the for-
mer Act. Finch 12. Co. 1. 4. 57. a. 4. In the Sadler of Londons
Cafe.

7. A. by Inventures settles B. of two acres to the use of A. for
life, remainder in talls to C. remainder to D. in see., with provis-
ion, that if E. die without issue, A. by Inventures leases, &c. in the
presence of 4 witnesses may alter the uses, &c. A. of one acre settles
F. and for the other acre A. by Inventures renounceth, surrenders,
releases, &c., unto B. C. and D. the said Power, Condition, Authori-
ty, &c. d. uses without issue, A. by Inventures revokes the first uses,
and limits new ones: And it was resolved, that A. had by the said
testament any release barred himself of limiting other uses; for as the
Proviso and Custome anæstaltis commence by Deed, so by Dey
may they be amended and defeated, because in all cases when any thing
entoroty is created by a Deed, the same thing by consent of all per-
sons, which were parties to the creation of it, may be again by
their Deed annulled; And therefore Warranties, Recognisances,
Rent-charges, Annuitys, Covenants, Leases for years, uses at the
Common Law, and the like, may by a Deed of Deleasance
(with the mutual content of all those that were parties to the creation
of them) be annulled discharged and defeated; so it would be
equally unreasonable, that a thing, which is created by the act of the
parties, shall not be again by their act with their mutual content disso-

5. Nature and human are not valuable considerations to satisfie
the Statute of 13 El. 5, and therefore if be that in involved to the several
persons (to each of them in 20 l.) in consideration of natural affection
gives all his goods to his some or cohen, in this case as much as
the other than told their due debts, &c., which are things of value, the
intention of the act was, that the consideration in such case should be
valuable; so equity requires, that such a gift, which shall benefit oth-
ers of their due debts, shall be made as high and as good a consider-
ration, as those debts are, which are so to be benefited.

11. By the Rule of the Common Law, a right of title, which is
pursuant to any Lands or Tenements of inheritance or Frank-tenen-

The Reason of

Col.4,55. b.
& 56.b.
In the Case of the Sadlers in London, 29 All. 1.
Pierce Partifields case cited in the case of the Sadlers of London in the 4 Report, fol. 55. b. it was found by office by force of a Diem clausum extremum after the death of one that held houses of the King in London; that the Tenant died without heir, whereupon the King grants them to Pierce P. for life, who thereby a Writ to the Major, to put him into possession, the Major returns, that the Tenant made his Will and gave them to his wife for her life, who was yet in life, and ceased of the said houses together with one J. D. then her husband, P. P. and his wife, who thereupon being a Sine facias against P. P. who demands Judgment of the King; because in as much as he was but Tenant for life, and the revocation was in the King, they ought to take the King, which they could not do but by petition: And it was adjudged by all the Judges assembled in the Chancery that the Writ should abate and that D. and his wife should sue by petition; because, as much as the King's title was found by inquest of office upon oath, the title of the Subject ought also to appear by Record of as high nature, viz. by like inquest of office upon oath, and not by return of the Major alone; for albeit that return be matter of Record, yet is it not of so high and great regard in the Common Law as an office found by oath.

Col.4,55.a
The Case of the Sadlers in London.

Col.4,56.a

35 E. 3. c. 1
An office found for the King cannot be quasit bar by petition, matter of record of as high nature.

13 It was found by office that J. by the King's Licence married the King's niece, and that certain lands descended to the same niece; which the Baron had alienated without the King's leave (his wife being the King's niece) to another, and that cause the land was settled, whereupon the Alienor comes into the Chancery, and the like.
the Common Law.

whether all the case as it was found by offiice; And therefore because all the truth of the case (viz. the Pleas marked by his License, the descent to the Haie after the Coverture, &c.) did appear in the Office, it was awarded, that the Baron for that cause should hold by the Curtailte, and that the Femme by his alienation should be put to her Action and thereupon by award the Alienic had restitution.

13 It was found by Office that 1. held of the King, and that M. his daughter and heire was of full age and had Liberty; and by another Office it was also found that the same 1. had another daughter X. which was yet within age, whereupon a Scire facias went out against M. and her husband, &c. who said that the land was given to 1. and to his first wife the Mother of M. in tail, and that X. was his issue of another wife, and to M. sole heire; but by award of all the Judges, all the land was sold into the Kings hand, because the entails was not found by any Office, but only that M. was general heire.

14 If a Woman be noble (as Duchesse, Countess, Baronette, &c.) by descent, although the man be under the degree of Nobility, yet her birthright remains: For that is annexed to her blood, and is Character inde lebis. But if a Woman attend not Nobility by marriage (viz. of a Duke, Earle, Baron, &c.) and after the death of her first husband take another under the degree of Nobility, by this last marriage with one, that is noble, the batt lost the dignity, unto which he attains by her first marrying one of the Nobility; so, to 

dem modo quo quevixit constitutor; diffiduor, At que 

15 It be demanded, what Canons, Constitutions, Opinions, &c., and Synods provincial are all in force within this Realme, the answer is, that it is resolved and enacted by authority of Parliament. What such of them as have been allowed by general consent and custom within the Realm, and are not contrary or repugnant to the laws, Statutes and Customs of the Realme, nor to the damage or hurt of the Kings Prerogatives Royal, are all in force within this Realme, as the kings Ecclesiastical Laws of the same; Now therefore as consent and custom hath allowed those Canons, &c. So no doubt by the general consent of the whole Realme, any of the same may be corrected, enlarged, explained, or abrogated.

16 Although Inventures being made for the declaring of the uses of a subsequent Fine, Recovery or other assurance to certain persons, and within a certain time, and to certain uses, are buttress, and do not bind the estate or interest of the land, yet if the Fine, Recovery, or other assurance be pursued, according to the Inventures, no naked asserment shall be taken against those Inventures, viz. that after the making of the Inventures and before the assurance, it was concluded and agreed by mutual consent of the parties, that the assurance should be to other uses: But if any other agreement or limitation of uses be made by writing, or by any other matter as high or higher, then shall the last agreement stand; for every contract or agreement ought to be dissolved by matter of as high nature, as that by which such agreement was contracted; because Nihil tam conveniens, &c.

17 One Eaton was indicted in B. R. for the death of a man, whereupon an exquit was awarded into the County of Lincolne; Eaton being a witness, and was never convicted or attainted; yet his executer being a 

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as the King was entitled by matter of Record, it ought to be avoid-
so by matter of as high nature.

20 If two claim as heirs to one man of one and the same land, 
holding of the King, and one is found by office, the other cannot trea-
vers that office, without first finding another office, which finds 
him præteralso.

21 The Charter of E. 3. (Anno 11 Regni sui) by which lands were 
annexed to the Duchy of Cornwall, being past by the consent of the 
Lords and Commons in Parliament, retained the force of an Act 
of Parliament, and therefore those lands cannot be disannexed but by 
Act of Parliament.

22 A man may be bound in a Statute to do any collateral Act, as to 
make a settlement, to remove a true accouter; it the like; here accours 
with execution by money or any other thing, is not satisfaction to 
save the forfeiture of the Condition; for the contract being made 
by writing to performe such a collateral Act, it cannot in that case be 
alterd without writing: But if a man by contract (without Deed) be to deliver a boile, to build a house, to do an-
yp other collateral thing; there money may be paid by accour in sa-
satisfaction of such Contract; as as a Contract upon consideration may 
begin by parol, fo by parol for any reasonable consideration it 
may be dissolved.

23 Life: and Powers in contingencie and possibility may be by 
mutation amiss of the parties revokned and determinr; fo, as they 
may be raised by Inventur, So by proviso of limitation annexed 
unto them in the same Inventur, they may be extinguishd and de-
stroyd, either before or after their being.

24 Albeit a man cannot prescribe to alledge a Custome a-
against a Statute, because it is matter of Record being (immed) the 
highest pooste and matter of Record in Law; yet a man may pre-
scribe against an Act of Parliament, when his Prescription of Cu-
stome is saved or preferred by another Act of Parliament, 
ets.

25 A man is bound by Inventur to pay a summe of money, and 
in an action of debt upon that Deed the Defendant faith he hath paid the 
summe, but hevert no acquittance; In this case, the plea is not 
good, for this Inventur is like a simple Obligation, where pay-
ment is no plea without an acquittance; It is otherwise where 
the Obligation hath a Condition, per Mountagu. Vide supra.

26 By the Statute of 13 R. 2. 16. If after a protection is allow-
ed by Innocentiimus, the party lay in the Country without going to 
the Service, to which he was retained; above a convenient time af-
ther he hath such protection, or repair from the said Service, upon 
information thereof to the Lord Chanceller, he shall repeat such pro-
tection by another Innocentiimus: Howbeit such a protection shall not 
be avoide by a bare abserment of the party in that case, because the 
Record of the protection must be avoide by a matter of as high a 
nature.

28 Things grounded upon an evil void beginning, cannot have 
good perfection.

1 Before the Statute of Ven. 2. cap. 1. Alienation by the Donee 
in ralle after issue bad did barre the Donor of his rebutson: but if he 
had aliened before issue bad, and had after has issue, although that aliena-
tion would have barre the issue, because he claimed a Fee simple, yet in 

Alienation by 
renant in tae 
before issue, no 
barre to the 
donor.
in that case if the issue had died without issue, the Donor might re-enter, for that he alienated before any issue, at what time he had no power to alienate to bar the possibility of the Donor, 2 Tenant for life of a Carve of land: the reversion to the father in fee, the sonne and heir apparent of the father endowed his wife of this Carve; by the assent of the father, the Tenant for life died, the husband died; here, the reversion was a tenant in the father, and yet this is no good endowment ex attendu patris; because the father at the time of the attaint, had but a reversion unexsisting upon a Freehold, whereof he could not have endowed his own wife; and albeit the Tenant for life died, living the husband, yet quod initio non valent stratum temporis non convalesce.

4 If the wife, after the husband hath entered into Religion, alien, the land, which is her own right, and after her husband is dersigned, the husband may enter and avoid the alienation.

5 In times past if a secular Priest had taken a wife, and had issue and died, that issue had been lawful, and should have inherited as heir to his father; ex. For, (as it was their holome) the marriage was not void, but voidable by Diocese; and after the death of either party no Diocese could have been had: But in those days if a man had married a Surname, or a Monke had married, those marriages were held void, the Plume, and the Monke being (as Littleton faith sect 202.) dead persons in Law, and therefore their issue could not have inhered. 31 E. 7. 39. 19 H. 7. Baifardicc. 33. 8. 2. Nonabiliyt 26. 47 E. 3. caufa ultimo. 2 If the Lord restrains the Tenant for rent before it be due, the Tenant may institute to make recions, and it shall not be adjusted dissi-1ent of the rent; so it is also of a rent charge.

7 If a Lease for years be made to begin at Michaelmas, the remainder over to another in fee, if the Lease make Liberty of seisin before Michaelmas, the Liberty is void; because Liberty of seisin must pase a present Freehold, and not in future; for it should work at all, it must take effect presently, and cannot expect.

8 If a man let another his land for terms of years, if the Let- see relates unto the Lessor all his right, ec. before the Lessor enter into the same land by force of that Lease, such a release is void, because the Lessor had no possession in the land (but only; interest termini) at the time of the release made: It is otherwise, if the Lessor had been in possession in the case of a Lease for life.

9 Regularly, the Incumbent may charge the Glebe, if the Patron and Ordinary join with him in the grant, or consent thereunto either by Pecuniary Licenses, or Indisputable confirmation: yet in this case, if the Patron be but Tenant in tail or for life, or the Ordinary be Patron, the charge shall not be perpetual; so in the first case the issue in tail, reversioner, or remainder shall avoid it; and in the other case, the Licence of Confirmation of the Ordinary is not available to the charge.
The Reason of Max. 2:8.

A grant of a rent not good.

Confirmation void.

A void release of a rent.

Nonage.

Estate in tail not chargeable.

A rent charge not good.

A Will void.

A void release.

A Leaf for life void.

A void soc.
lege or consent of the Baron to acknowledge a Fine to certain Con-
"tles and uses in the said Indenture mentioned, and afterwards the 
Baron covenants also by Indenture without the knowledge of the 
Feme to acknowledge a Fine to other Conities and uses in that 
Indenture also mentioned, and afterwards the Baron and Feme, joine 
in a Fine to the Conities in the Indenture of the Feme mentioned: 
Here, the Limitations and Declarations of Uses in both the Inden-
tures are void, and the said Fine was by construction of Law to the 
use of the Feme and her Heirs, as if no use at all had been declared, 
for, the Feme alone, albeit the be owner of the land, yet being not 
potestate viri; cannot in respect of her Coverture without her Baron, 
limit the use, and on the other fine, the Baron, who hath not any es-
est in his own right, cannot against the good liking of the Feme 
limit any use; because he is not owner of the land; so that the one is 
not lui juris and hath the estate; and the other is lui juris, and 
hath not the estate. And therefore when they differ in limitation, all they so much 
need be void.

Avid deed, or 

20. When a Dowl hath two deliveries, if the person at the first del-
ivery had power and ability in Law to contract, but could not per-
fect it, unless an impediment should be removed, before the second de-
ivery; in that case, the contract is good; as if the Dowlie make an 
Indenture purporting a Lease for years, and deliver it to a Stranger 
out of the land as aforesaid, and command him to enter into the land, 
and to deliver it upon the land as his Dowl to the Lessee, which is 
done accordingly, this is a good Lease: But if the person at the 
first delivery had not power or ability in Law to make the Lease or 
Contract, before the second delivery he attains, to such power, 
there the Lease or contract is not good; as if at the time of the first de-
ivery the Lessee be an Infant or Feme covert, and at the time of the 
second delivery they become of full age of sole, in both these cases the 
Dowl both not him; because at the time of the first delivery they 
were not persons that had ability in Law to make a Contract.

Avid joynt- 

31. If the Baron make testament in fee to the use of himselfe for 
life, and after to the use of B. for his life, and after to the use of the Feme 
for life, for her Joynure, that is not within the Statute of 27 H. 8. 
cap. 10, to barre the Feme of her Power, albeit B. die, living the 
Baron: So also if the estate be made to A. for life, and after to the 
Feme for her Joynure, neither is that within the Act, although A. die before the Baron: So in these and the like cases; in 
as much as at the time of the limitation of the estates they were 
out of the Act, (so that it was not then certain, that the estates 
of the Feme would take effect immediately after the death of the Baron, 
as it ought to do by the said Act) no subsequent event can make them 
within the Act: For, Quod ab initio non valet, tracut temporis non con-
validet; & quae malo sunt inchoata principio, non est ut bono peraguntur exiuit.

A taller of 

22. A. seized of the Hanno of D. in fee had communication with B. 
of demilling the said Hanno unto him, C. gives it out, that he had a 
Lease for 90 yeares in the Hanno, whereupon B. delitias from taking 
the Hanno by demis, and thereupon A. brings an action of Land-
er against C. And it was adjudged that those words would not 
beare it. And in this case, though it appeared by the Defendants 
barre, that he had no title of interest in any such Lease, yet because the 
matter alledged in the Count did not maintain the Action, the 
barre could not make it good.

23. B. Eliz. by Letters Patent grants to I. S. Totam illam portionem 
decimarium & garnarium fuum in L. in Com. N. cum omnibus alius decimis 
 suis quibuscunque in L. in di[io Com. N. tunc vel nuper in occupatione 
I.C.
The Reason of
Max. 28.

I. C. and grants further that those Letters Patents shall be of force and effect against her selfe any her Successors, Non obstante male nominando, vel male rectando praedict. portionem decimam, &c. Et non obstante aliquibus defectis in male rectando vel non nominando aliquibus re-

ntentis five occupatoris, &c. And all this was found by specialtis, and believed that I. C. never had any Libræ in L. in his occupation; and thereafter one question was, whether the defect of mistake the Farmer was not supplied by the non obstante; and it was resolved, that it was not; Because when the terms of the grant are not sufficient ex vi termini to pass the thing granted, but the grant is utterly void, there a non obstante cannot make the grant good; for when the Queen grants Totam illam portionem, &c, super invena I. C. here the addition of I. C. is of the substance of the grant, and in as much as I. C. never had the portion in his occupation, the grant must needs be void ex vi termini, and therefore the non obstante, cannot make it good.

24 If I let my land for life, and after give the trees, and after the lease dies, yet the Donor cannot take them; because at the time of the grant, the Lessee had the property in them, as annex to the land, 21 H. 6. 46. d. pertotum Curiam.

25 If a Countesse (that by the Statute may retain two Chaplains capable of dispensations to enjoy two benefices) with her retains two, and after a third, the two first and only capable of dispensations; for they only are her Chaplains according to the Statute, and the other at the Common Law; and therefore in this case, if the two first die, yet is not the other only capable of a dispensation; because at the time of his retainer he was not capable; for he ought to be newly retained again to make him capable thereof: So likewise if the Son and heir apparent of a Baron retain a Chaplain, and give unto him his Letters under his hand and seal, and after his father dies, and this Chaplain purchases a dispensation, this retainer and those Letters null do him no good; because they were not available at the first to make him capable, Et quod ab initio non valeat, taci temporibus non convaleat.

26 Pope Urban at the request of Ralph Baron of Greylock, founded a College of a Master and six Prebends to be resident at Greylock, and assigns to each of the Prebends five marks per annum, besides their houses and chamber, and to the Master 40l. per annum: And upon the Statute of 1 E. 6. 14. it was certified in the Book of First-fruits and Tithes, Restoriwm & Collegium de Greylock: But it was resolved by all the Justices, that this reputed College was not given to the King by the said Act, because it has no lawful beginning, nor so much as the countenance of a lawful beginning; so the Pope cannot found or incorporate a College within this Realm, so assign or give License to assign any temporal libings unto it; but it ought to be done by the King himselfe, and by no other.

27 In appeal of Mayhem between John Codwell Plaintiff, and Thomas Parker Defendant, the parties return to War, and the Jury kings for the Plaintiff; and now it was moved in arrest of Judgment, that there was variance between the Palet of the Venire facias and the Dilrings, and Postea, in the name of one of the Jury, that appeared and gave the verdict; so, in the Panel of the Venire facias, he was named Paulus Chela; and in the Dilrings and in the Postea it was Paulus Chela: And because the name of a Juror in the Venire facias was mistaken, the Judgment was arrested: But if he had been well named in the Panel upon the Venire, and misnamed in the Dilrings or Postea, upon examination it might have been amended.

A void grant of trees.

A void foundation of a College.

A void Panel.
Max. 28. the Common Law.

Avoid Prefen-

mends: because the Venire facias, and Panel are the beginning and
ground of the other subseqent Processe.

28. D. was seised of a Rannor, unto which an Advowson was ap-
parent; and dies, the Rannor devemts to E. an Infant, the Church
becomes void; A. presents during the nonage of E. who at full age en-
terests F. of the Rannor, and after the Church becomes void again,
and F. presents, whereupon the Alligne of A. byings a Quare impe-
dice; and it was an adjudge, that by the seement of E. when he had at-
tained his full age, the Rannor passed to the geosome, but not the Adv-
owson; because by the usurpatton, the Infant was out of possession
of the Advowson, and he had but a right in it; the usurpatton being one-
ly volatile by action, which could not be transferred to a Stranger;
And therefore, the Advowson being not at all granted to F. he did not
 gains it afterwards by an usurpatton.

29. Queen Eliz. in the 31 year of her Raigne grants unto Walter
Tooke and William Curle Officium annus Auditorum Curiae sui Wardorun,
&c. habend. dictis Waltero & Willielmo & aleri eorum conjunctum &
diversum pro termino vitaran fueram & eorum alterius viventis, &c.
And afterwards King James in the 4 year of his Reign during the
lives of the said Walter Tooke and William Curle, grants the Reversion
of the said Office to John Church-hill and John Tooke: And in
this case King James his grant was adjudged void; because that Office
being partly judicial, and partly ministerial, could not in respect of the
Judicial part be granted in Reversion; for which the Rule is, officia
judicia non co Toolbox, antequam vacent; and therefore being void at
first, it shall not be made good afterwards for albeit William Curle one of
the first Grantees, and John Church-hill one of the last Grantees
happen to die, yet shall not John Tooke enjoy the Office by vertue of
King James his grant; because, quod ab initio non vale, &c.

30. John Bishop of Sarum grants the office of Surveyour of the
Rannor of Sherborne unto Edward Green and John Green for their
lives together with the fee of 6 l. 13. s. 4. d. per annum, whereas the
office formerly used to be granted only to one; Edward Green dies, as
also the Bishop, the fee is behind, and John Green disclaims for it, but
could not maintain the Action; because the grant was void by the
Statute of 1 Eliz. not printed, (which restraineth Ecclesiastical per-
sons from making uniall grants, &c. ) and in this case, albeit Ed-
ward Green being dead, and John Green alone had the office, when he
disclaimed, yet the grant being void at first, shall not be made good by
any subsequent Act, that happens after, to bind the Successor; to per-
form it, Quia qux malo sunt incerto principio, vitam et bona perante exi-
tu & quod initio non vallat, &c.

Avoid "grant

of a Surveyor-

ship.

31. A Grant by the Master and Fellows of a College to Queen
Eliz. contrary to the Statute of 12 El. 10. being thereby made void,
could not afterwards be made good by the Statute of 18 El. 2. (for
Conformations of Grants made unto her) because that can by no
means be made good, which was meely void at the beginning.
Neither shall the general words of 18 El. enable any person to make
any conveyance, which by the Common Law was divided, as if an
Infant had correspondence to the Queen by Deed intoll, so had leaved
a Fine to her before the Statute of 18 El. and then that Act had been
made; yet the estates granted had not been confirmed by that Act; be-
cause the Infant during his minority was absolutely disabled to make
such a Grant; and therefore notwithstanding that Statute, he might
have reversed the Fine by a Writ of Error, as it was adjudged M. 3. s
and 33 Eliz.in B. R. by Wray and all the Court, in Vaughans cafe. So
likewise if a man seised of land in fee, had granted the land after his
death
The Reason of

Max. 28.

32 A presentsment made by a stranger to an Abbotson, which is appropriate to an Abbey, is void, be the presentsment in the Abbot's time or during the vacation; and albeit the Clerk be afterwards admitted, instituted, and inducted, yet that cannot make the presentsment, which was void at first, to take effect; for, Quod initio non valet.

33 A tenant for life (remainder in tail, remainder in fee) bargains and sells the land in fee to B. who after the Statute of 32 H. 8. cap. 31, and before the Statute of 14 El. cap. 8. suffered a recovery, wherein A was named, and bought over, &c. and after Judgment was entered and execution sued upon that recovery; yet was the entry of the tenant in tail unsuited congradable; for albeit the recovery was not had immediately against A. yet was it unsuit a forfeiture, within that Statute of 72 H. 8. and then the suffering of the recovery being a forfeiture, it could not afterwards be failed by enacting Judgment and having execution thereupon.

34 If the Patron grant the next avovance, and after Parson, Patron, and Ordinary before the Statute, had made a leaf of the Glebe for years, and after the Patron died, and the grantee of the next avovance had presented a Clerk to the Church, who is admitted instituted, and inducted, and diet within the terre, the Patron presents a new Clerk, who is also admitted, instituted, and inducted; here albeit he commeth in under the Patron, that was party to the Lease, and was Admitted, instituted, and Inducted; yet because the Lease had no good beginning, but was avoided by the Grantee Incumbent, who had the whole estate in him, it shall not be againe revived; but shall be extinct for ever, and shall not be maintained against the last Incumbent.

35 If a man be Tenant in general taille, and take a wife and hath issue by her, and the dies, and after he taketh another wife and dies, the last wife shall be endowed; because the may have issue, which by possibility may inherit: But in this case if the husband during his first wives life alien the land in fee, and takes an estate back to him and his wife, and the heires of their two bodis, and the wife dies, the second wife shall not be endowed; because during the Coverture (when her Title of Power should take beginning) he was left of an estate taille special; and yet here also the issue, that he may take by the last wife, is indestructible.

36 B. having divers sonses and daughers, A. giveth lands to B. & liberis suis, and to their heires, the Father and all his children do take a Feo simple joyntly by force of these words, their heires; but if he be no child at the time of the Frement, the Child or Children, both afterwards shall not take.

37 Cestui que uxe (after the Statute of 1 R. 3. and before the Statute of Lyes) makes a Lease for years, and after during the term makes Frement of the land, and gives Liber, &c. In such case, nothing passed by such Frement, because he be nothing in Uxe or Possession, and then the Statute of R. 3. would not aide him.
29 Quod non habeat principium, non habeat finem.

1 If the Bishop be named in the Quare impedit, he shall never afterwards precedent by Imped. and then shall neither the Metropolitan nor after him the King do it; for the Bishops presentment failing, which was to be the first step and beginning, their power of presentment, which should necessarily follow his, must needs also fail; according to the Rule, Quod non habet principium, non habet finem.

2 Regularly, a man shall not be remitted to a Right remissile, for the which he can have no action; and therefore Lincone faith (Sect. 629.) that the principal cases of a Remitter is, when the same hath no person (but himself) against whom he may bring his Action, by which it appeared, that he ought to have just cause of Action: for neither an Action without a Right, nor a Right without an Action can make a Remitter; as if Tenant in tail suffer a Common Recovery, in which there is error, and after the Tenant in tail disjoined the Recoveror, and dieth; here the time in tail hath an action, viz. a State of Error; but so long as the Recovery remained in force, he hath no Right, and therefore in that case cannot be remitted.

3 If B. purchase an Advocton, and suffered an adjudication and fi. a mortis causa to him, and the morter granted the Advocetion to B. and his heir; B. dieth, his heir is not remitter; because his Right to the Advocton was remissile, viz. a Right without an Action.

4 Vide infra M. 38, 1, 7, and 163, 49.

Vide infra M. 38, 1, 7, and 163, 49.

30 He that claimeth Paramount a thing, shall never take benefit, nor hurt by it.

1 If there be Grandfather, Father, and Son, and the Grandfather is lord of the acres of land in fee, and take the wife, and dieth, this land descended to the Father, who with either before or after entry; now in the wife of the Father possess, yet shall the same the thirds but of two acres merely, and the two of the Grandfather shall have for her Dowter the other acre interest; because the Dowter of the Grandmother is Paramount to the Wife of the Fathers; and the two of the Father, which descended to him (he it in Law so actual) is defeated: and now upon the matter the Father had but a Reversion expectant upon a Fracon; and in that case Dors de dote peti non possit, although the Grandmother be, living the Fathers wife.

Dower according to the improved value.

2 If the wife be entitled to have Dowter of this acres of March, every one of the baths of twelve pence per annum, the heire by his indelibility and charge make it good meanow, viz. every acres with ten Milings per annum, the wife shall have her Dowter according to the improved value, and not according to the value, as it was in her husbands time: So it is likewise if the heire improve the value by building; the like Law is; if the value be improved in the time of the heire; for then also she shall be endowed according to the value at the time of the Assignment, and not according to the value as it was in her husbands time; And the reason of all this is, because the claims paramount the improvement or impairing of it, and hath Little to the quantity of the land, viz. one just third part.
The Reason of

Max. 30.

3. If Tenant in tail make a Lease for 50 years referring to s. rent, and after take a wife and die without issue; here as to him in the reversion, the Lease is merely void, because he claims paramount the Lease: but if he endow the wife of Tenant in tail of the land (as he may be though the estate tail be determined) now is the Lease as to the Tenant in Dover (who is in, of the estate of her husband) revived again, as against her; so, as to her, the estate tails continuously, and the Lease is paramount her Title.

4. If a man (by the Custom) demise that his executors shall tell his lands, and, and die, the lands in this case descend to his heir, and the executors have no estate in them, but only a bare and naked power; nevertheless a term of land from them shall amount to an alienation to sell the land in the Feoff; because the Feoff by construction of Law shall be taken to be in by the Dividui, and not by the executors: so it is likewise, if a man (by the custom) demise a reversion or any other thing, that is in grant to be told by his executors, they may sell the same without Devil, causa qua supra.

5. If lands be given to a Willain and to the heirs of his body, the Lord may enter and put out the Willain, and the heirs of his body; so, Quoiquid acquiritur servo, acquiritur domino: And in this case the Lord gains a Fee simple determinable upon the wing of the Willain, without issue of his body and the absolute Fee simple remaineth still in the Donor. And if the Lord enter, and after enfranchise the Donor, and after the Donor hath issue, yet that issue shall never have remedie either by Formacon or Entry, to recover this land, by force of the Statute de donis, &c. For the Lord is in paramount the entails, and that Statute giveth only remedie to the Issue of the Donor, that hath capacity and power to take and retain the gift: And the Title of the Lord remaines as it did at the Common Law; for the Statute restrained not some only by the Tenant in tail: So it is also if lands be given to an Alien, and to the heirs of his body, upon office found the land is sold for the King, afterwards the King makes the Alien a Denizen, who hath issue and died, the King may retain the land against the issue; because the Kings Title is paramount the entail, viz. by his prerogative. Vide infra 72.

6. If a man grants a rent charge out of two acres, and after the Grantor recovereth one of the acres against the Grantor by a Little paramount; the whole rent shall issue out of the other acre, Doe. & Stud. l. 2. cap. 17.

7. If a man enfeoffeth B. of one acre in fee upon Condition, and B. being feoffed of another acre in fee, grants thence a rent out of both the acres to the Feoffor, who entract into the one acre for the Condition broken, the whole rent shall issue out of the other acre; because his Title is paramount the grant.

8. If two Join-tennants be feoffed of an estate in Fee simple, and the one grants a rent charge to another out of his part; here, the rent is good during his life, but after his decease the Survivour shall avoid it; because he commeth in by the first Feoffor, and not under his companion: So likewise it a man be possessor of certain lands for term of years in the right of his wife and granteth a rent charge and width, the wife shall avoid the charge: And for the same reason it is, that if a Join-tennant charge the land with common of Pasture, Carbery, Entry, &c. with a Copy of, or with a way over the land, or the like, this shall not bind the Survivour: For, jus accreddendi praeferre oneribus, and Alienatio rei praeferre juri accreddendi. Vide M. 15. Pl. 14.

9. If one Join-tennant in fee takeh a Lease for 50 years of a stranger, by
by Dyer defined, and death, the Survivour shall not be bound by the conclusion; because he claims above it, and not under it.

10 If there be two John-tenants in se, and the one makes a Lease for years, referring a rent and death, the surviving Tenant shall have the rent, but not the rent; because he claims in by the 1st Estoppel, which is paramount the rent. So it is also of the wise, where the husband being Lease for years, in her right, maketh a Lease of part of the terms, referring a rent, Inst. part 1. 318, a.

11 If a husband, wife, and a third person purchase lands to them and their heirs, and the husband before the Statute of 34. 1. 8. cap. 1. had aliened the whole land to a Stranger in se; and died the wife and the other John-tenant were John-tenants of the right, and if the wife had died, the other John-tenant should have had the whole right by Survivour; so that they might have joined in a writ of right; and in this case the discontinuance would not have barred the entry of the Survivour because he claimed not under the discontinuance, but by Title paramount above the same, by the 1st Estoppel.

12 If a man be seised of lands in Fee [Fee tail upon Condition to render certain rent, 03 any other Condition; albeit such a Tenant be seised], yet if the Condition be broken in his life time 02 after his decease, that descent shall not take away the entry of the Estoppel 02 Donor, 03 of their heirs, because the tenure was originally charged with the Condition, which is paramount the descent; for the Condition remains in the same essence that it was in at the time of the creation of it, and the estate of the Tenant is conditional, in whose hands over the tenure comes, et. So it is likewise if such a Tenant upon Condition be dispossessed, and the Disseisior die thereof seised, and the land descends to the heir of the Disseisor; In this case, albeit the entry of the Tenant upon Condition that was dispossessed, is taken away; yet if the Condition be broken, then map the Estoppel 02 Donor, that made the estate upon Condition, 02 their heirs enter, Cauta qua supra: and also for that a Condition cannot be dispossessed, 02 put out of possession, as Lands and Tenements.

13 If a Disseisor die seised, and his heir enter, who endoweth, the Feme of the Disseisor of the third part of the Tenements, et. In this case, as to this third part, which is to assign to the Feme in Power, presently after the Feme entreat, and hath the possession of the same third part, the Disseisor may lawfully enter upon the possession of the Feme into the same third part: because, albeit the heir entreat, yet when the wife is seised, the land not be in by the heir, but immediately by her being the Disseisor, for the law and that, by a Title paramount the being seised and decent: And therefore in judgement of Law, the descent, as to the Feme and Possession which the heir had, is taken away by the endowment; so that the Law adjungeth no mean seisin between the husband and the wife.

14 A man makes a gift in tail referring twenty shillings rent, and dies, the Donee takes wife, and death without issue, the heir of the Donor entreat and endoweth the wife. Here, the wife is not in by the heir of the Donor, but by title paramount of the estate of her husband; And therefore as in the estate tail be spent, and the rent referring thereupon determined, yet after she is seised, she shall be attainted to the heir, in respect of the said rent.

15 If there be Lord, Seine, and Tenant, and the Seine grant by
The Reason of Mass. 30.

16 A Discontinuance made by the husband, did take away the entry only of the wife and her heirs by the Common Law, and not of any other, which claimed by Little Paramount above the Discontinuance; as it was, being given to the husband and wife, and to a third person and to their heirs, and the husband had made a Feoffment in fee, this had been a Discontinuance of the one moiety, and a Dilettu of the other moiety; and if the husband had died and then the wife had died, the Survivor would have entered into the whole; so he claimed not under the Discontinuance, but by Little Paramount from the first Feoffed; And taking the right by Law both survive, the Law both give him a remedy to take advantage thereof by entry for another remedy for that moiety he could not have.

17 If a Bishop be lessee of a rent charge in fee, the Tenant of the land enforces the Bishop and his Successors, the Lord enters for the Portmaine, he shall hold it discharged of the rent; for the entry for the Portmaine affirmeth the Alienation in Portmaine, and the Lord claimed under his estate: But if Tenant for life grant a rent in fee, and after enforces the Grantor, and the Lessee enter for the foiture, the rent is revived; because the Lessee both claim above the Feoffment.

18 If a Feme Sole possess of a Leafe for years takes Baron, who deviseth it by his Will or dispositively not of it at all in his life time, the Feme, if he survive, shall hold it againe, because her estate is paramount the interest of the Executores; and there is the same reason of estates by Statute Sherant, Statute Staple, Elegit, Warships, and other Chattels real in possession: So likewise if the husband charge the Chattel real of his wife, it shall not bind the wife if the survive him, causa quae supra.

19 If lands be given to two brethren in feo simple, with a warranty to the eldest and his heirs, the eldest deth without issue, the Survivor although he be heire to him, yet shall he neither touch nor rebate, no have a Warrantia carte; because his Title to the land is by relation above the fall of the Warranties, and he cometh not under the estate of him, to whom the Warrant is made.

20 If the Lessee for life 2 years attorne upon any condition subsequent, the condition is void; so if the reversion or remainder be once better, it cannot be devised by any condition annexed to the Attornment; because the Grantor thereof is not in it the Lessee, but by the Grantor; but if one Attorn upon a condition precedent, there it is no Attornment before the condition be performed.

21 In Inuven and Balles cafe, in 3 Report fol. 83. it was agreed, that by the Common Law an estate made by Grant shall be avoided only by him, that hath a former Right, Title, Interest, Debt, or Demand, as in the 33 of H. 6. Sale in market overt by Covin shall not bare a more ancient Right, neither shall a conveyance Granter defeat an execution in respect of a former Debt, as it is agreed 22 Adl. P. 72. But he that hath only a later Right, Title, Interest, Debt,
22 When a Copholder surrenders to the use of another, and the Lord admits him; now he that is so admitted, is in by him that made the surrender; For, in a Planta in the nature of a want of Entry in Terre, he shall be supposed in the per by him; that made the surrender, because the Lord is but an instrument to make the admittance, and he, that is admitted, shall not be liable to the charges and

23 If a man whereby the Lord to the use of another to another by copy; that is done without warrant, and the Lord may not withstand him, that make admittance according to the surrender, and it shall be good, causa quippe. So also if the Lord after such surrender grants the land to Celiuy que us, and to a Stranger, all shall enure to Celiuy que u., so if he admit Celiuy que us upon condition; the condition is void; For, after the admittance he is in by him that made the surrender, and by the custome, which is paramount the power of the Lord.

24 In Newdon in defenser, if the Damant be barred by either of said, yet the same in took have a new Formdon in defenser, upon the constitution of the Statute of West. 4, cap. 3. So also if he be barred in a Writ of Error, upon the release of his ancestor, his issue shall have a new Writ of Error; For, he claims in, not only as before, but per formam doni and by the Statute, which is paramount the verdict of demurrer, and he shall not be barred by the same, or false pleading of his ancestor, to long as the right of the estate remains; And with this agrees in, 6. 5. 3 Eliz, Sir Ralfe Rowles case, Dyer, 188.

25 If there be two John-tenants both within age, and they enjoy in a covenant, in this case a joint right remains in them; and therefore if one of them die, the right will survive, and the Survivour shall have the right of the land as the first Feoffor,

26 If a man make a lease for years upon condition, that if the Lessee put him within the term, that he shall have se; in this case if the Lessee do put him, the interest of the term is turned into a right, and per there the Lessee shall have se, and one reason thereof is, because the Right of the Lessee is by force of the condition, which is paramount the Quitter.

27 If Feoffor not be disbarred for the Debts due to the King, by the Baron, in the lands which he held in Dower, nor in the lands of the Inheritance of the Feome, nor in the lands, which he hath by purchase made by the Baron to him, and the Feome, and their heirs; because the claims by Left paramount the Debs: and if the be therefore disbarred by the Sheriff, he shall have a Writ to discharge her, which see, Fiz. N. B. 150 q.

28 An Executory recovered, and with interdiction, administration of the goods of the late testator is committed to I.S. Here, I.S. shall not the operation upon this recovery.

29 Dower
The Reason of

29. Dover cannot be alleged referring a case, or with a pregnant sense: for she is in from the husband, and not from him that enquired Dover.

30. If a man make a Lease for 21 years, paying rent with condition of re-entry, and after the Lease make a Lease to the Land for 5 years to begin; two years after, and afterwards the rent being lawfully demanded in arrears; here, the Rentor may validly re-enter and take advantage of the condition; unless the tenant has accepted the future interest, and by the entry shall defeat the future interest, which would be in him.

31. If a man makes a sequester in sum upon collateral conditions, and after the Feodors re-enters the land to the Feodor, and afterwards the condition is performed; here, the re-entire of the land (being no exception of the condition) is no impediment but that the Feodors shall take advantage of the condition; and that thereby destroy the term, that he himselfe has accepted, as it is holde, 20 E. q. 19. 3 H. 7. 3. 20. H. 7. 4.

32. If a man, with the first tenant present and his wife without issue, and after the Church happens to be void, the younger issue of the second tenant shall not present; may have that Hypothec, so it there be two daughters of several tenants, and after partition one of them presents and dies, the other shall not have it: but if they make partition to present by turn, and one of them die before any presentment is made; in that case the other shall have the Hypothec: for he then claims paramount the descent from her sister, viz. immediately from their Ancestors.

33. The tenant in tail makes a tenement before the Statutes, 27 H. 8. Remiss. to the use of his wife for life, the remainder to his sons and heir in fee, and after the Statute is made, and the Feodors dies and his wife also, and the issue appears; in this case, it seems that the tenure is not remitted, for the Statute makes the partition in him as the issue was before: Howbeit it is expedient also, that his issue shall be remitted, because he claims paramount the Statute, viz. per permanenti; for the estate tail is still in being, so long as not entitling by the Statute: And in this case it is not material, whether the tenure (when he entered) was at fall age, or under age; for it seems he is not remitted albeit he were then under age; for if the tenant in tail makes a sequester to the use of himselfe and his heires, and the Feodors dies, his issue in both age, and then comes the Statute, here the heire shall not be remitted, but (it seems) his issue may, could and pra. Vide supra 5.

34. The tenant in tail makes a tenement before the Statute of Uses, a common recovery to the use of his somme and heire appearing, and his wife, and of the heires of the house of the house, after which Statute the somme hath issue and issue, the issue within age; In this case, the issue shall not be in the present of the issue of the fee simple, which have paramount the Statute, remains still in the father, albeit he exprest any will not use of fee simple, and then by the Statute, the prodit was vested in the somme and the somme, as the use was, and the use simple in the father, as he was Dower of the use, and not as one in remainder of a new fee simple, for that would have altered the case: And in the same case, if the father had covenant, that the somme immediately after his decease should pay the in possession: in use all his lands according to the same course of Inheritance, as they then stood; and that all man thereof to be felled, and all land left to the uses and estates thereof, yet the somme should not be in ward, for it had been but a Covenant, which

Dyer 14. 21.
34 H. 8.

Dyer 14. 21.
34 H. 8.

Dyer 34. 21.
34 and 35 H. 8.

Dyer 34. 21.
34 and 35 H. 8.

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The Kings Tenant of farms holven in Copie before the Statute of Uses suffer a common recovery to the use of his somme and heire apparant and his wife, and of the heires of the house of the house, after which Statute the somme hath issue and issue, the issue within age: In this case, the issue shall not be in the present of the issue of the fee simple, which have paramount the Statute, remains still in the father, albeit he exprest any will not use of fee simple, and then by the Statute, the prodit was vested in the somme and the somme, as the use was, and the use simple in the father, as he was Dower of the use, and not as one in remainder of a new fee simple, for that would have altered the case: And in the same case, if the father had covenant, that the somme immediately after his decease should pay the in possession: in use all his lands according to the same course of Inheritance, as they then stood; and that all man thereof to be felled, and all land left to the uses and estates thereof, yet the somme should not be in ward, for it had been but a Covenant, which

35. Wardship.

36. Dyer 34. 21.
34 and 35 H. 8.
which changes not the state of the Fee simple; which was paramount the statute, as says is laid.

34 If Tenant puruer vie own the land, and Celluy que vie lie, the Tenant puruer vie shall have the crop; so if the Baron lost the Feme sue, and the Feme die, the Baron shall reap the crop: likewise if the Baron make settlement in fee to the use of himself for life, the remainder to the use of the Feme for life; with remainders over, and the Baron lose the land and ple, his executors shall have the crop, and not the Feme by Hertex, because yeath being the Act of God, it could not be for this to prevent: likewise if the Baron make settlement in fee to the use of himself and the Feme for their lives both with remainders over, and the Baron lose the land and die, the Feme shall have the crop, because she was Joint-tenant with her husband, and dethit by title paramount the executors; so if the Baron lose the land and die, and the third part is assigned to the Feme for Dover; the Feme have the emblesment therewith; because she is of her husband's state paramount the Feme of the prest, and likewise shall be endowed de optimo possititione of her husband.

31 Things are to be construed, Secundum subjectam materiam.

1 Iohath hath a question much controverted in the books of the Law, at what age of the heir, a Guardian in Soccage was compelable to render an account, whether at 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 years: And the causes of that doubt have been both upon the words of the Statute of Marlbridge cap. 17, and.statutes upon the original writ of account against such a Guardian: The words of the Statute are these, Cum ad legitem aetatem pervenerit, ibi respondet, &c. and legitema aetas in 21 years: Also the writ of account resteth the said Statute, faith, Quare cum de communiti concilio, &c. provium in quibus custodes, &c. in Soccegio hereditatis, &c. cum ad plenam aetatem pervenerint reddant rationabillem componiam, &c. Whereupon it was gathered, that no action of account did lie against the Guardian in Soccage at the Common Law, until the heir were of his lawfull and full age of 21 years: But legitema aetas (as the Statute hath it) or plena aetas (as the writ both render it) are to be understood sekundum subjiciam material, viz. of the heire of the Soccage land, whose lawfull and full age, as to the Custodie or Wardship, is 14: and therefore upon consideration had of the said Statutes and of all the Books, it was adjudged in the Court of Common pleas P. 16. El. iro. 426, that the heir after the age of 14 years shall have an Action of account against the Guardian in Soccage, when he shall be at 17 years of age, and with this agreest Littleton, &c. 12.3.

2 Because Littleton saith Sec. 123 that the Guardian in Soccage shall render an account of the marriage money to the heir 03 his executors, that is not of the age of 14 may make a will; but the meaning of Littleton in that place is, that if after his marriage, he accomplish his age of 18 years, he may then make a will, and constitute executors for his goods and chattels: so that at that age he hath power by the Law to make a Will, and the words are to be understood sekundum subjiciam material, and as they may same with Law and Reason, Vide supra 15. 27.

3 The King of England is armed into divers Councils, viz. Com- commune Concilium, which is the Court of Parliament; another is called Magnum Concilium; and this is sometimes applied to the House of CO. INN. PART 1 43. 6.

The King's Councils.

Dyer 316, 13. 15 Eliz.

Co. Inn. part 1 43. 5.

Sec. of Marlbridge 12. H. 3. 17.

16. E. 3. 16. E. 3., acc-

Co. Inn. part 1 93. 43.

Sec. of Marlbridge 12. H. 3. 17.

16. E. 3. 16. E. 3., acc-

12. H. 3. 17.

16. E. 3., acc-

12. H. 3. 17.

16. E. 3., acc-

12. H. 3. 17.

16. E. 3., acc-

12. H. 3. 17.
of Petes alone, and sometimes out of Parliament to the Petes of the Realm, being Lords of Parliament, who are called Magnum Concilium Regis: Thirdly, the King hath a Privy Council for matters of State: Fourthly, the King hath another Council for matters of Law, and they are his Judges of the Law: Now therefore, when it is spoken generally of the Kings Council, it is to be understood, Secundum subjacent materia, as if matter of Law be concerned, that his Council at Law, viz. his Judges are to be understood, if matter of State, his Privy Council, &c.

4 If the Tenant for life, and he in the Remainder of Resevoir in Fee join in a Feoffment by Deed, the Liberty of the Freesold shall move from the Lees, and the Inheritance from him in the Resevoir of Remainder, from each of them according to his State.

5 Every man shall plead such pleas, as are pertinent for him Secundum subjacent materia, viz. according to the quality of his cases.

6 One Tenant in Common may settle his Companion, but not release; because the Freesold is several, some tenements may release, but not enfeoff, because the Freesold is joint; but Coparceners may both enfeoff and release, because their settling to some intents is joint, and to some several.

The words of the Statute of 11 H. 7. cap. 20. (which prohibits a Feme to alien the lands of her deceased husband) are these, that the same not discontinue, alien, release, or confirm them with Warranty, where Warranty seems to be referred to any Discontinuance or Alienation, as well as to release and confirmation; so that if a Feme Tenant in special title (after the decease of her husband) make a Lease for three lives (not warranted by the Statute of the 3d H. 8. cap. 28.) without Warranty, he in the Resevoir of Remainder by force of the said Statute of 11 H. 7. shall not enter; but the same is adjudged in Sir Geo. Brownes case in the 3 Report, that in that case he might enter, and that those words, with Warranty, shall be only referred to Releases and Confirmations, which indeed do not make a discontinuance without Warranty for the intent of the said Act of 11 H. 7. was not only to prohibit everybare, but also every manner of discontinuance, which might put the desire, to his real action; whereby he might perhaps be disheared, or at least greatly delayed; and therefore in regard Releases and Confirmations do not make discontinuance without Warranty, these words, with Warranty, are to be construed Secundum subjacent materia, and shall be referred to them only, to make them equivalent to such an estate, which passed by Liberty, and which of itself without Warranty makes a discontinuance.

The Statute of 32 H. 8. cap. 2. (which prohibits, that none shall have any Anworry or Conuance for any rent due, or Service, unless the same were had within 40 years before the Anworry, made) extends not to any such Rent or Service, which by common possibility cannot happen, or become due, within 60 years; as if the Seigniors courts upon Homage and Fealty only; for the Tenant may live 60 years after he hath done them: So also if the Service be to cover the Hall of the Lord, to go to Warre with him, when the King maketh Warre against his enemies, such casual Services, which by common possibility cannot happen within 60 years, are not within that Act. Likewise gifts of Echec, Celaviage, or Receus are not within those branches of the same Statute, which limit the feisin of lands, because in those gifts the feisin is not transferable, but the tenure, and in those
those writs of Elcheat and Ceulavir, albeit they demand the land; yet
need they not allege any seisin in the same land, &c., as the said Sta-
tute requires; because that Act only extends to such a writ, where
the Defendant or his Ancesitops may have seisin of the land in de-
mand within the time of limitation prescribed by the Act, and the
Statute doth not force them to any impossibility, &c.

9 The Lord Cromwell brings an Action de scandalo magnatum up-
ons the Statute of W 3, cap. 5, against Sirar Delmy; for speaking
these words unto him: You like of those that maintain sedition against
the Queens proceedings, unto which the Defendant pleads special in-
justification, that the Plantif procured two to bea b in his
Church, which enleveth in their Sermons against the Book of Com-
mon Prayer, and because the Defendant did prohibit them, the
Plantif said to the Defendant, Thou art a false varlet, I like not of thee, to
which the Defendant saith, It is no marvel though you like not of me,
for you like of those, (namendo the two, that should have prnstered)
that maintain sedition (innumernd feditioam illam do&rtinam) against the
Queens proceedings. And this was adjudged a good justification;
for, in case of slander for words, the sense of the words are to be
looked to, and the sense of them both best appeare by the cause and oc-
casion of speaking them, according to the Rule, Sentius verborum ex
causa dicendi accipendus est, & testiones tempere accipendihunt rece-
dum subiectam materiam: And therefore in this case the Council of the
Defendant is said to have done well in thewinge the special matter,
whereby the sense of this word (sedition) might appear upon the co-
herence of all the words, taken together, viz. that the Defendant
meant the seditious doctrine against the Queens proceedings in the
Act of 1 Eliz. by which the Book of Common Prayer was established;
and that he did not intend any such publique or violent Sedition, as
was allowed by the Plantif; and as ex vi termini per se, the word
itself would import, &c., And it was said, Quod unum finem loquuta
sunt, non dicit ad alium decographer, &c.

10. If Common be said to be appertaining to a Sexta, Land,
Seadolo, and Pasture, time out of mind, that shall be adjudged
Common Appurtenant, and not Common Appurtenant; for it is a
against the nature of Common Appurtenant to be Appurtenant to
Seadolo or Pasture; And therefore in that case the subject matter and the
circumstance of the case ought to direct the Court to give
Judgement, whether the Common be Appurtenant or Appurtenant.

11. In An Appeal of Murder against A. as principal, and against B.
as accresory before the fact, A. was found guilty of Sabo slaughter,
but not of Murder; in this case B. was acquit, because there cannot
be an Accresory before the fact, in Sabo slaughter, which all ways hap-
pans upon a ludadecimal debate or essay; for, if it be presumtuate, it is
Murder.

12. In joint warrants, or words

11. Joint yows of the parties shall by construction of Law be taken
respectively severally according to the several interests of the Gians-
tes; as Warranty made to two of certain lands, shall entitle as se-
veral Warranties; in regard they are severally fellow, the one of part
of the land, and the other of the residue in severality; So also a joint
Covenant taken severally in respect of the several interests of the
Covenants, Vide 16 Eliz. 337, 338, Dyer inter Sir Anthony Cook,
and Welton, in Justice Windhams case Co. 1. 5. 7. b. 4. Sometimes also
joint Yow in 28 Gants shall entitle severally, in respect of the in-
capacity of impossibility of the Gants to take jointly, as a Lease
made to an Abbot and a secular man; or to two men or two women,
and to the heres of their two bodies engenened; for in these and the like
cases the inheritances is severall, Vide 29.

12. In

Co. L. 5. 7. b. 4.
16 H. 4. 53, 54.

6 E. 3. Cove-
nant. Br. 49.

Co. ibid. Justice
Windhams cafe.
18 In Debt upon an Obligation brought by Houghton against Meek and Smith, whereas the Condition was to perform an Arbitration between the Plaintiff on the one part, and the Defendants on the other part, it was quod Arbitrium predictum fiat & delibetetur utique particium predictarum, before such a day, and the Defendants pleaded, that the Arbitration was (indeed) made before the day agreed upon, and was also delivered unto the Plaintiff, and unto Meek one of the Defendants, but not unto Smith, whereupon the Plaintiff demurred, and Judgement was given against the Plaintiff; so, in that case, it was resolved, that sometimes the word uterque, is disjunctive, and hath the quality of severing, and sometimes collective, and hath the property of joining together, as if two or three be bound in an Arbitration, & uterque committ, this word uterque, makes the Obligation federal; but in the aforesaid case it shall be taken collective; and the Rule always to know, in which of these two senses it shall be taken, is to consider the Subject matter, and to make conclusion according to the congruity of Reason, & ut eviceretur absurdum; as in the case of the 39 H. 6, 7, the Condition of an Obligation was, if uterque committ, viz. the Obliger and the Oblige, Sisterer Robert Bozom, &c. And it was unjudged that each of them was bound pro parte sua, and not the one to the other; for that would be absurd and against the congruity of Reason, And in the case of Houghton, in as much as both the parties were equally subject to the penalty and danger, reason requires, that the Arbitration should be delivered to both the parties, to the end they may perform it, and avoid the danger of breaking it, &c. Vide supra 8, 9.

13 This time for the Bishop to collate by lay is Tempus seminare, haille the peace, according to the Kalender, and is not to be accounted according to 28 pages for, each Suneth fora vera sunt acceptienda secundum subjectam materiam; and therefore because this computation of months concerns those of the Church, it is great reason, that the computation shall be according to the computation of the Church, whereas they are best acquainted, 8, 4. Vide Dyer 327, 7.

14 In regard the King (albeit he be but one person, yet) hath two several capacities in him the one natural, as he is a man; the other political, so called, because framed by the policy of man, if it be demanded, to which of these capacities ligament is due; The answer is, that it is due to the natural person of the King, (which is ever accompanied with the political capacity, and the politiue, as it were appropriated to the natural capacity) and is not due to the policy capacity only, that is, to his Crown or Kingsome distinct from his natural capacity; For every Subject is presumed by Law to be twoone to the King, which is to his natural person, and likewise the King is twoone to his Subject (as it appeareth in Bracton 1, 3, de actionibus cap. 9., fol. 107.) which hath be taken in his natural person, because the politic capacity is invisible and immaterial, but that capacity hath no soul, being framed by the policy of man; And therefore in all Indictments of Treason, when any do intend to compell more & destruction Domini Regis (which must needs be understood of his natural body, his body politic being immortal, and not subject to death, the indictment conclaves, contra ligeance fite debium, by which it plainly appears, that ligeance is due to the natural body of the King, that capacity being (indeed) the only Subject matter capable thereof.

15 If A. dotheth to B. ten bullocks and ten pounds branding and payable out of his lands and tenements quarterly at the most usual Feasts, &c. Here, these in woords payable quarterly, ought to be under-
the Common Law.

The Office of Marshal of the Peace may not be granted to persons, because it is an Office of great trust attended to the person, and concerns the administration of Justice, and the life of the Law, which is to keep such as are in execution in safety & security, to the end they may the fonder pay their debts; and this trust is insubstantial and personal, and shall not be transferred to executors or administrators; for the Law will not confide in persons unknown for the ordering of matters, which concern the administration of Justice, &c.

17. In the suit brought by Dyke against Manningham upon an obligation of 40l. with condition to save Dyke (being then high Sheriff of the County of Bedford) harmless, and to be ready at his command, as his true prisoner, the Defendant pleads the Statute of 2 H. 6, cap. 10, by which such bonds taken by the Sheriff colour officio, are made void, and farther, that there Thomas Palley purchased a Liberari fac. out of a recognizance to him made by the said Defendant, and procure to be directed to the said Sheriff of Bedford to be fettered and certified: and before farther, that the King had sent to the Sheriffs of London, Middlesex and Hertford, other writs in form as fo. said, and that the same Sheriffs returned the writ into the Chancery, &c. In this case, one exception taken to the Defendant's plea was, so that there were divers Sheriffs named in it, and the writ had his Order, that the same Sheriff returned the writ, &c., which was said to be uncertain: but it was resolved to be certain enough, and that it should be referred to the Sheriff of Bedford; for, the return contained an extent of land in the County of Bedford, and more could be done, but the Sheriff of Bedford, and the whole sum of the execution was referred to him, and that could not be so, unless the Sheriff of Bedford had made the return, &c.

18. If a man be outlawed in an action personal by process upon the original, and after brings his writ of Error. Here, if he, at whose suit he was outlawed, will plead against him a release of all actions personal, that seems to be no plea; for by the said action he shall recover nothing in the personality, but only to reverse the outlawry; Hobdew, in the same case, a release of the writ of Error is a good plea: And to note that, an action real or personal both imply a recovery of something in the realty or personality; or a restitution to the same: but a writ impeded neither of them, &c.

19. And his wife brings a Action of Covenant against B. upon Covenant made by Indenture quittance, in which B. Covenants with the Plaintiffs, and with I. S. and his wife, &c. assignate this, &c. quolibet & quolibet currem, that he was sole settler of the land, &c. And in a writ of Error in the Exchequer Chamber it was adjudged, that the Action would not lie; because the other Covenants ought to have joined with the other Plaintiffs; and this necessity was agreed: when it appears by the Count, that each of the Covenants hath or ought to have a several interest in estate, there the Covenant by those woods (cum quolibet currem) is several; but when they have a joint interest, there the woods (cum quolibet currem) are void, and signify nothing: As if a man let black acre to A. white acre to B. and green acre to C. and Covenant with them, &c. void, that he is right owner of them, &c. In this case in respect of the said several interests, by the said woods, &c. void, the Covenant is made several: But if he demes those acres to them jointly, then those woods (cum quolibet currem) are void; for a man by his Covenant (im-
The Reason of

Max. 31.

20 When two distinct matters of record amount to an office, sometimes there ought to be a scire facias, before the King though itself; and sometimes not according to the several subject matter. As if it be found by office, that the name of D. is held of the King, and it appears also by fine upon record, that the name of D. is alienated in estate; in this case there ought to be a scire facias, in which the issue may be averred. But the identity of the thing appears to the Court, and it cannot be divers; there the two matters shall then also amount to an office, and the King may self without a scire facias. As in the case of Sir John Savage, who was sheriff of the county of Worester, for life by letters patents under the great seal; for being involved in two voluntary escapes of felons, it was held per curiam in B. R. that those words amounted to an office, and that the King was self without a scire facias. And the reason was, because it appeared to the Court, that there could be but one sheriff in one county; and therefore there was no need of any scire facias in that case, &c.

21 In a quarrel, when the advowson is likely to come in question, the suit shall abate, unless the patron be therein named; but when the presentation only is to be recovered and not the advowson, neither yet the patron to be put out of possession; if in that case the suit is adjudged good without naming the patron. &c. 7 H. 4 25. 27

22 If lease for life make a deed of settlement, and a letter of attorney to the lessee to make liberty, and the lessee make the liberty accordingly, notwithstanding all that, he shall enter for the settlement, but if lessee for leases make a settlement in fee, and a letter of attorney to the lessee to make liberty, and he make the liberty accordingly; this liberry shall bind the lessee, and shall not be avoided by him; for the lessee could not make liberty as attorney to the lessee; because he had no freedhold, wherein to make liberty. But the freedhold was in the lessee, &c.

23 If tenant in tail make a lease for years of lands, and after lease a fine, this is a discontinuance, for a fine is a settlement of record, and the freedhold passeth; but if tenant in tail make a lease for his own life, and after lease a fine, this is no discontinuance, because the reversion appertains upon a state of freedhold, which looketh only in grant, passeth thereby, &c.

24 Vide Max. 104. Pl. 7.
the Common Law

Mc. 32.

25. If a Wilt of forcible entry and detainer be brought against A., and the more, and the Jury find all guilty of the forcible entry, and only A. of the detainer; in this case, if the Wilt be false, albeit the original Wilt be entirely brought against all, yet the A. shall have one Atttanc for the false Wilt upon the forcible entry, and A. shall have another Atttanc for the winning of the detainer.

26. A servant makes a bill, testifying the buying of more to the use of his Master, and this without Licence, in which heibringsubstitute to pay the debt; yet, In this case, debt lyeth not against the servant, but only an Action upon the case; for it is the debt of the Maker, and the Auminium of the servant.

27. The Custome of a Manner is, that the Lord, the Surteney, or his deputy may benefit by copy, the Lord veylesly authority to two to make Custome grants for payment of his debts, and dies; they hold Court in their own names; and grant copies in rebellion according to the Custome; the Feme of the Lord hath one of the Copyholds aligned by the Surteney upon recovery of the third part of the Manner in Dower; and it was held, that she should avoid the grant made by the two aligines; because the claims by title of Dower, which is paramount the devise.

31. According to the end.

28. The Wilt in Knight-service, that is able to performe the Co.inf. part 1 Service himselfe, may nevertheless, if he please, performe it by another, as well as he that is Rich, an Infant, or a Corporation aggregat of many, so, for Scribes incipit a fine, and the end of this Service is for defence of the Realm; And therefore if it be done by an able, and sufficient man, and the end, for which the Law ordained it, he receiveth, it is duly performes, as it ought to be.

32. If the Lord tender a commodable marriage to the hetre female within the two years, the Lord shall not have the forfeiture of the marriage; because the one part, which the Statute of Will. 1, cap. 22. giveth those two years, is for the Lord to make his tender (Co. l. 6. 71. a. The Lord Parties case) or rather, that he ought not lose the advantage of making his tender, And the benefit of those two years are given unto him; (as it were in lieu of the forfeiture, in case the hetre female should refuse his tender; so if he make tender within the two years, and he accept the same, and marry immediately after marriage he is out of ward.

33. If Willanage be pleased by the Lord in an action real, mist, of personal, and it be found that he is no Willanhe; the bringing of a Wilt of Error, is no ententelement; because the end of bringing that Wilt against the willanehe, is not to commence any new suit against him, but only to set the former Judgement.

34. If a Castle, that is used for the necessary defence of the Realm; besides to two of more Copytakers, this Castle might be divided by Chambers and Rooms as other houses be, but yet for that it is pro-bono publice & pro defenfione regni it shall not be divided; for as one house, Proper judi gladis division potest, and another house, Pri le droit dei cich, que se soiret division, en aventure que la force del Realne ne defaille par taut: But Castles vespense for another end, viz. habitation, and private use, and not for the necessary defence of the Realne, ought to be parted between Copytakers as well as other houses; any wites may also be thereof endowed, but cannot be of Castles for defence, &c.
The Reaason of

Max. 32.

Avowry upon

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Release of all

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plea in error.

Licence no

deemed.

An efficient

issue no

bought title.

State of Glouc.

E. I. 3.

9 Such confirmation must be made of a Statute, that the end, for which it was ordained may be always pursued, in suppression of the mischief and advancement of the remedy, as by this case it appears; A Fine levied by the husband only is within the letter of the Statute of Gloucester 6 E. 1. cap. 3, but the mischief was, that the heir, was barred the inheritance of his mother, by the warrant of his father without scire. Am this Act intended to apply a remedy, viz, that it should not barre, unless there were scire; and therefore the mischief is to be suppressed, and the remedy advanced.

10 The Wouches cometh into the Court to be viewt, and being viewed, is sworn of full age; yet he shall not be sworn to answer, till he com in to the same intent by other process.

11 The Wouches upon a Grand caput valentiam, shall not lose the lands, though he cannot save his default: because the process is only to this end, viz. that he should appear. Finch 13.

12 A man that is sworn by Writ to answer to a matter, shall not be sworn to answer any other matter than is contained in that writ: though the King be party: As if by Office it be found, that lands in Chibis were deeded to I. S. a fool natural, and that A. occupied them; whereupon a Scire facias goeth out against A. to answer, why the lands should not be settled into the Kings hands for the Indebpt of I. S. upon which A. commeth in and pleads, that I. S. when he was
was of perfect memory, made a recess to one B. who encouaged A. This is good enough without showing any licence of Alienation to discharge himselfe for the purchase of those lands.

13 Tenant in tail general having Mai a daughter, leaves a line in Trinity Surme, and dies in August following, the line immediately being a Formedon, and hanging the Wilt, the Proclamations are made: yet in this case the line is barred; for the end of making the Proclamations is not to barre the entiaule, because that is barred before by the line; but the only end of making the Proclamations (by the Statute of 32 H. 3.) is to distinguish the line, that shall barre the estate taille, from a Fine at the Common Law; for the Fine that shall barre such an estate shall be levied according to the Statute of 31 H. 7. viz. with proclamations, &c.

14 The Statute of 32 H. 8. cap. 37. faith, that the husband shall have an action of debt for the arrearages due in the life time of his wife out of any estate, which he held in her right: And this to be understand as well of arrearages due before as after, marriage; for in that Statute the end of naming the Feme (wife) is only to declare and describe the condition of the Feme, and not to imply, that the arrearages ought to incure after the coverture.

15 Where is an apparent diversity between a Capias in process; and a Capias ad satisfaciendum; for if the Capias in process be not returned, the arrest is toctious; because there the end of the arrest is, that the party may appear and answer the Plaintiff: But in all Wits of execution, when the Sheriff alone both execute them (as a Capias ad satisfaciendum, habere facias feinem et polissionem, fieri facias, liberam, &c.) if the execution be duly served, it is good, although the Wilt be not returned; for there the Plaintif hath the end, and effect of his suit, and then nothing else is to be done on his part afterwards: But in case of an Elegit, because the extent is to be made by inquest, and not by the Sheriff alone, that ought to be returned, otherwise it is nothing worth.

16 If a Bishop collate without Letis to a Church presentable, and his Clerke is inmuted, yet this may not put the right Patron out of possession; for that is nothing else but a provisjon, to the end divine Service may be celebrated, until the Patron present; and it is no more than belongs to his Office to do.

17 If the Diynasty of an Earle dome had beene instald to the heires male, it might have beene foitstaled for treason before the Statute 26 H. 8. cap. 13. by reason of a secret Conivasion in Law amnered unto it; for Earles are treason for two purposes, viz. ad confiulendum Regi tempore pacis, & ad defendendum Regem & partiam tempore belli; and therefore they wear a Cap of honoure and a Robe, as they are Councilors; and are girted with a sword, to represent them gallant Champions and Cavaliers; but then when such a person against his wili and the end of his dignity, commits treason against the King, his dignity (though enstaled) is forfeited by that Conivasion implicitly annexed to his estate, Vide 43. 7.

18 The scope and end of every matter is principally to be considered, and if the scope and end of the matter be satisfied, then is the matter itself, and the intent thereof also accomplished: And therefore in Fugitives case in the Commentaries, because the King had means of being intilled to the Custome of the Woun, viz. by causing it to be weighed, and the end and scope of the Statute being in that case performed, he was not to incur the penalty of forfeiting the Woun.

19 So let a person in execution go at large upon bond, &c. is es-
22 Hob. 8 csleok Knoines.

21 In debt when the Plaintiff hath had execution of the Defendants lands, and after the lands are ejected, if, such case before the Statute of 32 H. 8. 5. the Plaintiff could not have had a new execution, for the execution of lands was valuable, and accounted in Law § a satisfaction, and to avoid infinite losses, there could be but one valuable satisfaction or execution with satisfaction at the Common Law, but execution of the body is not a valuable execution; and therefore the Plaintiff after the Defendants death may have new execution, until he be fully satisfied, so that is the end and fruit of his suit, Et nonis rei attendendas est, & fines mandatorum Dominis Regis per reticpia sua (his, brevia) diligenter sust, observando.

33 Qui admisit medium di rimis fumur.

1. Plowd. 67. 2.


4. Co. 1. 5. 87. a. 3.

In alien fields ex.

The Reason of.

Max. 32.

Sheriff's bond void.

20 If the Plaintiff importune a Juror to appear and passe upon the verdict according to his conscience, albeit he was not summoned by the Sheriff or his ministers to appear, yet this is not any unlawful practice or cause of challenge of the Juror, because the end why he was impanneled, was to discharge a good conscience upon the verdict.

21 In debt when the Plaintiff hath had execution of the Defendants lands, and after the lands are ejected, if, such case before the Statute of 32 H. 8. 5. the Plaintiff could not have had a new execution, for the execution of lands was valuable, and accounted in Law § a satisfaction, and to avoid infinite losses, there could be but one valuable satisfaction or execution with satisfaction at the Common Law, but execution of the body is not a valuable execution; and therefore the Plaintiff after the Defendants death may have new execution, until he be fully satisfied, so that is the end and fruit of his suit, Et nonis rei attendendas est, & fines mandatorum Dominis Regis per reticpia sua (his, brevia) diligenter sust, observando.

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22 Hob. 8 csleok Effonies.
the Common Law.

7 If a Starter, that had a prisoner in his custody upon execution, suffereth him to go at large, though it be with a Keeper, he is liable to an escape; so he ought to keep him in salva & acta custodia, to the end he may the sooner pay his debt. Co. l. 3. 43. 5.

8 Where a man may enter, a release of all actions both not barre him of his right, because he hath another remedy, viz. to enter: But where his entry is not lawful, there a release of all actions is, by consequence, a barre of his right, because he hath released the means, whereby he might recover his right: As if the Defendant release all Actions to the heir of the Defendant, which is in by descent, he hath no remedy to recover it, because he had no other means to recover it, but by Action, and of that he is barre by his Release.

9 To hinder an Alien from getting into his lands by Gift, Trade, or other lawful means any treasure, or other personal goods whatsoever, as also an house for his necessary habitation, and conveniences of trading, and from maintaining any Action for the same, were in effect to benight unto him Trade and Crafick, which is the life and support as of every Plant, so more especially of this Kingdom.

10 The reason, why a Release of all Demands both barre a man of all his Right, Title, and Interest in any Lands, Tenements, Goods, Chattels, &c. is because by such a Release the means and remedies of recovering them are utterly exterm, and by consequence, the right and any Interest in the things themselves.

11 If a man by creating a Building or a Wood-pile both stop up or hinder the light of his neighbour's house, or by building an Hogs cave near his neighbours dwelling-house he much annoys the same, or makes the aire intendious or unwholesome, an Action upon the case will lie in either of these cases; so hereby he hinders and intercepts the peaceable dwelling of his neighbour, which is the principal end, for which the house was at first erected.

12 A poolec of a Lease for 500 years devileth it to B. for life the remainder to C. and his heires and dies; here albeit the whole term be in B. and C. hath nothing but a possibillity of a future Interest, and therefore cannot grant it over; yet in as much as the Legacie or Devise to C. is in eile and present, and therefore may be discharged, the Interest also, which springeth from the Legacie, may likewise be discharged; so, Qui progit medium, progit finem. And therefore it one devise to another: 20 L. when he comes to the age of 24 years, and die, the Legacie after the age of 21 years may release this Legacie and devise; and although he afterwards attaine to the age of 24 years, he shall be barre to recover it; yet in this case a Release of all limits and demands shall not barre him.

13 A is bound to B. to stand to the abode of C. A before the day of giving up the award withcharged C. to make any award; In this case, the Bond is foal; For how can A. stand to the award, when by revoking the Authority, which he had given to C. he hindereth C. to make the award.

14 If there be two Joint-tenants in fee, and one grants a rent charge in fee, and after released to his Companion: In this case, albeit he, to inward the Release was made, survive the other; yet must he not abide the charge; because he which forvices, by the acceptance of the Release hath repented himselfe of the way and means of avoiding the late charge; for, jus accrecedenti, the right of survivorship was the only means to have avoide it and the right of survivorship is utterly taken away by the release.

55. H. 8.
The Reason of

Max. 34.

15. H. 8. in the 33 yeares of his Reigne made to Sr. Richard
Cromwell the Forrest of Wayoridge and Sapley in Com. Hunt. with
the appurtenances for 80 yeares at the perrey rent of twenty nobles,
with this clause, viz. that Sr. Richard Cromwell his Executors and
Assignes should during the terme mainataine 100 Deere there, and
the rest the like, would leave there at the end of the terme: Now
the Lord North who had the 3x ample of the said Forrests, attempt-
ted to take the Deere, and give warrants there, but most of the
Judges & Sercents of both houses were of opinion he could not do it:
for all the Game was included in the woods and in one of the Forrest,
and the hundred Deere were not referred to be killed, or any of them,
because the Lord North would have debarred the Lesse of the
means of preserving the Game, and (by consequent) of performing
his Covenant, the end of preserving them being only for the main-
tenance of the Game and Forrests.

16. To build a new houle upon the Wall of several grounds within
a Forrest is a Purposse and Balance to the Game, andenable
at the discretion of the Judges of the Forrest to suffer it to hand,
or otherwise they may demolish it at their pleasure: because it is a
pravgible to the loss of the Deere, for the preservation whereof the Forrest
was obtained.

According to the effect.

1. A Deed delivered by an Infant, cannot be delivered again at his
full age; for it took some effect before, and was not voidable; But a
Deed delivered by a Feme covert, or a Receipt delivered to one that
had nothing in the land, may be delivered againe, viz. when the
commeth to be sole, or the party to have somewhat in the land: For
the first delivery was meerly void, and took no effect at all.

2. If a lease be made by Indenture bearing date 26 Mai. 4x. to hold
for 21 yeares from the date, or from the day of the date, it shall begin
on the 27 day of May: but if the Lease bear date the 26 day of May, 4x.
to hold from the making hereof, or from henceforth, it shall begin on
the day in which it was delivered; for the words of the Indenture are
not of any effect till the delivery; and then, p. from the making, or
from henceforth, take their first effect: So also if the habendum befor
the term of 21 yeares without mentioning when it shall begin, it
shall begin in the delivery; for there the words take effect: but if it
be a conditional then it shall begin on the next day after the deliv-
ery. Vide Max. 8. 2.

3. If a man deliver a Deed of Feoffment upon the land in name of
Seffia of all the lands contained in the Deed, this is a good Livery by
Seffia; but if a man only deliver the Deed of Feoffment upon the land with-
out mentioning yet it is in name of Livery, 4x. this amountes to no
Livery of the land: for it hath another operation to take effect as a Deed,
Co. L. 6. 6. Sharpe's Case & l. 9. 137.

4. If a man be dissolved, and make a Deed of feoffment, and a Let-
ter of Attorney to enter and take possession; and after to make Livery
by Attorney, this is a good Livery, albeit he was out of possession at the time of the Charter made; for the Authority given
by the Letter of Attorney is executor, and nothing passed by the
livery of the Deed, till Livery of Seffia was made: Aux in ancient
Letters of Attorney power is given to others to take possession for
the Feoffor: But if a man be dissolved, and make a writing of a
Lease for yeares, and deliver the Deed, and after deliver it upon the
ground,
ground, the second delivery is void; for the first delivery made it a
Deed; and in as much as the Lease for years must take effect by
the delivery of the Deed, therefore the Deed delivered when he was
out of possession was void; but so it is not of a Charter of Feas-
ment: for that takes effect by the Liberty and Seisin; And in the other
case if the Leesor had delivered it as a Stroke to be delivered as his
Deed upon the ground, this had been good.
5 A man hath issue a Sonne and drieth, and the wife dieth also:
When lands are letter for life, the remainder to the heires of the
wife, the Sonne dieth without issue; In this case the heires of the
part of the Father shall inherit, and not the heires of the part of the
Mother; because it took effect and vested in the Sonne as a purchaser.
6 If there be Lady, Feme meane, and Tenant, and the meane
bind her felse and her heires by her Deed to the acquittal of the
Tenant, the meane takes husband, the Tenant by his Deed granteth to
the husband and his heires, that he and his heires shall not be bound to
acquittal, the husband and wife have issue and die, this issue being
bound as heire to his mother, shall not take benefit of the late grant
of Sheriff, for this extends to the heires of the part of the father,
and not to the heires of the part of the mother, and therefore the heires
of the mothers part was bound to the acquittal.
7 If the husband alien his land, and then the wife is attainted of
Felonie, now is thevisiable, but if he be pardoned before the death
of the husband, the Lady be endowed; So if the Sonne endow his
wife at the age of 7 pears ex affinitu patris, if he before the death of
the husband attain to the age of 9 pears, the Dower is good; for
these two cases the right of Dower lookt effect in the life time of
the husband by reason of the capacity, which the wives had to take it;
But otherwise it is of an original absolute visability; as if a
man take an Alien to wife, and after the husband alien the land,
and after the late is Denizen, the husband dieth, he shall not be
endowed; because her capacity and possibility to be endowed came by
the Denization; otherwise it were if the were naturalized by Act of
Parliament; so that makes her as absolutely capable, as if she
were a subjece zone.
8 If the Father convey his lands holden by Knight-service either
of the King or of any meane Lord, to his middle Sonne in taille,
the remainder to the youngest Sonne in Fe, and dieeth, the eldest
being within age, and the King or Lord felse the body together
with part of the land according to the Statute of 3 and 34 of H. 8. In
this case if the middle brother die without issue, the King or the
Lord shall not have any benefit of the Statute against him in remain-
der; for the Statute was once satisfied, and the Statute extended
not to him in remainder. Co. 1. 93. 94. Bingham's case, and Nor-
chaste case. Co. 1. 10. 80. b. Loveyes case.
9 When Littleton saith, that every tenure which is not Knight-ser-
vice is Lomene in Sogage, he there speaketh of Sogage as it is large-
ly taken, and so called as effect, that is, all Tenures, which hath
the like effect and incidens belonging to them, as Sogage hath,
are termed Tenures in Sogage, albeit originally service of the Plough
was not reserved; as if originally a Rode, a part of gift Spars, a
Rent, or the like were reserved, or that the Tenant should hold
the land to be Ulteme ieleratorum condemnatorum, ut alio supzedo, a-
lios membrorum decetratione, vel alius modis juris quantitatem per-
trati feceris juris, that is, to be a Hangman 02 Executioner. It comes
in ancient times such Officres were not Volunteers, no to be hired for
lurce, but were to be bound therunto by Tenure.

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10 A tenant holdseth land of a Bishop by Knight's service, which
Seigniory the Bishop hath in the right of his Bishoprick, the Tenant
bith, his heir within age, the Bishop either before or after failure
bith; neither the King, nor the Successors of the Bishop shall have
the Warship, but his Executors, so, albeit the Bishop hath the
Seigniory en alter drio, yet the Warship being but a Chattel; he
bath it in his own right, and a Chattel cannot go in the succession of
the Corporation, unless the be in the case of the King.

11 If land be granted to a man for term of five years upon Con-
dition, that if he pay to the Grandor within the first five years 40
marks, that then he shall have fee; or otherwise but for the term of five
years; and liberty of Seisin is made unto him by force of the Grand;
in this case the Grantor bath, &c. simple conditional, &c., and if he do
not pay to the Grandor the 40 marks within the first two years, then
immediately after those two years past, the fee and Frank-
tenant land shall be adjudged in the Grandor, &c. And the reason
of this case is grounded upon the effect that the Liberty take at first;
for by the rule of Law a Liberty of Seisin must pass a present Free-
hold to some person, and cannot give a Freehold in future, as it must
be in this case; if after Liberty of Seisin made, the Frisby and In-
heritance fail not pass presently, but expect until the Condition
be performed; And therefore if a Lease for years be made, to begin
at Michaelmas, the remainder over to another in fee, if the Grand
make Liberty of Seisin before Michaelmas, the Liberty is void, be-
cause if it should work at all, it must take effect presently; and
cannot expect: And there is a diversify (in the case above put) between
a Lease for life, and a Lease for years; for in case a Lease for life
with such a Condition to have fee, the free simple paimeth, not before
the performance of the Condition, so that the Liberty may presently
work upon the Frisby; but otherwise it is in the case of a Lease
for years: There is also a diversify between Inheritances, that lie
in grants; and Inheritances that lie in Liberty; so, if a man grant an
Abeyancy for years upon Condition, that if the Grandor pass for
years within the term, that then he shall have fee, the Grandor shall
not have fee until the Condition be performed; &c. de familiaribus:
But otherwise it is, where Liberty of Seisin is requisite; and there-
fore if the King make such a Lease for years upon such a Condition
the free simple shall not pass presently, because in that case no Lib-
erty is made, Vide 55. 169. &c.

12 If a man make a Deed of Feoffment to another without Con-
dition, and when he gives Liberty, he clogs the estate with a
Condition, in this case the estate takes effect by the Liberty, and not
by the Deed of Feoffment, and therefore shall be subject to the Con-
dition.

13 If a Deed be made and dated in a foreign Kingdome, of lands
within England, yet if the Liberty and Seisin be made, Secundum formam
cartas, the land hath paimeth, for the land paimeth, and the grant takes effect
by the Liberty, and not by the Deed.

14 There is a diversify between a Feoffment of land (at this day) up-
on condition, so to the intent to perform his last Will; and a Fe-
offment to the use of such person and persons, and of such estate and
estates, as he shall appoint by his last Will: so, in the first case, the
land paimeth by the Will, and not by the Feoffment, because after
the Feoffment the Feoffor was left in fee simple as he was be-
fore; but, in the latter case, the Will purifying, his power is but a
direction of the uses of the Feoffment, and the estates paimeth by execu-
tion of the uses, which were raised upon the Feoffment: Posthabet in
both
both those cases, the Feoffees are settled to the use of the Feoff; and his heirs in the mean time.
17 If the Lease disf靛ce A. Leasee for life, and make a Lease to B. for the life of A. the remainder to C. in fee; here, albeit A. re-enter, and defeat the estate for life, yet the remainder to C. being once vested by good title shall not be avoided: So it is if a Lease be made to an Infant for life, the remainder in fee, the Infant at his full age disf靛ce the estate for life, yet is the remainder good; because it was once vested by good title. And therefore although it be regularly true, that when the particular estate is defeated, the remainder depending thereupon shall be also defeated; yet that rule fails in these and the like cases: But in both these cases there was a particular estate; at the time of the remainder created.
19 If the Lord grants the services of his Tenant to a man, and after by a Deed bearing a later date, he grants the same Services to another, and the Tenant attaints to the second Grantee; here, the last Grantee shall have the Services; and albeit afterwards the Tenant will attaint to the first Grantor, it is clearly void, 4c.
17 If a man beston of lands in tail, bestdoth them to another in fee, and die, and the other enter, 4c. this is no discontinuance; because no discontinuance can be made by Tenant in tail, but such as is made by a 4c. takeeth effect in his life time.
20 If two Joint-tenants within age make a Feoffment in Fee, and one of them dies, and the other survives, in as much as both the Infant must have jointly entered in their lives, that right shall wholly accrue to 'am that survives, and he shall enter into the whole, 4c. but in this case if one of the Joint-tenants had made a Feoffment in Fee, and died, the right would not have survived; because the tenure of the Jointure took effect in both their lives time. Whittinghams case.
Warranty of a man void.
19 In many cases a Warranty added to a contemple is said to make a discontinuance ab effectu, although he that makes the contemple was never settled by force of the estate tails; because it takeeth a way the entry of him that right hath, as a discontinuance both: As if Ten-ent in tail be disf靛ce and die, and the issue in tail releaseth to the disf靛ce with Warranty; In this case the issue was never settled by force of the tail, and yet this hath the effect of a discontinuance by reason of the Warranty.
21 Judge Richel's case.
22 A fine cannot operate doubtly.
22 If a man make a Lease for life upon Condition, that if the Leases grant over the revocation, that then the Leasee shall have Fee;
here, if the lessor grant the reversion by fine, the Lessee shall not have fine, for when the fine transfereth the fee to the Connex, that estate is so fettered, and takes such effect in him, that the same fine cannot work an estate in the Lessee also; for one alienation cannot vest an estate of one and the same land to two several persons at one and the same time.

23 When things, that lie in grant, and take their essence and effect by the delivery of the Deed without other Ceremony, are granted to one and his heirs, Habendum for years of life; there the Habendum is repugnant and void; as if a man grant rent, Common, &c. out of his land by the premises of the Deed to one and his heirs, Habendum for years of life, the Habendum is repugnant; for fee did pass by the premises by the delivery of the Deed, and therefore the Habendum for years of life is void: Again, if one by Deed grant a rent in fee, or a Seigniorcy in the premises to one and his heirs, Habendum to the Grantee for years of life; here, albeit another Ceremony is requisite (viz. Attozement) besides the delivery of the Deed, yet in as much as they are things that lie in grant and all the estates viz. in fee, for years of life, ought to have one and the same Ceremony to pass them, viz. Attozement; for that cause the Habendum is in that case also adjudged void.

3. When land is given by Deed in fee by the premises, Habendum to the Lessee for life, there also the Habendum is void; because the same Ceremony is requisite to both the estates, and it shall be taken most forcibly against the Feoffor.

4. When to the estate limited by the premises a Ceremony is requisite to the perfection of the estate, and to the estate limited by the Habendum nothing is requisite to the perfection and essence of it, but only the delivery of the Deed; in that case, although the Habendum be of a lease estate then is mentioned in the premises, yet the Habendum shall stand; as if land be given to a man and his heirs Habendum for years; here to the fee simple limited in the premises it is requisite to have Liberty and Seisin, and until Liberty be had nothing passeth but an estate at will (if the Deed should go no further) but by the Habendum for years, the estate takes effect immediately upon the delivery of the Deed, although Liberty of Seisin be never given.

24 A Feoffe Solo makes a Lease for life rending rent, and after by her Deed grants the Reversion to another; and after and before Attozement marries with the Grantee; here, this marriage was not a counter-mand of the Attozement, no more than if she had married with any other stranger; because, in that case, when the Feoffe by her Deed sealed and delivered had granted the reversion to another, that grant took such effect against her life if she could not by any words, which she could use, countermand it before or after the taking of the Baron.

25 If a man bargain and sell lands to another by Deeds infeudated, and also levy a Fine of the same lands unto the Bargainee, and after the Deeds is proven according to the Statute; in this case, the Grantee shall be in by the Fine, and not by the Deed involved; for when the fee simple pass by the Fine to the Connex and his heirs, the involvement of the Deeds infeudated afterwards cannot benefit and turn the estate out of him, which was absolutely established in him by the Fine; for than whereas he was in before in the person he shall be now in the poitl, which cannot be: And when the Common Law and Statute Law concurs, the Common Law shall be preferred.

26 When a Countesse retains two Chaplaines, those two are each of them capable of a Dispensation by force of the Statute of 21 H. 8. cap. 13, but if he hath retained two, the Statute is executed;
for the cannot have more than those, capable of a Dispenation and the retainer of a third, in the life time of the two first, cannot benefit the capacity of Dispenation, which was at first vested in them by their retainer, to make the third capable of a Dispenation within the Statute; and it he should survive both the first; because the retainer has an evil commencement to take benefit of the Statute, so although a Countesse may have as many Chaplains as the piety at the Common Law, yet he cannot have more than two capable of a Dispenation by force of the Statute.

27 If two have Little to present by turne, and the one presents his Clerk, who is Admitted, Instituted, &c. and after is depisb'd for crime or here's, &c. yet he shall not present again, but this shall serve for his turne; so if he present more laciis, which was Admitted, Instituted, &c. although he be declared by sentence to be incapable, and therefore void ab initio, yet because the Church was fall until the sentence declaratory came, that shall serve for his turne, because it was but voidable; as in the case of Littlecon, if the Lord marry his ward within age of content, and after he disagree unto it, and it was no marriage ab initio, yet he shall not marry him afterwards; So (27 H. 6. Grev. 11.) if the Guardian marry his Ward, and after they are divorced caws precommunis, yet he shall not have the marriage of him again; But when the Admission and Institution are merely void, then without question that shall not serve for a turne; as if his Presentee had been Admitted, Instituted and Inducted, but had not subscribed to the Articles, &c. according to the Statute; 13 Eliz. by which in such case the Admission, Institution and Induction are all void, likewise where two were to present by turne, and one presented in E. 6. time his Clerk, who in Queen Maries time was depisb'd by sentence, and then the other presented his Clerk, who in 1 Eliz. was also depisb'd by sentence, and by the same sentence the first Presentee was refused, and after this: in this case the Patron of the second Presentee shall not lose his turne; For although the second Presentee was present for the time to all purposes, and the first Presentee during the first depisb'd was not Incumbent, yet when the second sentence came, the first Presentee was Incumbent again by force of his first Presentation, Admission, &c. and there needed no new Presentation, &c. and therefore when this first Presentee dies (who was then in course the last Incumbent) the Patron of the second Presentee must needs present in the next turne; but if the first Presentee had died before the second sentence, or had not recovered the first sentence, then the Patron of the last Presentee had espied his turne, and could not have presented again.

28 As concerning the tender of money upon a Mortgage, Bond, &c. upon a certaine day therein limited, although the last time of payment of the money by force of the Condition be such a convenient time before sun-set, as that the money may be told before the Sun be set, yet if tender be made unto him, that ought to receive it, at the place specified in the Condition at any time of the day, and he refuse it, the Condition is saved for ever, and the Mortgagee or Diliber need not to make tender of it againe at the last instant of the day, as aforesaid: for by the express letter of the Condition the money is to be paid upon the day immediately, and the Day aggree the last instant, to the end neither of the parties should lose their labour in attempting the payment.

29 In all cases when a Creed is only voidable at the time of the Actor brought (as for Infancy, Dures, or the like) the Defendant ought to plead Judgment & Action, and not, non eff latum (1 H. 7. 2. &c.)
so that when the Deed is void by Act or Parliament he ought not to
plead non est factum, but in consideration of Law, the Deed is to be
avowed by special pleading, taking advantage of the Act of Parlia-
ment; for albeit the Act rescinds the Obligation or other Writing shall
be void, yet the Law implicitly requires order, which ought to be
purged by the Obligo, &c. As if an Obligation be made to the
Sureties against the Statute of 23 H. 6. cap. 10. or to one against the
Statute of Willy, 13 Eliz. cap. 3. in those and the like cases the De-
fendant ought to conclude, Judgement in Action and cannot plead non
est factum (7 E. 4, 5, 7 E. 6. Br. non est factum 14.) against the opinion
of Montague in Dyve and Maninghams case in the Commentaries:
Again, when the Obligation or other Writing took at first effect,
and was once revest his Deed, but afterwards before the Action
brought became no Deed, as by nature, addition, alteration, break-
ing or the Seal or the like, in these cases albeit it were sometimes
his Deed, yet may the Defendant safely plead, non est factum; so
doubtless, at the time of the plea (which is in the present tenures)
it was not his Deed. In Dyve 36 H. 8. 59. In debt, the Defendant
pleads non est factum, and before the day of Appearance of the In-
quest, the mice had eaten the Label, unto which the Seal was fixed,
by the negligence of the Clerk, in whose custody it was kept;
whereupon the Justices commanded the Jury, that, if they found
it was his Deed at time of plea pleased, they should then give a
special Verdict, which they did accordingly. If an Obligation be deliv-
ered to another to the use of the Obligee, and the Obligee reselicted
it upon tenure, in this case the delivery hath lost its force; and the
Obligee cannot agree to it afterwards, and then also the Obligee may
safely plead, non est factum, against the opinion in Dyve, 1 Eliz. 167.
So also if an Obligation be made to a Feme Cobert, and the Bar-
on disages to it, the Obligo may plead non est factum; so by the re-
solution the Obligation loseth its force; and becomes no Deed. And by
these resolutions the Quarter in Dyve, 2. Mar. 112, and the disallowing
1 Eliz. 167. and other places are well reconciled.

30 A Tenant for life the remainder to B. In fee joyn in a Lease to
C. this immediately after the delivery takes effect in this manner, it is
the Lease of A. during his life, and the Confirmation of B. and after
the death of A. it is the Lease of B. and the Confirmation of A. accord-
ing to his opinion of Dyve & Browd.M.6. and 7Eliz.234.235. and therefore
in an Ejectment brought by C. if he count of a joint Demise from
A. and B. his count is not good. And in that case although the Lease
be by Deed intended, yet shall it not work any conclusion; for when
the Deed ensues by passing of an interest (as in this case it both) it shall
not be taken for any conclusion, no more than a Lease of years of the
Tenant for life by Deed intended shall be an Estoppel after his
death, because at the beginning it took effect by way of passing an
Interest.

31 When Tenant by Knight Service dies, his heire within age,
presently the value of his marriage, as a Chattel takes such effect and
is sequest in the Lord (24 E. 3. 25. V. N. Br. 27 E. 3.) that altho\nheire within age be made a Knight, and to that purpose in Judg-
ment of Law is esteemed of the full age of 21 years; yet shall the
Lord have the value of his marriage, as well as the residue of his land
till his age of 21 years, which last to remove all doubt, was expressly
given to the Lord by Magna carta cap. 3.

32 If a king hath a kingdom by Title of descent where the Laws
have taken good effect and rooting, in as much as by the Laws of that
King,
Max. 34.

_The Common Law._

Lives without Parliament.

Some he both inherit it, he cannot change those Laves of himselfe, without consent of Parliament: So into a Kinges Gray a Thining Kingdome by Conquest, As King H. z. had Ireland, after: King John had given unto them (being under his obedience and submission) the Laws of England, for the government of that Country, succeeding King after the same without Parliament.

33. The Statute of a rent charge hanging out of land acknowledgeth a Recognisance, and afterwards releaseth to the Tenant-tenant; the Countie is the Execution and recovery the rent, notwithstanding the release it is extinguished, for the Recognisance took effect to charge the rent before the extinguishment; and therefore it shall lie liable to the rent, in whole hands, vntill it comes, and as to the Countie, shall not be valid.

34. If the King hath an Adowtn in Fee, which is bona, and during the abstinence the King grants away the Abyzbone in Fee; the King hath not present to this abinance: But if the King hath an Adowton by grant of the temporalities of a Bishopricke, which is bona, and during the abinance, the King letteth to the Adowton the temporalities, yet he shall present to the Adowton, and not to the Bishop for this abinance; because the presentation was a Charter which went in him before he restored the temporalities: So if the heire the Livery from the King, and hath it: yet the King hath present to the Adowton, which voided during the time, that the Adowton and land were in the Kinges hand, caetera quae supra. Likewise if a man be titled of an Adowton in Fee in grasse, or appenent to a Manor, and the Adowton voided, and after, his Executors shall have the presentation, and not to the heire: because it was a Charter vntill he vnder the Peniones: whereas the heire in title have the presentation, which he said in the tale of the Knight of Fee, yet the Executors of the Tenant in title.

35. The Temporall shall have the presentation, which he passeth during the terms, albeit during the term he present not to the Adowton: So if a Maicarage happen to be void, and before the Baron can present he is made a Bishop, so, yet he shall present to that Maicarage, because it was a Charter vntill he vnder the Peniones.

36. If the Guardian marry the heire after the age of 14 years, and shall after the heire is taken by a stranger, yet the Guardian shall not have the Wardship, because he hath had the effect of his marriage.

37. If a man be Guardian in right of his Wife, although his Wife die, yet he shall have the Wardship, because it is a Charter vntill in him.

38. If the Furnisher upon Condition be dissolde, and after bind himselfe to a Statute Diste, or Merchant, or in a Recognisance, or take void, this is no disability in him of performing the Condition: for that, during the voidness, the land is not charged therewith, neither is the land in the hands of the Dissolue liable thenceunto; because, in that case, if the Wife, or the Countie release the Statute or Recognisance, and after the Dissolue doth enter, he may performe the Condition in the same plight and freepose, as when the land was conveyed unto him.

39. Where an Estate of Lease is to be made void by a Condition or Limitation, no acceptance of the rent after can make it to have a continuance: Otherwise it is of an Estate of Lease voidable by entry.

35 M.
35. He that cannot have or perform the effect or consequence of a thing, shall not have the thing itself.

1 If a man be called by Writ to the Parliament, and the Writ is delivered unto him, and he sit in Parliament by force of that Writ, he is for ever after a Baron or Peer of the Parliament, and thereby his blood is ennobled to him and his lineal heires; but if he die before he sits in Parliament, he is no Baron or Peer neither shall he be his real any benefit of the Writ; because (being prevented by death) he cannot perform the effect or consequence of the Writ, which is, personaliter interesse cum Rege & cum Prelatis, magnacibus, &c. Super arduis & urgentibus negotiis &c. consulium iuuum impenitentium, &c.

2 An Infant within age, that is not in custody of another, cannot be Guardian in Socage; because no Writ of account can lie against an Infant. For, as Bacon saith, Alium regere non potest, qui scilicet regere non novit: Osius Flora, Minor minorem custodire non debet, alios enim presuntum male regere, qui lepissi regere necsit: And by § like reason, An man non compex meretis, cui Lunatric, a man cactus & mutus, os turbus & mutus: or a Leger removed by a Writ de leproso amovendó cannot be Guardian in Socage.

3 A Guardian in Socage shall not present to a Benefice in the right of the heire; because he cannot be accountable therefore, for that he can make no benefit thereof; for the Law both abo Simony, or any corrupt course for Benefices; And therefore in that case the heire shall present himself.

4 If two Joyn-tenants bring a Writ of Seine, and the one is summond and severed, the other cannot for the sake of the Seine; for he ought to be attendant to the Lord Paramount, as the Seine was, and that he can not be alone without his companion: So it is also if there be two Joyn-tenants Seines, and in a Writ of Seine brought against them, one makest default, and the other appears, there can be no faze-judge.

5 If Tenant in Frank-almoigne bring a Writ of Seine against his Lord, the Lord cannot visit him in the Seignory; because he cannot hold of any man in Frank-almoigne, but of the Donor and his heirs.

6 If the Lord maphim his Vilaime, he shall be invited for it at the Kings suit: but he shall not have an Appeal of maphim against his Lord, because he cannot in that case enjoy the damages recovered; for that upon recovery and execution for the damages, the Lord may immediately take them from him again. Vide infra. 38. 1.

7 In a Quod juris damm brought by two Executors, the non-fuit of the one is the non-fuit of both; because the Tenant cannot attain according to the grant.

8 Regularly when any man will take advantage of a Condition, if he may enter he must enter, and when he cannot enter he must make a claim: And his claim is to proceed and as it were to make way for his entry; And the reason of this is, because a Freehold and Inheritance shall not cease without entry or claim: yet in some cases, when he cannot enter by reason of some present-interest, which the Tenant hath in the land, neither shall he then make his claim, because he cannot enjoy the effect of his claim, viz. to enter into the land: As in the case of Littleton Sec. § 50. If land be granted to a man for 5 years upon Condition, that if he pay unto the Grantor within two years 40 marks, that then he shall have Fee, or otherwise but so to the term of 5 years, if in this case the Grantee do not
not pay unto the Grantor the 40 marks within the first two years, then immediately after those two years past, the Fee and Frank-tenant is in the Grantor, without entry of claims, &c. Vide 34. 11, and 55. 109.

9. If an Ejector be brought, and the terms in the lease hang-plement, yet the Action shall proceed for damages only, because an Ejector alone has the terms for damages alone; but if a Tenant purser rent, being an Allottee, and Celty, that he would hang the suit, albeit the suit were well commenced, yet the suit shall abate; because he cannot have the effect of a recovery in an allottee, which is to have as well the land as the damages, and not damages only, as in the case of an Ejector.

10. If Tenant in a real Action release unto the Demander after recovery, all his right in the land, he shall not afterwards have a Writ of Error, because he cannot have the effect of that Writ, which is to be restored to the land.

11. If Debtor, Damages be recovered in a personal Action by false verdict, and the Defendant released unto the Plaintiff all Actions personal, the Defendant shall not afterwards take any benefit by bringing a Writ of Attaint, because he cannot have the effect of that Writ, which is to be restored to the Debtor and Damages, which he lost: The like is the case, where a Judgement is given upon a false verdict in a real Action; for there also a release of all Actions real, is a good bar to an Attaint, and the Writ of Error, and the Writ of Attaint do include the nature of the former Action.

12. If the Defendant in a personal Action after Judgement be restored release unto the Plaintiff all Actions personal, he shall not afterwards bring an Audita querelia, because after he hath released unto the Plaintiff all Actions personal, he cannot have the effect of that Writ, which is to discharge himself of a personal execution.

13. Tenant in a real Action discontinues in Fee and deth, the Discontinee makes a Lease for life, and grants the reversion to the Plaintiff; in this case, the lease shall not have a Formenon against Tenant for life; because, he cannot have the effect of that Writ, which is to recover an estate of Inheritance; for the Lease for life hath not the Inheritance, but the life in the Leasehold hath it.

14. If Feoffor, upon condition make a Lease for life as a gift in tail, and the Feoffor, release the Condition to the Feoffee, the Feoffor shall not afterwards enter upon the Lease or Deme; because he cannot have the effect of his entry, which is to regain his ancient estate.

15. If a man plant Cones and Conto-burrowed in his own land, which afterwards increase and multiply, that they spread the ground of his neighbour thereunto adjoining, yet shall not his neighbour maintain an Action upon the case against him that plants them, for the damage done by them; because he cannot have the effect of his suit, which is to recover damages for the trespass committed; for immediately after the Cones come into the neighbours land, he may kill them; because they being ferme, the other that planted them hath then no property in them, and it cannot be with reason, that a man should make satisfaction for the damage which good be, that are none of his.

16. There are some makes titles, unto which warranty both not extend, as p Little in case of exchange, condition upon Mortgage, &c. Postnament, consent to the Reveles, and the like; because for these no Actions lies, in which there m. p be Woucher 92. Robster.
The Reason of

Max. 35.

17 Before the Statute of Articuli cieli cap. 15. he that confesseth the Felony could not have the benefit of his Clergy; because in cases of confession he could not have his purgation, &c. by interment of Law he cannot (against his expirite and voluntary confession in Court) be innocent: Confessus in judicio pro judicio habetur, & quo-dammodo sua sententia damnatur.

18 It is provided by the Statute of Welf. 2. cap. 12. Quodd sc appellatus de felonis, &c. se acquietaverit, &c. restitutum hujusmodi appellatores damnam appellatur. But if an appeal of truth hath been brought against a Monk, who had been acquit; and thereupon was played his damages according to that Act, he should not have been admitted any such player; because he could not have the effect thereof, being by Law incapable to take the damages.

Fol. 15 B. N.

19 In a Writ of Right de rationabilis parte by one Coparsener agaist another Wroucher liech not; because the Demanant cannot have the effect thereof, viz. to recover in value, in respect of the privite of blood, befor them, &c.

F. N. B. 33. f.

20 In all originalis brought by a Subject, wherein pledges & secundum are to be found, the plamens of the Writ is, Rex vicemcomm. faltem, &c. Si A. fecit te securum, &c. tunc summoneas, &c. But at the Kings first the plamens shall be, Rex vicemcomm. faltem, &c. fummonem per bonos summum, &c. and not, Si Rex fecit, &c. for the King shal not be bound to prosecute; because he is not subject to the consequece thereof, viz. to be amerced if he do not prosecute; neither can he be non-suited; because he is always present in all his Courts, V. infr. 39. 4.

F. N. B. 48. q.

21 If a man brings a Writ of Right of Abowtow against another, and bringt the Writ, the Church becomes void, the Plaintiff shall not have a ne admissit, to the Bishop; nor a Quart incumbrar-via, albeit the Bishop both encounters the Church, &c. for the Demanant shall not recover the presentment upon this Writ, but the Abowtow.

F. N. B. 135. d.

22 One Commoner shall not bring a Writ de administratione &c. against another Commoner, which hath Common aportament, or is in grosse sans number; because such a Commoner cannot be admeasure, &c.

Pl. Co. 112. 21.

23 The Statute of Welfm. 2. caps. 4. and Stewards cap. 21. Quoddiant brevia de ingredi heredi potens, super heredem tenentis, & super eous, quibus alienata sunt, hujusmodi tenementum, &c. pot if the Demanant in a Cefavi be, the hered shall not have a Cefavi; because he cannot have the effect thereof, viz. to recover the arrears; so that they (by Law) belong not unto him, but unto the Executors.

Co. Inf. para 1.

24 If a Tenant in Frankalmoigne with-ynou his Service, the Lord shall not disvamme, commence any suit, &c. in any remedial Court; because that Service, being Spiritual and uncertain, shall be defined and recovered in foro Ecclesastic, in the Spiritual Court: It is otherwise of Tenure by Divine Service, which, although it be Spiritual, yet being certain, shall be recovered in foro seculari, and the performance or non-performance thereof shall (upon a difference and Abowtow) be tried by a Jury of 12 men, &c.

Co. Inf. para 1.

25 The Tenor: for pleaes (before the Statutes of Glaiotserd E. L. cap. 11. and 21. H. 3. cap. 15.) was not able by the Common Law to enable a common recovery of the Freehold; because he could not have the thing that was recovered, viz. the Freehold.

Co. 8. 118. 3.

26 The Statute of Welfm. 2. cap. 21. gives a Writ of Cefavi heredi potens, super heredem tenentum, & super eous, quibus alienata suerit
the Common Law.

Dyer p. 128
40. 1 Eliz.

Co. L. 42. 2. 3. 4.
Sir Anthony
Midlemay's
case.

Co. L. 18. 91. a.
1. 4.
Franca's
case.

Co. L. 11. 98. a.
3. 2.
Sir James
Bagge's
case.

1. In Sir Anthony Midlemay's case in the 6 Rep. (which was a resolution against perpetuities) it was resolved, that these words (Assumps, &c.) or (gave about, &c.) or, (enter into communication, &c.) are words uncertain and void, and God restore, that Inheritance and Estates should depend upon such uncertainties; so it is true, Quod mitera est

Co. L. 11. 86. 2. 3.
Sir Anthony
Midlemay's
case.

Co. L. 13. 91. a.
4.
Franca's
case.

Co. L. 11. 98. a.
3. 2.
Sir James
Bagge's
case.
punish him, and to commit him, till he put in sureties for the good behaviour, but not to disfranchise him: so likewise, if he intend or endeavour of himself, or confine with others to do any thing against the duty & trust of his freedom, and to the prejudice of any commonwealth of the City or Borough, &c. but put in it not in execution, this may be good cause to punish him, as aforesaid; but not to disfranchise him: for, non officus coram nisi sequatur effectus. Non officus effectus, nisi sequatur effectus. And the reason of this is, because when a man is a freeman of a City or Borough, he hath frankenemnt in his freedom for his life, and together with others (in their politicking capacity) hath inheritance in the lands of the Corporation, & interest also in their goods, and peradventure it may concern his trade and means of life, and his credit and estimation; and therefore the matter, which shall be cause of his disfranchisement, ought to be some act or deed done, and not a bare intention or enterprise, whereof he may repent before the execution of it, and whereupon no prejudice both ensue.

4. Those which have offices of trust and confidence, shall not so set them by bare endeavours or intentions of doing acts, although they declare them by express words, except the Act it itself be put in execution! As if the keeper of a Park shall say, I will kill all the Game within my custody, or, I will cut down so many trees within the Park, &c. but in the mean time kills none of the Game, nor tells any of the trees, this is no forfeiture, &c.

5. If a Bishop, Arch-bishop, Parson, &c. cut down the all the trees, this is a good cause of deprivation, and with this accord 2 H. 4. 3d. So if a Prior alien the land, which he hath in due dominus sue, this is a cause of deprivation, as it appears, E. 4. 34. So likewise if a Prior enter his depredations, that is a sufficient cause to deprive him, as it was hiden E. 3. 16. H. 6. 16. Nevertheless if in these or the like cases there be but an enterprise or enterprise without doing any such act, there can be no cause of deprivation; so in such cases,Voluntas non reputatur pro facto.

37. Alla exteriora indicat interiora Secreta.

1. One may commit a forcible entry in respect of the armour or weapons, which he hath, that are not usually bear, or do no more violence and threats to the terror of another: And if this or that act be made to a forcible entry, albeit one alone use the violence, all are guilty of force: So also if the Master cometh with a greater number of servants, then actually enter on him, it is a forcible entry.

2. When entry, authority, or licence is given to any by the Law, and he mistook it, he shall be a trespasser ab initio; but where entry, authority, or licence is given by the party, and he mistook it, there he shall be punished for the misdemeanor, but not a trespasser ab initio. And the reason of this diversity is, because in case of general authority, or licence given by the Law, the Law judgeeth the act subsequent, quan animo, or to what intent he entered; so, Alla exteriora, &c. but when the party gives authority or licence himselfe to do any thing, he can for no cause subsequent punish that, which is done by his own licence and authority: And therefore when as the Law gives authority to enter into an Inn of Tavern, to the Lord to disfraine, to the owner of the foils to disfrain damage infant, to the Reverence, to the whether shall be committed, to the Commoner to enter into the lands to set his Cattle of the like (vide R E. 4. 8. b. 21 E. 4. 19. b. 5 H. 7. 11. H. 6. 29. b. 11 H. 4. 75. 5 H. 7. 15. 28 H. 6. 5.) Here, if he that enters into the Inn of Tavern commit trespass, as if he carry any thing away from thence; or if the Lord, that disfraines for rent, or the owner for damage infant
sent in, whereof 2; kill the thief, 2; if he that enters to draw the water, 2; hurt to the house, 2; stays there all night, 2; if the commoner cut down a tree, 2; etc. In these and the like cases, the law will adjudge, that he entered for that purpose; and therefore in as much as the overt act, which he both, is a trespass, he shall be adjudged a trespasser ab initio, as it appears in all the above-mentioned books.

3 If a Purveyor take my cattle for the king's household by force of his commission, that is lawful; but if he sell them in the market, then is the first taking of them felonious, and with this accord, 2 H. 6. 1 p. b.

4 In many cases an act subsequent shall declare the intention of a general act precedent, as Peter Vavfor, octabas Hill, suffers a recovery, and by inventure made 15 of February, between him and the recoveror, limits the uses and uses, Downman and his wife, the daughter and heirs of Peter, &c. brings an Alise against him, unto whom the use was limited; but could not recover, because the subsequent invarient did sufficiently declare the intention of the parties at the time of the subsequent recovery: so if the tenant in tenure hath nine two daughters, and if, and the eldest enter into the whole, and after thereof make testament with warranty, this is an inter vivos warranty for the one moiety, and collaterally for the other; for the testament subsequent both declare the intention of the general entry, viz. that it was only for his wife, or otherwise it would be warranty; which should begin by invarient for the one moiety; and with this accord, Littleton, cap. Garr. fol. 150. If the Lord come upon the tenancy, and take, and dole away an ox, if he impound the same, the taking of him shall be adjudged as a trespass, but if he kill the same, that subsequent act declared what his intention was ab initio, and shall be deemed a trespasser, etc., as above-mentioned; and with this accord, 2 N. 3. 8. b. 28 H. 6. 5. &c.

5 If there be Lord, Seale, and Tenant, and the Seale pays his rent and both his services due to the Lord, and yet the Lord will dilate the tenant per wall, and put his cattle into the pond for them: In this case the Seale at the tenant's instance ought to take out his cattle, and to put his oaten into the pond; and then if the Lord will not suffer the Seale to do so, the Lord shall be deemed a trespasser ab initio; for the Lord both not then use the cattle in the nature of a trespass, etc., and with this accord, 1 3 E. 4. 6.

6 Roper the father of Agnes, the wife of Gore, in love to his comrade in law, Gore, being sick, procures an Elecuary of one Marius, an Apothecary by the advice of Doctor Gre we, into which Agnes did secretly put Raisins, with purpose to poison her husband, and May the 18th gives part thereof to her husband, who thereupon became very sick, Roper also ate thereof, and likewise became very sick; and last of all, Marius being taxed for it, asked it and gates it, May 21, and May 22 vis: This was adjudged murder in Agnes, and the intended nothing against Marius, and that peradventure the striking of it by Marius might make it have more force to kill him; Foxt, in this case the law signifies the murderous intention of Agnes in putting the poison into the Elecuary to kill her husband, with the event, which ensued thereto, viz. the death of Marius; for the putting of the poison into the Elecuary is the cause, and the death of Marius is the event, Quia evenus est, qui ex culpae sequitur, & dicuntur eventus, quia ex causis eventent: And the striking of the Elecuary by Marius without the putting of the poison there- by Agnes, would not have caused his death.

7 An actual delivery of a writing sealed to the party himself, without any doubts at all, is a good delivery; Foxt, in traditionibus scriptorum non quod dictum est, sed quod getum est, insinuatur: It is otherwise when it is delivered to a stranger.
The Reason of

Max. 38.

If these

Treason.

Delivery of a Bond.

Bond.

Robbery.

Lentls, 5. 36.

3. If the

The appeal by a Villain against his Lord.

Foreign possessions not pleadable.

The heir at

Youth shall

1. If the

The heir at

The warrant

Co. 3. 37.

Negative pleas not to be averred.

Co. 3. 305.

2. A. causeth an Obligation to be written, and sealed it, which writing was to the use and behalf of B. whom he intended to marry, and upon

Co. 3. 36.

The appeal by a Villain against his Lord.

Foreign possessions not pleadable.

1. If the

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5 If Tenant in tail reale to his Distello, and himse if life and his heirs to warranty, and die, and this warranty defends upon the issue, this tooz as a discontinuance, so that the heir cannot enter, but is put to his action; so if the issue in tail might enter, the warranty (which is so much favoured in Law) would serve for no purpose, but would be utterly destroyed; whereas being put to his action, the Distello may make use of his warranty by pouching the issue, and shall therefore recover in value, if other lands defended unto him in fee simple, &c. Vide 15. 9.

6 It is a vain thing to give that to a man, which he had before, because nothing can operate thereupon: As if land be given in tail, failing the reversion to the Donor, and after the Tenant in tail by his death infeoffs the Donor in fee; this is no discontinuance of the estate tail; because the reversion is not discontinuance, but remains in the Donor as it was before: So if Tenant for life make a lease for his own life to the Leesor, the remainder to the Leesor and a Stranger in fee; in this case, limited as the limitation of the fee would make the wrong, it enureth to the Leesor as a surrender to the one morty, and a forfeiture, as to the remainder of the Stranger; so, he cannot give to the Leesor; that which he had before; so, so likewise, if there be two Joint Torys, and one of them enfeoff his companion and a Stranger, and make liberry to the Stranger, this shall vest only in the Stranger, because the liberty cannot enure to his companion, who was before possessor of the land, per my, &c.

7 If there be Tenant in tail; remainder in tail; and the remainder in tail bargains and sells the land and all his estate, &c. by Jumentor intruded, &c. to L. S. to have for the life of the Tenant in tail, and to his heirs males, the remainder to the Queen, &c. Here the remainder to the Queen is vaga, because the Jantes for the life of the Tenant in tail takes nothing; for the Jante Hall never have any benefit thereby: And the remainder to the Queen ought to take aside when the particular estate ends; but that having no beginning can neither have ending: Quod non habeat principium nec habeat finem: And vara est illa potentia quae munificentia veniet in actu.

8 In a trust of Ward the case was this: before the Stat. of 27 H. 8. a man enfeoffs I. S. of Knight Service land to the use of the Feotment and his heirs, after I. S. enfeoffs I. N. to the use of the Feotment; and his heirs, and the heirs of the Feotment, the Feotment dies (living the wise) having a term within age. In this case, the term shall be in Ward in the life of the Feo by the Stat. of 4 H. 7. as heirs of Cellu quo us--, because the ancient use both still remain in the term; notwithstanding it be in some lost altered in respect of the Feo; for by the last Feotment, the terme had no more conferred upon him then he had before; as (notwithstanding the last Feotment) there was still a reversion of use in the term, and not a new remainder; because a thing cannot be given to a man, which he hath already. Vide plus ibidem verbo fine. So Cellu quo use of two acres, one bounen by priority, the other by posteriority, makes a Feotment of both to his own use; this makes no equality of tenure, because the ancient use which he had before, still remains; The Lord Raffles case.

9 If one recover against me by a common recovery, and after I have the recovery, he shall be still called to my use; so he shall be adjudged in by the recovery, and not by the Feotment.
The Reason of Max. 39.

39 Lex non Precipit inutilis: Vide M. 177. 5.

1 If Tenant in taile enlists his Uncle in fee, who aliens to a stranger with warranty, to bond to him and his heires and assignes, and the Uncle afterwards takes again an estate of the land in fee; in this case the warranty is destroyed, because it were needesse for the Uncle to warrant the land to himselfe; and the Law will not command os suffer things that are in themselves useless and unprofitable.

2 When a man is in the custody of the Sheriffs by process of Law, and after another Writ is delivered unto him to take the body of him that is in his custody, he is immediately (by judgement of Law) in his custody by force of the former Writ, albeit he make no actual arrest of him; for to what purpose should he arrest him, when he is already in his custody? Et lex non precipit inutilia, quia inutilis labor frutus, &c.

3 When a Parson is admitted, instituted, and induced to a Church, and does not read the Articles according to the Statute of 13 Eliz. 3, the Benefice is thenceupon void by force of that Statute, without procuring a sentence declaratory to deprive him; for it will be needesse to obtain such a sentence, when the Solis to already body, and open, for the Beneficer to present another.

4 In judicial process, the Plaintiff shall not be enjoined to find pledges de prosequendo; for in those process, although the Plaintiff is barred, nomintio, or that the Writ abates, yet shall he not be amerced, because such process are grounded upon a judgement and record; and it is a needless and vain thing to drive the Plaintiff to find pledges in such cases, where he cannot be amerced, Vide supra 35. 20.

5 That which appears plain to the Court, ought not to be spared by the party: So in the City of London's case, the Constitution there made appearing to be agreeable to, and warranted by their Charter, need not to be so spared. So also no price of money, shall be expressed in the Writ, because it appears of its selfe; 46 E. 3. 16. Likewise 12 H. 4. 17. The time within age brings an Athlete of Morndance; he ought not to over, that it is within time of limitation; for it appears.

6 In a special verdict concerning a Bargain and Sale, Demis, or the like, the Jurors shall not be constrained to find the payment of the money, mentioned amongst the other conditions; for it shall be needlesse to know that; which is affirmed to be already paid and satisfiéd in time before the Grant, and is a personal consideration already accepted; And this is true, as well in the Kings case, as in the case of a Subject.

7 Where, in a wittt of right of Admiration, &c, the Defendant claims the same Admiration as Parson imparsion, albeit the title be found for the Defendant, yet shall he not in that case have a Writ to the Bishop, ad admittandum Clericum: For, in construction of Law, he is already in the Benefice.

8 If a man recover in a Precipe quod reddat against a Tenant by sale Mort, the Tenant cannot have an attainit before execution be had against him; because in an Attainit, the judgement is, that he shall be restored, &c, and it were improper and needessee to give such judgement, when the Tenant still retains the possession of the land. Note, that this is put as a quere in Fitz: but he seems rather to favour this opinion, &c.

9 In
9 In an action upon the Statute of 24 H.8, against buying of pre

tended titles, if the Plaintiff demand by his count, that neither the

Defendant nor any of his Ancestors, nor any other by whom he claims, ot

were in possession of the land, ec. not of the reversion or remainder, ec. not received the rents or profits, ec. by the space of a year, ec. The

Plaintiff must not aver the title to be pretended; for the Statute it tells

makes it the right of him which hath not been in possession, to be pis

tended; and therefore to aver that, which appears plainly by the Statu
tute it tells and the Declaration is necelesse and impertinent: So if it

be pleased that the Lessor surrendered to the Grantor of the reversion,

there is no need of pleading assomtion; for assomtion is included in the

surrender.

40 Where the foundation fallest; all goeth to the ground,

Debile fundamentum fallit opus, & contra.

fist shall

nor endow

cd.

4 1. If a man be Tenant in the tailors, and makes a Feudalmen
take, and takes back an estate to him and his heirs in se, and then
takes wife, and hath issue and dies, his wife shall not be endow

that her title of Dower is grounded upon the estate in se, which her

Husband had during the coverture: Now, that Fe-Simple, attended

by the remitter of the heir in tail, and therefore her title of Dower

must not be annulled also: For, her issue hath not the land by the descent

of the Fe-Simple, but by force of the intail; There is the same law, in

the Tenant in tail vitlessly the discontinuance, ec.

2. When a view of Feudalment is void in it selfe, if livery be made ac

cording to the forme and effect of that view, the livery is also void, and

Is A, by livery gave land to B. to have and to hold after the death of A. to

and his heirs: this is a void view, because he cannot recover to him

selfe a particular estate, and if livery be made according to that view, the

livery is likewise void; because the livery referseth to a view, that hath

no effect in Law, and therefore cannot void, Secundam format &

effectum of that view, ec.

3. Regularly none shall have an action of Wack, unless he hath the

immediate estate of inheritance, and therefore it hanging an action of

Wack, an estate take determineth, and the Plaintiff becomes Tenant

in tail after possibility, ec. the action of Wack is gone.

4. In ancient times, amongst Kings anyes that lands might eleheat

to be bestowed upon the Lords on whom they were helden; this was one, if

the Tenants did erect Crostles upon their Houses or Tenements in possi

of the Lords; to the end the Tenants might claim the privilege of the Hospitalers, and to valorize themselves against their Lords, by such erecting of Crostles they were subject to forfeit their tenancies; but now since it hath pleased God by the light of the Gospel to banish

out of our Church and Common-wealth all such superfluous religes, the

danger of forfeiting Lands that way is also banished.

5. Regularly it is true which Littleton saith, that when a Tenant

bath once done homage to his Lord, he is excused for term of his life

to make homage to any other Allien or heirs of the Lord; but onely it tells

in this case following; A. holdeth of B. as of the Hammo of Dale, wherein B. is settled in tail; B. discontinueth the estate tain, and taketh

back an estate in Fe-Simple; A. hath homage to B. B. with sedes, and

the Mine in tail entreth; In this case A. shall no homage again to the

heire in tail of B. because he is reremitted to the estate tain, and the estate in se, that his father had (in respect whereof the homage was done)

is banished, and therefore the homage it tells is also banished; for the

heire in tail is in of a new estate, in respect whereof A. ought to be a
The Reason of Macc. 40

a new homage. So likewise it is, when the Tenant hath done homage, and the Sannes is afterwards recovered from the Land in a Precise quod reddat, &c. by a Stranger; in this case also the Tenant hath no homage against the Stranger; because the estate of him, that received the last homage, is defeated by the recovery, &c. It is otherwise when the Sannes is alienated to a Stranger, or delivers to the feoff without resolace, as an estate of the original estate.

6 When the ground or cause of an Action fails, there must needs the Action it falls also fails; as if an out-lawed person brings an Action, the ground and cause of which Action is forfeited by the Out-lawy (as in an Action of Debt, Detinue, or the like) there the Defendant may plead the Out-lawy it falls in barre of that Action, and shall thereby conclude the Plaintiff: It is otherwise in real or personal Actions, where the damages are uncertain (as in trespass of Battery, or Good, of breaking his Cloce and the like) and are not forfeited by the Out-lawy, for there the Out-lawy must be pleaded in barre of the person.

7 Tenant in Daily (a Sannes), whereto unto a Wifian is regardant, entwisth the Williane of the Sannes and vieth: Here the Issue after recovery of the Sannes in a Forsewje against the Williane, may settle the Williane, and the bringing of that Issue in this case will make no mummisation, because at the time of the Wif it thought he was no Williane, and the estate, by reason whereof he might claim the privilegge of mummisation, being defeated, the mummisation it seizes is also defeated.

8 A man by Wifia grants a rent of 40 s. to another out of the Sannes of D. to have and perceive tachin and his heire, and grants over by the same wax (or by another) that if the rent be behind, the Grantee shall disclaim in the Sannes of S. Here, both the Sannes are charged, the one with the rent, the other with a distress, the one being out of the land, the other to be taken upon the land; and in this case if the Sannes of D. be vested by an assign Title, all the rent is extinct, and so (by consequence) both the Sannes is discharged, but if the Sannes of S. be only existed, all the rent with still remain, &c.

9 If a Pannel upon a Vencifaces be returned, and also a Tals; and the array of the Principal is challenged, if the Lriote quash the array of the Principal, they shall not trie the array of the Tals; for now it is, as if there had been no appearance at all of the Principal Pannel; but if the Lriote affirm the array of the Principal, then shall they also trie the array of the Tals, &c.

10 If a Testament be made upon Condition that the Feejee shall not alien in Mortmaine, this is good, because the Condition is backed by a Statute Law; for such alienations are prohibited by the Statute of Mortmaine: And regularly whatsoever is prohibited by Law, may be prohibited also by Condition; but it malum prohibitum de malum inf. In ancient Deeds of Testament in F., there was most commonly a clause, Quod licium fim donatorio, rem datum dare vel vendere, cui volueris, exceptis viis religiosis & Judicis. If Sannes made in inferior Courts be barred by the Common Law in some Statute Law, or warranted by some lawfull and reasonable Conforme of the place, or are good for the Common-wealth; although there be but a sole of the Jury that make them, yet those Sannes, or Sannes made before all the rest of the inhabittants within that Jurisdiction; by reason of the same assumption, upon which they are grounded, &c. So likewise if Testament be given in take, upon Condition the Tenant shall not discontinue the tail, this is a good Condition, because warrantwed by the Statute of Weilm. 2. cap. 1, &c.

REX OUT OF LAND CREDIT.

CHALLENGE.

GOOD CONDITION.
the Common Law.

If a lessor make a Lease for life, the lessor may release to the lessee, and such a release shall stand good; but if the lessor make a Lease for years, a release by the lessor to such a lessee is not good; because he hath no estate of Freehold, upon which the release may ensue: Howbeit, if the lessor make a Lease for life, the remainder to another for life; in life, or in fee, a release by the lessor to him in remainder is good; because of the remainder of the estate, that is in him, upon which the release may work: It is otherwise in the last case, if the lessor for life in possession be dissolv'd; for then a release by the lessor to any of them in remainder (having but a bare right in the land) hath notgood grounds; upon which it may work, &c. And therefore it lands be given to man in tale, referring to the lessor and his heires a certaine rent, if the lessor be dissolv'd, and the lessor release unto the lesseur all his right; albeit the rent is exting by that release, yet is the reversion still in the lessor, because at the time of the release made the lessor had but a bare right in the land; so that if the lessee after wards enter upon the lessor, although he hold the land discharg'd of the rent, yet shall he be Lessee in tale as he was before. So likewise, if there be Lord, and Lessee, and the Lessee makes a Feasment in Fee of the land, but the lessor never becomes Lessee to the Lord, in this case a release to the Lessee is void; because at the time of the release made, the lessor had no right at all in the land, &c.

If a man let his land for term of years, and the lessee re-leaseeth to the Lessee all his right, &c. before the Lessee entret into the land by force of the Lessee; such a release is void; because before entry he hath but interest temini, and no possession, and therefore a release which ensues by way of enlarging an estate cannot work without a possession, to before possession there is no reversion; And yet if a Lessee for twenty years in possession make a Lease to B. for five years, and B. enter; a release to the last Lessee is good; because he had an actual possession, and the possession of his Lessee is his possession: So it is if a man make a Lease for years, the remainder for years, and the first Lessee vov enter, a release to him in the remainder for years is good to enlarge his estate: But concerning a release before entry there is a diversity between a Lease for life, and a Lease for years; for before the Lessee for years enter, a release made to him is not good, as before; but if a man make a Lease for life, the remainder for life, and the first Lessee die, a release to him in the remainder, and to his heires is good to enlarge his estate; before he make any actual entry; because he hath an estate of a Freehold in Law in him, which may be enlarged by release before entry, &c.

If an infant make a Lease for life, and the Lessee granteth over his estate with Warranty, the infant at full-age bringeth a Dunt

Release for a time good to ensue.

Release void.

Release for a time good to ensue.

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release made, and therefore a release unto him, in that case, for a day, or an hour, is a release for ever to him, and his heirs, &c. as if there be Distellos and Distellos, a release by the Distellos to the Distellos is good without the word heirs, to establish the estate to him and his heirs, &c. Where is the same Law of a Confirmation.

15 If the Distellos make a Lease for life, and the Lessee maketh a Testament in Fee, and to Distellos released by the Testator, that release is good to prevent the entry of the Distellos upon the Testator; because the Distellos had power to enter upon the Testator before the release made: It is otherwise, where the Distellos is not conteasful, as if a man make a Lease for life, and the Lessee for life is distellos, and that Distellos is also distellos, and he in the rebellion released to the second Distellos, the first Distellos shall enter upon the second Distellos, and his entry is lawful, and if the Lessee for life re-enter, he shall leave the rebellion in the first Distellos; and the cause is, for that the entry of the Distellos (during the life of the Tenant for life, and by consequent) at the time of the release made was not lawfull.

16 A man that hath a Sonne within age, is distellos, and dies, and after the Son being within age, the Distellos also dies, and the lands bestowed on his heir, and a stranger abates, and after the Sonne when he comes to full age, released all his right to the Abates; In this case, the heir of the Distellos shall not have an Issue of Mordancetler against the Abates, but shall be barred: because the Abates is armed with the right of the Sonne of the Distellos by his release, and the entry of the Sonne was conteasful, for that he was within age at the time of the volente case: It is otherwise, where a man of full age is distellos, and a descent case, &c. for a release to the Case, &c. is not good; because in that case, the entry of the Distellos being taken away, the release of the Distellos to the Abates wants a good foundation upon which it may be grounded, viz. the title of entry, which in the other case it hath.

17 It is said of a Confirmation, that it cannot strengthen a void estate: Confirmatio est nulla, ubi dominum preceendens est invalidum, & ubi donatio nulla omnino, nec valebit confirmatio: For a Confirmation may make a voidable or defeasible estate good, but cannot work upon an estate, that is void in Law.

18 If my Distellos make a Lease for terms of life, the remainder over in Fee, and I confirm the estate of him, in the remainder, without any Confirmation made to the Tenant for terms of life; In this case I cannot enter upon the Tenant for life, because the remainder depends upon that estate; and therefore if his remainder should be defeasible, the remainder should be also defeasible, and it were not reasonable, that I should by my entry upon the Tenant for life defeat the remainder against my own Confirmation; There is also the same Law and Reason, if the Distellos had made a Lease for life reserving the rent, against my own Confirmation; There is also the same Law and Reason, if the Distellos is for the rent, the Distellos was not afterwards entered upon the Tenant for life; because then the Distellos by entry upon the Tenant for life, should also retain the rent, which was irrecoverably lost by force of the Statute.

19 It is regularly true, that when the particular estate is defeasible, the remainder thereby shall be also defeasible, notwithstanding it faileth in others.

Release to an Abater good and bad.

Confirmation where good or bad.

Remainder where defeasible.
cises; for where the particular estate and remainder depend upon one title, there the defeating of the particular estate is the defeating of the remainder: but where the particular estate is defeasible, $ the remainder by good title, there although the particular estate be defeated, yet the remainder continues good: As if the Lessor devise A. Lease, for life, and make a Lease to B. for the life of A, the remainder to C. in Fee, albeit A. enter and defeat the estate; if $, the remainder to C. being once devised by good title shall not be obvious; 29. it were against reason; that the Lessor should have the remainder against against his own Liberty; So it is also, if a Lease be made to an Infant for life, the remainder in Fee, the Infant at his full age disagrees to the estate for life, yet the remainder stands good: So that it was once vested by good title; And in both these cases, there was a particular estate at the time of the remainder created.

20 If the Lord grant by Deed his Seigniory to A. for life, the remainder to B. in fee; A. dieth, and then the Tenant attains to A. this appointment is void; because it is not according to the Grant; for then B. should have a Remainder without any particular estate to support it; and the particular estate being void for want of appointment, the Remainder, which depends upon it, is also void.

21 Tenant in tail makes a Lease for life to A. for the life of A. and after grants the reversion to B. in fee, the Tenant in tail dies, and after that A. dies; In this case the entry of the estate in tail is lawful, because by the death of the Lessee the discontinuance is determined, and consequently the grant made of the reversion, gained upon that discontinuance, is void also.

22 If Tenant in tail enfeoff the heir in tail, being under age, and when the heir is at full age be charged the land with a Rent, Common, &c. and after the Tenant in tail dies, whereon the heir is residuum: In this case by the remainder the grant of the Rent, Common, &c. is determined; because the Granter had not any right of the estate in tail in him at the time of the grant, but only the estate in fee simple gained by the Seizure, which is wholly defeated, and the State of the land, out of which the Rent, Common, &c. issued, being defeated, the rent is defeated also: But if Tenant in tail make a Lease for life, whereby he gained a new reversion in fee (so long as Tenant for life lived) and he granted a rent charge out of the reversion, and after Tenant for life died, whereby the Granter became Tenant in tail again, and the reversion in his defeated; yet because the Granter had a right in the tail in him, clausd into a defeasible Fee simple, the rent charge remained good against him, but not against his issue, &c.

23 If the heir apparent of the Distiller dise sole the Distiller, and grant a rent charge, and then the Distiller dies, the Grantor shall hold it discharged; for his former estate being defeated by the remainder, the rent, which was granted out of it, is also defeated: So also if the father dissolve the Grand-father, and granteth a rent charge, and dieth, now is the entry of the Grand-father taken away; if after Grand-father died, the Seizure is remitted, and shall avoid the Charge, &c.

24 If the Baron discontinue the laps of the Feme, and afterwards the Discontinuance lets the same land to the Baron and Feme for life by Deed inmenting referring rent, and for default of payment a re-entry, &c. And because the rent is ascertain, the Discontinuance re-enters for this entry, the Baron with the Feme cannot have an Mille of Novel difficulty, because he is espoused, &c. but the Feme after the death of the Baron, shall have such an Mille against the Discontinuance; because

the Common Law:
cause both the reversion of the Discontinue, and the estate for life
made to the Baron and Feme being defeated by the remitter of the
Feme, the conditions, and rents, and all other things annexed to, or
referred upon that estate for life, are also defeated.

25 If an Abbot, Bishop or Deane, &c. alters the lands belonging to
his house, Bishoprick or Deanery, &c. without leave, &c. and after the
Alteene charged by Hand: And then the Abbot, Bishop, or Deane, &c.
by licence resumed an estate again to him and his Successors, and after
the Abbot, Bishop, or Deane, &c. dies: In this case the Successor shall
defeat the charge; because by his remitter he defeats the estate, out of
which it was granted.

26 If Judgement be given against Tenant in taile upon a seigned or
tale action, and the Tenant in taile his before execution, by which
the lands descend to the Issue in taile, and then he that recovers loses a Scire facias
out of the judgment to have execution thereof against the Issue in taile; Here, if the Issue plead to the Scire facias, and prove the recovery
to be tale (which was the ground of the Jugeme) he shall thereby
hurt the Tenant to have execution of that judgement: It is otherwise when the Tenant in taile voucheth and recovereth in value, &c. by
reason of the intended redemption, &c.

27 Before the Statute of 1 H. 7. 25. If a woman has been Tenant
for life, the remainder or reversion to the next heir, and the woman
had aliened in fee with warranty, and died, this warranty being collateral
had barred the heir in remainder or reversion; however that in
case the heir that had the reversion or remainder had by entry in
the life of the woman abrogated the estate so aliened, the warranty being
annexed unto that estate, had been aboved also.

28 If a man make a gift in taile at this day, and warrant the land to
him, his heirs and assigns, and after the Donor make a Settlement and
diet in fee, the warranty is expired, as to any voucher or reverter
for, that the estate in tail, whereunto it was knit, is spent: It
had been otherwise, if the Settlement had been made before the Statute
De donis conditionalibus: For then the Donor and Feoffee had a sample: Am to are our Books to be intreated in this and the like cases.

29 If Tenant in taile discontinue the taile issue, and the Discontinue
is infefted, and the brother of the Tenant in taile releaseth by his
decree to the Discontinue all his right, &c. with warranty in fee, and
diet without issue, and the Tenant in taile hath issue and die: Now is the
issue barred of his action by force of the Collateral warranty defended
upon him: but if afterwards the Discontinue's stat upon the Discontinue,
then may the heir in taile well have his action of Formedon, &c. be
cause the warranty is defeated; so when the estate, whereby a warranty
is annexed, is defeated, (although it be by a max Branger, as in
the case afofofol) the warranty it taile is also defeated: Sublato prin-
cipali tollitur adjunctionem, &c. So likewise if the Discontinue make settle-
ment in fee, reserving rent, and upon default, &c. a rentven, &c. and a
collateral warranty of an Ancellor is made unto the Feoffee upon con-
vision, &c. which Ancellor dies without issue: In this case also, if the
Discontinue by entry for the Conviction broken defeat the estate of the
Feoffee, the warranty is also defeated, and the issue may bring his For-
medon as before. Finch 14.

30 If a woman Tenant in taile general taketh an husband and bath
issue, which issue dieteth, and the wife dieteth without any other issue, yet
the husband shall be Tenant by the Courtesie, albeit the estate taile
be determined, because he was entitled to be Tenant per legem Angliae,
before the estate taile was spent, and for that the Land it taile remain-

Charges upon land voidable.

Tenant in taile. Feigned recovery.

Warriory defeated.

Warriory continued.

The like.

Tenantry by the Courtesie.
eth. But if a woman make a gift in tail, and reserve a rent to her and to her heirs, and after make a gift to her husband and have issue, and the donor die without issue, the wife also dies; in this case, the husband shall not be Tenant by the courtesse of the Rent; for that the Rent newly reserved is by the act of God determined, and no estate thereof remaineth: Provided, if a man be last in fee of a Rent, and make a gift in tail to a woman, the take husband, and have issue, the issue, the wife, the wife also dies without any other issue, or the donee without issue, he shall be Tenant by the Courtesse of the Rent, because the Rent remaineth.

31 A. Lessee for the life of B. makes a lease for years by deed inventio, and after purchase the reversion in fee, B. dieth; in this case A. shall abate his own lease, although it be by deed invented; for by his confesse of the lease, which took effect in point of interest, and determined by the death of B. because the estate which A. had in the land for the life of B. (out of which the lease for years was derived) being determined, the lease for years it felt must needs also determine.

32 If a man take a lease for years of his own land by deed invented, the escheat in this case both not continuing after the term ended, because as by the making of the lease the escheat both grew, so consequently by the end of the lease, the escheat is determined; for, that part of the moiety, which before belonged to the lessee, both after the term ended, belongs to the lessor, which should not be; if the escheat continues, the lessee determines, 38 H.6.24. 30 Eliz.21. Vide 194.

3: A. man letters Lessor for life upon Condition, to have fee, and warranteth the land in Forma praedicta, afterwarde the Lessee performs the Condition, whereby the Lessee hath fee; in this case the warranty shall extend, and increase according to the estate: And to it is also, that the Lessee had died before the performance of the Condition; for that also the warranty shall rise and increase according to the estate: and yet the Lessee himselfe was never bound to the warranty, but by pariet relation from the first Escheat. And the reason of this is, because a warranty being a Covenant real executor, may extend to an estate in futuro, having an estate whereupon it may take in the beginning: But if a man give a Baignory for years upon Condition, to have fee, with a warranty in forma praedicta, and after the condition is performed, this shall not extend to the fee, because the first estate was but for years, which was not capable of a warranty; And so if, if a man make a lease for years, the remainder in fee, and warrant the land in forma praedicta, he in the remainder cannot take benefit of the warranty, because he is not party to the main, and immediately he cannot take, if he were party to the main, because he is named after the Habendum, and the estate for years is not capable of a warranty.

34 A is Tenant in tail, the remainder to B. in tail, B. grants a rent charge being out of the land to C. and his heirs, A. suffers a common recovery and dies without issue: In this case C. shall not have the rent, because the remainder of B. being defeated by the recovery, the estate of his Grantors in the rent is also defeated.

35 A. having of land, holmes in Socage deviceth it to D. for life, and after to the next heir male of B. B. hath issue C. A dies, B. enchoys D. with warranty: In this case, by the statute of the Tenant for life, the remainder is vested; so every contingent remainder ought to rest, either during the particular estate, or at least so infinite, that it determines; because if the particular estate which should support the remainder, he once determined in deed or in law, before the contingency ful, the remainder it feels must needs be also determined and void; Here therefore, in as much as the statute of B. his estate for life was determined, by a condition in law annexed unto it, and cannot possibly
possibly be afterwards revived, for this cause the contingent remainder is destroyed as aforesaid, against the opinion of Galloigne, 7 H. 4.

36 A grants land to B, to the use of B, for the life of C. the remainder to the heirs male of C. the remainder to the next heirs of A. B makes a settlement to C. and his heirs; here, by that settlement, the estate for life is destroyed; and by consequent the remainder which depends upon it, are destroyed also for by the settlement of the Tenant for life, title of Entry was given for the forfeiture, and at that time he in the next future remainder was not in estate to take it; and therefore the remainders in future by this settlement, were utterly destroyed a man void: Do if Tenant for life be, the remainder to the right heirs of I. S. If in this case Tenant for life make settlement in fee during the life of I. S. the remainder is destroyed; for otherwise there should be a remainder without a particular estate, which cannot be.

37 A gift in tail was made to A. C, the remainder to the right heirs of A. S. theDonee makes settlement to B. in fee, and after A. S. dies, the right heirs of A. S. shall never have that remainder; for the estate of the land was by the settlement of the Tenant in tail devised and discontinued, and all the estates before in the Feoffees, neither was there any particular Estate either in-esse, or in right to support the remainder when it fell, &c.

38 If a man make a gift in tail, the remainder in fee, he in the remainder grants his remainder to another for life, the remainder to the King in fee, upon condition that if he pay 10s tender 1l. at the College, that then the grant shall be void: The tenant in tail takes a recovery, and thereby destroys not only the estate tail it self, but likewise the remainder in fee, and the estate for life granted by him in the remainder, and by consequent the remainder to the King, as also the condition, which depends upon the estate for life, &c.

39 There is a diversity between a grant made by the agreement of the parties, which stands not with the rules of Law, & can never by any subsequent (as by livery or attornment) be made good: a grant which is good at the beginning, but is to have his consummation and perfection by some Ceremony subsequent: As in case of a Charter of settlement, if the Feoffees enter before livery he is not a Dislees; for the Charter is good, and the agreement of the parties is according to Law, and that may be made good by livery of Seisin subsequent: But if lands in lease for years be granted to C, Habendum tenencia predicta from Michaelmas next for life, and after Michaelmas the Tenant attorns: In this case the grant to C is void, and cannot afterwards be made good by attornment, and therefore if he enter, he is made a Dislees; for the Law will make construction upon the whole grant, and an estate of Frank-tenement cannot continue in future: And therefore observe well the difference between a good beginning or foundation capable of a structure, and an evil one, which wants a foundation whereon the structure may stand, and be built, &c.

40 If a Dislees be the feoffor of a Dislees, or any other, that hath a foreshort or feaseable estate or interest subject to the action or entry of another, holdeth Court, and maketh any voluntary grant upon the escheat of forfeiture of a Copyhold; such voluntary grant shall not bind him that right path; for when after re-continuance of the Sanno, by action or entry, he may have defeated the title of such Dislees; he shall also upon such voluntary grants: But if such a Lord, that is in by such defeasible title, admit any of the Tenants upon surrender made to the use of another, or gives admittance to the heirs upon descent, such admittances are good, because grounded upon the custom of the Sanno, &c.
41 If a Copyhold estate be forfeit, or escheat, or otherwise fall into the Lord's hands; if the Lord make a lease for years thereof; or for life, or any other estate by deed or without deed, or suffer it (before any new grant thereof) to be extended upon a Statute, recognizance, or the like; or if the Feme of the Lord have it assigned unto her in power, &c. In all these cases and the like, the custome which supports the Copyhold tenure being destroy'd, the tenure it selfe (so also destroy'd, so that it shall never after be granted by Capie, or by Copy of Court Roll; &c. notwithstanding it is so forfeited or escheated as aforesaid, the Lord may keep it as long as he pleases in his hands before he makes any voluntary grant of it: and yet the Custome shall be preserved, because it is all that while demised or demisable, and so it ought to be by the Custome, &c.

42 The Kings patentee for years assigns others parcels of the land to other fetherall persons, still referring to himselfe part thereof, and takes another lease in reversion for 21 years, the principal conception whereof was the surrender of the old lease (whereof he had assigned others parcels to others, as aforesaid) And after 3 years of the last lease were expired, in consideration of the surrender of the same last lease, the King grants him another of all the same land for three lives: In this case, the last grant of the lease for lives was adjusted void; because when the Patentee took the second lease, the consideration thereof was the surrender of the first lease, which could not be any good consideration, for that he had before assigned others parcels of the land to others; and then the King was deceived in his Grant, and (by consequent) the second lease was void: Now therefore the surrender of the second lease (which was void) being the consideration of granting the lease for lives, that last lease, being granted upon a consideration which was not valuable, must needs be void also.

43 If a Wit situate for non-tenure of all, the Demandant shall not have a new wit by Journeys accounts; because the first wit was taken out without cause of ground (33 H. 6.) but a pratic of a Sannos being abated for non-tenure of parcel, the Demandant shall have a Wit by Journeys accounts, because the Tenant is Tenant of the rellow, for which the Wit is bought, and it were hard to force the Demandant to discover, in whom the estate of every parcel of the Sannos land, &c.

44 When not able leases, being void for a time, shall be ever after aboven, and when not, this difference is taken, viz. when the interest of him that makes the abovance, is out for part of the termes, so that after his interest determined, a rellow of the termes void still remain; and when ye, that makes the abovance, so abov'd the whole interest, so that no part of the termes at all both remain after such abovance: As if Tenant in title of Landes in Capie make leases not warranted by the Statute of 33 H. 8. 28. and vis, his heirs being under age; In this case, although the King in right of the heir may void those leases for his time, yet if after the Kings interest determined, the heir accepts the rent, they shall be thereby made good again: But if the Patron of the Church of D. grant the prochein custome to another, and after (and before the Statute of 12 Eliz.) the Patron, Patron, and Ordinary made a lease for years remaining rent, and the Patron had die, and the Granter had presented a Clerk, who had been admitted, instituted, &c. in this case, that lease had been absolutely destroy'd, and the successor (although the Patron, that was party to the lease, present him) shall abode it, &c.
Defeasible estates.

45 A man seizes of certain lands in right of his wife, meekes testament by his inventors to it certain persons upon condition, that they shall let the land again unto the Baron and Femme for their lives, with divers remainders over in tail, the remainder to the right heirs of the Baron; and after the Baron dies, the Husband let the land to the Femme for life, the remainders over in tail, the remainder to the right heirs of the Baron, whereas it should have been to the right heirs of the Baron; in this case, when the heir of the Baron enters for the condition broken, by his entry the testament that made the usufruct, is defeated, and so by consequence the usufruct is left defeated also, so that the Femme may enter, and shall be in as of her former estate.

46 When one estate is to increase upon another estate by force of a condition precedent, the first estate ought to be permanent, which may serve as a firm foundation, whereas he builds the future estate; and not removably at the will of the Grantor or Lessee; and therefore if a man grant an Adwolvson to another at will, upon condition that if he do such an act, he shall have so; in this case, the estate at will is no such foundation as the Law requires to support the encrease of an estate of Frankenament or Inheritance; for the Grantor may determine his will before the performance of the condition, and so abate his own grant, and a Lease at Will cannot support a remainder over; so likewise if a man grant an Adwolvson, Kent, 42, for years upon condition, if the Lease within a year pay 10 s, he shall have so; and if he pay 20 s within another year after he shall have so, the Lease performs both conditions, yet shall he have but for life; for the estate for life at the time of the Grant was but in contingency, which is no foundation upon which a greater estate may encrease; because a possibility cannot encrease upon a possibility, and the estate of Fee-Simple cannot encrease upon the estate for years; so that is voided by the accession of the estate for life.

47 If a man hath judgement in a Quare Impediment, and hath a Writ to the Bishop, and the Bishop refuseth to admit his Clerk; here the Plaintiff upon this collateral matter of refusall may have a Writ of Quare non amit; but if the Defendant reverseth the judgement by a Writ of Error, and after the Plaintiff in the Quare Impediment brings his Quare non admit, the Defendant may plead no such record, and so bar the Plaintiff of obtaining that Writ (Vide 26 E. 3. fol. 75, per Wilby and Hill.) In like manner, if A. be taken by the Defendants in execution at the Suit of B. upon an erroneous judgement, and after make an escape, and after the judgement is reversed by a Writ of Error, the action upon the escape is lost, &c.

48 If the return of an Exigent be erroneous, the Dilemmacy which is grounded thereupon, is erroneous also, because the Writ of Exigent is the warrant by which they prosect to the Dilemmacy. Vide Proctors case, 5 Eliz, Dyer 223.

49 One that has cause of Privilege in Banco, is arrested in London, and delivers a Superficies; mortally (Vide) which, the Receiver gives judgement, and he is taken in execution, and is thereupon removed in Banco by a Corpus cum causa; And here, because the Superficies delivered, there was a Nullity in the proceeding and judgement, the Court (without Writ of Error) accordingly, that he should be discharged of the Execution, &c.

50 If two judgements are given, and the last depends merely upon the first, as upon his foundation, there if the first fundamental judgement be reversed by Writ of Error, or Attaint, the last (which appears in the Record to depend upon it) shall be reversed also; as in Affidavit and Redisclosure, so of a judgement upon the original, and another judgement in a Scire facias; so also of a judgement against the Tenant, and another against a Writ of Error, and the like, &c.

Quare Impediment: Error.
Exigent erroneous.
Privilege.
Superficies.
Two judgements. The 2nd defeated.
The Common Law

51 The Counsel of a Statute Staple in a suit of Decius of the same
Statute upon garnishment recovers by erroneous Judgement against
the Garnishee, and hath the Statute delivered unto him, the Garnishee
being a suit of Error, and the Counsel files execution upon the Statute,
and hath it. Here, albeit the Garnishee reverseth the judgement,
et inasmuch as the Statute was executed, that execution shall not be
avoided by the reversal of the judgement, because the judgement was
only to have the Statute delivered, and the Execution upon the Statute
is a thing executed, not at all depending upon the judgement: And yet
in this case (by the opinion of Coke Chief Justice) the Garnishee shall
have remedy upon the reversal of the judgement by an Audita querela;
because the cause and ground of the Collateral Action is dispoved, and
annulled by the reversal of the Act, and the Act Plaintiff restoring
his said act, upon which he may have his act and due remedy.

52 Execution have judgement in account, and for the arrecage have
the Demesne in execution, and afterwards the Testament was annulled,
because the Testament was an Ion, and the Recite spiritual
was removed into the Chancellor by Writ, and then sent into the Kings
Bench, where the Act was brought: And hereupon the Defendant
brought an Audita querela, so that the Testament was dispoved, and
it was resolved in the Exchequer Chamber (an. 35 H. 8.) that the Audita
querela would well lie.

53 It was found by Mandamus 2 Jac. that P. S. held the Mannor of
O. in Soccage of N; Eliz. as of her Mannor of N. In 7 Jac. a Melius
Inquirendum was awarded (reciting the former office) to enquire,
whether the Mannor of O. at the time of the death of P. S. was helden
the King in Capite, &c. whereupon an office was found, that at the time
of the death of P. S. the said Mannor of O. was helden of N; Eliz. by
Knight service as of her Mannor of N, and that at the taking of the in-
quirit there was helden of the King, &c. In this case the Melius was
repugnant in it self, because it was impossible for the Jury to enquire
the Mannor helden of King James at the death of P. S. which was in the
fourth year of N; Eliz. for then it must needs be holden of the Queen.
King James being then King of Scotland, &c. Now therefore, albeit the
Jury by the Inquisition had rightly found the tenure of the Mannor,
and that their finding thereof in that respect was good, and according
to the truth of the case, yet because it was not warranted by the Melius,
which was the ground of their Inquisition, all was adjudged insufficient
and void, and a new Melius Inquirendum was awarded.

54 A man that is found an Ion, from his nature by office, may
come into the Chancellor and pray to be examined, 02 by his friends he
may pray to be brought thither, and if it be found upon examination that
he is Ion, the office thereof found, and all the examination, which
was by force of the Writ or Commission, are utterly void without any
traverse, monstancie de Droit, 02 any other fault.

55 An Executive in consideration, that the Plaintiff will recover
Michaelmas fee for a debt due by 2 Lessor to the Plaintiff upon
lone, promised to pay it at Michaelmas, and in an Action upon the case
brought against her upon that promise, pleads non allumption here, the
consideration of solvance is good, because although he be no benefit
to the promisier, yet is it damage to the Plaintiff: And yet in this case
if (in writurate) the debt were not due debt, 02 the Executive had not
arrest at the time of the promise, we may give that in evidence, and shall
thereupon aroids; so then (in truth) there was not any consideration,
upon which the allumption might be grounded; because to forebear a
debt, which was not due, 02 wherewith the was not chargeable, could
be

Ibid. 143. b. 4.
per Coke Chief Justice.

Co. 1. 168. 3.
Paris Slaughters case.
be neither benefit to the Defendant, nor damage to the Plaintiff.

56 Baron and Feme being Lessees in special tail, are divorced (viz. by such a divorce, which dissolves the marriage ab initio, and the Baron and Feme s vinculo matrimonii) in this case they have ever after but an estate for their lives, because the marriage (which was the only means whereby they might have had heirs inheritable of the estate tail) being dissolved, the estate tail it selfe is thereby also determined, and exting.

57 When a Court hath jurisdiction of the cause, and proceedes in veria ordine, or erroneously; there no action will lie, either against the party that lieth, or against the Officer that executeth the precept or process of the Court: But when the Court hath not jurisdiction of the cause, there all the proceeding is coram non judece, and actions will lie against them without any regard of the precept or process, &c. for the rule is "Judicium à non suo judece datum nullius est momento: See the booke at large.

58 Tenant in tail, the remainder in tail to A. the reversion in fee to himselfe, bargains and sells the land to B. and his heirs; Here, by the devise invented andưởng, the Bargaine hath an estate determinable to his heirs, but determinable upon the death of the Tenant in tail, and hath also the reversion in fee expectant upon the estate in reversion, and here likewise the Feme of the Bargaine will be envevved: but in this case if the Tenant in tail die, the Dower which depends upon that estate, will determinate also.

59 Tenant in tail, the remainder in tail to A. the reversion in fee to himselfe, bargains and sells the land to B. and his heirs, and afterwards also leaves a fine to B. of his heirs with warranty. In this case, albeit A. be the next heir to the Tenant in tail, yet shall not this warranty bar his remainder; For every warranty ought to be quitted and annulled to an estate, so that a warranty hath his essence by depennancy upon some estate: Now in this case at the time of the fine lapsed, the warranty was annulled to the fee simple determinable upon the death of the Tenant in tail without issue, and also to the reversion in fee, but not extend to the estate of A. in the remainder; So that was not displaced or voided, but did still continue in him, because A. at the time of the fine lapsed, and after was fesher of his remainder: Now if the warranty at the time of the creation of it were annulled to an estate, the Comitie by his settlement or other act cannot extend it farther than it was at the time of the creation of it: And therefore when the estate tail (unto which the warranty was annulled) is determined by the death of the Tenant in tail without issue, the warranty (which hath his essence by depennancy) is also determinate; because there is no estate left to support it, &c.

60 In Allde before some and others in the Country, the Tenant pleads footment of the Plaintiff to him by deed of the land in plea, to have and to hold to him and his heirs, containing a letter of Attorney to deliver Sealing, &c. and in truth the Plaintiff was a legaci not lettered, and the deed with the warrant of Attorney was read unto him according to the form of an estate tail, and upon the same intent he sealed and delivered the deed with the letter of Attorney in it to deliver Sealing: In this case, the deed did not bind the man unlettered, but was unajured void: And therefore, albeit the deed and the warrant of Attorney were two several clauses, and that the said warrant was well and truly read unto him; yet because the same warrant did depend upon the footment, and had relation unto the estate in fee, that warrant of Attorney was unajured void also, &c.

A marriage dissolved, and so an intake grounded thereon,
6 If a man enforces another of land with warrant by deed, if the
Forester make settlement over, and take back an estate in fee; Here, the
estate, unto which the warrant was annexed being destroyed, the war-
rant it self is also destroyed, and in this case he shall not have a war-
rantia carta; because he is in, of another estate.

6 If a man hath title of action to recover land, and after he enters,
and distillex the Tenant of the land, and vieth feised, by whilx his heir
enters; here, the heir is remitted to the title that his Ancestor had, and
the Feme of the Baron that to vieth feised, shall lose her dower; because
that estate which the Baron had, is determined; for that was an estate
of fee by tort, and the heir hath an estate of fee, which was in his Anse-
ctor by right, &c.

6 If a man make a gift in tail, referring rent to him and his heirs,
and after the Donor taketh Feme, and dieth, and the Tenant in title
also dies without issue; Here, the Feme of the Donor shall not be en-
dowed of the rent, because the rent is extinct; for it was reserved upon
an estate tail, which is determined; But in this case, albeit the estate
of the rent is determined, yet shall the Feme be endowed of the
laws; because that with still continue, and is not determined, as is the
rent.

64 By the rule of the Law a remainder ought to have a preceding
estate to support it: And if that preceding estate fail, the remainder
fails also; As if a lease for life had been made to a Son, the remain-
ner in fee, this remainder had been void; because the Son had no capacity
to take the estate for life, and so the estate, the remainder is
void, and then (ex consequence) the remainder is void also.

5 A Church appointed to a spiritual Corporation, cometh dis-
appropriate, if the Corporation be dissolved, Finch 14.

65 A dilator of Land in ancient Demesne, the Lord confirms unto
him to hold at the Common Law, the dilator re-enters; Now shall
the land be ancient Demesne again; for the estate, wherupon the con-
firmation should enure, is defeated, Finch 14.

67 The priviledge of Abique impietzione vati is annexed to the pri-
erty of the Estate, (3 E. 3. 44, per Shard and Store) to that if the estate, un-
to which that privilege is annexed, be changed, the advantage of that
priviledge is lost (5 H. 5. 9. a.) And therefore if a man make a lease for
years without impeachment of walt, and after confirm the land to him
for life, he shall be ever after chargeable with walt, 25 H. 8. Dyer 120.
If a lease be made to one par ater vie, without impeachment of walt, the
remainder to him for the term of his own life; How is he punishable of
walt, for the first estate, unto which the advantage of Abique impieziona
vati is annexed, is bestowed and gone, and therefore that privilege
is gone also; So it is likewise of a Confirmation, &c.

72 It was adjudged in the case of one Owens, M. 28. & 29 Eliz. that
where the Tenant in tail after possibility of sue estina granted over
his estate, the Dantse was forced in a Quid juris claima to attorn; be-
cause by the assignement that privilege was lost; Now this judgement
was affirmed in the Hans Bench in a Writ of Error, and with it also

69 The heir at the Common Law shall have a prohibition of walt,
against Tenant in Dower; but if the heir grant over the reversion, his
Dantse shall not have it; for it appears in the Register, fol. 73. that
such an Assignee in an action of walt against Tenant in Dower shall
retitle the Statute of Glocester, and then (by consequent) he shall not
have prohibition of walt at the Common Law, for then he should not
retitle the Statute. Vide F. N. B. 55. 14 H. 4. 3. 5 H. 7. 17. b.

38
The Reason of Privilege led
by a purchase of the land.

If a man be seized of lands as heres of the part of his mother, and
makeeth a feoffment in fee, and takeeth back an estate to him and his
heirs, this is a new purchase: and if he die without issue, the heirs of
the part of the father that first inherit; because the estate, unto which
the property of descending to the heirs of the part of the mother, being
by the change of the same estate destroyed, that property it seile is also
destroyed. So likewise if a man to seize maketh a feoffment in fee, re-
serving a rent to him and to his heirs, this rent shall goe to the heirs of
the part of the father, &c.

If there be Lord and Tenant by Castle-guard, and the Lord
granteth over his Seignory to another: in this case, the Castle-guard
is gone; because the Grantor hath not the Castle, which is the ground
of the service; for the same reason it is, that if one holdeth me of me as
of my Pannor of D. by ready and suit of Court, if I grant over the ser-
vice of this Tenant, the suit is gone; because the Grantor hath not the
Pannor: But if the Castle be wholly ruanate, sic callat fit penitus di-
ratum, yet the term remaineth by Knight service, and goeth in be-
 nefit of the Tenant, as to the guarding of the Castle, until it be re-
settled; but warre and marriage belongeth unto the Lord in the meane
time.

There is a special regard to be had to the con-

continuance of the rebellion in the same estate, that it was in at the time
of the Castle gone; so if after the Castle committed, the rebellion grant-
eth it over, though he take the whole estate again, yet is the Castle
punishable; so likewise if he grant the rebellion to the use of himselfe and his wife, to his heirs, yet the Castle is punishable, and so of the like: because the estate of the rebellion continued not, but is altered, and consequently the Action of Castle for Castle done before, (which consists in poultry) is gone also.

After Castle gone, there is a special regard to be to the con-

nuance of the rebellion in the same estate, that it was in at the time
of the Castle gone; so if after the Castle committed, the rebellion grant-
eth it over, though he take the whole estate again, yet is the Castle
dispunishable, so likewise if he grant the rebellion to the use of himselfe and his wife, to his heirs, yet the Castle is punishable, and so of the like: because the estate of the rebellion continued not, but is altered, and consequently the Action of Castle for Castle done before, (which consists in poultry) is gone also.

An Executor may release before probate, not the Administra-

tor.

If there be Lord and Tenant, and the Tenant maketh a fe-

offment in fee of lands holde by Knight service to the use of the Fe-

offe and his heirs, until the Feoffor pay unto the Feoffee or his heirs
100 l. at a time and place limited; the Feoffeys, his heirs within
age: Here, the Lord shall have the warship of body and lands condition-
ally: For if the Feoffor pay the money, and enter into the land, the
warship of both body and lands is disabled. Vide pro ibid,

A conditional wardship de-

verted.

By Inventure enclosed in Chancery in consideration of money, etc. upon
bargains and sells to B. the Panno: D. to have and to hold to B. and
his heirs, to the use of A. for life, the remainder to the use of B. in taile:
Here, because the first grant is an use by the Statute of 27 H. 8. and
one use cannot be engendered out of another, the limitation of the
two last uses was adjudged void.

In my times land to two, habendum eis pro termino vicet corum, &c.

Flayque uss. coram alterus duobus viventibus, ad ulum A. B. pro termino vicet sue, without more and the two Letters vic: In this case, it seemed to the Court of Common Pleas that the estate was determined, because the estate upon which the use was created and ranked was gone, &c. But Quere, if such an estate had been made before the Statute of 27 H. 8. of uxes.

A writ of extent was awarded in the time of Queen Mary, retur-

nable Quindena Martinii, and the Writ is executed in the life of the No;
but before the return the drs, and yet it was returned, and a liberate

126

126

126
was therupon granted in the time of Queen Eliz. Queer, whether or no the Extent was returned without warrant.

78 In debt the Judgment was reversed, because there was no warrant rent of Attorney entered, and this albeit the Writ of Error was brought the same terms, the record remaining still in the hands of the 2 justices, and the Plaintiff had prayed entry thereof: Note, that both the first Action and the Writ of Error were brought in Banco Regis.

79 Whereof of Wol's being Parson in possession of the Parsonage of Winfram, leased the tithes for 65 years remisent rent, which was also confirmed by the Deane and Chapter; but not by the Patron and Ordinary, the Proviso was by Parliament united to the Deanery, cum primo vacari congetanti. The Proviso bies, the Deane accepts the rent yet the lease is not affirmed by such acceptance, for the Proviso's lease was void by his death, as it is of a Parson or Prebend; it was otherwise with a Bishop, Deane, Abbot, &c., which were elsewhere, and (before the Statute of Eliz. not printed) might make discontinuance; but if the lease above had been for life, it had not been void before entry: Also the acceptance above was to no purpose, for the reversion was determined, and the name of succession altered; As if Tenant in Dower or other particular Tenant make a lease and use, and he in reversion or remainder accept the rent, this is no affirmation, because the reversion is alterate.

40 Hob. 10 Doro; Leyfield against Tiskdale.

1 Things incident are adherent to their Superiors, or Principals.

1 A man sold of Lands in fee hath divers Charters, Deeds, and Evidence, and makes a settlement in fee either without warrant, or with warranty only against him and his heirs: In this case, the Purchaser shall have all the Charters, Deeds, and Evidence, as incident to the lands, &c. unless contrary, to the and he may the better defend the land himself, having no warranty to recover in value; for the evidences are (as it were) the motives of the lands, and the Feoffor being not bound to warranty, hath no use of them: But if the Feoffor be bound to warrant, so that he is bound to render in value, then is the defence of the title at his peril and therefore the Feoffor in that case shall have deeds that comprehend warranty, whereas the Feoffor may take advantage: Also he shall have such Charters as may serve him to maintain the warranty paramount: Likewise he shall have all Deeds and Evidence, which are material for the maintenance of the title of the land: but other evidences, which concern the possession, and not the title of the land, as Court Rolls, &c., the Feoffor shall have them, as concomitant & incidental to the possession.

2 If a man sold of Lands as heir of the part of his Mother, which hath a settlement in fee, returning a rent to him and to his heirs; this rent shall go to the heirs of the part of the Father (vide N.S. 40, 70) but if he had made a gift in table, s to a lease for life, referring a rent, the heir of the part of the Mother shall have the reversion, and the rent also, as incident thereto, had pale with it: but the heir of the part of the Father shall not take advantage of a condition annexed to the same, because it is not incident to the reversion, nor can pale therewith.

3 If a man had been sold of a Hamnoz, as heirs on the part of his Mother, and before the Statute of Quia emptores terrarum, had made a settlement in fee of parcel, to hold of him by rent and service, although they be newly created, yet for that they are parcel of the Hamnoz, they hold with the rest of the Hamnoz descend to the heirs of the part of the Mother,
The Reason of

Max. 41.

The like for a

Renter-charge.

The land incum

dent to the
tenant in lea

p. 14 Jac. in
B. R.

A remainder to

A man's

right heirs at

limitation to

himself.

Co. ibid. 13.

b. 3.

The possibility of having heirs to inherit is so inherent and inci

dent to a man as long as he lives, that it cannot by any act of his be

fevered from him during his life, except when his blood is corrupted by at

taxation, &c. And therefore at this day, since the Statute of 27 H. 8. cap.

10. If a man sold all his lands in fee make a feoffment in fee, and depart

with his whole estate, and limit the use to his daughter for life, and after

her decease to the use of his son in tail, and after to the right heirs of the

Feoffor: In this case, although he departed with the whole Fee

simple by the feoffment, and limited no use to himself, yet hath he a

reversion; for, whereas the Feoffor takes an estate for life and after a

limitation is made to his right heirs, the right heirs shall not be pur

chasers: And here is this case, when the limitation is to his right heirs,

dot heirs he cannot have during his life (for, non cit hares viventis) the Law

merely creates an use in him during his life, until the future use comes to

cite, and consequently the right heirs cannot be purchasers: And there is no

viciously when the Law creates the estate for life, and when the party: And it the limitation had been to the use of

himself for life, and after to the use of another in tail, and after to the use of his own right heirs, the reversion of the fee had been in him, be

cause the use of the fee continued ever in him; And the Statute both ex

ecute the possession to the use in the same plight, quality, and degrees, as

the use was limited.

Co. Inf. pars 2.

12 b. 4.

If a man make a gift in tail, or a lease for life, the remainder to

his own right heirs, this remainder is void, and he hath the reversion

in him; for the Ancestor, during his life, bequests in his body (in

judgement of Law) all his heirs; and therefore it is truly said, that

haz est pars antecessoris. And this appears in the common case; for if

Land be given to a man and his heirs, all his heirs are so totally in

him, that he may give the land to whom he will.

Co. ib. 3 b. 4.

A liberal Tenant in Frankmarriage is esteemed in Law a free ten

nure, till the fourth degree be past, yet the Donors in Frankmarriage

shall immediately make fealty; because fealty is incident to every ten

nure (except Frankmarriage), and cannot be separated from it.

Co. ib. 47. a. 3.

9 If a man make a lease for years, and release a rent to him and his

Executors, the rent shall and by his death, because the heirs hath the re

version, and the rent is incident to the reversion.

Co. ib. 68 a. 1.

10 Fealty is incident to Homage, because it is a part of Homage, Fealty.

all the words of Fealty being comprehended within Homage. Mirror

cap. 3.

Co. ib. 69 a. 1.

11 As fealty is incident to Homage, to Homage and Knight service Fealty, He

are incident to Gleamage, and by the grant of services Gleamage passed

with the rent.
12 If Tenant by Knight service maketh a gift in tail, and the Donor maketh a Feoffment in fee, and the Donor be the heir within age, the Donor shall have the Wardship of him: because he is his Tenant in right: but if the Feoffee, his heir within age, the Donor shall not have the Wardship of his heir, but the Lord paramount: because he is Tenant in fact to him: Neither shall the Donor abut upon the Feoffee or his heir, for the services due unto him: because he must in his Wardship show the reversion in fee to be out of the Feoffment, and consequently the services incident to the reversion are also out of him, but he shall abut upon the Donor and his issue: And thus are all books that seem to be at variance either answered, or reconciled.

13 Where can be no tenure without some service; because the service maketh the tenure, and is incident unto it.

14 Of Incidents there be two sorts, viz. separable and inseparable; separable, as rents incident to reversions, &c., which may be severed: Inseparable, as fealty to a reversion or tenure, which cannot be severed: For, as all lands and tenements within England are held only under Lord of other, and either mediate or immediately of the King, so to every tenure (at the least) fealty is an inseparable incident, to long as the tenure remains, and all other services, except fealty, are separable.

15 The tenure in Frankalmosque is an incident to the inheritable blood of the Siantos, and cannot be transferred or forfeited to any other, no more than a foundation of an house of Religion (which is intended to be in Frankalmosque) of Homage Incefted, or the writ of contra formam Feoffament, or the writ of contra formam Collationis, or any other incident to their inheritable blood: but it is no incident inseparable; so the Lord may release to the Tenant in Frankalmosque, and then the tenure is extinct, and he shall hold of the Lord paramount by fealty, as in the case of Littleton, Sect. 139.

16 If rent-service be behind, the Lord may disclaim for the arrear, because fealty is incident to rent-service, and where fealty, &c., is incident to the rent, there is a statute also incident thereunto.

17 In the case of a gift in tail, lease for life, 21 years, the sealty is an incident inseparable to the reversion, so as the Donor or Lessee cannot grant the reversion over, and fay to himself the fealty or such like service; but the rent may be excepted, because the rent although it be incident to the reversion, yet is it not inseparably incident.

18 If a man maketh a gift in tail, without any reservation, the Donor shall hold of the Donor by the same services that he holds over; but otherwise it is of an estate for life or years; so there it be reserved nothing, the sealty shall have fealty only, which is an incident inseparable to the reversion.

19 If there be Lord and Tenant by sealty and rent, and the Lord by his deed rectifying the tenure, releaseth all his right in the land, letting his latt rent; In this case, the Seignors remains, and he shall have the rent as a rent service, and all the sealty incident unto it: so in faying, the said rent, it is as much as if he had said, the rent service, whereunto sealty is incident.

20 If the Donor hold of the Donor by sealty and certain rent, and the Donor grant the services to another, and the Tenant attorns, some have said, the rent shall not pass; because the rent cannot pass but as a rent service, being granted by the name of services: And the sealty cannot pass; because it is an incident inseparable to the reversion: But it is reputed the rent shall pass as a Rent-serve; because at the time of the grant it was a rent service in the Siantos, and therefore there be too insufficient to pass to the Siantos; and it is not of necessity, that
that it shall be a Rent-service in the hands of the Grantor, &c.

21 If a man maketh a lease for life of Black acre, and White acre, reserving two-halflings rent, upon condition that the Leesee both such an ac. &c. that then he shall have in Black acre, the Leesee performs the condition; here, albeit by relation by both the Commons ab initio, yet all the rent be appoincted, so that the reversion of one acre, whereinto the rent was incident, is gone from the Leesee.

22 If there Lord and Lessor, and the Lessor holds the Lord by fealty and certain rent, and the Lord grants the rent by his own to another, &c. reserving the feudal, and the Lessor attorns to the Grantor of the Rent; here, such a rent in the hands of the Grantor is not Rent-service, but Rent-fees; because the power of distraining remains still with the Lord, as an incident to the fealty, which he hath reserved, &c. So it is likewise where the Lessor holds by homage, fealty, and rent, and the Lord grants the rent, reserving the Homage, &c. but in this last case, if the Lord grant along the Homage, falsifying unto himself the rest of the services, and the Lessor attorns. &c. In this case, the Lessor shall hold the land of the Grantor, and the Lord shall have the Rent, but as a Rent-fees, and shall not distrain for it; because the power of distraining both (of common right) go along with the Homage and Fealty, Fealty being an inseparable incident to Homage, and Distress the like to Fealty, &c.

23 Incidents is a thing appertaining to, or following another as a more worthy or principal.

24 If a man let lands to another, or terms of life, reserving rent, if he grant the rent, &c. lating the reversion, &c. the Grantor hath the Rent as a Rent-fees, for which he cannot distrain; because the fealty (rent which the Distress is incident) both still remain in the Grantor as an inseparable incident to the reversion; &c. albeit the rent be also incident to the reversion, yet it is separably incident, whereas Fealty is inseparably incident unto it; so that although, when the rent was first reserved, it was Rent-service, and so by consequent was Fealty and Distress incident unto it, yet being now by the grant severed from the reversion and Fealty, it hath lost the piloting of Distress, which always inseparably adheres to the Fealty, &c. Nevertheless, in the latter case, if the Lessor grant the reversion of life, &c. the rent shall pass therewith as incident to the reversion, and the Grantor shall have it as a Rent-service, whereas Distress is incident, because it then passeth by the grant of the reversion, as with the superiour or principal, and that without using these words in the Grant, sum pertinentiis, &c.

25 If two Jointtenants make a lease for life, reserving a rent to one of them, the rent shall accrue to them both, because the reversion remains in Jointure; and therefore the rent, which is incident to the reversion shall also accrue in jointure, &c. unless the reservation be by deed annuitate; for then he alone to whom it is reserved, shall have it, &c. so also a surrenderer to one shall endure to both.

26 If there be Lord and Lessor, and the Lessor make a lease for life, reserving to him and his heirs an annual rent, &c. and after the Lessor, dies without heirs, so that the reversion falls to the Lord by happy of Election, and the rent of the Lessor for life is behind; in this case, the Lord by Election may distrain to the rent arrear, albeit it was reserved to the Lessor; and his heirs; for both Alliages in Iudic. 6. Assizes in Law, hath the rent, because the rent being reserved of inheritance to him and his heirs, is incident to the reversion, and goeth with the same.

27 albeit (as Littleton lath, Sec. 362), a Tenant in tails may by condition be barred from making any alienation and discontinuance of his Tenancy in tail barred by condition, & has not.
his estate contrary to the Statute of Wills. 2. yet cannot that estate be clogged by a condition, that the incidents which are by law annexed unto it, may be barred or barred from it. How the incidents to any estate tali are, 1. To be dispensable of waste. 2. That the Feme of the Donor shall be enwrought. 3. That the Baron of the Feme Donor (after issue) shall be by the Court. 4. That the Tenant in tail may suffer a common recovery: And therefore if a man make a gift in tail, upon condition to restrain the estate from having any of these incidents, the condition is repugnant and void in Law: And for this cause it is, that a Collateral or incidental warranty with allets, in respect of the recompense, is not restrained by the Statute of Donitic conditionalibus, no more is a common recovery in respect of the intended recompense; And Lincoln there to the intent to exclude the common recovery, faith, Tiel alienation & disappointment, joining them together: 29. They that have Consequence of any thing: 30. to have Consequence of all incidents and dependants thereupon; For, an incident is a thing necessarily depending upon another. Vide 5.  31. By the Statute of 11 H. 8. cap. 29. it is enacted, That if the Lord shall suffer upon the Lands and Estates his, that he may know, upon the same lands, et. as in lands, &. within his Seigniory, et. without naming of any person certain, and without making away upon a person certain: Here, albeit the purview of this act be general, yet all necessary incidents are to be supplied, and the scope and aim of the Act to be taken: And therefore although he may not to make the respite upon a person certain, yet he must allege itself by the hands of some tenant certain within forty years, et. 32. If there be Lord and Lessor, and the Tenant holds of his Lord by the service of Fee tail and 30. rent; if the Lord by his Deed confirms the estate of his Tenant to hold for vid. or for a year, et. In this case (at Mr. Littleton, sect. 538.) the Tenant is discharged of all the other services, and shall pay the Lord nothing; but what is comprised within the same confirmation: Nevertheless, these words are thus to be understood, that the Tenant shall not render any more rent so annual service to the Lord, than is contained in the Deed; but other things, notwithstanding the same confirmation, the tenant shall yield to the Lord, as reliefs, aide pur fis mariæ and aide pur faire siege Chivalier: because these are incidents to the tenure, which do still remain, and shall not be discharged without special words, by the general words of all actions, services, and demands; 33. If a man hold of me by Knight-service, Rents-fait, et. and I release to him all my right in the Seigniory, excepting the Lease by Knight-service, or confirms his estate to hold of me by Knight-service only, for all manner of services, estrates, and demands; yet shall the Lord have War, Marriages, Bequests, Rights pur fis mariæ, & pur faire siege Chivalier; for these be incident to the Lease, which both shall remain. 34. Where a Lease for terms of years of life, or a gift in tail is made to a man, reserving rent, et. if the Heirs of the Donor grant thereto, to another, and the Tenant attains, the rent paying to the County; albeit the Donor of the grant of the reversion make no mention of the rent, because the rent is incident to the reversion, but not a converts; yet if a man in this case will grant the rent, including the reversion, albeit the Tenant attains, yet that rent is but a rent-fait, et.
The Reason of

Rent incident or not incident to a succession, Diversity.

Rent incident to the succession.

A Donor can not be subject to it.

A rent incident or not incident to a succession, Diversity.

Rent incident to the succession.

A Donor can not be subject to it.
38 If a Copyholder is served by force of several Copies, viz. of Black acre by a rent, of White acre by vi d., and of Green acre by 2s. d. rent, and he makes warranty in part of Black acre, or makes covenant of it, or promises the rent of it, whereupon Black acre is forfeited: Who so forfeits Black acre, or of Green acre; for although they are all in one and the same hand, yet every of them is liberally held, and to every here there is a severality condition (as an incident) implicitly entered into it, so that the forfeiture of one, cannot be the forfeiture of any of the others; because the several conditions in Law do subsist the severality conditions: so likewise if the Copyholder of the said three acres surrender them altogether in one surrender to the use of A. and his heirs, and the Lords admit A. accordingly, Tenement per antiqua servitute; inde pro e dubia & de iure confusa, &c. to the like effect, and A. commits forfeiture in Black acre, he shall be held only that, and neither of the other; For the said Tenement per antiqua servitute (credendo fugida singularis) continues the severality tenure; in like manner, it abates severally Copyholds elective to the Lords, and he se grants them to another, Tenement per antiqua servitute; &c. they shall be severally held, as they were before the Estates, &c.

39 Where several Copyholds lawful held by several services, the Lord ought to divide and demand lines severally for each particular to severally held: For, the Tenant may refuse to pay the hire for one parcel of land, and forfeit it, and may pay the fines for the other; because every severally tenure hath a severality condition in Law (as an incident) to assign amends unto it; and therefore the Lords ought for every severality tenure to assess and demand a severality fine.

40 Queen Liz. grants to one Michael the office of Clerk of the County Court, or the Sherif Clerk of the County of Suffolk with all fees, &c. lascars of his life, and after the Queen makes Michael Hopton High Sheriffs of the same County, who interrupts Michael, claiming that which was granted to him, as a thing incident to his office of Sheriffs, &c. and it was adjudged, that the County Court, and the erring of the Sheriffs proceedings in it, are so incident to the office of Sheriffs, that they cannot by Letters Patent be obtained from it, and albeit the issue grants made to Michael, when the office of Sheriff was told, yet when the Queen makes a new Sheriff, he shall obtain it, &c.

41 Tempora vacantes, of the office of Chief Justice of the Common Pleas, Queen Mary grants the office of the Exigence of London to one Scroggs, and it was shown to, because it was专属 to the office of Chief Justice of the County, which the Queen could not give: Also therefore the more Chief Justice shall obtain it, &c.

42 Warrants made (by the King) of the Judges of the Courts of Common Pleas and Chancery, in the name of Judges of Counties of right to be done by the Lieutenant in County to the office of Sheriff, as with very well appear by the judgement in Parliament, Ann. 14 El. 3. cap. 20. which it is evident, that all Judges of Counties shall be respectable the Sheriffs, and that the Sheriff shall have the benefit of the same Courts, as in time past was also, and that they should put in such Sheriffs, for which they should another, &c.

43 Habeas corpus, when a Governor extends to a thing in the possession of the Governor, the thing to be done by force of the Governor, is appendage or appendent to the thing demised; and this is governed by the same general rule, although he be much longer in some cases, but when the Governor extends to a thing, which hath not, assume all the time of the Governor made, the period by which that part offence cannot be done to be attended to; although the thing happened, and therefore in such case the Governor shall make the survey as he has paid in the custom: As if the Lease covenant to repair the houses,
houses, &c. this is part of the contract, and extends to the assumption of the thing demised, and the rents is quadam modico incident and annexed to the houses, and shall bind the Assignes, although he be not expressly bound by the covenant; but if the covenant be, to build a brick wall upon part of the land demised; or the like, which was not in use at the time of the demise made, but was to be done afterwards, this covenant may bind the Covenanter himself, and his Executors or Administrators, but shall never bind the Assignee, because the Law will never annex a covenant to a thing which hath not existence, &c. It is otherwise, if the Covenanter for himself and his Assignees covenant to do; for then the Assignees are specially named, &c. Co. 5. 24. 2. 4. The Deane and Chapter of Windsor's case.

Co. ibid. b. 3.

Co. ibid. 17. 2.

4. It a man demise or grant land to a Feme for years, and the Ley does not covenant with the Leetee to repair the houses during the term, the Feme takes Baron and dies; the Baron shall have an action of Covenant, as well upon the covenant in Law by force of these words, Demise and grant, as also upon the express covenant, because such a covenant runs with the land, and is incident unto it; there is the same Law of a Lessor by Statute of the Merchant, &c; statute Staple, &c. of a term by force of an Execution; for, in that case also, the term of the term of the term shall have an action of Covenant, as a thing incident to the land, albeit all these come to the term by as in law, &c. So likewise if a man grant to his Lessee for years, that he shall have so many Elevators, as shall serve to repair his house, or to burn within his house, or the like, during the term; this covenant is as an incident and appointment, that runs with the land, in whole hands forever it falls.

Co. 1. 5. 47. a. 2. 

45 In a general pardon, when an offence is excepted, all the incidents and dependents thereupon are also excepted; whether they be corporal, or pecuniary, &c.

Co. lib. 6. 7. a. 1. Wheeler's case.

46 If the King grant lands in fee, Tenement de nobis, &c., per servitium unius post rubis annatione, &c., solamen pro omnibus & omnimodis aliis servituis. &c. This tenure is Oscage in chief; and in as much as Oscage is incident to every Rent-service, the law annueth Oscage unto the land rent, and then these words, pro omnibus aliis servituis, are to understand of other services, which the law doth not imply, &c. and unto the rent; so that the tenure shall be by a Rule and Oscage, &c.

Co. 14. 70. a. 3

47 If there be Lord and Tenant by Oscage and Rent, and the Lord visibit the Tenant of the land, and makes tenantment in fee, by this the Oscage is extinct; but if a man make a gift in tail, or a lease for life, &c., renting rent, and visibit the Tenant in tail or for life, &c., and make tenantment in fee, Here, albeit the state of tenure to the Oscage, yet when the Duke or Lord re-enters, he shall revive the rent, as an incident to the reversion: there is the same Law also of a lease for years, &c.

Co. 1. 7. a. 2. Calvis. cause.

48 Ligeance is a true and faithful obedience of a subject due to his Sovereign; and this allegiance and obedience is an incident inseparable to every subject; so as soon as he is born, by birth-right ligeance and obedience to his Sovereign.

Co. 7. 18. a. 2. Calvis. cause.

49 Where he regularly (unless it be in special cases) that incents to a Subject born: 1 That the parents be under the actual obedience of the King. 2 That the place of his birth be within the Kings Dominion: 3 The time of his birth be the day to be conceived; for he cannot be a Subject born of one Kingdom, that was born under the ligeance of a King of another Kingdom, albeit afterwards one Kingdom adhered to the King of the other.

Co. 13. 54. a. 2.

50 If a man be settled of an house in right of his wife, and another grants to the Baron and his heirs to have Elevators to burn in

The like.

Elevators in
dent to a
house.
in the house; in this case the Esquires are incident and appurtenant to the house, and shall attend to the use of the Elaron and Feme: So likewise, if one hath an house of the part of the Rider, and one grant to him and his heirs competent house that to be burnt in the same house; here, those Esquires are incident to the house; and therefore, albeit that the is a new purchase, yet it shall go with the house to the heirs of the part of the Rider.

51 But every Fine imposed in Court, Imposition is incident; and therefore in all actions, Quare vi & armis, as Reclusi, crespuil, vi & armis, etc. if the Defendant upon judgment given against him, he knew he shall also be imprisoned; for, when the judgement is, quod defendant capiatur, that is as much to lay, as quod capiatur quocumque finem fecerit, etc.

52 A man may make a lease of these acres all of equal value per annum, removing 3. rent, and the Lessee grants the reversion of one acre, and 5 Tenant actions, the Grantee shall have a d. rent; for, albeit there was but one lease, one reversion, and one rent, yet that rent being incident to the reversion, which was severable, shall therefore attend upon the reversion, and upon every part of it.

53 When a new politic is incorporated by prescription by a certain name, then to impose, to be implied, to grant and purchase, are things incident unto it.

54 If the Donors in such holds of the Donor; by fealty, and the Donor by deed inrolled grants the fealty to the King, that grant is meere void; because fealty is an incident inseparable to the reversion, it was holden 26 As. Pl. 66. So also if the founder of a College, etc. will grant his Foundation to the King by deed inrolled, that is void; because it is inseparable to the blood, as it was holden, Tempore H. B. B. R. vii. And therefore if before the Statute of 12 Edw. cap. 3. (which was to make good all Grants made either by or to the Queen) a grant had been made to the Queen of such inseparable incidents, as of a Foundation, of such services of Donor in title, as aforesaid, that it would not have made such grants good, because such things are not grantable, etc.

55 Esquires of 10000 acres to be burnt in such an house, shall go to him that hath the house, by whatsoever title he hath it; for one is inseparable incident to the other.

56 Lord and Tenant by Fealty and Homage, the Lord relieves his fealty; this is void, for Fealty is incident to Homage, Finch 15.

57 An office of skill and diligence, of an Emulation pro concilio impendingo, cannot be dissolved by attaint of treason, Finch 15.

58 A Court Baron is incident to a Manor, and a Court of Wills to a Faire; and therefore one cannot grant the Faire or Faires, retiring those Courts, Finch 15.

59 Others one holubty of a man to keep his Castle, the Lord cannot grant his Castle-guard, retaining his Castle, Finch 15.

60 It hath been adjudged, that where two Coparceners make partition of land, and the one made a covenant with the other, to acquit her and her heirs of a suit that arose out of the land, the Coparcener aliens; in this case, the Alligee shall have an action of Covenant, albeit he was a Stranger to the Covenant, because the acquittal his run with the land, and was incident unto it, in whose hands never it should come, 42 E. 3. 44.

61 A tenant of the Manor of 1. wherein a Chappel was parcel, a Co. B. 385. A, and his heirs to celebrate Divine Service in his Chappel weekly, for the Lord of the late Patron, and his tenants, etc. in this case, the Alligee
The Reason of

Max. 41.

Alligness shall have an action of Covenant, albeit they were not names, so that the remeny by Covenant went with the land, to give damages to the party griesens, and is (as it were) incident and appertaining to the Panno: But if the Covenant had been with a stranger to celebrate Divine Service in the Chapell of A. and his heirs, there the Alligness shall not have an action of Covenant; for the Covenant cannot be annexed to the Panno, because the Covenanters was not lessee of the Panno.

F.N.B. 138. 1. 62 In some case the heir shall have an action of Deceinue for Charters, albeit he hath not the land, as if I be enfranchised with warranty, and I enfranchise another with warranty in fe: Here, my heir shall have a Wilt of Deceinue for the deed, by which I was enfranchised, to the end he may have the advantage of the warranty, &c.

Co. 7. 9. b. 1. Calvinus case.

Ligance and obedience on the Subject part to his Prince, is an independency incident to that power and protection whereby the Prince may command, and ought to defend his Subject; And this ligance and obedience, which that power and protection thus was with after them cannot be local or confined to any certain place or Kingdom, but follows the Subject whethresover he goeth; And therefore it is truly said, Qui abjurat regnum, amittit regnum, led non Regem, amittit patriam, led non patrem patriae, &c. for with-eraduing the absocation, he still oweth the King his ligance, and still remained within his protection; because the King, if he please, may pardon and restore him to his Country again, &c.


64. If a man seizes of lands in fee lesse them for life without deed, remaining rent with clause of re-entry upon non-payment of the rent, whereupon if the Lessee enter, and the Lessee bring an Allinze of Novel Diuision, the Juroys may find the matter at large, and the Judges ought to adjudge it for the Tenant, albeit (regularly) a condition is not void without deed showed in Court, and that the Lessee show no deed; for they that have consuuence of a thing, are to have consuence also of all incidents and dependance thereupon, and (in this case) the condition is an incident necessarily depending upon the estate for life, which was perfected by livery. Vide supra 28.

Dyer 2. 73. 3. 6 H. 8.

65 Emson avows for Rent-charge granted to him by a Stranger, who was seised of the land, where, &c. pro consilio impendendo, the Plaintiff pleads in barre, that the Defendant was attainted of treason and committed to the Tower, & yet the Grantor had need of Couseil, and could not have access, &c. and upon demurrer the Judgment was, that the Avowant should have return; because the rent being incident to the person of Emson, could not be granted over, as seised: So likewise land given by the King to a Duke to support his dignity, cannot be granted over. See Max. 45.

Dyer 45. 15. 136. 30 B. H. 8.

66 The King can by no way grant or seizer the tenure and seigniory in Chief from the Crown, for no Subject can take it of his grant with such a prerogative; And therefore if the King make a release to his Tenant in Capite to hold by a hemp, and not in Capite, this is a bold release, so that tenure is merely incident to the person and Crown of the King, and hath such a prerogative, that it cannot be held of any Subject, as the Tenant in Frankalmoigne cannot hold of any other than of the Donors and of his person, because it is a speciall tenure: Also, if the King at this day make a gift in tailor to hold of him in Capite, and after he grant the reversion of that land to another in fee, neither the tenure nor service palle to the Grantor, but remain in the King, because they are not incident to the reversion, but to the person of the King.

Dyer 17. 1. 132. B. 2. 177. 1. 13 B. 2.

67 The office of Exigerent of London being void, and Coke Chief Justice of the C. B. being then also dead, Queen Mary during the vacation of Exigerent of London.
of the said places conferred by her Letters Patents the Esquire's office upon Colliii, and then made Brown Chief Justice of that Court: But Brown refused Colliii, and admits Srogges thereunto: And in this case it was resolved by all the Judges and others (save the Justices of the Common Bench) that the said office did not appertain to the Du, to grant, but only in the disposal of the Chief Justice for the time being, as an insepensible incident to his person and place, and that by reason of common usage and prescription.

68 A Prior makes a lease of the Demeiness of a Panono rending rent, the King after the dissolution makes a lease for years of the Pan- non; And it was an unjust, that by the name of the Panono the rent and reversion of the Demeiness passed.

69 A warship fell to the Bishop of Durham by a tenure of him in Capite, who dies before seizure, yet his Executors shall have it, and not the King or Successor, for it was incident to his person, and a chattel vested in him before his death.

42 Quod tacite intelligatur, deesse non videtur. V. 64. 11.

Copholds.

1 When custom hath once created Copholds of Inheritance, and that the land shall be desceivable, then the Law both doth direct the descent according to the Parimes and rules of the Common Law, as incidents to every estate desceivable: So (5 E. 4. 7.) when usus have gained the reputation of Inheritance desceivable, the Common Law shall direct the descent of them, and that there shall be Poffello fratri of an use, as well as of other Inheritance at the Common Law.

2 Every contract executory imports in it seft an Assumpit: For when one agrees to pay money or deliver any thing, he both thereby assume and promise to pay or deliver it; and therefore when one tells any good to another, and agrees to deliver them at a day to come, and the other in consideration thereof agrees to pay so much money at such a day; In this case both the parties may have an Action of Debt, or an action upon the case upon Assumpit: For the mutual executory agreement of both the parties imports in it seft, as well a reciprocalt action upon the case, as an action of debt: And with this agrees the Judgment in Read and Northwoods cafe, Pl. Co. fol. 128.

3 In every exchange righteously made, this wood Exchangium imports in it selfe (tace) a condition, and also a warranty, the one to give receipt, the other Woucher and recumpence, and all in respect of the recepical consideration, the one land being given in exchange for the other: but that is only a special warranty; for upon Woucher by force thereof he shall not receive any other land in value, but that only which was so given in exchange, &c. And as it is in case of warranty, so is it also in case of the condition which the law implies upon the exchange; for if the exchange be between A. and B. and A. alleys his exchanged land to another, if the land which B. had in exchange, be existed from him by an signe title, B. shall enter upon the aliens of A. &c.

4 If a man make a settlement by this wood, Dedi, which implies a warranty, the Allignee of the Feodary shall not touch; but if a man makes a lease for years by this wood, Connecti 02 Demis, which imports a covenant, if the Allignee of the Feodary be executed, he shall have a right of Covenant: For the Feodary 02 his Allignee hold the perty profite of the land, which increases by labour and industry; and if he should lose the land, he should also lose his labour and cost, unless he were helped by implicit covenant.

5 If the Grantee of a Ward be implanted, he shall touch the Grantee; because this wood Grant, in case of the grant of a Ward (being a

Chattel
Chapel real) imposes in it settle a warranty, 2c.

6 A. being Lettice for 60 years if he should so long live, the reversion in B. and his heirs, B. grants a lease to C. Habendum; compt, five per mortem, trium reditiojor, vel foris atque praeclari, A. accident vacat, &c. for 60 years: Thus left lease vesteth presently in C. in point of Interest (and both not depend on contingencies) to take effect in possession at the end of the first terms, if by any of these accidents the first lease shall happen to be void; 2, 3, this case, these words (which of them forever shall first happen) are implied in Law; and the lease is not void for the uncertainly, which of them will happen first, neither hath the Lettice election to choose which of them he pleaseth; as if the first Lettice surrender the last terms take place immediately after each surrender, 2c.

7 If the dignity of an Earlsombe been entailed to the heirs male, it might have been forfeited to Creation before the Stat. of 16 H. 8. cap. 23. by reason of a secret condition in Law annexed unto it; for Earl's are created for two purposes, viz. ad condulendum rem tempore pacis, &c. and defendentem Rem & tribunum tempore bellis: And therefore they bear a Cap and a Robe, in token of Council, and are given with a Sword, to represent them gallant Champions, and Cavaliers. Now then when such a person against his duty, the end of his dignity commits Creation against the King, his dignity (though entailled) is so settled by that condition called annexed to his estate. Vide 32. 17.

8 A man by Inturde between him and his wife of one part, his second son on the second part, and his third son of the third part, in consideration of natural affection, and that the land remain in his blood, covenant to Kama vested to the use of himself for life, after to his Feme for life, after of the one moiety to one son, and of the other moiety to the other son: In this case the use accures to the Feme, although not named in the considerations of the word; because the express limitation of the use to her (being his wife) imposes in it settle a sufficient consideration, and the rather because it is not repugnant to the deed: So also if I covenant, that in consideration of fatherly love and affection to my eldest son, I will land vested to the use of my eldest son for life, or in tail, and after to the use of my second son in tail, and after to the use of such an one my cousin in fee; Here, albeit the consideration expressed in words respect only the eldest son, yet the consideration apparent in the use, in limiting the use to my second son, or to my Cousin, is sufficient in Law to raise an use: In like manner, if I covenant to land vested to the use of my sons, or my cousin, this shall not raise an use without any express words of a consideration; for, in that case, sufficient consideration appears, 2c. Co. lib. 1. 25. 2. Henry Helpis cafe.

9 At the Common Law, a lams has been given to a woman, and to the heirs of her body, and she has taken husband, and has issue, and the issue have issue, and the Feme also had issue without other issue, by which the inheritance of the lams revertus to the woman: In this case, the estate of the Feme was determined, and yet the Barron said he Tenant by his courtesy.

10 N. is bound to A. upon condition to Kame to and above the award of C. In an action of Debt brought by B. against A. the Defendant pleaded, that C. made no award, the Plaintiff pleaded, that the Defendant did happen C. &c. In this case the Bond is solvitur, and the Plaintiff the opposite, that C. had notice of the Countermand: but that is implied in the words of the plea, Revocavit e abrogavit omnem substantiam, &c. because without notice it is no revocation of the authority; and therefore, if there has not been notice, then the Defendant might have
have taken issue, quod non revocavit, &c. and if no notice were given to C.,

would have been found for the Defendant; as if a man pleads, quod

suo, dedici, 03 demise pro termino visce, that implies libera, for without

libera it could not be assentment, gift, 03 demise for life: and therefore

there is a diversity, when two things are requisite to the performance

of an act, and both things are to be done by the same party, as in the case

of assentment, gift, demise, revocation, countermand, &c. and when two

things are requisite to be performed by several persons, as upon the

grant of a reversion, assentment is not implied in it, but without

attornment the grant hath not perfection; but inasmuch as the grant is

made by one, and the attornment is to be made by another, it is not

implied in the pleading of the grant; but in the other cases both things

are to be done by one and the same party, &c. Bridges & Bendles sale, 21


11 James Wagoner was arrested at the suit of the Chamberlain of

London, upon the forfeiture of the pains of 5 l. for that he non exists,

libera persona, &c. utas et manuali occupatione Tallow-chandler, &c.

And upon the return of the Habres Corpus into the King's Bench, the

Court take avowal upon that part of it, whereby it was avered, that he non exists, &c. utas et manuali occupatione Tallow-chandler, &c. and therefore not that he诰 any Candles, &c. For if he made them for his owne use, and sold none for gaine, he might well do it, as every one is permitted to bake or brew, &c. for their own use, &c. but it seemed to be implied by the same asserment, that it was his trade, by which he got his living, viz. by selling the commodities of his trade, and not that he made them only for his own use: For it is not properly said, that one useth a manual occupation, when he onely doth it for himselfe, as he that brews or bakes for his own use, cannot be properly said to use the occupation of Brewer or Baker, &c.

12 If one kill a Smiriner of Justice in the execution of his office, the

Insamission may well be general, viz. that the Defendant felonice, voluntari, & ex malitia sua praecognita, &c. perecutis, &c. without alleging any special matter; so the evidence shall well maintain the Insamission, inasmuch as in this case the Law implies malice presence: So a Wiste, which offers to to rob a true man, kills the true man, in resiling the Wiste, this is murder of malice presence, 03 if one kill another without any provocation, 03 without any malice presence that can be proved, the Law adjudgeth that to be murder, and implies malice; and in both these cases they may be indicted generally, that they killed de malice presence; for malice implied by the Law, being given in evidence, is sufficient to maintain the general Insamission; and do it was adjudged in Mackalleys case, for killing Fells a Serjeant of London.

13 If a man pleads, that such a grant made per Iohannem super Episcopum Sarum, &c. was void; Where tooth super Episcopum, &c. imply

and import, that note he is not Bishop of Sarum.

14 When a Court is prohibited by Statute to hold plea of certaine

courses, if one be fined there contrary to that Statute, he may not only

have a Supercedas (in the nature of a protection) to cause the Judge to

cease proceeding; but likewise shall have an action upon that Statute

against the party, that fines contrary to the same Statute; notwithstanding it is in course of legal proceeding, and that the words of the Statute do not expresslie give any such action to the party; so that, that way of relief is a benefit, which (as a consequent) is implied in every such Statute.

Co. lib. 8. 129;

9. 2. The case of the City of London.

Co. lib. 9. 67. b.

3. Mackalleys cafe.

Co. lib. 58. b.

1. The Bishop of Sarum cafe.

Co. 1. 109. b.

2. The case of the Mariscal.
The Reason of

Good confidence implies ed.

By the Statue of 18 Eliz. cap. 2. no contraventions of the Queen are confirmed, but such as are for the satisfaction of debts, &c. and other good consideration; so so it is in the preamble, and although (good) is omitted in the body of the Act, yet it is necessarily implied, not only by the connection of the preamble to the purport, but also by this word (consideration) which (as in 16 Eliz. Dyer 336.) is a cause or occasion meritorious, requiring a mutual recumbence in Deed or in Law.

16 It appears by the Writ of Ad quod damnum (in F. N. B. 222.) that every gift or grant of the King hath this condition, either exply or implicitly annexed unto it: Ita quod patria per donationem illam magnus folio non oneretur, seu gravetur: And therefore every grant, made in grievance, or prejudice of the Subject, is void.

17 There is a condition in Law tacitly annexed to the freedom of liberty of a Citizen, or Burgess, which if he break, he may be dis-infranched, as if he commit any act, which is against the duty and trust of his freedom, and to the prejudice of the City or Borough, and against the Dath which he take, when he was made Free-man, there are causes of his removal.

18 If the Tenant holds of his Lord by Homage Ancestral, and is imploed, albeit he hath no charter of it, yet he shall have a Writ of Warrantia Carta against the Lord, for that tenure implies a Warrant.

Warrant implied.

19 If a man without need makes a gift in tails, or a lease for life registering rent, and alter he is imploed in an action, wherein he cannot be touched; In that case he shall have a Writ of Warrantia carta against the Donor, or Lessee, or his heere, that hath the reversio; for the reversio, and the rent revertus makes a Warrant in Law by the Statute of Bergamis, cap. ulitimo, albeit he hath no deed of it.

20 If a man grant land by these words, Dedi, consceli, &c. he shall be bound to Warrantary during his life (but not his heirs, unless he be thereinunto especially charged by the Grantor) for these words, Dedi, consceli, &c. imply a Warrant; and if the Factor be imploed, he shall have a Writ of Warrantia carta against the Factor by force of those words in the deed.

Dedi implied.

21 Russell brings an action upon the case against A. for saying that he was a false Thieve, and that such a night he would have robbed him to his damage, &c. And A. comes, Et defenditur, &c. & quasi propagationem, &c. etiens non futur damnum in forma qua, &c. to which plea the Plaintiff demurred in Law, and Judgment was given for him; because (by implication) the words are confessed, and no damage can be more grievous, than taking away a man's good name, and a Writ of Inquity was awarded.

An action of the case for words.

22 Vide Stat. 15, Ill. 1.

23 In a Replevin the Plaintiff is non-suit, whereupon the Defendant had a Rewtum habendo, but about the same time the Plaintiff pays a Writ of second delivery, and had it, and both the Parties were in the Sheriff's hands at one time uncoded: In this case, the Writ of second delivery is a Superficies to the Return habendo, by which it is implied, that the Sheriff ought not to serve the Return habendo.

Replevin, Second deliverance.

24 In a Quare Impedit the Plaintiff entitles himselfe to the next avoidance by the grant of the right Patron to a Stranger, who made two Executors, and died, and for that the Executors granted the next avoidance to him, Et hoc abihita oftentio literaturia, without knowing the testament of the first Grant; And in this case it seems he had not show them, because albeit the Executors never proved the testament, yet their grant of the next avoidance was good, for that it was an administration implied by Law.

An administration, in Law.
the Common Law.

Dyer 354. 51. 14 Eliz.

43 Things by reason of another are in the same plight.

1 Albeit the Maxime in Law be, Possessio fratris facit fororos effe hæredem, yet if the Sister die, letting the Brother, her issue, hath inherit before the brother of the halfs blood, because he personates the brother, and therefore shall succeed the brother in the inheritance.

2 Tenant in tail makes a lease for forty years, reserving a rent to commence ten years after: Tenant in tail dies, the issue enters and enforces A. the ten years expire, the lessor enters; if A. accepts the rent, the lease is good, for he shall have the same election, that the issue in tail had, either to make it good, or to avoid it, etc.

3 If there be two Coparceners of a reversion, and Waste is committed, and the one of them dies, the Aunt and the niece shall join in an action of Waste.

4 A Tenant by the Courtlee or in Dower, can hold of none but of the heirs, and his heirs by descent: and therefore if they grant over their whole estate, and the Grantee with Waste, yet the heir shall have an action of Waste against them, and recover the land against the Assignees.

5 If Tenant for life grant over his estate upon condition, and the Grantee with Waste, and the Grantor re-entereth for the condition broken, the action of Waste shall be brought against the Grantee, and the place wasted recovered, 6 Eliz.

6 If a woman make a lease at will referring a rent, and then taketh Husband, this is no counterterm of the lease at will; but the Husband and Wife shall have an action of Debt for the rent: And so is it if a lease be made to a woman at will, referring a rent, and the Lessor taketh Husband; this is no counterterm of the lease, but the Lessee may have an action of Debt, and restrain them for the rent: So if the Husband and Wife make a lease at will of the wives land, referring a rent, and the husband die, yet the lease continues: In like manner, if a lease be made by two, to two others at will, and the one of the Lessors

Dyer 31st. 7. 4 Eliz.
The Reason of

and of the Lessees die, the lease at will is not determined in either of these cases, &c.

Co. Inst. p. 19, 1. 52 b. 1.

7 Tenant for years, Tenant by Statute Merchant, Staple, Legit, at will, Guardian in Chivalry, &c. may be Lords of a customary Pan- nos, as well as those that have fee; for albeit they be not properly feles, but possessed, yet are they Domini pro tempore, not only to make admittance, but to grant voluntary copies of ancient Copishold lands, which come into their hands by feiture, escheat, or other wise; Also admittance made by Dilecto 20, Abato 20, Intrudo, Tenant at suf- ficiency, or others that have descible titles, land you against them that

Co. ibid. 38, b. 2.

8 In some special case an estate may be granted by Copie by one, that is not Dominius pro tempore, not that hath any thing in the Panmos; As if the Lord of a Panmo by his Will in writing, devised that his Exe- cutors shall grant the customary Tenements of the Panmos according to the customes, &c. for the payment of his debts, and the lands, the Exe- cutors having nothing in the Panmos, may make grants according to the customes of the Panmos.

Co. ibid. 59, b. 3.

9 If the Lord of the Panmos, for the time being be Lessee for life, or for years, Guardian, or any, that hath a particular interest, or Tenant at will of a Panmo (all which are accounted in Law Domini pro tempore) do take a surrender into his hands, and before amittance the Lessee for life dieth, or the years, interest, or custodes do end or determine, or the Will is determined, though the Lord cometh in above the lease for life or for years, the custodes, or any other particular interest or tenancy at will, yet shall he be compelled to make admittance accordin- ing to the surrender; And so it was holden in the Earl of Arundel's case, in 17 Eliz. See more of this Co. 1. 4. in the Copishold cases, & Trin. 1. Jac. Inter Shepland and Rider, in Repl. in Co. Ba. the case of Guardian in socage adjudged.

Co. ib. 76 b. 1.

8 In many cases the heire shall be in war, albeit the Tenant die, or not leased, &c. not in the homage of the Lord: As if the Tenant maketh a trust for in see upon condition, and the Lord doth die, after his death the condition is broken, the heire within age entreaty for the condition broken: In this case the Heire shall be in war, and yet the Lord doth not estate or right in the land at the time of his death, but only a condition; and which was broken after his decease: but because the condition restority the Lessee to the land in nature of a visent (to be he shall be in by descent) by the same reason shall it restore the Lord to the Wardship, &c.

Co. ib. 89 b. 2.

11 If a Stranger entreth into the lands of the Infant within age of 14 years, or taketh the profits of the same, the Infant may charge him as Guardian in socage: And this both well agree with the will of ac- count against a Guardian in socage: for the words be, Idem B. præfato. A. rationabilem compositum faunm de ebitibus pervenientibus de terris & tene- mentis suis in N. quæ tenentur in socage, & quorum custodiam Idem B. habuit, dum prædicta A. infra eratam fut. & dicitar; and true it is, that in judgement of Law he had the custodes of the lands, and is called Tutor alienus, whereas the right Guardian in socage is called Tutor proprius; Neither is it any plea for him to deny, that he is prochein any, but he must answer to the taking of the profits, as Lidleton Faith, Sec. 124.

Co. ibid. [108, s. 4.

12 If one holdeth land of a common person in gestate as of his per- son, and not of any Panmos, &c. and this Seignory ehcheth to the King, (yea though it be by attainer of Treason) he holdeth of the pers-
the Common Law.

I son of the King, as he held before of the person of the Subject, and not of the King in Capite; because the original tenure was not created by the King: And therefore it is strictly true, that a tenure of the King in Capite is, when the land is not held of the King, as of his Honour, Castle, Mannor, &c. But when the land is held of the King as of his Crown, Vide Dyer 44. 28. 6, 30 H. 8. & Mag. Car. cap. 31. & 25. 4.

13 An Avoisian is appantant to the Mannor of Dale, of which the King in Capite is, because the tenure is not created by the King in Capite, and therefore it is appantant to the Demesnes and not to the services; and so in a tenancy of the King in Capite, the Lord shall not increase his Common by reason of that.

14 If Common appantant be claimed to a Mannor, etc. (in rei veritate) it is appantant to the Demesnes and not to the services; and so in a tenancy of the King in Capite, the Lord shall not increase his Common by reason of that.

15 If the Tenant rescue the Dictello, and after it is distinguished of the tenancy, yet an alterity lyeth against him, for the Dictello done of the rent by the Rescous, etc.

16 If one of the Parceners take Baron and die, the Baron being for the life of the incumbent by the Dictello is completable by a moiety of partment, to make partition, and shall be jointly implied with the other Parcener; for he both continue the state of Parcenary, as the other Parcener both.

17 If the Dones in Frankmarriage die before the lands be put into Hocchop with the other Parcener, the hoise of the Dones may well do it.

18 If a Dictello make a lease to a man and to his heirs during the life of J. S. and the Lease his sixth, living J. S. this shall not take away the entry of the Dictello; because he that ode fellow, but be a Fre-hold, and heirs in that case were made to prevent an occupant; for an heir in that case shall not have his age; 43. as it was adjudged in Lamb's case, P. 28 Eliz. in Co. 65.

19 If the Dictello distinshes the hoise of the Dictello, albeit the plea recover the land against the Dictello, yet shall he leave the proceeding right in the Dictello: So if a woman sit hold right of Dover distinshes the hoise, and he recover the land against her, yet shall he leave the right of Dover in her.

20 If the Dictello distinshes the hoise of the Dictello, albeit the plea recover the Dictello, yet shall he leave the proceeding right in the Dictello: So if a woman sit hold right of Dover distinshes the hoise, and he recover the land against her, yet shall he leave the right of Dover in her.

21 Regularly when the redention is reverted, the Lease cannot have an action of Waste; yet in some particular cases the action of Waste shall lie, albeit the Lease had nothing in the redention at the time of the Waste done: As if Landor for life, make a testament free upon condition, and Waste is done, and after the Lease re-enter for the condition broken; in this case, the Lease shall have an action of Waste; yet afterwards if Waste for his delinquency, and Waste is done, the Lease re-enters. Here also, an action of Waste shall be mainteyned against the Waste, &c.
22 A warranty that is commenced by dishnel is properly, when the dishnel is done immediately to the heire, that is to be bound by it; and yet if the Father be Tenant for life, the remainder to the same in fee, the father by coin and content make a lease for years, to the end that the Lesse hinge make a footment in fee, to whom the father shall release with warranty, and all this is executed accordingly, the father vieth; here, this warranty shall not bind, albeit the dishnel was not done immediately to the son; for the footment of the Lesse is a dishnel to the father, who is parties criminis: so it is if one brother make a gift in tail to another, and the Uncle dishnel the Donor; and enfeoffeth another with warranty, the Uncle vieth, and the warranty decemeth upon the Donor, and then the Donor vieth without issue: hence, albeit the dishnel was done to the Donor, and not to the Donor, yet the warranty shall not bind the Donor: so likewise if the father, the son, and a third person be Joystenants in fee, the father make a footment in fee of the whole with warranty, and vieth, the son vieth, the third person shall not one avoid the footment for his own part, but also for the part of the son, and he shall also take advantage, that (in this case) the warranty commenced by dishnel, though the dishnel was done to another, se Co. 5. 70. b. Fitzherberts cafe.

23 By the Statute of the 32 H. 8. cap. 36. a fine with proclamations according to the Statute of 4 H. 7. cap. 24. shall bar the estate tail, but not him in the revulsion or remainder, if he make his claims, and pursue his action within five years after the estate tail is spent, &c. Howbeit if a gift be made to the eldest son, and to the beires of his body, the remainder to the father, and to the beires of his body, the father vieth, the eldest son levies a fine with proclamations, &c. and vieth without issue; this shall bar the second son: 22. the remainder descends to the eldest, and therefore what the father might have done by force of a fine, the eldest son in this case also do, &c.

24 At the Lease enters for the condition broken, or if the Lesse surrender unto the Lease; hence, the estate and term is determined, and yet the Lease; shall have an action of debt for the arreages due before the condition broken, or the surrender made, as appears in Fitz.N.B. 120, & 122. 30 E. 3. 7. 6 H. 7. 3. b. (contrary to the booke of 32 E. 3. xi. Rarp. 262, which is not Law,) and this is in respect of the contract between the Lease; and the Presumption in a Waterhouse.

25 A man may prescribe in a Watercourse leading to his Mill, albeit it was of late time changed from a Fulling-mill to a Gilfl-mill, or vice versa, because that alteration is not of the substance of the prescription, but the Mill may be so described, to view the nature and quality of it; and (doubtful) at all he may prescribe in the Watercourses before any Mill was built.

26 If a man have cotters either by grant or prescription belonging to his house, although he alter and change the rooms and chambers of the house, so as to make the Hall to be the Parlour, and the Parlour to be the Hall, and such like alteration of the quality of the house, and not of the house it selfe, and without making any new Chimneys, whereby the owner of the wood may suffer prejudice, or albeit he make new Chimneys, or an addition to the house, yet them none of the Cotters in those new Chimneys, do in the part newly added, both in none of those rights under the ancient prescription; for then many prescriptions would be destroyed: There is the same law of Commons, Water-pipes, and the like. Also if a man have an ancient winnow in his Hall, and after he convert his Hall to a Parlour or any other use, yet his neighbour cannot stop it; for he can prescribe to have a light in such a part of his house.

27 If
27 If a Corporation hath Franchises and Privileges by grant of prescription, and after they are incorporate by another name, as if they were Ballists and Burgesses before, now they are Joists and Community; or Joists and Covent before, and after they are translated to a Deane and Chapter, &c. Although in these cases, the quality and name of their Corporation is changed, and especially in the case of the Joists and Covent (for of Regular, which are dead persons in the Law, they are made Secular) yet the new Corporation shall enjoy all the Franchises, Privileges, and Precedents which the old Corporation had, be it by grant of prescription; for no man can be prejudiced by it, &c.

28 In debt against an Administrator upon an Obligation, the Defendant pleads, that the custom of London is, that the Administrator shall be bound to pay a debt upon a simple contract, as upon an Obligation, &c. and that he has already paid l. 5. &c. And in this case it was adjudged, that the Plaintiff being a Stranger, was as well bound by that custom, as if he had been a Citizen. Vide E. 4. 6. accord.

29 Winfor Plaintiff hath an Indemnity of two parts, the Defendant of the third, the Plaintiff presents one, the Incumbent dies, then in the time of E. 6. he presents one Parry, who in the time of Queen Mary was depivoutes, qui conjugatus, &c. whereupon the Defendant presents his Clerk, who in Eliz. was also depivoues by Jueli and other High Commissioners, and the first sentence adjudged void, and Parry restored, the Clerk of the Defendant dies, Parry also dies, the Defendant presents, because his Clerk was depivouted, whereupon the Plaintiff demurred; and in this Quare Impedit judgment was given against the Plaintiff; for all the Clerk of the Defendant was Parson for the time, to all purposes, and during the first depivotation Parry was not Incumbent; yet when the second sentence came, then was Parry incumbent again by force of the first presentation, institution, and induction, and there needs no new institution, &c. And by force of the second sentence the Presentee of the Defendant was removed, and Parry restored: And therefore when Parry upon, which was the last Presentee of the Plaintiff, the Defendant shall present as in his turn, and by force of the second sentence Parry was Parson in the same plight a condition that he was in upon his first presentation, notwithstanding the presentation of the other by the Defendant, &c.

30 When a writ of right is directed to the Lord of a Manor, or his Bishops, or a Juiffies, or other Mencntil Writs are directed to the Sheriff, &c. that shall not change the nature or jurisdiction of those Courts, as to make the Lord or Sheriff (to whom those Writs are directed) be Judges of those Courts respectively, which were not so before; but the Writs do still remain Judges thereof: Whether yet shall the direction of those Writs to the Lord or Sheriff, as also (albeit they are in themselves matter of Record) constitute the Lord or Sheriff to be Judges of Record; or a Court Baron, Hundred Court, or County Court, to be Courts of Record; For upon a Judgment given in any of those Courts, a writ of Falsie judgements lies; and not a writ of Error, &c.

31 When the King enrolls his Crown to the next Successor, upon the general resumptions by the Kings writ (which begins thus, Mandamus vobis, quod et cetera nostram animumeque licenum populi nostri, &c.) the original and issue (if any be joined) is revived; for that is a full record, and ought to be entered; it is otherwise of the piocess before issue joined, voucher, garnissment, &c. yet they shall be also revived upon a special writ, reciting all the special proceeding: And it appears by the Book of Entries, &c. Reattachment, 499, that if the Issue be joined, and the
the Jury returned, and a day given for tryal, before which day the
King dies, yet by special remonstrans all shall be revived, for the Ju-
ry was returned of record, and the record thereof was made full and per-
fect, &c.

32 It is ordained by the Statute of 1 Eliz. cap. 2. That every per-
son shall resort to their Parish Church, or (upon let thereof) to some other e-
very Sunday and Holiday, &c. And by the Statute of 23 Eliz. cap. 1. That
every person not repairing to Church according to 1 Eliz. 2. being thereof
lawfully convicted, shall forfeit twenty pound for every month they so make de-
fault, and that of the forfeitures aforesaid, the Queen, &c. shall have the
two third parts, &c., the one to her owne use, the other for relief of the
poore, &c. and the other third part the procurator shall and may recover by a-
ction of debt, &c. And by the Statute of the 29 Eliz. cap. 6. It is enacted,
that every such offender once convicted, shall afterwards in Easter and Mi-
chaelmas Terms, pay unto the Exchequer twenty pound for every months
abence from Church, &c. and if default be thereof made, &c. the Queens
Majesty, &c. shall and may by process out of the Exchequer seize all the of-
fenders goods, and two parts of his lands, &c. And lastly, by the Statute of
35 Eliz. cap. 1. It is ordained, &c. that for the more speedy recovering, &c.
of the forfeitures, &c. payable to the Queen, &c. by virtue of this Act, and of
23 Eliz. 1. all and every such forfeitures, &c. shall be recovered, &c. by action
of debt, &c. in the Kings Bench, the Common Pleas, or Exchequer, as
other debts may be recovered, &c. Here albeit the Statutes of the 29 and
35. seem to alter the law of the 23. in respect of part of the penalty
given to the procurator by the 23. and being all of it mentioned, as given
to the Queen in the other two subsequent Acts: Yet the Act of the 23.
remains in full force, according to the tenour of the same, notwith-
standing what said subsequent Acts, because those two Acts do not give the
penalty to any new person, but to the same person to whom the Statute
of the 23. gave it, viz. to the Queen, &c. and they are but acts of admo-
iration (especially that of the 35.) to give a more speedy remedy, than
was given by that of the 23. &c. As in a 20th of Meine, the process at
the Common Law was Difficile infinite, and although the Statute
of Wefin 2. cap. 9. gives a more speedy process, and in the end a Fore-
judge, yet the Plaintiff may take which process he will, either in the
Common Laws, or upon the said Statute, because both are in the affirm-
ative. Vide ibid. many authorities accordant, &c.

33 In many cases the designation of one person in a late Act of Par-
liament shall not exclude another person which was authorized to do the
same thing by an Act precedent. It is provided by the Statute of the
8 H. 6. cap. 16. that after office found, &c. he which found himselfe gri-
ved, might (within the moneth) after traverse, and to take the lands and tenements to farm, and then the Chancellour, Treasurer, and
other Officer shall devise unto him to farme, until, &c. (Vide 12 E. 4.
8.) And now by the Statute of the 1 H. 8. cap. 16. he hath liberty by
the space of three moneths: And after the Statute of the 32 H. 8. cap.
46. gives authority to the Master of the Wards, with the advice of
one of the Council to make a lease of the Wards lands, or of an Idiot,
during the time that they shall remain in the Kings hands: Here, albeit
the last designes another person, yet both it not utter take a-
way the said: For, it before any lease made by the Master of
the Wards, the Chancellour and Treasurer make one according to the
Statute of 3 H. 6. then cannot the said Master demis the lands: So al-
so if the Master grant them. In another, the Chancellour, Treasurer,
&c. cannot demis them to the party grised, as Sanford holds
Pract. vol. 69. &c. 8. where he mentioned the rule. Leges posteriores pri-
iores captivating abrogant. In 43 Ali. Pl. 9. the Statute of 13 E. 3. de Mer-
catoribus,
A mentor, which gives alls to the Tenant by Statute Merchant, in-

kily not atw th the Adore, which the Tenant of the Frankentement had be-

fore, but bth may well land together; So in 33 H. 8. Deor 32, it shoul-

be enacted, that the youngest son should have an appeale of the de-

th of his father, that would not exclude the eldest son of his suit, be-

cause there are no words of restr: int, it.

34 In a suit of right Close, if the suit of the Demantant abite, and

thereupon he brings a suit of false judgement in the Common Pleas,

and there the judgement being re-stated, the suit is awarded good,

then shall the Mandant hold plea there, and a judicid suit shall is-

ue out of that Court in nature of the protestation made for the suit

work, and if the protestation were in the nature of an assise of Mordanc-

celler, the Justices will direct a suit to the Sheriff to come out the An-

cents to come out of the ancient Demesne to the Common Pl, and the

whole matter shall be tried and determined in that Court: And albe-

st judgement be given of that land in the Common Pleas, yet shall

the land still remain ancient Demesne, as it was before.

35 If a man present to an Awardion, and after the Incumbent dies,

and the Ordinary presents by laps: another Incumbent, and after that

Incumbent also dies; now may the right Patron plead again, and if

he be disturbed, he shall have an assis de Darrein presentment, notwith-

standing those mean presentments.

36 If a disturber present to an Awardion, and the Patron brings

an assise of Darrein presentment, and hanging the suit the Incumbent

dies, if the disturber present again another Incumbent; and dies, yet

the Patron shall have an assise of Darrein presentment upon the first di-

surbance by Journeys accomps against the here of the disturber; And

so if the disturber present two or three times within the six months, the

tn true Patron shall have an assise de Darrein presentment upon the first di-

surbance.

37 If two Cop-recolders make partition to present by turne, albeit

the one Cop-recorder usurp upon the other, and presents in her turne,

this presentment shall not put her out of possession; but the Hall

shall have her turne, when it falls again, and had a Quare Impedit, or Scire

facias upon the Composition (if it be upon record) if she be disturbed to

pree.

38 If in the time of the vacation of an Abbey or Priory, a Church

happens to be void, which is of the patronage of the Abbey or Priory,

and a stranger usurp and present unto it; this usurpation shall not

previve the Succesor; but that at the next abscence of the said

Church he may present, and have a Quare Impedit: It is otherwise,

when the usurpation is made in the time of his Predecessour, for that

puts the succession out of possession, if the six moneths be past.

39 If a man lost land by default in a Precipe quod reddar, and dis,

his here shall have an action of Decet, as well the father, and shall

have restitution.

40 If a man have execution by default upon a recognizance in a Scie-

re facias sued against one, and the Defendant dies, his Executors shall

have a Writ of Decet, and shall be redosed.

41 If a man hath a Warrancie carrie hanging, albeit the Plaintiff

that hath the Action against him, who brings the Writ de warrancie

carre be non-fute in his action, that shall not abate the Writ de war-

rancie carre; for, he may have that Writ, although he had no action lu-

ed against him for the land, etc.

42 Rolle was boun in a Recognizance of 1000 Marks to Pope, and

Curton, according to the Statute of the 23 H. 8. cap. 6, and after Rolle

Rolle & Pope cal.
The Reason of

Max. 43

Burton Constable and other lands in the County of York in fee; And after Pope (as Darwino) seis execution of the said recognisances in London against Rolle; and his body was taken, and the said Rolle, imposing the said fine of those lands in the County of York would have discharged him of the recognisance, brought his Auditor quarels, containing the whole matter, upon which Wilt and Declaration Pope demurred in Law: And in this case, it was allowed, that the Auditor quarels would not lie, not that the purchase (by the Commons) of parcel of the land, that Rolle had at the time of the recognisance acknowledged, could discharge the recognisance; because the person was properly charged with it, and not the land, but in respect of the person, &c.

43 The custom of Gavelkind is not charged, though a fine and recovery be had of the same in the Common Law; for this is a custom by reason of the land, and therefore runneth always with the land: But otherwise it is of land in ancient Demesne, partible among the Sires; for there the Auditor quarels not with the land simply, but by reason of the ancient Demesne: And therefore because the nature of the land is changed by the fine and recovery from ancient Demesne to land at the Common Law, the custom of partition it among the Sires is also gone.

44 If an erroneous recovery be had of lands in Barrough English, 
youngest son shall have a Wif of Erreur; because the land it fell gory to him; so all the sons of lands in Gavelkind.

45 Two Co-partners make partition, and one covenants with the other to acquit the land; how if the Covenantor alien his part, the Attorney shall have a wit of covenant.

46 If the annual value of the land be equal at the time of the partition, and after become unequal by any matter subsequent, as by subsidence, in husbandry, or the like, yet the partition remaining good.

Judicis officium est, ut res, in tempora rerum
Quaera, quasi tempore, tum crisi.

47 Whosoever is lessee of lands, hath not only the estate of land in him, but the right to take the profits, which is in nature of the use, and therefore when he makes a feoffment in fee without valuable consideration to vitiate particular nses, so much of the use, as he disposeth not, is in him as his ancient use in point of Reverter: So if a man be lessee of two acres, the one bolden by Knight service in possessory, and the other by the same service in possessory, and makes a feoffment in fee of both access to the use of himselfe and his heirs, the old use continued in him, and the possior and possessory remain: So it is of lands of the part of the Holder; for if one make a feoffment in fee of them to the use of himselfe and his heirs, the use shall still goe to the heirs of the Holder, which could not be, if it were not the old use, but a thing newly created; The like law of lands, of the custom of Barorough English, Gavelkind, &c.

48 If Tenant by Receipt upon defaulte of Tenant for life appear, and is receivd and pleas, and after lately by authoritie, &c. The Tenant for life may have a Quod ej deforres upon the Statutes of Welt. 2. cap. 4. for the judgement is given against him for his default.

49 If a Rent-charg be granted out of land pro confisso impendendo, and he Grantor is afterwards inluenced and committs to prision, yet he shall not lose the rent; for he may give couneil as well in prision as large.

50 The feoffee to an use made a leas to the remaining ten, before the Statutes of Wills; in this case, Certi que usc (who now hath the reversion
reversibl in position) shall vitriolate and make Abowse for the rent, without appropriation: So it is if they have granted a rent upon condition, the Grantor (after the Statute) would have holst by the condition, in both places as he did before.

51 There are these Opinecece of a manor, and the king grants them a Law-day, and they afterwards make settlement of the Mithno, so shall they still retain the Law-day: So if a tenant hath a spring, and the king grants him free Warren within his Manor, if he afterwards enfeoff the King of his Manor without the appendances, he shall still retain the Warren: For a man may have Warren of a Law-day in another's land, per rot. Curt.

Misc upon these.

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inhal.

Cap 2. post the tenure in Frankamong remain the same, and such paper's due Divine service shall be paid and celebrated, as in times Hall by authorized by Parliament; yet although the tenure to (as Littleton hath it, Sect. 137.) A chanter an Messe, etc. on a chanter un placebo & dirige, yet if the Tenant lay Papers in such a form as is lawfully authorized, it Indirectly; And as Littleton hath, Sect. 179. in case of licence, the changing of one kind of temporal services into other temporal services altereth neither the name nor the effect of the tenure, so the changing of Spiritual services into other Spiritual services, neither altereth the name or effect of the tenure in Frankamong: For albeit the tenure in Frankamong was reduced by the said Statutes to a certain stability contained in the book of Common Paper, and now there to an uncertainty again by extemporaneous Papers; Yet seeing the original tenure was in Frankamong, and the change was, and to be general content in Parliament, Iberanto (as is postrormed) every man is party, the tenure remains as it was at first.

54 Testaments in London not alterable by curatendi, come into H. 8. hurts by the dissolution of Abbeys, and after the King grants them to hold in abate by Knights Service; In this case, a Deed of the whole is not good against the heir, but where, whether it be so against the King for worship of primer faith, by reason of the being in the Statute of 25 H. 8. cap. 1.

55 The Clerk of the Aisle may, notwithstanding the death of both the Justices of Nisi prius, deliver in Court the Records of the Verdicts taken before the same Justices in the Circuit, etc.

56 In a Reveiure, on an Aisle against two, judgment shall not be arrested by the death of one of the Deemthes after the last continuance, but shall be entered against the Survivo.

57 Assignments and Tenants in Common cannot since the Statute of 31 H. 8. 1. make partition by Parol, more now than they could before, so albeit by that Statute they are compelled to make partition, yet it alters not the Common Law in that case.

58 In web upon an obligation against the inher, it is no plea to say, that the Granteez have assign. Vide Dyer 207, 15.
The Reason of

Max. 44.

A. venire facias with Proviso was returned, served, and put upon
the file, and two hours after a Pluries venire facias, which was after-
wards perused by the Plaintiff was also returned and filed, each par-
ty also perused their Habesas Corpus, which are likewise returned.

Dyer 317. 61.

Discontinu-
ance.

Dyer 419. 49.

Tenant by
courtesy.

Dyer 443. 57.

Partition.

Dyer 316. 3.

De malefa-
rinius in parc.

44 Personal things cannot be done by another.

1. A single Corporation consisting of one person only may do ho-
mage as a Bishop in right of his Bishoprick, an Abbott or Prior in
right of his Monastery, &c. But no Corporation aggregate of many
persons capable (be the same Ecclesiastical or Temporal) can do
hommage, as a Dean and Chapter, Priors, and Cominialls, and the
like; because hommage must be done in person; & a Corporation aggre-
gate of many cannot appear in person; for albeit the body natural,
whereupon the body politique consisteth, may be seen, yet the body
politique & corporate it self cannot be seen, nor done by act but by atto-
rep., and hommage must ever be done in person, &c.

2. The steward or Bailiff of a Pannos may take sealy for the Lord;
but hommage cannot be made, save unto the Lord himselfe in person;
and therefore Bracton faith (lib. 2. fol. 80.) Scienium eff, quod non per pro-
curatores, nec per litteras fieri poterit hommage, fed in propria persona
Domini, quam tenens, capi debet & fieri.

3. The service of hommage is to nearily annexed to the person, as well
of the Lords five, as of the Tenants; that the Tenant ought to be to the
Lord, to the end he may do him hommage, if the Lord be within England:
And therefore Bracton faith (lib. 2. 8.) Ecciendum eff, quod ille qui ho-
mageum fuam pecore debet, occiendum reverentia quam debet Domino suo, adire
dominium suum, qui vicit inveniu fuerit in regno vel alibi, si pohtic
commodi adhibi, & non tenetur Domini quare solio pecore tenementum, & fec debet
homo(u)num ei pecore, &c. There is the same law in Fealty: It is other-
wise of tenet, for that is not personal, but may be paid and received by
another, or tenens upon the land, &c.

4. Grand Service is a service to be done to the royal person of the
King, and therefore cannot be performed by a Deputy, without the
the Common Law.

5. If two joint tenants within age make settlement in fee, they may enter jointly in their lands, or may join in a writ of right, but they cannot join in a Dower fur infra aestum; because the nature of the one is not the same as the other.

6. As to make a settlement to B. and C. and their heirs without devise, and A. makes liberry to B. in the absence of C. in the name of both, and to their heirs, this liberty is void to C. because a man being absent cannot take a Freedom by a liberry, but by his Attorney being lawfully authorized by devise to receive liberty; unless he be made by devise, and then the liberty to one in the name of both is good.

7. If a man demise his sheep, or other stock of cattle, or any other personal goods for a time, and the Lessees covenants for him and his Assignes, at the end of the time, to deliver such like cattle or goods, as good as the things demised were; or such a price for them, and the Lessee assigns the sheep, or as; this covenant shall not bind the Assignes; because it is but a personal contract, and there wants that certainty, which is requisite the Lessee and Lessee and his Assignes of lands, in respect of the reversion; so in case of a lease of personal goods there is not any certainty, nor any reversion, but merely a thing in action in the personality, which cannot bind any but the covenantor himself, and his Executors, and Administrator which do represent him: So it is also, if a man demise an house and lands for years with a lock or a sum of money, rendying rent, and the Lessee covenants for him, his Executors, Administrators, and Assignes to deliver the lock or sum of money at the end of the term; yet the Assignes shall not be charged with this covenant; so, albeit the rent reserved were increased in respect of the lock or the sum, yet the rent does not take out of the lock or sum, but out of the land only; and therefore, as to the lock or sum, the covenant is personal, and will only bind the Covenantor, his Executors, and Administrators, and not the Assignes; etc.

8. There is a diversity of the widest conditions, which are personal and individual, and cannot be performed by any other; and conditions, which are not to be scrupulously annexed to the person, but that they may be performed by any other; as it was resolved in the case of Thomas Duke of Norfolk (who in Anno 11 Eliz.) conveyed his land to the use of himself for life, and after to the use of Philip Earle of Arundel his eldest sonne in tail, with divers remainders over, with proviso, that if he should be minded to alter and revoke the said uses, and signifie his mind in writing under his own hand and seal, subscribed by this credible witnesses, that then, etc. And after the said Duke was attainted of High Treason, etc. In that case, the proviso of condition was not given to the Assignee by the Act of 33 H. 8. because the performance of it was personal, and inseparably annexed to the person, viz. to signifie his mind by writing under his own hand, which none could do, but the Duke himself: It is otherwise of payment of money, delivery of a ring or paras of gold, or the like; so they may be paid, delivered, or tended by others, etc. Vide 55. 109.

A Retractive cannot be entered, unless the Plaintiff or Demanndant be in Court in proper person; for the entry is, quod quærens in propria persona sua venit & dictit, quod ipsa placentum inam praecipitatem ulceriæ prolat qui non velit, sed ab inde omnino (et retractic, &c. And therefore a Retractive cannot be acknowledged by an Attorney.

10 There
There is a diversity between a general and absolute power and authority, as owner of the land, and a particular power and authority by him which hath but a particular interest; as a Copyholder being owner of the land according to the custom, may surrender his Copyhold land by Attorney; but if A be Tenant for Life, the remainder in tails, &c. And A hath power to make leases for 21 years, rendering the ancient rent, &c. he cannot make a lease by letter of Attorney by force of his power; because he hath but a particular power, which is annexed to his person: And so it was resolved in the Lord Greville's case at the Assizes in Suffolk, 24 Eliz. by Way and Anderson Chiefs Justices, and Justices of Assize there.

**Vileia:**

1. Some things are so inexplicable annexed to the person of a man that he cannot do them by another, as the making of Homage and Fealty: So it is held in the 32 E. 3, tit. Trepass 253, that the Lord may bequeath his Vilein for cause or without cause, and the Vilein shall have no remedy; but if the Lord command another to bequeath his Vilein, the Vilein shall have an action of Battery against him that so beareth him.

2. If the Lord dispossess the Castle of his Tenant, when nothing is behind, the Tenant has the respect and reverence which belongs to the Lord. He shall not have an Acton of Trepass vi & arms against the Lord; but if the Lord in that case command his Bailiff or Servant to dispossess him, when nothing is arrear, the Tenant shall have an Action of Trepass vi & arms against the Bailiff or Servant, &c. 2 H. 4, &c. 1 H. 7, &c.

**F.N. B. 35. c.**

11 It seems, that before the Statutes, which grant that a man may make an Attorney, &c. the Justices would not suffer either Plaintiff or Defendant, Demandant or Tenant to make attorney in any suit, or in any Court, &c. because the words of the Writ command the Defendant to appear, which ought always to be unaffected in proper person; and at this very also a mans real suit at a Leet, or Sheriff's suit, cannot be done by Attorney, but ought always to be in proper person, &c. So that before those Statutes the King by his Prerogative might have granted to a man to make an Attorney in every action of suit, as well to the Tenant or Defendant, as to the Demandant or Plaintiff, and might have directed his writs or letters to the Justices for that purpose, &c.

14 If the Tenant for terms of life be impleaded in a præcipe quod reddat, he is in reversion may pay to be received to defend his right in the suit of the Tenant, or upon his faint pleaing; but in this case he cannot pay by his Attorney to be received without a Writ out of the Chancery directed to the Justices for that purpose, upon some cause allledged in the said Writ, &c.

15 A man cannot excuse himself of a contempt (as of not serving the Kings process, of refusing a Petition from the Sheriffs or other Officer, or the like) by Attorney, but he ought to appear thereupon in proper person, &c.

16 The office of Marshal of the Marches cannot be granted for 21 years: because it is an office of great trust annexed to the person, &c. concerning the administration of Justice, and the life of the Law, which is to keep such as are in execution in salva & ardea cullodia, to the end they may the better and better their debts; And this trust is individual and personal, and therefore cannot be transferred to Executors or Administrators; for the Law will not consist in persons unknown; for the ordering of Matters, which concern the administration of Justice, &c.

**F.N. B. 35. d.**

1 F. 4. 34.

Finch 16.

Co. 1 96 b. 4.

Sir George

Ryn.i. cafe.
the Common Law.

17 If a man hold land by the personal service of being Serjeant, Care-

ver, Butler, &c. to his Lord, or when the Tenant is bound by his

nure, Ad convictum Dominum suum & familiam suam semel in anno,

ad equitantum cum Domino suo, in Com. N. suptibus suis propriis (vi-
dec 10 E. 3. 23. in John de Bromptons case:) by alienation of parcel

of the land, the service shall not be apportioned or multiplied; because

such services are personal, and are to be personally performed by one

man only: therefore purchase of parcel by the Lord shall extint with

them.

18 The office of Filer cannot be extended upon a Statute, or Ele-
git, albeit it is a frankenlenement, for which an Attire lpay; because it

is an office of truth and personal.

19 In action upon the Case was brought by two, for that the De-

fendant called them two false Knaves and Thieves; Here, the action

was not well brought jointly, for that the wrong done to the one was

not the wrong done to the other; and therefore they ought to have fevred in

actions, as in case of false imprisonment.

20 The reason why a thing in action cannot be transferred or granted

to another, is, because it is annexed to the person, that it cannot

be severed from him, not by any means as prosecute but in his name,

as an Obligation, Statute, Recognition, or the like: So if a man

have an Adowson, and when it is sold, the Patron grants proximam

nominationem, Professionem, & Institutionem, cum primo & proximo

vacu-erint; in this case, the Grantor shall not have that Presentation, be-

cause it is a thing in action, which the Patron could not transfer, but

the next to it he shall have, which was the title that could be granted.

45 They cannot be granted or transferred over, as matters of

pleasure, case, trust, and authority.

To have way, or plea, &c.

1 A licence to hunt in my Parke, to go to Church over my ground,

to come into my house to eat and drink with me, cannot be granted

other: So of a way granted to life over my ground, Finch 17.

2 The Patronage to life of an office of trust, as to be a Chamberlain

of the Exchequer, Squire of the body, &c. cannot be assigned over, un-

less it be specially limited in his Patent, that he may: And the reason,

why (regularly) he cannot assign it over to another, is, because he may

grant it to one in whom the King cannot confide, or that will be negli-

gent, &c. Finch, ibid.

3 The Dioceship of a Parke, Stewardship, Bailwicke of Busham-

day, &c. for life cannot be granted over, because they are offices that

require skill and diligence. Finch, ibid.

4 A licenteth B. to be an ad.; B. cannot grant this licence to another.

Finch, ibid.

5 A warrant of Attorney is made to one to deliver settin, he cannot

grant that authority over to another. Finch, ibid.

6 Arbitratoris cannot assign their power over; And therefore they

ought to make to certain an end of the difference, that they may leave

nothing to be further determined either by the parties themselves, or

others; for they being Judges of the case, their judgement ought to be

certane.

7 The office of Marshal of the Marshalls being an office of trust, &c.
cannot be transferred to another, but ought always to be granted for

life, and to be executed by none but the Grantor himself; And therefore

a lease for years of that office is void, so then it may fall into the

hands of Executors or Administrators; and in matters concerning the

administration of Justice, the Law will not repose confidence in per-

sons unknown, &c. Vide 44. 16.

Co. 1. 8. 10. 4,

Join John Talb

his case.

Dyer 7 b.

28 H. 8. 30.

Dyer 19. 111.

28 H. 8.

Dyer 16. 146.

28 H. 8. & 84.

11 Eliz.

& 150. 36.

13 Eliz.

Co. 1. 9. 6. 4

in Sir George

Reynell's case.
8 A Filizor's office cannot be aliened, because it is an office of trust and personal. Vide 44. 18.

9 A Sheriff in making an Under-theritke both implyeth give him power to execute all the ordinary offices of the Sheriffs himselfe, that may be transferred by Law, as serving of Process, Executions, or the like; notwithstanding the Under-theritke cannot name in a Writ of Habeas corpus, because in that the Sheriff is a Judge, not a Writ of Habeas, where the Sheriff is commanded to go to the place named, because there are places of trust, and personal to the Sheriffs himselfe.

10 The putting of an Apprentice to one man rather than to another, is a matter of great trust for his very health, and safety; And therefore (it seems) that trust cannot be transferred without consent of all parties interested.

46 They being once suspended, or discharged for a time, are for ever after extinct.

1 Where the Defendant is once imprisoned upon an execution, and makes an escape, the Plaintiff shall never after have remedy against him again, but ought to take his relief against the Sheriff; For if a personal thing be once in suspense, and the person of a man discharged of a personal thing for a time, that is a discharge for ever; as if the Debtor makes the Debtor and another, which survives the Debtor, his Executors, yet the debt is extinct for ever, ec.

2 A thing or action personal being once suspended (though for an hour) is extinct and gone for ever; when it is by the act and consent of the party himselfe, who hath the thing suspended, as a Rent-charge, Rent-charge, held by the personal, which are personal duties, and against common right; So likewise if a Feme, Phlegno, or the like marry with the party, and after they are divorced, the debt is extinct, as it is ruled in 11 H. 7. For if a man grant to another a Rent-charge of 10 l. out of the county of Isle, and the Grantor by his false delivery, that the Plaintiff shall retain five guines part for a legacy of 50 l. and more, whereby the rent is suspended for those five years: In Dyer 140, it seems to be the better opinion, that both the land and person are for ever after discharged thereof.

3 In debt upon the condition of an obligation consisting of sever points, if the issue be joined upon the breach of one point, which is found against the Plaintiff, and whereupon he is barred; Albeit all the other points of the condition are broken; yet he shall not lose the obligation against.

4 Where there were an Obligor and two Obligors, the Obligator makes the wife of one of the Obligors his Executor, and dies, the Executor admitted; In this case the action of Debt against the other Obligor is (at least) suspended, and then the Rule is, A personal action once suspended, is for ever after extinct. Vide infra 54. 36.

5 In a Quod permutat pretamere quodam domino, that by being new built, hindered a light of the next house by over-hanging; upon the issue and verdict it appeared, that the Defendant had built the said house upon the old foundation of an house which had been built there before, and had been pulled downe (because ruinous) by one, that was then owner of both houses; And it was the opinion of the Court, that the unity of possession of both houses in one man did suspend that easement, so as the Defendant could not be charged with any damage, but for what should be caused, by making it hang over more than it did before; for that easement being once suspended, is gone for ever, albeit the houses come afterwards into several hands.

47 They
They dye with the person.

1. If the Tenant both Waste, and be in the reversion died, the heir shall not have an action of Waste for the Waste done in the life of the Ancester; nor a Bishop, Master of an Hospital, Patron, or the like, for Waste done in the time of the Predecessor; so if Life for years both Waste and depthe, an action of Waste depthe not against the Executor or Administrator, for Waste done before their time, &c.

2. And in an action of account against a Guardian in Socage, &c. the Defendant cannot wage his Law, yet in respect of the privity of the matters in account, and the discharge resting in the knowledge of the parties thereto, an action of account depthe neither against the Executors of the Accountant, nor at the Common Law for the Executors of him, to whom the account is to be made, but that is holpen by the Statue of Wells, 2. cap. 23. And it hath been attempted in Parliament to give an action of account against the Executors of a Guardian in Socage, but never could be effectually.

3. An annuity is a yearly payment of a certain sum of money granted to another in fee, for life or years, and charging the person of the Grantor only, but both issue to the Grantee and his heirs, and his and their Grantee shall have a writ of Annunity; but if a Rent charge be granted to a man and his heires, he shall not have a writ of Annunity against the heire of the Grantor, albeit he hath assents, unless the grant be for him and his heires.

4. If a Dissolution make a lease for life, the remainder for life, and the Dissolution releaseth unto the tenant for life all his right, this release shall be void to him in remainder, because as to this and some other purposes, they are but as one Tenant in Law; but where the Dissolution releaseth all actions to the tenant for life, after the death of the tenant for life, he in the remainder shall not take benefit of this release, for it extendeth only to the tenant for life, and remaineth with his life, as it was adjudged in Edw. Alhams case, Co. 1. 3. 148. So also, if the Dissolution make a lease for life, and the Dissolution releases all actions to the Liske; this annuity shall not be to him in the reversion, &c.

5. In a writ of right, when the person is by Battailie, neither the Tenant nor Demaundant shall fight for themselves, but shall have each of them a Champion to fight for them; because if either the Demaundant or Tenant should be slain, no judgment could be given for the lands and tenements in question: It is otherwise in an appeal, for here the Demaundant shall fight for himself, and so shall the Plaintiff also; because there, if the Defendant be slain, the Plaintiff hath the effect of his suit, viz. the death of the Demaundant, &c.

6. Upon the grant of any thing, whereunto attachment is necessary, as of a Seigniory, rent, revenue, remainder, &c. the attachment must be made during the lives both of the Grantor, and also of the Grantee; for if either of them die before attachment the grant is void. And the reason thereof is, for that every grant must take effect (as to the substance thereof) in the lifetime both of the Grantor, and of the Grantee; whereas (in this case) if the Grantor died before attachment, the seigniory, rent, revenue, remainder, &c. descends to his heir, and therefore after his decease the attachment cometh too late; so likewise if the Grantee died before attachment, an attachment to the heir is void, for nothing descended to him; and if he should take, he should do it as a purchaser, whereas, heirs were added but as words of limitation of the estate, and not to take as purchasers, &c.
If a man for good consideration bargain, sell, and demise a reversion on land to the use of another for years, and the Grantor or Cessuy que uie before attornment or enrolment, the grant is in this case void of good at the election of Cessuy que uie, void, if taken at the Common Law by way of grant, because then there wants attornment, but good, by way of Bargain and Sale according to the Statute of Uses, (27 H. 8. cap. 10.) and because the Statute of 27 H. 8. cap. 16. (of Enrolments) extends not unto it, for that no estate of Frankenement pasheth, but only an estate for years; and notwithstanding the death of the Grantor, and Cessuy que uie (either one or both) the Executors or Administrators of Cessuy que uie have power (as well as Cessuy que uie himselfe) to choose, by which way they will claim, whether by way of grant at the Common Law, or by way of Bargain and Sale according to the said Statute of Uses, because Cessuy que uie has immediately upon the grant a present interest in him, which he (in case he has used) his Executors before election might have assigned over, and so that he claims one and the same thing by two several wapes, it being in his or his Executors power to choose which of them they please: it is otherwise, where the election is to choose one of two several things, by one and the same way or title; for then nothing pasheth before election, and that election must be made during the life of the parties; and therefore if I have these houses, and I give unto you one of my houses, in this case the election ought to be made in the life of the parties; for so much as none of the houses is given in certain, the certainty (and therefore the property) commented by election, and with this agrees Bullocks case in the 30 of Eliz. 281. The Bishop of Sarum having a great Wood of 1000 acres (called Berewood) enters another of his house, and of 17 acres parcel of the said wood, and makes a livery in the house, where, nothing pasheth of the wood before election, and therefore his livery could not make election, se.

If the Bishop make Certificate, and die before he be received, the Certificate is worth nothing, but the Successor ought to certify according, Fiz. 55.

An action of Debt with not against Executors upon a contract for the eating and drinking of the Jessato; so that action died with him, because in that case, the Executors cannot wage their Laws, as the Jessato might have done; so a man shall never have an action against Executors, where the Jessato might in his life time have waged his Laws, because they cannot have the benefit of Law-wager, as he might have had, et. 15 E. 4. Vide infra 14.

Of the family of the Lord De la Ware, there was Grandfather, Father, and Sonne, the Grandfather 3 H. 8. was summoned to the Parliament by W. F., and after in 3 E. 6. it was enacted, that the father should be disabled during his life from claiming any dignity, but was afterward by W. E. called to the Parliament, and came in the House as a publick Lord, and died, after whose death the same lawes in Parliament be restored to the place of his Grandfather, viz. between the Lord Berkley and the Lord Willoughby of Eresby, and it was granted him: For there was a diversity taken between a disability personal and temporary, and a disability absolute and perpetual; as if a man be attainted of Treason or Felony, this is absolute and perpetual disability by corruption of Blood, and shall barre any of his posterity to claim any hereditament in F. & A. as before unto him, 09 to any other Ancestor paramount him: But when a man is only disabled by Parliament (without any attainer) to claim any dignity for his life, this is a personal disability to his life only, and his heir after his death may claim as before to him 09 to any of his Ancestors above him, et. And
Max. 48.

Am upon this afterfip, Thomas Lord De la ware, Anno 39 Eliz. was restored to the place in Parliament originally belonging to his family.

12 Where a lease is made to the Baron and Feme for term of life or years, the Feme shall not be punished for Waste, committed by the Baron after the Baron's death. M. 3. E. 7.

13 When a corporal hurt or damage is done to a man, as to beat him, sc. if he be the party beaten die, the action is gone. Finch 17.

14 Where the lessor covenants to pay quit-rents during the term, and with his Executors shall not pay them, for it is a personal covenant which binds with the person.

15 The lessor covenants with the lessor to pay and bear all quit-rents, &c. not naming his Executors or Assignes: if the lessor die, his Executors are not bound, according to the opinion of divers justices, taken quare.

16 If there be a tenant for life, remaining in the, and tenant for life demise for 15 years and die, he in remainder enters, and the term being covenant against the Executors of the lessor within the demise, which is but an implied covenant, and it was assuaged it would not life, albeit the lease were by indenture, unless it had been broken in the life of the lessor, it is otherwise also of an express covenant: but an implied covenant is personal, and dies with him. Vide Stat. 32 H. 8. 34. Note, that if the term out the terms of the father, covenant lies against him upon the demise for the plaintiff. Vide Max. 55.

17 When Mary grants to one licence to sell wines by retail with a non obstante, the status of 7 B. 6. 5. and does not limit how long, but there is a command in the patent to the officers to permit him to do it during his life. And it was held by Dyer and Sanders, that it was dissolved bene-placito only, and that the pleasure determined by the death of the Queen, the commandment ceased also by her death.

18 Whiterbes being an action of debt against the Executors of the Warden of the Fleet upon an escape in the life of the lessor, and it was assuaged it would not live; because the offence was but trespass, which was done with the person: And by the common law debt did not lie against the Warden, but an action upon the case, until the statute of R. 2. 12. which gives debt against the Warden, but speaks neither of lessor or executor: It is otherwise, where the recovery is in the life of the Warden.

48 Things do ensue diversely according to the diversity of the time.
The Reason of

grant made to a Lord, & dominibus suis tām liberis quam natīvis, as the
like, was good; but they are not of capacity to purchase by such a name
at this gap, &c.

Col. 9 18. 2. 3.
in the case of
the Abbot of
Strata Dar-
scella.

3 When an ancient grant is general, obscure, or ambiguous, it shall
not be now interpreted, as a Charter made at this gap; but it shall be
concluded, as the Law was taken at the time, when such ancient Char-
ter was made, and according to the ancient allowance upon receiv-
Vide ibid., many authorities in the point. Vide supra, 25. 22.

4 If the Donor give land in liberum maritaggium, referring a rent
this reservation shall take no effect till the fourth degree be past, but af-
after that time the rent shall be paid according to the reservation. Littl.

Co. Inst. part
r. 21. b. 3.

5 If a man grant a rent out of Black-ace to one and to his heirs
and grant to him, that he may inherit for this in the same ace for term
of his life, this is a rent charge for his life, and a rent seek afterwards,
Diver.tis temporibus. Co. 1. 7. 4. b. 3. Bux. cafe.

Co. B. 171. 2.
6 Judicis officium est, ut res ista tempora rerum
Quæren, quæ sic tempore, tunc eritis.

7 A gift in Frankmarriage was before the Statue of Welfam. 2. a
Feasible, and since that Statue, a Feas-tale; So as it is true, that
the gifts do continue (as Littleton faith, Sect. 271.) but not the estate;
for the estate is changed, as appears in the same Author, Cap. Fee-
tale: And albeit Littleton faith (Sect. 271.) that such gifts have been
always since used and continued; yet now they are almost grown out
of use, and serve now principally for Hor-courts, and questions in law,
that thereupon were wont to rise.

8 When an obligation was once a deed, and after the action
brought becomes no deed, either by nature, addition, or other alteration,
or by breaking the seal, &c. In this case, although it were once a deed,
yet the Defendant may safely plead Non est factum; for without ques-
ton, at the time of the plea, which is in the present tense, it was not his
ex. 36 H. 8. Dyer 59. in an action of Debt upon an obligation against
Hawood, the Defendant pleads Non est factum, and before the appa-
rance of the Inquest, the Sice had eaten the Label, unto which
the seal was fired, by the negligence of the Clerkes, in whose custody it
was; Here, the Judges charged the Inquest, that if they found the
vēd to be vēd of the Defendant at the time of the plea pleaded, they
should then give a special verdict, which they did accordingly.

9 If a Lien for life, and B. in remainder in fee simple, in a lease
to C. Immediately after the delivery of the deed it is the lease of A. du-
during his life, and the confirmation of B. and after the death of A. it is
the lease of B. and the confirmation of A. according to the opinion of Dy-
er and Brown, Mich. 6. & 7 Eliz. fol. 234. 235.

10 If a man marry an Inheritance of land bore to the King in Co-
pite, and hath issue by her a Daughter, and afterwards the Feme die,
the Daughter shall not be in Ward, because she is heir apparent to
her Father; But if the Father take another Wife, and hath then a
Son, then shall the Daughter be in Ward to the King, because the Son
is now his heir apparent, and not the Daughter: And no heir ap-
parent shall be in Ward during the life of the Father.

11 The time of the birth of a man or woman is chiefly to be consid-
ered to make them a Subject born, or not; and is (as it were) of the es-
cence of a Subject born: For a man cannot be a Subject to the King of
England, unless at the time of his birth he was under the stature and
obedience of the King of England, albeit the Sinking of the King under
whole

A daughter in
ward of her
father.

Acharter in-
terpreted, as
the Law was,
when it was
made.

Frankmar-
riage, the fifth
degree.

Rent-charge
and seek.

Lease and
confirmation.

Ante-nati &
Post-nati.

Digitized by Google
the Common Law.

who's ignorance he was borne, do after wards descend to the King of England: And this is the reason, that Ante-nati in Scotland (for that at the time of their birth they were under theignorance and obedienceno other king) are allowed to be, in respect of the time of their birth, &c.

12. Widow of the rent upon the land before the Distressed, makes the Distressed covenants; tenor after the Distressed and before the imparkment makes the retainer, but not the taking covenants; tenor after the imparkment makes neither the one nor the other covenants; for then it is called a date, in regard the cause is then put to the trial of the law to be there determined.


14. Thomas Bowles in consideration of marriage with Anne Hide, conscious to Land of the Manor of D. to the use of himself and Annexor their lives, and after to their right male, and the heires male of his body, and after to the heires male of the body of Thomas and Anne, &c. In this case, before Annexor, Thomas and Anne were holders of an estate called sup exception, vix, viz. then by operation of law, the estates were divided, viz. Thomas and Anne became tenants for life, the remainder in tail to the life, the remainder to the heirs male of Thomas and Anne, &c.

15. A man brings an action upon the CAFE for these numerous words Thou art an arrant Knave, a Cofener, & a Traitor, being all spoken together at one and the same time, and upon not guilty pleased, the Jury's time for the Plaintiff, and such damages generally for all the words, hereof they did well; for all those words taken together, make but one scandal, and albeit no action (tis for these words, Thou art an arrant Knave, a Cofener, sated apart by themselves, yet being spoken at one and the same time, and coupled with the other words, and a Traitor, which are indeed actionable, they aggravate them and make them worse: Howbeit, if at one time the Defendant calls the Plaintiff Traitor, and at another time he calls him arrant Knave and Cofener, and the Plaintiff brings an action upon the cafe, and alldoeth the said several words spoken at several times, as several causes of action; there, if upon not guilty pleased, the Jury's attaint damages intirely, judgement shall be arrested for all; but he grounds his action upon two several scandalous, whereas one of them is not actionable, &c.

16. A man hath a Millstone in right of his wife, and the Millstone purchase land, he shall have that perquisite in her right: but if the Millstone purchase after that has, then the Baron shall have the perquisite to him and his heirs; become by the title he is entitled to be Tenant by the Courtier in his own right.


In the case of actions at the Remitter is, because the title which is first and most ancient is always most sure and worthy: And there is no man in the law of Remitter, say, that he is En ion primer cite, as en son melior droit, as en son melior aliter, &c. or the like: For, Quod priss est, verius est, &c. Quod priss est tempore, potius est jure, &c.

2. The Lease for life made a lease for thirty years, and after the lease, and Lease for life made a lease for 60 years to another, which lease for thirty years the Lease did first confirm, and after the Lease confirmed the lease for thirty years, and after the Tenant for life used within the thirty years: In this case, the lease for thirty years was determined by the death of the Tenant for life, and the Lease for forty years

Co. 1 Pr. 47. 8.
4. The 6 Carpenter's case.
Co. lib. 11. 80.
Co. lib. 11. 33. a.
1. fa. Othon's case.
peares might enter; so that albeit the lease for thirty years was the later in time, yet was it of greater force in Law; because the Letter, who had power to confirm which of them he would, did first confirm the second lease, Inter Unwel and Lodge, temps Eliz.

3 If a Countesse retain two Chaplains, those two are only capable of dispensation according to the Statute of 21 H. 2. cap. 13. And therefore if the Countesse retains a third, that cannot defeat the capacity of dispensation, which was vested in the two first; For albeit the Countesse may entertain as many Chaplains as she will, at the Common Law, yet can she the more than two capable of Dismissions by force of the Statute; and reason requires, that he which hath longest served, shall be first preferred; For, qui prior est tempore, potior est jure.

F.N.B. 141.6.

4 If a man purchase divers lambs by one testament, which are holde severally of others' Lords by Knight-Seruice, and after he dies, his heir within age, that Lord which shall first pay the Ward, shall have him, because there is no priority: But if he purchase land, which is holde by Knight-Seruice of one Lord; and after purchase other land holde of another Lord by the like service, and after his heir within age; In this case, that Lord shall have the Warde of the heir, of whom the land, which he first purchased, is holde; so that he held of him by a more ancient testament (viz. by priority) then he held of the other Lord of whom he held by posterioty, 

Co.1.4.48.b.4.

5 If a man be bound in two Statutes, and the last Statute is first extemned and put in execution; Yet the first Countess upon extent shall be first served, and the last Countess shall cap till the first be satisfied.

Faty wyde cafe.

Dyer 131.2.18.

& 19 H. B.

6 In debt against Executors, who pleafully administered, and it was given in evidence by the Detemants, that they had paid divers debts upon contracts made by their Lettars, and they knew not that they were paid before the Plaintiffs went purchased, whereas the Plaintiffs remitted, and that was the chief reason why Judgement was given for the Plaintiffs.

Dyer 131.3.1.5.

3.4 P.M.

7 A man being Patron of a Benefice in right of his wife grants proximam advocacionem to another, after which grant the Incumbent makes a lease of the Benefice for 60 years, referring rent to him and his Successors under the value in the Kings books; afterwards the Patron, Gianto, and his wife together with the Ordinary confirms the lease, and then the Incumbent is desirous for marriage, and the Giant presents his Clerk, who enters upon the Lease to avoid the lease; In this case, it seems his entry is congoable, because the Giant procured the lease.

Dyer 131.5.7 Eliz.

8 If debt be brought against the Ordinary for the debt of the inter-estate, after notice he cannot dispose of any of the goods to others, before he hath satisfied that debt, for which the action was brought against him.

Dyer 156.52.

10 Eliz.

9 A Scire facias was brought by Bailiff against the Corporation of Stire facias.

Torrington in Com. Devon, to repeal their Patent of Faires and Par-

kets; But it was held, that a Puine Patent shall not have a Scire facias to repeal a more ancient Patent, but coudra.

10 Vide Hob. 7. Spendlowes and Burkars, concerning the grant of an obvopance, and a lease of a Prehenbury in Lincoln.

50 According to the diversify of the same person.

Co. Insf. pars

1.8. a. 1. in

Calvry cafe.

Co. b. 138. 3.

1 A man taited of lambs in his hath issue an Alien, viz. born out of the Kings ligeance, that issue cannot be his here proper defectum subjactio-

nis, albeit he be born within lawful marriage; neither get shall he inherit.
hert to his Father or any other, although he be made Deniser by the
Bix's letters Patents: Nevertheless, if the same man be naturalized
by act of Parliament, he shall not then be accounted in Law alien-
gent, but indigens, and shall be capable of inheriting, &c.

2. The same man may have some children capable of inheriting his
land after him, and others incapable, according to the several condi-
tions, in which he is at the several times, when he had those children:
As if an Alien be made Deniser, the issue which he hath after the de-
novation shall be his heir, and not the issue which he had before: So also,
if a man hath an issue before his attainer, and obtains his par-
son, and after the parson hath issue another son, here, at the time of
the attainer, the blood of the eldest was corrupted, and therefore he
cannot be heir; but if he die living his father, the younger son shall be
here; for he was not at the time of the attainer, and the parson
refrode his blood, and some issues begotten afterwards.

3. If the same person be acquitted by the Lord in an action real, view,
or personal, and it is proved, that he is no Deniser, the hiring of a Writ
of Caponez is no enchainment, because thereby he is to defeat the for-
nower judgement: And if in the mean time the Plaintiff bring an action a-
gainst the Lord, the Lord may make no restitution, so long as the
record remains in force, for at that time he is free, &c.

4. If a Juris Lurum be bought by a Patron of a Church, the collateral
warrant of his ancestor is no bar, so that he demanded the land in the
right of his Church in his political capacity, and the warrant des-
dended on him in his natural capacity, &c.

5. If a collateral Ancestor or release with warranty, and enter into re-
ligion, not both the warranty and bond: but if afterwards he be deceased
then is the warrant repealed.

6. One that hath a rent charge going out of the issue land, released
it to the husband and his heirs; yet, in this case, the husband shall
not have the rent; but the release shall ensue unto him by way of exin-
guishment once, as settled in right of his wife.

7. The Patron of Welton in Com. Gloceft, An. 3 El. demitted his Re-
copy to W. Hodge, then Patron of the same Rectory, for 20 years, who
Anno 15 Eliz. by his said assignee over to Sir John Throgmorton. The
Hodge then assigns the lease, Anno 17 Eliz. in the life of the Lessee. And
in this case it was resolved, that the assignment of the said lease to grant-
ed by the Patron, imports in it itself both a grant, and also a confirm-
ation of the terms, so that a step of the same thing, by the same person, to
the same person, and at the same time, shall ensue to two several pur-
puses, viz. to a grant of the interest, as Lessee, and to the confirmation of
the same interest, as Patron: So also if Tenant for life a rent grant to the
reversion in fee, and the Reversioner by his own grant it over to another and his heirs, this is a good grant, and con-
firmation also to make the rent good for ever, in respect of the several re-
ations that are in him in the reversion, viz. as Grantor of the rent, and
as Reversioner in fee: In like manner, if the Disfellow make a lease for
life, the remainder to the Disfellow, and the Disfellow grant the remain-
der over, this is a good grant and confirmation also, &c.

8. If a man marry with a woman that was formerly contracted with
another, and hath issue by her, that issue in truth and in Law bears
the surname of the Father: but if afterwards the Baron and Feme be
blurred cauda pro pagana, then hath the issue lost the surname of
the Father, because the common majorum est exu lamine tractum, and then is
the issue a Ballad, and Nullius Filius.

9. A Member of Parliament, while he continues a Member, is freed
from arrest of his person: but when he ceaseth to be a Member, he may
arrested again, and albeit he being a Member be arrested upon an
execution

10. the Common Law

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Co. h. 8. 3.

Co. h. 11. 3.

Co. h. 12. 1.

Co. h. 12. 7. 5.

Co. h. 37. 4.

Co. h. 39. 2.

Co. l. 15. 3.

Co. l. 5.

Co. l. 4. 66. 4.

Dyer 60. 25.

Dyer 60. 23.
The Reason of

Max. 51.

10 Regularly, the law may tell us, Wilkins wherever he finds him, yet if he abide a year with ancient Daniel, his condition is altered, and the Lord cannot tell him: So while the Wilkins remains in the King's presence, the Lord cannot tell him, but afterwards out of his presence he may: And these privileges the Law gives to Wilkins in favor of liberators.

31 According to the diversity of several persons. Vide infra, 36.

Leaves by re-nant in title good, & void to several persons.

Co. Infr. pars 1. 46. 3.

1 If tenant in title make a lease 50 years, reserving ye, rent, and after take a writ of Wolfson's title; now as to him in the revolving the lease is mainly void; but if he reserve the wife of tenant in title of the land (as the title be, though the estate title be determinate) now is the lease as to the tenant in title (who is IN, as of the estate of her husband) revocable at will, as against her; FO 4, as to her estate title continues, and the land be allotted for the third part of the rent and services, &c. So if it Tenant in title make a lease for posts at supper, and death without issue, his wife enfranchiseth with a home, he in the revolving enters, against him the lease is void; but after the same is born, the lease is good, if it be made according to the statutes of 31 H. 6, cap. 28. and other wise is voidable.

Leaves void as to the Feme.

Co. Ibid. 46. 3.

2 The King made a gift in title of the sonnain of Bathalreigh in Kent to W. to hold by King's service; W. makes a lease to A. for 30 years, reserving 13 pounds rent; W. dies, his femme and heirs of full age, all this land found by office; As to the King, this lease is not of title; for he shall have his primer feign, as of lands in possession, but after liberty the lease may enter: And if the lease in title accept the rent, the lease shall bisve him, and that be good as to him, 48. And so it was adjudged in Avent's case, Pa. 2, & 3 Ph. and M. as Mr. Plowden reported to the Lord Coke.

Leaves void as to the Feme.

Co. Ibid. 46. 5.

3 If tenant in title make a lease 50 years, and death, the title is enfranchised, the King above the lease, and it shall be void as to her; but after her decease the lease shall be in force again against him in revolving, &c.

Co. I. 188. 5.

4 Leases by Cornage of a common person, is Knight-service, but of the King, is Grand Serjeancy; so as the royal dignity of the person of the Lord maketh the difference of the tenure.

Joy修士s

of a right, of differing nature.

Co. I. 188. 31.

5 If an husband, wife, and a third person had purchased lands to them and their heirs, and the husband before the statute of 31 H. 8, cap. 3, had allotted the whole land to a stranger in life, and died; In this case, the wife and the other tenant were joint tenants of the right, but in several manners according to their several interests, viz. the wife had right of action, and the other joint tenant right of entry; for at the Common Law the alternation of the husband was a discontinuance to the wife of the whole moiety, and a shiftn to the other joint tenant of the other moiety; Now if the joint tenants had sold the whole together in jointure for they are joint tenents of the right, because they may forge in a will of right, &c.

Co. B. 102. 8.

6 If a man sells lands in right of his wife, making a covenent in fee by in fee, intended, upon condition that the Feoffees should hold a certain day demise the lands to the Feoffor for his life, &c. If the condition be broken, the Feoffees may re-enter, and shall be again held as in his former estate, viz. in right of his wife: But in case the Feoffees
his before entry, albeit the heir of the husband enter for the condition broken, yet it is impossible to have the estate, that the Feoffor had at the time of the condition made; for the Feoffor had an estate in the right of his wife, which commenced by the coverture, and with the coverture was dissolved; and therefore when the heirs enthrone for the condition broken, and defeat the Feoffment, his estate both vacated, and the estate is thereafter immediately vested in the wife, etc.

7 A tenant in tail, and his issue vest the Discontinuance of Tenant in tail; and Tenant in tail die, whereby the lands descend to the issue; in this case, the issue shall be required, and shall be in no tenant in tail against every stranger, and shall assign the first warranty; but not against the Discontinuance, because he was Particeps Criminis; 1 E. 4, 2 Finch 18.

8 A lessor for years may make a Feoffment, and by his feoffment a feoff simple shall pass, and it a warranty be annexed to such an estate, albeit such a warranty cannot barre the lessor, or his heirs, because it commenced byissetin; yet between the parties such a warranty lawfully ground: for thereupon the Feoffor may touch the Feoffor of his heirs, as by force of a linear warranty: and therefore if a lessor for years of tenant by sale, statute, partition, statute staple, etc. or a feoff incontinente make a Feoffment with warranty, if the Feoffor be impeached, he shall touch the Feoffor, and after him his heirs also; because this is a covenant real, which binds him and his heirs to recompence in value, if they have allets or default to recompence; for there is a feoffment de fide, and a feoffment de jure; and a feoffment de fide made by them, that have such interest or possession as is above said, is good between the parties, and against all men, true only against him that hath right, etc.

9 If before the statute of 1 R. 3. cap. 9. a man had granted a messuage with the appurtenances to certain Barretors to maintain by a feoffment with warranty, by reason whereof the true tenant will not abide in the house, this warranty commences byissetin, and shall not bind him that right had; but some have said it shall be of force between the Feoffor and Feoffee, etc.

10 If a man hath two estates, and it dissolves, and the eldest son released to the Dissolution by his death with warranty, etc. and dies without issue, and after the father dies, this is a linear warranty to the younger son; because the land by possibility might have descemned from the eldest to the younger son; but in that case, if the younger son released to the Dissolution with warranty, and died without issue, that is a collateral warranty to the eldest son, and sits to the lieu of the house; because the eldest son by no possibility could convey the title of the land to himself by means of the younger; but in the same case, if the eldest son die without issue of his house, then the warranty is linear to the issues of the house of the younger; and to the warranty that was collateral to some persons, may become linear to others: and therefore if tenant in tail hath three sons, and discontinue the tail in fee, and the second son released by his death to the Discontinuance with warranty, etc. and after the tenant in tail die, and the second son die without issue, this is a collateral warranty to the eldest son; but in case the eldest son dies also without issue, it becomes a linear warranty to the youngest, etc.

11 An act of Parliament of the Common Law may make an estate both as to one person, and good as to another person; for example, if lands be given to the Baron and Feme, and to the heirs of their two bodies, and the Baron levy a fine with protestations, and after issue, and die: this fine by force of the statute of 32 H. 8. cap. 36. shall bar the issue in tail, but it shall not bind the Feme; to that in respect of one it is a good
The Reason of

Co. 1. 5. 60. a. 14. 5.

in Geufer
cafe.

Co. lib. 6. 78. b.
The Lord of
Aburgavantec
cafe.

Co. ibid. 75. 5.

Co. lib. 1. 79. 4.

Sir Edward
Plinton' cafe.

Col. lib. 8. 45.
Whittinghams
cafe.

Co. lib. 8. 145.
Devonport's
cafe.

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good barren, and in respect of another it is no barren: So also in a precipice, if one be vouch'd; In that case, having regard to the Deemant, the Bouchee is Leant, and a releas to him from the Deemant is good, but having regard to a stranger, he is not Leant, and therefore a releas to him from a stranger is not good: Likewise, if one be posses of a term for years as Executor, and surrender it; here, as to one respect the term is exting, and as to another releas it is acts, &c. 

12 If a fraudulently conveynance be made to avoid a debt, the grant is void, as to the Credit by the expresse provision of the Statute of 13 Eliz. cap. 5, but as to others it remains good.

13 A. and B. are joynentants for life, and judgement is given for C. against A. in an action of Debts, A. releaseth B. before execution; here, albeit B. is now in by the Lease, and not by A. and the estate of A. as to all strangers, is determined, yet as to C. who hath the judgement (where- by the moiety of A. was charged with the execution) the estate of A. (during the life of A.) hath continuance: But in case A. die before execution, B. shall hold it uncharged, &c.

14 If there be two joynentants in fee, and the one grants a Rent charge in fee, and after releaseth the other: In this case, albeit to some intent he, to whom the releas is made, is in by the first Joynent, and no degree is made between them, yet as to the Giants of the Rent charge, he is in under the Joynentant that releaseth, and be that surrendeth shall not avoid it after the deacease of him that releaseth. Vide M. 30. c. 8.

15 A. and B. are Joynentants for life, the retorsion to C. judgement is given against A. in an action of Debts, A. releaseth B. B. dies, C. enters; Pet, as to him that hath the judgement, the estate of A. (so long as A. liveth) hath continuance.

16 If the Baron being telleth of a Rent or Common in fee, releaseth to the land Leant, this rent is exting, yet having regard to the Feeme it hath continuance: so the Shall be allowed thereof. See there many authorities in the point; and Co. 1. 73. 8, Lillingtons cafe.

17 In the general parson of 41. Eliz. there was this proviso, that any Clerk might make a Capias ulgatum at the suit of the Plaintiff against out-lawed persons, to the intent to compel the Defendant to answer, and that the party shall see a Secre facias, before the person in that behalfe shall be allowed; but this is only as having regard to the Plaintiff; fo3 as to the King; it is an absolute parson, and grant of his goods, &c. so as the parson was allowed to discharge the Defendant in respect of the King, but not to discharge him against the party Plaintiff: As a Wailain is vilated against his Lord, but not as to any other.

18 If a Baffard be telleth of lands in fee, and make feestment thereof, and after die without issue: In this cafe, a feere were made by the Baffard himselfe in person, and to the feestment executed by himselfe, it shall stand good; but if feere were made by attorney, the lands shall estche, &c.

19 A. hath a Rectory, unto which a Vicarage is appennent, for certain years yet in being, and grants the next avoynance of the Vicarage to B. and after surrenders the Recoty to him in reversion: In this case, albeit as to all Strangers, the estate of the Rectory is determined by the surrender, yet as to the Giants of the next avoynance of the Vicarage it hath continuance; and if the avoynance happen within the termes, the Giants shall present, &c. So also if the Lease for years grant a rent, and then surrender: yet for the benefit of the Giants, the termes shall continuance; albeit in respect it is determined.

20 It Fraudulent
20 In Absolvite, it is not necessary to shew to the Plaintiff by what title such a Franchise is claimed; but when a Qui Warranto is brought by the King, the Lord of the liberty ought to shew his title.

21 If Lands be demised to one for life, exceptis querulosa, ulmis, & fraxinis adhuc crecent: ultra crecentiam 31 anni, the Levees may fall the great timber so excepted, and then (ratione juris) as to the Levee the Trees are divided from the frankentenement, but as to all others they are parcel of the inheritance of the Levee.

22 If Tenant in Lasto sells the Trees to another, that is a Chattel in the vendor, and his Executors shall have them, and in such case (ratione juris) they are severed from the land; but if Tenant in Lasto be before actual severance, as to the issue in Lasto they are parcel of his Inheritance, and shall go with it, neither may the Vendor then take them; and yet as to the Tenant in Lasto himself, they were severed for a time.

23 A man makes a Lease of a Pannoz, except an Acre this Acre is no part of the Pannoz, as to the Levee, but as to him, that hath right to demand the Pannoz by an equeze title, it remaineth parcel, and therefore he shall make no sequeze thereof in his Writ.

52 Relation is of great force in Law.

1 If a man makes a Lease for life to one, the remainder to his Executors for 21 years, the term for years shall vest in him; for even as Ancezzors and heirs are Correlativa, as to inheritance: (as if an estate for life be made to A, the remainder to B. In tali, the remainder to the right heirs of A. the Fee vesteth in A. as it had been limited to him; and his heirs) even to are the Levees, and the Executors Correlativa, as to any Chattel; And therefore if a Lease for life be made to the Levees the Remainder to his Executors for years, the Chattel shall vest in the Levee himself; as well as if it had been limited to him and his Executors.

2 A. Executors B. upon Condition, that B. shall make an estate in Frank-marriage to C, with one such as is the daughter of the Franchise; in this Case, B. cannot make an estate in Frank-marriage; because the estate must move from the Franchise, and there is not between the Franchise and the Daughter of the Franchise the near relation of Blood, which is required between the Donor and the same Donee in Frank-marriage; for here the Daughter is not at all of the blood of the Franchise.

3 In matters of State, Subjectio, and Procestio are Relatives, and immediately upon the birth of a Subject that relation begins; for ligance both not begin by the oath in a Liset; but comes into the world with a true Subject, and he obteth it unto his Sovereign by birth-right; so also is the Sovereign bound from that very time to protect his Subject; and therefore it is truly said, that Procestio trahit subjectionem, & Subjectio protectionem: And this is the reason, that ligance cannot be local, or confined within the bounds of England only; for wherever the Subject is, there likewise is to be found the foetale Relation; And therefore, Qui abjurat regnum, amicitiam regnum, fed non regnum, amicitiam patrimonii fed non Patrem patriam: so; notwithstanding the abjuration, he obteth the King his ligance; and he also remaineth within the Kings protection: because the King (if he please) may pardon and reforme him to his Country again.

4 For Continuance of Proces upon demise of the King, there shall never be Religions, or Reattachment, but where there was at first

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**Note:** The page contains a mix of Latin and English text, discussing various legal concepts and cases related to leases, estates, and relations in law. It references various sections of the Common Law, including the concept of relationships between estates and their holders, the impact of leases and titles on property, and the continuation of rights or obligations upon the death of a sovereign.
The Reason of

Summons and Attachment; for these are Relatives, and answer in relation one to the other.

5 If A. deeds to B. 10l. per annum to be paid quarterly, and that B. of Office and shall keep his Courts, &c. A. hath an estate for life in this annuity; for officium and sodium are Relatives, and Comonciania, and he shall have the like estate in the F. &c. that he hath in the office.

6 At the time of granting the Tales the principal Array must Land; Ques and Tales are words of simultaneity, and have reference to a resemblance, which at that time ought to be in eis: and therefore if the Array be qualified, or all the Poils challenged and tried out, No Tales shall be awarded; for at that time they were not Ques; but in that Case a new Venere facias shall be awarded: Howbeit it at the time of granting the Tales the principal panneld by Land; and after is qualified, as aforesaid; yet the Tales shall Land; for it sufficeth, that they were Ques at the time of granting the Tales; and this appears in 34 H. 6. Tit. Enquet. 36.

7 This word Damme is taken in the Law in two significations, the one properly and generally, the other relative and strict: properly, as when costs of suit are also included in it, &c. But when the Plaintiff brought the wrong done unto him to the damage of such a sum, this is to be taken relative, for the wrong which is past before the suit brought, and they are then to be assessed occasionis transgressis praedicat, and cannot extend to Costs of suit, which are future and of another nature, viz. to expenses in Law, whereas no certainty can then be known.

8 An Estate-tall cannot be discontinued, but where he, that made the discontinuance, was not once trespassed by force of the Law (except it be by reason of Wardanty, &c.) according to the Rule in Philosophic, Omnis privato presupponit habitum; for he cannot discontinue that estate, which he never had. Neither yet can a Person discontinue the Fee-simple of his parcelage, because the entire, and Fee-right thereof was never in him.

9 If a Sealment be made to two, and livery is made only to one of them, but yet according to the need; In this case, the livery shall endure to both, because the need, whereby the livery referred, is made to both; Verba relata hoc maxime operantur per referentiam, ut in eis inefic videatur.

10 Where Rent is referred to be paid out of the Land at Dale upon Michaelmas day, if it be behind 40 days after, then it shall be lawful for the Lessee to re-enter: In this case, it ought to be tendered at Dale a convenient time before Sun-set upon the last of the 40 days, so albeit it be not by express words, that if the Rent be behind and unpaid at Dale by the space of 40 days, &c. yet it shall have Relation to the place first named, and to the Law itself, that the Rent shall be paid at Dale the last of the 40 days, although it be not by express by plain words; Vide 131. 5.

11 The Termez-covenants by Invention to build an House without words of Executors, the Term expires, and he dies; In this case, the Executors shall be chargers; for they are co-relative with him, and represent his person, it is otherwise of the heir, unless he be named: It is to the knife of an Obligation, because it is a present duty. See also Dyer 23, b. 139. 28 H. 8. Per curiam.

12 Who have a Term as Executors, and one of them grants all that he hath in the Land: In this case, the whole Lease is faulty, because each Executor representing the person of the Testator, hath an Intire authority: Howbeit the Law is otherwise of other Joint-tenants.

13 A party by Invention enrolled qualified the Leases of D. to B. and his Heirs in his farm rending Rent with clause of distress, and upon non Rent not to be paid by a Fine.
the Common Law.

non-potent a ceentry, q by the same Inventurc Covenants to make such assurance, etc. according to the true intent, purpose and meaning expressed in the same Inventurc, and by another Inventurc bearing unto the same word, A. covenants to lease a Fine of the last Paren, etc., because such a word, etc. which Fine should be to the only use, intent, effect, and conditions expressed in the former Inventurc, and to none other, and liberty of being has mere upon the same Inventurc according, and after the Fine was also leased, viz. c.ome etc. etc. with release and warranty according to the course of Fines, etc.

In this case the Rente was not extant or touched by the Fine; because the Fine has relation to the former Inventurc.

14 If here be but a tenant to the Lease of the Plaintiff or Defendant, this is a principal Challenge, in respect of that relation between them, which may prove a favour.

15 A Feme hath the third part of the Land of a Lermur delivered unto her by the Sheriff in Dower, the Lermur; gives, grants, and assigns all the Land comprised in his Lease to A. and covenants, that he hath not done any act, but that the Allignes may enjoy it against every one, and he was also bound by Obligation to perform the Covenants; in this case, the Obligation is not forfeited for the wrongs, but that have Relation to the two of the Lease, viz. that he hath not done any Act, and are not absolute wrongs, as if the Allignes should enjoy it against all men.

53 Verbär posteriori, proper cemenuntiam addita, ad prius, qua cemenuntiam indigent, sunt referenda.

Reference of words.

1 If Adam de Clydrow Knight, bring a proue quod reddat against John de Clydrow, and the Will too; quod judice, & c. reddat muninem de Wiccombe, & duas cruet terce cum pertinencias in Clydrow. In this case, the Covenants of Clydrow that relate to the Hamnor quia non indiget; for the Hamnor may be vane without making mention, that it be vane within in Clydrow, but cum pertinencias, although it comes after the Covenants, yet both it relate to the Hamnor, quia indiget. Vide 3 E. 4. 10.

2 If a man grant Rente in manner de precipiendi, in C. Acres of Land parcel of the same Hamnor with clause of profit in the C. Acres; in this case the Rente shall only issue out of the C. Acres; and the general wrongs shall be construed according to the special wrongs, according to the Rule in Margery Mortime's case, Y. 2. fol. 10. a. Quando carta contine generalen claustrum, postrerque delendit ad verba specialia, que claustrum generalis sunt conferecente; interpretanda eft carta secundum verba specialia.

3 If a man grant Rente and go no further, these wrongs shall create an Estate for life; but if the habendum be for years, that shall qualify the general wrongs.

4 If a man gife Lamos to one and his Petres, habendum to him and the Petres of his bong, he shall have an Estate-call, and no Ks expectant; for the habendum qualifies the general wrongs Precendent.

5 A Feme hath title of Dower in Lamos in Webersfield, & Gosfield, and released to the Reverendoom omnes aiones, etc. sefas querebas, & Demandas quacumque nec non toman dornfum, ac titulum, ac actionem dominis ibi contingent, etc. de aliquibus terris in Webersfield, etc. this is only a Release of her Dower in Webersfield, and not in Gosfield.

6 If a man vendie Lamos for the abique impericitione vafti, the Lessee may cut down the Lumber trees, and convert them to his own use; but if he be abique impericitione vafti per aliquid breve de vaflo. In that case, the Tenant onely had be discharged, and not the property in the Trees, to that the Lessee, after they are felled, may tellis them, etc.
The Reason of

What is a good con-

ration wit-

the Statute

the Statute

of

of

54 No man can grant an act to himself.

No one can make any grant of lands, etc., to his wife during the coverture, because they are his, but his person in law, and a man cannot grant them to himself, etc.

2 A man cannot grant his own cause, and therefore, if a man will subscribe, that if any Cattle be Damage, etc., he may determine, etc., unless he is satisfied for the damage at his own will and pleasure; this is done in a grant to him himself, and ought not to be allowed by the Judges: For, Malus usus abplendens est, quia in confusundibus non diurnitas temporis, sed soliditas rationis et consideranda.

3 If there be Loiz and Tenant, and the Lord released to the Le-

nant his Seigniory, this must of necessity ensue by way of extinguish-

ment: For, the Tenant cannot have service to be taken of himself, niether yet one and the same man be both Lord and Tenant; for also if a Rent-charge be granted out of land, and the Grantor released or granted the rent to the Terre-tenant; in this case, the rent is extin-

4 If there be Loiz and Tenant by Fealty and Rent, the Lord

granted the Seigniory for peaces, and the Tenant attended, the Lord

released his Seigniory to the Tenant for years, and to the Tenant of the

land generally; the whole Seigniory is extinct, and the estate of the

Leis also: but if the release has been to them and their heirs, then the

Leis...

5 A fine is levied before the Bailiffs of Salop, etc., because

one of the Bailiffs was party to the fine; Ques, non debet esse in

propru causa; Nemo poeta esse in, etc., etc., Salop.

6 No one can make any grant of lands, etc., to his wife during the coverture, because they are his, but his person in law, and a man cannot grant them to himself, etc.

7 If there be Loiz and Tenant by Fealty and Rent, the Lord

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land generally; the whole Seigniory is extinct, and the estate of the

Leis also: but if the release has been to them and their heirs, then the

Leis...
Max. 54.

the Common Law

Leiske had had the inheritance of the one moiety; and the other moiety had been extince: And the reason of this diversity is, because when the release is made generally, it cannot enture to the Leiske longer than fo life, because it exturce by way of enlargement; and being made to the Tenant of the land, it enturc by way of Extinguishment, because he cannot do service to himselfe; and then there cannot remaine in the Seigniory a particular estate for life: But when the release is made to them and their heirs, each one takes a moiety, the one by way of enlargement, the other by Extinguishment.

If there be Lord and Tenant, and the Tenant lets the Encroachments to a Feme for term of her life, the remainder over in fee, the Feme takes Baron, and after the Lord grants the services, &c., to the Baron and his heirs: In this case there can be no attornment by parol, &c., because the Baron that ought to attorn, cannot attorn to himselfe; but his acceptance of the grant of the Seigniory amounts to an Attornment in Law.

If the Lord grant his Seigniory to the Tenant of the land and to a Stranger, the Tenant cannot properly and formally attorn to himself; but his acceptance of the grant is a good attornment in Law to Extinguish the one moiety, and to lett the other moiety in the Stranger.

If there be Lord and Tenant, and the Tenant take Feme, and after the Lord grant the services to the Feme and her heirs; Here can be no formal attornment, because the Baron cannot attorn to himselfe and his wife in his wives right; yet his acceptance of the graud is a good attornment in Law to lett the services in the Feme and her heirs; but during the coverture they are suspended, &c.

If there be Lord and Tenant, and the Tenant make a Lease to a man for term of his life, lasting the coverture to himselfe; Here, if the Lord grant the Seigniory to the Tenant for life in fee, albeit as to all things concerning the right, the Seigniory hath his being (as if the Tenant die without heir, the tenancy shall escheat to the Giants, &c.) yet as to the possession during the particular estates, the Giants shall take no benefit of the Seigniory; and therefore during that time he shall have no Rent, Service, Wardship, Reliefe, Herit, or the like; because these duties belong to the possession, and he cannot do or pay them to himselfe.

The principal cause, why a Tenant in taile in many cases is remitted, is because (as in Specium there is no person, against whom he may sue his Wilt of Formedon; for none is Tenant of the Franktenement but himselfe, and against himselfe he cannot sue, &c. There is the same reason also of other Remittors. Finch 19. Co.1.3,3, in the Marq. of Winchelzter's cafe.

Voucher affors.

Warranty.

If a man make a testament in fee to A. his Heirs and Allignes, A. enuesto B. in fee, who re-enuesto A. he or his Allignes shall never bouch; because he cannot be his own Allignes; but if B. had enuesto the heire of A. he might bouch as Allignes; for the heire of A. may be Allignes to A. inasmuch as he claughter not at heir.

An Tenant in taile make testament to his Uncle, and after the Uncle make a testament in fee with warranty, &c., take again an estate to him in fee, and then enoust a Stranger without warranty; and die without issue, and the Tenant in taile die; Here the issue in taile shall not be barred by the warranty made to the 2nd Feoffee; because that warranty by the Unics resuming an estate in fee of the land, is utterly debater; For if the warranty should have good in force, then should the Unice have warranted it to himselfe, which could not be, &c.

A man cannot present himselfe to a Benefice, make himselfe an Officer, sue himselfe, or commor himselfe; and therefore if a Hercul{9}

Litt. § 558. Co. ib. 311. b.

Co. ib. 313. a.

Litt. § 559. Co. Init. pars. 1, 313. a.


Litt. Sec. 667. Co. ib. 349. a. 4.


Co. ib. 385. b.a.

Co. ib. 385. b.

3, & 390. a, a. Litt. Sec. 741.

Finch 19. 6 H. 6. 19.

3 El.Dyer 188.
The Reason of

Max. 54.

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suffer a common recovery, it is Error, because he cannot summon himself.

16 A man cannot be judge and party in a Suit; And therefore if a Justice of the Common Place be made a Judge of the King's Bench (though it be but for vice) it determineth his Patent for the Common Place; so if he should be Judge of both Benches together, he should control his own judgments; because if the Common Pleas erre, that error may be reformed in the King's Bench.

17 If a man by Inheritance covenant to stand asserted to the use of himself for life, the remainder to others in tail, &c. and also reserve unto himselfe power of revocation, and both revoke the uses accordingly, immediately upon such revocation the uses so limited are determined without entry or claim; because he himselfe was Tenant for life of the land, and he cannot enter or make claim upon or against himselfe, &c. Am therefore it is agreed in the 20 E 4, 18. & 19. that if a Testament be made upon collateral condition, and before condition perfomed, the Feoffeor demiseth the land to the Feoffor, if the Feoffor performeth the condition, the land shall be immediately in the Feoffor without entry or claim; because he himselfe is already in possession thereof: So likewise if a tenant purchase rent letting out of the Lords land, that rent shall be in the Lords without entry or claim, causa qua quae.

18 It is holden in 7 E 3. that if the Dowrson of the Church of Dale be granted to the Patron of Dale, and to his Successors, this is void as to the Successor; because the Successor can never take any benefit thereof by way of presentation; so he cannot present himselfe, &c.

19 In all cases at the Common Law, when the King was lesse of any estate of Inheritance; Frankentenent by any manner of record, he that right there could not by the Common Law have any tenants, or real acton, upon which he might have an Actions mandamus; so that the King by his Writ could not command himselfe; but he was put to his Petition of right (in the nature of his real acton) to be restored to his Frankentenent and Inheritance, 4 H 6. 12. 24 E 3. 23. 1 H 7. 3. 4 E 4. 21. 9 E 4. 52.

20 If a Bishop himselfe be lesse, and he pleads in disability of the party, Plaintiff, excommunication by himselfe or his Committarie (who is as his Deputy) albeit it be for another cause than that in question, yet that shall not disable the Plaintiff; because in this case the Bishop himselfe is party; and with this agrees 16 E 3. Excom. 5. 5 E 2. Excom. 27. 5 E 7. 8. E 3. 69. 18 E 3. 58. 9 H 7. 21. b. 10 H 7. 9.

21 The Presbyter and the elect of the College of Physitians in London, ought not to be Judges to give Sentence or Judgement, ministers to make Summons, and parties to have the moty of the forfeiture; albeit they have an Act of Parliament to protect them, viz. 14 H. 8. cap. 5. For, Nemo deuet esse judex in propria causa; i.mq iniquum et aliquem iure rei esse iudicem.

22 If an Act of Parliament grant to any to hold 2 have Cominance of all manner of Places acting before him within his Hanno of Dale, yet he shall hold no plea, wherein himselfe is party; For Iniquum et, &c.

23 The Duchy of Lancaster, before it was united to the Crown, was holden of the King in Capite: but when they remained in one and the same person, the ancient tenures of the Crown did stop perpetuo sommo, because the King could not hold of himself.

24 In the Common Pleas, upon Error in Proceed, 23 in default of the Clerks, the Justices there may reverse their own judgement (so it be done the same terms) without filing any Writ of Error: And if it be deferred till another terms, yet may it be reversed by the said Judges upon
the Common Law:

upon a Writ of Error: But if it be Error in Law (which is the
default of the Justices themselves) that Court cannot reverse such a
judgment, not by a Writ of Error: For, that Error is to be revised
in another Court before other Justices by Writ of Error, because the
Justices of the Common Pleas are not competent Judges of their own
error.

25 A writ of Conspiracy cannot properly lie against one single
person; because one person cannot be liable to conspiracy with himself.

26 If the Warden of the Fleet, who hath his office in sea, did see
the Indictments, that was one of the Justices of the Fleet, that
Court cannot reverse the Indictment, nor can it be reversed in any
other Court on the same ground as in the former case: For, he
being in office, after the Statute is made, the Indictment may be
revived in another Court, because he is in the Fleet, the
Justices of the Fleet having jurisdiction in the case.

27 A Writ of error cannot be issued as to the Statute of
H. 8. (made Anno 22 H. 8.) had granted the same lands to Feoffees in trust to the use of
himself and his wife in tail, and afterwards the Statute is made; For, by force of that Statute, the possession being conveyed to the use
the Feoffees are Donors, and not A. For, the Indictments, and the
Partnership, and the Indictment against the Feoffees, is the same
as if it was for the use of the Statute, and therefore the
Partnership.

28 If the Conflater of a Recognizance (according to the Statute of
H. 8. cap. 6.) entailed the Conflater of parcel of the land, and a Stranger
of another parcel, and reserve parcel in his own hands: Here, the
Conflater shall only be acting against the Stranger: For if one Feoffee
of the Conflater (where his land only is in the possession) may have an
Audita quæra, against all the other Feoffees, to make their lands also
in execution, and to be contributory to the entire charge: By
the same reason, if the Conflater himself be one of the Feoffees, the lands
in the hands of the other Feoffees shall not be chargeable with the
execution; for that the Conflater himself cannot be contributory with them
(for his part) towards the satisfaction of the charge; because he cannot
contribute to himself, neither can he be contributory for a personal thing
due to himself; neither yet shall the Conflater be apportioned, but all
shall be as against the other Feoffees: However against the Con-
flater himself, the Conflater shall have execution for the parcel still remaining
in his hand, &c.

29 At the Common Law, if lands had been allotted to be sold by Ex-
cutors, 22 H. 8. had been devised to Executors to be sold, if any of them had
restituted the estate, the estate could not have been sold: but now that is holpen by
the Statute of 21 H. 8. cap. 4. viz. the estate by the express words of that
Statute, and the other by the equity of the case: However in neither of
these cases, when the one refused, the other makes sale to him, that
so refuseth; because he is party and pisto to the last will, and remained
remainder Executors.

30 The younger brother displeaseth the elder, who is barred in an Ac-
te by a false oath; the younger charge the land, and dies without issue,
the land devolves to the elder brother: In this case, the elder
brother is without remedy, because there is none (but himself) against
whom he may bring the attainder, and therefore he shall still hold the
land charged.

31 If a Parson of a Church purchase a Summo within his Paroch;
Here, by this purchase and unity of possession, the Summo, which was
justiceable before, is now made non decimabilis, because he cannot pay
theis to himself.

32 It was resolved in the Common Bench, Pach, 10 Jac. that a wife
cannot be produced as a witness, either against or for her husband, be
cause they are one person in Law, i.e. animo in carne una; and he cannot
be a witness to or for himself in his own cause.
33 A recognizance was acknowledged to Sir Nicholas Bacon and two others before Sir Nicholas himself, being then Lord Keeper, and it was adjudged void as to him, and good for the others.

34 The Citizens of York were incorporate by R. 2, by the name of Majors, Sheriffs, and Citizens, and claim to be so before by prescription, and to have a custom to flete goods for foreign: bought, to foreign sold; how in a suit against them for selling such goods, the Venire facias issued to the Sheriffs of the County, De vicinety Califi Eborum, because it was next adjacent to the City; for it was not thought fit to direct it to the Sheriffs of Coroners of York, because they were Citizens and parties.

35 The next abovement is granted to this, Habendum iiis & uni eos. in conjunctim & division, the aet presents the third, who is admitted, instituted, and appointed, and adjudged good: Potestis, if the Bishop had refused to admit him alone, his Quare Impedit, peradventur would have failed, he having a valid Interest in the abovement, and the Habendum being void in Law, as it stands.

36 The Oblige made the wife of one of the Obligos his Executrix, and die, the woman Executrix administrated, then her husband being one of the Obligos, made her his Executrix, and die, leaving assets to pay the debt, then the debt, and a stranger took administration of the goods of the Oblige unadministered, and brought his action against the surviving Obligo; but it was adjudged per Curiam, that the action would not lie, because when one of the Obligos made the Executrix of the Oblige his Executrix, and left assets, he could not sue her selfe, but the debt was presently satisfied by way of retainer, and (consequently) no new action could be had for that debt. Vide supra. 46. 4.

37 Trial of the Customes of London shall not be by Certificare from the Majors and Aldermen of that City (albeit it be by their Recorder) to the inferior Courts of Justice, because they cannot be Judges and parties, when their Customes come in question.

55 The Law favoureth privity. Vide Max. 47. 16.

1 Tenant in tail after possibility of time. Tegunt hath divers privileges annexed to his estate, which a bare Tenant for life hath not (so which see Co. Inst. pars 1. 27. b.) nevertheless if he grant over his estate to another, his Grantor shall not have them, for he hath those privileges in respect of the privity of his estate, and of the inheritance that was once in him; and therefore it was adjudged in the case of one Evans, Mich. 28. & 29 Eliz. that where Tenant in tail after possibility of time, grants over his estate to another, that the Grantor was compelled to attain in a Quid juris clamor, as a bare Tenant for life, and is so to be named in the title; for by the assignment the privity of the estate being altered, the privilege was gone: and this judgment was affirmed in a suit of Error: And hereunto also aggeseth 27 H. 6. Aid. Statham, 39 Eliz. 3. t. b. Co. 11. fol. 83. b. Bowles cafe. Vide infra 116.

2 If the husband make several grantsments of several parcels, and depress one of the Feoffees assign dower to the wife of a parcel of land in satisfaction of all the Dower, which the ought to have in the lands of the other Feoffees; in this case the other Feoffees shall take no benefit of that assignment, because they are strangers thereto, and cannot plead the same. But in the same case, if the husband give seised of other lands in fee-simple, and the same descended to the heir, and the heir endowed the wife of certain of those lands in tail satisfaction of all the dowry that the ought to have, as well in the lands of the Feoffees, as in his own lands, this assignment is good, and the several Feoffees
the Common Law.

Feoff's shall take advantage of it: And therefore if the wife bring a
Wit of Devore against any of them, they may bower the heire, and
he may plead the assignment which he himself hath made in safety
himself, lest they should recover in value against him: So as there is a
privy in this respect between the Heire and the Feoffes, and by this
means the assignment map be pleaded by the heire that made it.

3 If a man let lands for years, the remainder over to another in fee,
Albeit liberty be not necessary for the Lessor for years; yet because the
immediate possession belongs to him, he must of necessity take the lib-
ery; otherwise no estate can pass to him in remainder: And liberty be-
ing accordingly made unto him, it shall convey the estate to him in
remainder, by realish of the privy of those estates; for, the particular
estate and the remainders, which depends upon it (though there be
never to many) do all make in Law but one estate; and therefore
liberty to the Lessor for years shall enure to him in remainder, &c.

4 The advantage of bringing an action of Waite consists in privy;
for it after the Waite done, the Reveresion granteth away his estate,
though he afterwards taketh back the whole estate again, yet as the
Waite dispensable; so likewise if he grant the reveresion to the use of
himself and his wife, and of his heirs, yet the Waite is dispensible,
be, because the estate of the reveresion (wherein the privy is to that
purpose consisted) continueth not, but is altered, &c. If an estate take
determines, hanging the action of Waite, so that the Plaintiff becomes
Cesitant in tale after possibility, &c. the action of Waite is gone. If the
Censant both Waite, and he in the reveresion dieth, the heire shall not
have an action of Waite for; the Waite done in the life of the Allesor:
no; a Bishop, Master of an Hospital, Parish, or the like; for; Waite
done in the time of the Predecessor: And so if Lessor for years both
Waite and dieth, an action of Waite lyeth not against the Executors or
Administrators, for Waite done before their time: But if there be two
Coparceners of a reveresion, and Waite is committed, and the one of
them use, the Sunt and the Place shall join in an action of Waite, &c.
Vide Inst. 116.

5 If there be two Coparceners or Joyntenants of a Seigniory, if the
Censant both Homage and Fealty to one of them, he shall be excluded a
against the other; and this is by reason of the privy and interments
of their estate.

6 In Homage Ancestral, continuance of blood on the Lords side is
not always necessary; for an Abbot, Prior, Bishop, or the like, may
be Lord by Homage Ancestral; but yet there ought to be privy of suc-
cession time out of mind in one and the same politique breed; for if that
breed be once dissolved, though a new one be borned of the same name,
and all the possesions be granted to them, yet the Homage Ancestral is
gone; Howbeit if a Prior and Covent be translate (Concurrentibus
his, quia in jure requinuntur) to an Abbot and Covent, or to Deane and
Chapter; In that case, because the privy is preserved, the Homage
Ancestral both also remain; for albeit the name be changed, yet the body
was never dissolved, but in effect remained still, &c.

7 If the Tenant that holds by Homage Ancestral, alien his land to
another, the Alleene shall not hold of the Lord by Homage Ancestral,
because the privy of the estate is altered, and the continuance of it in
the blood of the Tenant is dissolved: And if the Tenant take again an
estate in fee of the land from the Alleene, he then holdeth by Homage,
but he shall not hold by Homage Ancestral, causa qua supra: So it is also
if the Tenant make a feoffment in see upon condition, and dieth, his
heire performeth the condition, and re-entreth; Here, the Homage An-
cestral is destroyed in respect of the interruption of the continuance of the
privy.
The Reason of

The like;

If the Tenant by Homage Auncstral alien his land, and the Aitene
is impeached, and vouch the Aitene, albeit he cometh in (by Ac-
tion of Law) to many purposes in privity of his former estate; yet to
this purpose he cannot come in, as Tenant by Homage Auncstral, be-
cause of the discontinuance of the estate and privity; for that the ten-
cy was not continued in the blood of the Tenant; And therefore Brit-	on faith, Et come autumno vouch per homaggio &c. Sc. Howerbeit if the land
were recovered against the Tenant upon a seant title, and the Tenant
recover the same again in an action of a higher nature; Here the Ho-
mage Auncstral remains; because in that case, the right was a suffi-
cient mean to preserve the privity and continuance: So it is also if he has
reverted it in the yirt of Errour.
14. I. S. gives of Lands in Fee by one two daughters, viz. Rose and Anne by
Richard, to, and Anne mulier wife of and died, Rose and Anne be
made partition; in this case, Anne and her shriefts are concluded
thereby, and this is for the benefit of the husband, that to benefit them.

15. An action of Account must be grounded upon a Pardon; for without
Pardon no Action of Account can be maintained, viz. either a Pardon
issued by the consent of the party as in such an action against a
Receiver, or Bailiff (for against a Pardon or other person over no
account with the) for a Pardon in Law (ex provisone legis) made by Law,

16. In coparceneries, if one of the parties be vested by an eigne
right, the same within age of another Court, and hath line two daughters,
and more, and the Court by good title is allotted to the eldest,
and the other to the youngnest, who alienated it to another in fee,
and after the infant at full age enters upon the estate; in this case, the youngnest
dughter hath excluded her title from being any part of the Court by
good title; for that by her alienation the Pardon was destroyed; to
And on the youngnest daughter before the entry of the infant has only
granted it for years, or life, or in tail, saving the reversion, there per
adventure it were otherwise; because in that case the Pardon is not ut
erly destroyed, but having referred to her sell the reversion and fee.

17. In caparcey, if the whole estate in part of the property be
vested, that shall avoid the partition in the whole, be it of a Hanno,
which is intire, of acres of ground, or the like, that be several; for in
that case the Pardon remains, and the partition imployeth (for this
proposition both a warranty and a condition in Law, and either of them is
intire, and therefore not void in this case an entry into the whole:
And so hath it been resolved (in Bastards case, Co. L. 4, sol. 121.) both
in the case of partition, as also of an exchange, where is likewise the
same reason, when any estate of Free-hold is vested from the Copar-
eener to the part of her property; for then it shall be also abrogated
in the whole: As if A. be vested in fee of one acre of land in possession,
and of the reversion of another oppenent upon an estate for life, and he
divides the Lesees for life, who makes continual claim; A. vested vested of
both acres, having both daughters, partition is made, so as the one acre
is allotted to the one, and the other acre to the other, the Lesees
enters, the partition is abrogated for the whole, and so likewise was it re-
solved in the case above said, Vide infra 100.
19 If there be two Jointenants of an Advowson, and the one presented to the Church, and his Clerk is admitted and instituted, this in respect of the priority shall not put the other out of possession; but if that Jointenant that presented, died, it shall serve for a title in a Quare Impedit brought by the Survivor.

20 If there be three Jointenants, and one of them releaseth to another of his companions all his right in the land without the word Heirs, this shall enure to that companion and his heires, to hold that part in common with the other Jointenant; and this is by reason of the priority of their estate, and for that he, to whom the release is made, is settled per my & per tuto, of the fee and inheritance.

21 If there be two Coparceners, and the one hath issue twenty daughters, and died, the other may release to any one of the daughters her whole part: And here, albeit he, to whom the release is made, hath not an equal part; nevertheless, by reason of the priority and the intestate of the estate the release is good, although it be made without the word Heirs: But if there be two Jointenants of ten acres, and the one maketh a footment of his part in eighteen acres, the other cannot release his entire part, but only in two acres, because the Jointenant is favored for the residue.

22 If a footment be made in Mortgage upon condition, that the Feoffor shall pay such a summe at such a day; albeit the Feoffor die before the day of payment, yet may the heire recover the Mortgage by the payment or tender of the money: So also may the Executor or Administrator, or (in their default) the Ordinary; although there be no mention in the deed of payment by any of them: And all this by reason of the priority between the Ancestor and heir which is, and the Executor and Executor, and the Intestate and Administrator, or Ordinary; for the heire is privy in blood, and the Executor, Administrator, and Ordinary are privies in right.

23 If a footment be made upon condition, that the Feoffor shall pay xxl. unto the Feoffee upon such a day, &c. and if payment be not made, that then it shall be lawful for the Feoffee, &c. to re-enter. If the Feoffee sell the land to a Stranger, payment of tender made by either of the Feoffees shall be effectual to settle the estate in the last Feoffee; for the first Feoffee may do it, because he was privy to the condition; and the last may also do it, because he was privy in estate, and in judgment of Law hath an estate and interest in the condition for the satisfaction of his tenancy.

24 There is a diversity between a condition of an Obligation, or a condition upon a footment, where the Act that is local is to be done to a Stranger, and where to the Officer or Feoffor himself: As if one make a footment in fe, upon condition that the Feoffee shall minister to a Stranger, and no time limited, the Feoffee shall not have time during his life to make the footment; so then he should take the profitts in the mean time to his own use, which the stranger ought to have, and there is no priority between the Feoffee and the Stranger, and therefore be ought to make the footment as soon as conveniently he may, and do it as also of the condition of an Obligation: But if the condition be, that the Feoffee shall re-entend the Feoffor, there the Feoffee hath time during his life, by reason of the priority of the condition, that is between them, unless the Feoffee in this case be by himself by request, &c.

25 For the redemption of an estate in Mortgage, the Executors or heire may make the tender; For albeit the heire be a third person, yet is he no Stranger; but he, and the Executors also are privies in Law, &c. Vide Lid. Sect. 337.
26 If a man enseff another upon condition, that he and his heirs shall return to a stranger a yearly rent, &c. This is not rent (properly so called) and the reservation is merely void, because there wants privity: But if A, be seised of certain lands, and A. an B. joine in a settlement in fee reversion, a rent to them both and their heirs, and the Feoffee grant, that it shall be lawful for them and their heirs to distrain for the rent so reserved, this is a good grant of a rent to them both; because B. is party and privity to the deed, as well as A. and the clause of distress is a grant of the rent to A. and B. But if B. had been a stranger to the deed, then B. had taken nothing, &c.

27 If an estate be made upon condition, and clause of re-entry, at the Common Law none shall take advantage of such re-entry, but only parties or privies; As if a man let land to another for term of life by indenture, reserving rent to the Lessee and his heirs, and for default of payment a re-entry, &c. After the Lessee grant the reversion to another in fee, and the Tenant attorn, &c. In this case the advantage of re-entry is gone for ever: for albeit if the rent happen to be arrear, the Sannies of the reversion may distrain for it, because it is incident to the reversion; yet shall be not for that cause enter into the land, and out the Tenant; for that the advantage of re-entry (at the Common Law) belongs solely to the Lessee himself, and unto his heirs, as privity in blood unto him, and cannot by grant of the reversion be transferred unto another; neither yet can it be left in the Lessee or his heirs, because he hath parted with his whole estate in the land: But if the Lessee has died after the expiration of the reversion, his heirs should have taken advantage of such re-entry; for that he is privity in blood unto him, as aforesaid. And therefore there is a liberty between the reversion of a rent, and a re-entry; for a rent cannot be referred to the heirs of the Feoffor, leaving out the Feoffee himself: but the heir may take advantage of a Condition, which the Feoffor himself could never do: As if I enfeoff another of an acre of ground, upon condition, that if my heir pay to the Feoffee, &c. ye. that he and his heirs shall re-enter: this condition is good: and if after my decease, my heir pay the ye. he shall re-enter: for he is privity in blood, and shall enjoy the land as heir unto me. So also is a Bishop, Arch-Deacon, Parson, &c. or any other noble person of temporal or ecclesiastical or temporal, make a lease, &c. upon condition, his successor may enter for the condition broken: for they are privies in right: Likewise, if a man have a lease for years, and demise or grant the same upon condition, &c. and viz. his Executors or Administrators shall enter for the condition broken: for they are also privies in right, and represent the person of the dead.

28 If settlement be made by deed Poll upon condition, and because the condition is not performed, the Feoffor enters: In this case, if either the devise Poll be pleased to the Feoffor, and by that means referred to the Court, or that the Feoffor otherwise happens the possession of the same deed albeit that it properly belongs to the Feoffee, and not to the Feoffor: yet because the Feoffor is privity unto it, he shall make use of it, and be received to plead it.

29 If two men do contract to another, who releaseth to one of them by his bond, the other, the Feoffor shall make use of that release, if he pays it to them: because they are privies and privity on the release: Likewise, it may be bound in an obligation, and the Obligee releaseth to one of them, both are unenforced. &c.
release shall entree as well to him as to them, if he be able to produce it, otherwise it shall not avail him.

31 If a man selleth of lands in the habit three two sons, and the eldest, and the youngest son enters by abatement into the land, and having therefor sold, and the issue enters into the land, this shall not be a defect to take away the entry of the eldest son, or of his heirs: because the Law intendeth that the youngest son entered claiming the land as heirs to his father; and so that the eldest son claimeth also by the same title, viz. as heir to his father; therefore he and his heirs may well enter upon the second son and his heirs, in respect of the priority of blood between them, and of the claim by one and the same title: But in the same case, if after the fathers death the eldest son had entered, and then the youngest son had divested the eldest, and had died seised; that had been a defect to take away the entry of the eldest son of his heirs; for that was a plain divestition, and the priority of blood shall not help that case, &c. So also where lands were given to the husband and wife, and the heirs of their two bodies, and they had issue a daughter, and the wife died, and the husband had issue by another wife, four sons and died, and the eldest son abated and died seised: This defect doth take away the entry of the daughter, because there wanted priority of title, for that they claimed not by one and the same title: And in the first case, albeit the eldest son hath issue and death, and that after his decease the youngest son of his heirs entered, and many seised by each in line: Yet may the heirs of the eldest son enter, in respect of the priority of the blood, and of the same claim by one title: But if the youngest son make a settlement in fee, and the Feodary was seised, that descent shall take away the entry of the eldest, in respect that the priority of the blood failed: And alway that the youngest son be out of the whole blood to his brother, yet be he of the whole blood to his father; and therefore if he enter by abatement, and death seised, it shall not bar his elder brother of his entry: Howbeit, if after the decease of the Father, a Stranger both first enter and abate, upon whom the youngest son entereth and intestates him, and die seised, if the descent shall divest the eldest; so be he entered by affidavit, and not by a bate ment, &c.

32 If a man be seised of lands in the nature of Burgah English, and be heir to two sons and one, and the eldest son, before any entry made by the youngest son, entered into the land by abatement, and death seised, this shall not take away the entry of the eldest son, in respect of the priority of blood betwixt them, and for that they claim by one title, &c.

33 If the father make a lease for life, and hath issue two sons and one, and the eldest, and the Tenant for life died, and the youngest son entered, and die seised, this descent shall not take away the entry of the eldest, caus qua suprâ: But if the father had made a lease for 20 years, it had been otherwise: because the possession of the Lease for 20 years maketh an actual free hold in the eldest son, &c.

34 If two Coparceners make partition to present by turn, and one of them being in the turn of the other, this partition shall not put the other out of possession, because of the priority betwixt them, and for that they claim by one title; and albeit they do severally present to the Hidrate, yet the Church is not troubled for the same reason.

35 Upon a writ of Summa claudit extremum, if the youngest son has been found before, the eldest had no remedy by the Common Law; because they claim by one title, &c. but now that is helped by the Statute of 3 E. 6. cap. 8.

36 If two persons be in debate for tithes, which amount to above the fourth part, and one man is Patron of both Churches, vs Indicavit both

Takes under one Patron.
of Incum.ents claim by one and the same Patron.

Co. ib. 142. a. 4

Lilie. Secl. 398.

37 Affia mortis antecessoris non tenet inter conjunctas personas, secul.

frares & sorores, &c. For these are privy in bidou; but it lyeth against the stranger, and then damages are to be recovered against a stranger, but not against his brother.

Co. ib. 143. b. 1.

38 If a man soteth of lands in fee, hath issue two daughters, and die,

the eldest enters into the whole, and hath the issue and dies soteth; and her

issues enters, and hath also issue and dies soteth, and the second issue en-

teres, &c ultera. Yet the youngest daughter of the issue, as to her moiety,

may enter upon whatsoever issue of the eldest, notwithstanding such
descents, because they claim by one and the same title, and by reason of

of the privy the entry of the eldest shall be accounted in law the entry

of them both, yet the eldest in the same case, if both the sisters had entered

after the death of their father, and had been soteth, and then the eldest had

dislodged the youngest of her moiety, and had issue, and dies soteth, and

the lands had descended to the issue of the eldest soteth, then could not

the youngest soteth nor her heirs have entered, &c. causa qua supra: Do

also if one Co-partenier enter claiming the whole, and make a sotement in fee,

and take an estate to her and her heirs, and hath issue, and dies soteth; this

descents shall take away the entry of the other soteth, because by the Sotement the privy of the Co-partenier was destroyed.

Co. ib. 147. b. g.

39 If lands be given to two, and to the heirs of one of them, he

that hath the Fee-Simple shall not have an action of Waste upon the

Statute of Gloucler, against the Joynent for life; but his heire

shall maintain an action of Waste against him upon the same Statute,

so that the heire that in this case maintain an action, which the Ance-

sor could not: And this is in respect of the privy between the Joynen-

tants, and for that they claim by one and the same title: whereas af-

ter the decease of the Joynent that had the fee, the Sur)vivors claims

by one title, and the heir by another, viz. the one by the first sotement,

and the other by descent from his father, &c.

40 If land be let to a man for term of life, the remainder for life, the

remainder in fee, and the Leman for life alien in fee, and be in the re-

mainder for life make continual claims before the dying soteth of the As-

siciant, and after the Assiciant dies soteth, and then be in the remainder

for life soteth before any entry made by him: In this case, he in the remain-

der in fee shall take advantage of the continual claim made by the

Leman in remainder for life, and may enter upon the heire of the As-

siciant, because the right of entry, which the Leman for life in re-

mainder had gained by his entry, shall go to him in the remainder in fee, in

respect of the privy of estate, and so it is also of him in the restoration

in fee in like case: for he is also privy in estate, &c.

41 If two Joynents be deceased, and the one of them makes con-

tinual claim and death, the Survivors shall take benefit of his continual

claim in, in respect of the privy of the privy of their estate.

Co. ibid.

42 If Leman in tail, the remainder in fee with warranty, have

Co. ibid.

judgement to recover in value, and death before execution without issue,

he in remainder shall sue execution; for he hath right thereto as privy

in estate.

43 If a Seigniory be granted by one to one for life, the remainder

in fee, the Grantor for life dyeth, he in the remainder shall have a per-

que servicia, for his duty right to the remainder, and is privy in

estate.
In a precise quod redat, a release from the Demseant to the Wimbee is good, and yet the Wimbee hath nothing in the land; but the reason of that is because when the Wimbee entred into the warrant, he becometh Tenant to the Demseant, and may rendet the land to him, in respect of the privity between them; whereas, if a stranger cannot release to the Wimbee; because in rei veritate he is not Tenant of the land. And therefore if after the Wimbee hath entered into warrant, and become Tenant in Law, a collateral Ancestor of the Demseant released to the Wimbee with warrant, he shall not plead this against the Demseant; for that release by a stranger is void, because there wants privity, &c. So also it is, if the Tenant alien hanging the precise, the release of the Demseant to the Tenant the precise is good, and yet he hath nothing in the land, &c. Col.4,7.3.

45 In time of vacation, an Annuity, that the Piron ought to pay, may be released to the Patron, in respect of the privity; but a release to the Ordinary onely feemeth not good, because the Annuity is temporal.

47 If there be Lord and Tenant, and the Tenant is dissatisfied, and the Lord release to the Distiller all his right in the Seignior and in the land; this is a good release, and the Seignior is thereby extinct; and this is the reason of the privity, that is between the Lord and the Distiller. And therefore there is an observable difference betwixt a Seignior, a Rent-charge, and a Rent-charge; for a Seignior or Rent-charge may be released by a stranger to him that hath but a bare right in the land, and the reason of this is in respect of the privity between the Lord and the Tenant in right; For the Distiller is not in the case as Tenant to the Seignior; but the Seignior, at will, may give to him, his heire within age, or after age, or on condition, and if it be in express condition, he shall pay relief, and if he be not without heirs, the land shall be of certain; but there is no such privity in case of a Rent-charge, for there the charge should yet run upon the land; A Seignior may be released by the Demseant to the Wimbee, as also by the Donor to the Wimbee; after the Donor hath discontinuance in him, and this is nearly in respect of privity without any estate or right, &c. And therefore if the Wimbee in talle partition, in case the Wimbee release to him and his heirs all his right in the land, this shall extinguish the rent; because the Lord must stand upon him, and put the Tenant in talle after the partition hath no right in the land; but the reason is in respect of the privity, and for that the Donor is of necessity compellable to acquit upon him only; For, if he should acquit upon the Discontinuance, then it should appear of his own showing, that the reversion, whereunto the rent is incident, should be of him, and consequently the Seignior should acquit: And so it was resolved Trim. 13 Eliz.; in the Common Pleas, in the Thomas Wight case; Much more then shall a release made by the Donor to the Wimbee, being discontinuance, extinguish the rent reserved upon the gift in talle; because in that case the Donor had still a right in him; whereas this is also in respect of the privity, that is between the Donor and Donor; yet here by such a release no right of the reversion shall pass to the Wimbee; because at the times of the release he had nothing but a right in the land. &c. For a release of a right in lands and tenements to one that hath but a bare right, regular; It is void; And to make such Release available, he, to whom it is made,
the Common Law

48. A man lets his land to another for terms of years, and the lease relates to the lease all his right, \\ before the lease enter into the land; that relate to void, as to enlarge his estate, the lease having only intermediate term, and not possession of the land; but if such a lease enter and have possession, then such a lease unto him after term that be assignable to enlarge his estate, according to the limitation of the same; by reason of the pesti that is between them, by force of the same lease: Suppose if a man make a lease for years to begin presently, retaining a rent, if before the lease be entered, the lease relates all the right that he hath in the land, and not this relate cannot enlarge his estate; yet it shall in respect of the pesti extinguish the rent: And so it is also, if a lease be made to begin at Michaelmas, retaining a rent, and before the day, the lease relates all his right, so this cannot square to enlarge the estate; nevertheless it shall extinguish the rent in respect of the pesti, it was resolved in the Exchequer 39 & 40 Eliz. between Sir Henry Woodhouse, and Sir William Paton.

49. A man granted the next subsistence of an advowson to two, the one of them may before the Church become void, release to the other; for albeit the tenant cannot release to them to increase their estate, because their interest is future, and not in possession; yet one of them to extinguish his interest, may release to the other in respect of the pesti: But after the Church becomes void, then such a relate of the pesti; because it is then (as it were) but a thing in action. Poc. 38 Eliz. in Quare impediens per Denunci. vs. Fec. de Norwich in Com. Banci.

50. A release to a servant at will is good; because between the lessor and such a lease there is a possession with a pesti; but a release to a tenant at sufferance (viz. who comes to the possession less tenably, and then holds over) is utterly void; because he hath a possession without pesti: As if a lease for 10 years hold over his term, so a release to him is void; for that there is no pesti between them, and there are the books that speak of this matter, so as he understands, so if a man entrench himself upon his own interest, and take the profits, his own wages, that he will hold: but the will of the owner cannot qualify her wrong, but he shall give the rent for the tenant, and then release to him is good; or, if the owner consented thereto, then he shall be a servant at will, and that may also be a release is good; but where there is a difference, when one cometh to a particular estate of land by the act of the party, and when by act in law, if the Common law holdeth, he is an abate, because his interest comes by act in law.

51. Pestis in the several meanings of the lease is four-fold, 1. Pestis in estate, as the lessor's bond, and Dond, lessor and lease, which pesti is ever imposable: 2. Pestis in blood, as the heir to the ancestor, 3. Pestis in representation, as Eestates, et al. to the tenant, 4. Pestis in tenures, as the lessor and tenant, et al. which may be related to two general heads, Pestis in estate, and pestis in a tenour. To which also may be added Pestis in right, as Precipitor and Successor, unless you may rank them with Pestis in representation.

52. A release that was once entire by way of enlarging of an estate, unless there be pesti in estate, as between lessor and tenant, Dond, and Dond, if A. make a lease to B. for life, and the lessor makes a lease to C. for years, and after A. relates to the lessor for years, and his heirs: this relate is void to enlarge the estate; because there is no pesti between A. and the lessor for years: So likewise if a man make a lease for 20 years, and the lessor makes a lease for 10 years, if the first
Lease both release to the second Lessee, and his heirs, that release is, 
both: Likewise if theDonee in tail, make a Lease for his own life, 
and the Donee release to the Lessee and his heirs, this release is void 
to enlarge the estate, etc.

53 If a man make a Lease for years, the remainder for life, a re-
lease by the Lessee to the Lessee for years, and to his heirs, is good; 
so that he hath both a privity and an estate; and a release also to him 
in the remainder for life and his heirs, is good also; for these are 
privies in estate, etc. But they ought to have the Deed ready in their 
left to plead. Co. L. 10. 93. a. 4.

54 If my Tenant for term of life lets the land to another for 
term of the life of the Lessee, the remainder to another in Fee; 
Here, if I release to my Tenants Lessee for life, I am barred to ever, 
although there be no mention of Heirs; because at the time of the release 
I had no reversion, but only a right to have a reversion; so by such a 
Lease and the remainder over, which my Tenant made, my reversion 
was uncontinued or rather devested, &c. And such release shall also 
enure to him in remainder, to take advantage thereof; as well as the 
Tenant for life; because he and my Tenants Lessee for life are privies 
in estate, &c. Being (as it were) but as one Tenant in Law solely 
letting in his Demesne as in Fee, at the time of the release made, &c. So 
likewise if a Distressor make a Lease for life, and the Distresser both 
release all his right to the Lessee; this release shall enure to him in 
the reversion, &c.

55 If there be Lord and Tenant, and the Tenant maketh a 
lease for life, the remainder in Fee, if the Lord release to the Ten-
ant for life, the rent is wholly extinguished, and he in the remain-
ner shall take benefit thereof: So also if the heirs of the Distressor 
devised and the Distressor make a Lease for life, the remainder in Fee, 
if the last Distresser release to the Tenant for life, that shall enure to 
him in remainder, &c.

56 A release of actions shall only extend to such as are privies to 
the Deed of release ant to none other; and therefore if the Distressor re-
lease unto the Distressor all actions real, and the Distressor makes a lea-
se, and the remainder in Fee, and air Male is brought against them, the Feoffee 
shall not plead the release to the Distressor; for that he is not privy to 
the release: So likewise, if a Distressor make a Lease for life, the re-
mainder in Fee, and the Distresser release all actions to the Tenant 
for life; after the death of the Tenant for life, he in the remainder 
shall not plead that release: Also if the Distresser release all actions to 
the Distresser, and die, this is only a barre to the Distressor during his 
life, for after his demise his heir may have an action; as some have 
said (191 6. 33. a.) And hereby may appear a manifest diversity be-
between a release of a right, and a release of actions, &c. If the part of 
the Distressor make a Feudiment in Fee to two, and the Distresser re-
leaseeth to one of the Feoffees all actions, and that Feoffee deth, the 
Survivour shall not plead that release, &c.

57 If the Distressor make a Lease for life to A. and B. and the Dis-
tresser confirm the estate of A. B. shall take advantage thereof; for 
because of the privy, for the estate of A. which was confirmed, was joine 
with B. and in that case the Distressor shall not enter into the land, 
and devest the moiety of B. So likewise, if the Distressor encom 
B. and A. and the heirs of B. if the Distressor confirm the estate of B. for 
his life, this shall not only extend to his Companion; but also to his 
own whole Fee simple, &c.
the Common Law.

58 If a freehold estate be made a fœdamental in fee to the use of A. for life, and after to the use of her issue in tail, and the remainder to the use of B. in fee, and then the husband and wife, who released to A. all his right, shall enure to B., and to his issue in tail also; for they are all quithe in estate, etc.

59 A Consecration shall never enlarge an estate, but when there is privy, neither yet shall it regularly abridge Services, but where there is privy: As if there be Lord and Tenant, and the Tenant holds of the Lord by freehold, and 20 s. rent, the Lord may by his Deed confirm the estate of the Tenant to hold by 12 d. or by a penny, or by an halfpenny, and in this case the Tenant is discharged from all other Services, but what are contained in the late Consecration: and this is in respect of the privy between the Lord and the Tenant: but if there be Lord, Tenant, and the Lord cannot confirm the estate of the Tenant to hold of him by other Services; for such a Consecration is void, because there is no privy between them, etc.

60 If a reversion be granted to two by Deed, and the Lease attorne to one of them according to the grant, this Attornment shall enure to both the Grantors, irrespective of the privy, etc.

61 If a reversion be granted for life, the remainder in tail, the remainder in fee: the attornment to the Grantors for life shall enure to them in remainder, to vest the remainders in them; for they are privies in estate, etc. And in this case, albeit the Tenant shall declare in expresse terms, that he hath only attorne to the Grantors for life, and that those in remainder shall take no benefit by that attornment after his death, yet shall the attornment be good to them all; for having attorne to the Tenant for life, the Law (which he cannot control) must vest all the remainders, irrespective of the privy, etc.

62 Upon the grant of a Fœdor of a rent services, none ought to attorne, but he, that is privy, and presently to be charged, and without such attornment the grant annulled not: As if a man be fellow of a Fœdor, which is pocket in demesne, and pocket in services, he attorneth this Fœdor to another: all that hold of the Alienor, as of his Fœdor, ought to attorne to the Alienor, otherwise the services remaine still in the Alienor: But if the Lord make a Fœdor for years, or for life of a Fœdor, and the Fræ-holders attorne to the Lease; here, in afterward the reversion of that Fœdor be granted, the Attornment of the Fœdors for years or life shall Vest the Fræ-holders: for by their former Attornment, they have put the Attornment into the mouth of the Lease, their Attornment being involved within him. So likewise, if there be Lord and Tenant, and the Tenant lets his land to another for life, he makes a gift in tail, taking the reversion: Here, if the Lord grants the Demesne to another, he in the reversion ought to attorne to the Grantors, and not the Tenant for life, or in tail; for he is the true Tenant to the Lord and not they, etc. Also if there be Lord, Tenant, and Tenant, and the Lord will grant the Services of the Selle: In that case, albeit in the grant he make nothing mention at all of the Selle, yet the Selle ought to attorne and not the Tenant perpetually, because he is the next privy in tenure, that ought to be charged, etc. And therefore there is a diversity to be observed between a rent service, and a rent charge or a rent fœdor: for a rent service, no man (as hath been here) can attorne, but he that is privy, etc. So in case of a rent charge, it followeth, that the Tenant of the Freehold hath attorne to the Grantors, without respect of any privy: And this is the reason, that the Privilege once in the case of a grant of a rent charge, shall attorne, because he is Tenant of the Freehold; but in case of a grant of a rent service, the Attornment of
of the Distileree sufficed in respect of the pittance: And therefore if there be Lord and Tenant by homage, fealty and rent, and the Tenant is distileree, and the Lord grants the rent to another, the Distileree attorneth this is void; but if he had granted over his whole Seigniory, the attornment had been good: And the reason of this diversity is; for that when the rent is granted singly, it palleth as a rent feck, and consequently the Distileree, being Terre-tenant, must attorne; but when the entire Seigniory is granted, then the Distileree in respect of the privyty may attorne, &c.

63 If there be Lord and Tenant, and the Tenant let his Manor to another for life, the remainder in fee, and after the Lord grants the services to another, &c., and the Tenant for life attorneth; this is good enough: for he that is pittive, and immediately Tenant to the Lord, must attorne, and that is, in this case, the Tenant for life: And do on the other side, if a Seigniory be granted to one for life, the remainder to another in fee, the attornment to the Tenant for life is an attornment to him in remainder also; because they are pittives in estate, &c. Vide supra 61.

64 If there be Lord and Tenant, and the Tenant make a Lease for life, saving the reversion; Here, if the Lord grant the Seigniory to the Tenant for life in fee; in this case, he in the reversion ought to attorne to the Tenant for terms of life, because he is the Tenant to the Lord, in respect of the pittance, &c.

65 Regularly upon the grant of a reversion the Terre-tenant shall attorne; yet if Tenant in Dover; or by the Curtesse, grant over his own estate, and afterwards the heir grant over the reversion; in respect of the pittance, the Tenant in Dover; or by the Curtesse shall attorne and not the tenant; and likewise by reason thereof they shall be subject to an action of Waste, so long as the reversion remaineth in the heir; albeit they have granted over their whole estate; because so long as the heir keepeth the reversion, they are to attorne upon him; so that their Gants cannot be Tenant in Dover; or by the Curtesse, &c. Vide supra 66.

66 If land be let to a man for ten years, the remainder to another for terms of life, referring to the Lease a certain rent by year; and liberty is made to the Lessee for years; in this case, if the reverter grant over his reversion, attornment must either by the Lessee for years; or by the Lessee for life in remainder, shall be available to settle the reversion in the Gants, in respect of the pittance of those estates, which depend one upon another. P. 15. Eliz. in Brashichca cafe in Co. Ba. per Dyer.

67 If two Suyntenants let their land for life, referring rent, &c. if one of them release unto the other, that release is good, to settle the whole estate and rent in him, to whom the release is made; without any attornment at all of the Tenant for life, in respect of the privyty between the Tenant for life and them in the reversion: So it is also, albeit there be those or more Suyntenants, and one of them releaseth to any of the other. Holboile, there is a difference between these matters; for the release in the one case maketh no degree; but he, to whom the release is made, is supposed in the next Feehold; whereas in the other, it hath a degree, and he, to whom the release is made, is in the fee by him; that made it, yet in neither of those cases is there any attornment requisite, by reason of the pittance: But if one Suyntenant make a Lease for years, referring a rent and deth, the other Suyntenant shall have the reversion, because he claims proroguunt that Lease, as by the next Feehold: Holboile doth, that we have the rent, for that there is no pittance between him and the Tenant for
the Common Law.

for 30 years, as there was in the other case between the tenant for life, and them in the reversion, &c.

68 If two joint Leases for 30 years, or life be settled or devised by the Lessor, and he entests another; Here, if one of the Leases re-enter, this is a good attornment, and shall bind both, in respect of the priority between the joint tenants; for an attornment in Law is as strong as an attornment in Deed, Co. L. 2, 67. 2. Tookers case.

69 If there be Lord and Tenant, and the Lord grants the Services by Fine, there the Services are immediately in the Grantor by force of the Fine; howbeit he cannot attorn for any part of the Services without attornment, because an Overway is in lieu of an action, which he cannot have without priority, no priority without attornment, neither yet before attornment can he have an action of waste, a writ of entry ad comminensionem legem, 02 in continuo calvo, 02 in calvo proviso, a Wait of Commons and Services, a Wait of Ward, &c. But if a man make a Lease for 30 years, and grant the reversion by Fine, if the Lease be settled, and the Commons settled, the Commons without attornment shall maintain an Allot; for that Writ is maintained against a Stranger, where there needeth no priority: And of such things as the Lord may settle 02 enter into without being any action, the Commons before any Attornment may take benefit, as to sell a bond of heter, 02 to enter into the hands of tenants of a Ward, 02 alchet to him; 02 to enter for an Alienation of Tenant for 30 years, or of Tenant by Statute Merchant, Staple, or Clergy, to his Dhibition.

70 One of the chief reasons, why a Foundation in lee, still in tail, 02 Lease for the life of the Lessee, made by the Tenant in tail, both make a discontinuance to take away the entry of him in reversion 02 remainder, in case the Tenant in tail be without issue, &c., because the Tenant in tail, and he in the reversion 02 remainder are parties in estate, &c.

71 If Tenant in tail make a Lease for the life of the Lessee, and after warns grant the reversion to another; and the Tenant for life attornas, and dies, and the Grantor of the reversion attorns in the life of the Tenant in tail, and after the Tenant in tail dies; in this case, the fine cannot enter, but is put to his Formacon; in respect of the priority between the Tenant in tail and his issue, the Grantor of the reversion having tenant and execution of the antient lands in the life, and from the grant of the Tenant in tail himself; howbeit, if Tenant in tail make a Lease for life, and grant the reversion in fee, and the Lessee attorns as before; and that Grantor granted it over to another, and the Lessee attorned again to the last Grantor, and then the Lessee for life beth; so as the reversion is executed in the life of Tenant in tail; yet this is no discontinuance, but that after the death of the Tenant in tail the fine may enter; because the last Grantor was not in of the grant of the Tenant in tail himselfe, but of the last Grantors, between whom and the issue in tail there is no priority, &c.

72 If at this day Tenant in tail make a Lease for life, and after by Deed invented and involved according to the Statute, he bargaineth and sells the reversion to another in fee, and the Lessee died 02 as the reversion is executed in the life of Tenant in tail; albeit the Bargaine is not in the per by the Tenant in tail (but rather in by force of the Statute) yet in as much as he claimed the reversion immediately from him, which is executed in his life time, this is a discontinuance; and to it 02, and for the same cause, if Tenant in tail had granted the reversion to the use of another, and his heirs, &c. in
The Reason of

Ma. 75

The repeal of the privy between the Tenant in tail and his issue, &c.

73. If a woman grant a term to her own use, take her Husband and

74. If every Esoppe privy is required: for it ought to be reciproc

75. If a man let a house to a woman for life, leaving the reversion to

76. Regularly a warranty is made by the Father; where the des-

Lit. 5 688, 690, Coib. 366, 367.
entiteth another with warranty, the Uncie dieth, and the warranty
decemeth upon the Donee), and then the Donee dieth without sine;
Here, albeit the billletin was done to the Donee, and not to the Donee,
and the warranty shall not bind him; for what was done, in this case, to
the Donee, ought to be adjunged done to the Donee; because all these
were privities in blood, sc.

77 If there be Tenant for life, the remainder in see by lawful and
just title, he in the remainder may obtain and get the pietences right or
title of any Stranger, and shall not thereby incure the penalties of the
Statute of the 32 H.8, cap. 9. made against buying such titles; because
the particular estate and the remainder are in Law accounted as one
estate, in respect of the plaintiff that is found between them.

78 No man shall have a title of Contra formam collationis, but onely
the Foeor and his heirs, who are privy to the done, and privities in
blood, F. N. B. 211. c.

79 As a man entiteth A. and B. to have an to hold to them and their
heirs, with a clause of warranty, Predictis A. & B. & corum hereditibus
& assignis; In this case, if A. dieth, and B. surviveth, and dieth, and the
heir of B. entiteth C. he shall vouch as Assignee, and yet he is but the
Assignee of the heir of one of them; for in judgement of Law (and in
respect of the plaintiff) the Assignee of the heir is the Assignee of the
Ancekt, and so the Assignee of the Assignee shall vouch in infinitum, with-
in these words (his Assignees),

80 If a man entiteth A. to hold to him his heir and Assignes, A.
entiteth B. and his heirs, B. dieth; Here the heir of B. shall vouch as
Assigne to A. to his Assignes, and Assignes of Assignes, and assignes
of heirs, in respect of the plaintiff, to be comprehended within these
words (his Assignees) which seemed to be a question in Brackons
time: And the Assignee shall not only vouch, but also have a Warrantia
carte.

81 If a man both vouch land to another without this word
(heirs) his heire shall not vouch: And, regularly, if a man vouch
land to a man and his heirs, without naming Assignes; his Assignes
shall not vouch; But if the father be entiteth with warranty to him and
his heires, the father entiteth the black son with warranty and dieth;
Here, in respect of the plaintiff, the Law giveth to the son advantage of the
warranty made to the father; and the father, because by act in Law the
warranty betwixt the father and the son is extime.

82 If a man at this day be entiteth with warranty to him, his heires
and assigns; and he make a gift in tail, the remainder in fee; and the
Donee makes a testament in fee; Here, that Foekso shall not vouch
as Assignes; because no man shall vouch as Assignes, but he that cometh in,
in pluity of estate; but he vouch his Foekso; and that Foekso shall
touch as Assignes: Howbeit such an Assignee may rebut.

83 If a warranty be made to a man and his heires without this word
(heirs) he grants over the land to another in fee, his Assignes shall
not vouch, but the Assignes or any other Tenant of the land may re-
but: And albeit no man shall vouch by have a Warrantia carte, either as
party, heis, or assigns, but in pluity of estate; yet any that is in of an-
other estate, be it by division, abatement, intrusion, usurpation, or oth-
erwise, shall rebut by force of the warranty, as a thing annexed to the
land, which sometimes was included among the Hages of our Law.

84 If a man be oultaken in a personal action, sc. and brings his
writ of Erry; if he, at whose suit he was oultaken, had plea against
him a release of all actions personal, this items to be no plea; because
by the law action he shall recover nothing in the personalty, but only to
revert the Oultate: Howbeit in that case, a release of the writ of Er-
roe.
The Reason of Error is a good plea; For albeit the Plaintiff in the suit of Error is to recover, 42 he refused to nothing against the party: Yet insinuated as the Plaintiff in the former action is plying to the record, 43 a release of a writ of Error to him is sufficient to barre the Plaintiff in the suit of Error of the suit and combination by the said writ of Error.

85 If there be divers Fastnesses, and the Fastness makes liberty only to one of them according to the deed: In this case, the land passes to them all in respect of the privyty of their estate, sc. So like wise, if there be two Jointanteys of a Ward, and one of them do waste, both shall answer for it, for the same reason.

86 A Tenant by the Courtelle 40 in Dover, can hold of none but of the heir, and his heirs by descent; and therefore if they grant over their whole estate, and the Grantee both waste, yet the heir shall have an action of waste against them, and recover the land against the Assignes; but if the heir either before the settlement had granted, or after the settlement both grant the reversion over, the Stranger shall have an action of waste against the Assignes, because then in both cases the privyty is oppressed, sc. ( Vide infra 94.) Also if wastes be done by a Stranger, they shall answer for it, sc.

87 There are two Jointanteys to life, the reversioner grants over his estate in fee, one of the Jointanteys only with attorn; this is a good settlement of both to settle the reversion in the Grantee, in respect of the privyty and intrench of their estate, sc. So if the Helio decease his two Letters for life, and another assigns, and one of the Letters for enter, this act of one of them is an assignment in Law for both: If one Jointantey gives letters of rent that shall have his companion, as it is agreed in 29 H. 8. 2. In order to some two, and after the settlement is granted to one of them, and he accepts the deed, this is holding a joint settlement in Law for both, Baldwin 81 H. 8. Gzer 13. 6.

88 Albeit by the general words of the act of attainer of all rights, sc. and hereditaments, sc. made against the Lord Norris, in the 81 H. 8. all his lands, sc. in demises, remainder, or remainder, and also all his right, in lands and tenements, sc. which his entry was compulsable, were given to the King; yet neither a suit of Error, nor right of action to recover land joguised to him by the general words of the same act (although such a right is truly a right and also an hereditament) became such a right, for which the party hath no remedy, but by action solely, to recover the land, is a thing that cannot be given in privyty, and which cannot attach, or be lodged by the Common Law: If this suit are the right of Formdon in deced, the right of action upon a diction, and a present case, and the like, Co. L. c. 3. a. 4. in England's cafe.

89 Upon judgement given against Tenant for life, or against Ten- aunt in tail (since the statute de donis conditionibus) he in the rev- ersion or remainder may have a suit of Error, albeit he was not party to the suit by aid paper, boncheon, or receipt: But he could not in that case bring that suit till after the particular estate determined; Poithowke if he was party and paid to the left, receipt by aid, paper, boncheon, or receipt, then might he have a suit of Error, presently during the life of the Tenant in tail or for life; for that he was in that cause party and privy to the left receipt.

90 Baron and Fore are tell of lands to the use of them, and the heirs male of the body of the Baron, the remainder in fee to another, the Baron acknowledges the use of the land in fee, and a stranger recovers the land against the Cuminum, who boughteth the Baronalty, and by boncheon over the common bondouch, and judgement and action are given accordingly, the Foreman being still in life: This recovery shall bind the remainder; let hence was a lawful Tenant to the precipit, and albeit
albeit the Baron who has the estate tail, was only touched; and not
the Feme, who has a joint estate with him; for the Baron coming
in as Wouches, he comes in priority of the estate tail, and not of any oth-
er estate, and then the recovery in view gives correspondence both to the
estate tail which the Baron hath, and also to the remainder over, because
although by the law into the estate tail, as also the estate of the Feme, and the
remainder were all debullied or discontinued; yet the Baron as Wouches
shall be in judgment of Law in of his estate tail; and the case is the
stronger, inasmuch as the estate of the Feme was put to a right; so
that the Baron comes in, as sole Tenant in tail, and cannot be
joins not joined with the Feme, because he was not Wouches; neither
yet can the Baron be in any other estate; for that he once had an es-
tate tail, and now comes in as Wouches; and therefore in that case, in
respect of the privilege shall be said in, as of the estate tail, and not other-
wise: But if theIssues inheritance had been joint with her husband, it
might be doubted, ibid. 28.

91 If A. be Tenant in tail; the remainder to B. in tail, the remain-
er to C. in tail, the remainder to D. in fee, A. makes settlement in fee,
the Feoffe has a common recovery, in which D. is touched; and he
over the common Wouches; in this case A. is not bound, but B. and all
the remainders are barred; for at this the settlement of A. all the
remainders were discontinued, and the estates of B. C. and D. were
converted to mere rights, and that the remainder could never be remit-
ted before the estate tail in possession were re-continued; yet in case of
a common recovery (which is the common assurance of the land) he
that comes in as Wouches shall be in judgment of Law in, in priority
of the estate, which he ever had; although the precedent estate, upon
which the estate of the Wouches depended, were debullied or discon-
tinued, et.

92 There are three manner of privileges, viz. 1. In respect of the es-
state tail only. 2. Of the contract only. 3. Of the estate and contract
together: Privilege of the estate only, as between the Quittance of the
Lessee and the Lessee: 92 (if the settlement is in fee) between the Lord
by settlement and the Lessee, to also between the Lessee and the Alliance
of the Lessee, there is privilege in estate only; for that there is no con-
tract between them: Privilege of contract only, which extends only to
the person of the Lessee and the person of the Lessee, as when the Les-
see assigns over his interests, notwithstanding such assignment the pri-

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vilege of the Contract tail remains between them (as to bring against the
Lessee an action of Debt for rent arrears, or the like) albeit the privilege of
the estate be remedied by the act of the Lessee himself: Privilege of es-
state and contract together; is between the Lessee and Lessee themselves,
so long as the estate is continued between them, et. Vide Dyer 4. b. 1.
24 H. 8.

93 Lord and Tenant; the Tenant makes settlement in fee; in this
case, the privilege which was between them in estate, as in tenure is gone:
nevertheless for the arrearages due, as well before, as after's settlement
until notice, et. the privilege between them as to the Mortgages, both till
remain; And at the Common Law, before the Statute, of Quia emptores
terrarium, if the Tenant had made a settlement to hold of the chief Lord,
the Feoffor by no tender that he could make could compel the Lord to a-
not upon him; but the Lord might still allow upon the Feoffor, for
that the privilege till still remain, and the Tenant by his own Act could
not change the Mortgages of the Lord, et. Nowbeth in the first case, if
the Lord grant over the Hereditary, or if the Feoffor die, there the privilege
as to the Mortgages is bereaved; for that is personal, and binds only be-
hind the Lord and the Feoffor themselves in person: So also if after

Co. ibid. 13. 4. 6;
The Reason of

Max. 55.

the assignment of the lease, the Leesor grant over his reversion, the Grantee shall not have an action of Debt against the Leesee; for the privyty of contract, as to the action of Debt holds only between the Leesor and the Leesee themselves in person; so in the same case, if the Leesee die, the Leesor shall not have an action of Debt against his Creaditor; for the privyty conflicts only between the Leesor and Leesee, &c.

44 If Tenant in Dover, 0; Tenant by the Courtesee assigne over their estate, yet privyty of action remains between the heir and them; so that he shall have an action of Waste against them; Waste done after the assignment: But if the heir grant over the reversion, then the privyty of the Action is destroyed; and the Grantee cannot have any action of Waste done only against the Alligee; because between them there is privyty of estate; but between the Grantee, and the Tenant in Dover, 0; Tenant by the Courtesee there is no privyty at all, Vide supra, 86.

45 If the Leesor enter for the condition broken, or the Leesee surrender to the Leesor; How is the estate and term determined, and yet the Leesor shall have an action of Debt for the arrears due before the condition broken, or the surrender made, as appears by F. N. B. 120, 132, 30 E. 3. 7. 6 H. 7. 3. b. (against the book of 32 Edw. 3. Tit. Barre 262, which is not law). And this is in respect of the privyty of the Contract, which still remains between the Leesor and the Leesee, &c.

46 If the Leesee for 50 years assigne over his Interest, and the Leesor by deed invented and appointed according to the Statute, bargain and sell the reversion to another, the Bargainee shall not have an action of Debt against the Leesee; because there is no privyty between them; Nevertheless, after the assignment, the Leesee himself might have an action of Debt against the Leesee himself for rent due after the assignment; because the privyty of the contract between the Leesor and the Leesee both still continue, as long as the Leesor retains the reversion: So likewise if an Executoz of a Leesee for 50 years assigne over his Interest, an action of Debt ipeth not against him; Rent due after the assignment: Also if Leesor for 50 years assigne over his interest and die, the Executoz shall not be charg'd for the rent due after his death; For by the death of the Leesee the personal privyty of the contract as to the action of Debt (in both these cases) was determined.

47 A. lets to C. 3 acres of land for 3 years, resuming rent, the land C. assignes all his estate in one acre to another. A. sufers a common recovery to the use of B. in fee, who brings an action of Debt against the first Leesee, this action shall well lie; for (in the same as the Leesee assigns his interest but for part, &c. remains possessed of the estate; not only the Leesor, but also his Assignee, or he that claims under him, shall have an action of Debt for the entire rent against the Leesee; because there was not only privyty of contract, but also privyty in estate and contract together; and therefore in this case, the action runs with the estate: So also at the Common law before the Stat. of Qiaia epoxes terraram, if the Tenant had made satisfactiment in fee of part of the tenancy; In that case there was no apportionment, but the Lord ov his Grants shall avow upon the Feoffor, for that he remains Tenant in respect of the rent: Potestatem, if he had made satisfactiment of all, then the Grants of the Lord shall not avow upon him, &c.

48 In debt against two Administratoz upon a lease made to their Leesors, the Defendants plea, that before the rent accru'd, one of them had assign'd all his interest to J. of which the Plaintiff had notice, and accepted the rent, by the hands of the Assignee, due since the assignment, and before this rent now demanded was due; Here, upon the demurrer
remitted of the Plaintiff the judgment passed against him; because the priority of the contract was determined by the death of the landlord, and for that after the assignment made by the Administrator, was not to last one after such assignment; see Nym. 4. 6. 41.

99. Being presented to a court with the appearances for 30 years, demised all interest in R and after C (having appeared with his whole interest in the estate) by Imprumture and certain of his heirs, they to the same unto W. for 37 years. And they in return to the whole estate with the appearances to C. for 37 years. In this case, if C. be misrepresented for the statute by C. W. shall not redeem and maintain the lease of the whole estate for 30 years against C. by way of concurrence; because all parties are parties in such an interest as bound by the statute.

The warranty which is in a lease in exchange, is stated only in the warranty itself; as that shall appear by the words, but partly such as are parties to the exchanging their heirs and their assigns; no further than such estates as are parties to the exchange, and to their heirs, and not except to the assigns; see like wise more, shall have a contras tation of the assignments, but the statute 59. 6. 41. states the statute may redeem by their interest, and in the exchange by neither term, as appears by the statute 59. 6. 41. that in the same law is in case of partition and as in case of warranty, so it is also in case of the condition, which the party shall also imply every exchange. And therefore if A. exchange B. and B. plans to A. who is directed by title in the contract. In this case C. shall not enter upon the other; as so the warranty, and the condition expressed in the warranty to such only, as are parties to the exchange, and to their heirs, and not except to the assigns; see like wise more, shall have a contras tation of the assignments, but the statute 59. 6. 41. states the statute may redeem by their interest, and in the exchange by neither term, as appears by the statute 59. 6. 41. that in the same law is in case of partition and as in case of warranty, so it is also in case of the condition, which the party shall also imply every exchange. And therefore if A. exchange B. and B. plans to A. who is directed by title in the contract.

Adventures for a lease at full value against, and one of them aces. all in contrast to the statute, and the statute continues his possession. Here, the exchanges shall be under the whole estate, in respect of the whole estate, but the warranty, and the condition expressed in the warranty to such only, as are parties to the exchange, and to their heirs, and not except to the assigns; see like wise more, shall have a contras tation of the assignments, but the statute 59. 6. 41. states the statute may redeem by their interest, and in the exchange by neither term, as appears by the statute 59. 6. 41. that in the same law is in case of partition and as in case of warranty, so it is also in case of the condition, which the party shall also imply every exchange. And therefore if A. exchange B. and B. plans to A. who is directed by title in the contract.
The Reason of

ficta tenementorum suorum; Non habeat capitalis dominus potestatem dif-

tringendi tenentes in dominico, dum praedictus tenens offerat ei servitut de-

Archduchta.

Co.l.7.b.3. The Earl of

Bedford's case.

104 If tenant in tail of lease held by Knight-service make leases
not warranted by the Statute of 32 H. 8. cap. 28. and die, his heir within
age; the Guardian in privity and right of the heir in tail shall avow
those leases during the time that the heir is in Ward; So also if a Bis-
op make a lease for years not warranted by the Statute, (to that the
lease is voidable by the successor) and dies: the King shall avow that
lease, during the vacation of the Bishoprick, viz. in privity and right of
the same Bishoprick; for the Guardian in the one case, and the
King in the other are not strangers, but privies in right: Potestat
in the case of the Guardian, he shall avow the lease, as to his own interest
only; but shall not prejudice the heir of his election at his full age to
confirm the same leases if he please; So, Custos flanum hereditis in custodia
in eis suis meliorem non detriment facere potest; So likewise, if the heir
within age before the entry of the Guardian, or the ancestor being
within age, make a lease for years remising rem., the Guardian may
enter in privity and right of the heir, and shall avow the lease; Potes-
bate the Lord by effect shall not avow voidable estates made by his
Tenant, who was an Infant; for regularly none shall avow voidable es-
tates by reason of infancy, but only such as are parties or privies, viz.
the Infant himself or his heirs, being privies in blood, and in the case
abovein the Guardian as privity in right, gc.

Co.l.7.13.s.1. in

Englefield's

cafe.

105 Thomas Duke of Norfolk, in Anno 11 Eliz. conveyed his lands
to the use of himself for life, and after to the use of Philip Earl of Arun-
del his eldest son in tail, with divers remainders over, and with proviso,
that if he should be moved to alter, and revoke the said deed, and should
signifie his mind in writing under his own hand and seal, subscribed by
three credible twetwashas, that then, &c. and afterwards the said Duke
was attainted of high treason: In this case, that proviso or condition
was not given to the Duke by the Statute of the 33 H. 8. cap. 20, because
the performance thereof was personal, and indisputably annexed to the per-
son, viz. to signifie his mind by writing under his own hand, which
more could be but the Duke himself; upon which point all the possessions
of the Dukedom was conveyed as excepted, were lived, and not forfeited
by the attainer. Vide 44. 8.

Co. b. 13.s.3.

206 The Templers held others of their possessions in Frankalmoign
(which tenure, as Littlestone faith, is annexed in privity to the blood of
the Dome:) and after they were dissolved, and by Parliament, Anno
17 E. 2. their possessions were given to the Hospitalers, to hold them in
the same manner as the Templers held; yet by those general words they
hold not in Frankalmoign: because the privy of the tenure on the Te-
nants part continues not, and that privity being personal and insepau-
able, by the general words of the act was not transferred to the Hospital-
ers: There is the same law of the Imposition of a Church, which
is also on innocent insepuable to the house of Religion, whereas the
Church is imposiétte: And therefore it is answered, P. 3, E. 3. that the
Hospitalers by the said Act of the 17 E. 2. should not have an Imposi-
tion, which was formerly inseparable annexed to the Corporation of
the Templers; because such a thing as that consisting in inseparable
privity by the general words of an Act of Parliament shall not be trans-
ferred to others.

Co.7.13.s.4.

Englefield's

cafe.

107 In tempore H. 8. Brook tis, Corodic 3. it is holier, that a commis-

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108 There are these manner of presents, viz. present in blood, present in estate, and present in Law: Presents in blood are mean of presents in blood Inheritable, and that is in 3 manners, viz. inheritable, as heir general, heir special, or heir general and special: Presents in estate are, as Joinants, Baron and Flame, Donor and Donor, Love; and love, etc. Presents in Law are, as when the Law, without blood or present in estate, calls the Land upon one, or makes his entry congeable, as the Lord by ethe, the Lord that enters to Sportmain, Lord of a Volente, etc. And for presents Inheritable, as heir general, shall take benefit of Intervent, and therefor an Infant Tenant in Fee simple, make testament and die, his heir shall enter: there is the same Law also of him that is heir general and special; as if a man give lands to another, and the heirs male of his body, and the Donor within age make testament in Fee, his Sonne, that is heir general and special, shall enter: It is to also of him, that is heir special and not general, age; in the same case, the Donor hath two Sonnes, and the eldest hath issue of a daughter, and the Donor dies, and the eldest Sonne within age makes testament, and dies without issue male, the youngest Sonne is special heir perfrormam doni, and shall abide the testament of his brother, although he is not heir general; because he is present in blood; and hath the land by decent. So it lands by given to one and the hero female of his body, and the Donor, having issue a sonne and a daughter, makes testament within age and dies; Here, the daughter, being heir special (unto whom the right of entry proceeds) shall enter, and not the sonne, unto whom nothing descends: So it is likewise of the heir in Borrowing English; for in all cases, when any claim by descent, as heir special, he shall take benefit of a right of entry, which descends unto him for the intervent of his Auncle: There is likewise the same Law, if his Auncle were of composit mensis at the time of making the testament; because in those and such like cases, the heir general cannot enter; for that no right or title descends unto him, but the right descends to the heir special; Paudeit presents in estate (unless it be in some special cases) shall not take advantage of the infancy of the other; and therefore if Donor in tail within age make testament in fee and die without issue, the Donor shall not enter; because there was only present in estate between them, and no right accrueth to the Donor by the death of the Donor: So if there be two Joinants in fee within age, and the one makes testament in fee of the whole and dies; the survivour cannot enter by reason of the infancy of his companion; because by his testament the jointure was severed; so long as the testament remains in force; And therefore in such case the heir of the Fe- soff shall have a Dunm fuit infra grey, or shall enter into the moity: But if there be two Joinants within age, and they join in a testimon; in that case a joint right shall remain in them, and therefore if one of them die, the right that survive, and the survivour shall have the right of the land, as from the first Fe- soff; which makes Lindleton seem to hold (cap. Discontinuance vol. 44) that the survivour may enter, in respect of the right accrued unto him; For otherwise (indeed) this mistake would ensue, that the heire of that Fe- soff which dies, cannot enter; for that the right survive, nor yet the survivour; because he shall not take advantage of the infancy of his companion, but shall be forced to his writ of Right, which without question he may have; for that after the testament, the Joinants might have joined in it, etc. Lastly, presents in Law, as Lord by ethe, etc. shall never take advantage of the privity of infancy; because he is a stranger to it; and
The Reason of Marriage.

The Lease Law of Conveyance and Non-Fraud Memory.

109. A grantor grants to B, in writing, and farther grants to D, at his death, pay into A, upon such a way of such a place xx, that when B, and D paid an estate of freehold in the lands to him and his heirs; In that case, the priest of the estate ought to be continued, and that condition ought to be performed by B, or his heirs, and the performance thereof is not assignable, if the estate be sold (and this provision by the Lords Lovell's case in P. Com.) to C the Leases by life of any persons, or lives.

The Lord
Staфорds cafe.

The lease for life of 10 years later render into the Lease, he shall inherit under the benefits of the Constitution. Because the priest of the estate is itself called ought to continue; it is that the con- create of estates ought to issue upon the particular Estate, and upon a termination, Am therefore to this case, it Leases for 10 years, or 20 years, or the whole in full their estate, and take an estate again, and after part in the Constitution, yet nothing shall thereby determine upon him; because by the absolute condition the priest for a time was absolutely established, which any talking against the estates cannot be revised; as a Charter or after partition makes testament in law, and then takes again an estate to his and her heirs; in this case the priest of the estate before all to determine the supremacy paramount is deceased (1 H. 4. 2. Vide 38. E. 3. 20. b.) but if Leases for 10 years his estate upon Conveyance, and after for the Constitution hemet, and after that performs the Constitution annexed to the estate, there performed the Lesse made over that estate; for the possibility was not absolutely established, and when the estate formed the Constitution, he to the lease ancient estate; and yet to it necessary that the particular estate should continue to the respects; but, if such estate or is party changing, as in capacity of the increase of an estate, it becomes, and therefore, it such a lease by life makes a Lease for years, holding a Lease for years makes a Lease for a lease term, or a Lease and Lease for his son for 20 years for the possibility of create, that still continues in them, they are capable of another increase of that estate: Provided it such a Tenant in chief make a Lease pursuant vie; there he is not capable of any interest; because he has joined a new reception of the lease, and the first priest commonly not; and yet in that case if the Leases for life die, there is the first priest of the estate restored. So he a man make a gift in that shall whereby a condition of necessity, as Abolishment, and after the Lease make bonastic title, so that he is now become Tenant in chief after the possibility of such estate: In this case also the estate be changed, yet in so much as the possibility both in continuance, he may by the proper means of the Constitution have the Afterward. So as if a Lease he made to two with condition to have fe; and the like title may partition the situation and have fees; but if the same John tenant have made partition of the title, the partition is destroyed; so the interest in fee ought to increase to them suitably, and not in lessee-
The Common Law

...And this is the cause, that when a Femme brings a Writ of Dower against the Alien of the Baron, &c., and he touch the heir, the Demanvant may estilise, that the heir hath lands descerned unto him in the same County, (for to another County the original, both not extent) and may pro, that the may be endeavored of his estate; and this to (for the behalf of the Wouche,) to be newly advised. Vide in 4 E. 3. 36. & 6 E. 3. 21. The Tenant in a Writ of Dower toucheth the heir of the Baron, and the Demanvant estilise, that he hath lands by descent, &c., in the same County, and Judgement was given against the heir: but if he had none there, it should have been given against the Tenant. In 6 E. 3. 30. The Femme of a Stranger brings a Writ of Dower, and the Tenant toucheth the heir, &c., the Demanvant shall not recover against the heir, because there wants piuity: In 18 E. 3. 36. in Dower, the Tenant toucheth, and the Wouche toucheth the heir of the Baron of the Demanvant, the Demanvant estilises that the heir hath lands by descent in the same County; here, the Demanvant shall not recover against the heir, but against the Tenant only; for in this case, there is not immediate piuity between the Demanvant and the heir: because the Demanvant shall recover against the heir only, when the Tenant in Demaine toucheth him, and not when the Wouche of the Tenant in Demaine toucheth him.

111. No Stranger, albeit he be Tenant of the land, and hath the evidences conveyed unto him, may in a Writ of Dower plead Dement of Charters: for, this plea lies solely in piuity, viz., for the heir of the Baron: And the heir also in this case may divers wages be in the degree of a stranger, to that he shall be disabled from pleading Dement of Charters: as 1 If the heir hath the land by purchase; 2 If the heir do deliver the Charters to the Feate (as it is resolved 7 E. 3. Dower 191.) 3 If the heir do not immediately toucheth, viz., by the Wouche in the Writ of Dower; but by his Wouche (18 E. 3. 36.) 4 If the benefactions in e Wouche, having no lands in the County, where the Dower is demanded; 5 If he comes in as Tenant by receipt, as appears in 16 E. 3. Dower 57. and by many other books: And the reason thereof is manifest by the true pleading of Dement of Charters: that, who pleads that plea at barre of Dower, ought to plead, that he hath been boses ready and yet, to recover Dower, if the Demanvant will not utherto him his writings; now Tenant by receipt, as such a Wouche, as is alledged, cannot plead, that he hath been boses ready to render Dower; for that the Demanvant cannot recover against the heir in such cases (viz., either being Wouche, or receive) neither can he render unto the Demanvant the Dower, which by the law both belong unto her, &c.

112. Upon a fine acknowledgement of lands according to the Statutes of 4 H. 7. cap. 24. The Guardian by nurture or in socage may enter in the name of the infant, who hath right to enter into the same lands, and this shall part the estate in the infant without any commandment or consent: because there is piuity between them: So likewise be in the revision exparant upon an estate for life 9 years, of the Lord of a Tenant by copy, &c. may well enter (within that Act) in the name of the Tenant for life, 9 years; 2 Tenant by copy, and also in their own right, as well to have their own Frankentment and Inheritance, as also the said particular interests; for the Lellos, of the Lord are not strangers, because they are privies in estate: And as the entries of those particular Tenants shall avale the Lellos and the Lord in those cases in respect of the piuity of their estates; So the entry of the Lellos of the Lord in the like cases in the names of the particular Tenants shall avale the same Tenants, in regard of
the privity of their estates, and for the salvation of their personal rights, without any request precedent, or assent subsequent: for in those cases the lessor and the lessee purport the title and claims, which they have to the inheritance, by lawful entry within the five years: according to the saying contained in the said Act: Hold a beast that is a mere stranger, and hath no right, shall not by his entry within the 5 years in the name of him, that right hath, avoid such a fine, unless he have some request or commutation precedent, or assent subsequent to authorize him to do it; because the said Act hathopperates the possession thereof, by way of action or lis pendens entry, unto him that right hath, either by interest, or privity, or else by request or commutation precedent, or assent subsequent, &c.

Col. 10.45. 3.

76 At the Common Law recovery against Lessee for life with Woucher upon true warranty and recovery in value shall be had him in remainder (as the books are in 19 E. 3. Recovery in value 20. 43 E. 3. ibid. 23. 44. Ass. pl. 35. & 5 E. 4. 3.) And the reason thereof is, because the particular estate and the estate in remainder (in respect of the privity) make but one estate, and one privity may attend to both, and therefore the recompense in being shall also attend to both.

Col. 10.48. 2.

114 Albeit the wholesome and policy of the Sages of our Law hath provided, that no privity, right, title, or lying in action shall be granted or assigned to strangers, to avoid multiplicity of suits, oppression of the people (principally of the Tenants-in-fee) and the abuse of the use and equal execution of Justice; Nevertheless all rights, titles, and actions by the prudence and policy of the Law, may be released to the Tenant for the term reason of his name and quiet, and for the assistance of suits and controversies, and to the use every one would live in his calling with peace and plenty: And therefore a right or title to the Frank-tenant, or Inheritance (be it in present or future) may be released in the main: 1 To the Lessee of the Frank-tenant in Dido 62 to Law, without any privity; 2 To him in remainder; 3 To his heirs at the deviation, without any privity, but an estate cannot be extinguished without privity: 4 To him that hath right, after in respect of privity; 5 To the Tenant and only, the Lord may release his Service, to the use of the privity and without any estate; 6 To him, and only in respect of privity alone, and the right of the Lessee, as it Lessee in due must make Footment to the Lord, after the Footment hath not any right, and yet in respect of the privity only, the Lessee may release unto him the rent and will declare taking the rent: So also the Lessee in a precise may release to the Woucher to the Tenant after Footment, &c. Vide ibid. 44.

Col. 10.49. 4.

115 It is a Maxime in the Law, that when he has to pass as privity in estate or interest, or be, that institutes in the right of him, who is party or privity, is forced to plead a Dido, albeit he, that has privity claims but parcel of the original estate, yet in that case he ought to plead to the original Dido to the Court; As if the King mortgaged land to B. for life, B. mortgaged the same land to C, for years; now, if C. be impaired, he ought to produce in Court the Letters patents of the estate granted to B., because B. and C. are privies in estate. Vide William Polers (j 3 H. 6. 20. 21. & 22.) which was in strict case; A. by inurement released B. of the annuity of Dale reverting unto A., and his heirs 5 marks rent per annum, with haune of the land; A. assigns to C. 22. 18. vi. s. viii. d. per annum, parcel of the said rent, who being freely setted and then released, brings an Action of the same parcel granted to him, and because in the same Alice the Lessee procured not the original inurement of the Inheritance of the estate due unto his Grandor, Justice was given against him, albeit by statute-act pat;
the Common Law: 187

garret of the said rent, and the reason thereof was in regard William Pole the plaintiff was always in the estate of the rent, and claimed by the first grant. And in the case above put, the reason holds against the stranger, in regard the lease might have bound the lessor by covenant to have demised forth the Deed, when occasion should have required. In 35 H. 6, it was agreed, that Guardian in Chivalry shall not plead a release made to his Tenant without showing it forth : So in 14 H. 8. 4. It was agreed by all, that he, who is in rent in estate, as freckle, Leases for years, &c. that sues the, as servant to him, or that is in rent, ought to show the Deed to the Court, which they plead. 
Lease in Debt against the heir, he shall not plead a release made to the Orientors without showing it ; for there is property between them; and both this agrees the 3 E. 2. Montrean des fals 42. Parkerett on the other side, where a man is a stranger to the Deed, and claims not the thing comprised in the grant, any thing thing out of it, as any thing or in right of the Grantee, as Pole to Servant, there he shall plead the Tenant or Deed without showing it : If the Tenant shall grant the land to Lord with attornment, he shall not show it, &c. de similibus : But where he that claims the thing, or any right or interest out of it, as sues in right of the Grantee, there he ought to show the first grant; as the second Grantor of a rent charge shall give the first grant, and to show his Pole; and the Grantor of a rent charge shall not plead the release of the Pole is to the Pole; without showing it; for albeit he claims not the land of which the rentee is made, yet be, that rent out of land, hath also right in the land, which by a release of all his right shall be gotten, and therefore in such case he ought to produce the Deed: And with this agrees the 3 E. 2. 7. 6. 14 H. 8. 5. The Pole shall not plead a release to the Pole, neither of right in the land, nor of rent arising out of the land, without showing it; for, where one claims the thing, unto which the release is made, or right or interest out of it, the Pole creates a property in respect of his estate or right in the land, viz. to this intent, that he shall not have benefit of the Deed without showing it.

116 If an estate of land be granted, without imprisonment of walt, that privilege is individually annexed unto that estate (3 E. 3. 44, per Share and Stone.) One, that hath a particular estate without imprisonment of walt, change his estate, he loath what advantage (5 H. 5. 9. a.) If a man make a Lease for years without imprisonment of walt, and after he continues the land to him by his life, he shall be afterwards chargeable for walt (18 H. 8. Dyer 10. b.) If a Lease be made to one pur ater vic without imprisonment of walt, the remainder doth inherit the term of his own life; here, he is punishable of walt; for the thief is made prisoner and gone; and to it belong of a Confirmation. 
The heir at the Common Law shall have prohibition of walt against the Tenant in Dover; but if the heir grant over the reversion, his Tenant shall not have prohibition of walt; For it appears in the Register fol. 73 that in such an Assignee in an action of walt against Tenant in Dover he shall receive the statute of Gloucester; and therefore he shall not have prohibition of walt at the Common Law; for then he would not receive the Statute. Vide F.N. B. 55. 14 H. 4. 3. 5 H. 7. 17. b. 14. &c. 18. 2. 57. If tenants be bouched and sue this warrant and leased, he may have a Wilt of Error, and shall alignt the error, which happen between the Demandant and the Tenant, or between the Demandant and himself as Wouches: And to be in revetion, that pays to be received for details of the Tenant for life, or for his joint planting.

Co. b. 34. 8.
Lease
Bowles C FORCE.

The Reason of Max. 54

ing, if he recovers and plead and lose, he shall have a \textbf{Writ of Error}, and shall align the error that happened between the Demanant and Tenant, or between the Demanant and himselfe, that to prap

so it Tenant for life lose by default; he in the resverton shall have a \textbf{Writ of Error}, albeit he neither was recover, not prap to be received; And he shall aligne for error any matter, that happen between the Demanant and Tenant, that to lose by de

And all this is in respect of the privity and interest, which the Wouchee and Reversioner had in the land from recovered by the Judge

118 In a plea of land against the Tenant, if the Tenant die; he that is heir to the Tenant for that land, shall have a \textbf{Writ of Error}, and not he that is heir in the Common Law; as in Holwng English, if the Tenant lose the land by erroneous Judgement; the youngest some shall have the \textbf{Writ of Error}; and so shall he that is heire in spe-
tal; And this in respect of the special privity and interest, which they have in the land: And for the same reason it is, that case land be lost by erroneous Judgement, the Tenant may have a \textbf{Writ of Error}, and so also may the Wouchee have another \textbf{Writ of Error} upon one and the same Judgement: and so may the Tenant, and the Le

ntenant by receit, and all at one time hanging. Executores also of Adminis-trators shall have a \textbf{Writ of Error} upon a Judgement given against their \textbf{Executor}s, for debt or damages: So likewise the heir that shall have a \textbf{Writ of Error} to reverse an out-law of Felony pronounced against his father, to reverse him to the privity of blood between his father and him. The \textbf{Successors} of an Abbott, Prior, Parson or such like bodies politique, shall have a \textbf{Writ of Error} upon a Judgement, given ag

ainst their \textbf{Predecessors}, of all things, which touch the Succession of Corporation; but if a man recover against a Parson, Bishop, or the like, debt or damages, by judgment of action personal; these Executores shall have a \textbf{Writ of Error} upon such Judgement, and not their \textbf{Successors}; because their \textbf{Executores} do Administrators have int

view in such things, and not the Corporation. If a man the \textbf{Succession} erroneously upon the recognition upon a recognition, the \textbf{Office} of the recognition shall have a \textbf{Writ of Error}, so

119 In a \textbf{Praecipe quod reddat} of land, if the Tenant by his own Dis-claim, whereby the Demanant recovers, in that case the Tenant shall not have a \textbf{Writ of Error}, against his own \textbf{Disclaim}; because he that ple

be hath waved all the privity and interest, that he had in the land; but if the Tenant onely plead non-cur, and thereupon it is found against him, so that the Demanant recovers, in that case the Tenant shall have a \textbf{Writ of Error}, so

120 If a man lose land by default in a \textbf{Praecipe quod reddat}, and die, the heir that shall have an action of veret as well as the father, and shall have restitution; for he is privy in blood: So likewise, if a man have execution by default upon a recognition in a question laid against one, and that \textbf{Defendant} die; his \textbf{Executores} shall have a \textbf{Writ of Error}, and shall be restitution; for they are parties in right of.

121 The \textbf{Wouchee}, or Tenant by receit, ashe in the Judgement, (where he is born to the Tenant for terme of life by act paper,) shall have an attaint, if the plese by false veret; and if the Tenant for life lose by false veret; be in the Judgement shall have an attaint of \textbf{Writ of Error}, fitting the Tenant for life; but this is by the statute of \textbf{9 R. 2. cap. 3.}

122 In recapse, if the \textbf{Defendant} plead, villanage in the \textbf{Plaintif}, and he saith that he is free, and he is found here by false veret, as

and after the \textbf{Defendant} die, upon his heir shall have an attaint to a

123 Against by heir in vill

Who may bring \textbf{Writ of Error}. 

Heir and 3. executo privi

Reversione

From the

Cates

Against by heir in vill

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the Common Law.

both this Gospel, and false servile, albeit it was given in an act personal. Sed quia de hoc.

112 Viz-Herbert falleth, the second Lord Hall have a suit at Covenant against the Lord; if the suit be made to him and his Aignees with humanity: But yet he falleth after tido, the Aignees of the Lord that maintain a suit at Covenant against the Lord; albeit in the body of Covenant there is no intention of any Aignees.ideo quare de hoc.

113 At the Common Law if lands have been sold to be sold by Executors, & had been listed to Executors to be sold, if any of them had refused, the suit could not have sold them, but none that is held by the Statute of 21 H.8. cap. 4, viz. the first by the appeal words of that Statute, and the other by the equity of the same: Potteke in neither of those cases, when none listeth, can the other make suit to him that to resell; because he is partly and privity to the last Will, and remains Executors still.

114 If a man listeth of 3 acres of land acknowledge a recognisance of Statute, & enforces A of one acre, and B. of another, and certifies, that the third acknowledgeth to his heir; In this case, if the execution be two only against the heir, he shall not have contribution, no more than the father would have had, if he had been living; for they are principles in blood; And therefore it is said, that the heir is in the seal of the Ancestor, &c. heares eft alter ipse; fills eft pars patris; mortues eft pater, sed quasi non eft mortuus, quia reliquir similim sit, &c.

115 The Baross makes a lease for life, and death, a release made by the wife of her Dowter to him in the reversion is good. albeit the path no cause of action against him in presensi. And this is because of the privity of estate, that is between the Leasant in Dowter, and him in the reversion, &c.

116 Where the Statue of Will. i. cap. 22, giveth unto the Lord two years of the heir female after his age of 14, thereby is implied, that at the Lord birth within the two years, yet his Executors or Administrators (though not named) shall also enjoy the same; for, when the Statute is belched an interest in the Lord, the Law giveth the same unto his Executors of Administrators, because they are principles unto him in representation. Then put case, that the 20th bath the warships of the body and land of an heir female, and makes his Executors, and death beeth her age of fourteen years, whether the Executors shall in that case have the two years, because the Executors is not Lord, no named in the Statute; And (in this case) my Lord Coke takes it, that the Executors, having the warships of the body and land, shall also have the two years, for that they were worked in the Lord, and in respect of the privity, as aforetold.

117 Executors and Administrators might take benefit of the general pardon in 43 El. and might plead it, as well as the Testator himself, &c. By Eliz. Dyer, 201 upon the Statute of 23 H.8. Executors shall have an Attaint, 6E.6. Bendoes, Executors shall have restitution upon the Statute of 21 H.8. Also Administrators shall have a Wish of Error upon the 24 Eliz. as it was adjudged in 36 Eliz. in the Lord Mor dataSource case in the Exchequer Chamber; yet there these later Statutes speak only of the partes, and not of his Executors or Administrators. Vide 28 Aft. Pl. 7. 1B. 3. Executors 97.

118 Executors and Administrators might take benefit of the general pardon in 43 El. and might plead it, as well as the Testator himself, &c. By Eliz. Dyer, 201 upon the Statute of 23 H.8. Executors shall have an Attaint, 6E.6. Bendoes, Executors shall have restitution upon the Statute of 21 H.8. Also Administrators shall have a Wish of Error upon the 24 Eliz. as it was adjudged in 36 Eliz. in the Lord Mor dataSource case in the Exchequer Chamber; yet there these later Statutes speak only of the partes, and not of his Executors or Administrators. Vide 28 Aft. Pl. 7. 1B. 3. Executors 97.

129 Patience is an absolute gift of all Chattels personal to the husband, and also a gift of all Chattels real sub modo, which the femme held in possession and in her own right (12 which see R. 92. Ex. 5) but Chattels real or personal, consisting merely in action the husband shall not have by the intermarriage, unless he recover them in the life of the wife, albeit.
The Reason of M. 55, 56.

albeit he survive her: As a gift of right of Ward, a Valore matrimonii, a testament of marriage; apprentices of rent, a presentation to a Benefice, debts by obligation, contract, or otherwise, which did accrue to the wife before marriage; the husband (I say) shall not have those or the like, unless he and his wife recover them, because they consist in property; and therefore albeit the husband survive the wife, yet he shall not have them; but the Executors or Administrators of the wife: So if a Female sole be possessor of a Chattel real, and be thereof disposed, and then takes husband, and dieth, albeit the husband survive, yet this right is not given to the husband by the intermarriage, but the Executors, &c. of the wife shall have it: So it is likewise, where the wife hath but a possibility; and of Estates, &c. Husbands now by the Statute of 32 H. 8. cap. 37. if the husband survive the wife, he shall have the appurtenances as well incurred before the marriage, as after: &c.

130 Between Hypotheems there is a two-fold privity, viz. in estate, and in possession; between Leases in common, there is privity only in possession, and not in estate; but parceners have this two-fold privity, viz. in estate, in person, and in possession.

131 There is a void privity, where a condition concerns a trusteeship, or local act; and is to be performed to the Fruits or Obligations, and where it is to be performed to a Stranger; as if A. be bound to B. to pay 10 l. to C. Here A. tenders to C, and he refuseth; in this case the Bond is valid, for because there is no privity between them, and A. cannot compel C. to receive it, but if it were to pass to the Obligation, upon tender and refusal the bond is void, by reason of the privity between them.

132 If a man be bound to A. in an Obligation with condition to enter B. (who is a mere Stranger) before a day, the Obligation both offer to enter B. and he refuseth: Here the obligation is void, for the Dollar hath unmerit to enter B. and there wants privity between him and B. But if the testament be to be made to the Obligee himself, or to any other for his benefit, a tender and refusal shall save the Bond, because of the privity between them; So likewise if A. be bound to B., with condition that C. shall enter B. In this case, if C. tender, and D. refuse, the obligation is saved; for it shall be intended that the testament should be made to the Obligee, which implies privity.

133 A Stranger's entry (of his own head) upon the Benefit a sige to the use of the Muller, is not good without the Mullers consent thereto afterwards: Poole, the entry of the Guardian in loco of their own heads (of their own heads). Without the Mullers attaint, is good to abate the title of the Bensard a sige, because of the privity, but they are no Stranger.

134 Leases in Common cannot make partition without deed, but Partition. Coparceners may, because they are privies, and as one heir, and (by consequent) have a three-fold privity, viz. in estate, person, and possession. Vide supra 136.

135 Vide Max. 114. c. 58. & Hob. 130. Oates and Frith.

56 Equal things cannot drown one another, & cens.

1 If a man make a lease for ten years, the remainder for 20 years, he in the remainder released all his right to the Lease for ten years; In this case, the Lease for ten years hath an estate for 30 years; for one chattel cannot void another, neither yet can years be continued in years.
...
57 Things are to be construed, **Secondum aequalitatem rationis.**

Finch 10.  
Bract. I. c. 3.  

1 This Rule in Law imports a logical veritas, a kind of equity, as Brasenholst calleth it, where he saith, *Equitas est rerum convenientia, quae paribus in causis paria juria desiderat, & omnia bene conquisiptas.* Et dicitur *equitas, quasi aequitas, id est nature, ut amplius, inlarger, et addit ad the letter of the Law.

2 Upon a recognizance acknowledged by the Amortis, or a judgment in an action of Debt given against him; If he be letter of two acres, whereas one is holden to Borough English; or having like two daughters, which make partition; or if he be without issue, whereby part of his land descendeth to the heir of his father's part, and part to the heir on the part of his mother; In all these cases, if one only be charged; he shall have contribution against the other; for they are in aequali jure. Finch 20. Co. 1. 2. b. 4. The case of Banker.

3 At two, four, or more men being generally letters of land, set in a recognizance, all their land must be equally extended. Finch 20.

4 This Rule doth chiefly shine anotherly to fall in the exposition of Statutes, by examining things there proviso to mischief in the like degress, &c.

Finch, ibid.

5 This Rule is also of great use for guiding the grounds and magistrate of things, which newly start up, according to the rule of the Common Law.

23 H. 8.  

Finch, ibid.  

6 Uses at the Common Law were nothing, yet in time gaining greater regard to be imputed amongst Inheritances, are now demanct in other Inheritances at the Common Law: So as *posse fletis fratris shall be of them;* so of land in Borough English, the use shall descend to the porter for you; And both also of these uses being turned into estates, shall be vested in all respects, as estates in possession, Finch 20.

7 When custom giveth Inheritance in Copp-hold lands, and maketh the lands descivable, then shall the Law visit the descent according to the Statutes and rules of the Common Law, to have a posses-son fratris, and the like: But not to collateral things, as tenancy by the Courtesse, Dower, descent to tell an entry. Finch 20.

8 Equity is a construction made by the Judges, that cases out of the letter of a Statute, yet being within the same mischief, or cause of making the crime, shall be within the same remedy, that the Statute produceth; And the reason whereof is, so that the Law-maker could not possibly set down all cases in express terms; *Equitas est convenientia rerum, quae conquisi conquisita;* & quæ in paribus rationibus paria juria demeret. And again, *Equitas est veritas quam radiq, quæ jus scriptum interpretatur & amplifcriptur, nulla scriptura comprehendit, sed illud in vera ratione consistit.* 

Finch, ibid.  

Co. 4. 4.  

9 Albeit the Statute of Gloucester, which produceth remedy against ward, speaketh not of the estate of Willeine, yet that also is comprehended under the general word of waste; so that waste as destruction of Willeine, &c. Lestants at will; or making them poor, where they were rich, when the tenant came in, whereby they depart from their tenures is
is to be enjoined male; for waste and destruction in their larger sense are words convertible, &c.

10 A liberty of lands out of the Kings hand is in the nature of a situation, which is to be taken favourably; for if liberty be made of a Manor, cum pertenencia, the heir shall thereby have an Advochion appurtenant; howbeit it is otherwise in grants by Letters Patents.

11 By the Statue of 2 E. 6. cap. 8. it is enacted, That such persons, as hold for term of years, or by copy of Court-roll, or have any rent, common, or profit apprender out of any lands found in any office, where- by the King is entitled to the wardship of the same lands, or to the forfeiture of lands upon attainder of treason, felony, praemunire, or any other offence, may have, hold, enjoy, and perceive their several estates, interests, and profits, although they be not found in the office; here, albeit those two estates only are laden by the letter of the said Act; yet if it being a beneficent Law, the estate of Tenant by Statute Staple, Merchant, Elegie, and of Executors, that hold lands for payment of debts, &c, are taken to be within the benefit of that clause: which was doubted in 14 El. Dyer 319.

12 Where an office is found by these words or the like, quod de quo, vel de quibus tenementa predicta tenetur; juratores predicti ignorant, &c, that the lands are holden of the King, fed per quæ servitutia juratores ignorant, neither of these shall be taken for an immediate tenure of the King in chief; but in such cases a melius inquirendum shall be awarded, as hath been accustomed of old time; and this provision is made by the Statue of 2 E. 6. cap. 8. And here, albeit that Statute faith no more; yet (by the equity of the same Statute) if the first office be in a tenure for the King per quæ servitutia, &c, and upon the Melius the tenure is found for a sub rent; in that case, the first office hath lost his force, and need not to be traversed; and the Melius is in the nature of a Diem clasico extremum, or a Mandamus, &c. And this was but a declaration of the ancient Common Law, as by these words of the same Statute (as hath been accustomed of old, &c.) it is apparent; but if upon the Melius it be found again as uncertainly, as before is said, then it is in judgement of Law a tenure in Capite; howbeit if upon the Melius a tenure be found for the King, &c, de maneterio, &c, fed per quæ servitutia, &c, it shall be taken for Knights-service.

13 At or before the Statute of Magna Carta, cap. 2. All Carldoms and Baronies were deriv'd from the Crown, and were holden of the King in Capite, and the King would not then suffer them to be divided, or severed; and such inferior Carldoms and Baronies are within that Statute to pay relief according to the limitation thereof: Howbeit at this day Carls and Baronies are without such Carldoms and Baronies of the Kings gift in chief; for at the creation of an Earl, he hath sometimes an Annuity granted unto him, and sometimes nothing at all, but rather given somewhat for his Honour; So as such Carls and Baronies created are clearly out of the Statute of Magna Carta, and are to pay such reliefs as other men, that hold of the King in Capite: for, as the heir of a knight shall not pay 100 s. relief, unless he hath a Knights fee; so neither the Earl nor Baron shall pay any relief by that Statute, unless he hath an Cardom or Baronie intended by the same Statute, &c.

14 By the Statute of 2 H. 8. cap. 4. it is provided, that where lands are twinen to be held by Executors, though part of them residue, yet the relaim may sell: And here, albeit the letter of the Law extendeth only where Executors have a power to sell; yet being a beneficent law, it is by construction extendeth also where lands are twisten to Executors to be sold.
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The Reason of

Tenure of

land.

Equity

19 The Land is to righteously equity and equality, that it may in those

cases work according to them without any provision or declaration of

the party: And therefore, it be the Statute of Quia empotis ter-

ram, a man had none a Bastile in fe, removing rent to 4th and his

heirs, this was Rest-Devolution, for which he might differant of common

right: And if he had made no declaration at all of any rent of service;

yet the Feoffee would have been driven of the Feoffor by such service,

as the Feoffee be under of his Lord next paramount: For, the Land in

this case did create a tenure.

If a man settled of divers lambs, of his heir to Feoffor, and of

the rent in tail, make a gift in tail, or a lease for life, or parts of all,

reverting a rent, and be: Here, if the latter in tail whoever the gift of laisse,

as to the entail-lamb, the rent shall be appositioned; for giving the

rent is refered out of, and for the whole lamb: It is reason, that which

part thereof is evoked by an other title, that the Demesne of Heald should

not be charged with the whole rent, but that it should be appositioned ra-

table according to the nature of the land.

By the Statute of 7 R. 2, cap. 10, it is enacted, that an Allot of

rents having both of lands in divers Counties shall be taken in Confis-

cio comitatus, which seems to be meant about of Counties that border

one upon another. Nevertheless, albeit the Counties do not joint, but

have twenty Counties lying between them, yet the allot in Confisco

comitatus both lie, and the Justices shall sit between the latter Counties:

And where the Statute seems to speak of two Counties, with the like

Land to do, when the rent must out of lands lying in more Countries than

Two.

The Statute of Meteton, cap. 2, (made 20 H. 3.) which gives the

Law of Redemption, is as follows:—Item, in quinque decemlis de libero

tenemento & coram justiciariis Inveniatur suam recuperari per

Assession noua alicujus, vel per recognizendum borm, qui secernit &b ibum,

et non alicujus per Vice comitatus diem, nisi hominibus, si tenent diebus

potest post &c. justiciarii, vel bitem, in codem tenementum herem

cum deno consequentem, alicuius &c. & sedem justiciarum, &c. &c. Here,

and this Statute refers to intend to entire lands and lambs,

yet Liderton, 5, 33, abounded it is extenuated to a Lease.

charge, or a Rent-sack, for so although they are against rendition rights,

yet a man may have a Free-hold in them: And therefore if a man grant

omnia thebennia tuo, a Rent-charg or a Rent-sock will take place there-

by: And by the same Statute the Allot items to be taken to be taken

within coram justiciariis Inveniatur; Liderton (above) speaks

generally, and to the Statute to be intended, viz. Where any codd

Lamb, that have authority to take Allot, and judicially the.sock

usually for them there for an example: And where the Statute itself,

Recuperari per Assession, &c. by the verdict of the Justices, as Liderton

in the same Chapter expounder it is; per recognizement, &c. by confor-

mation, yet if the recovery be upon a tenant, or by pleading of a record

and matter of, or by any other manner, such recoveries are not going

in the equity of the same Statute: And therefore Liderton in the above

Section spoken generally. It recoveres the fealtie del rent, intimating,

that it ought to be understood of All manner of recoveries in an Allot of

Novel diversity: And in that manner the above Statute confirmed

by Weism. 3, cap. 26. And here it is worthy observation, that this Statute

to expounder it is by equity, not by personal right, but by

the word of Liderton of Weism. 3, which damages is given upon the

Recovery.

Co. b. 174, 2. 3.
Co. l. 4, 111. b. 4.
Bastards case.
the Common Law:

thence, be that tenant, shall recover a toll recompence for all, that be to lessee: But upon a partition, the partner that lesseth shall only recover the moiety of half of that which is lost; to the end that the lesse may be equal.

The Lessee by the Court tenant have a will of Partition upon the Statute of 32 H. 8. cap. 32, as well as Joynement of Lesante in common to life at years: For albeit he is nothing joynement but Lesant in common (because a praecipe partly against the partners of Lesants by the Court tenant) yet so farre as he is in equal portions as another Lesant for life, he shall be intrested within the equity of that statute.

If a man leteth of lands in fee, hath two vantage, and gives part of them to one of his daughters in Frankmarriage, and lesse: In this case, after the lands undivided of exceed in value the other lands, given in Frankmarriage, yet shall not the Dower in Frankmarriage have any part thereof, unless the lesse put her part in Hoochpot with the other lands, and then they shall be equally divided between the lessees. And it is met by our old books, that by the ancient Land there was also a kind of resembiance hereof concerning game; so that rule debita debetur, et pot debitationem expedire, quae necessaria erant, id comu, quod une supererit, dividatur in his partes, quorum una pars renum omnium pecuniae, hic pecus habere debetur; secunda, hic supererit; et de tertio parte haebit cestator libaram disponealdi faciaturnet, si autem libera non habeat, una medicae defuncto, & alia medicae uxorii; si autem une uxorii dexteris, liberae exterrimissi, una medicae defuncto, & alia medicae liberis tribuat; si autem une uxorii & liberae, id comu deexitur remanente. And by the law before the Conquest it was thus provided: Sive quis in curia, five morte repentine fuerit interfectus mortuis, Dominus tenens nullam rerum suarum partem (priferam, que jure debetur) hereditom nonem suis affundit, venidem nas judicio suo uxorii, liberi, & cognationis proximitate, justi pro suo cuique justi distributio.

If a man leteth of 30 acres of land, each acre of equal value, hath that two vantage, and gives 15 acres to one of them in Frankmarriage, and lesse of the other 15 acres; in this case, the other offer shall have the 15 acres to defend, and the Baron and Feme shall not put their 15 acres in Hoochpot with them, because the parts are already equal: but this is to be thus understood, if they are of equal value at the time when the Partition shall be made: For, if the land given in Frankmarriage, be by the act of God decayed in value, or if the remain of the land in Frankmarriage be improved after the gift, they may be a part into Hoochpot: And the law is absolute of the value, as it is at the time of the partition; unless it be by the proper act of default of the parties, &c. And it is meteth to force, that in case they be of equal value at the time of the partition, that then the reversion in fee of the lands given in Frankmarriage shall only vest in the Dower, for otherwise the other offer shall have more benefit than the Dower; and to these parts should not be equal; and their parts might be put into Hoochpot, notwithstanding the 30 acres are all of equal value at the time of the partition; which is against the reason that Lireton gives, Sect. 273, &c.

If there be two Joynements in fee, and the one leteth his part to another to the life of the Lessee, and the Lessee beeth; some say, that his part shall lurrige to his companion; for that by his death the lease was determined: Notwithstanding others hold the contrary, and their reason is; First, because at the time of his death the Joynement was severed, so so long as he lived the lease continued: And secondly, because notwithstanding the act of any one of the Joynements, there must be equal

Livre of Joynement.

Co.175.2.4.

Co.175.2.5.

Livre of Inheritance.
equal benefit of survivor, as to the Fre-hold; but here, if the other
Hypotenent had first died, there had then no benefit of Survivor, to the
Lessee, without question; because at that time the enjoyment would have
belonged to the other

24. A Bishop, Abbot, Dean, Master, or any other such
body politic, or corporate, which hath a sole estate of lands in fee in
right of their several Corporations, if any such body be, or shall be
nece (if
never be) have a remedy agreeable to their right, viz., a Writ of Right,
which is the highest remedy, for that they have the highest estate; it is
the other wife of a Parson, because the entire fee and right is not in him;
his highest title being a Juris utrum.

25. Albiet the Statute of Gloucester, cap. 3. (made in & E. 1, for the re-
lish of the heir against the alienation of the Father, Tenant by the cur-
telee, with warranty, &c.) makes it by mention of a Writ of Mont-
dancers, Covenage, Aiel, and Brefiel; yet a Writ of Right, a Formedon,
Writ of Entry, &c. common amen leges, and all other like actions are with-
in the purview of that Statute: where those actions are hot put for examples.
Again, where it is said in the same Statute (the Tenant by the Cour-
tele alien) yet his release with warranty to a Dicelle, &c., as in
the purview of that Statute, because it is in equal mischief; and if that
release might take place, that Statute, should have been made in vain: So also if Tenant by Courtele be of a Heignays, and the
tenancy escheat unto him, and after he alieneth with warranty, this shall
not bind the issue, unless after defect

26. Albiet the possibile of the Statute of 24. H. 8, cap. 20. extendeth
only to gifts in tail made by the Kings of England before that Stat.
viz. hath given & granted, &c.) and the boole of the Act refers to the possi-
bile (viz. that no such sealed recovery hereafter to be had against such tenant
in tail, &c.) So as this word (such) may seem to couple the boole and
the purview together: Yet in this case (such) shall be taken for both
equal mischief, &c. in that case; and by others parts of the Act, it app-
neth, that the makers of the Act intended to extend it to future gifts,
and so is the Law taken at this point without question.

27. Some to expound these words of the Stat. of Gloucester, cap. 3: the
heritage of his mother, to be the land which the mother hath by descent:
And that construction is true; but that Stat. (by the authority of Little-
ton, Cap. 32.) extendeth also, where the mother hath it by purchase in
F-Simple, to so faith Littleton himself, that this words (Inheritance)
so as not extend, where a man hath lands by descent, but likewise
where a man hath a F-Simple by purchase; because his heirs may in-
herit him: And albiet it be true, that the Statute extendeth to an estate in
Frankmarriage acquired by purchase, yet both it extend also to all e-
states in tail, as well by descent as by purchase, Frankmarriage being put
there but only for an example.

28. If Tenant in F-Simple, that hath a warranty for life, either by an
expirice warranty, viz. by Dedi, he impeached and ouch, he shall rec-
cover a F-Simple in value, albeit his warranty were but for term of
life, for he, that the warranty was annulled, and did extend to the whole estate of the Feoffor in F-Simple: But if Tenant in tale, the
remainder to another in fee, and a collateral Ancestor confirm the estate of the Tenant for life, for the term of
his life only with warranty, and die, and the Tenant in tail hath issue
and die, the issue is barred during the life of the life of the Tenant for life
by the collateral warranty; And, in that case, if the Tenant for life be
impeached and ouch, he shall only recover in value but an estate for
life,
the Common Law.

29 If a man make a Charter of testament of an acre of land to A. and his heirs, and did another Deed of the same acre to A. and the heirs of his own, and neither be given to the Rob in tail, as well as to the Charter in fee; neither can the liberty exits only to the Deed of estate tail with a F & Simple estate; because liberty was made, as well upon the Deed in F & Simple, as the Deed in tail; and therefore others hold; that in this case, it shall enthe by motlles, viz. to have an estate tail in the one moiety, with the F & Simple estate; and to the liberty hold immediately upon both Deeds: And this last fames to be the opinion of Coke himself: being put last, according to his own rule; which he often vellicets in this part of his Institutes.

30 Albret of many Inheritance, that be intire, whereon, no blotts on can be made by metes and bounds, a woman cannot be entwined of the thing it falls, yet a woman shall be entwined thereof in a special and certain manner: As of a hill a woman shall not be entwined by metes and bounds, but in common with the heir; but either the may be entwined of the third tomb, or de indeparo molendino per quemlibet tertium merce: Am to an Alint either the third parts work, of every third week a money: A woman shall also be entwined of the third part of the profit of Stalage, of the third part of the profits of a Faire, of the third part of the profits of the Office of the Marchallike, of the keeping of a Park, of a Dove-house, of a Piscary, tertiam plicem, vel jactum recte ceterum: Of the third presentation of an Abbotton. A writ of Dower also led of tercia parte exitium provenientium de custodia Gaolhe Abraham Welin. And herewith agresty reverenc antiquity.

31 Regularly the fames ought to be entwined of an intire third part in severalty by metes and bounds; And yet if a man solely seized of lands in Fee, take a wise and enroute eight persons, and wise, a Wirt of Dower it is bought against those eight persons, and two confess the auctor, and the other he plead in barre, and return to sue; here, the Demandant shall have judgement to recover the third part of two parts of the lastin eight parts to be divided: And under the fine is found to the Demandant against the other he, the Demandant shall have judgement to recover against them the third part of six parts of the same land, in eight parts to be divided.

32 If a man of the age of 14 years marry his wifem in the age of ten, at her age of twelve he may as well allege, as he may, albeit he were of the age of content; because in the contents of matrimonie, either both must be bound, or equal cleation of obligation given to both; and to a convert, when the woman to of the age of content, and the man under.

33 Delivery of goods by the Bankrupt to a Creditor, after the Com- mision sealed, according to the Statutes of 13 Eliz. cap. 7. shall not be of force to avoid; p. 81; notaable distribution of the same goods together with all the rest unto the other Creditors, which are willing to submit to the wills of the Commissioners in that behalf, for the Statute saith, that the distribution shall be, to every one of the Creditors, sec. here and
rate like, according to the quantity of his or their debt: So that one shall not prevent the rest, but all may be in equal jure, according to that of Catu, Ids et enim leges cunctae jure regnum.

34. A man holds the Mannors of three several Lords by Knight Service, each Mannor of equal value; here, he cannot devise two of the Mannors, and leave the third to descend according to the generality of the words of the Statutes of the 32 and 34 H. 8. of Wills; for then he would prejudice the other two Lords; but by a favourable and equal construction of the said Statutes, he had power to devise only two parts of each Mannor; so that equality among them shall be observed.

35. The Lord of a Mannor shall not appoint it all, albeit he leave insufficient Common in the lands of other Lords, according to the Statue of Merton, cap. 4.

36. In Dover, if the heir be touched in three several Wardships within the same County; execution shall be had against one only; but all shall be equally charged, 19 Eliz. 39. there is the like case, Co. l, 3, 13. 3. Sir William Herbert's case.

37. Four men were bound in a Recognizance of debt to A. and after one of the Conunons dies, leaving his heir within age; the Conunon being a sure facias against the three Survivors to have execution, who plead, that the heir of the Conunon, who was dead, was within age, and in as much as during his minority, he could not be charged, and the Survivors bought not to be charged one only, they demand Judgement, 42. v. 2. And because A. could not gain that it; the Court awarded, that the Paroll should say; and this Judgement was afterwards confirmed in the Kings Bench by a verdict of Error.

38. If Judgment be given against two Distillers in an suit for the lands and damages and one of the Distillers dies, the execution shall not be awarded against the surviving Distiller; that was party to the wrong, but the heir as well as the Distiller shall be equally charged, 19. Eliz. 3, 9. execution 81.

39. Albeit at the Common Law no land was subject to an execution for the debt of a Common person, but only by force of certain Statutes made for that purpose; yet the Judges and Sages of the Law have always expounded general Statutes of that nature according to the Rule of the Common Law (which is always grounded upon the perfection of reason) and not according to any private man's judgment or opinion: And therefore in as much as the said Statutes have subjected a man's land to an execution for his debt, the Judges and Sages of the Law have considered the rule and reason of the Common Law in case of the heir of an Obligo; in which case the land was subject to an execution for debt by the Common Law and accordingly to adjudicate and resolve the cases, which arise upon the said Statutes.

40. If two men alien land with warranty, the land of the one shall not be only rendered in value; neither yet, if one of them die, the land of the Surviving shall be only rendered in value; but the charge shall be laid equally upon them: For a Joint bond that binds the land shall not survive, so is one upon the Surviving: as in case of a Joint warranty; where two of them and their heirs warrant the land to another and his heirs, the Surviving shall not be solely touched; neither yet may the Sheriffs settle the land to the one or the other at his pleasure; so in executions, which concern the reality, and charge the land, the Sheriffs cannot make execution of the land to one only; so also if two are bound to warranty, and both die, both the heirs
the Common Law.

hers ought to be vouched, and both of them ought to be equally charged.

41 William Barnerds and his wife being seized of the Hanno of Hinton in tail, being the wives jointure, and held in Capite; and W. B. being also seized of lands in Fobbing, both which amounted to the full third part of all his lands; and W. B. being likewise seized of the Hanno of Thoby (helden also in Capite) which amounted to two third parts, &c. W. B. devised to his wife the Hanno of Thoby, upon condition, that she should raise her former jointure, &c. W. B. dies, the wife in pais refuseth her former jointure: In this case, W. B. could not by the Statutes of Wills (32 & 34 H. 8.) devise the whole Hanno of Thoby; because the Hanno of H. and the lands in F. were not a third part of the clear yearly value of all his lands, as they ought to be according to the provision of the said Statutes; for that the clear title and present possession of the Hanno of H. was but in possibility, and depended merely upon the will and pleasure of the wife: and she could not by a bare refusal in pais refuse her title to the jointure: But in that case, W. B. had only power by those Statutes to devise two third parts of the Hanno of H. and also two third parts of the rest of his lands; to the end that the King might have an equal and proportionable third part appertained with like accidents and circumstances, that the other two thirds parts were, according to the true intent and meaning of the same Statutes.

42 If a Feme Tenant in taille accept a lease, que confiance de droit comme ceo, &c. and thereby both grant and render the land for 1000 years, pretending that this is not within the words of the Statute of 11 H. 7. cap. 26. which prohibits discontinuance, alienation, releases, &c. yet that alienation is within the intention of the same act, because within the same mischief, &c.

43 If a man make a feodament to the use of himselfe for his life, and after to the use of his wife for her life for the jointure of the wife, this estate in remainder is within the intent of the Statute of 27 H. 8. cap. 10. for albeit that Statute both expressly these forms, viz. 1 to the Baron and Feme, and to the heirs of the Baron; 2 to the Baron, and Feme; and to the heirs of their two bodies; 3 to the Baron and Feme, and to the heirs of the body of one of them; 4 to the Baron and Feme for their lives; 5 to the Baron and Feme for the life of the Feme; yet many other estates, not there particularly expressed, are within that act; for the said particular forms are but put there for examples, and not to exclude any other estate, which is to the like effect, and accords with the intent of the makers of the same act: So likewise an estate in fee simple conveyed to the Feme for her jointure, and in satisfaction of her Dower is a jointure within the equity of the said act; so that it is a competent reliance to the Feme of an estate of Franktenement, to take effect presently after the death of the Barou for all the life of the Feme and more: And so it is resolved in Sir Morrice Dennis case 8. Eliz. Dyer 248. And therefore the case of 6 E. 6. Dower Br. 69. (where it is said, that an estate in fee simple conveyed to the Feme for her jointure is not within the Stat. of 27 H. 8.) is misreported, and ought to be intended that such an estate is not within the Statute of 11 H. 7. cap. 20. which restrains the alienations of Femes, &c.

44 It is frequent in our books, that an Act made of later times shall be taken within the equity of an Act made long before: So the Statute of Malbridge, which was made Anno 52 H. 3. gives the word of the bec of the Tenant that holds by Knight Service, notwithstanding a lease.

A lease for part within de Summe of 11 H. 7. 20.

Cf. within the Stat. of 11 H. 7. 10, though not within the letter that art.
The Reason of the Stature made long before
of a Statute made by collation, at which time, and for 200 years after
and more, viz. until the Statute of 4 H. 7, cap. 17. (which gives the
words of the heir of Celluys queule) the heir of Celluys queule was not in
ward; And yet it is held in 37 H. 8. 9. If Celluys queule since the
Statute of 4 H. 7. make testament in fee by collation to be the
Lord of his lord, that is taken within the equity of the said Statute
of Malmbage: So also the Statute De donis conditionibus made 13 E.
1. as to the warranty of the Tenant in tail with heirs, is taken within
the equity of the Statute of Gloucester cap. 3. made 6 E. 1. as it is held
11 E. 2. tit. warranty Stath. & 38 E. 3. 27. For a Formacion in dender
was given in lieu of a Mordaceller: Likewise the Statute of Welfm.
cap. 26. made 13 E. 1. gives a Certificate, but it gives not after
motion; By Mordaceller assignment is taken by the equity of the Statute
of Magna Carta cap. 13. made 9 H. 3. as it is held 12 H. 4. 9. So the
Statute of 7 R. 2. cap. 19. gives an Auditor for rent in conhino Comitis,
and Readmission is also taken in case of rent by the equity of the
Statute of Merton cap. 3. made 20 H. 3. Vide 1 E. 2. 25. b. So in Dyer
1. Eliz. 289. Pl. 60. The Bishop of London being one of the High
Commissiones by force of the Statute of 1 Eliz. cap. 1. was translated
to the Arch Bishop of York, by his authority (notwithstanding
that preserement remains by force of the Statute of 1 E. 6. cap. 7.
So also, albeit lands were not devised till the 33 H. 8. yet if a man
devise lands to a woman for term of her life, to in tail, for her
joynure, and in satisfaction of her Dower, that is a joynure within
the Act of the 27 H. 8. For, as an estate for life made to a Feme for
her joynure before marriage, when the is not his wife, is within
the equity of that Act, So an estate for life devised to a Feme for her
life, which takes effect after his death when the marriage is dissolved, is
also within the equity of the same Act; because such an estate lands
well with the intent of the makers of the same Act of 27 H. 8. and likewise
with the nature of the joynure intended thereby. And therefore
if a man devise of certaine lands in his holden in Saccage, and of other
lands in tail holden in Capice, devise by his Will in waiting the third
part of all his lands to his wife to reconceme of her Dower, and dies, and
the wife enter into the third part of the lands holden in Fee Simple,
that shall be a barre of her Dower by force of the said Act of 27 H. 8. It
is otherwise, where a man deviseth lands to his wife for term of her
life, &c. generally; for that cannot be averred to be for her joynure,
&c. because a devise imports a commodification in itself, and unless it
be plainly expressed in the will what it is for, it shall be taken only as a
benevolence; neither yet can any averment be taken out of the Will,
unless it properly arise, may be collected out of the words contained in
the same Will, &c. Vide 51.

45 Albeit the Statute of 36 E. 3. cap. 13. gives traveres and Mon-
trance de droit from Lands selded into the Kings hands by oflices
returned onely into the Chancery; yet by equity of that Statute, if
the offices be returned into the Exchequer, and not into the Chancery
there also the Subject may put in his traverse, 02 Montrance de droit is as
appears by a presidet in Qu. Eliz. time, between the said Queen and
the said Collins and Howlehead.

46 Although the Stat of Welmy 2. cap. 18. which gives the Elig-
istrates onely the Sheriff to execute it; yet by equity of the same Stat.
the Sur tratant of the Place in London, 02 any other Immediate Officer to
any of the Kings Courts of record may execute the same Writ in their
several jurisdictions, &c.

47 Albeit by the Stat. of the 1 E. 6. cap. 14. only such estate (given
to superintitectuuses) as are to have continuance for ever, seem to be gi-
g by the Stat of Welfm, W. 3. 18.

48 The Statute of 5 E. 6. in Fulwoods cafe.

49 by the Stat of the 1 E. 6. cap. 14. only such estate (given
to superintitectuuses) as are to have continuance for ever, seem to be gi-
Equity of the Stat. of Welfm, W. 3. 18.
Equity of the Stat. of Welfm, W. 3. 18.
Equity of the Stat. of Welfm, W. 3. 18.
Equity of the Stat. of Welfm, W. 3. 18.
the Common Law.

ven to the King; yet other estates of issue continue, as estates in tail, for life, &c. implopes for such issues, are also given to the King, by the equity of the same Act: And the rather, because Onee major continuer in fe mines.

48 It a man be lessee in fee sole in talle of three acres, each acre of equal value, and lets, the heir enjoys the Feme of the third acre, and after the Feme is impaired by one that hath title paramount, and the bountzly the heir: Here the shall not recover in value according to her losse, but only the third part of two acres which remain; for by the Law she ought to have but the third part of that which her husband might keep and enjoy by good title, &c. Vide plus, ib.

49 The Commissioners of Dewers upon the Statutes of 6 H. 6. cap. 5. & 23 H. 8. cap. 5. are not only to charge those that have lands adjoining upon the Banks, Ditches, Cutters, &c., but likewise all others that are in any manner shall receive any profit by them, which is to be done in that particular: wherein the said Commissioners have authority to proceed according to their discretion; which nevertheless is to be limited and bounded with the rule of Law, and Reason: For discretion is a science to understand to discern between falsehood and truth, between wrong and right, between good and bad, substance, between equity and colourable glasses and pretences, and not to proceed according to a mans own will and private affections; because Tales ducres discretionem commundin, &c.

50 If the Commons of the Town of A. and of the Town of B. are adjacent, and that the one ought to have common with the other because of vicinalage, and in the Town of A. there are 50 acres of Common, and in the Town of B. 100 acres of Common; in this case, the Inhabitants of the Town of A. cannot put more Cattle in their Common of 50 acres, than that will few, without having any respect to the Common within the Town of B., nec est converso; for the original cause of this Common for cause of vicinalage was not for profit: but for the prevention of Suirt in a Champaign Country, by reason of the reciprocal escape of the one Town into the other: But therefore if the Common of the Town of A. will departe 50 Cattle, and that of the Town of B. 100 Cattle, it can be no prejudice to the one or to the other, if the Cattle of the one Town do reciprocally escape and departe out of the one Town into the other; for if all their Cattle departe punitively together, per am & perturam, that can be no prejudice to the one or to the other, &c.

51 It is a good exposition of a Statute to expound it according to the reason of the Common Law: For example, at the Common Law, if one has been slain in a Town in the day-time, viz. while there was yet full day-light, and the Man-slayer has escaped, the Town was therefore amerced, and so to be sobered in the 21 E. 3. Coro. 238. Dun quis felonice occultavit unum per die, nisi fuerit caput mortis, tota villa nulla oneretur. And that by this also agrees; 3 E. 3. Coro. 293. But if such a murderer or homicide has been committed in the night, the Town should not then have been amerced by the Common Law; because then no folkie could be imputed to the Inhabitants of the Town for letting him escape, &c. For the Scripture saith, The day is ordained for man to labour in, and the night to take his rest: And the Poet saith, Ug julgantes homines, surgunt de nocte lauriones: And from this resolution of the Common Law, the Statutes of Winchester 13 E. 1. and of 27 Eliz. cap. 13. are to be expounded; For, albeit no time be specified in those Statutes, when the robbery should be committed, for which damages are to be answered by the Hanover; yet it is enjoined in 29 Eliz. in the case between Milborne, and the Hamstead of Dunmow in Essex, that for a Robbery done before day, the Ham-
used shall not answer; but only for that, which is committed in the day

time between light and night. And therefore at the Common Law (as

is aforesaid) the Inhabitants in great Cities were not to be a mericled,

albeit the Man-haier escaped, when the Murther or Homicide was committed in the night; Yet at this day, by the later Stat.

ute of Winchester, by which it is enacted, that in Cities, and great

ovons that are enclosed, the gates shall be shut at Sunne-set, until

Sun-rising next morning. Now the Inhabitants of such Cities and

ovons are amerciable: if such Man-haier escape, although the Mur-

ter or Homicide happen to be committed in the night, as well as if it

were committed in the day; For now that as hath changed the ration

of the Law, and therefore the Law it selfe is also changed: Ratio of a-

nima legis, & mutœ legis ratione, mutœ & lex: For at the Common

Laws before the Statute, if a man were slain in the night (as is said before)

there was no fault to be imputed to the Citizen or Town; but now

it they do not keep their gates that according to the Statute, by reason

whereof the man-slayer escapes, then is the fault and negligence in them;

and this agrees with the book in 3 E. 3. Co. 399. which also in Co.

pro is in margin. Vide 149. 35.

52. Immanently the King is bound by the Stat. De donis condition-

libus, as it is assurged in the 1700 Barley's case, in Pl. Co. 240. by

which Act the King is restrained from alienation (by it is produced by

the same Act, Quod finis plo juste sit nullus) Reaton requires, that

the King shall take benefit of the Acts of 4 H. 7. and 32 H. 8. which enable

the Common in tall to burn his houses; For it is agreed in all our Books,

that the King shall take benefit of any Act, although he be not named

12 H. 7. 21. 32 H. 8. Pl. Co. E. h. 1) And it would be hard, if the

King being alone in intitule a gift made to the Subject, should be in double

condition then if he were not King.

53. The Kings Caresit by height-service conveys half his land to

the forehead of his viles that shall be; and after marriage he bequeath-

the other half for years to the payment of his debts, and legacies, and

unto 1.000 l. to his younger Children: In this case it was resolved,

that a man as the advancement of his wife he is in bond within the Sta-

tute of 27 H. 8. as the payment of his debts, and the preferment of his

Children; and for the operation of that Statute such principally take effect by the word that the Kings Carereit: For that cause, albeit the

estate of the Femne hath the precedence; yet the Kings third part shall be taken equally out of both those halfs, and not out of the half to

be darded only. And so it was also resolved 7 M. 41 \& 42 Eliz. between

Remington and Savage, and the 23 Eliz. 4s. Thaynes case. And agrees also with

the common experience of the Court of Wards. 32

54. In a Wilt of Mene, the Parol shall not alwey be the parage of the

Plantif; for it is not reason, that the Infant shall be disstraim for the

services of the Meine, during his Manshe (which indeed he cannot ac-

vey) and shall not have remedy till his full age; but that it selfe as his

manage shall not prejudice him from the payment of the rent during his

manage, the Law also in that case, gave remedy to him during his man-


56 R.
56 If a man be bound in a Statute Merchant, and after makes a feoffment of parcel of his lands to one man, and of another parcel of his lands to another man, and the Recognizance made execution upon the Statute, and hath execution against one of the Feoffees; Here, that Feoffor shall have an Audit quereela against the other Feoffee, to help cause why the Recognizance shall not have execution against the lands of that other Feoffee, as well as against the lands which he hath, &c.

57 The Statute Merchant (made 13 E. 1.) binds all the lands of the Condict to the execution, and provides, that they shall be delivered to the Condict upon reasonable extent; but speaks not a word, that they shall be delivered to the Extenders, in case they extend them too high; yet they shall be delivered to the extendors by the equity of the Statute of Acton Burnel made before (viz. Anno 11 E. 1.) which saith, that the goods paid too high shall be delivered to the Payyers themselves at the rate they let them, &c. (Vide 44.) And yet the Statute is a penal law.

58 If a man bring an action of Debt upon an Obligation, and he is barred by judgment, so long as that judgement flows in force, he cannot have a new action; pari ratione, when he hath judgment in an action upon the same Obligation, so long as that judgment remains in force, he shall not have a new action.

59 If the lines of Copsholders of a Parran be uncertain, the Lord cannot remain 03 years execut. 03 unreasonable lines: but if he do, C Copsholder may refuse to pay the line, and the reasonableness thereof shall be determined by the Judges, &c. Quam rationabilis debet esse finis non definitur, sed omnibus circumstantiis inpectibus ex justicia omnium discernitio; And so it was adjugé in C. B. between Stallon and Brady, P. 9. Jac. R. S. 1843. Vide Co. 1. 4. 47. b.

60 An avowal descents to two Copsholders, one of them being within age, and in ward, the Guardian marries with the elder, the Church is void, the Guardian presents in the name of both the others, and the Church is void again when the younger other comes to full age; In this case, it seems the elder shall have the Presentation, if the younger other will not join with her, for this shall be into the commencement of the Lurn, because the pessentment was before in both their names: Quare tamen, because it may be imputed to the folly of the Baron, who would not present in his and his wifes name, when he had full power to do so, according to Max. 117.

61 If a Jury eat or drink before their agreement at their own costs, that offence is blemish, but if it be at the costs of either party, it is cause of Error in the judgement that passeth upon such a verdict, because it implies attention and suspicion.

62 Vide Max. 178. 22.

63 If a Parton of a Church and A. be Tenants in Common of a Wood, and A. endeavour to make Wilke, the Parton for the preservation of the timber trusses shall have a prohibition against him, that he shall not make wilke, and the reason thereof is said to be, for that if the Parton of a Church will waste the inheritance of his Church to his private use in selling the trusses, the Parton may have a prohibition against him: for the Parton is built as in right of his Church, and the Glebe is the Dower of his Church (for thereof it is said to be endowed, and to lay many ancient records) and therefore not as a prohibition itself against him, reason requires that he shall have like remedy against him, who holds with him in common. See Marmite ubi supra, a notable case, wherein the Bishop of Dunferm is inhibited to commit Wilke in the Woods belonging to his Bishoprick, at a Parliament held at Carlisle in the 35 E. 1 by the ordinary remedy at the Common Law by prohibition out of the Chancery, &c. Vide F. N. B. 49. 3. 49 a

Co. lib. 6. 46. a. 3. in Higgins' case.

Co. 1. 11. 44. a. 4. in Richard Godfrey's case.

Dyer 55. 1. 34. 35 H. 8.

Dyer 55. 10. 34 & 35 H. 2.

Co. 1. 1. 49. a. 2. in Richard Lefards' case.

F. N. B. 103. B. Pl. Co. 5. Roff, cafe. & Co. 1. 11. b. 4. Sir will, Herbert's case.
11n. 7.1l.b. 64 Ä MSN bind« htlmlelk eNd hts hetrsin SN obltggttonhsbing heirs I.,nä5ccz^  

64 A man binds himselfe and his heirs in an obligation having heirs and leaving lands both of the part of the father and of the mother; In this case, both the heirs shall be proportionably charged. Co l. 2. 25. b.  
4. In the case of Bankrupts.

Dyer 186.87.  
2. Eliz.

65 The Statute of 3 M. 7. ordaines, that all Fines, whereupon proclamations are not duly made, by reason of the adjournment of any term by Writ, shall be as good, as if that term had been holden from the beginning to the end, and proclamations therein made according to the Statute of 4 H. 7. 24. The said Statute of 14. speaks of the adjournment of the whole term, yet if part of the term be onlyy adjourned, that is to be taken within the equity of the same Statute, as it hapned in 3 Eliz. when in Tr. T. there were but two vapes dies juridici.

Dyer 230. 56.  
6 Eliz.

66 A Servant makes a bill, testifying the buying of ware to the use of his Master, and this without seal, in which he binds himselfe to pay the debt; In this case, debt iseth not against the Servant, but action upon the case; for it is the debt of the Master, and the Allegience of the Servant, Allords case.

Hob. 91. the  
L w. Howards  
cafe. 14 Jac.

67 In the Starre-Chamber in a cause between the Lord William How ard Plaintiff, and Bell and others Defendants, It was holde by Coke ans Hobert, that the Tenants of a Pannoz claiming Tenant right (which the Plaintiff being Lord of the Pannoz supposed to be bothe in Law) might all joyn together in a peaceable manner, to defend the cause, being common to them all; and therefore, though some particular persons were fixed, yet the rest might defend the suit upon their common charge: And the reason was, for that, the title being one against all, There was in effect but one sentence, and one Defendant, for the trial of one mans case tried all; And therefore the Courts of Justice as every day deny them to be witnessles one for another in such general cases, as in cases of Common; Modus demanandi, and the like, wherein also it is many times ordered for avoiding of multiplicity of suits, that a trial be had in one mans case for all; Now therefore as they are acknowledged parties to their prejudice in detention, to likewise reason requires, that they should be in like manner allowed to be parties for their advantage: And so it was laid, it had been ruled in that Court before in the cause of the Lord Grey of Groby; yet the Lord Chantellos seemed to be of a contrary mind, and cited a Presidient to that purpose in 3 Eliz.

Hob. 110.  

68 The Law doth not allow any man to strike in private revenge of ill words, And the reason of the wisdom of the Law in that case, is because there is no proportion between words and blowses; but he that is strucken may strike again, per Hobert in the Lord Darces case of the Nothy,against Gervase Markham.

53. In quo quis delinquit, in eo de jure, est puniendus.  

Co.Inf..part 1.  
233. b. 2.

1 If a Keeper of a Parke kill any Dér without warrant, or kill or cut any Trees, Woods, or Underwoods, and convert them to his own use, it is a forfeiture of his office; for the destruction of vert is, by a mean, destruction of venison; So it is also if he put down a lodge, or any house within the Parke, wherein hay is used to be put for feeding of the Dér or the like, it is a forfeiture of his Office; for, in quo quis delinquit, in eo de jure est puniendus.

Co.l.3. 11. b. 4.  
Sir william Herberts cafe.

2 At the Common Lado, If a common person has taken a Recogniz ance, or Judgment for debt or damages, he could not have had the body or lands of the Defendant in execution; but in such case should have had execution only of his goods and Chattels, of grains, of some Goods liable for debt rec veved, and a person for Trespass.
some other present profit, which grew upon the land; for which purpose the Common Law gave the Sheriff power, either by a Levari facias, to seize them upon his Lands and Chattels; or by a Fieri facias, upon his Goods and Chattels: for, in as much as he failed to satisfy the debt and damages by his Goods and Chattels, or by fines and profits of his land, reasons required, that they only should be taken in execution, and not his body or land: On the other side, if a man commit any force; for as much as his body is a chief agent wherein, the Common Law doth then subject his body to imprisonment, which is the highest execution, whereby he loseth his liberty, until he hath both satisfied the party, and made fine to the King; and therefore it is a rule in Law, that in all actions quare viarmis, a Capias lieth, and where a Capias lieth in process, there (after judgment) a Capias as satisfactory; and there also the King shall have a Capias pro finis, and with this agrees H. 6. 9. 35 H. 6. 8. 22 E. 4. 2. 40 E. 3. 2. 49 H. 3. 2. and many other books; Most oft by the Statutes of Marlbridge cap. 13. and Wiltm. 2. cap. 11. a Capias was given in account (in the Common Law the process in account was distress for infinite) and after by the Statute of 25 El. cap. 17. Such process was given in debt, as in account, &c. And as concerning the other abovediscribed Writs of execution, viz. a Levari facias, and a Fieri facias, they ought to be laid within the year after the judgment; 21. the Recognizance acknowledged, otherwise at the Common Law the Plaintiff, or Cautor was denied to his will of debt: Most oft by the nature of Wiltm. 2. cap. 15. a Seire facias is given, and by the nature of Wiltm. 2. cap. 18. Cum subito fuerit recusatum, &c. the Estate is given for a moiety of the land, &c. which was the 1st Act, that subjected land to the execution of a Judgment of a Recognizance, which is in the nature of a Judgment (F. N. B. 265. 6.) And by the Statute of 13 El. 1. De maximis donis, 27 El. 3. cap. 9. &c. 8 El. 3. cap. 8. upon a Statute Merchant, or Staple, all the lands which the Commiss hath at the time of the Commiss, shall be extended, in whole hands, lower they afterwards come, &c. Most oft in debt against the heir upon an obligation made by the Ancestor, the Plaintiff by the Common Law hath all the land, which descendes unto him, in execution against him; and yet he shall not by the execution of any part thereof against the father himself; but the reason hereof is, because otherwise the Plaintiff would be without remedy; for the Common Law gives an action of debt against the heir, and then if he might not have execution of the land against the heir, he would reap no fruit by his action; because the Chattels of the debtor belong to the Executors of Administrators, &c.

3 The Statute of 3 El. 1. (called the Statute Merchant) binds all the lands of the Commiss to the execution, and provides, that they shall be delivered to the Commiss upon reasonable reasont, and speaketh not a word of the delivering them to the extensor, in case they extend them too high; yet they shall be delivered to the extensor, in that case, by the equity of the Statute of Aston Burrell made before (viz. anno 11 El. 1.) which saith, that the goods passed too high shall be delivered to the Strengths themselves at the rate they lent them; for reason requires, that they should be punished by the same means, that they intended to punish others. Vide Max. 57. 44. and 57. 4 Quam autem figerat Adonibezek, perfecuti sunt eum (Israelita) & L.Jud. cap. 7. prehendentes eum, amputavit pollices manuum ejus, & pedum ejus, tom ver. 6. 7. dixit Adonibezek ipse ingentia regis, pollicibus manum humi, & pedum humi, amputaverunt; collocabant substantia seca: quamadmodum socii, sic rependit mihi deus, &c. 59 Omne.
59 Omne majus continet in se minus.

1 Although by the Statute of 13 El. cap. 10, Ecclesiastical persons are in express terms restrained from making any estates of the land, which they hold in right of their Bishops, Colleges, Churches, &c., other than for one and twenty years, and three lives from the making of them, yet may they make Leases for lesser terms or fewer lives, &c. 25.

2 In the King's case this word Comittee both amount sometimes to a grant, as when he layeth, Comitissimus de W, de B, officium Senechallic, &c, quam diuinobis placet, and by that word also he may make a Lease, and therefore a tortori a common person may do the same.

3 A custom of a Manor, time out of mind used, was to grant certain lands, parcel of the said Manor, in Feoffment, and never any grant was made to any and the heirs of his body, for life, for 23 years: And the Lords of the said Manor did grant to one by Feoffment for life, the remainder over to another, and the heirs of his body: And it was adjudged, that the grant and remainder over was good; for the Lord having authority by Custome, and an interest withal, might grant any lesser estate; because in this case the Custome, that enabled him to the greater enabled him to the lesser, Omne majus continet, &c. It is otherwise where one hath but a bare authority, &c. 27.

4 Fealty is a part of Homage, and incident unto it; because all the words of Fealty are comprehended within Homage.

5 A man before the Statute of Qua emporos terrarum might have made a feoffment in fee, and added further, that if he or his heirs an alien without licence, that he should pay a fine, at that time this was a very good; so likewise it is said, that then the Lord might have restrained the alienation of his Tenant by Condition; because the Lord had then a possibility of revets; And therefore it is so still at this day in the King's case; because he may reserve a tenure to himself, &c.

6 When a man makes a feoffment of lands lying in several towns within the same County, Liberty of Seisin given of the land lying in one of those towns in name of all the rest, lying in the other towns, will pass the estate of all to the Feoffee; And therefore a tortori it seems good reason, when a man hath title of entry into lands or tenements lying in divers towns within the same County before any entry by him made, that by entry into parcel thereof in the name of all, the title of all is vested in him, as well as if he had actually entered into every parcel: For, if it be so in a feoffment parting a new right, much more is it for the restitution of an ancient right, as the woodier and more respected in Law, &c.

7 If a man in prison shall not be bound by a recovery upon default for want of answer in a Court of Record in a real action, which is matter of Record; A morto fortiore a deponent in pais, which is a matter of Deed, shall not for want of claim bind him that is in prison, &c.

8 As the argument a minore ad majus both ever held affirmatively, so the argument a majore ad minus, both ever held negatively, and the reason hereof is this, Quod in minori valent, valebit in majori; & quod in majori non valent, nec valebit in minori.

9 At the Common Law before the Statute of Non-claim (Anno 34 E. 3, cap. 16.) and in the Stat. of 4 H. 7, cap. 24. If a man that had title of entry into lands, had not kept his claim within a year and a day, after a fine levied of the same land, he had lost the land for ever; Potest in that case, if he that had such right were out of the Realm at the time

Grants of ecclesiastical persons.

Commission imports a Lease.

Copihall's granter's fee may be granted for lesser terms.

Refraction at a lie good.

Claim in pais good for all the same County.

A prisoner in bound for a default.

Major & minor: Negative Affirmative.

One out of the Realm not barred by a deponent.
time of the fine lessee, his title had been thereby saved: And if against
a fine which is a matter of record; the title of a stranger shall be in that
case saved, much more against a descent, which is a matter in fact, shall
the entry of him that is out of the Realm at the time of the descent cast,
c. he preferred; so that he may well enter at his return, notwithstanding
such descent, c.

10. If the Plaintiff after judgment releases all demands, the execu-
tion is discharged: Also by a release of all demands all actions real, perso-
nal, and mixt, are discharged. Likewise appeals, title or right of entry,
rents, service, rent-charge, rent-lease, common of pasture, &c. a war-
tanty, which is a Covenant real and all other Covenants real a personal,
Graves, all manner of Commons, and profits apprendre, Conditions
before they be broken or performed, and also after: Annuities, Recogni-
tances, Statutes Merchant, and of the Staple, Obligations, Con-
tracts, &c. All these and divers others by the word Demands, are re-
leased and discharged; because that word, being of so large an extent, con-
tains them all, &c.

No difficulty in
us without
untenance.

Accrued
right.

Masquito,
Annu.

Recovery.

Codicil.

Copshid.

The custom is, that a man shall not devise his lands for a
higher estate than for terms of life; yet if a devise be made in life,
the devisee claim but for life, the devise is good. Finch 21.

19. By the Statute of 32 H. 8. cap. 1. that granted power to devise two
parts of what lands, a devise of the whole had been good for two parts, al-
though the Stat. of Explanations (34 & 35 H. 8. cap. 5.) had not been
made. Finch 21.

20. An estate of Feoffment conveyed to the Feme for her jointure,
and in satisfaction of her Dower is a jointure within the equity of 27
H. 8. For if an estate for life be a competent livelihood for her, much
more an estate in Feoffment, c. Sir Morrice Denus cafe. Dyer 8 El.

248.

21. Where the custom of a Copshold (Sann) is to grant Copshold
lands to one, two, or three lives; there grant to a Feme Durante vi-
durate is good; so that is a lease estate, and therefore included in the
other, &c. Downes cafe.

22. This word (Attaint of murder) in the Statute of 3 H. 7. cap. 1.
shall not be meant only of a person that had judgement of life, but also
extends to a person convicted by confession or verdict; so, a person at-
taint is a person convicted and more. 36.

F 1

23. Albett
The Reason of the

208

23. Albeit by the opposite words at 1 E. 6. cap. 34. Cities in His
simple (given to superstitious uses) seem only to be given to the King,
for the words are, To the finding of a Priest to have continuance for ever.

24. Also the proviso of 1 Eliz, cap. 2. the Ecclesiastical jurisdiction
of Arch-Bishops, Bishops, and other inferior Officers is taken so that
they may not punish by deposition and other Ecclesiastical censures,
all such as shall deprave the book of Common Prayer, notwithstanding
by the same Act there is other proviso made for the punishment of such
offenders before temporal Magistrates; much more that high Commit-
mee (authorised by another Statute of the same year, cap. 1.) have
down to inflict the punishment of the like offence: albeit in the said Act
of 1 Eliz, cap. 2. there be no such proviso made for them, as for Bish-
ops, &c. Because, Quislicer, quod majus est, non debet, quod minus est, non
lícere.

25. The words of the Statute of 1 Eliz, concerning leases to be
made by Bishops, &c. are these: other then for the term of 21 years, or
three lives (without leasing, or under) and yet a lease for a lesser term is
good: There is also the same exposition of the Stat. of the 13 Eliz. cap.
whereas the words (as to that point) are the same, 1.

26. In Prince's case, in the 5 Rep. it was said, that it was adjudged in
a case between Vere and Jefrees in tempore Reg, Eliz. that where one
had goods only in an inferior Diocese, yet the Metropolitan of the
same Province pretended that he had bona Notabilia in others. Dio-
ceses, committed the administration of such goods, this administration
might not be void; but only revocable by sentence; because the Metropol-
itan's jurisdiction over all the Dioceses within his Province; but it as Qua-
nary of a Diocese commit the administration of the goods, when the
party hath bona Notabilia in others Dioceses, such administration is
merely void, as well to the goods within his own Diocese, &c. as else-
where: because he can by no means have jurisdiction of the cause.

27. A man assigns a debt unto Queen Eliz, by his enrolment in satis-
faction of a debt due to her from him, as Collector of the Fifteene, with
proviso, that if the Lord Treasurer, and the Barons of the Exchequer, or
any two of them, for some reasonable cause might allow to revoke the
same, then it should be void: In this case revocation by three of the
Barons shall be sufficient; for if three both it, two both at least one.

28. If a man tender more money than he ought to pay, that is good
enough; for Omne majus continit in se minus, and the other ought to re-
ceive to much thereof, as is due unto him: Quanto plus est, quae sierit
debit, vide tur etiam illud sierit, quod faciendum est: Et in majore summa
continetur minor.

29. In the general person of the 38 of Eliz. Burglary was excepted;
and thereupon the Judges were then moved, whether the attainer of
Burglary was thereby also excepted; And it was resolved that it was;
For if Burglary it fell was excepted, while it was yet doubtful, whe-
ther it would be found Burglary, or no, and before it did appear to the
eye of the Law to be so, a fortiori when Burglary appears upon record
by judgement of 1249, it shall be excepted.

30. By the grant of the Pannoz, without this word, of the reversions
the reversions shall pass, albeit at that time the Grantor had not the
Pannoz in possession, but in reversion; for this word Grantor includes
all estates, and degrees of estates, of or in the Pannoz: As if A. gives
the Pannoz of B. to B. in tail, and after the Donor is attainted of trea-
son, where the King is seized of the reversion, and after by his let-
ters patents grants Manerium de D. to another and his heirs: In this case
albeit

Leaves by the
Clergy.

Administra-
tion of land
Notabilia.

Three in-
cludes two.

Tender of a
greater sum.

Attainer of
Burglary, P
doned.

By the
writ
Mannor in
version per
session.
That the King grants the pardon of. is in question, yet the rebellion
shall take place; for the King has an estate (viz. the rebellion in line) grant-
able in him, the estate taken of the common person need not be rectific-
ated.
12 If the King be Tenant pur ater vis, and makes a lease for forty
years; here, albeit the King (having but an estate pur ater vis) cannot
absolutely contrac for a lease of forty years; yet without any recital of
mention of the estate for life, the lease is good; for the lease for years is
in judgment of Law, less than a lease pur ater vis, and the King both no-
thing or prejudice to any by such a demise, neither put he receives in his
grant; because, in judgment of Law, that is a lease for forty years.

32 If it be an litigation upon an offence committed out of a Court
which found by the Jury (whereof the Jury only have conscience and
for which they only are to impose the amercement) the Lord of the
Lady hath power to abtain, etc. Such modes for a fine imposed by the
Steward in Court for some contempt, etc. committed in the Court
half (and whereof the Steward only hath conscience) shall the Lord ad,
with the goods of the party offending, and impound them, etc. if he
make false thereof at his election, etc.

33 A man upon a grant reserve unto himself's power to make leas-
es, so that they shall not exceed 21 years, or thire lives; in that case,
he may make leases of 99 years, if any thereof shall to long life; because
such a lease exceeds not three lives, but in truth these for years, which is but a
Chastel, is lease in estimation of Law, than an
estate for life, which is a Frankteremement.

44 When an Officer hath power to make Alliances, he hath power,
implicite, to make Deputies: For, Cui licet, quod majus est, non debet,
non minuet, non licet. And therefore when an office of Steward
and the like, is granted to one and his heirs, he may thereby make
an Alliances, and (by consequent) also a Deputy, etc.

35 In Macallum case in the 9 Rep. exception was taken to the
Indictment, viz. that the precept was to arrest the Defendant, sin inventus
foro infra liberates Civitas praeedita (viz. London) And the Indictment
began, that in parochia Sancti Martini Bowyer Rowe in Warda de
Farrington in Londini praeedita, the Sergeant arrested him, and to he puis-
bis not the precept: for the precept was infra liberates London: But
notwithstanding that exception the Indictment was resolved to be good;
because the said Parish and Ward in London shall be intended to be
within the liberties of London: For these words, liberties of London have
a larger extent than the word London, and do include in them the City of
London itself, etc.

36 The Justices of the K. Bench are taken to be within the words of a
Cat. of 2 E. 6. cap. 14; which ordains, that for the appeal of accuracies in anoth-
er County, than where the accuracies were to be tried, etc. for that the
Justices of the K. Bench are the sovereign Justices of appeal delivery,
a of Oyer and Terminer; before whom the accuracies is to be tried, etc.,
for that the Justices of the K. Bench are the sovereign Justices of appeal delivery,
9 of Oyer & Terminer; and therefore they are included within the
same words; and upon the same grounds it holds, but in 7 E. 4. & 8. & 4 H. 7.
18. that if an indictment of forcible entry be removed into the Kings Bench,
the Justices of that Bench shall have a warri restitution, and set the law, of
2 H. 6. cap. 9, by asks only of Justices of Peace; but the reason is,
because the Justices of the Kings Bench have sovereign and supreme authority
in such cases; and therefore in the Lords Sancbiers case in the 9 Rep.
the Justices of the Kings Bench wrote (according to the said Act of 2 E.
6.) to the Justices of Oyer delivery in London, before whom the
Principal was tried, etc. who thereupon certified the record accordingly, etc.
61 A matter of higher nature determineth a matter of lower
nature, &c.

Co. laug. p. 1. 8. 4.

1. A Tenant by Castle-guard doth the King in his nature, be
shall be discharge against the Law, according to the quantity of the
time that he was in the King's hold.

Co. 8. 115. 2. 3.

2. If there be any sufficient proof of record or writing against a pre-
scription, albeit such a record or writing exceed the memory; or proper
knowledge of any man, yet are therein memory of man, and shall
qualify the prescription; for a matter in writing determineth a matter
in his; and a record or sufficient matter in writing are good memo-
risk; and therefore, if this, lies, and writing, and when the hold by
any record or writing contain the memory of any thing to posteriorly, the
plaints are, clearer moments, &c.

31 H. 7.

3. A man hath liberties by prescription, and after took a grant of
those liberties by Letters Patent from the King; this doth not prevent
the prescription; for a matter in writing determineth a matter to
Finc or, Co. 1. 6. 4. a. 4. Higgins's case Vide lb. par. auth.

31 H. 7.

4. A man's offence, which is murder at the Common Law, be upon
reason, no appeal shall be of it; because the offence of murder is a vui-
vous, and it is punishable as treasonable, whereas an appeal is held, &c.
Finc or.

Co. 41 I. 4.

5. A, the Tenant for life, the remainder of reversion to B, for life,
in that case A may surrender to B. For the estate of B, for term of his
poise life is higher than an estate for another man's life: and therefore if
Tenant for life entail him in the manner for life, this is a surrender
and no statutes. And generally, from this ground it is, that estates of
lower estates are disposed in states of higher nature, when they meet
in one and the same person: Hereupon also, as well extinguishing
between A and Tenant for
life may not render to the
reversioner; &c.

Co. 41 I. 4.

6. A man being a master of Debt by bill in London, or Norwich, or
an any other inferior Court, and afterward, at debt of Debt to the
Common Pleas that shall in the higher Court, which is purchased
being the debt in an inferior Court, shall not abate, as appears in 7 H. 4
8. & 3 H. 6. 15. Vide 48 Hil. 3. 42. & 57 Hil. 4. 44. Bringhamshams cafe.

Co. 6. 45. 2. 1.

7. After judgement upon a judgment for Debt, so long as that judge-
ment remaineth in force, the Plaintiff cannot have a new action upon that
obligation: for, as when a man hath a debt by simple contract, if he
take his obligation for the same debt, or for part thereof, that taking
the obligation determining the former contract (3 H. 4. 17. 11 H. 4. 9.
E. 3. 50. 51.) So when a man hath a debt upon an obligation, and by
the ordinary course of Law hath judgment thereupon, the contract by
specialty, which is of a lower nature, is by the judgment of the Law
changed into a matter of record, which is of a higher nature. Vide
56. 4.

Co. 1. 8. 47. 4.

8. If a man hath an annuity by means of prescription, and being a host
of Innuity, and had judgement: so long as this judgement remaineth
in force, he shall never have a host of annuity more, albeit the annuity
by of inheritance; but shall in that case have a soible facias upon that
judgment; because the matter of specialty or prescription is altered by
the judgment into a thing of an higher nature. Vide 37. H. 6. 29. Jus-
gment, in an action of forcing a false debt is a good faces in another action
upon the same forger. But if recovery be in debt upon an obligation: per
ficturies; there notwithstanding such judgment, the Plaintiff may
have an action of debt upon the same obligation in a Court of Record;
For the County Court being not a Court of Record, the obligation is not

A record, writing qu with a lieck

The like.

Suete in a lowr Court abares not a
in an higher.
not by a judgment in that Court changed into any other thing of an
higher nature; but for long as such judgment remains in force, the
Plaintiff shall not have any other action upon the same obligation by Ju-
rites in the same Court; Yetwell if a man be invested upon an ob-
ligation, and afterwards acknowledges a Statute Staple for the same debt,
and inclines satisfaction of the said obligation, in such case the Creditors
may use which of them be pleast then of a Statute Staple or obligation
in nature thereof, is but an obligation received; and an obligation, be
it of record, or not of record, cannot raise another: Also a bare ob-
ligation and an obligation in nature of a Statute Staple, are two ult-
imate bases made by assent of the parties without process of Law
whereof the one hath no dependance upon the other; but in an action
brought upon an obligation, the last is grounded upon the obligation,
as the issue upon a formation, and the Plaintiff hath judgment to
recover the debt due by the same obligation; so that by a judicious proceed-
ing and an in Law, the debt due by the obligation is transferred
and metamorphosed into a matter of record; Now a judgment in a
Court of Record is a higher matter, than a Statute Staple; Statute
opercant; or any recognition acknowledged by assent of parties, with-
out judicial proceeding.

9. In the Lord Sanciers case in the 9 Rep. it was moved, whether the
said Lord Sanciers might not, in the Term-time, be invoced, straitly;
and consulted at Bow-gate before Commissioners of Oyer and Terminers,
for the County of Middlesex; and it was resolved that he could not; For
the King's Bench is more than an Eire, and therefore in the Term-time
no Commissioners of Oyer and Terminers, or of Gaoler justices, by the
Common Law, may sit in the same County; where the King's Bench
lifs; because in presentia majoris, cells, poenas minorum: And with
this accord the 37 Assizes, Pl. 1: But Carlisle and Inwent, the two Con-
venones of the Lord Sanciers, were attainted and attainted in London,
where the matter was committed, before Judges of Oyer and Terminers;
in the Term-time; because it was in another Country, than where
the King's Bench lats.

10. At the Common Law the Court of Marshalleys had jurisdiction
of pleas of the Crown, and had a general authority in effect, as Ju-
rides at Eire bar; for they were in part the Viceroys of the Chief Ju-
stice of England within the Wrege: Yetwell after that by the Statute
of 2 Eliz. 1. cap. 5, the Judges of the King's Bench were enjoyned to fol-
low the Court; the general authority of that Court as to those purposes
vanished: because they being only the Viceroys of the Chief Justice,
in his presence their authority ought to cease; 616. in presentia majoris, cel-
les poenas minorum. 5t.

11. Sir Thomas Wyat being seised of others, warranted in tale, the
remainder in H. 5. in fee in the beginning of Queen Marie reign; is ex-
torted, whereby they exalted to the Queen. In this case, the
estate was utterly expired, and the Queen is in of her ancient Fe-
ample exeret. 52. the cannot be of the Ex-Simple determinable up-
on the entail, because then should be two Ex-Simples in the game:
which is absurd: And therefore rather than to, the entail that he em-
erged in the Queen's ancient Ex-Simple.

12. Sir Grigent is seised by the roll of Deane Mich, but the titles of
Grigent was returnable Menses, and the Defendant was out-laid be-
C. 16. O Suis and Mens, and this was adjudged error; because the roll
was of more cross than the suit, and determineth it.
62. The more worthy thing draweth unto it things of lesser worthinesse.

The body

more wo
than land

The body of a man is more worthy than land, therefore land shall follow the nature of the person, as a Willett make free land to be Willett-land; but Willett-land shall not make a free man to be a Willett. So like wise the Kings land, which he hath in his natural capacity, shall be vended according to the privileges and prerogatives of his body royal: As if the King had issue of a sonne and a daughter by one Venter, and a son by another Venter, and purchased lands and deth; and the eldest son enters and dies without issue, the daughter shall not inherit those lands, nor any other Fee-simple lands of the Crown; but the younger brother shall have them: Where note, that neither postitoe fratris, nor a brother shall hold of lands, which are the possessions belonging to the Crown; neither part both hold of lands, which make any impediment to the descent of lands of the Crown; as it fell out in experience after the decease of Edward and Queen Mary, and after the decease of Queen Mary no other son of the King purchased such lands, and from thence by the descend of the Crown, a man, that is King by descent on the part of his mother, purchased lands to him and his heirs, and dies without issue, this land shall descend to the heir of the part of the mother; whereas, in the case of a subject, the heir of the part of the father shall have them: So King Henry the eighth purchased lands to him and his heirs, having three daughters, Queen Mary, and Queen Elizabeth, and after the decease of the eldest daughter Queen Mary did inherit only all the lands in Fee-simple: But the eldest daughter of a King shall inherit all his Fee-simple lands: So it is also if the King purchased lands of the Household of Gavelkind; and the King had issue of divers sons, the eldest son shall only inherit those lands: And the reason of all these cases is (as above is said) for that the quality of the person both in these and many other like cases alter the descent, so as all the lands and possessions, whereof the King is lessee in jure Coronae, shall descend in jure Coronae; And thereto whatsoever the Crown descends, those lands and possessions shall descend also: For the Crown and the lands, whereof the King is lessee in jure Coronae, are Concomitants: And the lands and possessions belonging to the Crown do follow in jure Coronae, and so the King as minor has the whole body of the King both meet with the natural capacity in one person: The whole body shall have the quality of the Royal politique, which is the greater and more worthy: For Omne manus tali ad quod minus est: And therefore, in judgement of lands, the King, as King, cannot be said to be a Minor; because in the Royal politique there can be no minority. So likewise if the right heir of the Crown be attainted of Creation, yet shall the Crown descend to him, and (so infantile) without any other reversal, the attaint is utterly evaded, as it fell out in the case of L. 7, 46.

Co. ib. 43. a. 4. The King as minor.

2. When the Royal body politique of the King both meet with the natural capacity in one person, the whole body shall have the quality of the Royal politique, which is the greater and more worthy: For Omne manus tali ad quod minus est: And therefore, in judgement of lands, the King, as King, cannot be said to be a Minor; because in the Royal politique there can be no minority. So likewise if the right heir of the Crown be attainted of Creation, yet shall the Crown descend to him, and (so infantile) without any other reversal, the attaint is utterly evaded, as it fell out in the case of L. 7, 46.

Co. ib. 47. b. 3. 5. 6. 7. If a man be dower of a Rem-charte, Rem-heck, Common of

Things in picture, 02 such inheritance which do not lie in tenure, and deth; his heir being within the age of 24 pints; In this case, the heir may exorcise his Guardian, but if he hold lands in socage, whether with such like inheritances; Then shall the Guardian in socage not only take into his hand the lands which he socage, but such inheritances also; because he hath the custodie of the heir, 02.

Co. ib. 14. a. 7. 4. If a man cannot prescribe to have bona & cella productum, fe

lom, 02c. pet they 02 the like privileges be had obliquely (02)

by

Offences goods no prescription.
the Common Law.

by a certain prescriptive; For a County Palatine may be claimed by prescription, and by reason thereof to have born & call it Prorotum, scoliosis.

5. Whenever passage by liberty of lissaa, either in deed or in law, may pass without loss, and not only the rents and services (parcel of the Sannor) shall with the demeanors (as the most principal and worthy) pass by liberty without loss; but likewise, all other things regarding, appurtenant, and appurtenant to the Sannor (as incident and subordinate to the same) shall together with the Sannor pass without loss, and all other things that pass without losing, cum appurtenances.

6. If A. be holder of a Sannor, whereby unto the franchise of blank and strap, and the like are appurtenant, and the king purchased the Sannor with the appurtenances; now are these Royal franchises tenanted to the Crown, and not any longer appurtenant to the Sannor.

7. When a matter alleged permeth into a place at the Common Law, and likewise into a place within a franchise, it shall be tried at the Common Law.

8. Before the Statute of 7 Rich. cap. 10, no Male in continuance Comitus lay at the Common Law for the recovery of rent lying out of lands that lay in several Counties; but a Common of Palatine, Barony, Piscary, Steward, and the like in one County, appurtenant to lands in another County, an Male in continuance Comitus did lie at the Common Law; because the land as the more worthy drew them to it; But land could not be appurtenant or appurtenant to land; And if it is of a Slavish some in one County, to lands lying in another County; For, in that case also, the like Male did lie at the Common Law.

9. If the Appartee note be villein, and they assign an Male, and one of them releaseth to the Dileetor abnegation personal, this shall be of the Appartee, but it shall not barre the other. Plaintiff: For having regard to them, the reality shall be presaged, and Omne majus reddendum minus dignum: And in a suit of Ward brought by two, the release of the one shall not grieve the other, but shall ensue to his benefit; For he shall recover the whole Ward, and hold his Companion out.

10. In Law there are these kinds of rights, Jus proprietatis, Jus possessio, and Jus proprietary & possession; and this last is anciently called Jus duplicatum, of Droit. Droit: For example, if a man be dispossessed of an acts of land, the Dileettor hath Jus proprietatis, the Dileettor Jus proprietary & possession: And regularly it holdeth true, that when a naked right to land is releaseth to one, that hath Jus possession, and another by a mean right recover the land from him, the right of possession shall draw the naked right with it, and shall not leaseth a right in him, to whom the release is made: For example, if the heir of the Dileetto be in by descent, and A. both beilles him, and the Dileetto releaseth to A. both hath the mere right to the land; but if the heir of the Dileetto enter into the land, and again the possession, that shall draw with it the mere right to the land, and shall not regain the possession only, and leave the mere right to A. but by the recurrency of the possession, the mere right is there with vested in the heir of the Dileetto: So like wise if the Dileetto enter upon the heir of the Dileetto, and enfeoff A. in the, and the heir of the Dileetto recover the whole estate, that shall also draw with it the mere right, and leave nothing in the Feoffor, et. al.

11. The Le toilet for years of a lease, a Close, and other certain lands in Dale, makes a settlement of all, and gives liberty in the Close in name of cafe.
of all, the flesh being at the same instant being in the place; and it was ordained, that the taker was to receive, as well for the Clerk as for the Pease, and other lands to be sold; for when the Stallage, that the land is entirely mortgaged, the Stallage is the principal; because that section for the habitation of men, and in a Prince, shall be first demanded of the prince, as he may, and the revenue for the rent arising should be more at the Stallage, as at the more principal are not shown places with their. Deserts, but that the Stallage being the more wealthy, and the Principal, and the taker, shall not suffer, without question the possession of the Span is the benefit; at the time of the annual water, at the grand position of the law unlimited, 44.

23. The action of W allo, brought by this, without of all actions personal by one shall have the other; for in W allo the personal is to the principal. 9. 5. 19. per car. Vide supra.

24. A man brings in instead of the bargain and fail, give and grant his apprentice of Claire, and all his tree growing thereupon to another, and also no one shall be employed according to the statute, inasmuch as the bargain profited to the Bargainor, neither shall the tree pass; although they are granted by opposite words, and meagrely without entailment, and that a man's own grant shall be taken most strongly against himself; 44.

25. After a man hath delivered me, I regain the possession of the land; after my regresse into it, the Law shall assign, that the Frankonement shall continue in me, ab initio; and therefore if the Dillesee, of his Apparent, of his Dillesee cut down any tree, the same, or any of his, and that for another; yet after my regresse I may take them, wherefore I shall draw them; because the re-constitutions of them, as the principal, shall receive their property in them as accoutrements; albeit they be contained thereof the land, for the conveyance by their tenants cannot alter my property therein, 44.

26. And a man buys a house, or Corpo, or Ensae, or Henche, or put his house to his profit; and where in this case the house shall have them, and not the tenant, for they shall own with the inhabitants, and the pillar, for their own liberty, and could not be gotten without money, as to heirs and other ingines; Otherwise it is, if they were in a tenant, or the like; isc. in a tenant, and so in a house, and the same go to the heere.

27. And the tenant makes story another man's wife, and pays him in new clothes, the Husband may take the Wife with her clothes.

28. Finch 23.

29. A bar inclosed with Charterhall shall go to the heir with the Charterhall; and not to the Crown, Finch 24.

30. A bar inclosed with Charterhall shall go to the heir with the Charterhall, and not to the Crown.

A. with charters.

31. Finch 23.

32. A bar inclosed with Charterhall shall go to the heir with the Charterhall, and not to the Crown.

33. Finch 24.

34. A bar inclosed with Charterhall shall go to the heir with the Charterhall, and not to the Crown.

A. with charters.

35. Finch 24.

36. A bar inclosed with Charterhall shall go to the heir with the Charterhall, and not to the Crown.

A. with charters.

37. Finch 24.

38. A bar inclosed with Charterhall shall go to the heir with the Charterhall, and not to the Crown.

A. with charters.


40. A bar inclosed with Charterhall shall go to the heir with the Charterhall, and not to the Crown.

A. with charters.
Here, if the heire of the Distills eatr, he shall detain the land for ever: for, in all these cases the right to the possession shall stand the right of the land to it: neither yet shall any of these be relieved by bringing their writ of right, &c. And the rule to know: when the possession shall stand the right of the land to it, and when not, is this: when the possession is first, and then a right cometh thereunto, the entry of him that hath the right to the possession, shall gain also the right, which (as appears in those cases before put) followeth the possession, and the right of possession doth everyth the right unto it: But when the right is first, and then the possession cometh to the right, albeit the possession be defeated, yet the right shall remain: As if the Distills enter upon the heire of the Distills, albeit the heire may recover the possession of the land against the Distills in an Affic of Novel Distills, or in a suit of Entry in the nature of an Affic; yet shall the Distills afterwards recover the land again from the heire in a suit of Entry en le por, of the distills made unto him by his Father, or otherwise in a suit of Right; because the mass right of the land did still remain in the Distills, &c. So if a woman, that hath right of power, distills the heire, and he recover the land against her, yet shall he leave the right of power in her, &c. Because when the naked right is precedent before the acquisition of possession upon the defeasible estate, then (in consideration of Law) is the right more worthy than the possession, but when y possession is before the right, then is the possession most worthy, &c. according to the Rule, Quod prius est tempore, potius est jure. And this likewise holding true, when the mass right is subsequent, and transferred by act in Law, for there also albeit the possession be recontinued, yet shall not also the naked right with it, but shall leave it in him: As if the heire of the Distills be distills, and the Distills enceoff the heire apparent of the Distills, being of full age, and then the Distills vieath, and the naked right devancs to the heire, and the heire of the Distills recovers the land against him, yet both he leave the naked right in the heire of the Distills: So if the Distillmate of Tenant in talle ences of the Blue in talle of full age, and the Tenant in talle tie, and then the Distillmate recovers the land against him, yet both he leave the naked right in the Blue: For in these cases also, as before, the right although it seems to be subsequent to the possession, yet is it indeed before it, in respect of the privity, viz. (in the first case) of blood between the father and son, and (in the other case) of estate by force of the gift in talle; because the right of the father is (by construction of law) the right of the son, and the right of the Anteco is the right of the issue in the talle, &c.

20 The earth is more worthy than the other elements, because it was ordained for the habitation of man: and therefore it hath in Law a great extent upwards, not only of water, but of air, and all other things even up to heaven: For, cujus est locus, ejus est usque ad caelum, &c.

21 The person of a Member of Parliament is free from arrest, because the King and all his Realm have an interest in his person probo-no publico, and therefore the private commody of any particular man is drowned in it, and shall not be regarded, &c.

22 A lease for years of an house with advices Implement; rending rent, the Lezzor enters and makes settlement, the Lezzor re-enters, and for rent areasse the Frese bings debt, and adjudged maintainable, albeit there was no privity, and this per 5 Henry 7. where the Frese bings Debt: And there the rent was not extint, but only suspended, until the Termo, by his regresse rebeld the reversion; neither yet (in this case) shall there be an appomtment of the rent for the Implements, because Magis dignum trahit ad se minus dignum. Vide Dyer 361. 15. 20 Eliz.
The Reason of
3. The Statute of Marshaltakes the Court of Ar- ringtons, by

this the receivers office of the old Court was also destroyed. Sir Ro-
bert Cheffers case: Godbev the issue continued by a Provost in the same

Statute.

63 Accesarium Sequitur Principie.

1 If an house or land belong to an Office, by the grant of the Office
by deed, the house or land passeth, as belonging therunto: So likewise
if an house or chamber belong to a Corrode; by the grant of the Corrode;
the house or chamber passeth, &c.

2 If the Lease at will by good husbandry and industry, either by a
subtletying, trenching, or compassing of the meadows, or digging up the
bushes, or thy like, make the grass to grow in more abonience; Yet if
the Lease; put him out, the Lease shall not have the grass, because
the grass being the natural profit of the earth, ought to goe with it:
so it is also, albeit he takes Hyph: land, and thereby anecessarily
the grass, &c.

3 If a Manor be divided between Coparceners, and every one hath
a part of the Manor without taking any thing of the Overlord appen-
dant, the Undivided remains in coparcenary, and yet for story of their
turns, it is appertaining to that part, which they have, and is it is also if
they make composition to present against common right, yet it remains
appertaining.

4 The King by his Prerogative (regularly) is to be intreated upon
payment of his duty or debt by his debtor; before any default, although
the Kings debt or duty be the latter; and the reason hereof is, for that
Thalians Regis et fundamentali, &c. Armentereum specis: And thereof
the Law gave the King remedy by the topic of Protection, Com clau-
sula volumes; to praise his Debto, that he shall not be taken or attac-
ded, until he had paid the Kings debt; but hereof grew some inconvenience,
because many times to delay other men of their suits, the Kings suits
were the more slowly paid: For remedy whereof, it was enacted by the Stat.
of 25. E. 3. cap. 10. That the other Creditors might have their as-
trations against the Kings Debtor, and also to proceed to judgment, but not
to execution, unless that Creditor shall take upon him to pay the Kings
debt, and then he shall have execution for both the debts; Howbeit in
some cases the Subject shall be satisfied before the King: (regularly
ly) whenever the King is entitled to any fine of: but by the part of the
party, the party shall be first satisfied, as in a Dece statum against a
Juror; or an Embassier if there the trustful damages shall be first
satisfied, and then the Kings fine; because this is as necessary to that:
So likewise if in an act of Debts, the Deponent deny his way, and it
is found against him; in that case he shall pay a fine to the King, but
the Plaintiff shall be first satisfied: And so it is in all other like cases; The
like course was also taken in Bills preferred by Subjects in the House
Chamber; for if debts and damages were there recorded by the party,
they were answered before the Kings fine, &c. Vide 189. 41.

5 If Tenant in tail of a Hamon, whereunto a seventh is appen-
dant, etc; if the Writin of the Hamon, and vierty, the King shall have a For-
moned against the Writin, and after the recovery of the Hamon, he
shall write the Writin; Howbeit, before the recovery of the Hamon he
cannot write the Writin, fo: that the Hamon was principal, &c.

A manner

Rent and ser-
vice incident
to the recep-
}
the Common Law.

7 Where the Statute of 32 H. 6, cap. 5, concerning exceptional of lands, &c. to call the said lands be routed, gives a Scire facias out of the other Court, from whence the former execution did proceed, &c. to have execution of other lands, &c. If the recov be removed by Reo of Error into another Court, and there affirmed, the Remon by execution, that is voided, shall have a Scire facias (by the equity of that Statute) out of the Court, into which the Reo of Error was brought: because the Scire facias must be grounded upon the recov, and Accusatian lequior princi.

8 Albiet a man cannot at all be put out of possession of his Wills in gross, nor directly of his Wills in regarz; yet may he per obliquam, and by a means be put out of possession of his Wills in regarz to a Stnnt. For, by putting them out of possession of the Wills, which is the Principal, he may likewise be put out of possession of the Wills in regarz, which is but accessiz. And so it is also of an Advowson appenant to a Stnnt; and therefore by the grant of a Stnnt: without lying upon certain premises, the Wills in regarz, Advowson appenant, and the like by passe: So if the Wills in regarz take them, as Incidents to the Stnnt, whose estate is tortious, A man for the Scotts, who committed to his estate by local consequence, as we have shewn, as Incidents: And where the entry of the Wills in regarz, may settle the Wills in regarz, 2: present to the Advowson, &c. before he enter into the Advowson; But it is not the place where his entry is not tortious: And so are our ancient Rights to be recovered, and a point much controverted in our books to be resolved. Vide Diyer 5,8.

9 If the retention of Lease for life be granted, and Lease for life aiguise over his estate, the Lessee cannot attain, but the Aiguise, for the appomtment follows the land. So likewise, if there be life aiguise over his estate upon condition, the Aiguise shall attain, because he is Tenant of the land, &c. 

10 Appomtment of the Tenant of a Stnnt to a Wills of the Demesne shall withstand the Law of the rents and services, parcel of the Stnnt, because both Demesnes, rents and services make but one entire Stnnt, and the Tenants are the principal, &c. 

11 If there be 30 acres of Stnnt, which are to be divided yearly among the owners persons by lot or otherwise, viz. thirteen acres thereof to A, to acres to B. So as sometime the 15 acres lie in one place, and sometime in another, and so of the rest: In this case, if A being folter of these 15 acres in his, grant a Rent-charge out of those 15 acres generally, lying in the Stnnt of 30 without mentioning, where they are particularly; Where, as the estate of the land remains, the charge shall remove also.

12 Lament in tail of a Stnnt, with a remainder to an Advowson in appomtment, whereby a remainder, the Advowson grants the Advowson to Lament in tail of his heirs. Lament in tail birth, the title is not remitted to the Advowson; because the grant has no action to recover the Advowson, before he recovered the Stnnt, whereas to the Advowson appomtment, &c. so it is also of all other Incumbrances regardant, appomtment, or appomtment, a man shall never be remitted to any of them before he recoumed the Stnnt, &c. whereas they are regardant, appomtment, or belonging, according to that of Brioton, Nulke not clamor droit en les appomtments, declar les accessaries, neul droit ad le principal: Even the that of Braoton, Item, except polet, &c. quatervis jus habeant in tenenca & pertinentia, primo recognoscent debet tenenantes, et quod pertinent adverss., &c. duc poletas pertinentes decent ante, &c. Et de hoc
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hez materiæ in Rotulo Sanclî, Mich 3, H. 9. in com. Norf. de Tho. Bardolf, &c. But on the other side, if a man be remitted to the principal, he shall also be remitted to the apprehendant, or accessory, albeit it were severed by the Discontinuæ, or other wrong-doer: And therefore if there be Tenant in tail of a Hanover, whereas to an Abolition is apprehendant, and he enfeoffeth A. of the Hanover with the appurtenances, A. enfeoffeth the Tenant in tail, saving to himself the Abolition, Tenant in tail birth, his issue being remitted to the Hanover, is consequently remitted to the Abolition, although at that time it was severed from the Hanover: So it is in the same case, if Tenant in tail be dissolved, and the Discontinuæ suffer an usurpation; For here also, if the Discontinuæ enter into the Hanover, he is likewise remitted to the Abolition. 15.

In any action for the recovery of the principal, together with the accessory, a man shall never release the principal, without ascertainment: In an action of waste, if the Defendant confess the action, the Plaintiff may have ascertainment for the place wasted, and release the damages; but he cannot have ascertainment for the wastes, and release the place wasted; because the place wasted being in the reality is the principal, and the damages being in the personality, are but as accessories; for without ascertainment for the principal, the Plaintiff can have no title to the accessory; but having ascertainment for the principal, he is thereby also entitled to the accessories, and therefore may release them, &c.

16. If a man leteth lands to life upon condition to have so, and warranteth the land in form praebita, afterwards the Lessee performeth the condition, whereby the Lessee hath so: Here, the warranty shall extend and increase according to the estate; And so to it is likewise, albeit the Lessee had ever before the performance of the condition; For then also the warranty shall life and increase according to the estate, and yet the Lessee himself was never bound to the warranty, howbeit it hath relation from the first liberty, &c.

If Tenant in tail be of a Hanover, whereas to an Abolition is app- 15. Tenant in tail discontinuæ in so, the Discontinuæ granted to the Abolition in so, and birth, the issue in tail re-continuæ the Hanover by recovery, he is thereby remitted to the Abolition, and shall present when the Church becometh void, &c. 12.

16. It hath been adjured, that where two Coparceners made partition of land, and the one made a covenant with the other to acquit her and her heirs of a suit that arose out of the land, the Covenantant a-lienes; In this case the Allignes hath an action of Covenant, and yet he was a Stranger to the Covenant; because the acquittal as accessory did not with the land, which was the principal.

17. If a man make a covenant in so of two accesse to one, with war- ranty to him, his heirs and assigns, if he make a covenant of one a- cre, that Feoffie shall vouch as Allignes; for the warranty, as accessory, follows the land, as principal: And therefore there is a diversity between the whole estate in part, and part of the estate in the whole of any part: As if a man hath a warranty to him, his heirs, and assigns, and be make a lease for life, or a gift in tail, the Lessee or Do- niee cannot vouch, as Allignes: because he hath not the estate in Fe-offie; whereas the warranty was annexed; but the Lessee for life may play in ace, or the Lessee, or Donee may vouch the Lessee or Donee, and by this means they shall take advantage of the warranty: But if a lease for life, or a gift in tail be made, the remainder other in so; such a Lessee or Donee shall vouch as Allignes: because the whole estate being out of the Lessee, the warranty by consequent both follow it; and the rather, because the particular estate and the remain-
etc.

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the Common Law.

18. If the King grant to one and his heirs, Bona & Carallis felonum, & sigillum, 63. asoergon, fines, amercements, &c. within such a Town, 63 Dania: In this case he cannot enable them to another, not
least them to descend for a third part, according to the Statutes of 34
and 34 H. 8. of Wills; because they are of an yearly value: For the first
branch of the 34 H. 8. statutes, that the hereditaments devisable by those
Statutes should not be of a clear yearly value, 46. And therefore those Statu-
tes apply not to such kind of hereditaments. Nevertheless, if a
man be letter of a Manumit, unto which Lie. or Male and Female, or
two other hereditaments, which is not of any yearly value, to appertain or
appertain unto it; here, by the deeds of the Manumot, the appurri-
nances, they shall pass as Incidents to the Manumit; For in as much as
those Statutes by opposite bayes enable him to devise the Manumit, by
consequent they enable him to devise the Manumit with all Incidents and
appertanonce unto it: And it was never the intention and meaning of the
makers of those Statutes, that when the Dower hath power to devise
the principal, he shall not have power to devise that which is incident and
appurtenant unto it, but that the Manumit, 63, Shall be devolved, and
fractious made of things, which by usual prescription have been united
and appurtenant together, 46.

19. If there be principal and accessory, and the principal in par-
nership, or hath his Clergy, the accessory cannot be assigned; For the
Maxim of Law is, Ubri simul nullum, ubri solus nullus; & ubi non sit prin-
cipis, non posset efi accellarus. They before there appears to be a
principal, one cannot be charged, as accessory; but must be said to be
principal, before he be proved to be a principal by Law; and that ought
to be by judgement upon verse, or contradiction, or by constituting; for it is
necessarily not, that (in truth) there is a principal, unless it appears by
judgement of Law: Now this is the reason, that when the principal is
persons, or takes his Clergy before judgement, that then the accessory
shall never be assigned; because it appears not by judgement of
Laws that he was principal; and the acceptance of the persons, or proper
of the Clergy may be an argument, but can do no judgement in Law,
that he is guilty; Whereby, if the principal after attainer be persona-
r, and his Clergy adopted, then the accessory shall be assigned; be-
cause then appears judicially, that there was then a Principal.

22. When a man makes a lease for life of 20 years, the Lease hath but
a special interest in property in the lease (being great timber) as accesi-
bles answer to the land, so long as they are annexed unto it: But if the
Lease or any other lesser than from the land, the property any interest
of the Lease is thereby performed, and the Lessee may take them as
accessory things, which were parcel of his Inheritance, and in which
the interest of the Lease to determine, 46.

23. If a man let any land for life, and other grant the trees, and after
that theLessee gives, yet the Lessee cannot take them, as it was sold by
persons; Quia 21 H. 6, 46. de rebus at the time of the Grant, the
Lease had no property therein, as accessories annexed to the land, ec.
Vide Max. 25.

24. If trees (being great timber) be blown down by the violence, the
Lessee shall have them (for they were parcel of his Inheritance) and
not the Lessee for life of 20 years; but if they be not in the same,
without any great timber in them, the Lessee for life of years shall have them, 46.

25. When certain sumnes are limited to imperfectious etc., and one
is not separated and divided from the other, there the finding of one of
them
The Reason of

them only shall not give all the land to the King by the Statute, of 7 E. c.
cap. 14, but only the sum appointed to the superficies use, which was
employed within five years before the making of that Statute: but if
one of the uses depend upon the other, there the finding of the principal
of any part thereof shall give all the land to the King: As if land be
given to the intent that an Obit shall be found in such a Chappel, and that
upon the Obit to 8. shall be distributed and employed to the Priest; and
6 s. 2d. to others poor persons, that shall be present at it, and the reduc-
ture of the profits to the reparations of the Chappell: In this case, if the
Coin be maintained in any part within the five years, although the
6 s. 2d. be not employed to the poor men, not any thing at all upon the
reparations of the Chappell within the five years; Yet all the land shall
be given to the King by the late Statute; because all the uses depend up-
on the Statute.

24. In faults in the Star Chamber (before the repeal of that Court)
albeit the fault was for the King, and the offence such as the King might
punish; yet if the sentence was once given, and damaged given to the
Plaintiff, then the Plaintiff had particular interest in them by the
centum, which the King would not pardon: But if the pardon had been
obtained before the sentence, there the pardon had discharged all; for then
the Court could not have proceeded to any centum of the Principal, and
by consequent neither of damages, which are butアクセス: There is
the same law of a pardon before sentence in faults depending between par-
ties and party in the Court Christian for declamation; calling violent
hanging upon a Clock; or the like; for these being suits, profligate actions,
which are in truth suits only for the King, although proceeded by the party.
And therefore if in such a suit the Plaintiff hath received any costs, and the
King before sentence pardons the Defendant, in that case the costs are lost, cauza qua supra: It is another, if he be not pardoned the after sentence, for then costs being thereby given
to the Plaintiff, he hath a particular interest in them; which the Kings
pardon cannot frustrate, etc.

25. Assented in fee of certain lands, he was enfeated and enrolled ac-
cording to the Statute, covenants with B. That if B. pay unto A. his
Heres by Magna ten 101. upon such a day at such a place; that then A. and
his heres shall have the said fee of the said land to the use of B. and his heres,
A. having issue a son; makes his Will in writing; and makes C. his
Executor, and his testator bequeathes that C. shall have the land during the
minority of his son, and then dies, his son within age: In this case the ques-
tion was, to whom after the death of A. the Tenant ought to be paid, and
it was resolved, that it ought to follow the estate of the land, as an atten-
ded unto it; and shall not be paid unto C. either as Terme or Executor, because C. could not be such an M (note: illegible), as is meant by the
wills of the Covenant, having by the wills only a particular interest with the
land; Neither yet, if A. had granted the land for life of years, could any such lease have been Magna in that case; because notwith-
sanding such grant the reversion still remained in A. and the possibility
of having the land again as in his former estate, in case the condition
were not performed, therefore the payment thereof ought to be made
to his son and heirs; or unto the Magna of the Covenantator whole es-
state, as if the Covenantator had made an absolute conveyance in fee, or
cells, a gift in tale; or lease for life; with the remainder over in fee, then
the lease, Done in tail, or Lease for life, might be Magna, to
whom the Condition ought to be performed; because in those cases the
Covenantor departs with the whole estate, unto which the Condition
was annexed, etc.

26. Whereas
16. Whereas by the Statute of 24 H. 8. cap. 20. It is provided, that no common recovery had against Leman in title, who is party to the recovery, shall bar his titles, when the king hath the retention; &c. by this (inclusive) the act preserves the reversions and remainders in tail of the king's grant; so they cannot be barred, but when the estate tail, upon which they depend, is barred: And this is the reason, that when Leman in title is in an other estate, and takes a common recovery as Leman, this shall not bar any reversion or remainder; because it barreth not the estate of the Leman in title, being party to the recovery, and upon whose estate such reversion or remainder depended: For, quod non valet in principali, in accessoria seu confectioni non valetib, 

Andhic and kreditory.

27 If before the Statute of Wm. 2. cap. 19, an action lay at the Common Law against the Deputies or Committees of the Olinary (by the name of Executores) as appears by 39 E. 3. 26. & 40 E. 2. 3.

A mullo fortiiori, an action shall lie by the Common Law against the Olinary himself, who is the principal, and from whom the Administrators do now derive their power.

28 Albeit the Principal be attained erroneously, either for error in process, or because the Principal being out of the realm, &c. was out-lateral, or because he was in prison at the time of the Out-lawry, &c. yet shall the accessory be attainted; for the attainer of the principal stands good, until it be reversed; and with this agrees the resolution of all the justices in the Kings Bench: 2 R. 3. 12. And in the 18 E. 4. 9. the Principal was erroneously out-lawed for felony, and the Accessory was taken, indemns, arraigned, convicted, attainted and hanged, and afterwards the Principal reverted the Out-lawry, and was indemns and arraigned, and found not guilty, and the accessory was acquitted: Am in this case (for admissibly there can be no accessory, but where there is a principal, and here there was no principal) the heire of the accessory shall be restored to the lands which his Father had forfeited by that unjust attainer, either by entry or action at his election: For now upon the matter by act in Law the attainer against his Father is without any merit of Error utterly annulled; because by reverting the attainer against the Principal, the attainer against the Accessory, which depended upon the attainer of the principal; is ipso facto utterly defeated and annulled: And this case notably appears in an ancient book, de tempore E. t. cit. Mordancaster, 46. Where the case was this; A. was indicted of felony, and B. of the receipt of A. A. slings himself, and is out-lateral, B. was taken, and put himself upon inquest, and was found guilty, and was thereupon attainted and hanged, and the Law entered as in his election: After which time A. came in, and reverted the Out-lawry, and pleaded to the felony, and was found not guilty, where he was acquitted: Persuasion of the heire of B. brings a Mordancaster against the Law by election, and therein meteth all this matter, and so upon a Demurrer it was admitted, that the heire should recover said land of the Law: For if E. had been living, he should have gone quit by the acquittal of A. because E. could not be a receiver of a Felon, whereas A. was no Felon. 19. 29. 34. 35.

39 The makers of the Statute of 4 & 5 P. & M. cap. 4. obtaining that by the Statute of 25 H. 8. cap. 3. Clergy was taken from the principal officer in the case of house-breaking, &c. and not from any accessory, have provided that the accessory before the fact (in that and other cases there provided for) shall be also out of his Clergy, which was taken to be a good interpretation, made by that Parliament of all the Acts which concerned that matter: For if the principal shall have his Clergy, it would be absurd to take away Clergy from the accessory; because if
...if the Principal hath his Clergy before judgment; the accuser shall not be arraigned." Vide supra 19.

30. If Baron and Feene present to an Abbevson in right of the Feene, which is apposyn to the person of the Feene, and after the Baron alleys an act parcel of the Feene, together with the Abbevson in leg to a stranger, and does, and after the stranger presents, and then aliens the act to another in fe: taking the Abbevson to himself, and after the Church becomes void, the Feene shall present, and if the be hurtres, the part have an Msle of Barren presentment; because the Abbevson was severed from the act, but, if the Abbevson were apposyn to the act, then ought the Feene to recover the act, before the can present to the Abbevson.

31. A man recover in a Quare Impedit in the Common Place, and the recovwr is removed by a writ of Error into the Kings Bench, and there affirmed. In such case he shall have to try it in the King's Bench, and ought to sue a Quare nod admit against the Bishop thereto, upon a writ, &c.

32. An Abbevson may be sines in the Common Place, and the act be there, which is the principal, or it may be tried in the King's Bench upon some writ given in the Common Place; if the recover be removed to the King's Bench, &c.

33. A recovery was had in an Allde brought in the King's Bench, and the like, afterwards the receipt was sent into the Common Place, and the party, supposing the act upon that resins in the Common Place, for the act is, the principal, and the Abbevson the tempor is accural; which see in Alvey &c. 2. Tankell Cakes.

34. At the Principal the belief was given upon the account, whether a charter of pardon or pleasure, &c. In this case the accural would not be a writ of Conspurg, because he was discharged by the chancellor. The principal or by the charter of pardon went into the Principal, &c. 19. 66. 2.

35. Whose persons were accural for purchasing, or of any interest, to mine, or actually march them, or other fees, other man by her, in some, and holding them this committee the former; and these last interest, and my last principal; 11. Windsor Dale, there wanting Grenfell imitation, an accural unto them all; but it was made of the act, and, as one time; for he could not be accural as a Secular, because they were not yet accural.

36. Whosoever the Common is Exeter Law, and thereupon, in two essential, whether the matter be temporal or spiritual, (as the Comitia of that cause belong to the Kings Comitial Court) namely, the jurisdiction of the Ecclesiastical Court against, &c. (as an Abbevson) being the party of the Lord by Divine Service, and that service is not performed, the Lord hath his remedy in the King's Bench; for the bishop (not being it) he should upon the adorner, and damages at the Common Law, viz. in the King's Comitial Court for the act being of it; but it may be taken upon the post of the Divine Service, it shall be tried by the jury of twelve men; because the act is in the spiritual thing; as also the damages to be recovered, are temporal. It is otherwise of triers by Frankland, which is always spiritual; for there the right being merely spiritual, and the remedy only by the Ecclesiastical Law, the Comitia of the cause being of right belong to the Ecclesiastical Courts, &c.

37. If 46. 3. calculation, a demerit of a letter of Attorney to deliver: I refer this letter, or any thing that was to be the Feene, being a man of estate, in the form of an estate. But is (above) a footnot in fee, and the warrant was, that it was unlettered. A letter of
A leaf is made to Baron and Feme by indenture, in which there is a Proviso, that if they or their Executors shall be disposed to sell and alien the term, that then the Testor shall have the first offer, by giving for it as much as another will give: And here, the question was, whether this was a condition of a covenant, and the better opinion seems to be, that it is rather a condition than a covenant; Holwbeet together it be the one or the other, it runs with the land; So as albeit the Feme joyned not in the Indenture, nor was party thereunto, yet if the Survive the Baron, the Bail hold the land charged with the condition of covenant, as an accessory thereunto: So in 38 Eli. 2. a judgment was made by deed with divers covenants, and one of the Feoffors sealed it, and the other not, but yet occupied the land, and survided, and it was resolved the Surviver should be bound by the covenants and seal of his companion, Qui facit commodum, sententia debet & onus. Vide M. 236.

A penalty for breaking Hals, &c.

40 An Abbot with the consent of his Devent grants for them and their Successors to a man and his heirs, to have one of his Monks to sing Mass, Pater, and Ushers every Holyday in such a Chapel, and grants over that tates quotes destitute suit in aliquae, &c. that they will forfeit to him and his heirs five pounds. In this case, if by a failure of the service, the nomine man of 5 l. be to sell, the heire shall have an action of Debt for it, and not the Executors; for the heire having an inheritance in the penalty, it follows the nature of the gift given to the religious house, as an accessory thereunto.

41 After regresse of the Distriktor, the Distriktor shall have the grant of the Distriktor, albeit they be severer from the land by the Distriktor, per to- 

tam Curiam, and in B. R. in Sayes Cate.

42 At the Common Law before the Statute of 2 & 3 Edw. 6. 24. In an appeal of Robbery, the Abettors were to be prosecuted in the same County where the Robbery was committed, and where the Principal was attainted, and not where the abettment was proved to be; But that Statute hath now settled it in the County where the Abettors shall be taken.

43 If a man be seized of a Rent-charge, Rent-reeke, Common of pasture, or such like Inheritance, which lie not in tenure, and his his heire within the age of fourteen years: In this case, the heire may choose his Guardian: But if he hold any land in Soccage, the Guard- 

44 By surrender of the Letters Patents themselves, the Du- 

45 Vide Hob. 4. Mislavre against Wharton.

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MtUein ink«, but Tensnt koz?esrs, snv Tensnt st wtU sttolhsU hs^e

tttnk« ) but ttpzinctpz«? rekpetteththe qusttt? ok the eltste;Foz in

whst righttheGxecuto) hsth the MMetn, tn the lsme rtght kdsv he

hsve theperquttte: Ko ttis stlo iilthe cskeoks Wildop, thst hsth s

MMetn inrt^htokhts Ghurch ; SUkoiks msn hsth «Wivein in rtghtok

htsloile,he «M hsve the persMte tohtm her rtght: Wut tt thepur«

ch«K de slrerMne hsv , thsn theVsron lhsv hsve the persMte tohtm
and his heirs; because the law is entitled to be a Tenant by the
Courts in his own right, &c.

Littlen. 1st, that for a Rent-charge the tenants hath.

his estate, either to bring his Cash of Annuity, as it doth, &c. How- 
beit it of rent granted by way of partition, a visit of Annuity being not
in creature of the nature of the land descended, and therefore for
that the tenant shall only vest, &c.

12 He man recover land in an Affidavit of Novel discretion, whereunto
there is a Common appertainment as appertaining, and after is re-dissolved
of the Common, he shall have a re-discovery of the Common; for it was
satisfactorily recovered in the Affidavit.

13 If there be these Coparceners, and they make partition, and one
of them grant 30 s. per annum, out of her part to her two sisters and their
heirs for ever so-very or partition; here, the Garanties are not Coparceners
of this rent, but the rent is in nature of Coparcenary, and after the
death of the one Guaranty, the moiety of the rent shall descend to her share,
and course of coparcenary, and shall not vest into the other, &c. so that the
rents shall come in recompense of the land, and therefore shall value the
name thereof; And if the grant hath been made to them two of a rent of
30 s. viz. to the one ten holdings, and to the other ten holdings, yet shall
they have the rent in course of coparcenary, and pay the action for the
same.

14 If land be given to two men and the heirs of their two bodies, they
have same estates during their lives, and afterwards several inheritances;
and therefore if one of them have more and die; the other shall
have all the land during his life by right of survivorship, but after the death
that shall enjoy his father's part; and if that more die without issue,
the donor shall enter into that moiety, and not the issue of him that
died; for in as much as originally the inheritance was several,
the reverve is also several; And therefore upon the several determination
of the estate in the donor; may enter; for as upon joint and
several gifts or leases, there is one joint and entire reverve, to upon
several gifts or leases, there be several reverves, &c.

15 If two Guaranties make a lease for life, retaining a rent to one of
them, the rent shall come to them both; because the reverve is incident,
remains still in jointure; unless the reverve be by law invented, and then he only, to whom it is retained, shall have it, &c. Vide Dyer 308. 75. Winter's case.

16 All the Garanties recover lands and damages in an Affidavit of
Mordancellor, albeit the judgement be joint, viz. that they shall recover
the land and damages; yet the damages being accidental (though personal)
the inquiry of Law depends upon theFreehold, being the
principal, which is several; And although the question be joint, yet shall it be taken for distributive; And therefore in that
case if two of them die, the entire damages do not vest, but the third
shall have execution according to her portion, &c.

17 The right of a particular estate (which is an accidental) may be
satisfied as well as the particular estate it sells (which is the principal)
and he that hath but a right of a Remainder, or reverve, shall take
what is of such a satisfaction; but if tenant for life be added, and levys
as to the Wiltshire, he be in the reverve; remember that principally
matter upon the Wiltshire; for the satisfaction; so it is also, if the Lords after
the
The Reason of

Max. 6.

the assise had levied a fine to a Stranger; For, albeit to some respects,
Partes finis nihil habuerunt, yet is it a forfeiture of his right.

18. The entry of a man to re-continue his inheritance of free-hold,
must include his action for recovery of the same; As if two men did
me severally, of these several acres of land, being all in one County, and
I enter in one acre in the name of the same, this is good for no
more, but for that acre which I entered into; because each Distefco is a
several Tenant of the free-hold, & as I must have several actions against
them for the recovery of the land, so mine entry must be several; And
so is it; if one man disseize me of these acres of ground, and leaves
the same severally to three persons for their lives, &c. There the entry
upon one Lease in the name of the whole, is good for no more, than that acre,
which he hath in his possession: But if the Distefco has given severally
the said three acres to three persons for years, there the entry upon one
of the Leases, in the name of all the three acres, shall continue and
revert all the three acres in the Distefco; so that the Distefco might
have had one Assise against the Distefco, because he remained Tenant
of the Free-hold for all the three acres; and therefore in that case one
entry shall serve for the whole: So if one disseize me of one acre at one
time, and after disseize of another acre in the same County at another
time, in this case my entry into one of them in the name of both is good;
so that one Assise might be brought against him for both the Distefcos:
But if I enforce one of one acre of ground upon condition, and at an-
other time I enforce the same man of another acre in the same County
upon condition also, and why the conditions are broken, and entry into
one acre in name of both is not sufficient; so that I have no right to the
land, no acton to recover the same, but a bare title, and therefore se-
veral entries must be made into the name, in respect of the several con-
tions: But an entry into one part of the land in the name of all the land
subject to one condition is good, although the parcels be several, and in
several Counties: And so a diversity between several rights of entry,
and several titles of entry, by force of a condition.

19. If tenant in fee-simple, that hath a warranty for life, either by
an express warranty, or by Deed, be implied, and bouche, he shall
recover a fee-simple in value; albeit his warranty were but for term of
life, because the warranty extended in that case to the whole estate of
the Distefco in fee-simple; But if tenant in tail make a lease for life, the
remainder in fee, &c. And a collateral Assise confirms the estate
of the Tenant for life with warranty for term of life, of the Tenant for
life, and dies; In this case, if the Tenant for life be implied and
bouche, he shall recover in value but an estate for life, because the war-
ranty both extend to that estate only.

20. If a man make a gift in taille with warranty, this warranty is
also entailed; And therefore a release made by Tenant in tail of the
warranty Tail not barre the Main, no more than his release that barre
the Main to bring an attaint upon a taille vende, or a writ of Error upon
an erroneous judgement given against the father; Neither can his
gift barre the Main of the deed, that created the estate tail, nor of any
other deed necessery for defence of the title; For these are successors to
the estate tail, and are as firmly entailed, as the estate it self, &c.

21. A man is seated of a Sellefage and forty acres of land, unto which
he can prescribe to have Common in 200 acres of waste belonging to the
Hamn thorough the Common, for all the land levant and conchanted upon the said
Sellefage and forty acres; In this case, if he sell five acres, parcel of the for-
ty (whether the Common were apppellant or apppellante) the Allentee
shall enjoy a proportionable part of the Common, as belonging to the
said five acres: For albeit at the beginning, there was but one Common

Warnty,

All successor to an estate tail are in-

Aed, and as the estate is fel.

Common is portionable.

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mon attending upon a tenant; and by joint tenants, that is to say, such as die successively to each other, the land shall be holden in frankriegh.

22. 8. and his wife bring an action of covenant against B upon a covenant made by Mr. Smith, in which B. covenants with the plaintiffs, and his wife, that he, his heirs, and assigns, shall, during his life, and his wife's life, and the lives of their children, and of their issue, and of their successors, have the full and free use and enjoyment of the dwelling house, garden, and other appurtenances, as well during her life as during his; and if the covenant is not performed, the plaintiffs, and their assigns, shall have the right of peace, and the recovery and reversion of the same.

The court held that the covenant was for the benefit of both parties, and that the plaintiffs were entitled to the benefits of the covenant.

23. A Lord of a Lea cannot assign to the certain, bringing no covenant to the same effect, and the court can only consider the assignment as a release of the covenant, and not as a conveyance of the land.

24. A man may acknowledge a debt to B, and却又, having a debt due to C, and yet not being able to pay C, he may transfer the debt to D, and then the debt is transferred to D.

25. If a man sells one as principal to a stranger of another as agent, and in effect he is not interested in his own interest, this is an illegal transaction.

26. If a principal and one as agent are both interested, the principal is not liable, but the agent is liable.

27. If a man makes a will, and is at the time of his death, or at the time of the making of the will, in possession of the property, he is considered the owner of the property.
The Reason of

not their execution till all the days of payment be past; because a statute
favors the reality, and partakes of the nature of the land, and the pro-
fits thereof which are recoverable: It is otherwise of an obligation, which
is to be discharged at several payments: so that is merely personal,
and intire; ec. Co. 1. 47. b. 192. b.

28 A writ of Dower is wrong as well as a thing appentant to land, as for the land itself, ec.

29 In a Parson hath a Chapell annexed to his patronage; to which
Chappell there's an Glebe appenent. The Parson shall have a juris
urem as well as that, as of Glebe belonging to the Patronage it self.

30 If I sell unto you any thing for 100 l. to be paid by 22 l. per annum,
in five years, I shall not have an action of Debt, until all the days be
incurred, because it is but one intire contract; but if a man make a
lease of land so, five years, rendering each year 20 l. there in case of a
lease of land 10 years, the years are several, and the land and the pro-
fits thereof recoverable: And therefore the rent being recoverable as well as
the land, ec. he shall have an action of Debt for each year, &c. as it was
enjoined in 35 E. 3. 38. Co. Inst. pars. 1. 47. b.

31. There are two Joynentants for life, the reverender grants over
his estate to life, one of the Joynentants only hath action, this is a good
attornment of both to settle the reverender in the Grant; because the
effete of joint leases is intire (for every Joynentant is looked on in any &
per court) and by consequent the reverender, which is dependant and ex-
ceptant upon such an estate, is intire also, ec.

32 Some actions follow the nature of those, whereon they are
promised, as the suits of Curtesy, Attaint, Seize Fascias, and the
like.

33. The Feasa shall not have more appeals than one for the death of
the Brevor; but ought to own all, that the will charge, in one only the
same suit, and to allow due to declare against all in one and the same
Court; for as the murther of death is but one, so ought the Writ and
Count to be one also: And therefore since being an appeal of death aga-
inst others, and all but one make default, yet the Plaintiff ought to
bring his writ, and likewise to count against all, &c.

34 If an execution be laid on the body and of the land, and afterward
the Comtor enforces the Comitie parcel of the land, or terrere-
ance parcel of the land unto him, as the F. is ample parcel thereof belon-
ges upon him; in all these cases, both body and land are discharged; for by
the execution against body and land, the land was de facto charged, and
to become de jure, and by the execution, surrender, or desert, the land
was addischarged; because a discharge of a thing in execution is a
discharging all, be it by act of the party, or by act of Law; but the
writ being personal and intire, the execution (as necessary thereunto) is
intire also, &c.

35 If a Bellon in other officer of the Kings Pannes suffer any to
intrude upon any parcel of the Femeness, so that nothing is annoyance
for it in particular unto the King, but only the ancient rent of the
Pannes, &c. Yet that parcel so intruded upon, shall not in Law be said
to be concealed, nor made by any such name in any grant of it from the
King; for, the Pannes, it fell being in charge and accompl, by conse-
quent every part thereof is to all; And Turpis est paras, qua non convenit
cum tuo loco.

36 If two Joynentants within age make settlement in fee, they may
enter jointly in their lives, as joint in a writ of right, because being of
a writ of right follow the nature of the estate, which is joint; but they
shall not join in a Dower, but infra statum, because that follows the norm
of their lateral persons, which (in that case) are the principals, &c.
the Common Law:

the nonage of the one is not the nonage of the other, &c.

37 If Gavelkind land be let for years remiting rent, the rent is partable as the land; it seems to be otherwise of a Rent-charge granted out of the land, because that is collateral to the land, and intire: per Fitz-herbert.

38 Mistiss Sanders was necessary to the mother of her husband, and because it was but mother in the principal that killed him, it could not be petty treason in his wife; it is otherwise, where the wife compires with her servant to kill her husband, who both it in the absence of the wife, yet this is petty treason in the wife, being but necessary, because petty treason in the servant.

65 A man's own words are void, when the Law Speaketh as much, or otherwise. Vide M. 41, 6, 7, 9.

New invented statements void.

No execution of the estate to the use.

A man's heirs remain in him during his life.

If lands are given to a man to have and to hold to him and his heirs on the part of his Father, yet the heirs of the part of the Father shall inherit; so no man can institute a new kind of Inheritance, not allowed by the Law, and the words, On the part of his Father are void.

So if lands are given to a man, and to his heirs male, the law rejects this provision, Male; because there is no such kind of inheritance, sc.

2 By the Statute of Wylm, 2, cap. 1, the land is as it were appropriated to the Tenant in tail, and to the heirs of his body, and therefore it an estate be made, either before or since the Statute of 27 H. 8, cap. 10. (of nies) to a man and the heirs of his body, either to the use of another and his heirs, or to the use of himself and his heir; this limitation of use is utterly void: For before the said Statute of 27 H. 8, he could not have executed the estate to the use: And to it was adjudged in an Ejc. Gione Firmiz, between John Cooper Plaintiff, and Thomas Franklin, and others Defenemts. P. 14. Ja. in B. R.

3 If a man make a gift in tail, or a lease for life, the remainder to his own right heirs, this remainder is void, and he hath the reversion in him; For the Ancestor during his life, beareth in his body (in judgement of Law) all his heirs; and therefore it is truly said, that Heirs sit par antecessoris: And this also appears in a common case; for if land be given to a man and his heirs, all his heirs are totally in him, as he may give the land to whom he will; So it is also, if a man be seized of lands in fee, and by Indenture make a lease for life; the remainder to the heirs male of his own body, this is a void remainder; for the Donor cannot make his own right heir a purchaser of an estate tail without departing with the whole estate out of him, but by departing with the whole estate he may: As if a man make a feetment in fee to the use of himself for life, and then to the use of the heirs male of his body, this is a good estate tailed executed in himself, and the limitation is good by way of use; because it is tailing out of the estate of the Feoffees, which is a good feetment tailed executed in himself.

4 If a man make a feetment in fee to the use of himself in tail, and after to the use of the Feoffees in fee; In this case, the Feoffees is in by the Common Law, not withstanding the express words of a remainder, and the Statute of nies, 27 H. 8, cap. 10. For he hath still a reversion but in nature of a remainder, and yet the Feoffees hath the estate tailed executed in him by the same Statute.

5 If a man deliver a writing sealed to the party to whom it is made, as an efferow to be his deed upon certain conditions, &c, this is an absolute delivery of the said, being made to the party himself; for the delivery is sufficient without speaking of any words (otherwise a man that is mute could not deliver a deed) and tradition is only requisite; and
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The Exchange.

Co. i. 57. b. 3.
Little § 64.

6 In exchange, if the estate be not equal, albeit the parties agree, yet is the exchange void; for the accommodation of the parties cannot make that good, which the Law would not make.

Co. ii. 53. a. 2.

7 If a man make a lease for life, and by his grant, that if any house or destruction be done, that it shall be repaired by neighbours, and not by suit, or piece; yet if in the lease, an action of waste shall lie, because the place wastes cannot be repaired without a suit.

Co. ii. 61. b. 3.
Little § 81.

8 If a man let lands to another to hold to him and his heirs at the will of the lessor, these lands (to the heirs of the lessor) are void; because if in this case, if the lessor die, and his heir enter, the lessor shall have an action of Waste against him, and that before the lessor enters; for, that by the heir of the lessor, the lands is absolutely waste.

Co. ii. 64. a.

9 In the making of Homage the vassal to; other Lords (Save in boy, Homage that he do, &c. It is another Scions) is not of necessity, but only given for explanation sake; for, the hommage is referred unity to the Lord, the presence, which the Tenant hommage to that land, to he up to the Homage.

Co. ii. 191. a. 3.
Co. L. 4. 73. b. 1.

10 Lords given to time, Et uni comm dinum vivenc, they make part.

Little § 345.
Co. i. 279. a.

When the condition is certain (viz. the payment of 20 l. or the like,) the Holder or Fossee cannot at the time appointed pay a lesser sum in satisfaction of the whole; because it is apparent, that a lesser sum of money cannot be a satisfaction for a greater.

Co. ii. 312. b. 4.

11 If a man ensemble upon condition, that he and his heirs shall renew unto a stranger a yearly rent of 20 s. or, and that if he or his heirs fail to pay it, then it shall be lawful for the Fossee; and his heirs to re-enter. Although this reservation be by inviency, wherein the 20 s. reserved is named to be an annual rent, yet it must be the more a rent for that; because although the stranger is tenant of it, and that tenant is made, yet can he not have Allc; for it; and for that the estate made not from the stranger; neither yet can he be party to the use, or. But such a sum reserved in that case, is only a pain let upon the Mount, which if he pay not, the Fossee may sue, &c.

Co. i. 214. b. 1.

12 If a man ensemble another upon condition, that he and his heirs shall renew unto a stranger a yearly rent of 20 s. or, and that if he or his heirs fail to pay it, then it shall be lawful for the Fossee; and his heirs to re-enter. Although this reservation be by inviency, wherein the 20 s. reserved is named to be an annual rent, yet it must be the more a rent for that; because although the stranger is tenant of it, and that tenant is made, yet can he not have Allc; for it; and for that the estate made not from the stranger; neither yet can he be party to the use, or. But such a sum reserved in that case, is only a pain let upon the Mount, which if he pay not, the Fossee may sue, &c.

Co. i. 214. b. 1.

13 If a gift in tail be made to a man, and to the heirs of his body, and if he die without heirs of his body, that then the Donor and his heirs shall re-enter, this is a void Condition; for, when the lease fails, the estate determined by the respective limitation, and consequently the making of the Condition to be void, which is determined by the limitation of the estate, is void; and in that case the whole of the Donor shall be endorsed, &c.

Little § 346.
Co. ii. 245. a.

14 Thos. avends in a release, Que quoquis ino in unum habeas pacro, are void in Law: for no right passes by a release, but only the right which the Releasor had at the time of the release name; for if there be father and son, and the latter is in possession, and the son, living the father; released by his name to the O66, Gos; and all the right that he hath, &c.
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By a prohibition, the defendant no. 3, upon being taken in the said City, should be able to bring his action upon the said contract, and to recover his full damages, &c. in the said City, and in the said City of London, and in no other place, &c. unless there has been a breach of the said contract, &c.

An authority

17. A man may bring an action, to land, to arise, &c. by a breach of the said contract, &c. unless there has been a breach of the said contract, &c.

18. In the execution of the said contract, &c. unless there has been a breach of the said contract, &c.

19. A man may bring an action, to land, to arise, &c. by a breach of the said contract, &c. unless there has been a breach of the said contract, &c.

20. A man may bring an action, to land, to arise, &c. by a breach of the said contract, &c. unless there has been a breach of the said contract, &c.

21. A man may bring an action, to land, to arise, &c. by a breach of the said contract, &c. unless there has been a breach of the said contract, &c.

22. A man may bring an action, to land, to arise, &c. by a breach of the said contract, &c. unless there has been a breach of the said contract, &c.

23. A man may bring an action, to land, to arise, &c. by a breach of the said contract, &c. unless there has been a breach of the said contract, &c.

24. A man may bring an action, to land, to arise, &c. by a breach of the said contract, &c. unless there has been a breach of the said contract, &c.

25. A man may bring an action, to land, to arise, &c. by a breach of the said contract, &c. unless there has been a breach of the said contract, &c.

26. A man may bring an action, to land, to arise, &c. by a breach of the said contract, &c. unless there has been a breach of the said contract, &c.

27. A man may bring an action, to land, to arise, &c. by a breach of the said contract, &c. unless there has been a breach of the said contract, &c.

28. A man may bring an action, to land, to arise, &c. by a breach of the said contract, &c. unless there has been a breach of the said contract, &c.

29. A man may bring an action, to land, to arise, &c. by a breach of the said contract, &c. unless there has been a breach of the said contract, &c.
The Reason of

he was Civic & liber hanc de civitate & societate illa, am that he sold playing Cards, &c. as was lawful for him to do, &c. But the Justices gave no regard to this Burr, because it was no more than what the Common Law would have done, and then no such particular custom ought to have been alleged; for, in his, quæ de jure communi omnibus conceduntur, Consequentia aliquid patre vel loci or extant legans, and with this accords E. 4. 5. &c.

Dyer 19. b.

20. The Less; coevalents, that the Lessee shall have sufficient Purchas- by the assignment of his Benefactor; in this case, for as much as this covenant is in the affirmative, and nothing from the Lessee, and is no more than what the Law gives a Lessee privilege to do. per Baldwin and Fitchet, the Lessee may take the deed without assignment. Taken quære, for Shelley is of another opinion, because Cujus est dare ejus est disponere, &c. Modus & conventio vincunt legem, and the Lessee also seems to be bound by the acceptance of the lease upon those terms, Ide quære. Hodsbot, if it last to one two acres of Penedo, and that it shall be lawful for the Lessee to eat the graze by the assignment of the Lessee; yet the Lessee may eat the graze without my assignment.

21. A man sold in fee of lands in Burrough English since the Statute of 27 H. 8. makes a testament in fee to the use of himself, and the heirs males of his body engendered. Secundum curiam communem legis, and after was sold accordingly, having more two sons: In this case, the younger sons shall have the land, notwithstanding the words before. Vide 26 H. 8. 5.

22. The Lord by Knight-service released and confirms to the Koonant to hold by a Surette: In this case, the new reservation is void upon the estate before created; Hodsbot the terms by deed still remains.

23. A Convenant Inquest holds a man of murder, & cleft sanguin six, and upon his arraignment he is acquitt, and another found guilty, he opposet, and it was also found, that he did not live, yet he shall testify his good; for upon his arraignment in this case, the light shall not be given in charge, because they were before testified by the Convenants Inquest.

Vide 76. 5. 22 The Lord by Knight-service released and confirms to the Tenant to hold by a Surette: In this case, the new reservation is void upon the estate before created; Moreover the tenants by deed still remains.

24. In deed upon an obligation of 60 l. for the payment of 35 l. 10 s. at Coventry, there was taken, that the money was paid at Coventry, and yet by consent of parties, and a paper Rate of Court, the Surette was tried at London, and bound to the Plaintiff, and judgment given; Hodsbot, upon a Writ of Error brought in the Exchequer Chamber the judgment was reversed; for content of parties cannot change the Law.

25. If a Sheriff will make an Under-Sheriff, provided that he shall not true Creations above 20 l. without his special warrant, this proc- vides is void, as being against Law and Justice: For where he may choose not to make an Under-Sheriff at all, 33 may make him as his will, and therefore him wholly, yet he cannot name him an Under-Sheriff, and yet aboyd his power, no more than the King may, in case of the high Sheriff-Ship, Vide 167. 53.

26. A Tenant in Common enter into the whole, and claim all expressly, yet he cannot thereby supposse his companion; for the possession of him that to enter, is over all in general, as well before such claimers as after, so as there is no possessor altered by such claim, and then a sole claim without private can never change the possession, and without a change of possession (which the Law permits) it remains as before; and therefore a Coparnerer, Tenant, or Tenant in common can under be divested by his Bloss, but by an actual Owner: For the same reason it is, that if a Tenant in Common do alone bring an action of trespass against a stranger, his action shall be abated, by pleading him Tenant

Hob. 5. Crew and Edwards.


Hob. 110. Smere and Dolb.
66 Expresio corum, quae tacitius infusum nihil operatur.

1. Queen Eliz. lets for years receiving rent, payable at the receipt of the Exchequer at Westminster, ad manus balivorum, vel etexq; &c. with condition to be void for non-payment; &c. the Queen grants them receipt on &c.; here, the demand of this rent ought now to be made upon the land: for in the former case, the limiting of the payment of the rent at the receipt of the Exchequer, &c. to the hands of the Waifs, &c. &c. more, than the law would have ordered, if no place of person &c. had been named in the Patent; so that such a limitation (in the former case) operated nothing; and therefore when the Queen alights the reservation to a subject, it is then as if no limitation at all has been made, where, &c. to whom the rent should be paid: and then the payment ought to be upon the land, which is the principal debtor, &c. so by consequent ought the venand also, &c. Expresio corum, quae tacitius infusum nihil operatur, &c. expresse non proflinit, quae non expresse proflinit, &c.

2. If a man grant the annuities of Dale for years to another, except the wood and underwood growing and being upon the said annuities; the words (growing and being) are means of abundance; because without them the law will imply as much; &c. by the demise of wood and underwood upon the annuities, it is implied, that they are growing: And therefore to demise all the wood upon the annuities, and all the wood growing upon the annuities, is all one, &c.

3. If the King demise the heritage and passage of a park to A. for life, and after grant the reservation of the same to B. for life, without keeping quain into the first demise Per mortem, furiam reddendam, foris cum euram, vel aliquo modo quocumque expiraverit, &c. In this case, there is no uncertainty in the last demise, when it shall take effect in possession; &c. it shall begin when the first demise determines, because so much is implied in the law: &c. therefor, if the King, reckoning, that another holds the annuities of Dale for his life, grants the first annuity to B. for his life. In this case, the Law implies, that the Crown grant the Duke and Earl upon the determination of the first grant; there is with the same into what gift in tail, or a grant in fee, &c.

4. A. pollutes for 15 years the Recovery of Sale, and in which a Mans age was a pertinent, grants the poaching of a certain number of the Musters to B., if it shall become void during the said term, &c. &c. and therefore, this Administrator becomes the Recovery to him in possession, and then before the expiration of the said 15 years the Musters becomes valid in this case, notwithstanding the said annuity B. shall have the next advantage, because the limitation absolute, if it shall become void, &c. implies no more, than what the law would have said if it had been omitted; &c. if Tenant for years grants the next advantage; the law shall imply such a limitation, if the Church shall become void during the term: &c. and therefore, Expresio corum quae tacitius infusum nihil operatur.

5. By the Statute of 23 Eliz. cap. 1, it is provided, That every person that shall lay or ring Malle, &c. shall forfeit the summe of 200 marks, and that he, which willingly lays Malle, &c. shall forfeit 100 marks, &c. without intent, to whom the forfeitures shall accrue: and then follows the clause of forfeiting 101, a moneta to the Queen, and after 11, a moneta for keeping a Woolshepster, &c. after which follows the clause of the distribution of the forfeitures: viz. that all forfeitures of any summe of money limited by that Act shall be divided into three equal parts, &c. And in
Writs, Fodors case in the 11 Report, it was objected, that this last clause of distribution did only extend to the said forfeitures of 100 and 100 parks, &c. which were not given to any person in certain, but immediately and generally, that they should be forfeited, without naming to whom; and therefore the said clause of distribution did only refer to them, but by 2 x. 1. per medem, for Recusancy was expressly given to the Queen and so was not any of the other forfeitures; and therefore that clause of distribution shall not extend unto that, which was before given to the Queen, but unto those penalties only, which were left indefinately, and given to none: Provided it was answered, and resolved, that the said branch of distribution shall extend as well to the clause of the penalty for Recusancy, as to the clause of lapsing or bearing fealty, because it is all one to say, h: shall forfeit (generally) 0; he shall forfeit to the Queen; for the Queen shall have them in both these cases, and Expressio comunt, quae excitet infinit nihil operatur.

67. Parte quacunque integrante sublata, tollitur tumus.

Co.l. 3. 41. a. 3. in Reasiffi. cafe.

1. Latin in Ex-simple shall ever descend to the heir of the whole blow, and never to the heir of the half-blown; for in as much as the blow, which is between the heir and his Ancestor, is that which makes him heir (for without blow none can inherit) it is great reason, that he, which hath the full and entire blow, shall inherit before another, which hath but a part of the blow of the Ancestor; because, Ordine natura, tumum preferent unicum parti; And therefore Briton faith, Proper pietas fangunis duplicatum, nam ex parte patris, quem ex parte matris, dicunt hares propinquior suo, quam frater de alia uxor; And Briton faith, that Right of blood in that case makes the female exclude the male, according to the Maritime, Possesso fratris facti foreumm effe heredem: And that of Aristotle, libro topicoorum, parte quacunque integrante sublata, tollitur tumus; quod verum est, si accipias partem integrum pro parte necessaria, esse essenti, Ali; As on the case above said the blow of the father and the mother, are but one entire inheritable blow, and both of them are necessary and essential to the procreation of an heir; And therefore, Deficient uno, non potest effe hares: And upon this reason, it seems to Britton, cap. 5. If a man be attainted of felony by judgement, that the heir begotten after the attainer are excluded from all manner of Inheritance of heritage, as well on the part of the mother, as on the part of the father; and the reason thereof is, because the son begotten after the judgment had not two inheritable blows in him; for, at the time of his generation the blow of the father was corrupt; and then, Ex leproso parente, leprosus generatur filius: And when the father is attainted of felony, the blow on his part being corrupt, the same (as it seems to him) had but half the inheritable blow in him without corruption, viz. the blow of the mother, and therefore he holds, that such a son shall not be inheritable, no not to his mother; And with this agrees Bracton, lib. 3. cap. xii. Non valebit feloni generatio, nec ad hereditatem parentem, vel matrem; Si autem ante feloniam generationem fecerit, talis generatio fideedit in hereditatem parentem, vel matrem, a quo non fuerit feloni perpetra; because at the time of his birth he had two lawful blows committed in him, which could not be corrupted by the attainer subsequent, but only as to him that offended. See more of this matter, Co. Infut. part 5. a.

2. In an action of Accomplices upon the judgement, that Computer, before the final judgement given to the arraignment and damages, a writ of Error: thereof not; to in that within these words: Si judicium inde redditum sit, &c. are meant not only to be principal judicium, but also de integro judicio, viz. When all the matter within the original is determined, as
the Common Law.

In 34 H. 6. 18. in Humphrey Bohuns case in a Quarre Impedit brought against two, the two pleaded to the same, and the other confesseth the fact, upon which confession, judgment is given, and he against whom the dammage was given, uses his Right to repaire the record into the Kings Bench, and Prior and the whole Court pursueth it; because the Right of Error was not the least of all those which were parties to the original suit, and that the Right is, Et ex judicium inde residuum sit, wic Recitarum illum habeas, &e. By which it appears, that the Right shall not be removed by Right of Error, before the whole matter be adjudged.

3. If writ of Suintetia be brought against two, and the one confesseth and pleads, to that he is sentenced of the trespass, and judgment is given against him; in this case the Defendant, shall not have a Right of Error; before he may be adjudged sentence against the other; Co. The Lord Commissions against Canton and others, per Prior, [same p. 6.]

4. In trespass by the house of S., against one for his Castle taken, or to parcel the Defendant placeth not guilty, and as to the rest he pleaseth another plea, whereupon the Plaintiff vermones, and after the whole was taken to the Plaintiff, upon which he had judgment; in this case, the Defendant shall not have a Right of Error until the whole matter be determined, &c.

5. A man calleth in a Right of Error, upon a Judgment given, where the judgment was given of the Plaintiff and his counsel, but not of the Courts; wherefore the Rite was rather, because the suit is contingent, Si judicium inde residuum sit, &c. Co. ibid. b. 2. 3 H. 6. & 6. Co. ibid. b. 1. Eliz. Dyet 391.

6. In Foro faundo brought by Fitz-williams against Copley, the Defendant hath judgment of part 49. After the Plaintiff brings a general Right of Error before the application of the record, it is necessary that the record might be removed into the Kings Bench, but the Court would not grant it, because the whole matter is unknown. should be determined for the judgment of the Kings Bench, and the Court proceed without instance, if they should pass upon a matter which is not determined, and whereas upon judgment is given, and the whole record ought to be either in the Common Pless, or in the Kings Bench, also the original suit, and cannot be here and there too. &c.

7. The next Argument is, that he, who saith in a Quarre Impelee, the one plea, this plea cases the suit to alrea. Co. ibid. b. 7. 12 Eliz. Dyet 333. 94. 46 Eliz.

8. Marcus and James being Barmen in special suit, the Plaintiff is ad- Ad. Ad. having execution, and executes, having done the same goods, the said goods that he have the lands, or he ought to make his consequence by both, per Curiam.

9. If an injury be made for the performance of ninety things as one, and nothing to be performed on the other, it is a large injury's and hole, according to the book of P.H. 6.

10. A hiring an actio of trespass against B. C. and D. B. pleas not guilty, whereas the issue was against C. and D. makes a justification and thenethemot after a replication a demurrer was fought; bringing this demurrer, the issue was taken against B. and demurrer given, and judgment against him; after which judgment the Plaintiff brings a Noble process against the Defendant, and D. interjoyns Error thus brought by all the Defendants against the Plaintiff; and the Court adjuges thus, but that the Noble process has no effect on the Defendants; but it was held, that the Noble process against C. and D. had not delinquency B. and to an error, neither yet should C. and D. havejoined in this Right of Error, because there was no judgment against them, nor any other, and the rest of Error to be done against, &c.
1. It is the office of a good Expositor of an act of Parliament to make connotation of all the parts together, and not of one part alone by it selfe: Nemo enim aliquam partem reñe intelligere posset, antequam tum totum iterum acque regum perlegender: For example, albeit the first branch of 5 Stat. of 17 H. 7. c. 20. makes the discharge, alienation, warranty, and recovery made by the wife of the Inheritance of her deceased husband to be utterly void and of none effect; Yet the clause following being joined to the first, with this connotation, And that it shall be lawful for any person, &c. to whom the said Inheritance, &c. shall appertain, to enter, &c. both clearly expound the generality of the words of the precedent branch; and therefore the tents of both together is, that they shall be void and of none effect, by the entry of him, unto whom the interest, title or inheritance after the decease of the Same give appertaining: Howbeit they shall not be void, but stand in force between the parties themselves, and against all others, save only against such as have title, &c. and they alone have power to make them void and of none effect by their entry, as above said; For, estates of Franktenement or Inheritance cannot be defeated without entry, and therefore by entry they ought to be made void.

2. Such an Exposition of a Bill must be made, that all the parts thereof may well stand together, and that withall it may stand with the rule of Law: So if lands be given to the use of Aden, and of the heirs male of the said Aden lawfully begotten, and for default of such issue, to the use of divers others in remainder, &c. Here, albeit there wants the words (of the body) yet is this a good limitation of an estate tail; For, otherwise it would be against the intent of the Donee, and all the remainders other would be void; and if these words should be turned into Latin, they ought to be rendered thus: Et heredum masculorum de praebito Adeno legitime procreata, et non heredum masculorum praebiti Adenii, which is clearly spoken by the subsequent clause, and for default of such issue, &c. For, title cannot be of Aden, unless the words should be, De dicto Adeno, and so in this case the one clause is well expounded by the other, &c.

3. In Replevin the Defendant avows for damage dissent, the Plaintiff pleads in Barre, that the said lands were given in socage, and that 1. S. being thereof settled in fee by his late Will, devised them unto him for 60 years, if he should to long live, &c. Unto which the Defendant pleads, that it was true, there was such a while made, but after the said devise 1. S. covenanted certaine persons thereof to the use of the Plaintiff for 60 years, if he should to long live, &c. whereupon the Plaintiff demures: And in this case it was resolved that although it appeared, that the title; by which the Plaintiff claimed in his barre to the Aboyns, was utterly destroyed (for the Plaintiff avows by the Will of 1. S. which Will appears to be afterwards countermanded by the testament, which the Aboynant afterwards pleads, and which the Plaintiff contested by his demurrer) yet shall the Plaintiff have judgment, because his Count is good, and the Aboynant in his replication to the barre of his Avoyns, hath done two things: For first, he hath destroyed the title, which the Plaintiff made by the Will; And again, he hath given to the Plaintiff another title, viz. to have the land for 60 years by force of the ues declared upon the testament: And therefore as much as upon the whole record (according to which the Count ought to judge) it plainly appears, that the Plaintiff hath a lawful term in the Lands, and that the Defendant had taken his Castle wrongfully, so that cause judgment was given against the Aboynant.
The best Expositors of Letters Patents, and Acts of Parliament, are the Letters Patents, and the acts of Parliament themselves; by the construction and conference of all the parts together; Optima hactenus interpretatrix est (omnibus particularibus ejusdem insipientis) ipsum luumum: Et injustum est, nisi tota legi inopta, und alicua ejus particularis proposition judicare vel respondere.

In Dodoz. Bothami case in the eighth Report; although it was admitted, that the Plaintiff's replication was not material, and the Defendant had demurred thereto; yet in as much as the Defendant had confessed in the barre, that they had impugned the Plaintiff without cause, the Plaintiff had judgment: And this is the diversity there taken, that when the Plaintiff replies, and by his replication it appears, that he hath no cause of action, where he shall never have judgment; but when the barre is insufficient in matter, 02 amounts to a confession of the point in debate, and the Plaintiff replies and shews the truth of his matter to enforce his case; and in judgment of Law it is not material; yet in that case shall the Plaintiff have judgment: For 'tis true, that sometimes the Court shall be made good by the barre, and sometimes the barre by the replication, and sometimes the replication by the rejoinder, &c. Notwithstanding the diversity, i.e. that when the Court wants time, place, or other circumstance, that may be made good by the barre, so it is also of the barre, replication, &c. as appears in 18 E. 4. 16 b. But when the Court wants substance, no barre shall then make it good, so likewise of a barre, replication, &c. and with this agrees 6 E. 4. 3. Bone cas. & nos ibidem dictum Choke; Vide 18 E. 3. 34 b. 44 E. 3. 77 a. 12 E. 4. 6. 6 H. 7. 10. 17 H. 7. 32 L. 1. H. 4. 24, &c. But when the Plaintiff makes replication, or rejoinder, &c. and thereby it appears, that upon the whole record the Plaintiff hath no cause of action, he shall never have judgment, albeit the barre, rejoinder, &c. be insufficient in matter; for the Court ought to make judgment upon the whole record, and every one shall be intended to make the best of his own case: Vide Riegways case in the third Report, 52. And these diversities were also resolved and adjudged between Kendal and Heliar M. 35 & 36 Eliz; in B. R. and M. 39 & 30. in the same Court between Gilis and Burbury.

6. Albeit the replication be insufficient, yet if the barre be also insufficient in matter, upon the whole record the Plaintiff shall have judgment: It is otherwise, when by the replication it appears, that the Plaintiff hath no cause of action; so there the Plaintiff shall never have judgment, although the barre be insufficient: As in Deb upon an Obligation with condition to perform covenants in an Indenture, the Defendant pleads performance of all the Covenants generally, when it appears to the Court, that ubi 2 of them are in the negative of dissatisfied, and to the plea in the general affirmative insufficient; yet if the Plaintiff reply, and show a breach of one of the Covenants, which by his own showing is no breach (upon which the Defendant returns) judgment shall be given against the Plaintiff; because upon the whole record it appears, that the Plaintiff hath no cause of action; For the Obligation is ended with condition to perform Covenants; So that the Plaintiff hath no cause of action, until there be a breach of Covenant, and by the showing of the Plaintiff himself there is not any breach sufficient in Law to give him cause of action; and it is always intended, that every one shall show the best of his case, &c. But when the barre of the Defendant is insufficient in substance, and the Plaintiff's replies and shews the truth of his case, whereby he produceth no
matter against himself; but matter explanatory, of perambulations not material, there the Court shall judge upon the whole record, and (the Count being good) for insufficiency of the Barre without any regard to the replication, judgment shall be given for the Plaintiff: As if a man pleads a grant by Letters Patents in Barre, which are not sufficient, the Plaintiff by replication mention another clause in the said Letters Patents; which clause is not material, the Defendant demurs in Law; In this case judgment shall be given against the Defendant, &c in similibus.

Among the misprisions remediable: by the Statutes made for the amendment of records, this is one: that albeit the verdict upon issue recp. to be given for the Plaintiff, yet upon the whole record it appears to the Court, that the Plaintiff hath no cause of Action, he shall never have judgment, and so it hath been often adjudged.

In debt upon an Obligation, the Defendant pleads a release of the Plaintiff, &c. which was in this manner. A doth acknowledge himself satisfied and discharged of all bonds, debuts, &c. made by B. (the Defendant) and it is agreed, that A. shall deliver all such bonds as he hath yet undelivered to B. except one bond of 40 l., not yet due, wherein B. and C. stand bound to A. &c. The Plaintiff replies, that the obligation excepted, and the obligation in Curia prodata are one and the same, whereupon the Defendant demurs; and in this case it was resolved, that the exception extended to all the premises: because all the words before make but one infinite sentence, and the one depends upon the other; For it is reason, that when Bonds are satisfied, they should be delivered; and exceptio emptor ultima ponenda est. It was also reason, that this bond of 40 l. should be excepted, because it was not one when the release was made, &c.

M. J. upon a motion at the Barre it was resolved, that an obligation to the Sheriff upon a Fieri facias, for the payment of the money in Court, was not both, by the Statute of 23 H. 6, cap. 10. For the first branch of that Statute is, that he shall let to bail by writ of Bill, &c. which he could not do before, as appears, 19 H. 6, 43. Then follows the form of the body, &c. The third contains a penalty, that if the Sheriff take an obligation in any other form, &c. than is there prescribed, that it shall be void, so that upon confiscation of all the branches together, and upon their experience and dependance upon another. It plainly appears, that the said Statute both extend equally to obligations of such as are within their guard and custody, and not other.

Bonds taken by the Sheriff, not within the State of 23 H. 6.

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10 Always such construction ought to be made of an Act at Parliament, that one part thereof may agree with the rest; and that all may stand well together, &c.

11 The Justices shall affect the Fines of Copitholders upon the one consideration of all circumstances. Quam ratione quis debet esse finis non definitur, sed omnibus circumstantiis in spectu &c. P. 9. J. 184. 49.

Warrant that cannot be recovered by fin.
particeps Criminis, and agreeing thereunto: then albeit the parties with warranty is made after the defeasance; yet in so much as the defeasance was to last an intent and purpose, the Law will adjudge upon the whole Act, as it is agreed in 19. H. 8. 12. If a man defeaseth another with intent to make satisfaction with warranty, albeit he make the satisfaction twenty years after the defeasance, yet the Law will adjudge upon the whole Act, and the defeasance and warranty shall be coupled together according to the intent of the parties: and therefore in such case the Law will adjudge the warranty to begin by statute, albeit they are made at several times: So if a man make a lease of lands in two several Counties, referring an entire rent, albeit the liberty be made at several times (Ass in one County, and then in another) yet the rent is issuing out of the lands in both Counties; so likewise if a man make a charter of settlement of certain lands with warranty, and deliver the deed, and after make liberty of the land secundum formam carcer: Hereof, the Law will adjudge upon the whole Act; and albeit the deed be delivered at one time, and the liberty of the land at another time, and although a warranty ought to ensue upon an estate, yet upon the whole matter the warranty is good.

3. The use of a recovery was limited by a Latin word to the use of H. (912, 914) he against whom the recovery was had) for life, the remainder Seniuri pueri de corpore H. in tate, &c. Afterwards H. covenants by an English instrument to pay a fine to the use of the heirs, whereas the use was limited to the use of the eldest child of the body of H. &c. H. hath two children, whereas the elder was a daughter, and the younger a son: Rim in this case, it was adjudged, that the daughter should have the land; albeit the word pueri be indifferent to each sex, and then the stake for dignity should be preferred, yet because the English instrument had declared the construction to be the eldest child, the daughter shall have it.

4. The Recovery of Welf Bodwin ought to have come to E. 6. by attainer of felony, to which the Abbotswell of the Aberdeen was appellant, and was consecrated: Ex parte, a grant to the Recovery, Et omnium hereditamenta, parcelles, locantes, &c. Deed, and because the patent was in tam amplis modo & formis, as the felon had it, and also Ex certa scientia, so as the Monks was not deceived, it was adjudged, that the Aberdeen passed without special mention thereof.

59. Parts simul sumpsit component totum: & Totum comprehensis sunt partes.

1. Where all the Joumalists join in a testament, story of them in judgement of the Law both gives his own part: And to that means the whole estate both falls to the Frode according to the testament: So it is also, when all that have right, title, or interest in any thing, do join in a consequence, the estate shall be thereby clearly taken in the Grantor, as the Diluter and the Diluter, of his heirs, the Lessor for years of life, and the asdicer, and the life.

2. The Patron, Patron, and Ordinary may charge the Glebe, for they all have in them the Frode alone thereof; So may the Patron and Ordinary in time of location, and the Glebe of a Donative may be charged by the Patron and Incumbent without the Ordinary, &c.

3. A prior's B. upon condition the Frode, and Frode, by deed grants a Rent-charge to C. the condition is broken, and the Frode enters; yet in the grant of the rent-goods: For, both of them joining together in the bond, they had power to charge the lands, &c.
4 This Lord of a Copthold (whether) grants the inheritance of all his Coptholds; albeit no mention at all is made of the grant of the Manor; yet the Grantor may keep a Copthold Court, and take Jurisdiction, make Subsidies, &c. It is otherwise, where he grants the inheritance of some of them: retaining the rest to himself; so in that case the Grantor cannot keep Court; because those Coptholds are in that wise severed from the Manor, &c.

5 A Patron shall have a Juris Utrum, where the lands or tenements are alienated by his Pecessors, or if recovery be had against the Pecesessor; by default; or restitutio, &c. Nunc dedere of his Pecessors: where he hath not paid in aide of the Patron and Ordinary; but he pay in aide of the Patron and Ordinary, and they foie in aid, and render the land, &c. do not claim the Disenchant's actio: in that case, the Successor shall not have a Juris Utrum, because the latter shall be in them this, and they altogether had power by Law to oppos'd of it.

6 Two were out-laid upon an appeal of Farter, and they pur-sued their charter of pardon in these words, Donavimus, remissimus, &c. W. B. & L. B. omnis, omnimoda Udag, verius pref. W. & L. vel verius comm. aulcem proomalys, &c. Any exception was taken by the Kings Council, because the words of pardon were unjust, whereas they should have been Pardonavimus &c. W. & L.B. & comm. aulcem, &c. because each paying was several, and the several contemnnares should have several pardons: but the pardon was allowed, because (as it seems) it comprehended all that both of; either of them were guilty. And both another pardon was also allowed in 23 E. 4. Term. Rec. 15, but the book is not reported, and contrary to the record.

7 Vide supra 27. 9.

70 Intire things cannot be severed.
the Common Law. 243

1. A bond or contract by words in the personality, and inters, neither yet
and's bond be such words, as a covenant, sc. may. P.N.B. 130. b.

2. If trespass, or any action in nature of trespass, which is in law
several, and where every one may answer without the other, there a
protection cast for; one, shall serve for him only, unless they agree in
paying; or if they plead several pleas, and one Venere facias is agras-
ved against all, there a protection cast for one shall put the plea without
pay for all (and therefore in former times the Plaintiff also to sue out
several Venere facias in these cases for fear of a protection, &c.) But
in every action of plea, real or mixt, against two (where a protection
battles) in; in debt, letting, or accept, a protection cast for the one
party out the plea without pay for all; so these actions are in the
nature 'inter in respect of the joint party and interest, that attend
them, &c.

4. If a man be brought by several Precipes against two or
more, if the Demandant be non-fait against one, he is non-fait against
all; Fo., as to the Demandant, it is but one Intree to suit upon one
Tres.

5. A man grants a Rent-charge to another and his heirs, the Gran-
tee dies, and his wife recovers double thereof against the heir; In that
case the heir cannot after such eventment bring a suit of Amenity to
the other two parties; for either the whole must be a Rent-charge, or
the whole must be an Amenity; because other wise it would not be acco-
ing to the view of the grant, which is intire without exceptions, &c.

6. If a man, which hath a Rent-service, purchase parcel of the land,
out of which that rent in sitting, that shall not extinguish the rent, save
only for the parcel; Fo. Rent-service in that case is savory, and may
be appropriated according to the value of the land; because it lieth out at
the profits of the land, and is one by common right: But if a man hath
a Rent-charge to bring and his heirs aliening out of land, and he pur-
bished parcel of that land to him and his heirs, the whole Rent-charge
is extinct, and the Amenity also; because a Rent-charge is intire, and
sliding out of every part of the land against common right: So likewise
if one lends his land of his Lord by a service of rendering to his Lord, nei-
ther than a Feaste of Yeole, a troy pound gold, a Christmas flower, &c.; or
the like, in that case the Lord purchase parcel of the land, such service is
gone; because such things are in their nature intire, and cannot be te-
red or appostioned. Vide Burton's case, Co. L. 6. 7.

7. If a man grants a rent out of these acres, and
grant over, that if the rent be being, the Grantor shall distrain for
the rent in one of the acres, this rent is intire, and cannot be a Kent-
lock out of two acres, and a Rent-charge out of the third acre, and
therefore it is a Kentlock for the whole, and the Grantor shall distrain for
it in the third acre; so if a man be granted to this and their heirs out of
any acre of land, and that he shall be lawful for one of them and his heirs
in distress for it in the same acre, this is a Kentlock; Fo. as much as they
lent being lawful for one intire rent, it cannot be as to one a Kentlock, and as of the other a Rent-charge; And this intire
be an appurtenant to the rent, and therefore in that case the Survi-
bor, or their Grantor of the rent may distrain for it, &c.

8. If the service of the Tenant be to render unto the Lord yearly at
such a Feast an Horse, a Reo-cart, &c.; the like intire, annual service,
which cannot be severable, and the Tenant alien part of the land to a Stran-
ger: In that case, because the rent cannot be appostioned, &c. shall be
multiplied, and both the Feast, and Feast-Hall pay each of them a
Horse; Reo-cart, &c.; And therefore at the Tenement, which holds by

The Reason of

such service extends the father of the Lord of part of the land, and that
land afterwards descends to the Lord; yet that shall not extinguish
that annual entire service, but the Feoffor shall hold by a Boyle, &c.
because the service was multiplied, and each of them, viz. the Feoffor
and the Feoffee held by a Boyle, &c.

9. A both a Common of pasture certain (so for ten hounds) in forty
acres of land, and twenty of these acres belong unto him: in that case
the Common certain shall be appportioned: It is otherwise, if it be com-
mom of pasture (ten number: so for that being entire and unseverable,
cannot be appportioned, but shall still remain: So it is also of common of
Coles, Latchets, Milch, &c.

10. If the Haptenants hold by an entire yearly rent, as a Boyle, a
grain of wheat, or the like, and the Tenants cells by two years, and
the Lord receives two parts of the land against two of them, and the
third leaves his part by coming of the rent, &c. and finding fancy, Al-
beit the Lord comes to the two parts by lawful recovery, grounded up-
on the default and wrong of the two Haptenants, yet shall the entire
annual rent be exting: Vide infra, I. 114. c. 45.

11. If the Tenants holbeth by seality and a bushell of wheat, or 2
pounds of Pepper, or of Coyns of such like, and the Lord purchase part
of the land, there shall be an appportionment, as well as if the rent
were in money; because such services shall admit separation and divid-
on: But if the rent were by one grain of wheat, or one pepper corn, or
one piece of coyn, by the purchase of part, the whole shall be exting;
because these things are intires, and will not admit division, or sever-
ance.

12. If there be Lord and Tenant by seality and Heretic service, and
the Lord purchase part of the land, the Heretic service is exting; be-
cause it is intire, and also of such value, that it adventures the land
still remaining in the Tenants hand, shall not for the future be able to
wutcharge it: It is otherwise, where the Tenant holds by Heretic-serv-
ces; so if the purchase of part shall not extinguish the service, yet in
that case also the Heretic is intire; but Confondico vicin communem
legem.

13. If the Tenants holds of his Lord by Homage, Feality, Glas-
age, and Rent, and the Lord purchase parcel of the land, In this case, the
Rent and Glasnage shall be appportioned; but the Homage and Feality
shall still remain intire for the residue of the land still remaining in the
Tenants hand; because he still holds the residue of the land of him, and
then he must hold it by some service or other, and therefore those serv-
ces being in their nature indeferable and intires, they shall totally re-
main, being traced the feoff and feoffe chargeable services that the Ten-
ment can hold by, &c.

14. Albeit in some cases a Rent-charghe, which is in his nature inti-
tire, may by act in Law be appportioned, as when the Grant of the
rent comes to the land by descent, or the like: Yet in such cases the
writ of Annuity failed, because that it was being grounded upon the
grant by who (which is intire) must be free for the whole, and cannot
be free for part: Also a rent in respect of the realty may be apportion-
ted; but the personalty is indivisible, and shall not be severed, no not by
act in Law: As it execution he free of body and lands upon a Statute
Merchant or Staple, and afterwards the inheritance of part of those
lands descends to the Confess: In this case, all the execution is abo-
viation; for the duty being entire, and personal, cannot be divided, &c. Annui-
nee debuit judex non separat ipsum.

15. A Rent-service is of its own nature apportionable; Howbeit if
it he changed from Rent-service to a Rent-fekk by severance thereof
from Rent-serve becomes a feck.
the Common Law.

from the Seignory, it thereupon becomes entire and unfeastible according to the nature of a Rent-lease: And therefore if there be Lord and Tenant by seali and certain rent, and the Lord by his grant the rent in fee, fee-tail, as for life, leasing the sealiy, the rent, which before was Rent-lease, is by that fevance of it from the Seignory made a Rent-fkck; and then if the Sirante purchase part of the land out of which the rent is Mad, the whole rent is extint.

16 If a man be lesse of two acres of land in two sever County, and maketh a lease of both of them, referring two Holdings rent; in this ease, albeit several liberties be made at several times, yet is it but one entire rent in respect of the necessity of the case, and he shall doffect in one County for the whole rent, and make one awadby for the whole.

17 Every County is as it were an intire booy of itself, so that upon a feodment of lands in many Counts in one County, lie of seail made in one parcel in any one of these Counts in the name of all, suiffed for all the lands in all the other Counts within the same County; but upon a feodment of lands in divers Counties, there must be liberty of seal in every County: In like manner, if a man have cause to enter into lands lying in divers Counts in the same County, if he enter into one parcel thereof lying in one Count, in the name of all the lands in the same Count, by each entry be hath as good possesion of all those lands, as if he have enterd into every parcel; but if they lie in several Countys, there must be several entries, so likewise if a man be dispossessed of a rent lying out of lands lying in divers Counts with in one and the same County, he shall seek to being but one Mile for the recovery of that rent, &c. But if the lands lie in several Countys, he shall have severall Actions in continous Counts; and in either County shall make his plaint of the whole rent: Howbeit there shall be but one Patent to the Justices, And this Must in continua Continus to be given by the Statue of 7 R. 2. For no Little lay in that case at the Common Law, but the party might affidavit for the whole rent in either County.

18 If a man hold divers Countys or lands in divers sever Countys by one tenure, and the Lord is unpossessed of his services, he shall have several writts of customs and services, &c. For every County were returnable at one way in the Court of Common Plass, and thereupon Count according to his case by the Common Law: But if the Tenant in that case do cease, the Lord shall not have severall writs of Celavat ut supra; For the writ of Celavat is given by Statute of Welt. 2. cap. 27. and the writ and manner of that writ is therein prescribed; for which case it is holsten in our books, that, in that case a Celavat lay not at the Common Law, &c.

19 Of Inheritances some be intire, some federal, and of latter some be divisible; some be indivisible. If a Villein descend to two Co-parceners, this is an intire inheritance; and albeit the Villein himself cannot be divided, yet the power of his grant, &c. for one Co-parcener may have him one day at week, and the other another day at week, &c. They may likewise have an Inheritance in commonary, and may pearson by turns; because that is also an intire Inheritance, which cannot be divided.

20 If a man have reasonable Coheres, as Post, bat, Pap-bat, &c. appentant to his Free-hold; they are so intire as they shall not be divided between Co-parceers: So if a Coher be granted to a man and his heirs; and he hath three where daughters, this Coher shall not be divided between them; it is equitable of a Coher certain, so that joint partition may be made. Likewise Yeameage, Fealty.
ally, bitwise uncertain, Commodity nans number, and the like, cannot be
obviated between Coparceners and the two last, not only because they
are entire, but also because it would be a charge to the Tenant of the
Holt, if each beneficent should be divisible, the interest in them be-
ing unlimited, &c.

21 If a Colouise be granted to two men and their heirs: In this case,
because the Colouise is uncertain, and cannot be levied, it shall a-
mount to a general grant, viz. to each of them one Colouise: for the
persons be several, and the Colouise is personal, and the grant shall be ta-
ten most strongly against the Conyunto.

22 If two Tenants in Common of lands in fee make a gift in tails
of a lease for life to another, conveying to them yearly a certain rent, and
a pound of Pepper, and an Hack, and an Yle, and they are lessee
of that lease, and afterwards something the same leases being arrested, they
disclaim for it, and the Tenant makes forlsoms; In this case, as to
the rent, and the pound of Pepper, they shall have two several selves,
because these rents are several, and the two Tenants in Common
claim and hold the reversion (unto which the same rents are incident)
by two several titles: But as to the Hack and Orle, although they be
Tenants in Common, &c. they shall join in the selfe, because
these things are intra and cannot be levied: for one of them alone by himselfe
cannot make his plaint in Selfe for the mortis of an Hacke, or of
an Orle: because the Law will not suffer a man to demand any
thing against the order of nature or reason, as it appears by Littleton,
Sec. 129. Lex enim spectat natura ordinem.

23 Tenants in Common shall join in a Quære Impedit, because the
presentation to the Aduision is intra: Also they shall join in a witle of
right of Ward, and reversion of Ward for the boves, for the same
reason.

24 If two Tenants in Common be of the Warshiphe of the body, and
a stranger can both the Ward, and one of the Tenants in common
relatively to the wader, this shall go in benefit of the other Tenant in
common, and be recover the whole: Neither yet shall that realse be
any bar to him: for that the Warshiphe of the bove is intra, and cannot
be levied: So it is also if there be two Inagents of an Aduision,
and they bring a Quære Impedit, and the one both realse, yet the other
Ward the both and recover the whole presentment: Likewise the two
Tenants in Common shall join in a decemte of Charters, and albo the one
be non-suit, yet the other shall recover.

25 There is a diversity between Chattels real, that are apposition-
able, and severable, as leases for years, warshiphe of land, interest of
tenements by Equity, Statute Merchant, Staple, &c. of land and ten-
ements, and Chattels real entire, as Warshiphe of the body, a Willime
for years, &c. For if one Tenant in Common take away the ward, or
the Willime, &c. the other hath no remedy by action: but he may take
them again: But for the other, he, that is suiteth, may have remedy
against his companion that oueth him, viz. by Eject. Stone Firma, Es-
sement of Ward, Quære ejecto infra terminum, &c.

26 If two Tenants in Common be of a Manor, to which Wales
and Stray both belong, a Cray both happen, they are Tenants in com-
mon of the same, and if one both take the Cray, the other hath no re-
move by action, but only to take it again; unless by precept they
claim to have them by turns, &c.

27 The Grant of part of the reversion shall not take advantage of
a Condition, by the Statute of 32 H. 8. cap. 34. As if a lease be made
of three acres, reserving a rent upon Condition, and the reversion is
granted of two acres, the rent shall be apportioned by the act of the par-
ties.

28 The Reason of

Grant of

Max. 7

Co.Bid. 193. 3.

Litt. § 314.

Co. Sid. 17.

Co. Bid. 3.

Co. 1. 5. 47. b.

the Common
de Northum-
berlandes case.

Co.Inq.nu.i.

199. 6. 4.

Co. 120. 2. 3.

Co. 121. 3. 3.

Tenant in

Co. 199. 5. 4.

& 186. 4.

Co. 1. 5. 47. b.

the Common
de Northum-
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199. 6. 4.

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berlandes case.

Co.Inq.nu.i.

199. 6. 4.

Co. 120. 2. 3.

Co. 121. 3. 3.

Tenant in

Co. 199. 5. 4.

& 186. 4.
ties; but the condition is destroyed so that it is entire and against common right: It is objectivwise in the Kings case, &c.

27 In mist actions, as an action of Malsue, &c., which are mixed both in the reality, and personality, a release of all actions real, or a release of all actions personal, is a good plea in barre; because the action is in its nature entire, and therefore a release of part will annul all, &c. Where is the same reason of an Action of Novel dissenion, a writ of Annuity, Quare Impedit, &c.

28 If a Dilectio make a lease for a hundred years, the Dilectio may confirm parcel of those years, viz. Either the whole land for part of the term, or part of the land for the whole term, &c. So likewise if the Tenant for life make a lease for a hundred years, the Lease may confirm either for part of the term, or for part of the land; but an estate of Inheritance or Fee-hold cannot be confirmed for part of the estate; because those estates are entire, and not severable as years be: And therefore if the Dilectio confirm the estate of the Dilectio, albeit in the use of confirmation, the limitation, be exprest to be in tail for years, or for a day, or oneye for an hour, yet both the Dilectio a Fee-simple, because his estate was before the confirmation entire and unfeverable.

29 If any Dilectio make a lease for life, the remainder in fee, if I confirm the estate of the Tenant for life, yet after his decease I may well enter; because they are several estates, and nothing is confirmed but the estate for life: So it is also when the several estates are in one and the same person, as if the Dilectio make a gift in tail, the remainder to the right heirs of the Tenant in tail, or the remainder for life, and then to the right heirs of the Tenant in tail; in these cases, if the Dilectio confirm the estate of the Tenant in tail, it shall not extend to the other estates, causa quâ suprâ: But if the Dilectio make a lease for life to A, and B, and then the Dilectio confirms the estate to A, here B shall take advantage thereof; because the estate of A, which was confirmed, was entire and joint with B; and therefore in that case, the Dilectio shall not enter into the land, and shall not extend to the other estates, causa quâ suprâ: But if the Dilectio make a lease for life to A, and B, and then the Dilectio confirms the estate to their heirs, this shall not extend to their companions, but to his whole Fee-simple also; because to many purposes he had the whole Fee-simple in him, and the confirmation shall be taken most strongly against him that made it, &c.

30 If I let land to a Feme sole for terms of her life, who takes husband, and after I confirm the state of the Baron and Feme to hold for their lives: In this case the Baron doth not hold joint with his Feme, but holds in her right for the terms of her life; because the wife had the whole estate in her belovs for life, and Jointenants ought to come in by one entire tithe, &c.

31 If the reversion of these acres be granted, and the Lezze agrees to the same grant for one acre: this is good for all these: So it is also of an Attornment in Law, if the reversion of these acres be granted, and the Lezze surrenders one of the acres to the Grantor, this attornment shall be good for the whole reversion of the thos, according to the Grant, &c. For the Grant being entire, the attornment must be entire also.

32 Where be Lord and Tenant, and the Tenant hold of the Lord by twenty manner of services, and the Lord grants his Seigniory to another, if the Tenant pay de fato any parcel of any of the services to the Grantor, this is a good attornment for all the services; altho'
though the Intent of the Tenant was to attend but for that purpose, only: because, albeit there be divers manners of services, which the Tenant ought to perform, yet is the Signity intire, and the Tenant having attorne for part, it cannot be both for that part, and good it cannot be, unless it be for the whole, &c. Neither can the Tenant attorne for a time, &c upon Condition, &c.

33 If there be many Jointenants, which hold by certaine services, The like, and the Long grant to another the services, and one of the Jointenants attorne to the grantee, this is as good, as at all first attorne, because the Signity is intire, for there cannot be an attornment in part. &c. So also a lettin of a Kent by the Lands of one Jointenant is good for all, and a lettin of part of a Kent is a good lettin of the whole, &c.

34 If the donte in tale enchoke the dono; alone, that makes no discontinuance: because the reverson in that case is not discontinued, &c. But if he enchoke the dono: and a stranger, this is a discontinuance of the whole Land, because the Stranger is then felled per my & persons, as well as the dono, &c.

35 If Husband and Wife Tenants in special tale, have thus a Daughter, and the Wife die, the Husband by a body Wife hath thus another Daughter, and discontinueth in F., and dieth, a collateral Ancestor of the Daughter released to the discontinuance with Warrantie; and dieth, the Warrantie continues upon both Daughters: yet the Male in tale shall be barred of the whole: because in judgement of Law the Warrantie discontinued upon each of them entirely.

36 If a Man make a Feoffement in F. with Warrantie to the Feoffee his heires as assignes, and the Feoffee re-enforseth the F. out: and his Wife, or the Feoffee: and any other Stranger, the whole Warrantie remaining still, because the Warrantie is intire and not parted: So it is also if two Men make a Feoffement with Warrantie to one and his heires and Assignes, and the Feoffee re-enforseth one of the Feoffees, In this Case also the Intire Warrantie beth remaine, &c.

37 If a Man at full age, an Infant make a Feoffement in F. with Warrantie, this Warrantie is not void in part, and good in part, but it is good for the whole against the Man at full age, and void against the Infant: For albeit the Feoffement of an Infant, passing by liberry of Chent, is not voidable, yet the Warrantie, which taketh effect only by need, is merely void, &c.

38 If a Man let Lands for years, the remainder in F., and liberry is made to the Lessee for years only, this shall convert the F. simple to the remainder, F. or albeit liberry he not necessary to the Tenant for years, yet it shall serve for the benefit of him in the remainder: because the particular term, and all the remainders, which depend thereupon (though never so many) so in judgement of Law make but one entire Estate, which takes effect at one and the same time, &c.

39 Since the Statutes of Uses, 27 H.8. If a Man make a gift in tale, with proviso upon Condition, that if the bond be void such an Act, that his Estate, shall cease during his life, or if a Feoffement in F. be made with proviso, or upon such a Condition, that his Estate shall cease during his life, these provisos or Conditions are utterly void, against Law: for such an estate tale in F. in Land being intire, and without fractions, such a Condition or limitation annulled to such Estates ought to destroy the whole Estate, unto which they are annexed, and not part thereof: and that
that enters for the condition broken, ought to have the same estate, which he had, when he made the estate conditional, which was intire, and without fractions, &c.

40. If a man make settlement in fee of land to the use of A. and his heirs, and to the use of B. and his heirs, and to the use of C. and his heirs, it must be, for the use of A., and for the use of B., and for the use of C.; for the words no such fractions of estates in the Law

41. If a man makes a lease for years of an house, and of a Close lying by it, and of certain other lands in Dale, the Lessee makes settlement of all, and makes livery in the Close, the lessee being at that present in the house: In this case the livery was adjourned for all; because the demesne being intire, the possession of the house is the possession of all intirely demised with it, &c. So it had been also, if the Close had been made by the Lessee at will, but not for years.

42. If a man be sold of a Hamnno, part in demesne, part in lease upon Rent reserved, and part in Copshold, and by Advenure in consideration of money, &c. demised, granted, bargained, leased, &c. unto A. and B. and the said Hamnno; with the Appurtenances, and the revestions and remainders thereof, &c. together with all rents releved upon any demesne, &c. to have and to hold to them and to their Assignes immediately after the decease of the owner of the Hamnno, for the term of seventeen years: In this case, the grant ought to take affect intirely, as a demesne at the Common Law, or intirely by bargain and sale, by raising of an use by force of the Statute of 27 H. 8. and not for part by the Common Law, and for another part by raising of an use: So thereby the Hamnno may be dismembered, which is against the express demesne and bargain; because both parties agreed, that a Hamnno would be intirely demised and bargained, and also that a Hamnno should be accepted by the Lessee without any fraction or division thereof.

43. If there be two Jointentants for life, and the Reversioner grants over his estate, whereto one of the Jointentants only both adjoin; yet this is a good attainment of both to best the whole reversion in the Grantor; because the estate of the joint Lessees being intire (for every Jointenant is intased, per my & per tourn.) the reversion, which is dependent and expectant, upon such an estate is intire also; and therefore the attainment by one of them, is attainment to both to command the whole reversion, &c. So if the Lessee dispose his two, Lessee for life, and enfore another, and one of the Lessee re-enter this act of one of them is attainment in Law for both: If one Jointenant gives back to the Jointenant, that will bind his companion, as it is again in 39 H. 6. 7. If a lease be made to two, and after the reversion is granted to one of them, this is helden good attainment in Law for both (Baldwin 28 H. 8. Dyer, 12. b.) And all this in the respect of the intireness of their estate, &c.

44. A having an office and power to make Deputies, by Indenture between him and B. and for a hundred pound pido, &c. makes Indenture thereof to B. and A. covenants both B. that if A. die before B. that then the Executors of A. shall repay unto B. fifty pounds, with divers other Covenants in the said Indenture concerning the said office in the enjoyment thereof: And A. was bound to B. in two hundred pounds for the performance of Covenants, and in debt the breach was allowed for the non-payment of the said fifty pounds, in as much as B. survived A. Here, albeit the said Covenant to repay fifty pounds was lawful, yet in as much as the rest of the Covenants were against

Co. 1. 2. 3.

31. 35.

b. 3. in S. Rolv. Heywoods Cafe.

40. 41. 42.

Co. 1. 2. 66. b.

& 67. 2.

90.

Coferits Cafe.

L 1 2
the Statute of 5 E. 6. cap. 16. The bond which was a thing
fitter being
both to those not-lawful Covenants, it was utterly void for all
And if the assinment of a Lawfull Covenant should make the
bond of foze
so to it the Statute would then force to little or no purpose, &c.

45 45. e. the Deposition of any part of a service (as of part of a Rent, of one
per annum, when it is void at the life) is actual seizure of all to have
an Aditus; because the service in that case is entire, &c. So if a man
make a Lease for life, or a gift in tail, running the first years a
quarter of years, and after the yearly Rent of 5. the Seizure of
the tenant is the tenant of the Rent, whereupon he may have an Aditus
for all is but one entire retribution, &c.

46 46. When the King makes a Sheriff during benefactions, albeit he
cannot determine his Office at his pleasure, yet he cannot determine it in
part, as for a Borough, or-handed, or any other part, nor abridge the
Sheriff of any thing incident or appertaining to his Office; for the
Office is entire, and ought he to continue in his Anticette without any
fracture or diminution whatsoever: unless it be by Act of Parliament, &c.
that the King makes any Borough, a County of its self, and Constituates
there a Sheriff, and all things incident to a Sheriff within the lady
Borough; but he cannot determine the Office of the Sheriff, any
part thereof without, but by constituting a new Sheriff, viz. for the
operation and administration of Justice; because the Office is in its
nature entire, &c.

47 47. A policy of an house, whereunto a Stable was appurtenant to the
terms of 30 years, by deed instrumented in consideration of 35 l. due to
be afterwards paid, demised the same house and Stable to B, for 21 years,
remaining unto A, 24 l. per annum quarterly, and also 5 l. quarterly at the
same Stable, until the stable 25 l. one should be paid, upon condition
that if the said summe of 25 l. or the said Rent would be arrears at any
Feast, &c. that then it would be Lawful for A to re-enter: And afterwards
and before any day of payment B, re-demitted the said Stable unto
A, for 10 years, who entered, and after the Rent of 24 l. per annum is
arrears, and Lawfully remained, and also the 5 l. part of the summe
in goods was not paid: In this case, the whole Condition, as also the
re-entry of A is suspened: For albeit the condition stands upon two
parts in the instanet, viz. Either for the payment of Rent, or of a
summe in goods (which was collateral) put in as much as B, re-demitted
part of the Stable to A, (viz. the Stable) whereunto A, entered, and
the Rent was hereby suspended, and hereupon the entire condition,
both as to the Collateral summe as also to the said Rent, was likewise
suspended; because although the condition comprehends two severall
things in the distinuative of two severall matters, viz. The one a
Rent buluing out of the land, which is incident to the redemption, and
may be suspened by the inter-meeting with the land: the other matter
collateral to the land, which cannot be suspendet by the land re-vestimat
yet here there are not severall conditions, but one entire condition, which
referrers to two severall branches: and therefore being suspendet in
part it is suspendet in all: And that the condition was entire, it
appears by the Confession thereof, viz. for the non-payment of the
one of the other, it would be Lawful for the Landk to re-enter into all
the land: so that it is but one entire Condition and one entire entry,
which is not by the Act of the Parties to be appurteined or divided ec. The
like case was adjuged p. 27 El. Rot. 185. inter Brightman and
Somerset.

48 48. A, and B, Wargane together, that A, for a certaine Consideration
shall deliver unto B, yearly 20 quarters of barley during the life of B, in

The Reason of

A. ffreferrerence

of a Rent in

case.

The Sheriff's

Office imm.

A provisio in

three

Co. 1. 4. 9. 2.
B. 3. in Mile's
Cafe.

Col. 1, 4. 33.
a. 2. in Miler's
Cafe.

Col. 15, 4. 9. 1.
Tewlars Cafe.

Co. 10. 4. 34.
b. 2. in Slades
Cafe.
this case if A. failed of any one years payment B. cannot have an action of Debt for it until all the years be incurred, because the Actition of Debt is entire and cannot be sued above once; howbeit in that case have an Act upon the case for it, &c. as it was adjudget in the case between Redman and Pecke 2, & 3. P. & M. Dier, 113.

49 A Condition annexed to an Estate is to intire, that it will not admit any separation from the Estate, unto which it is annexed without the distrinction of it, and being again all as to some persons, as for part, it is annexed for all; as if A. demisst Land to B. and his Assignes, with condition, that neither B. no, his Assignes shall alien without the Licence of A. If A. give B. Licence to alien the Land, to whom he pleaseth, and he Assignes the Leads to C. neither C. no not any other Assign is bound by that condition; but the Condition is thereby absolutely determined, so that no alienation, which may be made afterwards shall be a breach of the Condition, or give cause of entry to the Lessee; for the Lessee cannot live upon with an alienation for one time, and yet the same Estate remaine still subject to the condition afterwards: And albeit the proviso be, that neither the Lessee; no his Assignes shall alien, yet when the Lessee licenseth the Lessee to alien, he shall never defeat: by force of that proviso, the term, which is absolutely allene by his Licence; for the Assignes, (and so by consequent every subsequent Assignes afterwards) shall retain it in the same right, that it was in, when the Lessee granted it; then it was absolute and letters from any condition, &c. And as the suspension to one is a suspition to all other subsequent Assignes, so it is also as to persons; for in case of jointure, where the Estate is in more then one, a Licence of Aliening granted to one shall entitle to all, as it was adjudget in Common and Leads case, T. 18. E. Ror 256. in the Co. Pl. Likewise if the Lessee Licence the Lessee to alien part of the Land, he may alien the rest or any part thereof without Licence; because a Condition cannot be broken, so asportions by the Act of the Parties, as it was bosent by Popham Cl. Instruct, against the opinion in Dier. 16 E. 334.

50 A Lease was made by Indenture for 21 yeares of 3 Mannors A. B. and C. rendring per annum 820 A. S. 1. for B. 5 l. any for C. 10 l. to be paid as a place out of the Land, with a condition of a re entry into all the three Mannors for Default of payment of the said Rents, or any of them; and after the Lessee by deed inventing and improved bargains and lets the Reversion of an house and 40 acres of land, parcel of the said Mannor of A. to one and his heirs and afterwards by another deed inventing and improved bargains and lets all the residue to another and his heirs, and whether the second’shee might enter for the Condition broken or not, was the Question; and it was adjudget (P. 14 E. Ror. 1015) that he could not enter for the condition broken; because the Condition being entire cannot be appoint them by the Act of the Parties, but, by the levendance of part of the reversion was utterly destroyed, &c.

51 If A. give in exchange 3 acres to B. for other three acres, and after one acre is sold from B. in this case all the exchange is extinguished, and B. may enter into all his Land; for albeit the exchange has been good, if A. had given but two acres, or one Acre, or lett, yet in as much as all the three acres were given in exchange for the other, and the Condition (which was implied in the exchange) was intire, upon the violation of that one acre the condition to Land is broken, and thenceupon entry given into all; for it is the property of a Condition to vest all, and not a part only, except the Condition be restrained only
to a part, as it is not in this case. And therefore there is no advantage between an interest thing (as a hamnom) and a thing, that is severable, in point of exchange; &c. There is the same Law also of a partition, as it is agreed in 13 Eliz. 4. 5. & 42. Aff. pl. 22. in the Case of Pembroke's Case.

Co. L. 4. 113. 17. Baron sells of the Hamnom of Dale to the use of himself, and his issue, and of the heirs of the body of the Baron, leases a line to A, two enfeoffees B, two enfeoffees C: C exchanges the said Hamnom of Dale with B, for the Hamnom of Sale, the Baron dies, the Feme enters into the Hamnom of Dale: In this case B may re-enter into the Hamnom of sale; for as when the whole estate in part is vested, all the exchange is defeated, so, here, when the Condition of the frank-tenant for the life of the Feme, which is but parcel of the estate, is vested in all the land, or in part, the whole exchange is hereby defeated, by reason of the condition in Law annexed unto it; for, albeit a redomain expected upon an estate for life may be given in exchange for land in possession, yet when C, was selle of the Hamnom of Dale in his Wariness as of F., and gives that in possession unto B, for exchange, as also sale, after that the Feme enters and vests the estate for life; it, B may re-enter into the whole Hamnom of Sale, which was to given in exchange, because the Condition in Law (annexed to the exchange) being broken for part of the estate, is defeated for all; &c. So likewise if he in the redomain in F. (by hisse the Feme for life, and then gives that land in exchange to another for other land, and after the lease, for life enters; in that case also the other may re-enter into his land again, and hereby defeat the whole exchange; because the implied Condition, upon a man's nature unseverable and entire.

52 A lets to B. the Hamnom of Dale for 20 years, except all wood and under-wood growing and being upon the Hamnom, after A lets to B, all the wood is underwood, 6f. for 62 years without impeachment of wood. And after A, lets to B the Hamnom for 30 years from the expiration of the former case of 30 years, the first 30 years expire, the Lease cut the trees, the Lease; the trees, the Lees; brings an Action of waste. And Judgment was given for the Plaintiff for the accept of the future Lease, the trees, for 62 years, was presently and actually surrendered, because it could not be surrendered in part, and in force; for, the terms of the term; and the Lees by such acceptance affirm the Lees to have ability to make a new lease, which he could not do so long as the first lease stood in force: So likewise if the Lease for 20 years accept a lease for three years to begin ten years after, this is a present surrender of the whole term; for the last ten years cannot be surrendered, and the third ten year remain in eile, because that would make fractions, of the term, which is in its nature entire: Neither can be, that both a lease for 20 years surrender the last ten years by any express surrender, taking unto him the last ten years, &c.

54 Two Poules are let to one man; the one for 41. rent per annum, the other for 20.5 per annum, with proviso, that if the said rent of

the other for 20.5, per annum, with proviso, that if the said rent of 41. be behind in part o1 in all, then the Lessee shall re-enter; these Poules afterwards eschew to the King, who after grants that, upon which the 10.5 per annum is reserved, to 1. the rent thereof is restored. In this case, the Poule cannot enter for the condition broken, because albeit the rents were severable, yet the condition was entire by the express reservation, and given in entire re-entry into all for default of payment of any part of the rent; and therefore, by the relevancy of any part of the redominion all the condition (as to all commonersons) is expezed; Poule that the whole condition remains int
intire in the Act only the rebellion of the other House, and that in respect of his prerogative, &c.

57 The issue of peace is an ejection from the Defendant's estate that before the lease, the lessor bargain and sold to the Plaintiff by indenture sealed within five moneths, whereby he was settled, until assisted by the Lessee, who let the land, &c. The Plaintiff pleads that the bargain, &c., was upon Condition, which was broken, &c., the Defendant demurres, and the issue of peace according to the Statute, &c. Because the Plaintiff showed not forth the invention of the Condition; and in this case judgment was given for the Plaintiff; because when any deed is settled in Court, the deed by judgement of Law remains in Court all the term, in which it is settled; but at the end of the term if the deed be not settled, then the law annulleth it in the Court of the Party, to whom it belongs: for all the term in Law is but one day; and therefore the deed shall be intended to remain in Court all the term, in which it is settled; for the term in that case is intire, and will admit of no fractions; And so by consequent the Plaintiff may, in such cases take advantage of the Condition compiled in the deed settled forth by the Defendant himself, to be so in the same term, as aforesaid, &c.

56 Goods were called super arenas, aquae liquidae, &c., and another parcel were called super aquae maris, and another parcel were called super aquae maris fluence, ex arenis ejusdem Maneriae infra fluxum, &c. The Potentate of the Spaniard, and Fk. &c. of Holderness in Camp, Ebor. brings an Action of Trepasss against him, that settled them to the use of the Lord Admiral: And the Juris affected damages intirely for all; In this case judgment was given against the Plaintiff; because the Goods so settled upon the Waters (called Fleetam) did not of right belong to him, but to the Lord Admiral; And therefore the Water being intire, (viz. given for both) and the damages of the works being thereby made un-targetable from those of the Fleetam, the Plaintiff could take nothing by his Act. So in Trepasss (21 H. 7. 14. b.) the Defendant justifieth for part, and Pleas not guilty for the rest, the Jury inquire of one of the things, and tax damages intirely; here, the whole Court (against Finerx) adjudged it not good, 22 E. Dier. 369. accord. M. 14 & 15 El. in Trepass by Pooey for his Servant beaten and his Clope broken, and lad not, per quod servitium amisit, upon non culp. the Jury as well damages intirely, and it was adjudged not good. See 9 H. 7. 7. M. 30 & 31 El. inter Moore & Bede in Auffampi, where the Plaintiff lays two breches, whereas one was insufficient, upon non asumptis the Jury affecting damages intirely; And in this case there were two resolutions, 1. It shall be intended, that they gave damages for both; 2. Because the Plaintiffs had no cause for one of the allegations, the judgement was to be reversed in the Eschever Chamber, &c.

58 Concerning intire Services, and where they may be appositioned, and where not, see Berton's Case, per cur., Co. L. 6. 1. and John Talbot's Case in the 3. Rep. fol. 108.

58 Warrantie is an intire thing, which will not suffer partition, but shall always either intirely remaine, or be intirely annulled: and therefore, if there be two Joripentants with Warrantie, and petition is made between them by judgment, in a writ de partitio scienda, by reason of the Statute of 31 H. 8. cap. 1. in this case, the Warrantie shall remaine to each of them intirely: because upon the Kings write they are compellable by the Statute (unto which every one is Party) to make partition, and to the Party preferring his remitute according to

Co. L. 6. 2. in Berton's Cafe.

Co. L. 6. 15. in Aurrion's Cafe.

Co. L. 6. 15. in Morrice's Cafe.
to the Act shall not receive any prejudice by the operation of the same Act, unto which every one is partie: but if they had made partition by deed, by consent (once the said Act,) albeit they were compellable by writ to make partition, yet in as much as they did not pursha the statute to make the partition by writ, so that cause such partition remains as it was before at the Common Law, and (by consequent) the Warrantie is gone, (as it was agreed in 29 El. 3. t. Gurr.) became the Warrantie is insolvable, and cannot be parted as the Land may.

59 The Marquess of Winchester by will (as it was supposed,) devised divers Lands, jewels, &c. to his reputed Sonnes, and also made them Executors: They endeavouring to prove this will in the prorogative Court, A suggestion was framed in the name of the Marquess his Sonne and heir, to have a prohibition out of the Kings Bench, supposing that he was not of fain memorise at the time of the making of the will, which was pleaded in the Spiritual Court, in Arrest of the probate of the will, and thereupon a motion was made in the Kings Bench to have prohibition generally to stay all the proceedings in the Ecclesiastical Court, viz. as well for the Legacies and bequests in the personality, as for the Lands; and the reason and ground of that motion was; so that the will concerning the Lands, and the Testament concerning the goods, being all mixed together in one entire will, if those in the Ecclesiastical Court would proceed concerning the Testament of the goods, that would prevent and prejudice the trial in the Kings Bench; so if he was of fain memorise at the making of the Testament of the goods, he could not be of now fain memorise at the time of the making of the will of the Land, both being made at one and the same instant; And the Common Law ought to determine, what shall be said to be fain and perfect memorise at the time of making the will concerning the Land, and therefore the prohibition shall be general, quod fuit concebsum per tocam Curiam. And in the Argument of his case the Lord Coke, being then Attorney general, cited a case between L. Loyde and L. Loyde, in 38, & 39 El. in the K. B. where it was ruled accordingly in terminus terminantis, and that no Contamination would be granted to any part, until the whole matter would be tried in the same Court.

60 Informedon in remainder the Tenant pleads in barre collaterall Warrantie, descended upon the Ancestor, unto whom the remainder was made, the demandant faith, that the said Warrantie descended also upon B. another Coheiress of the Warrantie, and that the Warrantie quoad mediatam tamentum descended upon the demandant: nevertheless it was resolved per tocam curiam, that the demandant was barred for the whole; and the Warrantie in that case is entire, and extends to all the Land, and is a barre to every person, upon whom it descends, of all the right, which he hath in the Land, and if each of them had right in the Land jointly or severally, each of them is barred, and if one of them only had right and the other nothing, he that hath the sole right shall be barred of all, &c. vide Pl. ibid. & 5 E. 2. Gurr. 78. 4 H. 7. 18. b. 6 E. 3. 50. 11 H. 4. 10. 41 E. 3. 3. 10 H. 7. 13.

61 Divers services, (by reason of their Intinherence) upon alteration of parcel the tenancie shall be multiplied, sometimes also the Lord shall be contented with one entire service amongst all the severall attendes; And sometimes upon the Lords purchase of parcel thereof such a service shall be either totally extinct, or else totally preserved: And therefore when an entire thing (be it a valuable Chattel, as a Hysle, Dre, a golden Sppre, a Bow and arrowes, a Woon,
The Common Law.

Max. 70.

a Sow, a Sartlet one, 03 the like, 03 matters of pleasure, as a Falcon, 02 other Hawke, a Dog, 02 lay other things of pleasure) Shall be rendered 02 paid by the Tenant to the Lord: in that case the entire service by the alienation of parcel of the Tenancie shall be multiplied, so that each particular alienation shall render the whole service, and yet upon purchase of parcel by the Lord the whole is extinct, as it was resolved in Buertons Case in the 6. Rep. fol. 1. So likewise homage and fealty by alienation of parcel shall entirely multiply: because when the Tenant makes homage or fealty, he both them for all the tenements, which he holds of the Lord, so that those services extend to the entire Tenancie, and to every part thereof, and albeit the Lord purchases parcel, yet the homage and fealty do still remaine for the residue: also Knight-service, which is an entire service to be performed by the body of a man, shall be multiplied upon alienation of parcel, and albeit the Lord purchase parcel, yet it shall not be extint, but shall intirely remaine for the residue, quia par bono publico, & defensione regni, And the ecnage shall be apposioned: But the personal service to be Sever, Carter, Butler, &c. 02 when the Tenant is hold by his Lembre ad convivandum Dominum suum & Familian suam elem in Anno; & ad equitandum cum Domino suo in Comitatu N. impicibus suis propriis., &c. (vide to E. 3. 23. in John de Bromptons Cafe) by alienation of parcel shall not be apposioned, 02 multiplied, for such services, which are for the private Benefic of the Lord and are personal: to be done by one man, shall not be multiplied: Because they are to be personally performed by one man only, and multiplication of them would be a charge and prejudicie to the Lord: And these also in regard of their intermixe by the Lords purchase of parcel shall be totally extint: So it is also when the Lembre is to performe some manual labour, as to cover 02 repair the Hall of the Lord, to make 02 repair the Pale of his parcce, to plow 02 sow his Wheatens, to reape 02 cut downe his Graines, 02 the like, these services and others like unto them shall not be multiplied, albeit parcel of the Tenancie be aliened, yet amongst all the alienes the whole service shall be performed; and if the Lord purchase parcel, the whole shall be extint, 02. There is the like Law also in Heriot-service: For by alienation of parcel of the Tenancie it multiplies, and by the Lords purchase of parcel the whole service is extint: It is otherwise of Heriot-costume: For in that Case notwithstanding the Lords purchase of parcel, the entire service remaines for the residue, because such custom is incident to the whole Land, and also to every part thereof, 02.

61. In an Ege Shore against two 02 more, an accord and satisfaction for; one shall also discharge all the other Ege Shore and Trepassage: for that action is intire, and cannot be discharged as to one, and yet prosecuted against the rest.

62. There is the King Lord Paramount, the Maine, who holds by Knight-service in Capice, and Tenant paraivale in Vescage; the Seine Santes the Mahiatite to the use of himselfe for life, and after to the use of the Tenant paraivale in tale; in this Case the Mahiatite is not suspened during the life of the Seine by force of that remainder in tale: for, a remainder in tale 02 for life represent upon an estate for life, 02 in tale, shall never in parte a Mahiatite, Seigniory, Rent, 02, because albeit the remainder rests presently, yet that cannot suspend the present Frank-tenement.

Co. lib. 9. 75.

b. 4. in Henry Potter Cafe.

b. 3. in Alcoughs Cafe.

Co. lib. 9. 134.

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The Reason of

of the Rent during the life of the first Tenant for life, who in manner
the rent to the Land as to the rentier, upon whom it
shall be made, &c and as a Signatory, Rent, &c. cannot be
in part, and in esse for part, in respect of the Land, out of which it
is making, so neither can a Signatory, Rent, &c. be suspended in re-
mains, and yet be in esse for a particular Estate in possession, for
then necessarily there must infinite fractions of Estates, and par-
certain Estates shall be created without Deals or Leases against the
Rules and Limitation of the Law, &c. It is otherwise, if the lease
grant his entailment to one for life, or in tail, the remainder to the
Tenant perannuit in Fee; so in that case the entailment is totally
extint, because there the Tenant perannuit hath as high an Estate
in the inheritance of the entailment, as he hath in the Leases, neither
there, in that case, any possibility of reviving the entailment; and
also into the entailment is not extint for the inheritance, and so
for the particular Estate for life, or in tail in possession, but the
entailment by the remainder in Fee is extint in all; for otherwise this
entailment would follow: that there would be a Fee Simple of the Leases
perannuit, and also a Fee Simple of Signatory, &c. perannuit, and but an
Estate for life or in tail only of the entailment; and so a Leases in
Fee Simple be only holde of a entailment for life or in tail, and
an Entailment in Fee Simple would be making out of an entailment for life or in tail,
which is impossible, and can by no means be, &c. Vide 3 H. 6.
1. 15 E. 4. 1.

A summa.

64 If Tenant for life make a Lease for yeares remoying Rent at
Caster, and the Leases occupie for three quarters of the yeares, and
in the last quarter before Caster the Tenent for life dies; here shall
be no appositionment of Rent for three quarters of the yeares, because
the time is entire; and in respect thereof there shall be no apposition
ment, neither yet was the Rent due before Caster. Howbeit in the
same case if part of the Land was esquit before Caster, and that
Fee had inturev in the life of the Leases, there shall be an appos-
tionment of the Rent; but not in respect of the time, which both
still continue but in regard, that part of the Land esquit is esquit, &c.
Vide 27 E. 3. 84. b.

In Actions merely personal or personal and in some fort mixt
with the realtie, in which entire things are demanded, if there be
plural Plaintiff, and one be summisumo and severed, the death of him,
which is so summisumo and severer (where the intire thing surviveth
to the other) shall not abate the suit, as in a visit of ward of the hoyp, or
the life, &c.

66 The Office of Auditor of the Court of Wards (according to
Statute of 3 H. 8. cap. 46.) cannot be granted in reversion; because
they two make up one Judge or Judicial Officer of that Court, and
as none can give judgement of things in futuro, so neither may any be
admitted a Judge in futuro, according to the Rule, Officia judiciale non
concedetur ante quam vacent; And besides, great inconvenience might
incurrence thereupon: to be, that is at the time of the great sufficient to
execute it, may perhaps, when it fails, be un-capable and un-instructed
to it: And albeit that Office be only in part judicial and in part min-
nisterial, yet ministerial or ministerial Offices may be granted in reversion; but as
much as two persons have both of them but one Office, are as two Offi-
cers, that Office is by the fact made so entire, that it cannot possibly
be divided; for, the King cannot make two Auditors of the ministerial
Office, and other two to execute the judicial part, because then there
would be two persons, which the Act refers to two; neither yet can
can the King make one Person to have the judicial voice, and the other the ministerial Office; For then there would be two Officers, and two Offices, whereas the Act makes but one Officer; and then also of one of them shall have a distinct Office and voice, whereas the Act joins them together in two Persons; And therefore in as much as the ministerial part is so united with the judicial part, and that jointly in two Persons, which make up one entire Officer, that there is no possibility of severing the one from the other, as the judicial part cannot be granted in reversion, so neither, can the ministerial, &c.

67 When in Trespasses against divers Defendants, they plead non culp. of several pleas, and the Jury finds for the Plaintiff in all; tho' the Act of Trespass cannot affect several damages against the Defendants; because it is but one Trespass, and also made joint by the Plaintiff, vizt and count: And albeit one of them be the most malicious, and de facto both the greatest wrong, yet all coming forth to do an unlawful Act, and being all of one party, the Act of one is the Act of all; that are present and of the same party: And therefore in such case if the hand of one of them only gives a mortal wound, whereas death follows, that is murder in all, that are present and of the same party: albeit the others intended not to give a wound so mortal, as appears in McKallies Case in the 9. Report.

68 If two Capiencers Tenants in title lose by default, albeit the default of the one is not the default of the other, yet in respect of the interesse of their estate they shall joyn in a Quod cedit prosequi, &c. M. 25. 3. E.

69 If an execution be made of the body and of the land, and afterward the Conunon entothes the Comitee of parcel of the land, or surrender repairing parcel of the land unto him, or the isimple parcel thereof descents upon him, in all these cases, both body and land are discharged; for by the execution against the body and land, the land was de facto charged and to become debts; and by the testament, surrender, or descent the land was also discharged; because a discharge of part of a thing in execution is a discharge of all, be it by the Act of the party, or by Act of Law; for the only being personal is entire and so is the execution intire also, &c.

70 It is ordained by the Statute of the 25. E. 3. cap. 16. That by the execution of non-tenure of parcel no writ shall be abate, but only for the quantities of the non-tenure, which is alledged; Neverthelesse, in a precise quod reddat of a Sanno; if the Tenant plead non-tenure of parcel, the whole writ shall abate; because a Sanno is an intire thing: And therefore the Judges have taken it to be against reason, that by his Demand of the whole Sanno he should recover against him, that is but tenant of parcel thereof, for which cause they have expounded that Statute only to extend to writs, where things demanded are several, as acres are, and not to extend to writs, where the things demanded are intire.

71 In an appeals of death against others, they plead not guilty, and one joint venire facias, is awarded; if one challenge peremptorily, he shall be venire against all; otherwise it is of several venire facias.

72 In 9 H. 5. fol. 15. One brings a writ of Debit of 20 l. against another and counts upon an obligation of the same summe: the Defendant pleads, that he was a lay man, and knew not letters, and he acknowledged himself to be bound to the Plaintiff by the same seen in 20 s. which he hath pays and thereof Seem an Accittance and as to the rest of the summe in the last. Obligation;
The Reason of

Max. 70:

obligation nent for the; And in this case, the Obligation was set

void for all; because the summe being entire, it could not be void

for any, and void for the reasone of law, but must meanes be void for all.

73 If there be two absolute and distinct Clauses or Covenant in

a deed, and one of them is read to a man not letters, and the other

it is good for the Clause or Covenant that was read, but void for the

other: Is this absolute if a deed containes divers such absolute and distinct

Clauses or Covenant, if any one of them be alterd by addition, dis-

triction, or strike, this absolute or pact pull so shall make the

whole deed void (as it is holden in 14 H. 8. 25, 26.) For albeit they

are several Clauses or Covenant, yet it is but one entire word, 3 H. 7. 5.

If too be bound in an obligation, and other the soul of one

of them is broken, this indenence or pact so shall make the obliga-

tion void against both; because it is an entire thing, that will not

admit solvance, 45.

74 If Inventures of demise be transferred bearing date the 26 of May,

to have and hold for three years from henceforth, and they are after

written delivered at 9 of the Clock in the after-morn upon the 26 day of June

then next following; In this Case, the Paper shall commence upon

the day of the delivery; for, from hence forth shall have reference to

the delivery (when the paper took effect) and not to the date, and it shall

not begin immediately after the delivery, 1: a at 9 of the clock in the

after-morn, but that whole day shall be part of the demise; because a

day is (in judgement of Law) an entire thing, that will stand

without fractions, to avoid uncertainties, which are always the mother

of contention. And therefore the day of delivery is taken inclusive vis.

to the next day of the demise; so it is also if a Lease be limited to begin

a consecution, it is likewise, when the lease is to begin a die

consecution, as a die daw; or (in this case) the day itself is

excluded; so if the doubt in 12 E. 1826, is well explained, and

with this resolution agrees 44 E. Dier 307. The words of the

sentence of Inconclusus are (within six months after the date of the same

writings, &c.) and it was enjoyned (T. s. E. in Co. Bo.) that if such writings

proceeded not, the 6 months shall be accounted from the date, but if they

want date, then from the delivery; And therefore when the 6 months are

accounted from the date, the day of the date is excluded as it was

excluded P. 4 E. Roc. 312. 353; from the date, and from the day of the

date are all one, because (in that case) the entire way of the date is

excluded; But it seems by the resolution above, when they are

accounted from the delivery, the day of the delivery is to be totally in-

cluded within the account, caul qui superv. 46.

75 Leaue in tails makes Lease of Land holden not absolutely by the

law, and dies, his heir under age, the King as guardian may during

the un-age estate that Lease, but it may be continued by the heir's

acceptance of the Rent after his fall age: So it is also where a hold-

able Lease is made by a Bishop; for albeit the King during the Ma-

nent may subod it, yet the success; by acceptances may continue it:

because in these Cases the term is variable, and may for part

be avoided, and for the present be continued; It is otherwise of entire

things, when the whole interest is avoided; as if the Patron of a Church

grant the prophan avoidance to another, and after and before the Statute

of 13 E. the Parson, Patron, Ordinary make a Lease for years

remaining Rent, and the Parson dies, the grantee presents one, two

is admitted assigns and inducts and dies, this Lease is voided

absolutely in all, and shall not hold good against the second successor.

So (2 E. 3. 8.) an avoidance by Licence is granted to a Prelate

his
his assertion, was in natures equivalent to the Plead, &c. here; for the French meaner, the defendant in the Advise, and her Clarke intimated, the apposition is defeated; for ever, &c. So if a Feas
court (as a Feas sale) is allowed on, by the entry of the Bar on all is assured, 77: q. 23. precedent the Baron has not entered, it has bound the Feas and the

76 In the Case of an in part of the Purpurs he alleged, that the shall
atone, if the whole, he Easa Hamis, that is intire, &
the partition (in such Case) implied for this purpose, a Warrant, and a
in Law, and either of them is intire, and given an entry
in the whole; And so it was settled in Bullants Cate
Co. 1. 4. 121. both in the Case of change and partition.

77 If an Earlsome, Baronie, or other Peerage descends to Coar-
tes, the Lame shall be divided, as amongst other Partiters, but the
(fut are intire) cannot be parted, neither shall it ac-
come to the chief alone, but (in such Case) the King (who is
the sovereign of home and vigilitis) may consent it upon which of the
Coar
 County in

78 A writ of Dover is brought against the Advenic of the Baron,
and he brought the herit. In this Case, the Defendants will be intitled
that the heire hath Lame attourned unto him in the same County (for to
another County the original must not extend) and may pay, that
he may be common of his Place; so in 4 E. 4. 36. & 6 E. 3. 12. The
Convent in a writ of Dover vouched the heire of the Baron, and the
Defendants intitled that the heire hath Lame by descent, &c. in the same
County, and judgement was given against the heire; But if he has
done there, it should have been given against the Convent. Vide supra

79 If there be an obligation with Convention, that if I settle ano-
other before such a Feas of the Spannor of Dale, chargess of all man-
ner of rents; In this Case, it a stranger hath a Rent making out of
the same Spannor, and I make a Feasment, and at another day afterwards and before the Feas I purchase a release of the stranger, here
the Condition is not observed, as much as the Spannor ought to be by
him discharged at the time of the Feasment (inal & feucl), because
the Condition was intire: But if the Condition be, that I pay 10 l.
build an house, and gas of year straps to Paul before such a Feas,
In such Case, I may well doe these Acts upon several days before the
Feas, because the Condition was not intire.

80 If a Leafe be made to two tenures, terms of those, and they make
partition, and the one uses, his part shall revert to the Lees, be-
cause their lives are several, the life of the one not being the life of the
other: But in a Leafe he made to two for term of years, with pro-
vided, that if the Lees die within the term, then the term shall
cease, and they make partition, &c. out of them, alien his part, and
also; In this Case the Leis) cannot enter into his part that dies,
but the grantee or the executor of the Lees (if he made an alienation)
shall have his part during the life of the Survivors; because the terms of
years is intire, and cannot cease as to one, and continue to the other.

81 An H. 4. 2. is intire as well as a County or Spannor, and there-
fore a differe taken in the County of Wils in a place which is par-
cel of the Dame of Wallingsford (the Castle and Court thereof is with-
in the County of Warcs) was written to that Castle and there impound-
and upon a replying writ was (since the Statute of 12 P. M. 12.)
and held good; For afterwards at the suit of the Defendant the Plaintiff

Co. Infh. parti
173. b. 4.

Co. lib. 2. 17.
136. a. 2.

34. 123.
28 H. 6.

32. 12.
3 E. 6.

168. 20.
2 El.
was removed by an Accedas ad Curiam directed to the Sheriffs of Oxon, and the Plaintiffse counted of the taking in predicto loco in Com. Wilts, and all held gow per Curiam.

82 A general pardon discharges all post fines under 6 l. And for the fine there were two wits of Covenant, but only one concord of Lands in two Counties, and the Post-fine being extracted intirely did exceed 6 l, but being divided it was under, which division Sank-ford requested; but the Covenant being intire, the Court anjudged the Post-fine but one afo.

83 In a Replevian against a Bishop and others, they were at several nuises, but one venire facias was awarded, the Bishop challeng'd the Array, because there was no Knight; and this challenge was held good for all, because the venire facias was intire, albeit the nuises were several.

84 Covenant for life surrenders the one Party, and the Lessee grants the whole Land to a Stranger; Habendum the one Party for life, and the other for 20 or 30 years after the death of the Lessee for life, rendering 40 l. per annum. In this Case the Lessee may disclaim and avow for the whole Rent presently, albeit the one Party be but terra reverens, and the reason is for that the reservation is intire.

85 In Debt upon a lease for years of several parcels, the parties are at issue upon non dimitt, and it was found a venire of all but one parcel, and damages assent; Howbeit the Plaintiff could not have judgement, because the Lease and Count were intire, and bis contention all.

86 Where two commit Trespass, a release to one of them of all actions real and personal, enures to both; albeit he to whom the release is made, is not party to the suit, but is only mentioned in the declaration with a sum nam, &c., because the Trespass is intire, and therefore cannot be released to one, but must also be released to all, that are guilty thereof. Vide Hob. 70 Parkens Case.

87 Where a man hath a personal Action against two Defendants, Trespass, if they plead severally, and he be non-fine against the one, before he hath judgement against the other, he shall be barred against both; for the Trespass being intire, the non-fine too, keth in nature of a release of the whole.

71 Argumentum à Divisione est fortissimum in Lege.
The Common Law.

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2 Another example hereof you shall find Sec. 380, & 381. Where to prove that an Estate made to Baron and Feme during the Coverture is an Estate unto them for their two lives, he useth this argument: Every man (saying he) that hath an Estate of Frank-tenement in Lands or tenements, hath an Estate in them, either in Fee, or Free-tale, as for his own life, or pur-saun tor vic; but the Baron and Feme have not by such a Grant, Fee, nor Free-tale, nor an Estate pur-saun tor vic. Ergo, they have an Estate for the term of their lives: Howbeit that is upon a Condition in Law, viz. None of them live, or a sitzage so long before them, that then it shall be Labord for the Lease, or his Heires to enter, &c. And in this Case if they make wall the Feste; and his Heires shall have a witt of wall against them, supporting by his witt, Quintenecad terminum vix, &c. But in his Count he shall declare the special manner of the Lease.

3 In Trespass the Defendant justifies, that all Inhabitants in any ancient mehalmg within the Towne of Dale have used to have Common in the place where, &c. in Sale, rationem condonantur, &c. And this Custome was anij coming to be against Law: Because there are none four kind of Commons, viz. Appendant, appurtenant, in grosse, and so; situatem, and Common Ratione commorantia is none of them, &c. Sec. 170.

4 Edward 3. gave unto the Blacke Prince the Duke-wome of Cornwall, &c. Habendum &c. cum suis & hereditum suorum Regum Anglie filii primogeniti, &c. And it was resolved in 3 Jac. in the Prince's Case, that the Prince had an Estate of Fee-simple in that Duke-wome; because every Estate of Inheritance is either Fee-simple, or Free-tale, but that Estate could not be Free-tale; for it is not limited or restrained, (either by express words, or by words which do not import) to the heires of the body of the Prince; because he that is to inherit that Duuke-wome, ought to be the first borne Sonne of the heires of the Blacke Prince, be it heir lineal or Collateral; and such heire sought ait to the King of England, &c. Vide infra 192. 3.

72 The Generals must go before, and the Specials must follow after.

1 In a suite the General shall be put in deman am in Plaine; because the especial, as Land before Yce, Ylce, Wood, Juncarte, Maris, &c. Wood before Alders, Willoves, &c. Finch 24.

73 The more worthy shall be set before the lesser worthy.

1 An entire thing shall be demanded before the mistle part of parts, the thing of greater signification before that which is of lesse, as a menage before Land; so, albeit Land be of more esteem then any of the other elements (because it was principally made for man to rest on, which he cannot do in any of the other elements) yet Land builded upon, is more worthy then any other Land, because it is the habitation of man, and in that respect both the precedent to be demanded in the first place in a precipice, howbeit a Castle shall be demanded before a menage of Ylce, because it is more worthy then they; being
passing on the presentment to a Church two turns, and another the third turn, be that the third turn, bringing a Quare Impediment shall not begin with his own terms but, with the other two turns.

By Lord Coke well observes, that Littleton did worthily begin his Books with an Estate in Fee-Simple, because all other Estates being derived from that, it must needs be the most worthy: for (faith he) A principalioribus & dignioribus est inchoandum.

By the Statutes of 31 H. 8. cap. 13, it was enacted, that all Monasteries, &c. Colleges, &c. which after that Act should happen to be dissolved, renounced, relinquished, forfeited, given up, &c. or by any other mean should come to the Kings highness, &c. should be veiled, determined and judged by authority of Parliament in the actual and real possession of the King, &c. Any afterwards by the Act of 1 E. 6. cap. 14. The College of Maidstone in Kent was given to E. 6. Now the Question was, whether by the General words of the Statute of 31 H. 8. That College was not to be deemed in the actual possession of E. 6. because the Charter of E. 6. was a mean, by which it came to the Kings hands, and therefore satisfied these words of that Statute, by any other mean: But it was resolved per eadem Curiam, that the Statute of 31 H. 8. could not to be understood; For when the Statute speaks of dissolution, renouncing, relinquishing, forfeiting, giving up, &c. which are inferior means, by which such Religious houses came to the King: then the said last words (by any other mean) cannot be intended of an Act of Parliament, which is the highest manner of conveyance, that may be: Any therefore the makers of that Act of 31 H. 8. would have put that in the beginning, and not in the end after other inferior conveyances, if they had intended to have esteemed that Act to that: But these words (by any other mean) are to be thus expounded, viz. by any such inferior means: So likewise it hath been shown, that Bishops are not included within the Statute of 13 El. cap. 10. For that Statute begins with Colleges, Deanes and Charters, Barrons, Wickers, and concludes with these words, and others having spiritual promotions, these last words do not include Bishops, causa qua siupra: So also in the Statute of Westminster, cap. 41. The words whereby are these: Statum Rex, quod si Abbas, Prior, Cauffidem Hospitale & alienum Domorum Religiosarum, &c. These last words include not Bishops, as it was solved Diac 2, &c. Vide Co. 1. 100. Causa qua siupra.

An Executors or Administrators ought to execute his Office, and to administer the goods of the dead lawfully, viz. ought to pay all duties Debts and Legacies in such precedence and order, as he ought to pay them by the Law, and if he vary therefrom, he shall be taken to do in his own wrong: And therefore he ought first to discharge Injunctions, Statutes, and Recognisances, then Debts and Duties by bond, after that Debts upon Simple Contract, and last of all Legacies, &c. Vide Co. lib. 5, 28. b. 4. Harriots Cales. So in an Original suit if the Feme be named before the Baron, it shall abide, albeit that be nothing but mount of forms, &c.
The Common Law.

8. Exceptio separata postea est. And therefore where a release run thus: A doth acknowledge himself discharged, &c. of all Bonds, &c. made by B, and it is agreed that A shall deliver all such Bonds as he hath un-delivered to B except abando of gold wherein B & C stand bound, &c. Here the exception extends to all the premises, and it could not be inferred sooner, because the proper place is to come last, &c.

9. The proper place of a reservation is to come after the limitation of all the estates; and therefore if A left to B Habendum pro uno anno. &c. &c. in fine and both parties shall be agreed, that the Demise shall be rendered continued for a longer time, such Habend. premises for three years, rendering yearly during the termo predicto 40 l. &c. In this case the Reservation shall extend as shall to the first year, as to the other three years; because the reservation was to be inferred after all the estates: so likewise if a man by deed inures demise jamas to A, Habendum tuum to him for life, the remainder to B, and to the heirs of his body; and for default of such like to remain to C, in tail or for life, Residendo inde to the less, and his heirs an annual rent, this reservation shall extend not to the last estate only, but to the two former estates also: because it could not be inconveniently inferred, before all the estates were limited: for his proper place is to succeed them, &c.

10. There is an order observed in the Register, when a man demanis others parcels of Land in his wit, which are of divers nature, which parcel shall be first specified in the wit, and which next to that, and so of the rest: for which order take these two verses following for your direction.

usarium, um. endinium, umbare, dinam, ra, rum, tur, cus, ra
    ria, cus, rum, caria, dinitus

And if a man in his wit full demand ten messuages, and ten acres of land, and ten acres of meadow, and ten of pasture, &c. and after in his wit full demand the moiety or third part of a messuage, or of an acre of land, or of meadow, or of pasture, &c. then the form of the wit is first to set down to whole, and afterwards the moiety or third part, &c.

11. If two licences have an avowment, which happens to be void, the elder licence shall have the first presentation, and shall be the baron of the elder licence, if he be tenant by the caiestle, and the tenant in dower (in that case) shall have but the third presentation, &c.

74. Sicut natura non facta satum, Ita non Lex.

In writings of Entry fur diffusis, if the degrees be not only oblitered, and the wit framed accordingly, that error will make it abatable: As if a man being a writ of Entry fur diffusis in the Pere, or in the Pere cui, or in the Po, when it ought to be a writ of Entry fur diffusis in the nature of an Affixe, that is, an error whereupon the writ shall abate, &c.

2. When a Quare impedit is brought against the disposer and the Bishop, a by moneda palla, in that case the Bishop shall not collate by laps, neither put it other by moneda palla, but the Metropolitan collate; for the Metropolitan shall never present by laps, but when the inferior Ordinary might before have collation by laps, and both increase his time; so that, in this case the first degree being wanting, the other that follows, shall fall, &c.

3. If the tenant make a sedentum by colaction, &c. the Lord ought to

Co. 1. 9. 5. 8. 4. in Hickman's Cala

Co. 1. 10. 107. 3. in Leslie's Cala

F. N. B. 3. 6

& 34. v.

Junes, caris, a. p. 1. leq. leq. p. r. to be priors.

Co. Inf. p. 17

358. b. 3.

Co. 16. 5. 8. 1. in Boswell's sale

Co. 15. 8. 15. in Episcrs.
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The Reason of

recover the land by writ of right of ward before he can have a writ to
the restitution of the ward, &c. N.B. 143, k. 12. H. 4, 133, 33. R. 6, 16.
per Prifer.

4. If the rebellion in &c., and the tenant of a mean estate for life,
do both at one and the same time part to be received, the mean estate
for life is in respect of the immediate and proximity thereof shall be
preferred before the rebellion in &c., for the woods of the Estate of
Walt. 2. cap. 2. (which gives that receipt) being general, viz. adminis-
tur heredes velit illi, ad quos specta revertit, &c. the Latiowhich always
supposes a kind of proximity, prefers the next (though little) estate, be
it in restitution or rebellion for life, before the more remote (though
great) estate in &c., &c. And why this accords 24. E. 3 & 2. In Pierce
Grimeale.

5. As, when men of a Town corporate, which have power
or by Charter or prescription to sit infranchise, do sit infranchise one
of their members, and upon motion in the Kings Bench the Judges
there do award a writ, that they to remove him, or otherwise to signify
the cause, &c. and they certify sufficient cause to remove him, but he
isaile: In this case, the Court cannot therefore award another writ
to remove him, neither yet can any order be taken thereupon; because
the parties are strangers, and have no day in Court; Howbeit the party
grilled may well put an Action upon the special matter against
those that made the certificate, another that it is false: And if it be
found for him, and he obtain judgment against them, to that it may
appear to the Justices, that the causes of the return are false, then shall
they award a writ of restitution, and go before: and this is proved by
the reason of the Book in 9. H. 6, fol. 44, where it is holden, that upon
a Corpus cum causa, if the cause returned be sufficient, but indeed false,
the Court ought to remain the writ, and he is thereby put to no
mischief: for if they had no authority to impose him, or that the cause
sufficiently false, he may bring a Writ of false Imposition against
them, &c. Vide Foss. &c. corpus cum causa, p. 1. the case of 9. H. 6, wall
in a

F. N. B. 191.

F. N. B. 105 c, & a, 115.

F. N. B. 124.

F. N. B. 135.

F. N. B. 144.

F. N. B. 145.

F. N. B. 146.

No error before all certi-

fied.

When errors

are to be al-

figured.

Upon a false

return no writ

to the Bishop.

A Certificates

of an accord

before a Nos

adminis.

10 In
10 In a Waif de admensuratione pasture, all the Commoners shall be
admeasured, viz. as well those that were not parties to the Waif, as those
that were: but yet if any of them which were not parties, &c. forfeit the
Common after admenseurement, they shall not forfeit their cattle,
(not per the value of them) which were in the pasture above the due
number, because they were not parties to the first Waif; neither shall
the party that complains recover damages against them in that Waif
for such forfeiture: for a Waif de secunda super oneratione (fryth not, love
only against him, against whom the first Waif was sued, &c.

11 In an Affile of Fresh-force in London against Jekel Foxley and
Agnes his wife, and eleven others, whereof ten appeared by Bally, and
plead, No such Agnes, the wife of Foxley in rerum natura, and demand
judgment of the plaintiff, & quod inquisitor per Asliam, &c, Nul. tort.
nul. diss. &c. and the others plead the same plea by Attorney: And the
Plaintiff, &c. as to the plea in abatement of the Plaintiff demur in law,
and as to the other plea they pray the Affile: And whether the Waif
should abate or not, was argued at Guild-hall by the Counsel of both
parts before the Affile was taken: but afterwards the Counsel of the
Plaintiff, &c. perceiving that the matter was argued before the terms,
(for the Affile ought first to have inquired all the matter, and if they
had found the exception, and had also found a die for a tenant, then
would it have been time to have disputed what the Law would have
determined in that case, and not before) they therefore prayed the Court
when the Affile was sworn, that they might first inquire of the matter
pleaded in abatement of the Plaintiff, which was done accordingly, &c.
for the course formerly run, was Peculious, and not suitable to such
ordinary proceeding, as the Law requires: And so it was found, that
there was no such Agnes, &c. and yet the Waif did not abate for the
Waif, &c.

75 A digniori fieri debet Denominatio et Resolutio.

It hath been a question in our Books, whether upon a Recovery
was by default, in an Acton of Waif against tenant in dower, or by
the Courtielle, a Quod et doreceat, lieth by the Statute of Wes in
cap. 4. For some have holien, that in an Acton of Waif, although it
be brought against a tenant in Dower, or by the Courtielle, that have
a Fre-hold, yet the damages are the principal, because they were reco-
verable against the tenant in Dower, and by the Courtielle, by the
common Law; and the Statute of Gloucester gave the place wastede but
for a penalty: so as the nature of the Acion (say they) remained still
to be personal, for that the damages are the principal, &c. But the
best opinion is conceived to be, that albeit in that Acton the damages
may be the more ancient recempence, yet (doubtless) the place wasted
(having in the Palsy) must needs be the more principal: And therefore
upon a Recovery was by default, in an Acton of Waif against tenant
in Dower, or by the Courtielle, a Quod et doreceat, lieth, as well as in
any other Acton, &c. so à digniori fieri debet denomination et resolutio, &c.

At the King grant the office of the Tennis-Plays in Westminister,
by the name of the Kings Tennis-plays in VWellm, &c. this grant shall
be taken in a reasonable sense, viz. the Tennis-plays for the Kings
Houhold, and not only for the Tennis-play, when the King himself
plays in his Royal Person; for the King is the Head of his Houhold,
and therefore à digniori parte the Tennis-plays to his houhold may be
well called, The Kings Tennis-plays, &c.
The Reason of

Executor or

Legatee, Election.

No writ of Error, before judgment of all.

Principal things include inferior.
76 The Law requireth decency and order.

1. The tenant ought to seek the Lord to do him homage, if the Lord be within England; for this service is personal, as well on the Lord's life, as on the tenants; and in this Case the Law requireth decency and order; and therefore Bracton faith, Ex sciendum, quod ille, qui homagium suum facere deberet, obtenuerent, quem ipse dominum suo, audire deberet dominum suum ubique inventus fuerit in regno, vel alibi, si comoda pollet adiri, & non tenetur dominus querere suum tenementum, & sic deber homagium ei facere, &c. and there is the same Law for seale, &c.

2. If a woman give land to a man and his heirs, causa matrimonii praecuncti: In this Case, if the either marry the man, or the man refuse to marry her, she shall have the land again to her and to her heirs; but on the other side, if a man give land to a woman and to her heirs, causa matrimonii praecuncti, though he marry her, or the woman refuse, he had not have the lands again; for it knows not with the modesty of women in this kind to ask advice of learned Council, as the man may and ought, &c. and for the same reason a woman may have the cause, although it be not contained in the Decret., yea although the seale be made without Decret.,

3. The order of god pleasing must be observed, which being attended, great prejudice may grow to the party, tending to the subversion of Law: Ordine placitandi servato, servavit & jus, &c. And therefore first, in god order of pleasing, a man must plead to the jurisdiction of the Court: Secondly, to the person, and therein first to the person of the Plaintiff, and then to the person of the Defendant: Thirdly, to the Court: Fourthly, to the Writer: Fifthly, to the Action, &c. which order and form of pleasing you shall read in the ancient Authors, agreeable to the Law at this day: and if the Defendant misforse any of these be thiết the benefit of the former: Again, the Court must be agreeable, and conform to the Act, the Law to the Court, &c. and the Judgment to the Court; so none of them must be narrower or broader than the other, &c.

4. If the King make a Lease for years, remitting Rent, with condition to be void upon non-payment of the Rent, the King shall take advantage of that condition without any demand: Fo; for so long as the Robertson and Rent continue in the King, the Law dispensed with the demand, as a thing un-decent, it being against the dignity of the King to wait upon his subject, or to demand any thing of him: It is otherwise, if the King grant over the Robertson; for his grantor shall not take advantage of the Condition, without demand of the Rent: But in the other Case the Laws (which always requireth that decorum and conformancy be observed) appoints the subject to attend upon his Sovereign, and in that Case to perform the Act, although it be in the case of a Condition, which threatened to the destruction of his Estate: Howbeit this is only a personal Prerogative annexed to the person of the King, for order and decency take, and not respect of the nature and quality of the Rent, &c.

5. One of the reasons which the Lord Coke makes in the Lord Darcy's Case, why the Single value of the marriage of a Ward in Knight-service should be due to the Lord without demand, is this: If the Common Law (faith he) would have imposed the Lord to have made tender to his ward, &c. it would also have appointed all necessary circumstances for the performance of such a tender, as a certain place, &c. whereas
The Reason of

it should be done, and would not have left the Lord, which is the superiour, to fine out the Ward which is the inferior; and who may, if he will, take advantage of his own faults, when there can be no laches at all in the Lord, &c.

6 Among other reasons produced to prove, that in Suits prosecuted in the Marshalsea, one of the parties (at least) ought to be of the King's household; this is one, because (faith the Book) it would not be comely, that a Carman or other Pedeschal person should at his pleasure for another in that Court, and upon that occasion take liberty to appear in Aula Regis, (where that Court was originally kept) abique vestimenta aliecia; for those that appear in Court use to wear garments suitable to that place: And therefore it is recorded by Luke the Evangelist, cap. vii. ver. 25. Capit de Johanne dicere ad turbam, &c. Quid exillis vituri, hominum mollibus vestibus amidiis? Ecce qui vestiti magnifico umanor, &c. Inter in Palatius Regis, &c. And the Common Law regards convenience, and altogether disallows indecorum, and every thing done contra bonos mores.

77 Negatio Conclusionis est error in Læge.

1 In Attachment upon a Prohibition, the Plaintiff counts against A proprietor of Lites, that heretofore the Prior of Montecure was seized of twenty Acres of Land, &c. before and at the time of the dissolution, and held those Acres; and also the Redex simul & semel, &c. Ratione curris the Prior held the said Lands discharged of Lites: The Defendant conveys title to the Land, &c. Abique hoc, that the Prior held them discharged of Lites, &c. Here the plea of the Defendant pro consulatione habendi (for he is in a manner, an Adea) was insufficient, because he travaleseth a thing not traveresable: For the prescription of the unity ought to have been travaled, and not the conclusion, viz. Ratione curris; because as in Logick the conclusion of a Synonim cannot be venient, but either the major or minor Proposition: so neither in Law, which is the perfection of Reason, &c.

2 In a Præcipe, one that pleads that the Tennor of Dale is ancient Demeline, and that the Land in demand is parcel of the Tennor, and of ancient Demeline, there the Demandant cannot say, that the Land in demand is not ancient Demeline; because that is the Conclusion upon the two first preceding Propositions, viz. 1. That the Tennor is ancient Demeline; 2. That the Land in demand is parcel of the Tennor; so sequitur conclusio ex præmissis; and therefore it cannot be venient, and with this agree 41. E. 3. 22. 48. E. 3. 11. and many other Books.

78 The Law respecting the Bonds of Nature.
The Common Law.

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3 A. hath issue B. a daughter, and his heir apparent, who being married to C. hath issue by him D a son; it was, and A. that holds Land by Knight's Service, nisi prius, and the A. and issue to D. as he had to A. and within time: In this Case, the Lord shall have the wardship of the land, but not the wardship of the body of the heir: for none shall be in ward for his body so any Lord, during the father's life; because the Law of Nature requires, that the father during his life shall have the wardship of his heir apparent, as then the Lord, or any other person hath the. When A. is the same, if D. had been a daughter: it is otherwise, because the father was, living the mother, when the Landholdeth by Knight's Service, unknown to the son on the part of the father: because no Law that A. cannot come more in the mother, so. Again, this privilege extends not to any collateral heir, but only to the son or daughter being heir apparent: for albeit a man shall have an Estate of Mortality, Quare confingunenc & hereditum copius, and albeit the words in causam matrimonium ad ipsum pertinent: he causes the ward-holding of his heir apparent in marriage is a great establishment of the son's; yet that he to be understood as against a strong-voes; but not against a Guardian in Chivalry, and the mother shall have the like right for taking away of her son and heir apparent; and yet the mother shall not bar the Lord by Knight-service of his wardship of his boy, as Littleton saith, § 114. Quia ex filia tua nativum, in quattuor tam non et, sed patri sui, Fleta l. s.cap. 6.

3 Part the same thing to D. and Feoffment by Knight's Service of a Carus of Land, the feoffor made a footman in the upon condition, and taketh the Lord to husband, and have issue a son; the wife is eth, the issue solution to the condition broken, the Lord enters into the Land as Guardian by Knight's Service, and maketh his executors, and devise: In this Case, the execution shall have the wardship of the Lord during the minority of the heir, but not the wardship of the body: For albeit the Lord cannot have a double interest in the wardship of the body, one as Lord, and another as father; yet as father, and not as Lord, in judgment of Law, he shall have the wardship of the body of his son and heir apparent, in respect of nature, which has before any wardship, in respect of Seignories by Knight's Service, begun: And that wardship, by reason of nature, cannot be waived, and claim made in respect of the Seignories: And the execution of the father shall not have such a wardship, which the testator gave as father; neither can such a wardship be foisted by Mortality; because it is due to the father in respect of privity of nature. 9.

4 If the Sheriff or other Officer be of kinsman or affinity to the Plaintiff or Defendant, and that such affinity continues; this is a cause of challenge to the Array; as if the Sheriff marry the daughter of either party, or e converso, this is a principal challenge; so if there be affinity between the son of the Sheriffs and the daughter of either party, or e converso, or the like; albeit this is no principal Challenge, yet is it a Challenge to the labour, 9.

5 If a Juror be of blood or kinsman to either party, (Confingunenc, Co. 8. 157.e; this is a principal Challenge to the Polles, because the Law presumes that one kinman both labour another before a Stranger; and how remote so ever he is of kinsman, yet the Challenge is good: And if the Plaintiff challenge a Juror, he kinsman to the Defendant, it is no Counter-plea to say, the he is of kinsman also to the Plaintiff; though he be to in a nearer degree: for the words of the venire facias (sounding) the Juror to be of kinsman to either party.

6 If
6 If a Body politic be incorporate (tale 2, aggregate of many) being an Action that concerns their Body politic; or incorporate, if the Juro be of kindness to any that is of that body (albeit the Body politic or incorporate can have no kindness) yet for that those Bodies consist of natural persons, it is a principal Challenge, &c.

7 Affinity or alliance by marriage is a principal Challenge, and equivalent to Contagiousness, when it is between either of the parties; as if the Plaintiff be Defendant marry the daughter of cousin of the Juro, or the Jury marry the daughter of cousin of the Plaintiff or Defendant; and the same continues, or time be had: And if, the son of the Juro hath married the daughter of the Plaintiff, or, albeit this be no principal Challenge, because it is not between the parties, yet is it a Challenge to the labour, &c.

8 Martha Wilcox, (one of the daughters and co-heirs apparent of Eliæ, the relict of William Wilcox, and then the wife of Ralph Rackcliffe) dwelling in her mother's house at Hitchin, (being then under the age of sixteen years, and about fourteen, went from thence at two of the clock in the morning (with the consent of the said Ralph) to Bramfield, (being eight miles distant from Hitchin) and there married Edw. Rackcliffe: And in an Elysian firm brought by Luke Norton upon the demise of the said Edw. the issue was, whether Eliæ, the mother had the custody of Martha at the time of the said marriage; so if she had, then the Land of the said Martha, (being in toccage) was to be lost to her, by force of the Statute of 4 & 5. P. & M. cap.8, which prohibiteth the conveying of a maid, out of the custody, and contracting Matrimony with her, without the consent of her father, if he be living; or of her mother, in case her father be dead, &c. in pain for the man to suffer imprisonment, &c. and so; the maid to lose her land, as aforesaid, &c. And in that Case it was resolved, that Eliæ, the mother, had the custody of the said Martha at the time of the marriage, within the possession of the said Edw; so that Statute hath obtained two manner of new custodies, viz. by reason of nature, and by avowal: And here the father of Martha being dead, the is by nature left in the custody of her mother; neither yet was the son of Ralph Rackcliffe (the husband) any thing at all material: so the Statute hath annexed the custody to the person of the mother, jure naturæ, which is inseparable, and cannot by the marriage be transferred to the Baron, but after the marriage remain alone in the mother, &c.

9 It is said, that if there be Lord and Feme tenant by Knights-service; and the tenant make a lease for life, and after the Lord and the tenant inter-marry, and have issue between them a son, and the Feme dies, and after the father dies, the son within age, here the Executors shall have the wardship, by reason of the Seigniory; so the father hath the wardship of his eldest son jure naturæ, which is inseparable, and cannot be waived, and he cannot have the wardship of his son by the death of his wife; in respect of his Seigniory; for that was inseparably vested in him as father, immediately upon the birth of the son jure naturæ: And Littleton faith, that the father during his life shall have the marriage of his son and heir apparent, and not the Lord, &c. 3.

10, Ambrosia, daughter and heir, who being married to Sir Arthur Gore, had issue by him Ambrosia, a daughter, Douglas dies, and likewise Ambrosia being under age, afterwards Sir Arthur Gore takes another wife, and hath Issue a son, Ambrosia, remaining still under age. This case, Ambrosia was not in ward, during the time the remained heir apparent to her father; but after her father had a son, so that the
Faith, obedience and legance are one to the 2doaline by
the Law of Nature, which cannot be changed or taken away; for all
Judicial and Municipal Laws have induced and imposed in several
places and at several times others and several punishments and pen-
alties for breach or not observance of the Law of Nature (for that
Law only consisting in commanding or prohibiting without any
certain punishment or penalty) yet the very Law of Nature itself
could never be altered or changed: And therefore it is certainly true,
that Jura naturalia sunt immutabilia.

And here with 3grit into Bracton lib. I., cap. 5. and Doct. and Student cap. 5. & 6. For example, If a man hath
a Warr by reason of a 2ignory, and is out-laowed, he forfeited the
warrship to the King; but if a man hath the warrship of his own
Son or Daughter, which is his heire apparent, and then is out-
laowed, he cannot forfeit that warrship, because nature hath annexed it to
the person of the Father; as it appeared in 33 H. 6. 55. b. So likewise the
Faith, Obedience, and Legance, which owe to our Sovereigne
cannot be taken away: For, bonus Rex nihil a bono patrie d'tat, &
patria dictiur a patre, quia habet communem patrem, qui e't patre patriae.

In the same manner, 3ar is & femina conjunctio est de jure natura, as
Bracton and Doct. & Suid. in the places before quoted no hold: And
therefore if he that is attainted of treason or felonie be blame by one,
that hath no authority, or executed by one, that hath authority, but
purposet not his Warrant; In this Case, the eldest Sonne can have no
appeale; for he must bring his appeale as heire, which privilegie,
being ex provinione hominis, he losteth by the attainer of his Father:
Sowbeit his Wife (if he have any) shall have an appeale; because she
is to have her appeale as Wife, which the continueth to be, notwith-
standing the attainer; for that maris & femina conjunctio est de jure
natura; And therefore (it being intended to be of true and lawfull
matrimonio) is invissable: and this is proved by the books in 35 H. 6.
fol. 57. So if there be 3ther and Daughter and the Daughter is at-
tainted of felonie, now can not the heire to her 3ther, nor the cause
aforesaid: yet after her attainer if she kill her 3ther, this is particu-
lar and petit treason: For she killed the remaining her Daughter: because
that is of nature. If a man be attainted of felonie or treason, he hath
lost the Kings Legal protection: for he is thereby utterly disabled to
use any Action real or personal (which is a greater disability then an
alien in league hathy and yet such a Parson to attainted hath not lost
that protection, which by the Law of Nature is given to the King:
for that is indelebelis & immutabilis, and therefore the King may protect
and pardon him; and if any man kill him without warrant (albeit at-
tained as aforesaid) he shall be punished by Law as a 2an-Kinger:
By the Statute of the 25 E. 3. cap. 22. a man attainted in a Pramunire,
is by expresse words out of the Kings protection generally; and yet this
continued only to legal protection; as it appeared by Lit. fol. 43. for
the Parliament could not take away that protection, which the Law of
Nature giveth unto him; and therefore notwithstanding that Statute
the King may protect and pardon him: And although by that Statute
it was farther enacted, that it should be done with him as with an
enemy, by which words any man might have blaine such a person (as
it is shown in 24 H. 8. Coron. Br. 197.) until the Statute made in 5 E.
cap. 1. Yet the Kings might protect and pardon him. A man out-laowed
is out of the benefit of the Municipal Law; for faith Jux. N. B. 161.
Ut legatus cit quasi extra legem politicam; and Bracton (1. 3. tra. A. 2. cap. 11.)
The Reason of

Faith that captur gerit lupinum, &c. yet is he not out either of his natural ligeance, or of the Kings natural protection; for neither of them is tied to municipal laws, but is due by the law of Nature, which was long before any judicial or municipal laws: And therefore if a man were out-laided for sciences, yet was he within the Kings natural protection: for no man but the Sheriffs could execute him, as it is adjudged in 2. & 3. Pl. 3. Every subject is by his natural ligeance bound to obey and serve his Sovereigne, &c. It is enacted by the Parliament in 23. H. G. cap. 8. that no man should serve the King as Sheriffs of any County above one year, and that, notwithstanding any clause of non obstante to the contrary, that is to say, notwithstanding that the King should expressly dispence with the said statute; howbeit it is agreed in 2. H. 7. that against the express purview of that Act, the King may by a special non obstante dispence with that Act; for that the Act could not barre the King of the service of his subject, which the law of nature did give unto him: One of the chiefest grounds, according to which the case of the poll-nati was resolved in 6. Jac. was, because obedience and ligeance of the subject to the Sovereign is due by the law of Nature; for it is due by that law, and the same law be parcel of the laws of England as well, as of all other Nations, and is immutable, and that poll-nati owe of England are united by birth-right in obedience and ligeance (which is the true cause of natural subjection) by the law of Nature. It clearly followed, that Calvin (the Plaintiff in that cause) being born under one ligeance to one and the same King, could not be an alien borne: And there is great reaon (as it was then allowed) that the law of Nature should direct that Case, wherein the natural operations were remarkable. The King has the Crown of England by birth-right, being naturally procreated of the blood Royal of this Realm; Secondly, Calvin the Plaintiff, was naturalized by procreation and birth-right, since the descent of the Crown of England; Thirdly, Ligeance and obedience of the subject to the Sovereign due by the Law of Nature; Fourthly, Protection and government also due by the Law of Nature: Fifthly, It was presently said, that this Case of Calvin in the opinion of others was more doubtfull in the beginning, but the further it proceeded the clearer and stronger it grew, and therefore that the doubt did arise from some violent passion, and not from any reason grounded upon the Law of Nature, quia quanto violentus mensus (qui fit contra naturam) appropinquat ad sumum sinera, et debliores & tardiores sunt ejus mensus, sed naturalis mensus, quondi magis appropinquat ad sumum finem, tanto fortiores & velociores sunt ejus mensus: And for as much as in case of an alien borne, you must of necessity have two severall ligeances to two severall persons, but in this Case one person alone is head of both, and the poll-nati, and we may joined in ligeance to that one head, (which was copula, & tanquam oculus of that Case) And ligeance of the subject of both Kingdomes being due to their Sovereign by one and the same law, viz. by the Law of Nature, the poll-nati cannot be alien of either Kingdom, but ad invicem naturalis subjicitis of both; to, Non adversariar diversarum regnorum, sed regnantium; non patriarum, sed patrum patriarum; non coronarum, sed coronatorum; non legum municipali, sed Regum Majestatim, &c.

12 If the Grand-father hath issue a Sonne, and the Sonne take Wife and hath issue and die, the Mother of the issue shall have the Wardship of the issue, which is her own Sonne, and not the Grand-father: Albeit the issue may have the law, which ought to descend unto him from the Grand-father, that the Mother shall not have it, &c.

13 The
The Common Law.

13. The Statute of Articuli fip, cartas cap. 10, provides, that no
D leter, or other whatsoever, to have part of the things, which are
in plea, shall undertake business, which are so in plea; yet if the
L enant hanging a perippe quod reddat against him, entitles his Sonne
and hether apparent, this shall be out of the danger of that Statute, as
it is taken in 6 E. 3, 274. in a writ of Champernie; (see it also in Firz.
Champernie 10.) and the reason of this is, for that the Sonne cannot be
said a Maintainer of the Father; because he is bound to alde and assist
his Father, when and as often as he may, being enjoyned so to do by
the Law of nature, &c.

14. By the Statute of West. 2, cap. 12, it is ordained, that in an ap-
peal it shall be inquired, who were the Abettors, and that they shall
tender damages to the partie aqvint; Nevertheless, if the here abet
his Father to bring the app ale, although it is within the words of
that Statute, yet shall he be out of the danger of it, And to Herie toke
it, in 6 E. 3, 274. For Common Law and reason cap, that he ought
to be aiding to his Father, and may also abet her,

15. Afore for the provismon of heires male, that one shall engage,
Brotherly love, &c. are good confederation to raise an use; But long
Acquaintance and familiaritie, are not: Inowwtht confederation of Par-
tage is more favoured in Law, then any other.

16. The Sonne may maintaine his Father and one Brother an-
other, &c.

17. Brothers of Cousins shall not wage Battel in a writ of right,
&c.

18. A Statute, that maketh it Felonie to receive, or give meat and
drink to one that comitted any such an offence, ( the partie to
receiving or giving having knowledge thereof) hretchen not to a Wom-
man, that receiveth or giveth meat and drink to her Husband in such
a Case, &c.

19. For that there are three manner of Privities spoken of in the Law,
viz. Privitle in Blond; Privitle in Etate, and Privitle in Law; Privitle in Blond is, that between the Ancestor the Heire, Privitle in Etate, as between Jointenants, Baron and Feme, Donor and
Donie, Leffod and Lette, &c. Privitle in Law are, as when the Law
without Blond or Privitle of Etate calls the Land upon one, and
makes his entry Congeable, as the Lodge by vlchak, the Lodge that
enters for Pormain, Lord of a Milen, &c. Now of these three sort of privities, onse the first (which is by blond, and therefore most natu-
ral) shall take advantage of Instant, Covertures, non lane memorie,
&c. and not the other two, and therefore than Infant, tenent in
his ample, make a Feestment and die, his Heire shall enter; There
is the bane Law also of heires special, and of heires general, and spe-
clial, unto whom the right of entry wevems per seem doni, or by the
Custome, as all Lands in Gavelkind, Borough-Englishe, &c. It is
otherwise of privities in Etate, and in Law; And therefore if the
Donor in title within age make feestment in fee, and die without Mere,
the Donor had not enter; Because there was only privitle in Etate
between them, and no right accrues to the Donor by the death of the
Donor; So is there be two Jointenants in fee within age, and the
feestment feestment in fee of his morta, and vis, the last hiber
cannot enter by reason the Instante of his Companion; Because by
his Feestment the jointenants was severed, so long as the Feestment
kynships in toze, and therefore in such Case the Heire of the Fa-
dre had a dun but antr acent, or had enter into the middye
In like manner Privities in Law: (as the Lord by vlvchak, &c.) shall

Do 2

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The Reason of Max. 78:

never take advantage of the Plight of Infants; because they are strangers to it: Also in that Case if an Infant Contract make Testament and die without Heirs, the Testament is un-ceivable: here is the same Law of Scripture and no law not memorise, Ex.

19 It is false, that one of the Christian reasons, that moved the Parliament in 3 H. 8. and in 34 & 35 H. 8. to give liberty to dispose of the five third parts of Land by will; or otherwise to a Competent legal, hound of Wives, and Children, et al: payment of Debts, was this: Because these Cases were ordinary, usual, and necessary: Am for that every man is in the life time bound by the Law of God, of Nature, and of Nations, to make provision for his Wife, and Children, and also for the payment of his Debts, etc.

20 There is a nearer Relation between Father and Sonne then between Grand-father and a Grand-child: And therefore if there be Grand-father, Father, and others Wommes, and the Grand-father to the life time of the Father conveys his land to some of the Wommes, this is out of the Act of 3 H. 8. of Wills: For the Father ought to have the immediate care of his Wommes and Sons; But if the Father be dead, then the care of them belonges to the Grand-father, and then it he covert any of his Lands to any of them, that is within the life Devises.

21 It is regularly true, that the Wiltain cannot bring any Action against his Father, yet he may have against his Father an appose of the death of his Father, or of any other of his Ancestors, whose heirs he is, for the heidinis is both by way and in nature bound to purify such an Action.

22 A man setteth of the Acres of Land, acknowledging a co-rogance of & tenants, et al. Am entitlled A. of one acre, and B. of another, and the third welcome to his heire: in this Case, it apprains he must settle against the heir, he shall not have contribution; For he comes in the place of his Ancestors, and sits in his stead: Here is an Act of 6th & 7th of Eliz. in what manner, so that the third is so bound, while the third setteth his lands to the heir.

23 If one Coprecus make a Testament in Sie, and after the Teste is implanted and toucheth the Testator, the may have none of the Coprecus to any part of the Warrantis per annum, but never to recover per rate against her by force of the Warrantis in Law upon the partition; For (as Littleconfait) he by alienation the heir himself so as to have any part of the Land as his patrimonie, but if these he two Coprecus and they make partition, and the other two thirds of the house and its appurtenants is by the heir, and after the house is improved; Here, albeit he be in by the Testament of his Father, yet shall he pray in case of the other Coprecus to have the Warrantis per annum, and to recover per rate, not only because the Warrantis benefit his Father and him by it and allowance, but also because for that is his kiend with his Father.

24 A fine is levied by Common in taile after the Statute of 4 H. 7. 24. and before the Statute of 32 H. 5. 35. who fined the fines in taile, and his title was not preferred by any of the bungings in 4 H. 7. because although the claimer per formam doni, yet claiming through his Father, the Land comes to him in the nature of a descent.

25 If any of the Kings subjects be beyond Sea, and is commanded by the King to return home, and in contempt refusal to go, all his Goods and Chattels, Lands and Commissions shall be taken by the use of the King; And this is to reasen of the faith and allegiance, which he swear to the King by the Law of Nature: And this was the Laws of Richmond's Cate in 19 H. 3. 35 Scoleswe.
the Common Law.

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Max. 79. 26 If a Balkard were born at T unr, when it was under the
presence of H. 8, he was a written by the Law of Nature: so it is also
of the time of Matters born within this Realm.

27 Vide Hob. Rep. pag. & The Case of Claffrichard's Case 10, Greiley
against Lothor.

28 In an Action brought by the Husband and Wife, of a suit of
Eccles, a common case, of Action of Wills; because there is a Wesley
in them already either a Highness or reversion actually, and therefore
the same belong to the present Estate to return, is come in position,
therefore in this Case, Reverter is to be made to them both, and
so are the Books in 1 H. 6. 10. & B. 3. Brief 372. Ruliter 238. F. N.
B. 119. Also is a Forndem in Reverter, wherein nothing is already
reverted, but the right only returns, there the right may be lain to
return, either to the Wife alone, or to the Husband and Wife, as
Doubt resolves it; 23 H. 6. 54. See also 18 H. 8. 20. 5 H. 3. 13. 38 E. 3. 16.
and 18 E. 3. 3. Where it was sometimes to the Wife, sometimes to the
Husband and Wife: But in a Forndem in descender upon a descent to
the Wife, there the descent must be made in the suit to the Wife alone,
because the descent follows the blood, and to that the Husband is a
Stranger, and so are the Books in 19 H. 6. 46. and 33 H. 6. 10. Where
a Forndem in descender was brought by two Husband and their
Wives, and made the descent in blood to the Wives alone, and yet
concludes, that the right ought to descend to the Husband and Wives:
No exception was taken to it, and ordered by the Court, that it would
be amended, and the descent made only to the Wives.

29 In an Action upon an Assumpsit, that A. would give to B. 1001,
if B. would give her her content, that A. might marry her Daughter,
and it was moved in a court of judgement, that the action would not lie,
the consideration being no travel or charge, but only a bare content;
however, it was held by the Judges against one, that the considera-
tion was good, because the Mother by the Law of Nature a Spe-
cial Eoke to incline the Daughter to one way or other, and the destre of her content and the working of it enough, that the Plaintiff
to consider it.

79 Nemo presumitur alienam potestatem sua praevalere.

1. If Lexam in alio discontinue the tale and path Mine and die, and
the Uncle of the Mine releas to the discontinue with Warranties, &c.
and die without issue, this is Collateral Warranty, and had been
the Mine in tale, albeit the Uncle had no right at all to the land in-
talles; because the Law presumed that the Uncle would not m-
aturally ad-inherit his Latek Veire, being of his same blood, of that
right, which the same Uncle never had, but came to the Veire by
another way, unless he would leave him greater advancement some
other way; For nemo presumitur, &c. And in this Case the Law will
admit no proofs, against that which the Law presume: And so is
reasonable of all other Collateral Warranties; no man is presumed to
do any thing against nature.

2. If a man make a voluntary Conveyance of his Land to the use of
any of his collateral blood, who is not his heirs apparent; that is not
within the Act of 32 H. 4. of Wills; for it cannot be intended, that he
will ad-inherit his heirs on purpose to defeat the King of his Goods
(losing every one hopes to like to see his heirs attain his full age) much
less to deprive him of his Primer felin. Vide: Dier 3 07. 77.

D 0 3

0 The
The Reason of

80 The Law esteemeth and judgeth of all things according to their nature and quality.

1. Where the tenant holds of his Lord by sealty and a pound of pepper, or a pound of Cammin; or a certain number of Capons, or hens of a pair of Groves, or certain buldels of wheat, or the like; the Lord shall have to much for relief as he receives in rent, viz. a pound of pepper, a pound of Cammin, or the like: But if the tenant holbeth of the Lord by doing certain work-doings in Yatter, or to attim at Christmas, or the like; he shall not double the same; for of corporeal service or labour, or work of the tenant, no relief is due. It being one-

ly payable, where the tenant holbeth by such yearly rents or profits, which may be paid or delivered, &c.

2. When the tenant holbeth by such yearly rents or profits, as may be presently delivered, the relief is due to be paid to the Lord immediately upon the tenant's death; and upon non-payment thereof the Lord may attaint, for it presently: Howbeit if the tenant holbeth of his Lord by a Rate, or by a buldel of Roset, to be paid at the feast of St. John Baptity, if such a tenant die in winter, the Lord shall not be able to attaint for the Relief, until the feast of Roset; for Lex in fece naturae ordinem, Lex non cogit ad impossibilitatem. And therefore it is observed by my Lord Cook, that Littleton puts a diversity between Corn and Roset, for Corn will last, and therefore the tenant must deliver the Corn presently before the time of growth, and so of Cotton, &c. But Roset and other flowers that are fruchus fugaces cannot be kept, and therefore are not to be delivered, until the time of growing; neither is the tenant down by law artificially to preserve Roset; for the Law in these cases respects nature, and not the present.

3. Prescription (although neuer to ancient) cannot make any thing appendant or appurtcent, until the thing appendant or appartenent agree in quality and nature with the thing whereunto it is so appendant or appartenent; as a thing corporeal cannot properly be appendant to a thing corporeal; nor a thing in-corporeal to a thing incorporeal; but things incorporeal which lie in great, as Advancements, Wainness, Commons, and the like may be appendant to things corporeal, as to a Danno, house, or lands; so also may things corporeal be appendant to things incorporeal, as lands to an Office; but yet these are ought to agree in nature and quality; so Compton of Turbery or Etovers cannot be appendant to all appartenent to lands, but to all house to be spent therein; no a Lut which is tempalized to a Church or Chap-


gel, which is Ecclesiastical. Neither can a Nobil man, Esquire, or claim a seat in a Church by prescription, as appendant or belonging to land, but to an house; for that such a seat belongeth to the house, in respect of the inhabitancy thereof; and therefore if the house be part of a Danno, yet if that case he may claim the seat, as appendant to the house for the reason aforesaid.

4. A man cannot be naturalized either with limitation; for life, or in:


tail, or upon condition; for that is against the abolishment, purity, and indissolubility of natural Allegiance.

5. Corporations aggregate of many are not capable of the Protec-


tions of Professor of Moraturie; because the Corporation itself is invisible, and respect only in consideration of law.

6. Littleton saith (§ 219) that the giant of a rent charged hath no jestion to bring a suit of annuity, and to changing the person upon to make
the Common Law.

make it personal, or else to restrain upon the land, and so to make it real; but this is to be understood with some limitation; so of a rent granted for; obloquy of partition, a view of Annuity not void, because it is of the nature of the land extended: Also of such a rent as may be granted without a view, a view of Annuity not void, although it be granted by deed, &c.

7 If there be two Joint-tenants, and the one lets his moiety to another for life. In this Case, the Jovinture is viewed so, that if the Joint-tenant which will retains the frank-rent of his moiety, have issue and heir, the same shall have that moiety by descent; because a frank-rent cannot by nature of Jointure be annexed to a bare reversion, &c.

9 Where the Common or Statute Law gives remedy in foro seculari, (whether the matter be temporal or spiritual) the Concourse of that Court belongs to the Kings temporal Courts only, unless the Jurisdiction of the Ecclesiastical Court be saved, &c. as if an Abbot or Prior hold of his Lord by Divine Service certain, and that Service is not performed, the Lord hath his remedy in foro seculari, because the Service being certain, may be made to a temporal Court: It is otherwise of tenure in frank-almaine; so, that Service being spiritual and uncertain, must be defined and recovered in foro Ecclesiastical, in an Ecclesiastical Court, unto which Court the Concourse of that Court with properly belong, &c.

9 If two tenants in common of Lands in fee make a gift in tail, o3 lease for life, reserving a yearly rent, and a pound of pepper, and an hawk, and house, and they are settled of that Service; and afterwards all the said Service being arrear, they refrain so; and the tenant makes request: In this Case, as to the rent and pound of pepper they shall have two secural Allies, because the two tenants in common hold the reversion (unto which that Service is incident) by several titles; but as to the hawk and house, albeit they be tenants in common, &c. they shall join in the Allot 50; one of them above by himself cannot make his plaint in Allot for the moiety of an hawk or of an house; because the Law will never suffer any man to demand any thing against the order of nature, or reason, as it appeared by Littleton § 129. Lex enim spectat nature ordinem, &c.

10 If A. ensearch B. of Black acre, upon condition that if C. ensearch B. of White acre, A. shall re-enter: In this Case, C. hath time during his life to make the feoffment, if B. hath not taken it by request, and to likewise of an Obligation: Potestat in tunc et eis, although the condition be collateral, as aforesaid, and is to be performed to the Oblige, and no time limited, &c. yet in respect of the nature of the thing, the Oblige shall not have time during his life to perform it: As if the condition of an Obligation be, to grant an Annuity of yearly rent to the Oblige during his life, payable yearly at the Feast of Easter, this Annuity yearly rent must be granted before Easter, or else the Oblige shall not have it at that Feast during his life, &c. de finibus: And so it was resolved by the Judges of the Common Pleas, in Andrews case: for which see Dir. 14, Eliz. 31.

11 If a Testament or bond be made upon condition, that the Feoffor, o3 Oblige shall pay, &c. certain sum of money to the Feoffe or Oblige at fixed a day, but no place limited for the payment thereof: In this Case, the Feoffor or Oblige ought to seek out the Feoffe or Oblige to make payment thereof accordingly, if he be to be found within England, &c. so in case of an Obligation as the Law was always clear, and in case of a Testament, although it hath been sometimes controverted, yet at this day that
that doubt is settled, it having been oftentimes resolved, that laying the money to be paid is a sum in gross and collateral to the title of the land; the feoffor must tender the money to the person of the feoffee; and it is not sufficient for him to tender it upon the land; otherwise it is of a rent, that issue out of the land: Howbeit, if the condition of a bond or feoffment be to deliver twenty Quarters of wheat, or twenty loads of timber, or the like, the Obligo; Feoffor is not bound to carry the same about, and to seek the Feoffee; Obligo; but the Feoffor; Obligo; before the day must go to the Feoffee; Obligo; and know where he will appoint to receive it, and there it must be delivered. And to note an order between money, and things ponderous, or of great weight: Likewise if the Condition of a Bond or Feoffment be to make a Feoffment, there it is sufficient for him to tender it upon the land, because the State must pass by liberty, 

12. Every man shall plead such pleas as are proper for him, and apt for his defence to be pleaded: As a mistake that hath nothing in the land may plead a release of Actions personal, because damages are to be recovered against him, and therefore for his defence they may plead it. But a release of Actions real he cannot plead, because he hath no Estate in the land. And none shall plead a release of Actions real in an Assise, but the tenant of the land. Et sic de ceteris.

13. A particular Estate of things that lie in grant cannot commence without deed, and consequently that Estate cannot be surrendered without deed; but albeit a particular Estate be made of Lands by deed, yet may it be surrendered without deed, in respect of the thing united; because the particular Estate might have been made without deed: And so on the other side, if one be tenant by the Courtelle; tenant in Dover of an Advowson, Rent, or other thing that lies in grant, albeit there the Estate began without deed, yet in respect of the nature and quality of the thing that lies in grant, it cannot be surrendered without deed: And so if a Lease for life be made of Lands, the remainder for life, albeit the remainder for life began without deed, yet because Remainders and Reversions, though they be of lands, are things that lie in grant, they cannot be surrendered without deed, &c.

14. A Rent cannot be granted out of a Piscacie, a Common, an Advowson, or such like incorporeal Inhabitants, but out of lands or tenements, whereunto the Grantor may have recourse to disclaim, or which may be put in view to the Re-cognition of an Assise. And although it be out of Lands or tenements, yet it must be out of an Estate, that passed by the Courtelle, and not out of a right, as if the Courtelle release to the Dilett(2) of Land, reserving a rent, the reservation is void, & sic de similibus.

15. John Goffe, the brother and heir of R. Goffe, brings an Appeal of murder of the faith. R. Goffe against Bibite, as principal, and against Hoell David, as accouncement before, and against David & Thomas, as accouncement after: The principal pleads not guilty, and by nisi prius in the County of Mamouth he was found guilty of man-slaughter and not guilty of murder: and in this Case it was resolved per Popbam Chief Justice & toman Curiam in the Kings Bench, that Hoell David was discharged: because there could not be any accouncement before the fact in Case of man-slaughter: for man-slaughter ought to Inform upon a sub-ordinate debate of effray, because, if it be premeditated, it is murder.

16. A Feme sole without land to A. and his heirs; if A. forgive him, they inter-married, the Feme revokes, and often hath (during the Coverture) that A. Wall not harvest, and dies, to proceed the heir of the

No rent out of things incorporeal.

No accouncement before the fact in man-slaying her.
the Feone enters: And in this Case it was resolved, that the making of a Will is but the inception of it, and that it taketh not any effect until the death of the Devisor; so Omni testamentum morte consummatur et voluntas sii ambulatoria utque extremum vice examinum. And therefore it would be against the nature of a will to be so absolute, that the party which made it being of fame and perfect memory, might not have power to countermand it; and then this taking of Baron being the Feone propre all, shall be accounted a countermand in Law, of the will; and therefore the heir of the Feone recovered the Land, 

17. A man desisted a rent fortnite out of the Perno of Dale, and desisted the Perno for years, the terms enters, and pays the Rent: after the Term ended, the Devisees brings an Affic against the Terrentant. And in this Case it was resolved per totem Curiam, that the payment of the rent by the tenant was not settin to blame the Terrentant, after the determination of the Term, in respect of the weakness and meannes of the interest of the tenant for years, who at the common Law could not prejudice no daw in question the estate of the frank tenement, etc.

18. In Trespass, the defendant satisfies, $ all Inhabitants in any ancient possession within the Town of Dale have used to have Common in the place, etc. in Soto ratione communis. And it was adjuged per totem Curiam, that this Custom was against Law for divers reasons, amongst which this was one, that such a claim of a Common is against the nature and quality of a Common; for every Common may be suspenda or extinguished; but such a Common as that shall be incident to the person, that no certain person shall be able to extinguish it; so long as he which released, etc. removes, the new Inhabitant shall have it again, etc.

19. In Calvins Cafe, the plea of the Defemants, that continue the ligeance of the Plaintiff s Calvins to the Kingsome of Scotland onely (Infra ligentiam Regis Regni fui Scoti, et extra ligentiam Regis Regni fui Anglie) and so no make one local ligeance for the natural subjects of England, and another local ligeance for the natural subjects of Scotland, was adjuged utterly insufficient; because ligeance being a quality of the mind, that follows the subject whithersoever he goeth, it is against the nature thereof to be local, or confined within any one particular Kingsome of Ccounterp; And therefore it is truly said, Qui abjurat regnum, amnitet regnum, fed non regem, fed amnites patriae. fed non parent paterne, for not withstanding the abjuration, he owes the King his ligeance, and still remaineth within the Kings protection, because the King, if he please, may pardon him and restore him to his Country again, etc.

20. There is a diversity, when the Lord in his Adivorce varies from the truth of the quality of the services, by colour of feitin and possession, which he had got of his tenant; and when he varies from the truth of the quantity of the services, by reason of feitin, which he hath got of more, then he ought to have of the same nature; for where the Lord aboves, because the tenant holds of him certain land by feitin, rent, and suit of Court, and allenges feitin of all, am for the rent arrear, etc. whereas the true tenure was by feitin and rent only: In this Case, the feitin of the suit is not material, because it is of another quality and nature, and the tenance originally was not charged with any service of such a quality as suit of Court: And therefore in such case the tenure is treasurable. But where the rent is 2s. per annum, if the Lord hath happy and voluntary feitin of more rent, then he ought
The Reason of

Co. Inst. p. 1. 176, 2. 31 If a man be Lessee of a Village, for life, 25 years, or at will, and the Tenant purchase lands in fee, if the Lessee enter into the lands, he shall hold the lands as a Perpetual to him and his heirs for ever; for the Laws respected the quality and not the

Lease, Villain

Co. 3, p. 20, 4. 32 A tenant holiness of his Lord certain lands in socage, to pay yearly a pair of guilt Spurs, or live Shillings in money at the Feast of Easter: In this Case the rent is uncertain, and the tenant may pay which of them he will at the last Feast, and likewise the tenant may pay which of them he will too relief; but if he pay it not when he ought, then may the Lord either use which of them he will: Provided if the tenant be to attend on his Lord at the Feast of Christmas, or to pay ten Shillings, there the relief must be ten Shillings, because it is against the nature of the other to be bounded.

Relief

Co. Inst. 3, p. 20, 4. 4 If an Obligation of 100l. be made for the payment of 50l. at a day, and at the day the Obliger tenant it; yet is in Action of Debt upon the Obligation, if the Defendant plead the tenant and refusal, he must also plead, that he is yet ready to pay the money, and tenant the same in Court: But if a man be bound in 200 quarters of wheat for the delivery of 100 quarters, and the Obliger tenant at the day the 100 quarters, he shall not (in such case) plead uncor prit, because although it be parcel of the Condition, yet they being bona permissa, it will be a charge for the Obliger to keep them; and therefore (in such case) he is not bound to pay, he is always ready to pay the last 100 quarters, quid. Vide Dier. 150, 34.

Payment of money or value. Directly

Co. Inst. 3, p. 20, 4. 24 If a man make a single bond, or acknowledge a Statute of Reconnaissance, and afterwards make a protest for the payment of a lesser sum at a day, if the Obliger or tenant mention the lesser sum at the day, and the Obliger or tenant refuse it, he shall not have any remedy at Law to recover it, because it differeth in quality from the sum contained in the Obligation, Statute of Reconnaissance, because it is no parcel thereof, but contained in the necessity made at the time, or perhaps after the Obligation, statute, or Recognition: And in such Case, in pleading of tenant and refusal, the party shall not be obliged to plead uncor prit, neither both the Obliger or tenant any remedy he laws to recover the sum contained in such necessity: so likewise is it, if a man make an Obligation of 100l. with condition for the delivery of 100l. 20 timber, or the performance of an Arbitration, or the doing of any Act, either differing in nature from the sum contained in the Obligation, and being no parcel thereof to collateral thereto; and therefore in such Case also, a tenant and refusal is a perpetual bar. The like Law it is of tenant and refusal of money upon a Mortgage of Lands, because the money is collateral, and different in nature of the land.

Dier. 5, b. 16, H. 8, 12. 25 In case of land available by the custome, less it for years, removing rent, and whether the rent to a stranger, and was, and the Stranger is taken of the rent, and was also. In this Case, the rent being in its nature a chattel, shall go to the executors of the Deed, and not unto his heir.

Rem. reserve a chattel.

Dier. 30, b. 208, 28, H. 8. 26 In suit against Executors brought in the County of Middlesex, the Defendants plead daily annulment. The Plaintiff objects, that they Debt against Executors.
they have Acres in Essex, and thereupon the Defendants demurred; and judgment was given for the Plaintiff, because Acres (in their nature) is a thing transitory, and not local; and if it had been in issue and trial of a Jury of Middlesex, they might have found the Acres in any County of England.

27 Rent-service was apposable at the Common Law before the Statute of Quia Emptores terrarum, because there are divers kinds of Rent-service, which are not within that Statute, and yet were apposable by the Common Law; and if a man maketh a lease for life or years, reserving a rent, and the Lessee surrender part of the land to the Lessor, or if the Lessor recover part of the land in an Action of waste, or entereth for a forfeiture, or granteth part of the reversion to a stranger, or if tenant by knight-service by his last will in writing bequeath two parts of his lands; in all these cases the rent shall be apposable, yet they are not within the words of the said Statute; but the reason seems to be, so that rent-service is of the nature of the land, and therefore partable, as it is partable, according to Max. 64. It is otherwise of a rent charge, because it is not of the nature of the land, being against common right, and collateral to the land.

28 A liberty to be out of ward being in nature of a restitution, shall be taken and expunged favourably; and therefore if liberty be made of a Hanno cum pertinentiis, the Yeal shall thereby have theadvolvon appendant: It is otherwise of Grants by Letters Patents.

29 If a Lease for life be made to two, to hate and to hold the one moiety to the one for life, and the other moiety to the other for life, and the Lessor confirm their estate in the land, to divide and to hold to them and their heirs; in this Case, they are tenants in common of the Inheritance; and (regularly) the confirmation shall inure according to the quality and nature of the estate which both enlarge and increase.

30 There being these Coperceneries of land in Gavelkind in reversion, depending upon an estate for life, the youngest infants his part by fine in 6s., the tenant for his dote, and the eldest son enters into the whole, and then the second brother and the eldest being a joint 1/2 of partition upon the Statute of 31. H. 8. 1., against the eldest brother, but it was adjudged, that it was not maintainable; because they were entailed to and of partition of several natures, viz. the one to a 1/2 of Copercenaires at the Common Law, and the other to a 1/2 of Partition by the Statute, and therefore could not join.

31 The President of Magdalen College in Oxford being deprived by the Bishop of Winchester, their Bishop, could not have an Appeal to the Delegates, because the deprivation was temporal, and not spiritual, and therefore out of the Statute of 25. H. 8. 19. And so he was put to his elbow.

32 Tenant for life of an house brings an Action upon the Case against one, who stopped the way in his land, which time out of mind has been a passage between the house and a Park, and albeit the Park was the Lessor, and not the tenants for life, yet it was held by the Court, that such an Action lay not for tenant for life, but an Action of nuisance.

33 The Lord Dacre's certain land and Stock to friends, who co-renant to pay 100 l. per annum to him and his wife, his heirs assignes, during the term, and also 200 l. at a certain day for the marriage portion of his daughter, to dies, his son within age, sufferers more than a third part of all his lands to descend, after the Feme dies. And in this Case it was adjudged, that the Queen should not have the 200 l. per annum, but the executors of the Feme, because (in nature and quality) it is not a rent which goeth to the heir, but a sum in gross.
8r In persons, the Law looketh at the excellency of some, and giveth them singular Priviledges, and preheminences above others, as to the King, the Queen his Wife, Noble-
mens, and Peeres of the Realme; also unto persons of holy 
Church.

If the King give Land to a man with a Woman of his kinred 
in Frank-marriage, and the Woman withoulth land, the man 
in the Kings Call shall not hold it for his Life; because the Woman 
was the cause of the gift; but it is otherwise in the Call of a common 
person.

If a Common Person take an Alien to wife and die, 
and his Wite be seised of Land in F & E, as it tells; yet there is no 
his Wife be seised; but if the King take an Alien Wife, and all, the land 
be seised by the Law of the Crowne; And yet Edmund brother to E. 
married the Queen of Navarre, and died; And it was resolved by all the 
Judges, that the Wite should be seised of the third part of all the 
Lands, where her husband was seised in fee.

If a Bishop hath an Advolton, and the Church becomes 
void, and the Bishop dies, neither the Successor nor the Executors shall 
be seised, but the King, because it is but a Chose in action.

If a man holds the manor of D. whereunto an Advolton is a 
part, of the King by Knightes service, the Church becomes void, 
and then the Tenant dies, his heir under age, in this case, the 
King shall hold it, and not the Executors of the Tenant; And this is 
by reason of a prerogative, that belongeth to the King to provide for 
the Church being void, for, where the tenure by Knightes-service is of 
a Common Person, the Executors of the Tenant must present, &c.

Leurrey by rending yearly to the Lord, a Bow, a Horse; a 
Dagger, a Sallet, & such other small things belonging to warre, 
in Case of a Common Person, is nothing else, but plain segress, ab 
effectu; because it has such effects and incidents as belong to segress; 
and neither want nor marriage, &c. But in the Kings Case, in respect 
of the dignity of the Kings Person, it obtained the Name of Perie 
Sejancie, &c.

If a Willain purchase Land and alien it before the Lord enter; 
the Lord is barred for ever; For, before the Lord enters, he hath 
be such juridic and real, but only a possevility of an Estate, 
which Estate is must gaine by his entry; And therefore if the Willain 
both by way of prevention alien, before the Lord both enter, the Lord 
is for ever barred of the possevility, which he had to enjoy the Land: 
Si autem ferrus vendiderit feodum, quod ibi & hereditas erat possibilis, ante-
quam Dominus feanim inde eceperit, valer donationi & Dominus ibi 
impiterit, quod canum expectavit; fuit alia, si fuisse in regio, si 
metam Laus regaiio, et alienavit, before the King (open an 
Office found for him) both enter, yet the King after Office found shall 
have the Land, Qvia mulctum temporis occurrit Regi; & am the after Office 
found, the King shall have the mean possis; because the title 
comemnented by the seurre. It is otherwise of men in the Kings 
Case; For if the Kings Willain acquired any mans or Chattels, the 
property of them is in the King held by way seurte or Office; And it is 
well known of an Ancient Author, Al Roy quant al droit de la Cosyne, ou 
Veillein purchased Land, or goods seasure.
Per son at the King, etc. Nulla tempora sunt limita quae a morte ducunt.

7 Where a Church is presented, it is held by submission and the resignation against any common person, but against the King it is not held before Imposition.

8 By the Common Law the Wife of the King of England is an exempt person from the King, and is capable of lands and tenements of the gift of the King, as no other Feoff coverts, and may liv and be lord without the King; for the complexion of the Common Law would not have the King (whole continued care and study is to the publick, & circa suam Regnii) to be troubled and disquieted for such private, and petty causes; so as the wife of the King of England is of ability and capacity to grant and to take, to use and to be used, as a Feoff sole by the Common Law; also the Queen of England hath many other prerogatives, viz. She hath no new places, for such to her dignity as she hath not by annexed: Neither the use of the kings man are restrained by the statute of 11.4.4.6. concerning grants by the King: In a Quare impedit brought by her, some say, that privity is no plea; and move there in the Case of the King: If any Bailiff of the Queen by an Action concerning the Hundred, he shall lay, In contempt Domini Regis & Reginæ: The Queen shall pay no toll, 44.

9 If the Queen's Consent alien a certain part of her tenancies to one, and another part to another, the Queen may alienate some part for the whole; as the King may do: but other Lords had alienated but for the rate; she therefore where the Queen to alienate, there is but a writ de onerando per ratam portionem: Also the writ of right shall not be directed to the Queen no more than to the King, but to her Bailiff; otherwise it is when any other is Lord.

10 In case of Ayde prayer of the Queen, it is Domina Regina inconculta, and the cause of the Ayde prayer shall not be counterpleaded in more than in the Kings Case: And the where the Ayde shall be grantees of the King and Queen: and where, of the Queen only, and of the King; 14. E. 3. Voucher 119. xi E. 3. 33. 11 E. 3. 31. 17 E. 2. 61. 10 E. 3. 17. 5 E. 3. 4. 15 E. 3. Ayde del Roy, 68. 10 E. 3. 18. 29 H. 6. Ayde de Roy 24.

11 Protection shall be allowed against the Queen, but not against the King, neither shall the Queen be sued by petition, but by a patente: the Queen is not bound by the Statutes of Marlbridge for being a delicto into another County.

12 If any do compound the death of the Queen, and declare it by any overt act, the very intent is prevention, as in the Case of the King: By man may marry the Queen Dowager without the Kings licent.

13 A Bishop being an Ecclesiastical Judge, and sometimes a Lord of Parliament, by reason of the Barony annexed to his Bishopric, the Law gives much Honor and Reversion unto him; and therefore none but the Kings Courts of Record (as the Court of Common Pleas, the Kings Bench, Journeys of Goal-delivery, and the like) can indict to the Bishop to certify the Barony, Palliety, Laygalle of Palliety, and the like Ecclesiastical matter; For it is a Rule in Law, that none but the King can write to the Bishop to certify; and therefore no Inferior Court, as London, Norwich, York, or any other Incorporation can write to the Bishop; but in those Cases the Bills must be removed into the Court of Common Pleas, and that Command write to the Bishop, and there remain the Record again: whereas in the reason, why a Quare impedit and his Church in Wales in the County near apostolica, so that the Lordship Marches could not
not write to the Bishop: Neither shall Conscience be granted in a
Quare Impedit, because the Inferior Court cannot write to the Bishop:
And herewith agree Antiquity: Nullo alius præter Regem poeât Epis-
ccopo demandare Inquisitionem faciendum: And another speaking of
Loyalty of Parliaments, Nec alius quum Rex super hoc dammande Episcopo,
quod inde inquirere: Episcopus alterius mandatum quum Regis non debet
obeire: And herewith also agree Britton.

Co. ub. 175. a. & F. N. B. 79. a.

Co. ibid. 176. 2. 3.

Co. ibidem. 1. 6. 1. 3.

The Reason of

Max. 81.

If a Villain remain in the Ancient Demesne of the King a pear and
a day, without clamour or trouble of the Lord, the Lord cannot have a
writ of Natico habendo, or else himself, so long as he remains and con-
tinues there: And the reason of this was in respect of the service he did
the King in Plowing and Sowing of the Demesnes, and other labours of
Husbands; for the King's benefit: And herewith agree old books,
which say, that his Immunity was sometimes granted by common
consent to the King for his profit; and for the help and ease of his
Villains: So likewise, if a Villain be a Priest of the Kings Chap-
pel, the Lord cannot have him in the presence of the King, for; the Kings
presence is a privilege and protection for him; 77 Al. 49.

If a Villain be professed a Monke, or a Wife a Nun, the Lord
cannot have them, 6c.

16 If a Peer of the Realm or Lord of Parliament be demanand
or Plaintiff, Tenant, or Defendant, there must be a Knight be returned
of his Jury, or else the Array may be quashed: but if he be returned,
even if he appears not, yet the Jury may be taken of the reslos: And
if others be joined with the Lord of Parliament, yet if there be no
Knight returned the Array shall be quashed against all: So also in the
like case in Attain, there ought to be a Knight returned of the Jury:
Bishops were by Act of Parliament excluded the house of Lords: and
therefore Quere, whether at this day this Law holds in their Case or no; Nowbein
g sees not hold, because they still retain their Barones, in respect
whereof they enjoyed Places and had votes in that house, and others
shall retain divers other Priviledges, which of right belong to Temporal
Peeres, that have Barones: Tenem quare.

17 At the Common Law, any subject under the degree of a Peer
of the Realm upon any Indictment or Appeal of Treson or Felonie
against him, might (in favorem vire) challenge peremptorily, viz. 35.
or any other number under three Juries: But a Lord of Parliament
that being a Peer of the Realm, is to be tried by his Peeres, had
challenge none of them; because they are not twowe as other Jurors
be, but the party guilty or not guilty upon their faith or attiga-
cence to the King, and they are Judges of the fact, and every of them
both separately give his Judgement, beginning at the lowest, 6c.

How the Common Law hath been altered concerning peremptorie Challenges,
see Co. ubi in margine.

18 A Peer of the Realm or a Lord of Parliament, as a Baron;
Vicount, Earl, Marquess, and Duke, (propt honoris respectum,
in respect of honour and Nobility) are not to be twowe on Juries, and
if neither party will challenge him, he may challenge himself; Ifo,
by magna Carta it is provided, Quod nec super eam ibimus, nec super eam
mitteremus, nifi per legale judicium parium fuerit, aut per legem vere:
the Common Law hath denied all the subjets, into Lords of Parlia-
mant, and into the Commons of the Realm: The Peers of the
Realm are divided into Barons, Vicounts, Earls, Marquesses, and
Dukes; The Commons are divided into Knights, Esquires,
Gentlemen, Citizens; Poemen, and Burgesses; and in judgment of

Illeg. Ancient

Priest, Chas.

Vicilea.

Lord,

Knight,

Jury.

Bishop.

Villain.

Villain.

Challenge

peremptory.

Peere no

Challenger

Vicilea.

Vicilea.

Lord,

Commons

Trial

Parli.
The Common Law.

of Law any of the said degrees of Nobility are hereby to another, as if an Earle, Marquett, or Duke be to be tried for treason or felo diex, a Baron or any other degree of Nobility in his Person: In like manner a Knight, Esquire, &c. shall be tried for per per, and that is by any of the Commons, as Gentlemen, Citizens, Prosumers, or Burgesses: So as when any of the Commons is to have a trial, either at the Kings sake, or between parties and parties, a Peer of the Realm shall not be impeached in any Case.

3. 9. If a man maketh a Feasement in 

The Common Law.

not in the Kings case.

The Conditions not approved in the Kings case.

20 A Common person being granted of part of a reversion of Land, shall not take advantage of a Condition by force of the Statute of 32 Geo. I. c. 34. As if a lease be made of this to a person saving a Rent upon Condition, and the reversion in granted of two acres, the Rent shall be appos'd by the Act of the parties, and the Condition is destroyed: So that it is title, and against Common right: Provided in the Kings Case the Condition in that Case is not destroyed, but remains in the King, notwithstanding such alteration of part, &c.

22 In a Writ of entry for discretion an estate made to the King makes no degree; and therefore if a defeas of any part be made out of the Lands to the King, and the King by his charter granteth it over, the devisee cannot have a right of Entry in le per se cui, but in le post, &c.

23 If there be Consent for life, the remainder in tails, the remainder in Feud, and Consent in tails willing to the Tenant for life, and wish land, this shall take away the entry of the Consent for life: But if the Kings Consent for life he willing, and the devisee be willing, this devisee shall not take away the entry of the Lease for life; because the devisee cannot take in estate against the King, and then he could not be seis of any more, than a bare Estate of free-hold during the life of the Leasee: And Littleton saith, that a devisee of an Estate for term of another man's life shall not take away an entry, &c.

24 If he fail, if the King be seized of Lands, and the Land remain to his Successors, this shall bind the devisee, though he were an Infant at the time of the devisee; because the possession of an Infant in that Case does not against the King.

25 A grant of a Reyniship, Kent, Robinson, Remainder, &c. to the King as by the King to another, is good without attornment, and this is by force of his prerogative.

26 In case of a void, nothing passed before attornment: In Case of a fine, the thing granted passes as to the State, but not to whatsoever, &c., without attornment: But in the Kings Case, the thing granted both passes to the State and to Hoots to withdraws &c., without attornment unless...
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Mans or tenements, that are parcel of the Duchy of Lancaster, and lie out of the County Palatine.

27. Tenant for life shall not be compelled to attorney in a quid juris claim upon a grant of a reversion by fine, by order of the King in Chancery without license; nor the reason hereof is not, because the Tenant of such land be charged by the fine (for his Estate was more ancient, than the fine levied) but because the Court will not suffer a prejudice to the King, and the King may sell the reversion and rent, and to the Tenant shall be attornant to another, etc.

28. If there be Tenant in tail, the reversion or remainder in the King; in that Case the Tenant in tail cannot discontinue the Estate tail; but Tenant in tail, the reversion in the King, might have barred the Estate tail by a Common Recovery, until the Statute of 3 H. 8. cap. 20, which restrained took a Tenant in tail; moreover that Common Recovery neither barred no; continued the King's reversion, etc.

29. At the Common Law before the Statute of W. 2. cap. 5, no stranger has presented his Clerk to a Church, whereas any subject had been lawfully Patron, the Patron had no other remedy to recover his Advowson, but by a writ of right of Advowson, wherein nevertheless the incumbent was not to be removed: And so it was also at the Common Law, if an intimation had been had upon an Infant, 03 Feme Cobert, having an Advowson by descent, 03 upon Tenant for life, etc. the Infant, Feme Cobert, and he in the reversion were driven to their writ of right of Advowson; For at the Common Law if the Church were once full, the incumbent could not be removed, and presently generally was a good plea in a Quare impedit, 03 aile of Darreine preelement; Poblet at the Common Law, if any had usurped the King; and his presentee had been admitted; instituted, and invested (for without intimation the Church had not been full against the King) the King might have removed him by Quare impedit, and to have been refused to his presentation; for, therein he had a prerogative, quod nullum tempus occurrit Regis, etc.

30. If the King be present to a Church, and his Clerk is admitted and invested; but before intimation the King may repeal and revoke his presentation, etc.

31. Aunciores Ag 03 entry, 03 a title, a feoffee recovery against Tenant for his 03 in tail, the reversion, 03 reversion in Fee to the King shall never exist any State, remainder, 03 reversion out of the King; It is otherwise in the Case of a common person.

32. If the Quen be only Tenant for life of a Copi-hold Manor, and a Copi-hold of inheritance seatteth unto the Quen may grant it, to whom the pleaseth, and that shall bind the King his heirs and successors for ever; for the was Domina pro tempore; And the custom of the Manor also shall bind the King, etc.

33. When the King's title and the title of a subject concurre in commencement, the King's title shall be preferred (as Welton holds, Pl 03 Co. 26.)

34. When the King's Tenant sells of Land in Fee dies without issue, the Fee and free-hold is presently (after his death and before office thereof comes) called upon the King; for in such Case it ought to be in some person or other, and if any person enter into the Land, and take any of the profits, an information of Intrusion by the King may be preferred against him before office or trouble; because the King immediately after the Tenant's death is in actual possession, and hath

A writ of ri

Revoke pre

Entry.

Fained.

Recovery:

Copi-hold

Mannor.

Titles con

Curfew.

Quare imp

Plenary.

Quare imp

Revoked pre

pensation.
has not only a precedent, but also an earlier text in

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the assertion is in Morainne, and shall defeat the appropriation: for he shall not be able to dispute to the decision by replication: And in 2 B. 4, 3, 2 E. 4, 28, 27. And if he be taken to the King, the King extends one of them, this shall not discharge the other, in 6 H. 7, 35, & 1 H. 19, 21. If the King grants land to the son, upon condition that the grantee shall not alienate this to good: whereby in all these cases the fault is otherwise in the case of a common person, 55.

For in many cases the King that claims by a subject, shall be for better cause, in respect of the dignity and prerogative descent by the Law to the Royal portion of the King, then the subject himself, by whom he claims: As if the King has a rent for his attention, or by grant, &c., he shall withdraw for his not being to the land charged, but that, otherwise in all his other terms, and yet the subject, by whom the King's claim, shall not withdraw for it at all: If a subject has a recognition of obligation, and afterwards be out of law or omitted: in these cases the King shall sell all the law of the Common, or obligation, whereas he himself could have but a moiety: If a subject is making a claim having right, and a re-entry upon account of payment, etc., in this case the subject shall not take advantage of such a condition without demand of the case, but if the importance of that law come to the King by Law of Parliament, or grant, &c., the King shall take advantage of the breach of such a condition without demand of the case, 55. If the King purchased a right, of which land was sold by another, the King shall be in better condition than the subject, from whom the claimant, and in this case the subject, shall have the priority: and shall have the grant ad libitum, &c., as in counsel in 24 H. 7, 3, 55. Pec. tit. gard. 17, 7, 47.

In all cases when the King is parties, he requires, if no one do not open) may (after notice given of the cause of his coming, request more to have the case; others) open) break open, the house of the parties, either to take him or to make other execution of the cases, etc.: if he cannot otherwise enter into it, but if it is not, in the case of a subject, etc. 48. If the King has interest, therefore the Lord Chief Justice may enter the house to take the tenant, because in every colony the King hath an interest: and whereas the King hath interest, therefore is it not omitted proper aliquam libertatem: and therefore the liberris or privation of all houses shall not hold out against the King; 6. because it concerns the commonwealth that colonies be approached, and in that respect also the King hath a special interest, being the head of that body, etc.

40. T. 4, 24. E. in B. R. in Ejection firm, it was resolved, that if the Plaintiff's plea in evidence any matter in writing, Records, &c. Sentence in the Ecclesiastical Court; whereas upon Motion in Law may rite, and the defendant sues to demurrer, &c. the plaintiff's case rests to move in denunca, unless he well amongst his evidence; To if the plaintiff's produce witnesses, and the defendant would exhibit his testimonies to be true, he may demurrer, etc. So also may the Parliament demurrer, without mixand: But in the event of the King, his Council shall not be compelled to demurrer: But in that case, the Court may refer the jury to find the special matter, and therefore may not make the Law, as appears in 34 H. 8, Diet. 53. And this is by reason of the King's prerogative, who may also waive the demurrer, and take time at his pleasure, Note bene.

41. Originally the Common Law gave unto the King all such things, as were In nullius bonis, as Wreck, viz. Goods, as mahogany ad terram appellation: Flosan, viz. When the Ship is purchased of other wife permitted, and the Crown upon the men: Edict for when the Ship is in danger to be broken, and to obstruct the Ship.
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the Gods are cast into the Sea, and after notwithstanding the Ship, peradventure Lagan (vel potius Iagan) as when the Gods so cast out are to be mounded, that they shine, and the Mariners to the end they might find them again taken a piece of Coke or a Hope to them, that will not shine, and therefore this seems to be called Lagan or Ligeando: It gave also to the King Strages (which Braqton calls Animalia vagantia, and others Animalia vacantia, quia Dominio vacari debent: Also treasure trove, and the like) Because by the Rule of the Common Law, when more could claim a property in any Gods, the King was to have them by his prerogative: And therefore Braqton saith, Sunt alia quasdam, quae in nullius bonus eft dicentur, fequit Wrecnum maris, Grofius Plesc, ficut Sturgio & Balena: & alires, quæ Dominum non habent, ficut animalia vagantia, & quæ sunt Domini Regis propter privilegium. And note, that the King hath, not in, and Braqo by his prerogative, as well as wreckes; Albeit they be, in or upon the Sea: for the Sea is of the Kings Liegance, and parcel of this Crown of England, as it is helden in 6 R. 1. protection 46. and Britton cap. 33. agrees well with the opinion of Braqton, that wreckes, &c. are things in nullius bonis, and come into the hands of the subject Dignitatively by Kings grant, his words are these: Et aui purchas lon per franchize grantee par nos &c. choses troves in nulluy bien, si come de wreckes de neer, & belles eftayantes, of Conies, Levres, & pelions, & Fefans, & Perris, &c. & autres Beites lavages, par franchize de aver wreckes de meer trouvé en fon foul, & waife & eftay trouvé en fon fée, garmentes en fes demefnes terres, &c.

42 A Countesse by descent 03 marriage cannot be arrested; noab 02 trelpass, 1 In respect of her dignity: 2 Braqo-Laws presumes, that the hath sufficient in Lands and Cenements, so hereby to be determined; so albeit in respect of her for the cannot fit in Parliament, yet she is a Perse and shall be tried by her Perces, as appears of 26 H. 6. cap. 9. which is nothing else but a declaration of the Common Law: Do it is also of a Baron, that is a Perse of Parliament: 1 H. 4. 15. In homine repandiendo against the Lady Spencer, it appears, that the said Lady was a Perse of the Realme.

43 In 3 H. 6. 48. A theft of wheat upon arreages of accord was brought by the Lady of Aburgavenice, against another, the Defendant pleads Rien lui doit, and hereby to make his Law, and pages by force of the Statue of 5 H. 4. cap. 8: that the Parliament might be examined, which Act is general; viz. that examination shall be made, which is always intended upon both. And there Cokein, who gave the Rule, saith, La Dame d'Aburgavenie est un Perse del Realme, & ne fera bien fait de luy faire venir d'elldre examine: Car par meines la realion nous Damnes faire venir chescun Duke on Countee d'Aigleterre, Rolfe Serjeant, parquoy nous? Le dit Sature est general, & es fait par chescun home haut & baie; A que Cokein dit, le ley vist over diversity pur enter Seignior on Dame, &c. & autre Common Perfon By which book it may be observed, that a Lady, which is but the towe of a Baron is Perse of the Realme, and is in equipage (as to Nobility and privileges incidental to their dignities) with Dukes, Carles, &c.

44 In 48 E. 7. 30. Sir Ralph Everden brings a suit to the Eancers and also a suit of the Prp to scale to the Justices, rehearsing, that he was a Baron, and commanding them to discharge him of his said in juras accessis &c. recognizance jubulique, because the Barons ought not to be trouyng upon Inquests and Recognizances against their mills, and by our noble he was clearly discharge thereon. See more examples to the same purpose. I say in my say.
The Reason of

Col.7,14,4
in Calvian
Cafe.

45. Feeders puncture, to make Leagues, with only and wholly particu-
lar to the King, and not to the subject; so also both Bellum indicere:
Likewise the King only without the subject may make not only let-
ters of late conduct, but letters patents of Denization, to whom and
how much he please, and may enable them at his pleasure to use any
of his subjects in any action whatsoever, real or personal, which
the King could not do without the subject, if the subject had any Interest
given unto him by the Law in any thing concerning an Alien born;
And, the Law is more precise herein, then in a number of other
Cases, of higher Nature; For the King cannot grant to any other
to make of Strangers born, Denizens, it is by the Law it fell to in-
dependly and individually annexed to his Royal Person (as the Book is
in 10 H. 7. 8.) because the Law elsewhere it a point of high prerogatives,
Just majestatis, &c. in the manner of a potentate, to make Aliens borns,
subjects of the Kingdom, and capable of the Laws and Inheritances of
England, in such sort as any natural borne subject is: And therefore
by the Statute of the 17 H. 8. cap. 24. many of the most ancient prerog-
aves, and Royal Flowers of the Crowns, as Authority to pardon
Pardon, Purge, Ban-Sonnet, and Felonie, Power to make
Justices in Eyre, Judges of Assize, Judges of Peace, and Assis-
dent, and the like, having been severly and divided from the Crowns
were again remitted to the same: But authority to make Letters of
Denization, was never mentioned therein to be remitted; because
there was never any that claimed the same by any pretend whatsoever,
being a matter of so high a point of prerogative, as.

Col.7,14,4. in England
Cafe.

46. A Matter of the manner of Dale in F. 6. Codenamado with B. to
Remedied to the use of himselfe, for life, the remainder to B. in tial,
the remainder to B. in F. 6. with provide, that upon delivery of tenant
of a vint to B. by himselfe or another, as the Clauses shall be bold: A
trust thereupon for the Ing, the King leased the Land, and les to A
to D. 664. 40. And the Ring gives a Commission under the
Great Seale to B. to tenant the ring to B. according to the Con-
dition: In this Case, if a Common Person had enjoined the Kings
Estate, by making such a Lease of 40. 40, so he utterly deliverd
himself of all the Estates and taking advantage of the Con-
dition: Because his all shall be most expregated against himselfe: But
( in that Case) the Kings estate shall not an error (to his especial prono-
vise) to two tenants, &c. to a demise of Land, and and to a suspens-
ion of his Commission, whereby he might suffer the Estates to fall, and
the other Estates, that depend upon it; or to a demise in respect of his
violent Estates, pur suer vie, and also to a Confirmation in respect of his
Commission ( whereby otherwise he might desist) as shall be also in
Case of a Common Person; For the Kings grant shall always be taken
according to his express intention comprehend in his grant, and shall
not extend to any other thing by Confirmation 3: Implication, when
it appears not by his grant, that his Intent extended unto it; and there-
fore as such Cases, the King ought to be truly informed, and he ought
not to make it special and particular grant, which by opposite words may
eurite to all such severel intents, as are deliverd, as.

Col.7,1,6,4. in the Cafe of
Spain.

47. A White Swan not marked, which by gaines their liber-
ity, with their mean and in open and Common River, may be taken to the use
of the King by his prerogative; Beacuse Votativum (the function en-
plete) ad fictum regular, the Common man, and Swan to a Royal bird, and
therefore of the proper prelur they do not knoweth it belongeth to the
King by his prerogative; But there was always an ancient Declar
of the King, called Majistir deducus Cignorum, who continues them to

Peace & war.
Denization.

Treason.
Sefiar.

Demise by the
Kings power.
Revocation.
remains.

Swans
wilde.
the Common Law.

to this day: Potestatissima, the subject may and have property in white
Duds best marked, as some may have bravos not marked in their
private waters, the property whereof belongs unto them, and not unto
the King: And albeit they escape out of their private waters, yet
they may take them, and conveys them home again: And with this agrees
Brandton, Hist. cap. i. fol. 9. Si autem animalia tenebat manueta, et ex
contemtindam sententiam et redactum, volent et revolunt, (ut plane Cervi, Cigni,
Pavolet, Columbae, &c. hujusmodi) eo utique notantur intelligentus, quamdiu ha-
bueut animam reversiendi. But if they have with their natural liberty,
and no fisht in open and common Rivers, the Kings Officer may
sell them in the open and common River to the King; because one
white Swan without such pursuit (as the fish) cannot be known
from another. And when the property of a Swan cannot be known,
(being of its nature a Royal Fish) it belongs to the King, &c.

48. In the Prince's Case (Co. l. 8. fol. 8.) It was resolved, that
the Act of 11 E. v. force and effect the Kings stuff but was made
Duke of Cornwall, was null and void, where the Judges and all the
Royal ought to take Conscience; because it concerned the King, and
his fish-ponds for and were apt in the Crown for the same being,
perpetual future temporibus: for every subject hath interest in the King,
and none of his subjects who are under his Laws, are divided from
him, being his Head and Subject: So that the Kings affects con-
cern the whole KingsState, and especially when the Prince, the first
begotten son of the King, and his heirs apparent to the Crown is there-
here concerned: Cornwall enim Principis radius Regis Patriae sui, &c.
and therefore if any shall attempt the death of the Prince, and
shall make declaration thereof by some other Act, that is, Crimen leae
Macrius, high Treason, by the ancient Common Laws of England, and
is so declared by the Statute of 23 E. 3. &c.

49. 1 H. 3. fol. 7. If the Prince, as Prince of Wales, hath judg-
ment to recover, and afterwards the Crown becomes to him, he
shall, as King, sue execution.

50. The Act of the 33 H. 8. which concerns the Capacity of the Queen
was null and void, where the Judges ought to take Conscience, because
it concerned the Kings Wife, as it was resolved in the Lord Barkley's
Case, &c. Co. 1. 52.

51. There are some persons which shall not be assured, and there-
fore (by consequence) shall have no pledges, as the King, and also the
Queen, who (as to that) participates of the Kings Jurisdiction, F.N.B
31. 6. 47. c. 104. 31. 18. E. 3. 2. Br. memorandum 33.

52. An Original writ by the Common Law was not amenable in
the case of a common person, to which see 1 E. 3. Tit. Amendment 62.
which was before any Statute made concerning Amendment, &c. And
Case for a Quare Impediment, where the Quare Impediment was presented for
presumption, and after exception taken to it, and before answer, by the
above of the Chancellor, (out of which Court that writ issued) and of
the Faculty of the Kings Bench, the writ was amended in the
Chancellor, and the defendant was made to answer thereunto by award,
Vide 4 H. 5. &c. &c. 4. 1. 3. 16. a 4. in the Earl
of Buckingham's Case.

53. When the Kings Charter may be taken to two several intents,
and both interests are of effect and good, in many Cases it shall be taken
to both intents, as shall be most beneficial for the King; but if it
may be taken to one intent of effect and good, and to another intent void
and of no effect; it shall then be taken and construed to such an intent,
as that the Kings Grant may take effect, and that (in judgment of law) it shall be understood to stand in the Kings Intent: so it was not his Intent to make a void Grant: And with this it agrees the Book in 21 E. 4. 44. In the Abbot of Walkhams Case, and the resolution in the Earl of Cumberlands Case in the 8 Report. 167. where the Case was that E. 2. granted the Castle of Skipton, to Robert de Clifford in tail, and H. 6. grants to Thomas Lord Clifford (Colon and Heir of the Body of Robert, the reception of the said Castle, necnon Caltrum, &c. Here, the Kings Intent appeared to be, that Thomas Lord Clifford should have all his Estate in the Castle: And therefore whether it be taken to be a grant of the Restorat, in case the former grant in tail was void, 03 of the possession, in case that former grant was void, it is not material, in regard it appears clearly by the express words of the Charter, that the King intended, he should have it in possession, either the one way or the other: So if the King grant Totum illud Manerium, five firmam de D. 03 toam illam Re:toriam five Advocationem de D. In this Case also, whether the King hath a Sannoz, 03 else a Farm and no Sannoz, 03 a Restor Impropriate, 03 else an Abbot, 03 no Restor, that which the King hath, pitched; for the effect of the Grant is, that be it Sannoz 03 Farm, Restor, Impropriate, 03 Abbot, 03 that which the King in truth hath, pitched by the Grant.

54. Of ancient time, beore the Statute of 31 H. 3. cap. 11. when a man died Intestate, and so make no disposition of his goods, no committed his trust to any in that behalf: In that Case the King (who as Parent Patrie, hath the upream care to provide for all his Subjects: to the end, every one may joy that, which he ought to have) did use by his Ministers to settle the goods of the Intestate; to the intent, that they might be preserved and bestowed for the burial of the dead, for the payment of his debts, for the advancement of his wife and issues if he had any, and if not, then of those of his blood: And this appears in Rovulis Clausi de 7 H. 3. M. 15. Bona Intestate capi solvunt in manus Regis, &c. And afterwards this case and trust was committed to Divers; and there could be found none more fit to have such care a charge of the Intestates transitory goods after his death, than the Ordinary, who all his life had (so at least ought to have) the care and charge of his immortal soul, as it is said in P. Co. 280. in Gresebrooks Case; And therefore the Ordinary was in that respect appointed in loco parentis, and this appears also by the construction of John Stratford, Arch Bishop of Canterbury, at a Synod in London, Anno Domini 1330, where he conceived, that the Administration of the goods of an Intestate was granted to the Diversaries, Contenius Regis & Magnanimi Regni, &c.

55. If the King grant the Office of Stewardship of the Hanours of D. and L1 to an Earl, without power to make Deputies; nevertheless, in respect of the management of the Office in a base Court, and of the dignity of his Person, being an Earl, it is implied in law by convenience, that he may in that Case make a Deputy, for whom he ought to answer, so that no prejudice may happen to the King: And his Deputy shall execute Officium laboris, as to hold a Court Baron, and to enter Pleas, Surrenders, &c. And this requires in Cases of difficulty, or which concern the Kings profit, the Earl shall execute Officium fiduciae, scientiae, & ingenii. For, Comites dicuntur a comitando, quis comitantur Regem. Comites a comitatu, fide a societate, nomen sumptum, qui etiam dicis potius Confules: Reges enim tales sibi adjacentis confuentudinem: And that was the greatest title of Honour, that was from the Conquest, until the 11 of E. 3. when the Black Prince was created Duke.
Duke of Cornwall, and those which of ancient time were created Earls, were of the blood royal; and even unto this day, the King in all his apppellations likes them. Per nomen charissimi cohaeravissi nostris, for which cause the King thereof is held high and great privileges: And therefore those honours shall not be exercised for west, traspasse, etc., because the Law intends, that they affect the King with their Counsel pro bono publico, and keep the Realm in safety by their presence and valour: And for the same reason it is, that they shall not be put upon justice, unless that he be for the service of the County: Also if he be taken, whether the Plaintiff be an Earl, or no, it shall not be tried by the County, but the King shall: Also the Defendant shall not have a day of grace against a Lord of the Parliament; because he is conceived to attend the publick: And all these and many other to appear in our Books: 48 E.3.30. Regil.-179. F.N.B. 147.48. All.P.L.c.23. All.P.L. 24. 31 H.6.27. 33 H.6.46. So that, as when such an Office devotes to an infant, or to a man de non sana memoria, they of necessity ought to exercise it by Deputy: so likewise an Earl for the necessity of his attendance (which the Law intends) upon the King and the Commonwealth, that Dependency of a base Court shall be exercised by Deputy: Also if a Parker be granted to an Earl, without power to make a Deputy, yet he may keep it by his servants: And if a Duke have licence to hunt in a Park, the Law will allow him attendance suitable to his condition, etc.

56 It was found by Office, in 9 Jac. that Sir George Reynell had sustained the Office of Marshal of the Marshalsea, by others voluntary escapes; and it was resolved, that the King might seize that Office, without issuing out a Scire facias: And in that Case it was observed, 1 That the King in some cases shall be in possession by seizure without Office, as in 2 H.7. and 3 H.7. (in case of temporals of a Bishop, and of Priests aliens, because the certainty of those appears in the Exchequer. 2 He shall sometimes be in possession by Office without seizure, as of Lanes, Commons, Offices, etc., which are local, or whereof continual profit may be taken, as upon condition, attornment, wardship, etc. (Vide 3 H.7. 8. Stann. 55. Dowries case in Rep. 3 and the Sadders, Rep. 5.) And the Office albeit lost, yet cannot be disquieted without trade
d; for he cannot transfer the Kings title in the informations, etc. 20 E.4.10. 3 The King shall be in possession by Office and settlement of an Abolition, and thereof he is not to possess until presentation, nomination, and institution; And if the King, upon removal, being a Quare Impedit, the owner may transfer the Kings title in that Abolion without transfer of the Office; because it is not a manumission, but an incorporeal Hereafter; also the right to present is casual, and not continuous. 4 The King shall be in possession without office, whereas his tenant died without heir. 9 H.7. 2. 5 When definite matters amount to an office, in that case there ought to be a Scire facias, before the King can seize. 6 When a common person is put to his Action: In that Case the King upon office is put to his Scire facias, etc.

57 When the King grants any land without resumption of any tenure, 03 absoque aliquo inde reddendo, 03 Chelms. the Land by operation of Law shall be holden of the King in capite by knight's service, according to the rate and proportion of Land holden by knight's service, viz. more or less, according to the quantity of the Land, etc.

58 When any thing is due to the King, he ought to have the full and complete effect of the thing to one man; So if there be Grandfather, Father, and Son of Land, interest some are holden of the King
The Reason of

Max. 35

King in capite by Knight service in capite, and the residue of other Lords, &c. And the Grandfather conveys all the Lands held of other Lords, and part of the capite Lands to the Father for life; the remainder to the Son in tail, the remainder to the right heirs of the Grandfather; and the residue of the capite Lands to four younger Sons (unclewis) for life, the remainder to the right heirs of the Grandfather; the Grandfather dies, the Father renders his services, and dies before liberty land, an office found, the Son being of full age; and all this is found by office, and the Son continues the liberty, the four younger Sons being still in life. In this Case, neither by the death of the father before liberty land, the King hath lost the privileges of having primer feoff after the death of the Grandfather (as it was allowed in Northcoast case, and in Hales case, in the 8 Rep.&c.) for the- Son hath not the liberty, nor pay primer feoff, because they were put by the Father, after the death of the Grandfather; and the Son (living the Father) is not within the Statutes of 35 & 34 H.8, for the Lands conveyed unto him: Nevertheless, in the same Case, the King shall have primer feoff for the Lands conveyed to the younger Sons, because they are within the time Cases, in which wardship and primer feoff are given unto the King, by the said Acts, viz. Advancement of his wife, preferred of his children, and payment of his debts: And the reason hereof is, because when the said Acts give unto the King primer feoff, it is intended of an actual and effectual primer feoff, and not of any which is only Mathematical and Imaginary: for (as before is said) the King ought always to have a full and complete effect of the thing, which is due unto him. So also if the King hath title to present by present virtue, and be present, and his Clerk is admitted and instituted, but dies before innovation: In this Case, the King shall present again; for he hath not the full and complete effect of his presentation, as it was resolved by Sir James Dyer & toam Curiam, in Gyles' Case, 18 Eliz. in Co.B. Likewise if the King marry a daughter, which he hath in ward, infra annos nubiles, and before the age of consent; the Baron dies, the King shall have the marriage of the Peer again; because the Act of marriage was not complete, as it was resolved in Ambrofia Gores case in the 4 Rep. fol. 22. And the King non res in tunc before the Statute of Wills, &c. was not barred by the alienation of the Dower, past present, in case, without Aliens, albeit there were collateral warranty: Powell, in all these Cases a common person might be barred, &c.

.9 When the King grants any thing upon a false intimation; or suggestion, such a grant of the Kings is void; for in that Case there is a dealing between the King and a common person: For a Subject, that may into his private affairs, shall not in such Case avoid his Grant; but the King, who intempts the Publicus good, shall avoid his Jur Regio as it was said in 21 Eliz. 47, in the Carl of Kent Case; And this is an high and great derogative, which the King hath; that when he makes any Grant upon such false suggestions, those Grants are void in Law: So also when upon false intimations and pretenses he makes any grant, as of a Monopoly, &c. which in truth is in the prejudice of the King and Common wealth, the King (Jur Regio) shall avoid that. Grants, and such Letters Patentes shall be by judgment of Law cancelled: And therefore, in Legats Case, in the 20 Rep. it is justly said of Perpetuities, Monopolies, and Patents of concealment, that they were born under an unfortunate Constitution; because as soon as they were drawn in question, Ignorant was always given against them, and never for them; they having, always two

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two indepentable questions distinct unto them; viz. to be troublesome and truthless.

55. It can't be payable at the seat of Edin., and the tenant pay the rent in the meaning, and the Lords be before noon, this payment be voluntary, and give satisfaction against the King, but not against the King.

56. 'When the King hath any Perrogatives, State, Right, Title, Interest, by the general means of an Act of Parliament, he shall not be barred of them, as in case of reclamation and the King hath an Estate and Interest in it, and whereas the general means of the Statute of Wills, cap. 35, shall not extend unto it; Also the King hath a Perrogative, quod nullum tempus occurrit Regi, and therefore the general Mos at Limitations, 03 of Plurality shall not extend unto him: Likewise the Sir by his Perrogatives may sue in what Court he will, and of that Perrogative he is not barred by the general parties of the Statute of Magna Charta, cap.11. Et sic de simulibus.

57. None can make a Park; Case, 01; Warren, without the King's license, because that were quodam modo to apposeiate such things as are free nature, & in nullius bonis, to himself and to restrain them of their natural liberty, which he cannot do without the King's license, etc.

58. The Earl of Devonsdshire, being Maker of the Devonsd, obtains a Privy Seal to convert to his own use, &c. All the unfaire Perrogatives expressed in a Seal, in regard the King was inform'd, that the makers did use to claim and enjoy them, as less and finally belonging to their Office: Whereupon he sold them, made his executors, and died: And in this Case it was concluded, that albeit the Earl claimed them to his own use, yet in regard the grant was made upon a false suggestion, he was in his life-time accountable to the King for them, because in the Kings Case the Law makes a privy; so as if any take the Kings goods, 02 enter into his lands by wrong, the King may charge him in account (1 H. 6. 2. 4 H. 7. 6. 6 H. 7. 10. 14 H. 7. 17. 1 Eliz. 149. Browne v. Case, and 40 Aff. Pl. 75) it goeth be devised to the King, in whole bane lest they come, the perrogatives shall be charged in account to the King, and the King shall not be put to his Action of Necessitatis, 03 then by the death of the party the King bo without remedy; but the King by his Perrogatives may have an Action of account against the executors of the party, as appears in Lid. 149, fol. 8. And the King is not constrained to charge the Defendant, as Balo 02 Receiver, as a common person ought; but the King may allege in his Information generally, that he ad composidon Domino Regi reddendum temporis mortis sine cænabur in such sums of money unto the King, &c. as appears by many presents in the Exchequer, and in the Kings Bench; And therefore it the Earl was in his life-time bound to render an account unto the King, his executors shall do it after his decease, &c. If one by Letters Patents, 02 by virtue of his Office, hath power to assist fines upon grants; or admissions made to Corporals within such a Patron; or of the Kings, and he afterwards little fines for the King, and another takes great sum, as other returns of the Corporals to his own use, in deceit and prejudice of the King: In this case he shall be charged to the King in account for all; for in truth all was due to the King; and if he die, his executors in the Kings Case shall be charged; for it is held in 39 Aff. Pl. 18, that the Officers are spotters of the Kings may advantage him, but can never do any thing to his dis-advantage.
None can pose of the Kings treat without his licence.

F.N.B. 5.1.

64. M. 37. & 38. Ediz. An Information was prefered by the Exchequer against Carew and Dodington, executors of Sir Walter Mildmay, Knight, Chancellor of that Court, to tender an account of 525 l. of the Queens treasure by him converted to his own use, &c. the Defendants plead, that Sir VValter Mildmay non recipit, &c. ad computandum, nec die mortis tenebatur Reginæ in Comporo, &c. And the special Verdict was, that the Exchequer and Under-treasurer of the Exchequer made a warrant to four Escofos of two, to pay to Sir Walter Mildmay 100 l. per annum, for his visit, and 40 l. per annum for his Attendance in the Exaction (by reason that by the anning of the Court of first-fruits and Augmentation the Chancellor was restrained to attend more to other Chancellors had formerly done) And in 2 Ediz. the Queen directs a Philip Seal to the Treasurer, Chamberlains, and Under-treasurer of the Exchequer, commanding them to pay such as should be implored by her, &c. for their labours and expenses, at their discretion, according to their merits, in so large manner, as any Treasurer, Chamberlains, or Under-treasurer had done before: And in this Case it was resolved, that no Office was of them together can ex officio dispose of the Kings treasure without the Kings warrant, although it be for the honour and profit of the King: because the Kings treasure is the ligament of peace, and the need of war, and of To hight a nature, that the indempsey of treasure prove (although not found in the Kings Coeffors) was treason; And, treasure and other valuable chattel be in necessary and incident to the Crown, that in the Kings Case, they shall go with the Crown to the succorder: And not to execute as in case of common persons, as appears in 7 H. 4. 43. and 44 Elz. 42. Neither get by otherv warrant serve for the using of the Kings treasure; for it cannot be done by Paol, or by the pilly Signet; but ought to be done under the Great Seal, or Philip Seal. It was also further resolved in this Case, that albeit Sir Vvalter had thererceived the Queens treasure to his own use; yet fraudously he received it without lawful warrant (be knowing that it was the Queens treasure) the Law makes privity in the Queens Case; and therefore the might charge him as an Accompanant: And so it was also adjudged in the Exchequer in J udens Case, P. 3. Eliz. Rot. 150. Neither yet is it of necessity, that the Kings money or goes should come into the hands of the Taxator; for if he were only a mean Instrument, whereby the King was put to loss or damage, he shall be charged with so much as he hath to endanger the King, and shall be compelled at the Kings suit, to repair the loss, either in nature of an Accompanant, for which there is a notable precedent in M. 30. E. 3. Rot. 5. or other Case, which is in Co. 1. 17. 92. in the Earl of Devonshires Case. And therefore it was also resolved in Sir Walter Mildmay Case, that the Queen might either charge the executors of Sir Walter, or those that made such unlawful warrant; at her election: And if they were dead, their executors, &c. so in as much as they were in their life-time chargeable by the Law; in that Case, if they were before judgement against them, without question their executors shall be charged; because where the Taxator is by the Law chargeable to satisfy the King for losses or dammage, done unto him, his death shall not dispence thereof, but that his Executors shall be also chargeable to the King, &c.

65. In a Precept in Capt. the Tenant had not pleased, that the Tenements are not holden of the King, albeit the wait-lappeth as much, but he ought to take it by protestation, and to
plead other matter in barre, if he have any matter to plead.

66 In a Suit of Right, the Demanant ought to count of his own fault, or the fault of his Ancestor, &c. yet the fault is not traversable; but the tenant may render a Di. mark, to enquire of that fault, &c. and if it be found with the tenant, that the Ancestor was not solis, the Demanant shall be barred: Potest, if the King be party Demanant, the Tenant shall not render a Deny &c.

To enquire of the fault; but he ought to plead in bar, &c. and there the tenant shall not impair without the affect of the Kings servants.

67 The King may have an appearance.

The King may by a writ de warrantia dici may command the Justices to enquire of the Defendant of appearing at the day, whereunto he was adjourned to appear in proper person; and whether the Courts asserted in the writ be true or false, it is not material; when the King certifies, that he is in his service; for it lies by the words of the writ, that the King by his Prerogative may warrant that default for a day: And so also it lies that if the tenant in a Præcept quod red der at the great Cape or petit Cape returned, make default, that before judgment upon that default the King may command such a writ to the Justices hearing, that the tenant was in his service, &c. and commanding them that his default should not turn to his prejudice: And it stands with reason, that the King may do it; because every one is bound to serve the King in his affairs, &c.

68 It shall Judgment be given for the King in any Action or Suit, the party pleaded shall have a writ of Error, and align Errors without suing any Scire facias against the King ad audend, errors, because the King is always present in Court, and that is the cause, that the form of Entry in all Suits for the King, is Edvardus Herbert Males Apostropho Dominii Regis generalis, Qui pro domino Rege sequitur, venie in Curia &c. And not at all, Dominus Rex per Edardum Herbert Apostropho iam, &c. And therefore it is also, that the King cannot be Bound, that all Acts of Parliaments that concern him, are general, and the Court must take notice of them, without pleading them; for he is in all, and all have their part in him, &c.

69 It seems, that before the Statutes, which declare, that a man may make Arrests, &c. the Justices neither would nor could give for the Plaintiff at Defendant, Demanant or tenant, to make Arrests in any Action or Court whatsoever; yet the King by his Prerogative (even before those Statutes) might grant to a man power to make Arrests, and by his Wise of Letters might command the Judges to admit and receive them, &c. and that without any cause shown in the writ, &c.

70 In the Register, there is the form of a writ, wherein a common person is joined with the King in a Quare Impedic in which runs thus, Rex vice comit, &c. precipite R. de C. quod jüfi, &c. permittor nos & P. de T. præfeture, &c. But Fiz. faith in his N. B. that the common opinion in this case was, that the King should have the whole presentment sole, and Thamore have a sole Action, &c. although he seems to hold the contrary himself, Idea-quære.

71 If the King recover by a Quære Impedic, and after citation the C. &c. Acts of the Processment yet at the next assize the King shall present, because the Account and Judgement for him were not appeared.

72 In a Free Chappel of the Kings, where the Dean ought to give the Democratic, if he makes not collation within six months un-
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to them, then shall the king present unto them by laps, as Ordinary.

F.N.B. 34. a. 72 If the Bishop make collusion and die before intimation, or installment, and the king title the temporalities, he shall have that presentment, because the Church is not full against the king, until the Parson or Prebend be intimated or installed.

F.N.B. 35. a. 74 If the king's tenant hath title to present to an abbot, which is void, and the fix moneths past, and after the king's tenant dies before the Bishop presents by laps, and leaves his heir within age, and in ward to the king: In this case, the Bishop shall not present by laps, but the king shall have the presentment by reason of the ward, &c.

F.N.B. 35. p. 75 In a Quare Impedit for the King, albeit the Defendant hath a writ to the Bishop against the king, yet the king may sue a new Quare Impedit against the party of the same abstinence, and make another title.

F.N.B. 37. f. 76 The king may sue a Ne admissas, after the fix moneths past, where he hath a Quare Impedit, or an Affile de Darren presentment depending, because Nullum tempus occurrit Regi: It is otherwise in the case of a common person: because the Bishop may then present by laps, the title of presentment being devolved to him, &c.

F.N.B. 38. c. 77 In a Quare Impedit between two strangers, if the title appears to the Court for the king, they award a writ to the Bishop for the King accordingly.

F.N.B. 38. a. 78 Upon grant of a Reversion, (although it be by fine) the Grantor cannot bring an Action of want against the tenant before Appointment; but if the king grant a Reversion by his Letters Patent, the Grantor may have an Action of want before Appointment.

F.N.B. 39. a. 79 At the Common Law every man may go out of the Realm for Perambulating, Peregrination, or other Cause whatsoever pleased him, without the king's licence, and he was not to be punished for it: Howbeit, because every man is by law bound to defend the King and his Realm; therefore the King at his pleasure may by his Writ (de securitate invenienda, quod se non diverset ad partes exteriores, fine licentia Regis) command, that he shall not go out of the Realm without his licence, &c. And if he doth it, he may be punished for not obeying the King's Command: And it seems, that this Commandement may be made by the King's Writ under the Great Seal, Privy Seal, or Privy Signet: For in this Case the Subject is bound to take notice of every Seal the King hath, as well as of the Great Seal: The King may do the like by his Proclamation, in Cælo he cannot be found to have the Writ served upon him, which if he obey not, it is a contempt, for which he shall make fine to the King: Note, that by the Statute of 5 R. 2. cap. 2. it was enacted, that none should go out of the Realm without the king's licence, which continued in force until 4 Jac, and then by the Statute of 4 Jac. cap. 1. that Clause of that Statute was repealed: So that at this day it seems, that the Subject hath the same liberty that he had at the Common Law: yet by the words in the beginning of the writ which are these; Rex A, de B sub. &c. Quid eam ab eis nobis intelligi, quod in veris partes externas abisse licentia nostra clam definias te divertere. It seems he cannot go out of the Realm unlicensed by the King, &c. As Dyer. obiterdes 165. p. 6. Ideo quarte de hoc.
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8o If the King had granted to one his protection, and man takes his Goods, or enters into his Lands, &c. as be his Servants, &c. the partie grieved shall have a special writ directed to the Sheriffs to inquire of them, and to certify it before the King, &c. And it saith, that the King shall make process against them by venire facias, as upon an Indictment, and that they shall make fine hereupon.

81 The King ought of Right to have and defend his Realm as well against the breakings on of the Sea, as against enemies that it be not drowned or walked, and to provide remedy for it: And also to provide that his subjects, have their passages throughout the Realm by Bridges and Lake Wayers; And therefore if the Sea-banks be broken, or Sewers and Gutterers be not cleared that the fresh waters may have their direct Course, the King may and ought to make a Commission to inquire thereof, &c. And to hear and determine those defaults: But now matters that concern Sewers are regulated by direct late Statute, viz. 23 H. 8. 5. & 13 El. 9. &c.

82 If a Man hold of the King by Possetivity, and of another man by priority, and after the King grants to the Queen the Seignior for term of life, and after the Tenant dies, bis heirs within age: In this case, the Queen shall have the worship of the body, having no regard to the Possetivity; Because the Reversion of the Seignior remains still in the King: It had been otherwise, if the King had granted it in remainder to another in Fos, for then it became, they should not have had the priority, &c.

83 If the King grant an Amnity to one for term of life of peace, it ought to be expressed in the grant by whole hands be shall receive that Amnity, as to lay, by the Hands of the Sheriff of S. oj by our Bayliff of the Parish of S. and then the Sheriff or Bayliff shall have allowance upon that Patent showing, if he pay it; And if there be not such words in the grant of the Amnity, then the grant is void; For he cannot lie to the King for it, and no person is bound to pay it unto him, if be be not named and expressed in the Patent, &c.

84 If a Man pray in Hyde of the King, and the Hyde is granted, then shall it be awarded; that be shall due to the King in the Chancery; And the Justices of the Common Pleas shall cease, until a Writ De procedendo in loquela come unto them, &c. And then they may proceed in the Plea, until it go on to suit, that Judgement ought to be given, &c. For the Plaintiff: And then also the Judges ought not to proceed to Judgement, until another Writ De procedendo ad judicium be brought unto them; And if the King certifie the Justices by his writ, that the Lands are leste into the Kings hands: then also shall they for cease until a writ De procedendo & loquela be sent into them, &c. And if it appear to the Justices upon Record, that the Escheates are leste into the Kings hands, or if it appear to the Court by the planing and delving of the Parties, that the King hath an Interest in the Land, or shall take Rent, &c. if serviceless then the Court ought to cease, until they shall receive a procedendo in loquela from the King, &c.
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Pt. Co. 76 b.

in The Lord willoughbius

in Com. I. for the Kings writs, in such Cases, will admit a

Finch 82.

The King’s writ.

Finn 83.

Demise.

Le Roy.

1 Di.
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92 Because every subject is by Law in the protection of the King, who therefore is of right bound to defend his subjects persons or Estates; and for as much as an Idiot is not able to govern himself, or other his Estate, The Law of England hath provided the King to be his Censor to Govern and Order both his person, and Estate; For the Statute of Prerogativa Regis (made in the 17 of E. 2. cap. 9.) was nothing else, but a declaration of the Common Law, &c.

93 It is a Primitive Law, that the Rent must be returned to him, from whom the State of the Land moveth; and not to a Stranger: but some do hold, that it is otherwise in the Kings Case.

94 If Lands be given to A. de B. Bishop of N. and to a secular man, to have and to hold to them two and to their heirs; In this Case, they are Jointtenants; For each of them take the Lands in their natural capacity: But if Lands be given to the King and to a subject, to have and to hold to them and to their heirs, yet they are Tenants in Common and not Jointtenants; For the King is not seller in his natural capacity, but in his Royal and Politique capacity, in Jure Corone, which (in respect of the Majesty of his Kings Person) cannot stand in Juvenit with the seller of a subject in his natural capacity: And therefore if there be two Jointtenants and the Crown descend to one of them, the Juvenit is thereby severed, and they are become Tenant in Common, &c.

95 It appeareth by Littleton 5. 140. (which my Lord Coke saith is a secret in Law) that in the Kings licenc to grant, land to a Corpora
tion there needs not any non obstinate of the Statutes of Mortmain; for the King shall not be intended to be mis-constant of the Law, and when he licenseth expressly to alien to an Abbot, &c. (which is in Mortmain) he needs not make any non obstinate of the Statutes of Mortmain; for it is apparent to be granted in Mortmain, and the King is the head of the Law, and therefore praedium Regem habere omnino Jura in scientia peores sui, for the maintenance of his grant to be good according to the Law.

96 When an Cariborne or Baronie descends to one Daughter of another heire Female, the King solely enjoy both the Dignity and Lands, but where it descends to more heires Females then one, the Land shall be divided as amongst other Coparceners: Howbeit, in that Case, the dignity cannot be divided, neither shall the Stock have it, as to be a Countess, Baroness, &c. But (in such case) the King, who is the Soveraigne of Honors and Dignity may for the uncertainty conferre it upon which of the Daughters he please; this is to be intended, when the Ancestors devis left of Peerage in F. & simple.

97 If the King grant his own recognisance, the suit shall be in the name of the grantee; but if he grant an obligation forfeited for untidily, the suit shall be in the Kings name, Fuit dic.

98 Buterton, who was attainted 28 H. 8. had certaine obligations, which were forfeited to the King, and the King grants them to his Wife, without any words, that it should be lawful for the grantee to bring Actions thereupon, yet the Feme brings an Information in her owne name for the said obligations; And upon demurrer thereupon it was adjudged, that the Action was well brought, because the King only may grant a thing in Salton.
99 The King may license things prohibited by Statute, as to copy money, which is made felony by the Statute, and before that it was lawful for any one to do it, because it is but malum prohibitum. But malum iniuria, as to issue a billet in the high way, the King cannot license a man to do it, after it is done he may pardon it; but the Statute is against it, that his licence shall be void, there the licence shall have a clause of non obstante, viz. shall lay, notwithstanding any Statute to the contrary, otherwise it is not good, as the Statute of 25 H. 7. grants, notwithstanding that the Kings license be given in this manner, and the Statute of 35 H. 3. contains, that the license shall be void, notwithstanding that his Patent shall have a clause of non obstante, and therefore a non obstante such Patent shall be good, but nothing without that clause; Holwell neither without such a clause, nor with it, can he dispense with a Statute before it be made; and therefore a licence to send ball-metal out of the Realm, notwithstanding any Statute made or to be made, is not good, if a Statute be made after to prohibit it, so he cannot dispense with an Act of Parliament before it be made: Holwell he may set things wherein he hath an interest or interest, so to grant to own to be discharged of tares and不尽 to be granted, this is good.

100 Statutes of restraint bind not the King, unless they concern the Common Wealth, or be so the thing they concern be specially named, as the Statute of Wills 2. of useless bills the King, because it concerns the whole Com. Wealth is likewise the Statute of 1 H. 5. (cap. 5.) That in Injunctions without given to the party injured, bishop the King, because Injunctions are specially named: But if by Statute one be attainted and his Lands sold, with a proviso that of such Lands as he was fined to the use of any other, Celly que uce may order, it blithest not the King, that Celly que we should enter upon him, for it is not for the Common Wealth, neither is it the King named therein.

101 When the King by the Common Law cannot make a grant, there is no obstante of that Common Law but not against the reason of the Common Law make the grant good; but when the King may lawfully by the Common Law make a grant, and the Common Law only requires, that he be attainted, that he may not be deceived, there is no obstante supplying it, Laws with the reason of the Common Law, and shall make the grant of the good; And therefore if the King grant a prodigiously in a Quare Impediment an Apple with a non obstante of any Law to the contrary, such grant is void, so by the Common Law a Prohibition being in either of those Cases, so the damage that may happen to the Plaintiff by such great delay, and therefore in such Case a non obstante shall not suffice, where the King by the Common Law cannot grant the thing, as it was Rules in 39 H. 6. 9.

102 The King by his prerogative may make 4 Sheriffs without the usual annex and Election in the Exchequer.

103 The King may demise a Faucon, except the Courts and parishes, so cannot a Common Person.

104 Some books are, that by an impropriation, the King shall be out of possession and put to his writ of right of acquisition, but 35 H. 8. it is there, that the King may gain possession by pretenement and possession by 6 months, and that against an infant, who is a purchaser.

105 In a Quare Impediment, the title appears to the Court to be in the King, without he be party to the suit, yet they ought to allow a writ to the Bishop in his behalf, The Chancellors, et al. Camb. against Welgraves.

106 The Knight not bound by Statute.
82 Like-wise the Law giveth greater privileges to men, then to Women.

A Tenant of Land held by Knight-service, hath like B. a Daughter and his heire apparent, who being married to C. hath issue and dies, A dies inter vivos, and the Land descends to the issue within age; in this Case the Land that have a worthing of the Land, but not the wort-ship of the body of the heire; for none shall be in ward for his body to any Lady during his fathers life: It is otherwise where the Father dies, leaving the Mother, when the Land, held by Knight-service descends to the issue on the part of the Father, because the Law in that Case confines more in, and giveth more respect unto the Father than the Mother, &c.

2 If a Wileine take a free Woman to Wife, and have issue between them, the issue shall be Wileines; but if a Piece take a free Man to her Husband, their issue shall be Free.

3 In some Cases Women are by Law wholly exclu-sed to bear testimony, as to prove a man to be a Wileine, Mulieres ad probationem fars hominis admittit non deont. Flota l. 2. cap. 44. Fizx. vilein 32. 36. & 37.

83 The Law tendreth the weaknesse and debility of other persons, as those out of the Realme, in Prison, Femes covert, and other Women also: Like-wise Infants, Lunatics, Ideots, and such as have other imperfections,

7 If Coparceners make partition at full age, and unmarried, and of same memoriam, of Lands in Fe-offsimple, it shall hold gow and firm for ever, albeit the values be unequal: but if it be of Lands intailled, or if any of the persons be of non same memoria, it shall bind the parties themselves, but not their issues, unless it be equal: Or if any be covert, it shall bind the husband, but not the Wife, or her heires: Or if any be within age, it shall not bind the Infant, &c. Besides if the Feme covert after the becomes sole, do assent unto the partition, it shall bind her for ever: and therefore in that Case the partition is not void but only voidable: There is the same Law of an Infant, that attains after he attains his full age, &c.

2 If Tenant in tail make a Feoffment in Fe-off upon Condition, and within the issue in tail within age both enter for the Condition broken, he shall be first in as Tenant in Fe-offsimple, as heirs to his Father, and consequently, and instantly shall be remitted: but if the heire be of full age, he shall not be remitted: because he might have had his former against the Fizx., and the entry for the Condition is his own, &c.

3 A Heire shall not take away the entry of an Infant: unless his Mother being prouerment enclitique the tenant was cast before his birth: then there was not cause of entry at the time of the descent cast, &c.

4 A being cast shall not take away the entry of a Feme covert; unless the issue, was made, when she was sole, and of full age, and that she take Husband before the attaining her full age.
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Max. 83.

1. If the heire be cast during the life of one that in non claims remains, albeit he himselfe cannot enter (because he cannot make himselfe) yet his heire may well enter notwithstanding such desert, &c.

2. A descent shall not take away the entry of a man in prison, when the descent be made, or the descent made during the time of his imprisonment, neither is he (in that Case) forsooke by law to make continual claim by his servant, or any other by his warrant, &c commandment: For things done by deputy are deemed well done, but every man shall be willing to be his owne bullenste most effectually bishop and performed. As the reason, why in this and the like Cases a man imprisoned shall not be bound, is, for that (by the intendment of Law) he is kept without intelligence of things abroad; and so that he hath not liberty to go at large to make entry of claim, &c. to take Counsel, &c., so likewise if a Recovery by default be had against a man in prison, he shall abate it by writ of error: For a man in prison ought not to go out, though he be with a keeper and with the leaves and Incessance of the Counsel: Possesse of imprisonment must be Cutoffia, non poena; for Career ad homines cutofendi, non ad puniendos dari debet, &c.

7. A man out of the Realm in the Kings service, &c. at the time of a dissolution, and a descent cast may enter at his returne, because a man out of the Realm (by intendment of Law) cannot have knowledge of the dissolution, &c.

8. At the Common Law before the Statute of Non-claims 34 E. c. cap. 29. that of making proclamation after a fine, 4 H. 7. cap. 24. one out of the Realm was not barred, albeit he made not claim within a year and a day after a fine levied, &c.

9. If a man have a judgement given against him for debt or damages or be bound in a recognisance, and finds, his heire within age, or having two daughters, and the one within age, no execution shall be made of the Lands by Executor, during the minority; albeit the heire is not specially bound, but charged as Tercia-remiss: So also against an heire within age no execution shall be made upon a Statute of Merchant or Staple, not upon an obligation or recognisance taken by force of the Statute of 3 H. 3. cap. 6. for it is accepted in the proceed against the heire: Whether the heire within age arrest his heire, shall execution be sued against her, during his minority.

10. At the Common Law, If a Feeme tenement had a Baron, who being under age, had allowed the Feme land in Feo, and also: In this Case the Feme 2d) her heire might have entered: which they could not have done (before the Statute of 32 H. 8. cap. 1) if the Baron had been of full age: For (by the Common Law) the Feme was (in that Case) put to her Curit in vita, and her heire to her Surevi in vita; because such Foundation of the Baron did took a self-continuance, &c.

11. If the Purchas his within age take a Wife a Feeme Tenant in taile, general, and the Husband makes a gift in taile, and wife within age, so this Case, the Wife may enter: 2d) the heire of the Baron (in respect of the new reversion descemned unto him) may enter; but if the heire ever presently therestpond his Estate vanishted, &c.

12. If Husband and Wife be both within age, and they have intended issue in a Feomand, redovtng a Rent, and the Husband within: In this Case, the Wife may enter, 2d) have a Dowry in infantae. But if the were of full age, the shall not have a Dowry in infantae; for the non-age of her Husband: Allso they be but one person in Law.

13. If
If two joint tenants being within age, make conveyance in fee, and one of the Infant's dies and the other survives; In this Case, the surviving joint tenant may enter; Because the right descends to that they may appoint in a Writ of right, &c. Likewise if there be two joint tenants, the one of full age, and the other within age, and both make a conveyance in fee, and by of full age birth, the Infant may enter, or have a Dam finis in statuto, but for the mally only.

When an Infant makes a conveyance being within age, he may enter either within age, or at any time after full age, and likewise after his death his heir may enter; meliocem enim conditionem sacre porient minor deterioriorem nequaquam: Also a special heire will take advantage of the Infancy of the Auctor, as if tenant in tail of an Acre of the County of Borough-English make a conveyance in fee within age, and birth, the youngest Son will void it: for he is privy in blood and claimeth by descent from the Infant; so likewise if the Tenant in tail to him and the heire Male of his body make a conveyance in fee and birth within age, having being a Son and a Daughter, the Daughter will void the conveyance: And to note (by the way) that a convey to enter by reason of the Infancy, is not like to conditions, Warranties, and Covenants, which even descents to the heire at the Common Law.

If Tenant in tail enforces his heire apparent, the heire being of full age at the time of the conveyance, and after the Tenant in tail dies, this is no remitter to the heire; Because it was his folly, that he, being at full age, would make such a conveyance; But such folly cannot be adjudged in the heire, if he had been within age at the time of the conveyance made, in respect of his temper, age, and want of experience.

If Tenant in tail enforces a Feme in fee, and die, and his issue within age takes the same Feme to Wife, this is a remitter to the Infant within age, and the Feme then hath nothing; Because no folly can be judged in him, being within age at the time of the Eponials; It is otherwise, if such heire were of full age at the time of the Eponials; For then the heire hath nothing but right of his wife, &c. There is the same Law, where the Tenant in tail enforces his issue (being within age), and the Wife of the issue in fee, and birth; in this Case, the issue is also the issue is remitted, &c.

If a Feme fells of lambs in the take Baron, who alien the same lambs in fee, and the Allene lets the Land to the Baron and Feme for life, leaving the Reversion to the Le佐 and his heirs: In this Case the Feme is remitted, and is left of the Lands in her Demise; as of fee, as she was before; because the reversion of the Estate shall be adjuted in Law the act of the Baron, and not of the Feme; so that no folly can be adjudged in the Feme, who was covert at the time of making the Lease: And in this Case, the Le佐 hath nothing in the Reversion, because the Feme is felled of fee, &c. And here, if the Le佐 die an Action of void for void committed by the Baron; albeit the Baron cannot (against his own conveyance and reversion) bar the Le佐, by showing the remitter to his Feme, &c. yet in such an Action it the Baron make default to the great distress, and the Feme pay to be received, and is receiv'd accordingly, the may well shew the whole matter, and how she is in her remitter, and so bar the Le佐; of his Action, &c. for regularly in every Case, where the Feme is receiv'd for default of the Baron, she shall in pleading have the same advantage that a Feme sole hath, &c. There is the same Law, if the Allene had made the Lease by Deed inventer, or by Fine, because in taking a thing by Fine, the Feme is never examined, &c.

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<td>Co. ibid. 351.</td>
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<td>Lit. 5. 648.</td>
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If a Feme covert be received in an Affile, and plead a Receipt, the bill shall not therefore be an answer to a Distress, as the Feme would be, if the issue was, &c. So if a Feme covert only by a Fine executor, and a Scire facias be brought against her and her husband, if he be received upon the default of the husband, the Feme bar the Comite, which if she had been false, the could not be, &c.

If the acknowledging of a Fine by a Feme covert, less the Fine would be received at any way abused, her examination ought to be secret, and to this effect, viz, whether the be content to levy a Fine of such lands (naming them particularly and distinctly, and the State that passed by the Fine) of her own voluntary free will, and not by threats, menace, or any other compulsory means.

If the Baron did continue the land of the Feme, and the Distressor is to take the same land to the Feme for term of her life, and gives her fee thereon accordingly: In this Case, whether the Baron were out of the Realm, when the Lease was made, or within the Realm, or whether the Baron agreed to the Lease, or no; nevertheless the Feme (in this Case) is remitted: It had been otherwise, if he had been false at the time of the Lease made, for then she could not have been remitted.

If two Joint-tenants of lands in fee, the one of full age, the other under age, are dispossessed, and the dispossessor does so, and his fine enters, one of the Joint-tenants being full within age, and after he obtains his full age, the heir of the Distressor lets the Lands to both the Joint-tenants for their lives: this is a remitter (as to the mortgage) to him, that has within age; because his entry was consummative: But the other hath not an Estate for life in the other moiety, because his entry was taken away by the being false, &c. for the Infant (being favourable) had right of Entry, whereas the other had only right of action, &c.

If tenant in Dover has aliened the Land in fee with warranty, and that warranty had descended to the Heir, who has to inhere the land in Dover, the Heir has thereby power to demand the same land; whether the Heir were within age at the time of the warranty descended upon him: In that Case, the Heir might enter and abate the Estate either within age, or at any time after his full age; but if he were within age at the time of the alienation with warranty, and became of full age before the descent of the warranty, the warranty did pass him for ever, &c.

Albeit Laches of a man non compositum mentis may prejudice him for his entry (as if he be fined, was a tenant in cap, in this case he cannot enter) yet it is not prejudice his right; as if a man non compositum mentis were dispossessed, and the dispossessor had given a Fine, in this Case (at the Common Law) although the year and day had passed, yet he that was non compositum mentis, was not bound thereby, but that he might well enter: And this to prove by the Statute of mode leandi fines, made Anno 18. E. 3. which was nothing else but a Declaration of the Common Law: Where is the same Law of an Infant, one in pisan, or not within the four minutes, 3d of a woman not being examined; to in all these Cases a Fine was not binding at the Common Law, although claim was not made within a year and a day, as appears by the same Statute, &c. Where is also the like exception of such persons in the latter Statute of Fines, with Declarations made, 4 H. 7. cap. 24. which proves, that the Law-makers had shew Ages a special care to provide for persons that have such defects and imperfections, &c.
the Common Law.

24. In Case of Ideos or sois natural, because (as Bracton tells) non
medium distant a buntas, qui ratione carere, the Law of England, (as well
as the Law Civil) hath provided a Statute for them, viz. the King, and
half more professed of the preservation both of their Inheritances, and
also of their goods, as appears by Bracton, col. 16. and likewise by Pro-
scriptiva Regis, cap. 9. made 17 E. 2. which was nothing else but a De-
claration of the Common Law: And albeit that Statute expressly, Godd
Rex habebit cutooddiam terrarum favorum naturalem, &c. yet the
King shall have as well the custody of their books and goods, as of
their lands, and also of all other hereditaments, as well those which
they have by purchase, as others which they have by inheritance at the
Common Law. &c. And the reason of this is, because (as Fiz.N.B.
faith, 22.) the King is bound of right by his Laws to defend his Sub-
jects, their Goods and Chattels, Laws and Tenements: And there-
fore every Subject being by the Law in the King's protection, an User
who cannot defend of his government, nor have his State, ought of	right to have both his person and estate protected and order by the
King, &c.

25. If an Infant be an Executor, a Release or Acquittance made
by him, binds him not, unless it be in the usual form of his
Office of Executorship, and for so much only as he really receives.

26. An Administrator (during minor state) cannot sell any of
the goods of the ward, if it be not of necessity for the payment of debts,
bona pereutra, for he hath his Office of Administration pro bano & com-
modo of the Infant, and not for his prejudice; Also such an Admini-
strator cannot alienate to any legacy, unless there be Notice to pay debts,
&c. and generally, he can do nothing to the prejudice of the Infant; for
the words of the letters of Administration are, Administratorem
omnipf & singul,m. & omnes sus, &c. &c.

27. Generally in all Actions real, which the Infant brings of his
own possession; albeit he hath the land by vesture, and that the Estate
was of warranty of his Ancestor, the parcel shall not pay for his non-age:
For by Presumption of Law, the granting of vesture is in favour, and for the benefit of the Infant, left by default of good mean-
standing of his estate, and of the truth of the matter, he might be pres-
scribed of his right, which vesture unto him from his Ancestor; And
therefore, in such case the Law will rather suffer a delay, that hazard
the right of the land, the possession whereby his Ancestor hath by negligence,
or otherwise lost: But when the Ancestor was vested, and the same
rested unto the Infant, and he enters and takes the Express and profits;
In this Case, it will be a prejudice to the Infant, if he
should lose the possession which he had, and shall be thereof demolished,
until his full age: It is otherwise, when only a naked right descends,
unto him, for then he can suffer no such prejudice, but rather may run a
hazard, &c. And with this agrees 12 E. 4. 17. in a writ of Entry for dif-
fenium, of a writ made to the Infant himself: And 41 E. 3. ut. Age 39
in a writ of Right of a vestment done to the Infant himself of
land, which he had by vesture: So likewise in Escheat and Celare, and
a writ of Right for disclaimer bought by an Infant, because he hath
the possession in possession, which by Escheat, Celare, or Disclaimer he
might lose: and in that Case also his Ancestor had no right to the
land, and therefore the Parol shall not pay for his non-age: In like
manner in a writ of Meitie bought by an Infant, because the cause of
Action, &c. the wrong begins in the name of the Infant himself, the
Parol
Parol Hall not Cap.  

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****

**The Reason of**

**Max. 83**

****

**Recovery by default.**

**I Col. 6, a, b, 1**

in *Ferrers cafe*

**8** At the Common Law before the Statute of Weit.  

****

**Money Recovery.**

**I Col. 7, 7, b, 4**

in the Ear. of *Bedford's cafe*

**19** When a Subject is Guardian in Chivalry, he is in the right of the heir within age, and in his Curtesy, shall hold valuable Leaves, for so long time as he hath interest in the Lands, by reason of the Childship; but this shall not prejudice the Heir of his election, to make the Leaves good by acceptance of the Rent; *et* when he shall attain his full age, *et* Custos (tatam hereditis in custodia sua existentis milites non deteriorum faceret) *et* the Law is also the same, when the King is Guardian, *et*.

**I Col. 8, 8, 6, b, 4**

in the Ear. of *Bedford's cafe*

**30** Infants shall not be amerced, and consequently shall not lose pledges, by reason of the weakness of their age; And therefore (in that Case) the entry is, Ideo in meticulo, sed lex est natura qua infantis, Vide 43 Ass. Pl. 45. 44 E. 3. tit. Amic. 10. 3 E. 2. Enfant 14. 14 Ass. Pl. 17. 41 Ass. Pl. 14. 17 E. 3. 759 Bradon. fol. 254. F. N. B. 195 h.

**I Col. 8, 8, 9, b, 4**

in Sir Richard *Letchford's cafe*

**31** A Custom (that the Lord Hall sells Copialons after the Proclamations at these Courts, and non-claim by the heir, et.) shall not bind the Heir, *et* in beyond Sea (extra Maria) at the time of the Proclamations made; *et* it is also of an Infant; non compos mentis, or one in prison; because, in judgment of Law they are not bound to make claim, neither yet (by intention) can they have notice thereof; *et* if these persons were excused (by the Common Law) though they might not claim within a year and a day after a Fine levied, or a Recovery in a writ of Right (being matters of record, and of extraordinary high esteem) in the Law so that they were not barred of their right, notwithstanding their non-claim: *et* a Fortiori, shall not Proclamations made in a baile Court, and in a private curter be any bar unto them, *et*. Vide 5 E. 3. 232. and 7 E. 3. 335. Also, if in a real Action a Recovery by default be had against a man in prison, it shall not bind him, but he may recover it by writ of Error, as appears 5 E. 3. 106. 4 E. 2. Difict 51. Littleton 103 b.

**I Col. 9, 7, b, 4**

in Comber *cafe*

**32** Where the custom is, that an Infant at the age of 15. may make a testament, he cannot do it by Attorney, because the Custom that enables any person disabled by the Law, ought to be pursued, and an Infant cannot make any thing to passe out of him by Attorney, Vide 15 H. 4. 33.

**I Col. 9, 8, 2, 2**

in Conway *cafe*

**33** Albeit the tenant of a Manor, that is within age, may be restrained for rent arrear, and, whether in that Case, or in a per quæ servitut, bought against him (when the tenancy belongs) shall have his age;
the Common Law. 319

age; because at first the Land departed with the Law in consideration, that the tenant should hold of him, pay his rent, do his service, &c. And although upon grant of the Tenant by Fine, he may be compelled to attend in such behalf; and if he attend upon grant thereof in part, the Attornment is good; yet in a case of Customs and Service, (which is a want of Right in his nature, and in which Judgement must then be given) against an Infant that is in his non-age, he shall have his age, although to be upon his own costs, because he is not a tenant at will, but tenant before Judgment, and that by a right of his nature, and not made not: tenet, tenant; he shall lose the land; and so it was adjudged in 3 & 4. Ed. 1.; 56. Vide 9 Eliz. 54. & 5 Ed. 3. Age 32; Age 32; Age 54; 2 Ed. 2. Age 12. And albeit such an Infant do attend in a Per quire Service, that can be no mistake make him; for notwithstanding his Attornment within age, he may add his full age, and do himself to hold of him, or may say, that he holds not of him, or may acknowledge himself to hold of him, but by tenet, or other Service: And with this seems to accord 36 Eliz. 54; & 1 Ed. 1. Per quire Service, and Age 32. Vide 2 Ed. 3. Age 77 & 78. 37 H. 8. Attornment Br.

44. In a quid Jura clamant having a Tenant, the tenant tells, that he had the Law for many years; and of all the LANDS of the Infant's Land, that greater than that he should not be imprisoned of Lords by way, which in the Court to the Court: And in this Case, because the Plaintiff was then in age; and to avoid not acknowledging the same; and on his non-age, it was dong, that he should hold until his full age, whatsoever, in this Case, if when the Infant attains his full age, the Defendent by his own judgement at Court, this shall not any way trench to the Infant's possession. For albeit the Attornment were after his full age, yet as such as there was no Laches in the Infant, but that he brought his suit, the quid Jura clamant to force the tenant to attain the delay, which was then his full age (which the Law promises for his benefit) shall not turn to his prejudice: And therefore by jurisdiction of law, (which with wrong to none) he shall have as much advantage as would for the services of rent, as for mistake, as if the Tenant had Attorney at the time of the will pleased.

45. There was a Case amongst an Estate tail vested by will to a Feme sole, that if the should apparently and willingly conclude and agree to discontinue the Estate, &c. that then the land should from thenceforth remain to another, &c. the Feme takes, and that it is not, and that according with J. S. to suffer the recovery of the Land, with intention to make void the Estate, and thenceupon a common recovery was suffered according to, &c. And in this Case Coke Chief Justice was of opinion, that such conclusion of a Feme covert was of no force; &c. yet could be any cause of dissolution of, &c. no Feme covert shall be barred (by her consent) of her inheritance or frank-tenure, but when she is spinster by her own suit, Vide 15 Eliz. 8. 44 Ed. 18. Vide 1. 1. 4. & 5. 8. Suit some such power to spinster a Feme covert without will (Vide 21 Eliz. 3. John de Holbornes Case.) And this is the cause that if Baron and Feme acknowledge a Statute or Recognition, this is void, as to the Feme, but which the Baron, as it was Johnson P. 17 Eliz. in the Court of Law in the County of London Case: So if Baron, and Feme acknowledge a Statute, he is enrolled, and it is enrolled accordingly, this also is void, as to the Feme. (Vide 29 H. 8. Farts ent'ed. Br. 1. & 2. 44. 5. 1617. & 5. 31 Eliz. 3. 3.) And the reason is, because no such Statute is depending against the Baron and Feme, upon which the Feme may by the Law be examined: But if the Infant acknowledge a Statute F. N. B. 106; 42.
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of Recognizance, it is not void, but voidable by Audita quære, during his non-age. And the cause of the voidness is, that the Judge (in case of an Infant) may by inspection know his age, but not know whether a woman be capable or not. And the act is always upon a common Recovery against Baron and Feme to examine the Feme and to grant a Decimus potestate to take (upon examination) her Con- fidence, as in Case of a Fine; so in that Case also there is a writ, upon which the same be examined, Vide 44 El. 3. 28. Though a common Recovery against an Infant, although he appear by Guardian, shall not bind him; for an Infant hath not such a disposing power upon the Lands, as Baron and Feme have, but is utterly disabled by Law to convey or transfer his Inheritance or Frank-tenement to others, during his minority: And at this day a common Recovery appears to be a Common Consequence of Assurance of Lands, &c.

18 El. 4.

Grant a Decimus potestate to take (upon examination) her Confidence, as in Case of a Fine.

36. If an Infant hath conveyed Lands to Queen Eiz. by deed enrolled, that grant has not been established by the Act of 18 El. cap. 2. (which was made for the confirmation of grants made to the Queen from pri-
sed to that time, &c. because the person of the Infant during his mi-
nority was absolutely disabled to make any conveyance at all by the
Common Law: So likewise if an infant hath issued a fine to Queen Eiz. and afterwards the said Fine was made; yet the infant notwithstanding the Statute, might have revoked such fine by writ of Error: And so it was resowed by 2 & 3 Eliz. R. 4. Wray Chief
Inst. & comam Curiam in Vaughan's Case: There is the same Law, if
Baron and Feme had made a grant of the Land to the Queen to the Feme, (for neither had his been made good by the said Act to have bound the Feme (after the Conveyance) nor herself: Because the person of the Feme covered is insensible to convey her Lands, unless it be by fine upon
examination, and so also was it holden in the aforesaid Case of Vaughan.

Advowson.

Usurpation.

37. If an Infant hath a Married by descent, under which an Abédoule
is apparent, and suffers an alteration to the Abédoule, when the
Church happens to be void, and after grants the Married in fee at his
failure, and after that the Abédoule happens to be void again; In
this Case, the Infant shall present, and not the father: for the
Abédoule was debared by the alteration, and yet the infant may present.

Waste.

Accomp.

38. If a Case be made to Baron and Feme for life of years, the Feme
shall not be punished for work done by the Baron, after the Barons
death.

F.N.B. 34. 1.

39. A man may have a Writ of accomp against a Feme, as succep- nion domanum, 61 against a Chaplain: But a man shall not have a Writ of accomp against an infant.

F.N.B. 110. d.

F.N.B. 161. a.

F.N.B. 55. 1.

Fisch. 16.

40. Women shall not be compelled to villainy, to come to s Sheriffs
feme, 62 to Lents, and if they be disfitted, they may use the writ of contention sectes, &c. to escape themselves of that service, and thereupon they may also have alias place and attachment, &c. And to
as much as Feme shall not be two in Lents to the Ring, as men of
the age of twelve years or upwards shall be, when a Woman is out-
lawed, she is said to be marred and not out-lawed; for she was never put upon coming to the Law, but a man is said to be out-lawed, because he is; 62 ought to be amens to the Law, and then for continuance he is put out of the Law: and so is said to be ut latus, qualis extra legem politia; And by the Rule of the Register two Women may jointly in such a writ, &c.

F.N.B. 161. b.

41. If
Max. 83.  The Common Law.

41. If an infant of tender age (viz. under the years of discretion) kill a man; that is not known in him: because he wants discretion and understanding, and therefore the Law imputes it to his ignorance, which he had at that age by nature; and so no fault in him; and therefore it is called, Involuntary ignorance: For he cannot be wise and discreet, though he would, but is ignorant by compulsion; and therefore shall be excused: Am such an Act is properly said to be ex ignorantia, where involuntary ignorance is assigned to be the cause thereof: So if a man de non sane memoriae kill another, although he hath broken the words of the Law, yet he hath not broken the Law: because he hath not any memory, or understanding, but mere ignorance, which falls upon him by the hand of God: and therefore the Law imputes it to involuntary ignorance and not to him, so that he shall be excused for the doing of it, ec.

42. The makers of the Statute of 11 H. S. 20. in consideration of the frailty and inconstancy of Women, ordained that Law to restrain them from the alienation of 5 Lands of their deceased Husband; and because they did conceive that they might (by flattering words) be easily deceived and induced to covin, therefore they ordained that Act a penalty against them; as a silence of their inconstancy, to prevent them from being (in that manner) seduced, ec.

43. A Woman shall be enowne of the best possesstion of her Husband, as if the Husband holds of Jo. S. per iij. d. who held over of another by xx. d. and Jo. S. relaves the Husband (as now the Husband holds by xx. d.) the wife being enowne of this land, shall hold only by the third part of iij. d. and not of xx. d.

44. If a nume person being an Action he shall plead by procione.

Tender upon a Mortgage for an Idea.

Infant not ouc-had.

Infant no ac-dent-ant, or can make bath.

45. In case of a mortgage (Lis. 5. 324.) if a Stranger of his owne head, that, hath no Interest, &c. will remove the money, &c. to the stockist at the day appointed, the stockist is not bound to receive them, &c. yet if the tender ought to be made by an heir, that is and Jost, of what age soever, In that Case any man may make the tender for him, in respect of his absolute vis-ability, and the Law in this Case is grown up upon charity and so in like Cases.

46. An infant under the age of 12 years shall not be charged in account as Receiver 93. Bulistke, because (by intendment of Law) before his full age he hath not skill ability to raise or make any improvement of the lands. Gads. 93. Chetwells committed to his charge, Neither shall an infant under that age be twains of an Inquest; For the Rule of Law is, Minor jurare non potest. And therefore an infant, cannot make his Land of non fumamont, neither shall his default in such Case grieve him: for seeing the mean to excuse the default is taken away by Law, the default it self shall not prejudice him: Howbeit, an Infant at the age of 12 years shall take the oath of Allegiance to the King, as this was (as Bracton faith) Secundum leges Sancti Edwm. but inverse such was the Law in the time of King Arthur. Howbeit an Infant cannot wage his Law in an Action of debt, no more then makes oath of non fumamont, as aforesaid.

47. In Testaments by Will. de Walton against John Martin judgment was given, that the Parliament should recover damages & quod praeid. Johannes capitator. Am the Record faith, quod praeid. Johannes venit coram Domino Rige & reddidis se prione, & quia coeitatis Curie per
The Reason of

84 The Law (in some Cases) tendeth the ignorance of men unlettered.

1. A man make a will to A. for years; and after by his will the

2. A man not lettered is not bound to read any writing

3. Writing read or expounded in another for them purposes,

7 E. 3. 9. Col. Inf. 3. 1. 101. b. 4.

Co. lib. 1. 5. 4. Byners Cafe. Dier T. 12. 5. 5. 58. Pl. 39.

Co. lib. 1. 9. 2. Thoroughgood Cafe. Col. 14. 44. b. 3.

Co. lib. 11. 2. 27. b. 2. in Henry Biggs Cafe.

Leaves for Life.

Not bound to scale a deed unlettered.

Indictments.

Special Verdicts.

Several Obligations upon one person only.

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not lettered, and the other not, it is good for the clause that was read, and ab initio void for the other.

7. In 9 H. 5, fol. 15. One brings a suit of debt of xx l. against another, and a summons upon an obligation of the same summe, the defendant pleads that he was a c. 49. man, and knew not letters, and he acknowledged himselfe to be bound to the Plaintiff by the lain deb in 20. shillings, which he hath paid, and thereof thereby an acquittance, and as to the residuum of the summe in the said Obligation, inter alia; And in this Case, as much as the debt consisted upon an entire summe, it was adjourned void for all: The same is also agreed in 14 H. 8. 26. & 30 E. 3. 31.

8. In 30 E. 3. casu ultimo in an Affile before Seriffes and others in pais, the Tenant pleads sequestration of the Plaintiffs to him by deed of the Land triangle, to have and hold to him and his Heirs, comprehending a letter of Attorney to deliver settlum, &c. And in truth the Plaintiffs was a Lay-man, ignorant of Letters, and the deed with the letter of Attorney was read unto him according to the forme of an Estate case, and for the same intent he sealed and delivered the deed with the letter of Attorney in it to deliver settlum: And in this Case, the sequestration was adjourned void, and the letter of Attorney also (albeit it were truly read) because it referred upon the sequestration, and had relation to the Estate in fee: And therefor Justice said, that every deed ought to have writing, sealing and delivery: and when any thing passed, from such as have no understanding but by hearing only, there ought also to be reading avowed to the other three: And (indeed) he that is not lettered is reputed in Law as one, that cannot see but only hear, and all his understanding is by hearing: So likewise a man, that is learned, but cannot see, (as to purpose) taken in Law as a man not letters; and therefore if a man be learned, but blind, if the deed be read unto him in another manner, &c. he shall avoid the deed: because all his understanding in such Case is by his hearing, as it was related in Shure's Case, in the Serjeant-chamber, M. 9 Jac. who was a man of 115 years of age at the time of his death. Vide John Pynchon's Case in 37 E. 3. 3. cited in Cooke ubi supra. Vide 63. 35.

85. The Law favourableth Strangers, that are neither parties nor privies.

1. Lord and Tenant, and the Tenant maketh a sequestration in fee upon Condition, the Feoffor upeth, after his death the Condition is broken, and the Feoffor with his age entretith, for the Condition broken: In this Case, albeit the Feoffor had no Estate of right in the Land at the time of his death, but only a Condition, and which was broken after his decease, yet the Feoffor shall be in ward, for the Lord was neither party nor party to the Conditional sequestration, and therefore there should be no default in the Lord to barre him of his wardship.

2. A man leans of Land, whereunto Condition is appertaining: is disdellus; In this Case, the dilette cannot use the Condition, until he entereth into the Land, whereunto it is appertaining: but if a man be dilette of a manor, whereunto an appovson is appertaining, he may pick his way into the Appovson, before he enters into the manor; And the reason of this diversity is, because in the Case of the Condition it should be a prejudice to the Tenant of the sole; for if the dilette might put on the castle, the dilette might do so too, which would be a double charge to the Tenant; it is otherwise of an Appovson, &c.
The Reason of

Max. 85.

3. Professions of entering into Religion is a Civil death, so that his heire shall inherit: howbeit, this shall work no prejudice on a stranger, that hath a former right: And therefore if the dative enter into Religion, and is professed, so as the Land devolves to his heire, put this precedent shall not toll the entry of the dative, &c.

4. If there be Land and Tenement of 40 acres of Land by yearly and 20 Shillingo Rent, if the Tenant makes a gift in tail; or a Lease for life of years of parcel thereof to the Lord; in this Case the Rent shall not be apportioned in any part, but the rent shall be suspended for the whole: for a Rent-service (faith Lit. 9. 232) may be erect for part, and apportioned for the rest, but (regularly) it cannot be suspended in part by the Act of the partie, and in cite for another part; So it is also, if the Lessee enter upon the Lease for life of years into part, and thereof withdraws or part out the Lease, the Rent is suspended in the whole; Pointed, a S Bailiouny may be suspended in part by the Act of a Stranger: As if two joint-tenants or co-occupiers be of a S Bailiouny, and one of them devolves the Tenant of the Land, the other joint-tenant or co-occupier shall intrain for his 20 his moiety; so it is no reason, that they (being Strangers) should suffer any prejudice by the Act of another, &c.

5. If a man hath a Rent charge to him and his heire, falling out of certain Land, he purcahse any parcel thereof to him and his heire, all rent charge to extinct; as the unity of possession of parcel of the Land and of the Rent (by the Act of the party parting) is the whole Rent: Pointed, if the grantee of a Rent charge grant the Rent to the Tenant of the Land and to a Stranger: In this Case the Rent shall not be totally extinct, but only for the moiety, &c.

6. As concerning a Condition an Obligation, and upon a S Testament, there is a diversitie, where the Act, that is local; is to be done to a Stranger, and to the obligation of the testator himself: As if one make a testament in his, upon Condition, that the Testator shall unescrow a Stranger, and no time limited, the Testator shall not have time during his life to make the testament: so then he should take the testor in the interim to his own use, which the Stranger ought to have: And therefore in that Case, he ought to make the testament, as hean convenient he may: And so it is likewise of the Condition of an Obligation: It is otherwise, when the Condition is, (that the Testor shall unescrow the Testator): for there the Testor hath time during his life, unless he be satisfied with the testament, and this is in respect of the moiety of the Condition between them: There is another diversitie, when the obligation or Testator is to a Stranger, & when a stranger is to unescrow Testator or obligation: As A. unescrow B. of Black-acc. upon Condition that if C. unescrow D. of White-acc., A. shall re-enter: In this Case, C. hath time during his life, if B. not, not being his by testament: As so likewise of an Obligation, &c.

Co. ibid. 149.

b.4.

Co. ibid. 288.

b.3 & Co. 11.

75. b.3.

Lord Crow whit Cate.

Co. lib. 128. e.3.

Co. lib. 6. - h.2.

Satter Cate.

Co. ibid. 288.

b. 4.

Co. ibid. 109.

b.1 & Co. 13.

96 Goodall Cate.

Co. ibid. 118.

b. 2. & Co. 13.

Lord Goodall Cate.

324

The Reason of

Max. 85.

Co. ibid. 158.

b. 2.

Co. ibid. 148.

b.4.

Co. ibid. 128.

b. 3.

Condition.


Rent suspend
ed in all.

In part.

Rent-charge not exist
to a Stranger.

Feoffee. Obligee.

Co. ibid. 128.

b. 1.

Condition.


7. There is another diversitie, where the Condition concerneth a thing. It is a real Act, and is to be perform'd to the Testator or obligation, and where it doth to be performed to a Stranger, as if A. be bound to B. to pay ten pounds to C. A. bound to C. and he redeem'd it; In this Case the bond is forfeited, whereas, if the Testator or obligation redeem'd it upon tenant, the bond is not forfeited, in respect of the moiety of the Condition, &c.

Co. ibid. 96.

Gedali Cate.

8. If it be agreed between the Mortgagor and the Grantee of the Mortgagor, that the Mortgagor shall in appearance pay the whole term, but that afterw'ards the Grantee shall repay part thereof back to the Mortgagor; this is no performance of the Condition; As the S

Co. ibid. 129.

b. 1.

Law of the Land shall not be broken and of the heirs, which in these

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The Reason of

Max. 83.

Reversion, and

A lease, &c.
drowned at

his th...
In the Common Law.

In the Case B. that not have the rent, because although the tenancy do remain over the remainder for life between them, yet as to a stranger it is in esse, etc. and therefore B. shall not have the rent, but his heir shall have it.

16 If the executry of a Lessee for yeares assigne over his interest, an action of rent shall not lie against him for rent due after the assignement: So if the Lessee for yeares assigne over his interest and die, his Executor shall not be charged for rent due after his death: because by the death of the Lessee the personal property of the contract as to the action of rent in both Cales being determined, the Executor becomes a stranger to the late Lessee, etc. There is the same Law also in the Sumtillator, as appears P. 41 El. Rot. 2438. in C. B. Marrow & Tipps Cafi.

17 The makers of the Statute of 33 H. 8. cap. 39. (whereby the heir in tail is chargeable with the Kings debts, as well as the heir in F. i semplice was at the Common Law) doth not think fit to charge his assigns, when the heir in tail before any process or extent had being side attaint the Lessee; for, they had reason to save the purchase, farmoz, etc. of the heir in tail, more then the heir himselfe; because they are strangers to the debts of the Tenant in tail, and come to the Law upon good consideration, etc.

18 Lessee for yeares grants a rent-charge, and surrenders, yet the rent shall be paying according the yeares: So if he in the reversion grant a rent-charge during the term, and then the Lessee surrendereth unto him, he shall pay the rent during the term: for, the stranger that is the grantee of the rent) for his benefit half cap, that the term continueth, or that it is determined, etc.


Lesse for life

1. If a man make a Lessee for life, and then grant the reversion for life, and the Lesseis attorneys, and after the Lessee infefteth the Lessee for life, and makes a tenant in fee, and the Lessee re-enters; this shall leave a reversion in the Grantor for life, and another reversion in the Feeholder, and yet this is an attachment of the Grantor for life, because he both his as, not given attend any, which might amount to an attachment in law. But.res inter alios et alteri nocere non debet, etc.

2. If an be given in tail, saving the reversion to the Donor, and after the tenant in tail by his devise enchoke the Donor; if so, this is no destination of the estate in life, because the reversion being already in the Donor; it cannot be the destination of the tenant in tail, be destinated; but if a man make a gift in tail, the remainder in tail, reserving the reversion to himself: In this Case, if the Donor enchoke the Donor, that is a destination, because to there is a man Chattel, that other is to what wrong, and yet would be remediable; there is the same Law also, where the Donor enchoke the Donor, and a stranger, etc. for, that is also a destination of the whole Land, etc.

3. If a Prome covert be tenant for life, and the husband make a testament in fee, and the Lessee enter for the testament; this shall not cut the woman from her just right: for here, although the reversion was revest, yet the destination did still remain at the Common Law.

4 If
The Reason of

Max. 86.

4 If there be tenant for life, the remainder in fee by lawful and just title, be in the remainder may obtain and get the pretended right of title of any stranger, and shall not thereby incur the penalty of the Statute of 32 H.8.cap.9, not only for that the particular estate and remainder are all one, or that it is a mean to extinguish the ideas of troubles and suits, but likewise because by the doing thereof there can happen no prejudice to any stranger: Howbeit if a tenant make a Lease for life, lives, or years, the remainder for life, in tail, or in fee, he in remainder cannot take a promise or covenant, that when the Tenant hath entered upon the Land, or recovered the same, that then he should convey the Land to any of them in remainder, thereby to avoid the particular estate, or the interest or estate of any other: For, the words of the promise be (buy, obtain, get, or have by any reasonable way or mean) and that is not by promise or covenant to convey the land after entry or recovery; because that is neither lawful, being against the express parturition of the body of the Act, neither yet reasonable, because it is to the prejudice of a third person,

5 If one man enforce two with warranty, and the one reliteth the warranty; yet the other shall touch for his moiety.

6 If a Lease be made to an infant for life, the remainder in fee, the infant at his full age still agrees to the estate for life, yet the remainder goes: for that it was once vested by good title, and it is no reason, that the practice be left; for the founder and the infant, should prejudice him in remainder, who is a stranger, &c.

7 If a Feme infaretritis take Baron, and have issue a son, and the Baron die, and the takes another Baron, and the second Baron lets the land which he had right in his wife to another for term of life; and after the Feme dies, and after the tenant for term of life surrenders his estate to the second Baron, &c. In this Case, the son of the Feme may immediately enter, which he could not have done, if the tenant for life had not surrendered: And therefore here, Rest inures acta liberis prodelt, &c.

8 When the tenant holds by an entire service, as by the payment of an horse; or an hawk, &c. partly: In that Case, if the Lord purchase any part of the Land, the whole service is extint; but if the tenant alien the Land in parcels to several men that shall give the Lord, who is a stranger, an advantage and benefit; so that every one of the Bessses shall pay an horse, hawk, &c. like: For, Rest inures acta in nomine nocere debent, fed prodesse polet, &c.

9 If the reversion of two tenants for life, or the Rent or Seigniory of two joint-tenants be granted by land: In a Quod juris clama, quem reddidum reddit, or Per quae servitut against each joint-tenants, the one shall not be permitted to attorn without his companion; because if the one attorn alone, he may prejudice his companion, as if he will not claim to be dish-punished of suits, or condition to have fee, or a future term, &c. for upon general attornment in Court of Record, the Lease shall lose all advantages, which are not claimed upon Record, because this question is demanded of him, Quod juris clama? &c. And therefore he shall have no more then he claims upon Record: And for this cause one of the joint-tenants alone by himself shall not be permitted to attorn upon Record, in regard of the manifold prejudice which might happen to his companion, in case it should be attornment of both, &c.

10 It is said, that as relations shall extend only to the same thing, and to the same intent; to shall they also only extend between the same parties; and shall never be strained to the prejudice of a third person, who
who is neither party nor pith to the said Act; And therefore if a man
make a testament of a Tenant by Devil: without Devil: and a long
time after the Devil, the tenants attorn to the Testator: In this Case,
the attornment by necessity, and the Devil must fall, shall have relation
(by Acton of Law) to pass the Services ab initio: yet this relation
shall not charge the tenants for the arrears in the mean time: So if
Testator upon condition grants a Rent-charge of the land, and after the
Grantor brings a suit of Annuity; here ab initio this was an Annuity
between the Grantor: and the Grantee, but as to the Testor, who is a Stran-
ger, and is entitled to enter for the Grantment broken, it shall have no
relation to his prejudice: Likewise in 30 Eliz. 3. 11. in a Deed suit infra ex-
tem (against Richard Spellow) the tenant faith, that his father was fel-
sed, and died before, and so proper his age, the Demannant counter-
pleads the age, because the tenant and his father were jointly enforced
and to the heirs of the father: And it was adjudged that the tenant
should not have his age; for albeit this refusal (of taking the land by
purchase) shall have relation to himself; yet as to the Demann-
ant, who is a Stranger, it shall not have relation to delay his Action,
taken in truth the tenant had the frank-tenement by purchase.

11. W. B. and his wife were feised in tail of the Hamnoz of Hinton,
(for the Joyniture of the wife) holden in Capite, and W. B. was also fe-
ised of land in Fobbing, which Hamnoz and Lande did amount to a full
third part of all his lands; he was likewise feised of the Hamnoz of
Thoby in Capite, which amounted to the other two parts: VV. B. de-
vised Thoby to his wife, upon condition, that she should take no former
Joyniture, and dies, the Feme in pais refuted the Hamnoz of H.: Here
the question was, whether the will was good for the whole Hamnoz of
Th. or for a part, by the 32 & 33 H. 8. And it was adjudged, that
this refusal shall have unity relation as to the Hamnoz of H. and not to
the Hamnoz of Th. and to the intent only that the Feme should not be
prejudiced by any thing concerning the Hamnoz of Hinton: Nowbeft
that relation shall not prejudice the heir, which is a third person, and
upon whom, by the death of the seftor, part of the Hamnoz of Thoby
decesed, &c.

12. If a Specialty become rent-seck by surplussage, as if the tenant
holds of the Meine by two Tenings, and the Meine holds over of the
Lozo by 12 d. and the Lozo purchase the tenancy: In this Case, the
ancient feisin of the latter rent of 2 s. is sufficient for the surplussage,
being now changed to a rent-seck of 12 d. because the Specialty is extinct
by the Act of the Lozo, and of the tenant's parcell, and the nature of the
rent of the Meine is not changed by his own Act, but by the Act
of others: And therefore albeit the rent is become seck, yet the
Meine shall retract for it, &c., as it is laid in 2 E. 2. tit. Extinquish-
ment 6.

13. The heir of a Coppelholder tenant may surrender to the use of ano-
ther before abstinence, as any other Coppelholder may; but this shall
not prejudice the Lord of the Fine due unto him by the Custom of the
Hamnoz upon the descent: So abstinence of a Coppelholder tenant for
life, is an abstinence of him in remainder to vest the Estate in him:
Nowbeft that shall not bar the 2,000 of his Fine, which he ought to
have by Custome, &c.

14. A Release by Devil (and not by way of surrender) made by one,
that perty right to a Coppelnoz, to one that is in possession thereof, by law-
ful abstinence shall be effectual to extinguish that right, and to es-
stable the possession of the party to abstinence, because in such Case the
Lord cannot suffer prejudice, for that he perty his Fine; but if a Copel-
holder...
holy. he ante by thing, there his relese by him to the distinc, up
up other wrong does shall not transtef his right, nor any harm for
him thereof, because that would tend to the presence of the Lord,
being a thing profan to the Lord might lose his Fined her service,
and there be releas by him to the same, is utterly void, 66.
15. If the Lord a Copy-hold Manor, alien the inheritance of one
of the Copy-holders to another, that shall not alter the nature of the Copy-
hold, but that it shall be retained the quality of Copy-hold to descend
to the next heir, 66, 66. Custom having once established and now that
Statute, it cannot be changed by the Act of the Lord; neither is it so
reason, that the Act of the Lord and the alien the lands in that Case pre-
judice the Copy-holder, who is a stranger; 66, where such a Copy-hold
after such transfers as if from the Owners can never afterwards be
conveyed by furmurer, or otherwise, but must still be left to uncense,
16. If a Baronet in his Widows-hand retain a Cabin at accordance
with the Statute 21. H. 8. c. 13. and after marry a Part of the Realme;
Abid this tenant to be his own title to the Act, yet shall not such
Marry to be a Couternour of the realme; 65, 65, 66. for, after also age, 66.
17. Eneries at Wills, or other particular Leases or occupies of
Lease cannot by the Alien By that, that take the Inheritance. In
Rookes Case.

... in A. 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18, 18,
Max. 86. The Common Law.

Joint-tenant
Release.
Continuance, 23 A judgment in debt is given against joint-tenant for life, who released to the other, two Jews, the Receiver enters, the Plaintiff gives execution; and in this Case, it was adjudged, that notwithstanding the death thereof, and that the Land entered, and is in the ancient right; yet as to the Plaintiff the estate both continues: And if the Baron sighed of Rent, Common, &c. in the receipt to the Terrent, that Rent, Common, &c. subsists: And yet having regard to the Feme they have continuance: for the Feme be thereof and voted, as it is adjudged in § 3. Dower § 35 &c.


Res is in esse after release, 24 Dirwell and his Wife, a Lillington and the Northcote, a heald of the Rector of Lillington in Com. Bess; the Commoners cannot make charge of £1, per an. for several to live to continue after his marriage and, proviso, quod non expendit ad one any persons, the Commoners; &c. and then also enter the Rector to Dirwell having his suits into the Remainder to Lillington, &c. acknowledge the recognizance to Duncombe of £50 l. In the nature of a Statute, that according to the statute of 23 H. 5, &c. Dirwell and Lillington relations. Dirwell and Lillington, Geo. C. of the Clerk of the Star, who certifies the recognizance, thereupon the rent was enhanced, and was not made payable into Duncombe, who siendo an action of debt against Lillington (who at that time was tenant of the Rector) and Duncombe, and he has the title of Dirwell. And it is not enough; that by the Duncombe, &c. to the tenant, and that the title to this tenant, and the Dower of the tenant to the suit, and relations in the title, tenant and the Dower shall be sometime, &c.
The Reason of Max. 86.

27 A Proctor, Administrator, composition. who had judgment of it, for 60. this under-hand composition shall not prejudice another creditor, that is a stranger: For an Executive and Administrator ought to execute their office lawfully, in paying all duties, debts, and legacies in such manner as the Law requires, truly, in contriving nothing to their own use, diligently, with negligence temper habit infortune comitem; And an Agreement between two shall not answer a third person. See Goodall's Cate, Co. lib. 5. 96. supra B. 9. ex 8.

26 If the obliger make the obligee his Executive, this is (in Law) a release of the debt: because it is the Act of the obligee himself, and with this according E. 4. 3. 21 E. 4. 2. b. Cc. But if the Archbishop Grant letters of Administration to the obligee, this shall not extinguish the debt, but it shall still remain; for, the Act of the Archbishop and the obligee shall not being the same, who is (in that Cate) as a third person.

25 It appears by the preamble of the Statute of 22 E. 4. cap. 7. (which gives Licence of enacting several lands in forests, &c. seven years after they are least for the better preferring of the wood from cattle) between what persons and for or against whom that Act was made: Any two parties to that great cause by Act of Parliament are, the submarines, lands, &c. within forests, chases, and peltresses, on the one part, and the King and other owners of forests, chases, and peltresses, on the other part: so that the Commons are not any of the parties, between whom that Act was made: And therefore being Strangers unto it ought to receive no prejudice by it: So likewise the Act of a Bishop being made between the King and the Priores aliens (whereas the Priores aliens was given to the King) shall not extinguish the mortgage of the peltress of Cattle- acre, which he had out of a Rectory parcel of a Priores alien: Albeit there was not any taking in the Act; But M. 45, Act of Bish. in Hostells Cate in Captain Wardonom, it was repulsed; that whereas an Act made any some part against the King &c. any other person of England in certain, this shall not take a longer nightight of any other, except having in the Act to prevent it (which the Commons have not done). See Goodall's Cate, Co. lib. 5. 96. supra B. 9. ex 8.

24 If the Act of the Bishop of Huntington being the 1st of 22 nace of a Rectory unto which was added an open grant of some particular of the Bishop's, that the mortgage became void within the term of the Act in this Case, it has resolved, that the said (understanding the Act of the Rectory, and as to the grantee it was made) the preacher, avoidance infra Q. 4. 56. 12. 13. 14. 15. 3.

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the Common Law.

333

to the Assizes in termes, was a barre, but not as to the Frei, who was a stranger unto it: And therefore if there be Baron and Frei, tenants in special terms, the Return to the Donor, they have [not], the Baron lodis a fine with proclamations to a stranger and dies, the Frei enters: In this Case the Frei hath defeated the whole Estate out of the Countess, and cruelly on the Estate table in herself, the immediate return to the Donor; and hath left nothing but a possibility in the Countess: for the practice between the Baron and the Countess that not barre the Frei, of her right, who is a third person.

31. Half of an house in London for 31 years, bedight, that Isabel her wife shall enjoy the profits thereof, during Visitation, and that the residue of the term should remain to B. and dies, Isabel by licence of the executory enters into the house, and purcahsethe her, and that married C. Inhererupon B. enters; and it was resolved, that he might do so; for albeit the whole term was in Isabel, quosquie, &c. so that by the purchase of the Freisample, the interest of Isabel was exting, yet that shall not defeat the executory Interest of B. but that after the marriage of Isabel, and not before, he may well enter, &c. Hammington and Kudynar Cale. Tr. 38 Eliz. 1674. cit.e per Co. Ch. Just. ubi in margin.

32. Whereas the Act of 32 H.8. cap. 46. secludes, that the King shall appoint two to be Liminaries of the Court of Wards, who shall be accompanied as one Office. In this Case, the King cannot appoint only to execute that Office: for that would be a wrong to the subject, who by force of that Act are concerned in the appointment of that Office, according to the said Act, &c.

33. After a popular Act was commenced, albeit the Kings Attorney will enter, Uterius non vult profequi, or if the defendant plead a special plea (whereas the Attorney-General must to reply alone) albeit the Attorney will not reply as proferea for the King, yet the Informer may prosecute for his part, because the Informer by commencing that suit hath made that Action, which was popular, to become his private Action, which nother the King nor any other can relitigate, as to the Interest of the Informer. Tr. 31 Eliz. Stretton and Taylers Cale. cit ubi in margin.

34. The Tenant will sue a Precipice in Capite in the Kings Court for such a term as is helden of another Land, the Lawe will not suffer it, but had Rulzampl (as in that Cale) have a right out of the Chancery necessarie the Judgments of the Common Place, commanding them, that it shal not appear unto them, that the Leases are holde of the King, but of another Lord, that they shall not proceed farther, &c.

35. All tenant for less term of years, life, in Dower as by the Countesse, of some succession to the Church, &c. and the term determined, at the youngest issue, he in the succession who is heir to the Successor, that last, practised, shall have such de damnum peregrinum, as he be sufferer, from the other tenant, to whom he himself was lessee, suffer an Espumation; to whom he shall not have such an Article, &c. because (as it seems) it will be than imposed to the Lessee folly that he must not understand the tenant from doing, by the Covenant, &c.

36. If the De damnum peregrinum between two strangers, the Article was tithe for another stranger that was not party to the suit. In this Case the party that has a right to the Bishop for the Vices, albeit he was not party; for, the suit is, Quis advicat utimam praemunit vit, &c.
The Reason of

F.N.B. 61. b.

37 In a real Action, if the tenant make testment, hanging the Plea, and the Demandant is in doubt, that it may be committed, etc. the Demandant may have a writ of Effrepement, both against the tenant, and also against his executors, etc. And it seems by the same reason, that he may likewise have a writ of Effrepement against the tenant, and also against those that are his tenants, naming them by their names, etc. Albeit they have nothing in the tenancy, etc. Tamen quare.

F. N. B. 136 online.

38 In a Perambulatione facienda, if it be made by the consent of both parties, being tenants in fee-simple, it is binding to them and their heirs; but if tenant for term of life of a Seigniory, and another who is tenant in fee-simple of another Seigniory adjoining, for such a writ of Commission, whereupon perambulation is made; It seems, that that shall not bind him in reversion; neither yet shall perambulation made by the assent of tenant in tail bind his heir.

F.N.B. 150. e.

39 If the tenant fores-judge the Meine, get the Feme of the Meine shall be enjoined.

40 If two Parsons claim under one and the same Patron, one of them may sue for spoilage against the other in the Court Christian; albeit the profits amount to a fourth part or more: because the title of the Patronage comes not in debate: But if they claim by several Patrons, and the tithes, or profits, or pension spoil-ed amounts to a fourth part or more; then it is, as much as the Patron of the Patron graced (being a stranger) may suffer prejudice, be shall (in that Case) have an Indicativ 0; Prohibition to remove the said into the Kings Court, there to be tried at the Commons Law; because then the title of the Patronage will come in debate, etc. Vide Statute VVest.

Fi. Co. 31. a. 1.

41 If a man demise land to A. for life, the remainder to B. for life, and if A. die, that then C. shall have the land, during the life of A. this demise is void, for the prejudice of the particular Grantor; for things done in prejudice of others shall be void: So in the Case of 21 E. 4. where the King had granted to an Abbate, that he should not be Colleger, when any tenth were grant-ed per Clerum Anglicum: And then the Clergy of the Province of Canterbury had granted a tenth to the King, with a Provisle, that no College; which the Bishop would not return. Would be discharge by any Letters Patent of Erection made by the King; And the Bishop returned the said Abbate Colledge; Now there it is obvious, that the Grant made by the Clergey in that point, viz. to charge persons exempt is void; because it is in prejudice of others; And so alfo the above-said remainder to C. shall rather be void, then a Stranger shall suffer prejudice by it.

Co. Inf. p. 117. 8. 1. 59. 1.

42 If a Mil lain purchase Land, the Lord may sell it, etc. but if he purchase a common Fains number, the Lord, shall not have it; for the Lord may surcharge the same, and that would trench to the prejudice of the terre-tenant, who is a third person: there is the same Law also of a Corodie uncertain, granted to a Mil lain, and of all other such-like uncertain Inheritances.

Co. lb. 108. b. 1.

43 If the tenant be dissised, and the dissision in a writ of Meine fores-judge the Meine, this shall not bind the dissision; so likewise if the Meine be dissised, and a fore-sentence is had against the dissision, this shall not bind the dissision; for the points of the Statutes Vvest.

2. cap. 9. 103. Quaando tenens fine prejudice alterius, quod modi juris, alterius, ex poecele capitali Domine.

The Lord shall not be common in number.

The Act of a Differ for no prejudice.

44 Ance
the Common Law.

44 Admissions made by Dissentors, Abaters, Intruders, Tenant at sufferance, or others, that have not their titles, are good and effectual in the Law: For it is no reason, that the Loans competitors for the title of the Plaintiff, should by any Act they do prejudice theCopthold Tenant, who are strangers to the difference between them; for if they be admitted by any, who is Dominus pro tempore, it sufficeth: howbeit such wrongdoers cannot grant voluntary Copies.

45 Let us suppose a Fine, come ecc., &c. to a Dissenter; this is a privation, and he in remembrance of reversion shall take advantage of it: Vide plus, ibid. It is said, that if the Dissenter leaves a Fine to a Stranger, the Dissenter shall retain the Land for ever: For the Dissenter against his own Fine cannot claim the Land; neither can the Common enter, for the right of the Common cannot be transferred to him, but by the Fine the right is sole, and the Dissenter shall take advantage thereof.

46 If there be Lord and tenant by divers tenures in Night-serf, and the tenant is dissented of the one, and the Dissenter with others, and the tenant with those of the other, his heir within age, the Lord retells the Boopy and Lands of that Plaintiff, and after the heir at his full age recovered the other Plaintiff against the heir of the Dissenter: In this Case, the heir shall pay relief for the Plaintiff recovered; and the descent case shall not hinder it: So, res inter alios, &c. And so one Lord of the heir of one tenant shall bothwardship during his minority, and also relief at his full age.

47 If a will be made a secular Chaplain, yet his Lord may seize both him and his goods; and albeit the Lord cannot seize his will that is profess in Religion, nor his nephew that is married to a Free-man; nor this, because Seizure is honorable and indivisible; not that, in favour Ecclesi, and because then he cannot live according to his Profession and Religion; yet in both these last Cases, the Lord shall have his Action in his Case, and shall recover what he is committed; for albeit the Profession and Seizure were lawful; yet when they work a prejudice to a third person, an action lies against the Sovereign of the house and the husband. to the value of the l. a.

48 The Ordinary was sued, after the administration committed, in plaint of a Debt at London, and Nihil habet being returned, upon suggestion the debt was attached in the hands of one xv. who was indebted to the debtor, and after four default of the Ordinary, being relitig, non est inventum, and Debt made that the Debt was due, the Plaintiff has judgment and execution against the said xv. against whom the Administrator also brings Debt, who pleads the matter supra, whereupon the Plaintiff demurs, and it was adjudged, that he should recover: for after the administration committed, Debt was not either against of for the Ordinary, and (indeed) it lay not at all until xvii. 2. 9 which is within memory, and cannot make a cause; And it stands not with reason, that the above settings of strangers should bebarre the Plaintiff of his due Debt. Tota Calis.

Ordinary, Administrator.
The Reason of

Max. 87.

87 Nemo puniatur pro alieno delicto.

1. In a Replevin, the Defendant cannot claim property by his Bailiff or Servant, because if the claim fail out to be false, he that claims shall he liable for his contempt, which the Lord cannot be, unless he make claim himself; And, Nemo puniatur pro alieno delicto.

2. A Guardian shall not be punished for waste done by a Stranger, it is to penal unto him; for he shall lose the wardship both of the body and of the land, though the waste be but of the value of twenty shillings; and if that sufficiently not to satisfy for the waste, then he shall recover damages of the waste, over and above the loss of the ward, And, Nemo puniatur pro alieno delicto.

3. By an Eliz. by his Letters Patent grants the Office of the Clerkship of the County-Court of the County of Sommerset to Miston, and then constitutes Arthur Hopton, High Sheriff of the same County, who grants that Office to another, and (upon Miston's complaint) it was adjudged that he might: As one of the reasons of that resolution was this, That in all writs to remove any Pisa out of the County Court into the Common Places, the King calls the County-Court, the Court of the Sheriff; and if the Sheriff do not by force of such writs certify the Record, then shall that proceed inconvenience in contempt against him and if the Record be impleaded, the Sheriff shall answer for it: And therefore it will be of danger and damage to Sheriffs, if others shall be appointed to keep the Entry and Rolls of the County-Court, and yet the Sheriff to be liable to answer for them, as immediate Officer to the Court: So, Nemo puniatur pro alieno delicto. And therefore the Sheriff ought to appoint Clerks under him of the County-Court; for which he shall at his peril answer, &c.

4. In Folters & Myles Case, P. 8. Eliz. in Com. Banco, Rot. 820. It was laid, that if Leslie for years devolved his term to another, and makes his executor, and dies, and then the executor make waste, and after attend to the Device; In this Case, albeit between the executor and the Devisee, that hath relation, and the Devisee is in by the Devisee; yet an action of waste shall be maintainable against the executor in the tenures: So likewise if the Grantee of a Term upon Condition make waste, and after the Grantor enters for the Condition broken, the action of waste shall be maintainable against the Grantee in the tenures, &c. 30 E. 3. 16. accord.

6. At a Lect the Tabernacle was jointly fined six pounds; because they would not present according to their duty, &c. And it was resolved that the Fine so imposed upon the Jurors jointly was not legally imposed; because the refusal of any of them being mutual and personal, and the refusal of one not the refusal of another; the Fine ought to have been assessed upon them severally, and not jointly; for, if some of them did refuse, and the rest were ready to present, &c. those that refused were only to be fined. And therefor the Case put Prior fo 75. 11. 6. Examination 17, that if one of the Enqueit escape, after that they are sworn; so that they cannot give their verdict, although the rest did not attend therefore, yet all should be fined, was utterly written to be late; for Nemo debet puniri pro alieno delicto, whereunto he was neither party, privity, attending, nor consenting; because then it might be said, Curllinon fecit, Eamullus plebiscit: And it was said, that that Case was either ill reported, or ill printed.

6 If
6 If a stranger make waste of his own wrong after the suit of E-
feategement delivered unto the tenant, and against the tenants will; In-
that case the tenant shall not be punished for that waste.

7 In an Act 3. 3. 16, it falle be a merection outragious for one and
the same trespasses, they shall not join in a suit de moderata milercor-
dia, so they ought to be severally merced, albeit the trespasses were
jointly committed; so it is also in a Place except by two, if they be
non-fautes; for the mercedation ought to be severals, and they shall
not join in a moderata milercordia, because the one ought not to be
charged with the mort of the other: And therefore the course in
the Common Pleas is, when differs Defendants are merced, to
make the Crosses of the mercedations severals; Likewise, it dif-
vers Demercants are merced in a Place real for their Non-faute,
they set the Crosses severally upon them; And in these Cases, in
the Common Pleas, the course is, for the Clerk of the Warrants
to deliver those Crosses to the Clerks of Aisle, and they to the
Conners, who are to affix them, and then to re-deliver them to the
Clerks of the Aisle, and they to the Clerk of the Warrants, who
makes the Crosses, and then one of the Jutkirs of the Bench, to-
gether with the Clerk of the Warrants, goes with the Roll of the
Crosses into the Exchequer, and there puts them in before the Bar-
ons of that Court, from whence they file to the Sheriffs of every
respective County to be used for the Kings use, and the Ofs-
cer in the Exchequer, that serves them, and so prepares them
for every severable County, is called the Clerk of the
Crosses.

8 In an Audita querei, brought by two, concerning the per-
sonalty, the Non-faute of the one is not the Non-faute of the other,
because it goeth by way of discharge and freeing of themselves;
And therefore the default of the one shall not hurt the other.

9 In Debt against two Executors, one appears and confesses the
Action, the other makes default and Judgment to recover de bonis
Tettoratis, in both their lands; to which purpose a Fieri facias taxes
out to the Sheriff, who returns riens; but that he who made default,
has waited before the receipt of the writ, whereupon a Scire facias is
issued out against him only that he had the goods, and be
making default, upon Scire facias returned: Execution has a
warrant of his proper goods only, and not of his companions.

10 In a suit de Peglis acquietandis, the Plaintiff counts that he
was bound with the Defendant as his surety, and at his request to a
stranger by Bill Obligatory, and that at the day required the Creditors
was not paid by the Defendant, whereupon at the Creditors suit the
Plaintiff was arrested and imprisoned, &c. And the Defendant
cognovit A. Siorn, whereupon Judgement was given, quod acqüiet-
the Plaintiff versus the Creditors of the sum and damnaages alluded
by the Court, &c. Vide F.N.B. 374.

11 The Statute of Wall, 2. 35. (against ravishment of Wards)
both two apear in it, one civil, another criminal; viz.
provides, that the Executor shall answer for the parties; sed non quoad pernem
prison, sed Nemo pro alieno facit puniti, &c. It is as if a husband and wife: For
albeit the wife be only guilty, yet the hus-
dand shall answer the commages, but shall not be subject to absin-
uation, or immediate Imprisionment, which is to be perpetual.
whereby, to the mediates Impisonment, viz., upon a suit of Ex-
cution for the commages and the value of the Marriage, &c.

25. 3. 16.

A writ to an

guiturection.
The Reason of

Max. 88.

shall be liable, as in other trespasses, where the will only is guilty of the fact.

88 The Law favoureth things done in another's Right.


S. 2. 1. If in no persons are disabled in law to be private Attorneys to deliver feoff; as Spencers, Inlands, Femes covert, persons attainted, outlawed, excommunicated, Alien, Aliens, or, may be Attorneys: So a Feme may be an Attorney to deliver feoff to her husband, and the husband to the wife, and he in the remainder to the Leese for life: And the reason hereof is, for that the Attorney hath nothing in his own right, but in the right of another.

Co. 15. 3. If the Leese for life make a new of Feoffment, and a Letter of Attorney to the Leese to make Liberty, and the Leese maketh Liberty accordingly; notwithstanding such making of Liberty, he shall enter for the forfeiture; because he void it in another's right, and the Leese for life had Freehold, whereas to make Liberty: It is otherwise of Leeses for years, because (in that Case) the Freehold being in the Leese, and not in the Leese, the Leese cannot do it as Attorney to the Leese, etc.

Co. 2. 2. If the Leese, or Letters make a new of Feoffment, and a Letter of Attorney to the Leese for years to make Liberty, and he void it accordingly; this will not void or extinguish his Leese, because he did it as a Minister to another, and in another right; and that is accounted (in Judgement of Law) the act of the Feoffor; and not of the Leese, neither doth both the Feoffor claim any thing from the Leese, etc.

Co. 3. 4. If the tenant declare, that the Lord shall fell the Land, and birth, and the Lord believe it accordingly; yet the Seigniorie shall fall already; because the Lord shall fell the Land in another's right, etc.

Co. 18. 4. If a Guardian in socage shall not possess his Interest by Delegation, or attorney of Falely or Treason; because he hath nothing to his own use, but only to the use, and in the right of the heir, whole Guardian he is.

Co. 14. 4. As (after the Statute of 1 R. 7, cap. 1 and before the Statute of 7 H. 6, cap. 10.) Estigmagy we had written, that his Wife should fell his Land, and made her Execute it, and also, she had taken another husband; and in that Case, the might have sold the Land to her husband, for the both it in overtook, and, her husband would never have had it by the Deviser, etc.

Co. 113. 3. As a man declare, that his Executors shall fell his Land; In this Case, the Executors have no Stake or Interest in the Land, but only a hand and naked power; yet this Feoffment amounted to an allegation to fell, the Land to the Feoffor; for they do it in their right, and the Feoffor shall be in by the Devisee: So like wise if a man appointeth that a Reversion or other thing that he has in grant, shall be held by his Executors, they may fell the Land without Dower; for the right will be in by the Devisee, and not by the Executors, Causing, etc.

Co. 18. 3. 8. As a man be Lessor of a Wills (of life, for years, etc.) at will, a the Wills is purchased the terms in fee, if the Leesor unres the land then shall

Attorney to deliver feoff. Per son dis abled.

Attorney a deliver feoff.

Leese for years.

Devile.

Guardian in Socage.

Sale by Feme to Baron.

Devile of a Reversion to be hold by execu tors.

Villain.
Bull hold the Lamps as a perquisite to him and his heirs tototer; For the Law respects the quality and not the quantity of his Estate; But if a Bishop hath a William in right of his Bishoprick, and he purchase Lamps, and the Bishop entereth, the Bishop shall have his perquisite to him and his Successors not to him and his heirs; so it came into his hands as in another right: So if Executors have a William for years, and the William purchase Lamps in fee, and the Executors enter, they shall have a fee-simple, but it shall be a trust in their hands: For they have it in right of the Lezato, etc.

9 A William may (as Executor) have an Action of debt against his Lord, because it is not to recover a debt to his own use, but to the use of the Lezato; neither yet shall the Lord take out of the possession of such William, (who is Executor) the goods of the deceased; because he is possessed of them in another right: And if the Lord do take them the William shall maintain an Action of trespass against him; and therein recover damages against him to the use of the Lezato, etc; for they shall be alized in his hands, etc.

10 An Executor or Administrator such an Action, out-laying in the Plaintiff shall not sit-able him, because the suit is in utter drie, viz. In the right of the Lezato; and not in his own right; Am for the same a Spoo, and Commonalty shall have no Action, though the party be out-laid, etc. So it is also of one communicated.

11 An Abbot, Prior, or Vicaralle Alien, shall have Actions real, personal, or mixt for any thing concerning the possession of goods of his Sonacery here in England, although he be an Alien brake out of the Kings Allegiance, because he brought it not in his own right, but in the right of his Sonacery, and not in his natural, but in his politique capacity.

A Monke &c professed in Religion.

12 A Monke or any other professed in Religion within the Realms shall have an action in some Case, as if he be made an Executor, or if he be an Administrator, he shall maintain an Action, not in his own right, but in the right of the dead: So if a Monke be made a Bishop, or a Parson, or a Vicar, he shall have an Action concerning his Bishoprick, Parishage, or Vicarage, &c de similibus: Likewise an Abbot, or Prior, or any other Sovereign of an house of Religion, albeit they be profest and therefore dead in Law, yet by the policy of Law, they are persons able to purchase, and to inplead and to be implicated, to sue and to be sued, for any thing, that concerns their house; For, do they do it in utter drie, and otherwise their house might be prejudiced, and other men also of their lawful actions; And this is the ancient Law of England, as appears by the Mirrour (c. 2. §. 14.) In these lewse Desbiens des gens de Religion, appent l'Action al Chiefe en son nomine par lay & son Covent: Allo ha Monkes, &c, se bewomen, beaken, imprisoned, &c, the Abbot and the Monke shal in that Case sone in an Action against the wrong doer; and if the whik he ad Damnum ipius Prioris, the whic is good, &c, if tis ad Damnum ipsum, it is god also: Likewise if a Monke be falsely and maliciously intided of Kapi and Robbery, and afterwards lawfully acquitted his Sovereign and he shall sone in a suit of conspiracy, &c the like: And what is here spoken of a man professed in Religion, is also to be understand of a Monne sanctimonialis, mutatis mutandis.

13 If A be bound to the Abbot of D.A. is professed a Monke in the same Abbey, and after is made Abbot thereof, he shall take an action of debt against his own Executors, etc.

14 Regularly, in personal actions there shall not be tannouns and tolerance, for the non-act of one is the non-act of both, etc. Robinson.
The Reason of

15 If an Infant be an Executary, upon payment of any debt, due to the Executor, he may make an agreement; because it is in such cases but (in that Case) a release without payment is sold, &c.

16 Albeit Baron and Feme (as Litchlen faith, 129) be one person in Law, so as neither of them can give any Estate to Interest in the other, yet if a Charter of feu-feo be made to the Wife, the Husband, as attorney to the Seantor, may make liberty to the Wife; and a Feme covert, that hath power to sell a Norm by will, may sell the same to her Husband; because they are but instruments for others, and the Estate passes from the testator to the devisee.

17 If a Land be given to two Abbotts and two Succeedors, they shall not take by fideitio, but are ab initio Tenants in Common: for albeit the words be joint, yet in regard of their several capacities, whereby they hold it in several acts of right, the Law both advises them to be severally seized: So it is also of a secular barony, to compose, as if Lands be given to two Bishopps, to have and hold to them two and their Succeedors: Albeit the Bishopps were never any persons in Law, but always in capacity to take: Yet being they take this purchase in their politicke capacity, as Bishopps, they are pedantry Tenants in Common: because they are seized in impartible rights, &c. The like Law is of two Parsonns, and their Succeedors, as many other such like Ecclesiastical ba, politiques, or Incorporate, &c.

18 If a Land be given to an Abbot and a secular man, to have and hold to the Abbot and his Succeedors, and to the secular man and his heirs, they are Tenants in Common, in respect of their several rights and capacities: So it is likewise if Lands be given to the Baron of Dole and a Layman, to have and hold to the Parson and his Succeedors, and to the Layman and his heirs: So also of a Bishop.

19 If a Land be given to John Bishop of Norwich, and his Succeedors, and to John Over-all Parson of Diancey and his heirs, being one and the same Person: In this Case, he is Tenant in Common with himselfe.

20 If a Land be given to the King and to a subject to have and hold to them and to their heirs, yet they are Tenants in Common and joint-tenants; for the King is not held in his natural capacity, but in his Royal and politique capacity, in Due Corone, which cannot stand in jointure with the dition of the subject in his natural capacity: So likewise, if there be two joint-tenants, and the Common Residuary of one of them, the jointure is thereby severed, and they become Estates in Common, &c.

21 If there have been Lord and Covenant, and the Covenant bound the Land for his reasonable Rent with clause of re-entry, &c. And the Cate (at the Common Law) neither the ligature in now (as the tenants), or the ligature in Now (as the Lord by rent) could take advantage of the re-entry: Bobwell (at the Common Law) Guardian in Chivalry of in socage might in the right of the heir take possession of a Condition by entry; or re-entry, &c.

22 If a man make a testament in fee with Comission, that the feoffee shall not alien, this Condition is repugnant and void: but (in other things)
that a man by licence may give land to a Bishop and his Successors, or to an Abbot and his Successors, and upon Condition to it, that they shall not without the consent of their Chapter or Convent, alienate because it was intended a Mortmain, viz. that it should for ever continue in that use or house for that they had in utter droit, for religious and good uses, as was pretended, &c.

23. If a Feme creditor take the voids to Husband, that is a release

in Law of the debt: but if a Feme executrix take the voids to Husband, that is no release in Law: because the party the debt in another's right, and that would be a wrong to the woman, and in Law work a dereliction, which an Act in Law shall never work: &c. In Sir John Nethams Cafe.

24. Upon Plea administrativi pleaded by an Executors, Et istant rieux

inter mains, if it be proved, that he hath goods in his hands, which were the Executors, be may give in evidence that he hath payed to that value of his own money, and also not plan it speculim: because what he do in that case, was in another's right.

25. A matter of a Hospital, being a sole corporation, by content

of his Brother, unless a lease for years of part of the possessions of the Hospital after the term the Acts for years to make Maker: In this case, the term is not released: a man cannot have a term for years of his own right, and for the hold in utter droit to consist together as if a man Lease for years take a Feme Lees to Wife, &c. But a man may have a free-hold in his own right, and in utter droit. And therefore if a man Lease take a Feme Lees to Wife, the term is not released, but he is possessed of the term in her right during the coverture: So if the Lessor make the Lessee his Executors the term is not released: Causa quae supra: But the in the case first put, if it had been a corporation aggregate of money, the making of the Lessor matter hath not evacuated the term: no more then if the Lessee had been one of the Brothers of the Hospital: because he then had the free-hold in utter droit together with others, &c.

26. A Parish or Vicar of a Church because he is settled in right of his Church, for the benefit of the Church and of his Successor is in some cases nipple in law to have a fullimple qualities, but to no thing to the prejudice of his Successor, and many Cases: the Law authoritie have to have in effect but anOnChange to the: Causa Ecclesie publicus causis equiparatur, et ius naturae causid, quidse Religione facit, et Ecclesia fungur vice minorum: Meliorem facere potest Conditionem suam, deere sem nequeatur: &c. His administration of the Globe makes no infinite creation, &c.

27. The Wife be possessed of Chattels real in utter droit, as

Corpus et Administrator: or in Docage, &c. and the heirs-married, the Law makest no gift of them to the Husband, although he survived her: In the same manner if a Woman grant a term to her own wife, and then takeeth Husband and birth, the Husband for which shall not have his right: but the Successor Administrator to the Wife, for it consisteth in point: And so it was resolved by the Judges, P. 32 Eliz. in Cancell, in Widham Cafe; H. 38. Eliz. in Cancell, in Waterhouses Cafe, &c.

28. In a Feme executrix of Chattels personal in her own right, and she taketh Barow: In that Case, that marriage is an absolute
gift (in Law) of all such Chattels, whether the Husband take the Wives, &c.; But of personal goods in utter droit, as Executors, or Administratrix, &c. the vynderow to gift all them to the Husband, although he survived his Wife. But as personal goods (in Law) Barow
Baron and Feme) there is a diversity worthy of observation; between a property in personal goods (as is above said) and a bare possession; for if personal goods be bailed to a Feme, or if the goods, or if goods come to her hands as Creditor to a Bailiff, and she taketh an Husband, this bare possession is not given to the Husband, but the action of detinue must be brought against the Husband and Wife; because the possession which the path is in utter droit, &c.

It is to be observed, that in all cases which Littleton putteth in the chapter of Warrant, concerning infeudal and collateral Warrant, the heir is still mentioned to be bound by them, he never making once mention of the Successor; from whence it may be inferred, that the Successor conceiving in another right, shall not be bound by the Warranty of any natural Incestus: And therefore in a Jurs urum brought by a Parton of a Church, the collateral Warranty of his Incestus is no barre, because he demaneth by Land in the right of his Church by his politique capacity, and the warranty delivered on him in his natural capacity: And albeit some have holsten, that if a Parton being an Alle, that a collateral Warranty of his Incestus shall bind him; because the Alle is bound of his own possession and feoff, and he shall recover the mean profits to his own use; yet seeing he is father of the Free-hold, whereof the Alle is bound, in Juris Ecclesiæ, which is in another right than the Warranty, it seemeth to be no barre in the Alle: And of this opinion my Lord Cooke seems to be: because he produceth it in a case, according to his own Rule, &c. The like law is of a Bishop, Arch-deacon, Dean, master of an Hospital, and the like, of their sole polt. Acts; and of a Prebend, Vicar, &c.

If there be Lords and Lemain by fealty, and two fiddlings Rent, and the Lords by Incroachment, (viz. by the voluntary payment of the Lemain) happens feoff in more Rent: then he ought to have, the Law both to greatly favour feoff and possessions, that neither the Lemain nor his heir shall avoid the feoff, so has by Incroachment, in Avowry: Nevertheless, if an Abbet hold by fealty and Rent, and the Lord increased suite by feoff of the Abbet, &c. This feoff shall not prejudice his Successor, but he shall discharge it: for there is not the same reason of the Prebendar to the Successor, that there is to Incestus to the heir, &c. As it is agreed in 4 E. 2. Avingy 204.

For almsch as an Creditor or Administrator, hath not the goods of the next to his own use, but in utter droit, to the use of the dead, he ought to execute his Office, and to administer the goods of the dead faithfully, truly, and diligently; likewise in paying all duties, debts, and legacies, that they be paid by the Law: truly, viz. to convert none of them to their own use, neither yet by any practice or device to barre or hinder any creditor of his own debt, but truly to execute his Office according to the truth required in him; diligently, Quia negligentia semper habet inornatum co-munem, &c.

The Bishop who is an Creditor appointed by the Law, is not permitted by the Law to make a releas of debt or gift of goods: for he hath a special property in the goods of the dead for the benefit of the dead, and nothing to his own use; and it appears in 9 El-Dier 253, that the Ordinary hath not power to give authority to another to sell the goods of the dead; because he hath not any luce authority himself: And the Statute of Wills 21 & 22, Bona deveniunt ad manus Ordinarii diponenda, viz. for the good of the dead: And he is not much unlike (as to that purpose) an Administrator; duration minorc ware, who hath special power committed unto him to dispose of the goods of the dead.

Parson, Warrant.

No bare in Juris urum, or Alfé.

Land and Tenure.

Suic of Cant. Abbot.

Executive.

Administrator ought to execute his Office lawfully, &c.
the Common Law.

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38. The Law dif-favoureth other persons, as Villeins, Bondmen, Our-lawes, Ex-leges, men in Exile, Aliens, and especially Aliens, that are enemies.

1. It is principal. Challenge to the Pol, that he is a Villein or Bondman: Also upon the trial in a vicit of right by battaille, the Champion must be a Free-man and no Villein or Bond-man: And this is proper defectum.

2. A Villein can hold nothing (either Law or Goods) in his own right: so, Quicquid acquiritur ferto acquiritur Domini, &c.

3. In the Reign of King Elfred, and until a good while after the Conquest, Out-lawed was esteemed in Law a grievous punishment; so that none was in those times out-lawed, labv only for felony, the punishment inwards was death; And therefore in ancient time (as appears by others in Books, and Receops.) In out-lawed man was said to have Caput Lupinum; because he may be put to death by any man, as a Wulf that hath a beast might: Utgaus & Wiviate capita habent Lupinum, quod ab omnibus imperet poterat amparari; meritò enim sua legc debent perire, qui secundum legem vivere reclusit: Any another fault, Utgar per fulloigne liens iten pour Loup, & est crable Male: thead, pur ecq que Loup est beasts hay to tous gens; & de ceo ca avan jut a aucun de l'oeire ou luer del Loup, dont couteffo folioite de porter les

4. It is probable, that the Lord of a Copie-hold Mortor, who takes a Larrament to the use of another, hath onely power to grant it according to the use of the Larrament, and not to the use of Amy Stranger, as it is holden in the 4. Rep. fol. 28, in Weltwickes Case.

33. If the Oblige make the Obligo; his Executor, this is a relates (in Law) of the debt; because that is the Act of the Oblige himselfs, if it a Commission of Amnification be granted by the Archbisp to the Obligo, that shall not extinguish the debt: because then he hath the debt in another's right, and for the god of the deed, &c.

4. As a man present to an Aboludion, and after lets it for term of yeares, and after the Church is sold; and the Lentent for yeares presents, &c. And after the incumbent dies, and Leiso presents, and is disturbed: In this Case, it seems he had not have an Affile de darrein presentment; because the Lenam for yeares presents in his own right: but if a Guardian presents in right of the heire, and after the incumbent dies: In that Case, the heire had present, and if he be disturbed, he shall have an Affile de darrein presentment; because the Guardian did it in utter droit, viz. in the right of the heire, &c. This seems to be the opinion of Fiz. Pobwell it is resolved in the 5. Report fol. 97. in the Countesse of Northumberland Case, that the presentation of the Grant of the prohience possession is sufficient title in a Quare Impedit for the Grantor and his heires: because he held it in the right and title of the Grantor; So it is also of Leiso for yeares, life, Lentent in Dower, Countesse, Guardian, Lentent by Statute, &c. And with this agrees others opinions in our Books, viz. 7. E. 4. 22 E. 4. 9. b. 16 H. 7. 18. a. 9. H. 7. 23. Br. Quare Impedit, 12. 13 El. Dier 300.

35. In next brought by two Executors the one is summons and seuered, and afterwards he, that was seuered, dies, and the Defendant pleads this in abatement; In this Case, the wit shall not abate; because either of them Act in other's right.

Max. Aq. 9.
4. Witlemage is such an exception in any plea brought by the Wife against the Lord, that it shall make the writ abate; so that he shall not have a resummons or Re-attachment, as in Case of the Eommunication, &c.

5. If a man be outlawed in Estales, debt, or any other Action he is thereby disabled to serve of a Jury; so that it is a principal Challenge to the P. viz. proper delictum; because he is Exile; and therefore is not legalis homo.

6. If a man enriched or banished beyond Sea (viz. by authority of Parliament, or in Case of abjuration upon an Ordinary proceeding of Law) is in the nature of a man in Law: And therefore in such Case his Wife may sue to be found without him, as in Case when a man enters in Religion and is professed a Monk, &c. Thus it was in the Case of the Wife of Sir Robert Belyn, one of the Judges of the Court of Common Pleas; for, during his banishment: being yet alive, he brought a writ in her own name, whereupon one said,

Ecce modó minum, quod famina ferit hæc Regis, Non nominando virum conjunctam robore Legis.

Do likewise E. 3. brought a Quare Impediment against the Land Maltravers, and after that H. 4. brought a writ of Ward against Sibill B. during the exile of her Husband: The like was also assuages at the Parliament held in Craitinnu Epiphaniu Ann. 10 E. 1. in the Case of Margery de Mole Wife of Th. of Weyland, being the years before abjures the Realm for felony, &c. Howbeit if the Husband by Act of Parliament have judgement to be exiled but for a time (which some call a Relegation) that is no civil death; but abiration (in 8 E. 2. Coron. 425) is called a divorce between the Husband and the Wife: And therefore in that Case the Wife may sue and be sued, &c.

If Allen, Christian, or James purchases houses, lands; tenements, or hereditaments to him and his heirs, albeit he can have no heirs, yet he is of capacity to take a fee-simple, but not to hold: so upon an Office found, the King shall have them by his prerogative, of whomsoever the land is hovled and in that Case the Lord shall lose his Heiroy-lp: So it is also if he purchase lands and die: for in that likewise the Latv casteth the freehold and inheritance upon the King. If an Allen purchase any Estate of freehold in lands, &c. upon Office found the King shall have them. If an Allen be made tenant and purchase lands, and die without issue, the Lord of the fee shall have the escheate, and not the King. If an Allen purchase a lease for years, upon Office found the King shall have it, unless it be of an house for habita-
hhabitation, to the end he may use Perchance and Commerce; 

Wherein such an house also if he return home and leave or die, the 

King shall have it, and not his Executors, &c.

8 A man settled of land in fee farm (as an Alien, that is borne out 
of the Kings Largesse, he cannot be beare proper defectu subjectionis, 

albeit he is borne within lawful marriage: And if he be made Deni- 
zen by the Kings letters patents, yet cannot he inherit to his father 
or any other: But it is otherwise if he be naturalized by Act of 
Parliament: for he is not then accounted in law Aliengena, but In-

digena.

9 When an Alien is made Denizen, the issue, that he hath after- 
twards shall be heirs to him, but no issue that he had before: So like-
twise if an Alien committet into England, and hath issue two Sons, 

there two Sons are Indigena, subjects bojone, because they are 

borne within the Realme: and yet if one of them purcahse lands in 

Fife, and within without issue, his Brother shall not be his heir for 

there was never any Inheretible blood between the Father and them: 

and where the Sons by no possibility can be heirs to the Father, the 
one of them shall not be heir to another: It is otherwise of naturali-

zation by Act of Parliament: so if the Father be naturalized by Par-

liament, the Child had before, shall Inherit: So if an Alien of an 

English-man be borne beyond Sea, and the Child be naturalized by 

Parliament; he shall Inherit his Fathers Lands: but so he shall not, 

although made Denizen; because no Alien naturalized by Act of Par-

liament is to all intents and purposes, as a natural born subject; 

but to is not a Denizen.

10 If a man be settled at an Estate of free-hold and inheritances in 

lands, &c. and take an Alien to Wife, and die, the Child shall be 

enowed neither shall the Baron be Tenant by the courteisie: Howbeit 
it is otherwise in the Kings Cakes, &c. And Edmond the Brother of 

E. married the Queen of Navarre and died: And it was resolved by 
all the Judges; that the Child should be enowled of the third part of 

all the lands, whereas her husband was settled he.

11 It is a good plea in uti-ability of the person, that the Demen-

sant or Plaintiff is an Allein, &c. and this exception holds good in all 

Actions both real and personal against an Alien enemy, but not abso-

lutely against other Aliens: so the Law both distinguishes betwen an 

Alien, that is a subject to one, who is an enemy to the King, and one 

that is subject to one, who is in league with the King: And true it is, 

that an Alien Enemy shall maintain neither Real nor Personal 

Action, Donee terra sucerent communis, viz. till both Nations be in 
peace: But an Alien, that is in league, shall maintain personal A-

ctions: For, such an Alien may trade and trafficke, buy and sell: 

And then of necessity he must be of ability to have personal Actions: 

but he cannot maintain either real or mixt actions: So also an Alien, 

that is comprized in an information, shall have a Writ of Error to re-
fieve himself, Et sic de similibus.

12 If an Alien, that is no Alien Enemy, commences a suit 

the Tenant or Defendant may plead in uti-ability, and ought 
at law to demand Judgement, if it were responde, But if an Alien 

Enemy being a suit, he shall conclude to the Action by laying, Judge-

ment & action.

P 2

13 If
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The Reason of

33 It is a principal Challenge to the Poll, that the Juror is an Alien born, and that is proper defectum Pariz, or rather ligeance, as Littleton hath it, or Subsectionis, as Bracton.

34 It is to be observed, that it is, nec Colum, nec Solum, neither the Climate not the Soil; but ligeance & obediency, that make a man to be a Subject both; for it enemies should come into this Kingdome, and possesse a Solum or Fort, and have place there, that shall be no Subject to the King of England, though he be born upon his Soil, and under his, both Climate and Persuasion; because he was not born under the ligeance of a Subject, nor under the protection of the King.

35 If an Alien of a Country in league with the King come into this Kingdome, and here commit Treason, &c. he shall be indicted for it, and proceeded against, according to the municipal Law of the land, and the indictment shall begin and end as other indictments do; viz. the beginning shall be, Contra Dominum Regem, &c. and it shall also and thus, Contra ligeantix lex debimum, &c. Only in the whole these words shall be omitted, naturalem Dominum statum, &c. as it was resolved in Hill. 30. Eliz. in the Case of Stephano Ferrara de Giano, and Emanuel Ludovico Tinoco, two Portugals born, who coming into England under the safe Conduct of Queen Elizabeth, and living here under her protection, joined with Vado Lopez, in treason against her Majesty: But if an alien enemy come to infringe this Law, and be taken in war, he cannot be indicted of treason for it; because the indictment cannot conclude, Contra ligeantix lex debimum; To he never was in the Kings protection; no; ever sought an any manner of ligeance unto him; but made an enemy, and therefore in that Case such an Alien shall be put to death by Martial law: And so it was in A.D. 1579, in the Case of Perkin Vanebeck, who being an Alien born in Flanders,设计ed himself one of the taxes of E.4. and invaded this Kingdome, with intent to take upon him the Royal Dignity: But being taken in war, it was resolved by the Judges, that he could not be punished by the Common Law; but before the Constable and Scharchal, according to martial Law, and to he was, according to that Law, to be hanged, drawn, and quartered; and was in that manner executed accordingly.

36 Every Alien is either a friend that is in league, or an enemy that is in open war, &c. Every alien enemy is either to pro tempore, a temporary enemy for a time, or perpennis, perpetual; or Specialiter permittus, permitted in a special manner: An alien friend (long as he continues to be) may acquire by gift or purchase Lamps, &c. but cannot hold them, he may also have Leases and Goods to; Trade and Commerce take, maintain personal actions, &c. in is above said: But if such an Alien become an Enemy, (as all Aliens friends may) then he utterly shall unable to maintain any action; or get any thing within this Realm: But a perpetual enemy (though there be no Wars by Fire and sword between them) cannot maintain any Action, or get any thing within this Realm; such as are all Infidels, which are (in law) Eximen perpenni iminici; because the Law assuming that they shall not be converted (that being remote potentia) between them (as with Devils, whose Subjects they are) and the Christian, these is perpetual hostility, and can be no peace: For, as the Apostle saith, a Cor.6. 13. Que aem concordia Christo cum Belial, aut que portio fideli cum infideli? And the Law saith, Judaeo Christianum nullum fiverit mancipium: Nefas enim ci
Max. 89.  
the Common Law.  

A.  

17 In an Action brought by a Subject against an Alien, the Subject shall plead, that the Defendant is an Alien born for the benefit of the King: to the end, that the King upon Office found may tell that, whereas the Alien is fellow of Police, and also that the tenant may yield the same to the King, and not to the Alien, because the King hath best right thereto.

18 In an Action real against an Alien-born, it is a good plea in bar of the person to say that he is an Alien born, otherwise it is personal: but against an Alien Enemy it is a good plea in both.

19 A person absented is disqualified to sue any Action; for he is extra Legem, and yet he cannot be properly said to be a Stranger.
90 As concerning the ages of Infants, the Law ordeth them in this manner;
Seven, for the Lord to have aid for the marriage of his eldest daughter of that age.
Nine, for a woman to deserve her Dowry.
Twelve for a man to take the Oath of Allegiance in a Turn or Leet; and also to binde a woman in matter of Marriage.
Fourteen, the age of discretion, and therefore that a competent age to binde the man in matter of Marriage, for a Ward in Soggage to chuse his Guardian, and for a woman to be out of Ward to the Lord by Knight-service.
Fifteen, for the Lord to have Aid to make his eldest Son (of that age) a Knight.
Seventeen, for an Infant Executor to be out of the tuition of Administrators.
Eighteen, for an Infant to have power to make a Will.
One and twenty, their full age to make good any Act they do, and for a man to be out of Ward to the Lord by Knight-service.

Co.Law.p. 53, 63.

1 A wife (whether he de facto, or de jure) if the be of the age of nine years at the time of the death of her husband, shall be involved in what age her husband died, viz. although the be but four years old, ye. And the will he so old (to have Dowry) Quia junior non possis deorum promoveri, nonque virtutum suaviter; nec obstat nullem potentem materiam, viz. necessitate it is to be understood, that albeit Confestus non conatus est matrimonium, with that a woman cannot consent be-fore twelve, nor a man before fourteen, yet this inchoate and unperfect marriage (from which either of the parties, at the age of consent may allinge) after the death of the husband shall give Dowry to the wife; and therefore it is to be accounted in Law after the death of the husband, legitimum matrimonium, a lawful marriage void, domum: And (as that Case the Wife upon an instant application to the Will of her husband, Quod nuncquam fuerunt copulati legitimo matrimonio, ought to certify, that they were coupled in lawful marriage, albeit the man were under fourteen, and the wife above nine, and under twelve.

Co.ibid.

2 If a man take a wife of the age of seven years, and after alien his Land, and after the alienation the wife attains to the age of nine years; and after the husband with: In this Case, the wife shall be involved; so albeit the was not absolutely Downable at the time of the marriage, yet she was conditionally Downable, viz. if she attained at the age of nine years, before the death of the husband: So to Littleton Copy 3, 35. So that she passe the age of 9 years at the death of her husband; because by his death the possibility of Dowry is consummate: So likewise if the Son entwined his wife at his age of seven years ex aliensi patriis, if she before the death of her husband attains to the age of nine years, the Dowry is good, &c.

Co.ibid. 78, b. 3.

3 The reason wherefore the Law gave the Marriage of the heir-female to the Lord, if the were within the age of fourteen, and that the Heirs not marry her self, seems in antiquity, viz. Pur esse que les heiress
4 A man (by the law) for several purposes hath divers ages assigned unto him, viz. twelve years to take the Oath of Allegiance in the Exchequer; fourteen to consent to a marriage; fourteen, for the heir in socage to have his guardian; and fourteen is also accounted his age of discretion; fifteen, for the Lord to have his pur fair lie Chivalier; under twenty-one to be in Ward to the Lord by Knight-service; under fourteen, to be in Ward to the Guardian in socage; fourteen, to be out of Ward of Guardian in socage; and twenty-one to be out of Ward of Guardian in Chivalry, and likewise to alienate his lands, goods, and chattels: Also all women hath seven ages for several purposes appointed to her by law: as seven years for the Lord to have his pur fair lie Chivalier; cubic, to be twelve to consent to a marriage; until fourteen to be in Ward; fourteen to be out of Ward, if the same Obtained in the life of her income; fifteen, to renovate her marriage, if the same under fourteen at the death of her income, which was granted by the Statute of Wills, cap. 21, and twenty-one years to alienate her lands, goods, and chattels. 

5 In Infancy, when he shall have attained the age of eighteen years, may make his Testament, and constitute Executor for his goods and chattels.

6 If a person of full age of lands in fee-simple make an equal partition, he hath the best part is bound to; over, as well as in case of an unequal exchange: Now if the unequal partition be of lands in tail, he hath the worst part is bound for his life, but her issue shall void it, etc.

7 The law hath provided for the safety of a man or woman Estate, that before the age of twenty-one years they cannot souse themselves by any Deed, or alien any lands, goods, or chattels, before which age a man or woman is called an Infant; Let he, if before that age he be made a Bailiff, receiver to another, he is not chargeable in assumpsit; neither can he (under that age) be put upon an Inquest, &c. nor make his law of non-famous, nor in an action of Debt, according to the Parlement, Minor jurat non possit: get the husband and wife of full age for the debt of the wife before the Counceller shall make their law; And all an Infant, when he is of the age of twelve years shall take the Oath of Allegiance to the King in the Exchequer; and this was (as Bradon saith) feodum leges landae; Edward, But (invers) such was the Law in the time of King Arthur, &c.

8 If he be an inmarriage, and he be both within age, and they be such inden- tured for in a Foundling, retaining a coat, the husband and wife, the wife may, or by have a Dam suit infraWatatem: But if the wife of full age, the law not have a Dam suit infraWatatem for the non-age of the her husband; albeit they be not one person in law.

9 In Administration durance minorate of the child, the child of a child, before which age he cannot attend to a Process, &c. Provided it be such an Exchequer, and he be fifteen years before baron of full age, the Administration also in that cause to be, because then the Baron is able to administer, as specified, &c.

10 The common law the full age of the heir female was fourteen, as appears in 35 H. 6. 52, and Lex. 33, and if the were of the age of
The Reason of

Max. 91.

court at the death of the Ancestor, he could not be in ward; and if
within that age, he was to have liberty at that age, &c., but note by the
Statute of VVeft, t. cap. 32. If he were under 14 at the death of her
Ancestor, he shall be in ward till 14, for the Lord to tender
marriage; and upon refusal to have the benefit of those two years, but not
to have any forfeiture of Marriage, &c.

11 The Statue of Merton cap. 6. Anno 20. H. 3. cannot extend to the
heir female; because it faith, 14 &c., and ultra terminam iniurias de
21, &c., which words must be understood of the heir male, and not of the
heir female; because twelve is the age limited for the heir female to
give consent to marriage; but fourteen for the heir male; and there-
fore that Statue gives a forfeiture in case of refusal of Marriage upon
tender to the heir male, &c.

12 By the Civil Law the full age of a man or woman to alien,
be alive, let, contract, &c., is the and twenty years, for then the Romans
 accord young men to have plenam majoritatem, and the Lombards at eigh-
teen years.

91 In things, the Law respecteth every thing, according
to Worthiness.

1 Littleton faith, §. 1. If a man be killed of Lands in Fæ-simple,
and vit without issue, Son prochein Cofein collateral del entire f问ke, &c.,
his next Collateral Cofen of the whole Blood, &c. Null habe it, as heir
unto him; whereupon my Lord Cook puts this Case; One hath
sue two sons, A. and B. and died: B. hath two sons, C. and D. and
vied, A. purchased Lands in Fæ-simple, and died without issue: In
this Case, D. is his next Cofen, and yet shall not inherit, but the
issue of C. because albeit D. be his next Cofen, juris propinquitas,
the issue of C. shall inherit, being the more worthy, viz. his
next Cofen, Jure representationis: And Littleton there deemed of the
right of representation: so legally, in course of Decents, he is the next of Blood inheritable, because the most worthy; In such
case, that all that Line of C. be they never to remote, shall inherit before D. or his Line: And therefore Littleton faity well, de quel plus
long degree que il foin, &c., And yet in the Case abovefadd, if a Case
for life were made to A, the remainder to his next of Blood in fe:
In that Case, D. shall take the remainder, because he is next of Blood,
and capable to take by purchase, though he be not legally next
to take as heir by Decent: And D. takes the purchase by the spec-
ial limitation of the party, but the Law calls the Decent upon the
issue of C. as the more worthy, &c. (Vide Littleton, page 116.) So
likewise, the Blood of the Fathers side is more worthy than that of
the Mothers; the male then the female; the eldest Son then the
younger, &c. And therefore those shall inherit before these, and the
female on the Fathers side, before the male of the Mothers on the Hetthers,
&c. Quod quidem est dignissimum, &c., quem prior est, tempore poteir est iure: Si
qui pius filius habuerit, jus proprietatis primum defendat ad primogenium,
vol quod inventus est primum in rerum natura.

2 If the Tenant cut down or destroy any Fruit-trees grow-
ing in the Garden or Orchard, it is waste; but if such tree grow
upon any of the grounds, which the Tenant holdest out of the Garden
or Orchard, it is no waste.

3 A yping-tenant and a desert, and not a yping-tenant and an El-
chent, both take away the entry of the Distress, because the descent is
the worthier title, &c.

4 It
4. It is held, that if there be Baxford ryne and mulier public, and
the Mulier be within age at the time of the vying servis of the Baxford,
that nevertheless the Mulier shall be barred; because the Issue of the
Baxford is in judgment of Law become lawful heire, and the Law
with preferre legittimation, befire the prishibledge of Infancy.

5. It is regularly true, that Laches shall not prejudice an Infant;
neverthelss Laches shall be avuidged in him, if he present not to a
Church within 8 moneths; For, the Law respecteth more the prish-
ibledge of the Church (that the care be tendered) then the prishibledge of
Infancy.

6. Amongst the servis due to be performed by the Leant to his
Lord, hommage and fealty are of greatest officme in the Law, vix. Hommage
as the moke honorable and the most humble service of reverence (as
Linleton faith.) And Fealty, the most sacrif, being performed by an
oath; And therefore the Law makes more account of them, then of
other Interro servis: for the first of them is offin of all other servis
whatsoever, and no distresse for them of any good or chattels (of
what value soever) shall in judgement of Law be named excusible;
And albeit the Lojite distresse for them alltimes, so that the Leant
cannot manure his law, yet the Leant shall not therefore have an
Affile de leuant distresse, as he shall have for Rent and other profits:

7. When the Kings title, and the title of a subject concurre in com-
cencement, the Kings title shall be preferred, as Welton holds Pl.
Co. 261, b.

8. In all Cases at the Common Law, when the Kings Title ac-
crue unto him by a Judicial Record; (as Calcoigne faith. 9 H. 4. 4.)
by judgement of Records, there albeit, the King had granted all his
Estate over, yet the party grieved who is put unto his petition, and was
to have a seire facias against the Patentee, as in Case of Attainder,
Recovers, &c. (44 E. 3. 22. 10 H. 6. 15. 21 H. 7. 2. 3 M. 139.
7 H. 4. 21.) But where the King was only entitled by connession of
Record, and if the subject has conveyed the land to the King by acte,
was enrolled, or other matter of Record, there albeit the party was
put to his petition against the King, yet if the King has granted the
land over, the subject or he, that right had, might enter, or have
his Actin against the Patentee: for, a Judicial Record is always
preferred before a connession of Record by assent, &c.

9. By deed inuited bargansies and sells a reverion of land to B. and
his heres, and after atteandment of the Leant, or enrollment of the
deed (according to the Statute of 27 H. 8. cap. 16.) lies a line there-
of to B. and his heres, and after the deed is enrolled within 8 moneths;
In this Case, the Commiss shall be in by the line, and not by the In-
venture enrolled; For, when the Fe. Simple passes by the line to the
Comiss and his heres, the enrollment of the deed inuited afterwards
cannot dewet and turne the Estate out of the Comiss, which was
absolutely established in him by the line; because then, whereas he was
inbrede in le per, he shall be now in le poit: Also, when the Common
Law and Statute Law concur, the Common Law shall be
preferred, &c.

10. When land is given to any expresse Superstitious use, prohibited
by the Statute of 1 E. 6. cap. 14. without limitation of any certainty
for the sending of it, there all is given to the King by the Law Act: but
when a good use is limited, and behoves a solart in certaint for a Priest
and towards thesending of him other things, as Pocks, Bead, Wine,
Witsment, &c, are accre impriyed and requisite, which are uncertain,
188.
there the King shall not have all by reason of the implied uncertainty; because a good use expressed shall be preferred before any thing implied and incident to a superstitious use, &c.

11 In debt against an Abroad, who pleads, that the Intestate was bound in a Statute Naple, Oultre que il madiens, &c. the Plaintiff replies, that there were Inventions of subsistance for the performance of covenants, which are for that use, &c. the Defendant demurs; and in this Case judgment was given for the Plaintiff; for, An Obligation shall be paid before a Statute to perform covenants, which per-adventure will never be broken, but are things in contingency and future, and shall never be any present debt upon an Obligation or other specially: And it was adjudged in B. R. Per totam Curiam H. 42, El. I. that a debt recovered in the Kings Court by judgment shall be paid before a bond in nature of a Statute Naple or Marchant: because the judgement is a matter of a higher and more worthy nature than private. Recovys portable in pockets: also it shall be preferred before a recognizance acknowledged in any Court by assent, which may also be privately done; And a judgment for given in the Kings Court upon ordinary and judicial procuring, which remaine in the custody of a movie officer, are Recovys, which are preferred in Law before such Statutes; Ex non refer, whether the judgement or recognizance or Statute be first, for the judgement first or last it shall be first satisfied, &c. And it was held per totam Curiam in Co. Ba. in Pemberton and Bartams Cafe, Pl. 32 El. Rot. 235 Which see in the end of the Sadlers Cafe in the 4. Rep. Diet 80. 53.

12 There are good diversities betwixt an execution not valuable (as of the body of the Defendant) and an execution valuable, as of lams, &c. As if two men are bound jointly and severally in an obligation, and the one to saw, condemned and taken in execution, and after the other is also saw, condemned, and taken in execution, and then the first escapes, and the other brings in his Audita querela: In that case, he shall be barred to bring that writ, until the Plaintiff be satisfied; So likewise if the Defendant in debt in execution, yet the Plaintiff may have a new execution by clogic of hieri facias; but if the Plaintiff have once execution of the lands of the defendant, and after the lands are sold, there before the Statute of 32 H. 8. cap. 5, he shall not have any new execution; for the execution of the lands was valuable, and accompted in Law for a satisfaction, and to (hath infinitelie) he shall have but one valuable satisfaction, or one execution with satisfaction at the Common Law; &c. So likewise, if a Willein be delivered to one in execution, upon recovery in value, and after the Willein dies without issue, yet the Defendant shall not have any new execution, because his first execution was valuable, and by the Law a man shall have but one execution valuable, &c.

F. N. B. 33. m. & 34. v.

13 If two Sisters have an Auditorion, which happens to be sold, the eldest Sister shall have the first patiemtment, and so the Baron of the eldest Sister (if he be Tenant by the courtises of the Auditorion) shall have the first patiemtment, and the Tenant in Dower shall have but the third, &c. And if there be more Sisters than two, they shall present by turns according to their liberal ages, viz. the eldest first, the second next, the third next, &c.

14 Two Females jointenant of a lease for yeares, one of them taketh a husband and dieth, in this case, the moiety of the term shall goe to the survivours, and not to the husband: for, although all chattelles real are given to the Husband, if he survive: yet the survivours between the jointenants is the elder (and therefore the more worthy) title, and after the
Max. 91.

the Common Law.

the marriage the wife continues not proceeded: but if the husband died, and the wife survived, the wife should have had it, and not the

Guardian in

charge.

In this Case, both the Parties are of equal degree; and yet the clock Ball be

Co. 3. b. 4.

in Sir Row-

land Heywards

Cafe.

C. D. be removed into the K.B. (except so to the

the K.B. cannot write to the K.B. abovethis

the K.B. this higher Court then the C. B. bu the

these

the C. B. by mittimus: Poulebott, sir to have an

the C. B. by mittimus; Poulebott, sir to have an

this Statute makes a thing an offence, which was not to as the

the Common Law, and inflict a penalty for it to be recovered in any of

the Courts of Recor, such offence or penalty is not determinable in

any other Court. Take only in the four usual Courts at Westm. Poulebott, where no Court is limited, the King had have his

The Law respecteth life and liberty most, and the

his possessions.

1 If a Willin (as Executor, in matter's right, &c.) brings an action

against his Lord, the Lord in his plea makes not justification, that

he is his Willin, &c. the Willin shall be thereby enfranchised, albeit

the thing be found for the Lord; And this is in favor of libertatis.

2 If a Willin sue an action of Kedehals or other action against

his Lord in one County, and the Lord faith, that he ought not to be

Answered, because he is his Willin regardant to his manner in another

County, and the Plaintiff faith, that he is free and no Willin, this

shall be tried in the County where the Plaintiff has concernted his

Action, and not in the other County; where the Lord faith he is Willin;

And this is in favor of libertatis. No, implius & crulius indicijus est, qui libertatis nostrui retro: Angius jure in omnibus libertati datijus

rem, sale, Fortescue cap. 42.
The Reason of

Co. H. 137. b. 2

If a Witenae be once amnestiad, unless the afterwards be
visited to the Lord in the highest degree, yet the amnestic

Finch, 29.

Lec. 5. 307.

Co. B. 137. b. 4

If the Lord asks to the Witenae an Obligation, as guaranty
of him an annuity, or a leave for years, &c. the Witenae is thereby
exonerated: so when the Lord promises the Witenae to hold an Action
against them as his debt annuity, &c., so that the Witenae is certain
now almost in every case, &c., as a leave for years, &c., this amount to
an Exonerament not only during the years, but the dissolution of both
the leave becomes to the Witenae without title, yet if it be an Exonerament
for ever, &c.,

Co. b. 2. 2

A non-preemptory, in

Non-preemptory, in

Serleman in

A Culture to have a fine for

Co. b. 139.

a. 4. Linkden

9. 809

The Laws both amongst the
Liberty and Subject of the
Dissent in general; But especially of the
Commonalty, as if a Person a
Pamor will prefer, that there is a Culture within his
OWN that every Tenant, that marries his Daughter to any man with
out the Lords licence, shall pay a fine to the Lord: this is a
Culture to bind a Free-man, for every Free-man may marry his
Daughter to whom he and his pleasure : And therefore to claim
such a fine by a general Culture within a Pamor, is against the
freedom of a Free-man: that is not bound thereto by particular
term, deserve sc. Subiecte such a Culture will hold amongst Witenae,
23 amongst Free-men, that hold in Exonerament 30 lease
in the same.

13 to the Common Laws, upon an incumbrance of 33 Appeal, 3. 31
You, the Pleas, ought to challenge the
Challenge, viz. 35, which was under the number of this Pleas; But by
the statute of 33 H. 8. cap. 24. the number was revised to 39. in every
Exoner, Pamor, and Exoner, and in Case of high Exoner, and the
Union of high Exoner, it was given by the statute of 33
H. 8. cap. 39. and afterwards by the statute of 34. 8. Ph. & M. cap. 10. the
Common Laws were revised: So that not for any Exoner the
Vite, and shall have his challenge to the number of thirty days, as before.

Once more

Power of

Non-preemptory, in

In an appeal

Solemnity in

A Culture to have a fine for

Challenge, a
And so it was related by the Justices, upon conference between them in the Case of Sir Walter Raleigh, and George Brooks. And albeit the Defendant be not arraigned upon the Crime it self, but the Issue is join'd so upon a collateral point, yet shall the party have such challenges, as aforesaid: As if a man be out-lawed for Breach of Felony at the King's suit, and the party so absolving thereof: Implyment or the like, at the time of the Out-Lawry: In this Case, although the Issue be join'd upon a collateral point, yet shall the party (in favor of Vice) have such challenges, as if he had been arraigned upon the offence it self; because this also (by a mean) concerneth his life. And it is to be observed, that this kind of challenge is called peremptory, because the party may challenge peremptorily upon his own dislike, without defecting any cause at all: Howbeit, if the Defendant challenge for cause, he must shew the cause presently, and then also albeit the Jury; be tried indifferent, yet may the party afterwards challenge him peremptorily: And all these privileges concerning Challenges are granted to the Defendant in favor of Vice, &c.

12. Regularly no Lives shall be adjourned in an Infant, yet if an Infant hath a Will, that is Set into ancient Demeline, and he claim his estate within a year and a day, that Non-claim of the Will be not the posture of the Infant, and this is in favor of liberawis: So if an Infant being not an appeal of the death of his Ancestor within a year and a day, he be barred of his appeal for; ever: and this is in favor of Vice, for the Law respects more liberty and life than the privilege of infancy.

13. Doubt of fear that concerneth the safety of the person of a man, as Battery, Persecution, Implyment, Death, &c. is insufficient cause to excite him from going upon the Law to make his Claim, so that he apprehends as the land as he dare for such doubt of fear; but fear of burning his houses burnt, or of the taking away or spoiling of his goods, is insufficient cause to excite him; because he may recover the same, or damages to the same thereof, without any corporal hurt: And therefore in such Case he shall go upon the Land to make his claim, &c. Tali enim debeat etsi mens, qui cadere potest in virum centum, & quia in se continent, mortis periculum, & corporis cruciamentum: Et nemo tenetur de informinis & periculis exponere.

14. If a man be out-lawed, there is two manner of ways to rescue it. viz. by Pleas, or by issue of Errors, by plea, for when the Defendant cometh to prove the Captius ultragatum, &c. he may by plea reverse the same for matters apparent, as in respect of a Superficedex, or million of process, variance, and other matter apparent in the Record, so as to the same term, as some hold: But for any matters in fact, as Death, Implyment, Service of the King, &c. he is driven
14 An express manumission of a Slave cannot be given a Condition subsiding: for, once true in that Case and ever true: And this
in favor of libertatis: It is otherwise a Condition precedent in the
same Case. et.
15 The life of a man is so precious in the eye of the Law, that it
will not suffer (by way of plea) to justify in the killing or death of a
man; And therefore in that Case he shall be received (as it were by
way of plea) to give the special matter in evidence, as to say, that it
was so defending, as in his house of the night against Thieves, and Robbers, or the like.
16 The liberty of a man is of such high esteem in the consideration
of Law, that he could not (at the Common Law) be imprisoned, un-
less be were guilty of committing some force; In the Law, being the
preferer of the Common peace of the Land, abhors all force, as
one of her capital Crimes; and therefore as concerning such commit-
force, the Common Law subjects their bodies to imprisonment, as
to one of the highest Executions of Law, whereby they lose their
liberty, until they have made agreement with the party, and the
King; for which cause it is a Rule in Law, that in all Actions
Quare vi & armis, a Capias lies, and where a Capias lies in process,
thereafter judgment a Capias ad larcinacionem lies, and there also the
King that have a Capias pro fine: And with this agrees 8 H. 6, 53 El.
6, 62 E. 4, 25 E. 3, 49 B. 3: and where other Judges
But (at the Common Law) if a common Person had been a recogni-
tance, or judgement for debt of wages, he could not have the body
of the Defendant not his lands (unless in some special case) in execu-
tion; but was only (in such case) to have execution, either of his
goods and chattels by his executors, or of his grains, or other present pos-
tio (which becreased upon the land) by levati facias; both which writs
were to be faced within the year after the judgement, or recognizance
acknowledged, and if he has neither the one or the other within the
year the Plaintiff or Consul was his put the writ of debt, &c.
And then by the Statutes of Westminster, 6, 6. 7, 25 E. 3, &c. and where other Judges
But (at the Common Law) if a common Person had been a recogni-
tance, or judgement for debt of wages, he could not have the body
of the Defendant not his lands (unless in some special case) in execu-
tion; but was only (in such case) to have execution, either of his

Co. 4, 13. b. 4.

in Sir Will. Herberds case.

Co. 4, 13. b. 4.

in Sir Will. Herberds case.
20. The Law to proceed for the preservation of a man's liberty, that no general arrest is deemed legal without helping the particular cause whereby he is arrested; and therefore the subpoena of any other by his authority which makes an arrest of the person of another, ought upon the arrest to view at whose cause out of what Court, to whom cause he do both it, and when the process is returnable to the intent that, if he be upon an execution, he may pay the money, and to have his money from imprisonment; and if he be upon a mesne process, may either agree with the party, or put in bail according to the Law, and to make his appearance accordingly, &c.

21. An Act of Parliament, that gives power of imprisonment ought to be strictly interpreted, to answer (as much as may be) the liberty of the subject: So the Act of 14 H. 8. cap. 5. which gives power to the President and Councils of the College of Physicians in London to imprison, was to strictly and literally be understood, that the President was not thereby bound to receive such as they should commit unto him; because there was no clause in that Statute to give him power so to do: And therefore was the Statute of 1 Mar. cap.9. made, which commands the Governor to receive them upon a penalty, &c. And yet the receipt of the Governor (in that case) seems to be a necessary incident to the power given them to imprison; but in regard it concerns the liberty of the subject, and they had not the authority of any Court to commit him, the Governor could not receive such as they should commit without an apparent province by Act of Parliament for that purpose, &c.

22. A power and continuance, &c., may be made by Laws and Constitutions for the good ordering of their Corporation, &c., and may incident a reasonable pecuniary penalty for the due observing thereof to be levied.
levied by distress, 0; recovered by Action of debt, &c. But they cannot
insist penalty of imprisonment: for such a Constitution or Ordi-
nance, which trencheth upon the liberty of the subject, is not favour-
ous in Law, and besides it is expressly against the letter of Magna
Carta c. 20. Nulius liber homo imprimitore, &c.

23 In an Appeale of Death, Robbery, 0; any other Appeale
of Felony 0; of Plightem, If the Plaintiffe be barres, or non-litig,
0; if the Writ abate by his own default, he shall be fined and imprison-
ed, 8 H. 4. 17. 20; for the malice is more venomous, which concernd
life and member.

F. N. B. 68. c.
24 In a Homine replyinge if the Sherifes return, that the De-
fendant hath elognes the body of the Plaintiffe, so that he cannot
make delibrance, &c. Then the Plaintiffe Shall have a Capias in
Withernam to take the body of the Defendant; and Shall detain
him, &c. until, &c. be Paire of the Realme or other common
Perion: And if the Sherif returne non eit invenus, upon that
Capias in Withernam of the Body, then shall the Plaintiffe have
a Capias in Withernam of the goods of the Defendant, &c. And this is
in favorem libertatis.

F. N. B. 78 c.d.
25 If a man sue speciall Writ de Nativo habendo against
two, the two may joine in a Writ De librate probanda not-
withstanding those severall Writas: And a man shall not joine
above two Williams in a Writ De nativo habendo: But more may joine
in a libertate probanda: And that is in favorem libertatis

F. N. B. ibid. f.
26 In a Writ De nativo habendo if the Plaintiffe after ap-
pearance departs in dispit of the Court, or faile he will fetch his
Council, and after being demanded makes default; In these
Cales the Wiltone Shall be Enfranchised for ever: So also shall
be be upon a Retraction, when the Plaintiffe faile he will purse his
Writ no further, causa qua supra &c.

F. N. B. ibid. g.
27 If a Free-man marry a Belle, he shall be free for ever,
albeit the Baron die and the survive, And this (as Fitz notes out of
Britain) is in favorem libertatis, for a Free Woman shall not be a Wil-
tenne taking a Willen to Husband,

F. N. B. 99. d.
28 If a man sue a Writ of Montravitt against a Ballitt upon
the Statute of Malbridge cap. 23. with purpose that the Sherifes
would attache his Body to bring him to accoyme, when as he
had sufficient Lands in another County, by which he may be
made to answer by Writ of Accompt: In that Case, the
Defendant shall have a Writ of dillecit against the Plaintiffe that
sues the Montravitt; for so long as he hath lands, his body in that case
ought not to be attached.

Finch 29.
29 If a Span for Fears, or in Simplicity will Confesse
himselfe guilty of a Felony, yet the Judge must not Record
that Confession, but later he to plead not guilty, And that is
in favorem vite.

Co. Inst. p. i.
30 A Free, if he be married, is either a Wisse De facto,
0; De Jure; De facto, until both of them have attained the years of
Content (viz. 24 for the Span, and 12 for the Woman) De
Jure, when at those ages, they have not by-assent: How, al-
bast a Wife De facto onely, who is nine years old at her hus-
band's death (though he be but foure years old, when he dies)
shall be endowed: yet (as some hold) such a Wife De facto shall
not have an appeale of the death of her Husband, but only the
that is a Wisse De Jure, and that is in favorem vite.

13 Wards.

Impronement for malicious
fact, that con-
cerns life.

A Capias in
Withernam to
releive a pri-
soner.

But two Wil-
leins find no
more may, &c.

Enfran-
chis-
ment upon
contempt or
Retraction.

A Nice for
by married of
a Free-man.

No mosstatis:
if the accon-
tant hath
lands.

Confessio
a Felon as
bring an ap-
pearance.

A Free De
shall one
ult be brought an
asp
31. Wardship hath been always (especially of late times) accounted a name of Sccondary, and therefore it was always in the old Books of Maxime in Halic, quod dominus non marritum in corpore in sui nisi famulorum, and Gainst Faith. For some legumina must have taken, rec. postmodum non constantiam habendi Dominorum cec. And therefore if the Guardian marry his ward under the age of 14 years, and at that age he be aliens as he may, he shall marry him no more, being thereby freed as to this wardship of his body: So it is also, where the Lord marries him to a woman, and the marriage is also produced by reason of a privy contract: It is otherwise when the father marries him with his age, and he is under 14 or 15 in that Case, the Lord shall have the marriage of him, Vide Pl. ibid.

32. Clergy was allowance to the accessor to the Healing of Poisons and Spices, because the heavens of E. G. 15. and 16. E. G. 3. shall be taken literally in Avoreen vice, and are therefore to be solely without of Principals, which they expressly mention, and not of Accesories, &c. See Co. 99. 2. 59. 1 Mar.

33. Albeit it be entered upon Receipt at one Session, quod non not, and the parties so do the same expound, yet he may read at the next Sessions, and shall have his Clergy, in Avoreen vice, Vide 76. 2. 62. that a Priestman shall issue his Clergy under the Gallows.

34. If the man it before the King, of the Right of Defense be playing their parts, and one of their happen to kill the other, this is not felony, because he done upon purpose, and hence, it is to be questioned as an Felony, the life of the Offenders (which the Laws deny to them) would be brought into feoffery: there is the large Law also of a Lunaticque, that was a man: Plottom in Appendix, which interpos only to the bannages, according to hurt and done, it is not to: And therefore it is a lunaticque hurt a man, he shall be answerable in Common; but if the person or persons, in such cases, shall be so hurt, as to his goods to interest themselves: yet if the accident were insensible, he shall be excused, &c.

93. Things in the Reality more than those in the Personality.

1. As there be an question, whether upon a Recovery, you by default in an Action of Account against tenant in Deputy, or by the席卷, a Quod ei debentur legit upon the Statutes of Wills, cap. 4. And some hold, that it both not, in regard the bannages (as they lay) are the principal, and not the place bound, because the bannages were required upon that action against such tenants at the Common Law, and the place was not afterwards given by the Statutes of Gloucester, as a penalty: so as the nature of the Action (for they) remaineth not to be personal: so that the bannages are the principal, &c. But in that Case, others are of opinion, and say, that albeit in that Action the bannages may be the most ancient recompence, yet the place entirely (being in the reality) must now be the more principal: And therefore upon a Recovery by default in such an action, a Quod ei debentur legit as well as in any other, &c. Also to fast comes to be my Lord's real opinion, because past last, according to his own Rule, in his Comment upon Linlaron.

2. Where is a necessity between a Lien real and a Lien personal? To a Lien real, as a uncertain, with every respect to the note of the Committee Law; but the Lien personal with what special parts, all the which part in Co. b. 36. b. 3 & 11. 5. 3. 11.
in Gavelkind, the heir on the part of the mother, &c. When such an heir being charged by the Obligation of other act of the Grantor, is in by
possession, &c. So if two men make a Feme Tenant in Fe, with baronalty,
and the one die, the Feme cannot touch the fidevivo only, but the
heir of him that so was also: Howbeit it is otherwise, where two
do jointly bind themselves in an Obligation: for if it die, the life
vivo only shall be charged, &c.

3. In personal actions, the one Joint-tentant may enfeoff an heir, but if
the personality be united with the estate, it is otherwise, as in an estate
by two, the release of all actions personal by the one, no bar, against
the other: for albeit an estate is an action in the realty and person
ally, yet one majus minor ad eum minus, as it is adjourned 30 [4. 6. Bar 39.
Also a Joint tenant had not prejudice his Company, as to any mat
ter of Inheritance or Frank-tenant, but as to the profile of the Frank
tenant, she may prejudice the other; for there, is a piloting and
fruit between them: and therefore if one of them takes the prof
ile of the Land, or all the Rent, the other hath no repre
sence.

4. By force of the Statutes of Wills, &c. (which great work, &c)
under this word, tenements, not make all corporate Inheritances
(which are not so be alleged) may be inherited, but also Inheritances
unto one of any of those Inheritance, or the conversation, or money to,
or exercisable within the same, though they lie not in Tenure: as
Rentes, Easements, Commons, or other such whatsoever granted
out of land; or Wills, Offices, Dignities, &c. which concern
land or certain places: All these (I say) may be inherited within that
Statute, because they favour the Realty: But, it the Grant of
an Inheritance may personal, or to be executed about Chattels,
and some out of land, no concerning any land; or some certain
place; If Inheritor cannot be executed, because they favour any thing
of the Realty: For example, in 3. 7. 1. the Office of the fourth part
of the Exchequer of the Comman Pleas in York is perpetual, and therefore may be inherited: In 3. 7. 2. the Office of the
Kerbing of the Church of our Lady of Lincoln, was inst
s, and a Formedon brought thereupon by the same intail, in 5. 4.
3. pl. 10. fol. 4. 4. The Office of Sheriffs of England was intailed, in
1. E. 4. 1. the Office of one of the Chamberlains of the Exchequer in
stalled, in 1. 3. 7. 18. the Office of a Fellowship intailed, in 4. 3. 10.
and 1. 3. 5. 0. Chapter intalled. In 19. H. 3. 3. All intailed,
In 1. 1. 4. The nomination to a Benefice intailed, &c. Also the
name of Dignity may be intailed within that Statute, as Doctors,
Bishoprics, Earls, Hours, and Barons, because they are names of
some County, counties, Borough, &c. 92 place: In 14. 11. 7. 4. if the
free in tail in a Formedon by a Deceder be bartered by title. Berdette, his re
lease to take his in title, albeit the act is at the Common Law: For
the like Lawes is of a writ, Error, 3 H. 4. Diet, 188. If a gift in tail
be made with a grante, the Donor releases the warranty, this shall
not bring the free in tail: For to all these: Cases ansamle as the late
Statute notwithstanding: But if I grant to a man, and to the heirs of his
poise to be oner of my Donors, or Master, of my People, or to be my
Heirscope, or the like, with a fee thereon, yet these cannot be in
stalled with the said Statute: For that they be not making out of Se
ments, nor amenable to, nor exercisable within, or concerning
Leaves, or longs, or Eminent of Freedoms or Inheritance, but concerning
Chattels, and favour nothing of the reality: So it is likewise
In, by my Diet, for me and my Peter, grant an Immunity to
a man and the voices of his body, because this only chargeth
my Person; and concerneth no Land, nor favour of the Re-

5 If a Feme sole be possessed of an Estate for yeares, or by Statute
Percibant, Statute Staple, or Elegie, or of a warship, or other chit-
tels real, and taketh a Biron, the Biron is thereof possessed in her right
only. And alibit during the Coverture he may dispose of such an E-
state by Giant, Demise, &c. or upon Out-lawry. Aitainer, &c. may
folesit it, or may submit it to be sold by the Sheriff upon an execution
for his Debt, and in Case he survive the Feme, he shall then have a clear
interest in it; yet he cannot dispose of such an Estate by Will, and if
he survive him, (no disposition or forfeiture being thereof made, as
above,) the Feme shall have it, and not his Executors or Administrators;
because these Estates andInterests favour of the reality: and therefore
the Feme being thereof once possesse, her interest cannot be by the
Inter-marriage so easily removed, as if they were Chattels personal:
There is the same Law also of Chattels real, which being of a mix
nature, (viz. party in possession, and partly in action) happen during
the Coverture; As if the husband be seized of a rent-service, charge,
or fee, in the right of his wife, the rent becomes due, during the
Coverture, the wife defeith, the husband shall have the arreages: but if the
wife survive the husband, he shall have them, and not the Executors of
the husband: So it is also of an Adoption. If the Church become
vold, during the Coverture, he may have a Quare Impedit in his own
name, as some hold; but his wife shall have it, if the survive him,
and the husband, if he survive her, &c. de similibus. But as concern-
ing Chattels personal, the Inter-marriage is an absolute gift of such
goods, which the husband in possession, and in his own right, whether the
husband survive the wife no, so that he may at his pleasure dispose of
them, either by an execute in his life, or by Will; and albeit he make
no such disposition of them, and the living the wife, yet his Executors
or Administrators shall have them and not the wife, &c. howbeit if
they be in action, as Deeds by Obligation, &c. the husband shall not
have them, unless recovered during the Coverture; neither shall
he have such goods, as the wife hath in her right; as Executive 02
Administrate, Vide R. 55. ex. 139.

6 If one Tenant in Common of Chattels take any Chattels real,
(which are not of an entire nature) from his companion; the other
may have his remedy to recover them by Action; but if one of them
take all the personal goods from the other, he hath no remedy by Action
or otherwise, save only to take them again by Catch-pole Law: And
so it is also of entire Chattels real, as a Ship, House, Land, &c. the like;
but that is in respect of the Inheritance and Inheritance of their
natures, &c. for which see R. 70. ex. 25.

7 It is laid in our Books, that若是
do with satisfaction is a good plea
in personal actions; where damages only are to be recovered,
but not in real Actions; For a right to title to any Estate of
Inheritance 02 Freehold cannot be barred by acceptance of any col-
lar satisfaction or recompence; As if a disseise B. (tenant for
life, or in Fee) of the Mannor of Dale, &c. after A. gives the Man-
nors of Sale to B. and his Heires, in full satisfaction of all his
rights and actions, which he hath in 02 for the Mannors of Dale, and
B. accepts thereof: Nevertheless B. may enter into the Mannors of
Dale, 02; recover it in any real action; it is otherwise of things in the
personality.

As a
8 In real Actions to plead, that the Plaintiff is an Alien in a good bar, because an Alien can have no law within the Realm, but such a Plea in personal Actions is no bar; because an Alien may bring personal Actions, unless he be an Alien Enemy.

9 But with real and personal Actions there is a diversity for its personal Actions, as in Debt, Account, &c. the bar is perpetual; because (in such Cases) a man shall not have an Action of a higher nature: But in a real Action, if the Demissant be barred by judgment upon Merit: Demurrer, Confession, &c. yet he may have an Action of a higher nature, and shall try the Laws again, because it concerns his Frank-tamement and Inheritance; So if a man be barred in Action of Novel diffusion, yet upon showing a defect, or other special matter, he may have an Action of Mandelacion, Ael, Beliaç, &c. Vide infra 173. 14.

10 An Abbot, Bishop, or other Sole Corporation cannot disclaim, nor defeat anything of its, which is vested in its houses, or other spiritual Corporations, to the prejudice of the Successor; Howbeit, if an Abbot or Bishop, &c. acknowledge the Action in a writ of Annuity, or in an action of Debt upon an Obligation, Statute or Recognition; this shall bind the Successor, so as he shall not prevent execution thereupon, albeit they were granted and made without the consent of the Covenant, Chapter, &c. because these things being in the personality, the recovery thereof cannot be withheld in an higher action, Etex judicata prior et acceperit, Vide supra, M. I. cap. 4.

11 In a Plea real against divers tenants, if one tenant pleads in barre to partizel, which extended usely to him that pleaded it, and the other pleads a Plea, which goeth to the whole (viz. to both the tenants) and which (indeed) would make an end of the business, if it were tried, yet those several Pleas shall have several trials; And if the suit be bought by one as pert to his father against two, and one of them pleads a Plea, which extended but to himself, and the other pleads a Plea, which extends to both, (as Ballaible in the Demissant) and it is found for him, yet the other may still be tried, and he shall not take advantage of the other Plea: But in a Plea personal against divers Defendants, it is otherwise, for in such an action if one Defendant pleads that, which extends but to himself, and the other pleads a Plea which goeth to the whole, viz. to both Defendants; this last Plea shall be first tried; and if that be found for the Defendant that pleads it, it shall discharge both, so in a personal Action a Discharge of one is a Discharge of both: For example, If one of the Defendants in Etrepasle plead a Release to himself (which in Law extends to both) and the other pleads not guilty (which extends but to himself) the Plea which goeth to the whole, and discharges both, shall be first tried, &c. if that be found, it maketh an end of all, and the other shall take advantage of it.

94 Freehold and Inheritance more then it doth Chattels.
it were in ancient time when such Giants were allowed: But Gods
and Chattlesthey may purchase, &c.

2 If an Estate of Freehold in Seigniories, Rents, Commons, &c.
the life, be suspended, a man shall not be tenant by the Courtelle;
but if the suspension be but for 5 years, he shall be tenant by the Courtelle:
As if there be Lemen, Seigniories, and Tenant, and the Ten-
ant makes a Lease for life of the Tenant to the Seigniories, who
takest an husband, and hath issue, the wife died, he shall not be tenant
by the Courtelle: Howbeit if the Lease has been made only 2 years,
then should he have been tenant by the Courtelle, &c.

3 In the eye of the Law an Estate for life, being (as Littleton saith)
an Estate of Freehold against the tenant, whereas a Practice quod
redebat ius, is in another and greater estate then a Lease for 5 years,
though it be for a thousand years or more (which is a Chattle; and
so long, never without suspension of fraud:) And they have been al-
ways the least valuable, for they (at the Common Law) they were
subject unto, and under: the power of the Tenant of the Free-
hold, &c.

4 Claim by the Lord (inter vices, &c.) of the Villains goods, shall
not only be the goods which the Villain hath, but also which he
after that shall acquire and get: Howbeit it is otherwise in the
Estate of Freehold, or Inheritance in lands, for there is a general Entry
of Claim extends only to such lands as the Villain hath at that
time, and not to any other, which he shall purchase afterwards.

5 If a man grant a Rent out of Black-Acre to one and to his
heirs, and also grant to him, that he may affirain for it in the same
Acre for the term of his life, this is a Rent-charge for his life, and a
Rent-charge after him; divers temporibus: but if the Detach be
only limited for certain years in the same land: In that Case it re-
maineth a Rent-charge inter alios: so that the Fe and the Freehold is leck
in such Case, &c.

6 At the Common Law (before the statutes of 31 H. 8. cap. x, and
32 H. 8. cap. 3.) Joyn-tenants by content might have made par-
tition, and if they had been possessor of a Lease for years, they
might have done it by Parol, but if they had been settled in an Estate of
Inheritance, or for life, they could not have made partition without
Wit.

7 If a man makes a Settlement in fee, or Leases for life, ad faci-
endum, or faciendo, or intentione, or effectum, or propoision, &c.
that the Feoffee no Lese shall do, or shall not do such an Act, more of
these words make the Gase in the land conditional: for (in the Case of
a common person, and not of a will) they are in judgment of Law
no words of Condition, and so it was resolved, H. 18 Eliz. in Com.
Banc: Howbeit for the absolving of a Lease for years, no such pro-
cise words of condition are required, as in Leases of Freehold or In-
heritance; fo, if a man by Wit makes a Lease of a Hammo for years
in which there is a clause. (And the tate Lese shall continually
be upon the Capital Pledge of the tate Hammo) upon pain of
Extermination of the land Term) these words amount to a Con-
dition: So it is also if such a Clause be in such a Lease, Quod
non licebit to the Lessee, dare, vendere, vel concedere Statum, & sub pena
self-faure, this amounts to make the Lease for years defeas-
able: And so it was also adjused, H. 40. Eliz. Rox. 1610. in
H. 18 Brown & Ayel. And the reason of the Court was, because a
Lease for years was but a Contract, which may begin by troop, and
by word may be voided

Max. 94. The Common Law. 363

Co. ib. 39. b. 2.

Co. ibid. 46. r. 1.

Co. ibid. 18. b. 4.

Co. ibid. 17. h. 4.

Co. ibid. 17. s. 4.

Co. ibid. 187; n. 24.

Co. ibid. 244. 4.
The Reason of

Max. 94.

9. A man in any Action real, personal, or mixt, cannot plead that an Estate of Freehold or Inheritance was made upon condition, without proving a Record thereof, or showing a writing under seal, that proves the same; but a man may plead a condition, that concerns Chattels either real or personal, without proving forth any writing purporting the same.

9. If a Defendant make a Lease for years, and be tried of the Revolution, this descent shall take away the entry of the Defendant; because he died before the Fs. and Frank-tentement; like Law it is, if the Land be extended upon a Statute, Judgments, or Recognizance; and so it is likewise in case of a Remainder: Howbeit, if he had made a Lease for life, either for his own, or to another, he, and then had died before the Revolution, this descent shall not take away the Entry of the Defendant; so, albeit he had the Fs., yet he had not the Frank-tentement; and the Lease hath given great respect to the Estate of Freehold, though it be but for term of life; and therefore there is the same Law also, when the Defendant makes an Estate in life, mutatis mutandis.

10. If I let Land to a Tenant for life, who takes Baron, and after I confirm the Estate of the Baron and Tenant, to have ass to hold for their lives. In this Case, the Baron holds not jointly with the Tenant, but only in her right, during her life, and shall have it for life, if she survive her: But if I let to a Tenant for life, and for term of years, who takes Baron, and I confirm the Estate of the Baron and Tenant, he shall and do hold for their lives. In this Case, they have a joint Estate in the Frank-tentement of the land; because the Tenant had not Frank-tentement before, but only a Chattel, whereas the Baron hath such a possession in her right, as was capable of a conveyance, or a release; and the confirmation in this Case to the husband and wife, for their lives, and the other joint tenant for life, because this Chattel of the Tenant covers may be divided: So note a Liberty between a Lease for life, and a Lease for years, and that a Tenant for life, and the other joint tenant for life, who confirm the Estate of a Tenant for life, to have ass to hold for their lives, whereas the Tenant for years may demise.

11. If a Lease be granted, and he is the Rehearser of the Lease, and the Leasee to the Defendant, the Defendant may enter, for the term for years or certain, and determinable. But otherwise it is in case of a Lease for life, for that Case the Defendant and Tenant, whereas the Defendant is the tenant for life, whereas the release of the life is for years may demise.

12. A man letten Lands to life, on condition to have Fee, and to warrant the land in form and produce, whereas the Lease performance, the Defendant performeth, where the Lease hath Fee: in this Case, the warranty shall extend and increase, according to the Estate; for a warranty being a Covenant, has effect, may extend to an Estate in future, having an Estate whereupon it may break in the beginning; but if a man grant a Deed for years, upon condition to have fee, with a warranty in form and produce, and after the Condition is performed, this shall not extend to the Fee, because the Fee is an Estate above the years, which was not capable of a warranty; and so, it is, if a man grant a Lease for years, the remainder in Fee, and warrant the Land in form and produce, he in the remainder cannot take benefit of the warranty, because he is not party to the Deed, and immediately he cannot take, if he were party to the Deed; because he demises after
Finch 19.

Col.13.6,8,9.

Col.13.5,6 in the Marquee of Winstanley Cave.

Col.6.7,8,9 in Ferrers Cave.

Col.5.11,12,14 in Sir W. Herbert's Case.

Col.6.5,6,7,8,9 in Bredinian Cave.

Col.3.8,9,10,11 in Matt. Mark's Cave. &

Col.10.48,52 in Lawpet's Case.
The Reason of

Max. 94.

shall take advantage of that Condition by the Common Law; for the lease is thereby absolutely void: But if a lease for life had been made upon such Condition, the grantee shall not take benefit of the breach of the Condition; because a frank-tenant (whereof a precise life) cannot to easily cause, but it is voidable by entry after the Condition broken; which cannot by the Common Law be transferred to a stranger; et with the agreements 11 H. 7. 17. & Br. Condit. 125. 2. Mar. per Bromley Rule 27. 24. 25.

20 If the Lord grant his Seigniory for years, the remainder to the Tenant perannually for life, in this Case the Seigniory is suspensory: because the Tenant for life hath the frank-tenement of the Seigniory, and he is Tenant to every precise of the Seigniory: as in the Case of Lineton l. 1. cap. Atornament. fol. 128. If land be let to a man for years, the remainder to another for term of life, and after the Lessee grants over the reversion, and he in the remainder for life attires, this is a good attornment, and shall bind the Lesse for years without any attornment made by him: For, he was Tenant of the frank-tenement: and at the Common Law the term for years was subject and under the power of the Tenant of the frank-tenement: so shall not satisfy a recovery of the Common Law against the Tenant out of the frank-tenement, because he hath but a Chattel.

21 If Lessee, for 1000 years be ousted by the Lessee, and he makes a lease for 2 years to another; In this Case, the Lessee for 1000 years may release to the Lessee for 2 years: but if the Lessee, whilst his Lessee for life, and makes a lease for 1000 years, yet the Lessee for life cannot release to that Lessee for years: because a frank-tenement is too high to be owned in a Chattel.

22 If a term be devised to one and to the heires males of his body, his heire shall not have it, but his Executors; for the term, which is but a Chattel, cannot be salisfactorily, and such a deviser may alienate the term to whom he pleaseth: and so it was adjudged, Tr. 25 Eliz. in B. R. in Petocks Cafe, and 23 Eliz. resolved by Anderson and Walnally, being referred unto them out of the Chancery betwixt Higgins, and Mills, She also Dier 7. 28 H. 8. Pl. 8.

23 If a man make a devise of lands of Commentes, the devisee shall not sue for them in the Ecclesiastical Court, and if he do, the other party shall have a prohibition: Whereas it is of personal goods, and also of Chaticles real, as a term of years, a warce, et. for, for inch, the devisee may sue in that Court, et.

24 An Estate of Inheritance of fee-simple cannot be put out of a man by any verbal waiver, disclaimer or dis-agreement in pais, or otherwise then in Court of Record: but a man may disclaim or dis-agree to Interest in Chattels in pais and no such dis-agreement in a Court of Record is (in that Case) necessary: For example, If Lands be given to Baron and Feme in pais in fee; the Baron dies, the Feme (in this Case) cannot obviate the frank-tenement out of her, by laping, the dis-agrees to the grant, or that she will have nothing to do with the land, so if the Baron alleys his land, and takes again an Estate to him and his wife in tails, the Baron dies; the Lords of whom the land is holden by Knight-Devise, supposing that the Baron died fully seized, by parcel assigns power to the Feme, in which the accepts: yet this restraint of the Inheritance, and acceptance of the Power in pais shall not obviate the frank-tenement out of her: Likewise, if a Charter of testament be made to four, and直升Velvored the fourth coming age of all, and after the直升Velvored the fourteenth coming age of all and before, dis-agrees to it and

Declarion in
pair of interest
goods, as
of freehold

Seigniory,
Attornment,
Letters for
for years.

Frank-tenant
cannot abide
in a Chattel.

A term shall
go to the
Executors.

Court,
Christian.

Discalms in
pair of interest
goods, as
of freehold

Col. 135. 21
in Aynsedge
Cafe.

Col. 15. 32.
in Bayley &
Baker's Cafe.

Col. 34. 5.
in Leonard
Lovel's Cafe.

Col. 26. 5,
in Bayley &
Bakers Cafe.

F. N. B. 34. 5.
and faith he will have nothing to do with the land; yet it was assjudged in 13 El. 4, Tile Jovements, that this bil-ament by parol in pais could not itself the frank-tentiment out of him. Ann Thorp in 53 El. 3. Tit. Disclaimer, faith, that in such Case the tenancy remains in all, until bil-ament in Court of Record: But if A make the Obligation to B, and write it to C, to the use of B, this is the use of A: 1st, that B should be of the use of the Donor, the ease and Chattels are immediately in the Donor before not bil-ament: 3d, that the Donor may make refusal of such gift in pais, and thereby the property and Interest shall be preserved, and such bil-ament is not necessary to be made in a Court of Record, as in Case of a free-hold, &c.

25 There is a nobody between a Condition annexed to a free-hold, and a Condition annexed to a lease for years: 3d, if a man make a gift in pais of the title to a lease for years; if the Donor shall give not to Rome before any way, the gift or lease shall cease of be void, the grantee of the Reversion shall never take advantage of this Condition, because the Estate cannot cease or an entry; but if the lease be been not for years, then the grantee should have taken advantage of the like Condition, because the lease for years upon entry by the breach of the Condition without entry was void; so a lease for years may begin without Ceremony, and also may in without Ceremony: And of a void thing a Stranger may take benefit, but not of a valuable Estate without entry.

26 A man sells of Black-are in tie, and presents of White-are to years; grants a Rent charge for life with clause of interest in both. In this Case, the Rent takes only out of Black-are: for out of White-are in regard of the meante of the interest thereof, a frank-tenement cannot arise: neither shall it be put in view, and acceptance of the Lease of White-are by grantee of the Rent shall not suspend the Rent.

27 If A man make a Lease for years upon Condition, that if he do not such an at the Lease shall be void, and afterwards he grants the reversion over, the condition is broken, the grantee shall take benefit of this Condition by the Common Law, for the lease is thereby absolutely void: but if the lease has been for life with such Condition, the grantee shall not take benefit of the breach of the Condition: for a Frank-tenement (up on with a principle lesse) cannot so easily determine, but is payable by entry after the Condition broken, which cannot be by the Common Law transferred to a Stranger.

28 If Latoes be given to John Bishop of Norwich and his Successors, and to John Overall Doctor, of Norwich and his heires, being one and the same person, he is Tenant in Common with himself; but it his otherwise of Chattels real or personal: so if a Lease for years be made to a ward granted to an Abbot and a secular man, or to a Bishop and a secular man, or if goods be given to them, they are joint-tenants thereof, and not tenants in common; for they take them in their natural, and not in their politque capacity.

29 Grant of a Reversion of free-hold is not good without attestation, but if a man make a lease for years remitting Rent, and afterwards makes a Lease of the same lands to another to commence during the first term, this is a good grant of the reversion, and he shall have the Rent (it being but a Chattel which is grants in reveration) without attestation.
95 Matter of Record more then other transactions.

1 There is a diversity between a warrant of Record, and a warrant, or an authority in Law; for if a capias be awarded to the Sheriff to arrest a man for felony, albeit the partie be innocent yet cannot he make rescues; but if the Sheriff is titled by the authority, which the Law gives him arrest a man for felony, which is not guilty, he may refuse himself.

2 If a man de non sane memoriam; an Infant make a testament of other conveyance of his land in pais, the heire of the non sane memoriam, and the Infant himselfe or his heire may enter and out the feeor, etc. Otherwise it is, if the conveyance be by fine, or by other assurance of record, etc. unless the Infant revest it before full age because of inspection.

3 A particular State of any thing, that is in grant, cannot be solesed by any grant in fee by deed, as by Lemat for life of years of an Indueion: Kent, Common, as of a Reversion or remainder of land, by deed grant the same in fee: thus is no solesed of his Grant; because it passeth by deed, and nothing is devisees, neither yet with any thing thereby passed, albeit the deed of such things be enrolled, and to make a made of record; yet neither then solesed if any solesed, because the deed is the original, etc. But a grant of such things by fine, (albeit no reversion or remainder is thereby devisees) works a solesed, because that is matter of Record, ab origine, etc.

4 An attornment of Record to a Stranger by Lemat (so of life of years) works a solesed: so both not an attornment in pais.

5 If an Infant or any man of full age have any right of entry into any lands, any stranger in the name and to the use of the Infant of man of full age may enter into the lands, and this (regularly) shall rest the lands in them without any commandement precedent, or agreement subsequent: But if a diffieso, leveth a fine with proclamation according to the Statute of 44. 7. cap. 24. a Stranger without a commandement precedent, or an agreement subsequent within the six years cannot enter in the name of the Diffieso: Howbeit an Assize subsequent within the five years is sufficient; Omnium enim ratio habito racione et mandato aquaatarum: And this resolution is grounded upon the construction of the Late Statutes, and the force of a fine, being a matter of Record, etc.

6 Before the Statute of Uses (17 H. 8. cap. 10.) upon a grant in pais of a Signifior, Barb, or seisin, or remainder, whether the grantor or the grantee bad dies before attornment, such grant had been remeived and void, etc.; had the grantor bad been by fine, then albeit the Counter or Counter had seised, yet the grant had been good; so, by fine leveth the late did passe to the Counter and his heirs, and the attornment to the Counter or his heires at any time, to make payable to subscriber, had been sufficient: But now by force of that Statute the grant of such things (by fine, or baugaine and sale by deed indent and enrolled) is good (pen ten to straite) alter without attornment, Vide R. 55. c. 69.

7 If Lemat for life hath a ptilledge, not to be impeachable of wall, or any other ptilledge, and upon grant of the reversion by deed he attorneth; without saving his ptilledge, yet loath is thereby no ptilledge, yet there can be no conclusion of barre by such attornment in pais, and so it is also of an attornment in Law; as if the Lemo; dilleke the Lefise.
Max. 95. The Common Law.

Lease for life and make a testament in fee, and the lease re-enter, this is an attornment in law which shall not prejudice him of any privileges; likewise if the lessor live a fine of the reversion, and the
Courts vie without heirs, whereby the reversion escheats to the
Lord: in this Case the Lord both supply an attornment, and there-
fore the Lease shall lose no privileges, sc. But in a Quid Juris claim
brought by the Courts of a fine, if the Tenant for life claimeth not his
privileges, but attorneth generally, his privileges is lost; because that
is upon record, and the writ supposed him to be but a bare tenant for
life; and therefore by his general attornment according to the writ he is
barred for ever to claim any privileges, but a bare Estate for life, sc.

8 If a reversion be granted for life, the remainder in fee, by deed,
and the grantee for life dies, attornment to him in remainder is void,
for it is not according to the grant; otherwise it is, if the grant were by

Waiver in Court of Record.

9 At the Common Law, if lands be given to Baron and Feme in
talle, or in fee, and the Baron die; in this Case, albeit the Feme before
her entry, reciting her Estate, faith by parol in pais, that the assigns
and agrees to the land Estate, or words to that effect, yet afterwards
the may waive that Estate in a Court of Record: So in M. 34 E. 1,
Title Advowry 275. it was adjudged, that if a man take a writress for
one thing, yet when he comes into a Court of Record, he may make
Advowry for what thing he pleaseth: Alto in 13 R. 2. Joint-tenancy,
A Charter of seisin was made to four, and feint was delivered to
these in name of all, and the fourth coming and viewing the deed, dis-
agrees, and faith by parol, he will have nothing to do with the Land;
and it was adjudged, that this disagreement by parol in pais shall not
destroy the frank-tenement out of him: And Thorp in 35 E. 3, Title
Disclaimer, faith, that in such Case the tenancy remains still, until his
off-agreement thereunto in a Court of Record, and therefore in such
a Court he may disagree and not otherwise, sc.

10 The Law to much temteth the debility and weakness of a non
compos mentis, that in many Cases the Acts, which he hath in pais,
shall be avoided, sc. but matters of Record done by him shall not be
avoided: as if he live a fine, suffer a recovery, acknowledge a Statute
or recognizance, sc. such things as these shall not be avoided by any
agreement of non san memoria, either by his heirs or executors, sc.

11 If a man be outlawed for felony, albeit he was in prison beyond
Sea, sc. renders himself upon the exentent; and upon his trial is
found not guilty; yet he shall forfeit all his goods and chattels, and
shall not have restitution, sc. for Knivet in 43 E. 3, 17. faith, that the
party shall not have restitution of his goods, although the writ of exentent
eroneous, so long as the award of exentent (which is there called
a judgement) stands in force: because the foes-fald abements of imp-
ishment, or being beyond Sea, sc. are but matters in fac. But (as
it is said in the same Book) if such an outlawed person have a charter
of pardon of an elder date than that of the Exentent, the goods are
saved, sc. for that the cause of laying them appears upon Record, sc.

12 In some Actions the Defendant shall be fined in one Court,
and only amerced in another Court, and yet the offence shall be one
and the same: As in a suit of Receptio, if it be brought in the Common
Pleas, and Judgement there given, the Defendant shall be fined and
imprisoned; but if the suit be Vicomtiel, and before the Sheriff in
the County the Defendant is contic, the judgement shall not be, quod
capitator, sc. but in such Case he shall be only amerced; And albeit the
writ, viz. the Receptio is of Record, yet as much as the Judges

in

Col. 2. 69. 12. in Taunton Ca.
Col. 3. 62. 3. in Butler and Baker's Cafe.
Col. 1. 4. 114. in Beverley's Cafe.
Col. 3. 62. 3. in Feeley's Cafe.
Col. 3. 62. 3. in Bicker's Cafe, & Co.
Col. 8. 41. 2. 3. in Greves's Cafe, & lib. 2.
Col. 4. 15. in Doctors Benjamin's Cafe.

The Words in
the same
Book.
in the Court, viz. the Autors, are not Judges of Record, nor the Court a Court of Record, they cannot impose a fine or commit any to prison, Qui nulla Curia, qui Recordium non habet, potest imponere finem, neque alicum mandare carceri, quia nulta Curia, qui Recordium non habet, potest imponere finem, neque alicum mandare carceri, quia nulta Curia, qui Recordium non habet, potest imponere finem, neque alicum mandare carceri.

13 If a Lease for life be made to a Feme covert of an Infant, and they by Charter of Sequestration Alien in Fee, the breach of this Condition in Law is no absolute forfeiture of her Estate: So it is also of a Condition in Law given by Statute, which gives not by way of entry only. As if an Infant, or Feme covert with their husband, Alien by Charter of Sequestration in Mortmain, this is no bar to the Infant or Feme covert: But if a recovery be had against an Infant, or Feme covert, an Action of waste, there they are bound and barred for other; because that is matter of record unto which the Law gives high respect; and therefore it is to be observed, that a condition in law by the force of a Statute, which gives a recovery, is in some Cases more strong, than a Condition in Law without a recovery: For if Lease for life make a lease for years, and after enter into the land, and make wast, and the Lease recover in an Action of waste, he shall avoid the lease made before the wast zone: But if the Lease for life make a lease for years, and after enter upon him, and make a sequestration in fee, this sequestration shall not avoid the lease for years.

14 If a man sue a false and sealed Action against Tenant for life, and recover the land against him by default, that he may have against the recovery a Quod est de lorcore, according to the Statute of Wills, 2. Eq. 4. In this case, albeit the Action be false and sealed, yet is a Recovery (being a matter of Record) so much respected in Law, that it worketh a discontinuance: so that the Lease cannot have an Action of wast neither against the one nor the other; for by the recovery the业主 between the Lease and Lease is destroyed, and between the Lease and the recoverer there never was, so can be any priority: and by the recovery the whole action is dismissed out of the Lease and dehers in the recovery: But if Tenant for life make a sequestration in Fee, upon Condition, and wast is done, and after the Lease re-enters for the Condition broken: in this Case the Leasing shall have an Action of wast, and so if a Bishop make a lease for life for years, and the Bishop and the Lease, the Fee being void, with wast, the Successor shall have an Action of wast: so if the Lease be dismissed, and wast in now, and the Lease re-enters, an Action of wast shall be maintained against the Lease, and so in the Cases: And yet in none of these Cases, the Plaintiff in the Action of wast had any thing in the sequestration at the time of the wast made: Holoweth in these Cases the party utterly still remains: but in the other by force of the recovery it is for the present utterly destroyed, etc. Vide Statutes 24 Eliz. cap. 8. concerning this matter.

15 The Disllence lets the Land to the Distllese for years, who enters and disclaims (by parol in pais) to have any thing, but the lease for years in the land; yet is the Distllese in his Remitter note the standing such disclaimer in pais: But if he disclaim in Court of Record, that he had not any Estate, save only such Estate for years, such disclaimer in Court of Record shall conclude him: And to observe a difference between a claim 03 disclaim in pais of an Estate, and a claim 03 disclaim of Record: for a claim 03 disclaim in pais shall not hinder a remitter: But a claim 03 disclaim of Record shall, because this worketh a Conclusion, so doth not that, etc.
Max. 96. The Common Law.

16 There is a diversity to be observed between matters of Record and things in fact; for matters in fact shall stand either within age, or at full age; but matters of Record, as Statutes, Merchant and of the Staple, Recognisances acknowledged by him, and a Fine levied by him, or a Recovery against him by default in a real action, (laving in Dower) must be avoided by him, viz. Statutes, &c. by Audita querela, and the Fine and Recovery by writ of Error, during his minority, and the like: And the reason thereof is, because they are Judicial acts, and taken by a Court or a Judge, &c.

17 If Coperceners make partition in Chancery, or in the Common Pleas to present by turn, and after a stranger interposes in their several turns; yet after, when these turns happen, each of them may have a Scire facias upon that partition against the stranger, when her turn falls, to that whereon he presents, notwithstanding such ulceration made; but it is otherwise (as it seems) where the partition is not of Record; for then they are put to their own right, by reason of such ulceration.

18 Some do hold, that if there be Lord and Tenant, and the Tenant be dissolved, and the Discharge without her, the Lord accepts rent by the hands of the Dissolution, this is no bar to him; but if he allows for the rent in a Court of Record, this shall bar the Lord of his writ of ejectment.

19 If a Giant be made to, or a Lease be made by a Dean and Chapter, Papo, and Community, or the like; it is good without naming the Dean or Papo, &c. by their names; but in pleading the proper name of the Dean, Papo, &c. must be inserted, because it is matter of Record, and ought to be certain.

20 If there be two Coperceners, and one of them make a Lease for years of her part; and afterwards the other brings a suit de partitione faciendo against the Lessee, and partition is thereupon made; in this case, albeit the part allotted to the Lessee be less, then the part of the other, yet the Lessee is without remedy: But if the partition were without writ, it seems to be otherwise.

21 Ancient Demesne shall be extended by Legie, because in such case no Judgment is given to recover the possession of the land in a Court of Record, but only execution made by the Sheriff in pais; but without in a Morte brought by tenant by Legie, ancient Demesne is not so plea, (as it is held, in 22 Att. Pl. 45.) because there the Plaintiffs shall recover the possession of the land by Judgment upon Record.

22 The Certificate of the Challenger (sent by Queen Mary to the Electorate in Germany to call up Barne and his wife, the Dutchess of Suffolk home) and the advice there offered to him by their servants being recovered in Chancery, and afterwards sent by Mittenus into the Exchequer, could not be traversed, for that it was a Record, and could not be tried by any Vicar of the Realm, it is otherwise of matter of fact made in the Country, &c.

23 Conveyances by Livery, or which passe Estates of the Land, more then those that passe by Grant, or only passe things belonging to, or issuing out of the Land.

24 The Livery of Seisin is of greater consideration in Law, then a bare Conveyance by Grant; for, a particular Estate of any thing that
lies in Grant cannot be forfeited by any Grant thereof made in Fee: As it tenant for life 70 years of an Absolute, Rent, Common, or of a Reversion or Remainder of land, by Dying grant the same in Fee, this is no forfeiture of his Estates, because it passes only by Death, and nothing is given, neither yet both any thing thereby passed, but what may lawfully pass: But if tenant for life extends another of the land in Fee by Liberty without Death, that is a forfeiture of his Estate, in regard of the solemnity of the Liberty, whereby the Reversion or Remainder is divested: So likewise if the Tenant for life 70 years of land, the Reversion or Remainder being in the King, make a Feoffment in Fee by Liberty, &c. Albeit (in that Case) no Reversion or Remainder is divested out of the King, nevertheless that also is a forfeiture of his Estate, in respect of the solemnity by Liberty tending to the King's dictation, &c.

2 It tenant in tail be disinnest, and he then released by his Death to the Diestate and his heirs all his right that makes no disannuance; because nothing can pass by such a release, but that which may lawfully pass without prejudice to any other: But otherwise it is, if he make a Feoffment in Fee of the land, in respect of the liberty of Seisin; for it is the most solemn and common Bargain in the Country, and to be maintained for the common good and quiet of the Realm: And upon the Feoffment the Feoffee, (which is so much affected in Law) both by open liberty to the Feoffee; but by the release a bare right only.


Disannuance.

4 Tenant in tail before the Statute of 27 H. 3. ofoves makes a Feoffment in Fee to the use of himself and his heirs, and after he and his Feoffees make a lease for years renewing rent, and after the Statute is made, the tenant in tail was settled, and his issue aliens the land by fine before any entry made upon the Quittance, or any receipt of the rent, and the aliens assigns the rent: In this Case, the Alienor shall never avoid this lease, whether he accepted the rent or no; for the lease was not merely held by the death of the tenant in tail, without actual entry made by the Alienor; but it has been otherwise of a rent granted out of the land by the Tenant in tail and his Feoffees: So likewise in Lincoln, Case of a Feoffment by tenant in tail to his eldest son within age, and when he comes to full age, he make a Lease for years, and after the father dies, as the law is committed, yet he shall not avoid his lease, as he might have done a rent during out of the land.

5 If there be tenant for life, the remainder in tail, and he in the remainder grants it to another in Fee by Deed, and the tenant for life attains, this is no disannuance of the remainder in tail; for it in this case of a Rent-charger, Adovisian in gross, Common in gross, or the like; for the case is, that a Grant by Deed of such things as he lies in Grant, and rent in liber of Seisin, be void no disannuance.

6 If tenant in tail of a rent, tercive, &c. of a Reversion or Remainder in tail, &c. grant the same in Fee with warranty, and he demise the land in Fee to his issue, and with the same to neither has nor disannuance to the issue intail, but he may retain for the rent, &c. service, or enter into the land after the decease of the tenant for life: But if the issue brings to a Forman in hermimer, and admit himself out of possession, then he shall be barred by the warranty and Asses: It is otherwise, if tenant in tail in possession makes a Feoffment with liberty of Seisin, so that he worketh a disannuance: Any yet if tenant in tail
A matter in the right; more then a matter in possession.

2. If the tenant be discussion, and the Dis十足 in a writ of Mene, Co.Inf. p. 1, 100 b. 1.

3. A title once gained by prescription o2 custom; cannot be lost by interruption of the possession for ten or twenty years; but by interruption in the right it may be lost, as if a man have a rent o2 Com- Co. ib. 174. b. 2

254. It is a matter of law, and that the tenure is perpetual. C. 254. 35.

255. The tenement is perpetual. C. 255. 35.

256. And that the tenure is perpetual. C. 256. 35.

257. The tenure is perpetual. C. 257. 35.

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344. The tenure is perpetual. C. 344. 35.
The Reason of

4 The and claim (lawful and made) shall have an for the against the , notwithstanding his continuance of possession and occupation, and shall recover damages and costs for the first entry before any regrett, and after regrett of the ; he shall have an for with a , and recover as well for all the mean occupation, as for the first entry.

5 If the enter upon the for the (which entry is a distress, etc.) and the bring an and of Entry in the nature of an , he shall recover; but if the bring a of right against the , he shall be barred, because in the of right the charge of the grand upon their oath is upon the right, and not upon the possession, etc. And albeit (in that Case) the in an and of Entry, etc. may regain the possession from the , yet shall the still retain his ancient right, and therewith may again recover the possession of the land from the in a of Entry in the per. for the made unto him by the ancestor of the heirs; or otherwise may recover it in a of right, etc. And therefore there is a little worthy observation, when the shall draw the right of the land to it, and when not: for, when the possession is etc., and then a right doth thereunto, the of him that hath right to the possession, shall gain also the right, which followeth the possession, and the of right (in that Case) goeth the right unto the ; but when the right is etc., and then the possession cometh to the right, albeit the possession be released (as in the Case of distress, etc.) by the of the yet the right still remaineth: So if two men that hath right of Power dissease the heir, and he recover the land against her, yet shall he have the right of Power in her: Likewise if the heirs of the dissease the heir, and the dissease enter the heir apparent of the dissease being of full age, and then the dissease death, and the right returns to him, and the heirs of the recover the land against him; yet not he have the right in the heir of the dissease, that being originally in him, in respect of the quality of Discontent: Also if he of the dissease he dissease, and the dissease release to the dissease upon condition; if the condition be broken, he reveal the naked right, etc. And if the dissease have entered upon the heir of the , and made a upon condition, if he entered for the condition broken, and the heir of the dissease; entered upon him, the naked right should be left in the dissease; But in these two last Cases if the heir of the dissease had entered before the condition broken, then the right of the dissease had been gone for ever; because in the first Case the possession of the dissease was etc., and then came the right unto it by the release of the dissease, and in the other Case the possession and right happened both in one and the same instant; and (in that Case) the possession had relate etc. And in both Cases until the breach of the Condition, the dissease had put his self of his whole State. In like manner, A. dissease the heir of the dissease, and the dissease released the State, etc.
the Common Law.

with A, the more right to the land; and therefore if the heir of the
villain enter into the land, and re-gaine the possession, that shall
not be with it the more right to the land; and shall not re-gaine
the possession over, and leave the more right in A, but by the recont-

mance of the possession, the more right is thereby better in the heir
of the villain; because the possession was in A: before the acquisition
of the more right, &c.

6 In an Action of Trespass against Tenant for life, who pleads
villainage in the Plaintiff, and the Plaintiff is found rank & no villain;
yet he in the reversion is not stopped by this verdict; to s thing it tells
whereupon the reversion depended, not in demand, and the Plain-

"tiff Hall recover only dammages: Neither can he in the Reversion
have a writ of Error or attainit upon it: Deferri it is in a natural ha-
bendo, for there the right of Villainage common in question, and he in
the Reversion may have an error or attainit.

8 Yet it favoureth Possession, where the right is
equal.

1 If a man purchase at one time several lands, helden of several
Lords by Knight-service, and die: the Lord that first can have the
warship of his heir, shall have it.

2 Husband and Wife purchase socage land to them and the hestres
of their body, and dite his heir within fourteen pears of age die: In this
Case, if the Grand-mother of the part of the Mother of the Sce
first settle the body, the Hall have the warship, and not the Grand-
father of the part of the Father of the Blaw.

3 If lands holden in socage be given to a man and the hestres of his
body, and he dite his heir within the age of 14 pears, the next Cozen
of the part of the Father ( albeit he be the worthier ) Hall not be pre-
ferred before the next Cozen of the part of the Mother, but such of them
as first settle the heir Hall have his custody.

4 If a man be letter of lands holden in socage of the part of his Fa-
ther, and of other lands holden in socage of the part of his mother,
and dite, his Sce being within the age of 14 pears: In this Case,
such of the next of kin of either side; as first happen the body of the
heir, shall have him; Bowdeth the next of the blood of the part of the
Father Hall enter into the lands of the part of the mother, and the
next of kin of the part of the Father; Hall enter into the lands of the
part of the Father, &c.

5 Tenants in Common of Personal goods have an equal right in
them; Bowdeth the one may take them all from the other, and Hall
have them to his own use, if he can hold them: but the other, if he can
re-gaine them by Catchpole Law, he Hall have them: And so it is also
of real Chatells, that are entire: but not of other Chatells real that are
severable, &c.

6 If there be Lords and Tenant by fealty and 2. Kent, and the
Lords by incroachment ( viz. by the voluntary payment of the Tenant )
happened settle of more Kent, then he ought to have: In this Case,
the Law is to great advantage of settins and possessions; that the Le-
dant shall not abold this settle had by incroachment in absury unless
it be in some special Cases, which be ubi supra.
The Reason of

99 The Law respects matters of profit, and Interest, largely; Of pleasure, skill, ease, trust, authority, and limitation, strictly.

1. Albeit to others purposes a Letter for leases is not Lessor before entry, as a release made to him is not good to increase his Estate; before entry, neither yet can the Lessor, before entry, grant away the reversion by the name of the reversion; nevertheless, he before entry hath an Interest, inter esse termini, grantable to another: So that although the Lessor die before the Lessor enters, yet the Letter may enter into the lands: So also if the Lessor die before he entered, yet his Executors or Administrators may enter; because he presently by the lease hath an Interest in him; And therefore if the lease be made to two, and one die before entry, his Interest shall survive.

2. If there be two joint attorneys to receive liberty for another, and liberty of servit is made to one of them, in the name of both this is clearly void: because they have not a mere and bare authority, and they both pos in law make but one attorney, unless the warrant be jointly and severally: But if a lease for purposes without be void be made to A. and B. the remainder to C. in fee, and liberty is made to A. in the absence of B. in the name of both, it is void (in this Case) the liberty is void to both the remainder: because the Lessor for purposes, that take the liberty hath an Interest, &c.

There is a diversity between an attorney coupled with an Interest, and a bare authority: For example, There was a custom in a Manor; for the Lessor to grant copl.-hold lands always in fee-simple, and never to any letter Estate, and the Lord did grant to one by copy for life, the remainder to another and the heres of his body: And it was adjudged (H. 26 Eliz. Rot. 492, inter Sharon & Barns in an ejectio-ne firme in B. R.) that the grant and remainder ever was good; because the Lord having authority by Custom, and an Interest to walk may grant any letter Estate: so in this Case, the Custom that enabled him to the greater, enabled him to the lesser, Omne majus constinct in le minus, &c. So also if one as Procurator or attorney to another present to his own Benefice, be thereby puts himselfe out of possession; because of his Interest coupled with his authority, and for that the presentes committeth in by the Institution and Injunction of the Ordinary; If the Lord of a Chanter of a Rent-charge had been also Ceftay que use of the land, and after the Stat.of R. 3. and before the Stat.of 27 H. 8. Ceftay que use had made a feodament in fee of the land, albeit (in this Case) the land paleth from the soil, and his feodament is warrantied by the power given to him by the Statute, yet the Seignory or Rent-charge is extinct by his feodament, so that he had not a bare authority as an Attorney, but also an interest coupled therewith: But be that hath a bare authority to do a thing is so farre from doing more then which he is expressly authorized to do, that if he strictly pursue not his authority, the Law adjudgeth that which he doth to be absolutely void: As if a man be desirous of Black-ace and White-ace, and a warrant of attorney is made to enter into both, and to make liberty; there, if the attorney enter into Black-ace onely and makes liberty seculundum formam caret; In this Case the liberty of servit to void: because he doth make his warrant; for, the Estate in White-ace cannot be obviated without an entry: So likewise, albeit the warrant be general, viz. to seivel servit; yet the attorney cannot deliver servit within the view: for his warrant is inestimable in Law of an Actual and express liberty, and not...
not of a liberty in Law; and so it was resolved in Yarham's Case, P. 3. El. in Co. Bancro. In the manner, albeit the warrant of Attorney be
indefinite, without limitation of any time, yet the Law prescribeth a time, which the attorney is bound to observe, viz. in the life time of the Feoffor and Feoffee; for, if either of them die before Liberty made, that is a countermand of the Letter of attorney, and also the Deed it
self is become of no effect, because in that case nothing will pass before Liberty of Seisin; for, if the Feoffor die, the land belongs to the
heir, and if the Feoffee die, Liberty cannot be made to his heir, because then he should take by purchase, whereas heirs were named
by way of limitation: And here with I agree with Branden, Item, Opor-
ter, quod donationem sequatur rei traditio, etiam in via donatorum & do-
natoris, &c.

4 If I hold upon a man my sheep to compass his land, or any open,
field, he shall be discharged; because he hath a property in them, and
therefore ought to keep them no otherwise than his own: but if he that
had them, tendred the money before the Sealing, and the other re-
sisted to deliver them, then for this default in him he shall be charged:
for, after such tender he kept them upon trust as Bailie, and therefore
was to look solely to them at his peril.

5 If goods be delivered to one, as a gage or pledge, and they be col-
lected, he shall be discharged; because he hath a property in them, and
therefore ought to keep them no otherwise than his own: but if he that
gaged them, tendred the money before the Sealing, and the other re-
sisted to deliver them, then for this default in him he shall be charged:
for, after such tender he kept them upon trust as Bailie, and therefore
was to look solely to them at his peril.

6 If a man sell or of Lands nobility, that his executors shall sell it,
and make two executors and death: In this case, if one of the
executors before sale thereof die, or refuse, at the Common Law be-
fore the Statute of 21 H. 8, cap. 4, the land could not have been sold by the
surviving executor; because the power given them by the will, being but
a bare authority, it ought strictly to be observed, and they ought both
to sign in the sale: but if a man vendeth lands to his executors to be
sold, and he maketh two executors, and the one die, yet the surviv-
ors may sell the land; because they had not a bare trust only, but al-
so a trust coupled with an interest, and therefore as the State, so also
the trust shall survive, &c.

7 Upon a Mortgage, if a Stranger, that hath no interest in the land,
mortgaged of his own head take authority to tender the monies, &c. the
Feoffor is not bound to receive them: but if the Mortgagee die, his
heir within the age of 14 years, and the land being held in occu-
pation, the next of the kinne, to whom the Land cannot descend,
being his Guardian in occupation, may tendre in the name of the heir;
becaus he hath an interest as Guardian in occupation: Also if the
heir be within the age of 21 years, and the land is held by Knight:
service, the Lord, of whom the land is held, may make the
 tended for his interest, which he shall have, when the Condition
is performed; for these in respect of their interest, are not accounted
Strangers, &c.

8 If an Office of Parker wch be granted or decent to an in-
fant or Feme covert, and the conditions in Law annexed to that
Office (which require skill and confidence,) be not observed and
fulfilled, the Office is lost for ever; because (as Litleton faith
9. 379.) that impotent condition of skill, &c. is as strange as an oppo-
sed condition; but if a trust for life be made to a Feme covert, an infant,
and
by Charter, of leasehold estate in fee, the breach of this condition in law, that is without skill, sc. is no absolute forfeiture of that estate: so it is likewise of a condition in law given by Statute, which gives an entry only; as if an Infant, or insane, with his husband, issue by Charter of leasehold in Mortmain, this is no bar to the Infant, or insane, cover; because those conditions conduce not to defeat an Interest, singly, but the other an Interest mixed with a trust and confidence.

Co. 111 b. 4. 9 If a man makes a letter of attorney to deliver feoff; Sec. 1. Livery of feoff upon condition, and the Attorney delivereth it absolute, this he has;

and to (some hold) If the warrant be absolute, and he delivereth feoff upon condition, the delivery void; because he ought to perform his Warrant, sc.

Co. 116 b. 1. 10 If a man by his last will devise, that his Executors shall sell his land, and bid; If the Executors receive all their right and title in the land to the heir, this is void; so that they have neither right or title to the same; but only a bare authority, which is not within the case: a release of a right; And if it is, if it is that this case; and if the Executors have sold his land, albeit they have made a leasehold estate, might they sell the uses for the authority in that case is not given away by the delivery, because in these cases the power or authority is vested only in the use of a stranger, and nothing for the benefit of him that makes such release orlessee. It is possible where the power or authority both also respect the benefit of the lessee, as in the case of the usual powers of reversion. When the lessee, both power to alter, change, determine, or revoke the Uses, being intended for his benefit; for in that case, a leasehold releases, and where the estates before were defeasable, he may by his release make them absolute, and declare himself from any alteration or reversion, as it is resolved in Albaines case in the Rep. 112, in 120.

Co. tit. 111. 113. in Albaines Case.

Co. b. 116 b. 1. Lit. § 112.

11. Attachment by a kind of power, which the tenant, sc. hath to Attachment make satisfy the grant of a reversion, remainder, rent, sc. And therefore ought to be always strictly and exactly directed according to the grant: as if the New first grant his services in set one, and afterwards another for life, and that tenant first attaches to the last grants, in that case, he cannot after attach to the last grants to make the alleged past, so that would not be according to the grant; but in that case, the Attachment to the last is countermanded: And so it is, if a reversion spring upon an estate for life be granted to another in fee, and where the Grantor before Attachment confirms the estate of the Lesse, in tail, the Attachment to the Grantor for the IPS is void: in the same manner, if a reversion upon an Estate for years be grantever, and the Lesse confirm the estate of the Lesse, for life, he cannot after wards attach, sc.

Co. b. 365 b. 3. 12 Warranties are enforced in Law, because they are matter of interest, whereby a main estate is the better secured; it is otherwise with Estoppel, because they are matter of limitation, whereby an Estate is barred.

Co. b. 197 b. 1. in South's Case.

13. If a man hath no power, authority, coupled with a confidence, as Executors have to sell land, they cannot do it by Attorney: but if a man hath authority, as absolute Owner of the Land, there he may do it by Attorney, as Copyhold, because they are matter of limitation, whereby an Estate is barred.

Co. b. 325 b. 3. 14 Power to make Leas
the Common Law

...wishes a customary estate of inheritance coupled with such an authority, may surrender by Attorney. Also there is a liberty between a general absolute power and authority, as Owner of the Land, as absolute, and a particular power or authority (by him that hath but a particular interest) to make Leases for lives of 2 years;

And therefore if A be tenant for life, the remainder in tail, &c. And A, hath power to make Leases for 21 years, rending the ancient rent, &c., he cannot make a lease by a letter of Attorney for force of his power; because he hath but a particular power, which is personal to himself alone, as it was reformed in the Lady Gresham's Case; 24 Eliz. get Wray, and Anderson, then Justices of Alias in Suffolk.

14. When any hath authority as Attorney to do an Act, he ought to do it in the name of him, that gives him such authority; for he appoints the Attorney to be in his place, and to represent his person: and therefore the Attorney cannot do it in his own name, &c., as his proper act, but in the name, and as the act of him, but gives him the Authority; And what he doth otherwise is void: So if Attorneys have power by writing to make leases by Instrument for 21 years, &c., they cannot make the Inventions in their own name, but in the name of him, that gave them warrant, &c.

15. The office of Marshal of the Marches cannot be granted for 21 years: because it is an Office of great trust annexed to the person, and concerns the administration of Justice, and the life of the Law, which is to keep such as are in Execution in these &c., and under the Statute of 21 I. which enacts that Court, provides, that there shall be two persons, &c., who shall have a Judicial voice; and therefore (in that case) the King cannot appoint only one; because it is a matter of trust committed to two, and the subject by that Act hath an Interest in it, &c., securis expedium negotiis commerciis pluribus: Howbeit the King may constitute one at one time & another at another time by several Patents; And albeit he may do, yet he is not that shall constitute, hath no judicial voice, before the other be also constituted; for it is provided by the Statute, that two persons, &c., shall be one Office: And therefore (in the same case) although they be constituted by one and the same Patent with these words, conjunction & division, &c., the same, shall serve for no other purpose, than that the surviving shall be one of the persons, to whom another may be added to make up that one Office, &c.

16. If an Office of trust be granted to two pro termino viarum (without more) by the death of one of them he shall have his part; but if being an Office of trust no survival can be thereof: In like manner, there can be no survival in the Office of the two Auditors of the Court of Wills; for the Statute of 32 H. which enacts that Court, provides, that there shall be two persons, &c., who shall have a Judicial voice; and therefore (in that case) the King cannot appoint only one; because it is a matter of trust committed to two, and the subject by that Act hath an Interest in it, &c., securis expedium negotiis commerciis pluribus: Howbeit the King may constitute one at one time & another at another time by several Patents; And albeit he may do, yet he is not that shall constitute, hath no judicial voice, before the other be also constituted; for it is provided by the Statute, that two persons, &c., shall be one Office: And therefore (in the same case) although they be constituted by one and the same Patent with these words, conjunction & division, &c., the same, shall serve for no other purpose, than that the surviving shall be one of the persons, to whom another may be added to make up that one Office, &c.

17. A licence to hunt in my Park: If Walk in my Orchard extends not to himself, not to his servants, &c., other in his company; for, it is but a thing of pleasure; otherwise it is of a licence to hunt, &c., and carry away the Doe, &c., that is a matter of profit.

18. A Trip granted to Church over any land, extends not to any other but himself; &c., to but an Acrement.

19. A Reversion granted to two Joint-tenants, and the tenant attorns to one, it is a void Atrojment.

20. If the Sheriff behead one, there should be hanged, it is blong. Finch, ibid.
21 The King licentiate one to alien the third part of his Land, and he alieneth all, it is a void alteration for all.

22 A Lease is made to A. and B. for their lives, A. yeath, B. shall have all during his life, for it is an Interest; but if a Lease be made to I.S. During the life of A. and B. there (none of them die) the Estate is utterly determined: for that is a limitation.

23 A covenants to stand solely to the use of himself for life, the Remainder to B. in tail, etc, which power to revoke and limit new Wills, by B. invented to be inrolled in Chancery; A. afterwards revokes and limits by B. invented, and then leaves a Fine, and after that the Adventure of Revocation, etc, is inrolled in Chancery: Here, by levying the Fine before Involvement he hath extinguished his power of Revocation, etc. So also if it had been, if he had made Feoffment of the Land: for, power of Revocation, and limitation of Wills are to be punctually observed, because strictly taken in Law; and therefore also (in the same case) these words, Indentured to be inrolled, are to be rendered, Indentured and Inrolled.

24 A covenants with B. that in consideration B. will marry his Daughter, he and his heirs shall stand solely to the use of B. and his heirs, B. enters, and delivers A. and makes Fee in F. A. re-enters, and after B. marries his Daughter; yet here, the Use both not well in B. because he hath extinguished the limitation of the Wills to him by his Fee

25 If a man be bound in an Obligation with condition to pay 10 l. to the Obligee at a day to come, and the Obligee delivers him an Issue, or any other thing in satisfaction of the 10 l. and the Obligee accepts it, the condition is performed, for the Obligee may dispose with his own duty by that means, but the condition be, that a stranger to the condition shall pay it, so that the Obligee shall pay it to a Stranger to the Obligation, in such cases, the Conditions ought to be strictly performed, according to their several limitations, otherwise the Obligations are lost, for in such cases, an Issue, or other thing in satisfaction of the like sum will not suffice, because such limitations must be strictly observed.

26 In Debt upon an Obligation to perform Covenants of an Adventure, etc. the Defendant pleads a Release of all Covenants in the same Adventure, made five years after the date of the said Adventure, and this was held no good plea in barre of the Obligation, because the limitation of the condition being for the performance of Covenants, if any Covenant was broken before the lasting and delivery of the Release, the Obligation was thereby lost, and could not be abated by the Release.

27 A man deceased, that his Executors shall take the profits of his Land, until his heir shall be at full age to pay Debt &c. etc. for the one dies, after the Survivor makes his Executors and dies also, the Executor of the Executor last dying, shall take the profits; because it is an interest, that forbids; if it had been but a bare authority.

28 A man deceased, that after the death of his wife, his land shall be sold by his Executors, and cum asciendo A. and makes his wife and a stranger his Executors, and dies, the same dies, and A. also dies; in this case, the authority is determinate.

29 Two submitted themselves to an Arbitrator by Recognizance concerning the right and interest of 100 acres of land, called Keliting; and for all other actions and suits concerning the same, i.e. quaed Arbitrarius, &c. before a certain day; the Arbitrators found, that the Defendant hadukes makes during his life in the Waite of the Town of...
And therefore these may be countermanded, so cannot those.

1 Where the Office of an Officer hath no profit thereby, but only a Conventional certain Fee, there the Giant; may discharge him of his Service; as to be a Bailiff, Receiver, Surveyor, Auditor, or the like, the exercise whereof is only Labour and Charge to him; but where the Giant defines his certain Fee, hath also profits, and avails by reason of his Office, there the Giant cannot discharge him of his Service, or attendance; so that would be to the prejudice of the Giant: As if a man both grant to another the Stewardship of his Courts of his Manor, with a certain Fee, the Giant cannot discharge him of his Service, and attendance; because he hath other profits, and fees belonging to his Office, which he should lose, if he were discharged of his Office: So it is also in the case, which Linclen put forth (§ 379.) of the Office of the Keeper of a Park; because (in that case also) he hath not only his Fee certain, but profits and avails also, in respect of his Office, as Deer-skins, Shoulders, &c.

2 If a female sole maketh a Lease for life or years, referring a Rent, and granteth the Reversion in Fee, and taketh husband, this is a Countermand of the Appointment.

3 If a man be bound by Obligation to Come to, abide, observe, &c., the Rule, Arbitriment, &c. of another; yet he may countermand the authority so given to the Arbitrator, for a man cannot by his act make such an authority, power, or warrant to be uncountermandable, which by the Law, and of its own nature is countermandable: As if I make a letter of attorney to make Liberty, or to sue an action in my name, or if I assign annuities to take an account, or if I make one my Factor, or if I submit my selfe to an Arbitriment; albeit these are made by express words irrevoicable, or although I grant or bind my self, that all these shall stand irrevoicable, nevertheless, they may be revoked: So likewise, if I make my last Will and Testament irrevoicable, yet I may afterwards at my pleasure revoke it: for, my act and my words cannot alter the judgment of Law, and make that irrevoicable, which of its own nature is revocable: And therefore, notwithstanding it is said in 5 E. 4. 3. 6. That if I be bound to stand to the award, that I S. shall make, I cannot discharge that Arbitriment, because I have bound my self to stand to his award, and that if it were without Obligation it would be otherwife: Nevertheless, in the one case and in the other, the authority of the Arbitrator may be countermanded; but then in the one case, he shall forfeit his Obligation, and in the other case he shall lose nothing; for, a submission non oritur actio. And with this agrees Brooke, in abolging the false Book of 5 E. 4. Vide 8 H. 6. 30. 18 H. 6. 49 E. 5. 9. 18 E. 4. 9. 8 E. 4. 10.
4 A licence to come to my house to speak with me: Good half. 
over to be delivered to J. S. to deliver in Ames, a letter of Attorney 
to deliver himself: all these may be countermanded before they be done: 
But if I present J. S. to a Church, I cannot alter base and present 
the licence for a kind of Interest that is out of me: So if I deliver an 
Obligation as a forswear into a Strangers hand, to be delivered to the 
Obligee upon a Condition to be performed, this cannot be counter- 
manded: for upon the delivery there will be an Interest to the Obligee, 
he being (as it were) party and pizz to the delivery. Finch 32.

5 A man deliveras a summe of money to another to the use and be- 
half of a Woman, and to deliver it unto her upon the day of her mar- 
rriage: In this Case, when a man makes such a conditional gift of 
his free will am pleasure, and deliver the thing in Ovell hand to keep 
to the use of a stranger, before that condition be performed, the bali- 
ment (which is but a mere authority) is revocable; So if a man 
deliver to his servant at Christmass a gold ring to give it for a new years 
gift to a stranger, he may countermand it notwithstanding the gift: 
But if I lay that J. S. hath enclosed me of certaine land, and in re- 
compence thereof I give him this money, and withall deliver it to a 
stranger to be delivered over: In that Case I cannot countermand for, 
because this gift doth not take effect as a free gift, but as a satisfaction 
and interest, ec.

6 The licence granted to Spiller Barthe (to go beyond Sea to reco- 
er the debts of Charles Brandon Duke of Sufolke deceased, provided, if 
he should entertain any fugitives of England, that then it should cease) 
was not countermandable until he did entertain fugitives, because 
till then he had the licence in nature of an Interest, being (indeed) 
granted unto him for a certaine time, viz. until the proviso were 
broken.

7 Hob. 1. Sir Dan. Norton against Siames, the under-sheriff of 
renewable.

101 Matter of substance more then matter of circumstance.

1 In a writ of Melle the Plaintiffs sally, that the Defendant and 
his Ancestors had acquitted him and his Ancestors, ec. and upon a 
special Writ the Jury found, that the Plaintiffs Grandfather bought 
the land of one Agnes, and that before that purchase acquittal was used 
but not since: And (in this Case) it was adjudged both in Banco, 
and afterwards by Writ of Error in B. R. that albeit the Writ was 
found against the letter of the Mai, yet for that the substance of the Mai 
was found, viz. a sufficient title by prescription, the Plaintiff Should 
recover his acquital: So is a modus decimandi be allowed by prescrip- 
tion, and the Jury finds a continuance of the prescription till 20 years 
and after 20 years a payment in specie: In this Case, albeit the Jury 
finds not the prescription, as it is allowed, viz. for the whole time: 
et for as much as the substance of the Mai is found, viz. the prescrip- 
tion, that shall not be pursued by such cellar for 20 years, which is 
bout a circumstance, ec. For if the matter and substance of the Mai 
be found, it is sufficient.

2 In the Melle recovereth a Rent, when it is a Rent-service, and 
after the Rent become a Rent tacke by sur plusage, and after the 
Tenant both re-disseise him of the Rent; In this Case, the Melle shall 
have a re-diffence upon the Statute of Morton 20 H. 3. for, the substance 
of the Rent remains till; though the quality be altered, So if Tenant 
in special talle recover in Malle, and after becommeth Tenant in talle 
Talaz
the Common Law.

after possibility; &c. and then is re-undertaken, he shall have a re-discus
upon the same statute; to admit the date of inheritance be altered
not the time (tho' who remained.

3. If there be a Challenge for Contraage; be that taketh the Chal-
lenge must then how the Juror by Contra: But yet if the Contraage,
which the effect of fulness, be found, it suffered; for the Law
preferred that, which is material, before that, which is formal.

4. Upon a Mortgage, where there is a time and place limited for
the payment of the money; although it be pays at a day before it grows
due, at another place, then which is limited in the act of mortgage;
get if the mortgagee receive, that is insufficient payment; for the time
and place of payment are but circumstances, which shall not prejudice,
so that the fulness,viz. the payment, &c. be performs; There is the
same Law of an Obligation.

5. If a Testament be made upon Condition, that the Testator shall
give the land to the Testator, and his Wife in tails, the remainder to the
heirs of the Testator; and the Testator dies before the testament in this
Case; (Lord Coke infra § 372.) that the Testator ought to make an E-
heritance life to the Wife without impeachment of waft, &c. And yet if
the Wife have ascended any Estate for life without this clause, without
impeachment of wals, it is good because the Estate for life is the substance
of the grant, and the priviledge to be without impeachment of wals is a
collateral circumstance, and only for the benefit of the Wife, and
the omission of it costly to the benefit of the testor: So likewise, if
the Wife (in that Case) take husband before request made, and
then they make request, and the land is made to the Husband and Wife,
during the life of the Wife, this is a good performance of the
Condition, albeit the Estate be made to the Husband and Wife,
where Lord Coke saith it is to be made to the Wife, but it is gone
in stature, seeing that the limitation is, during the life of the Wife,

6. An Obligation made beyond the Seas may be sued here in Eng-
land, to what place the Plaintiff be well: As it bears note at Bordeaux
in France, it may be discharges to be made in quidam loco vocato Bordeaux
in France in Illingston in the County of Middlesex, and there it shall be
tried, to whether there be such a place in Illingston or no, is not traver-
sable in that Case; because the place, where it was made, is partly
circumstance, and not of the fulness of the same, &c.

7. Thus words, modo & forma, pour, &c. and in many Cases but
words of form in pleading, and not words of fulness; for a man
being a writ of entry in case provided, or an alienation made by the
Warranty in Deover to his heir-inheritance, and counts of the alienation
mentioned; and the Warranty saith, that he alienates not modo & forma
form, prays the Demantant hath declared, and they upon the act at Place;
and it is found by Notice that the Warranty alienates in tale to, as pur
d'aucier vie: In this Case, the Demantant shall recove, yet the alien-
ation has not his manner as the Demantant. hath declared: Now
this Rule holds always true, when the Place taken goeth to the
point of the writ as Action; for then modo & forma are but words of
form, But otherwise it is, when a collateral point in pleading is
transferred, as it testament be altered by two, and this is transferred
modo & forma, and it forms the testament of one, there modo & forma,
is material: So is a testament be pleaded by new, and it is transferred;
above how quod. So that modo & forma, upon this collateral place modo &
forma needs essential, that the Jury cannot form a testament without
the.
The Reason of

8 Lord and Tenant by'salty only, and the Lord intretanes the Tenant for Rent, the Tenant brings an Action of Trepass against the Lord for his cattle to taken, and the Lord pleads, that the Tenant holds of him by trauty and certain Rent, and for the Rent he stran- 
s, et. And the Tenant faith, that he holds not of him modo & forma, 
as he supposeth, and thereupon they are at Issue, and it is found by 
Hercule, that he holds not of him per fidiclatum amnun ; In this Case, the 
write shall abate, and yet he held not of the Lord, in manner, as the 
Lord had allaged; But the matter of the Issue being found, viz. 
that the Tenant holds of him, that suffteth to abate the writ, 
albeit the Lord intretane the Tenant for other Services, then are 
one.

9 If A. be appelleed, or indicted of Murder, viz. that he of malice 
preseented killed B. A. pleaseth, that he is not guilty modo & forma, yet 
the Jury may and the Defendant guilty of man-slaughter without mal- 
lice presenst, because the killing of B. is the matter, and malice pre- 
persent is but a Circumstance.

10 In Affid of darrien preence, if the Plaintiffse alleaghe the 
abstenance of the Church by poulution, and the Jury and the 
voynance by death, the Plaintiffse shall have judgement : for the 
manner of the voynance is not the title of the Plaintisff, but the voyn- 
ance is the matter, etc.

11 If a Guardian of a Hospital bring an Affid against the 
Ordinay, he pleaseth, that in his voitation he deposeth him as 
Ordinay, whereupon Alue is taken, and it is found, that he dep- 
soeth him as Patron; yet the Ordinay shall have judgement, for, 
the depsoation is the substance of the matter.

Co. a. 2. a.

12 The Lese covenants with the Lessor not to cut doome any trees, 
and hire himselfe in a bond of 40 pounds for performance of 
covenants, the Lese cutes doome ten trees, the Lesser bringeth an 
Action of debt upon the bond, and assigneth a breach that the Lese 
hath cut doome 10 trees, whereupon Alue is joined, and the Jury 
finds, that the Lese cut doome ten; yet judgement shall be given for 
the Plaintiffse; For sufficient matter of the Issue is found for the 
Plaintissse.

Co. b. 2. a. j

13 In a writ of Trepass for battery or for goods carried away, if the 
Defendant pleas not guilty in the manner, as the Plaintiffse supposeth, 
and it is found, that the Defendant is guilty in another towne, or of 
another day, then the Defendant supposeth, yet he shall recover: For 
in Actions brought for things transitoy, the wrong being done in one 
towne, the Plaintiffse may not only alleage it in another towne, but 
also in another Country, and the Jurors upon not guilty pleased are 
bound to Iudg for the Plaintiffse: Neither can the assailant, battery, 
taking of goods, et. alleage in another Country, he traverseth with- 
out special cause of Justification, which extenteth to some certain place, 
as if a Contable of a towne in another Country arrest the body of a 
man, that breaked the peace, there he may travers the County: 
Hence it he must not stay there, but must lay farther, and all other 
places, saving in the towne, whereof he is Contable: So it is also in an 
Action for taking of goods; for, in that Case also, if the Defendant 
judits for damage talem in another Country, he may travers, as before: 
But where the cause of the Justification is not restrained to a certain 
place, whereof it is to local, that it cannot be alleaged in any other towne 
as in the Cases before alleaged, and the like) then albeit the Action 
be brought in a foraigne County, yet he must alleage his Justification 

in
in the County, where the Action is brought: As if a man be beaten in the County of Middlesex, and by bringing his Action in the County Buck, the Defendant cannot plead, that the Plaintiff assailed him in the County of Middlesex, &c. and traverse the County, but he must plead his justification in the County of Buck, for that the cause of his justification is good in any place: So it is likewise in Case of Bailment of goods, and other Cases for transitory things, as, for example: In an Action upon the Case the Plaintiff declared for speaking of slanderous words, which is transitory, and laid the words to be spoken in London, the Defendant pleaded a concurs for speaking of words in all the Counties of England, saving in London, and traversed the speaking of the words in London; the Plaintiff in his replication denies the concurs, whereupon the Defendant demurred, and judgment was given for the Plaintiff; 20, the Court said, that if the concurs in that Case should not be traversed, it would follow, that by a new and fertile invention of pleading, an ancient principle in Law (that for transitory causes of Action the Plaintiff might allege the same in what place or County he would) should be subverted, which ought not to be suffered: And therefore the Judges of both Courts allowed a traverses upon a traverses in that Case, &c. Now the ground that rules all these Cases is this, because the Law respects more the cause of the Action, which is the substance of the suit, then the place where the Act was done, which is but circumstance, &c.

14. That which is alleged by way of concomitant or incumbrance to the substance of the matter, need not to be so certainly alleged, as that which is the substance it itself: And where a matter of Record is the foundation of ground of the suit of the Plaintiff, or of the substance of the plea, there it ought to be certainly and truly alleged otherwise it is, where it is but concomitant; because that is but circumstance, &c.

15. When a Count, barre, replication, &c. is defective in respect of omission of some circumstance, as time, place, &c. there it may be some good by the plea of the adverse party; but if it be insufficient in matter and substance, it cannot be saved. Co.L.1.20.b.D.Douche. Case.

16. In the Reigns of E. 2. E. 3. and upwards, the pleadings were nothing curious, but plain and sensible, ever having Care respect to matter and substance and not to forms of words, and were often hapen by a quantum cft, and then the questions move by the Court, and the answers by the parties were also entred into the roll, &c.

17. Albeit a plea as to the form be false and ignorant, yet if good in substance, it shall be adjudged sufficient. Co.L.1.43.b.4. & Co.L.7.35.b. in Bar Case. Co.L.304.a.4. in Bar Case.

18. If a deed bare date after the delivery, and after the decease of the party to whom it is delivered, yet is it sufficient: as if an obligation bare date 4 of April 24 El. and the Obligee delivers it as his deed 30 July 27 El. and the Obligee dies before the date, yet this obligation is good; for albeit the Obligee in pleading cannot allege the delivery before the date (as it is adjudged in 12 H. 6. 7.) because he is stopp to take abeyance against any thing express in the deed, yet the Jurists, who are noone ad, veritatem diemanda shall not be stopp in that Case: And a reason hereof is, because the date of a deed is not of the substance of the deed; for if it want date, or have an impossible date (as the 30 day of February) yet the deed is good, there being only three things of the essence and substance of a deed, viz. the writing in paper or parchement, sealing, and delivery: And if it have these three, although it wants, in cujus rei testimonium signum sium appositum, yet the deed is sufficient: for delivery is as necessary to the essence of the deed, as the putting
The Reason of

19. If it be agreed by Indenture, that a fine shall be levied of certain Lands by the name of a certain number of Acres to which persons, and that they shall grant and convey the Land again to the Assignee, which shall be certain rules: The fine is levied of the Land, but there is some variance in the number of Acres comprised in the fine, or the fine is levied to one of the parties only, who grants and conveys the Land: so that there is variance between the Covenant and fine in number and person: Nevertheless (in this Case) the fine shall be adhered to be to the use of the Indentures: For the original bargain and agreement of the parties was declared by writing, and although there be some little variance found in quantity, the same, as and by such other circumstances, between the fine and the Indenture: put the Land (which in common conversation hath great respect and regard to the interest of the parties, and to the substance and effect of their original bargain and agreement) will permit afterwards to agree the fine and the substance, notwithstanding these little circumstances of person, time, and the like, when the party sues, that there was not any mutual consideration; to no agreement between the parties that the fine was levied according to the indenture, and to the same substance contained in the lands was (howsoever it is contrary to justice and equity, and principally in common understandings of lands between party and party, that every little variance in circumstance should not disturb all the substance of agreement of parties or persons in their understandings and obligations one of them: and therefore it was supposed in Tawes's case about the 42 of El that K. A. hath 20 acres in Duke, § 8 hath as many in the same town, and A. leeds a fine to B. of 20 acres, and B. grants and conveys 20 acres to A. in 60. but A. shall not have the 20 acres of B.: and if there were a special agreement between them in that effect; or otherwise the Commons' house be said to render more than they receive, and the difference in the number of acres is but a circumstance, &c.

20. Exception was taken to an Indenture upon the death of a man because those words (in pace Dei & Dominii Regis) were omitted; and albeit in Indenture those words are usually inferred, yet the exception was not allowed: because such words are not terms of substance, nor only inferred by way of Amplification to aggravate the deserving of the crime, &c.

21. Where a man prescribes for a course of water to a Falling-mill, whereas anciently it was a falling-mill of late time was pull'd away, and a falling-mill stand in place thereof: yet if that water course be taken by a Stranger: In an Action upon the Case, &c. he may well prescribe the course of water to this falling-mill as altered as above, if the mill is the substance, and the thing to be assumed; and the addition of a Grind or Falling, are but to show the quality or nature of the mill; And therefore in the Register, and also in F. N. B. it appears that it was well a Common Grinding Mill, Falling-mill, or any other-mill, the note shall be general, &c. de molendino, without any addition of Grind or Falling, and precisely agrees 21 Alb. 23. of a Right in Affidavit.
the Common Law.

...
The Reason of

Max. 16.

26 In debt against Savior, the Jury was all for, the debtor was charged, and the debt was in dispute, not only in a Foreign Country, but in a foreign Country, not to be enforced, for the debt was not found nor in any part of the world. As if the Savior were a bankrupt; the like, the case was beyond seas. He shall be charged with them as a debtor. For the place and the circumstance, see.

27 In ancient times, when the Savers and Clerks of the Chancery were通知 men, they stood in the Lawes of the Realm (the first sort of them), making writs in difficult Cases only which were called Brevin Magistralia, and they (by reason of their performance) called Matters of the Chancery, the other making Brevia de causa, and therefore called Curthorius writs were by them, made, formed without fault or error. But now, when such learned Clerks are, the Judges in many Cases give allowance to ancient forms of writ, and parts the parties to make a special Count; and in such Case, when the writ warrants the Count in substance, they advance it sufficient; although there be variance in circumstance. For example, the original writ of Affidavit, with alteration, is formed in these words, 

Before the Lord & the Right Honourable, the Judges of the Realm, of all this to the use of their Lordships, and to be published: As the King's Grant to A to B, for life, with Condition that the S. pay to the Expenditor such a sum, to the Kings use, that then he shall continue, and if S. pays the same according: Although it be generally true, that the King by reason of the Privilege of his prerogative, extends departably any thing, that by matter of Record, (yet in this Case) S. shall have the same: and the Affidavit shall be out of the King immediately upon the payment of the money without petition, monstrosus and, any substratum of circumstances, etc. If the Grantees shall not make answer such circumstance, then it cannot be proceeded, and it shall not proceed. If the writ were not 

b. In the usual Case, the judgment is taken before the to the King without any circumstance; etc. (without before) the writ 

in this Case) that is to say, that the matter is taken with this agreable reason in the 60 Lewis Cases, at, in, and in 60Lewis, 

28 The Law never requires circumstances; except when the circumstance may be so: As the King's Grant to A to B, to D, for life, with Condition that B. pay to the Expenditor such a sum, to the Kings use, that then he shall continue, and if S. pays the same accordingly: Although it be generally true, that the King by reason of the Privilege of his prerogative, extends departably any thing, that by matter of Record, (yet in this Case) S. shall have the same: and the Affidavit shall be out of the King immediately upon the payment of the money without petition, monstrosus and, any substratum of circumstances, etc. If the Grantees shall not make answer such circumstance, then it cannot be proceeded, and it shall not proceed. If the writ were not 

b. In the usual Case, the judgment is taken before the to the King without any circumstance; etc. (without before) the writ 

in this Case) that is to say, that the matter is taken with this agreable reason in the 60 Lewis Cases, at, in, and in 60Lewis,
the Common Law.

at set him without warrant or pretext, and yet the indictment was uncharged good: for it sufficiently, if the substance of the matter be found without any such precise regard to the circumstance: And therefore, it's man be invited, that he had a Dagger gave to another a mortal wound, whereas he used, and upon the evidence it is proved, that he gave the wound with a Dagger Resip, Stabbe, or Bill; in this case, the Offender ought to be found guilty; for the substance of the matter is, that the party invited gave him a mortal wound, whereas he used, and the circumstance of the manner of the weapon is not material in case of an indictment: yet such circumstance ought not to be omitted, but such weapon ought to be mentioned in the indictment; so if A. B. and C. be invited for killing of A. B. and that A. struck him, and the other were present, Picuring, absting, etc., and upon the evidence it appeared that B. struck him, and that A. and B. were present. In this case the indictment is not perfect in the circumstances, but yet this is sufficient to maintain the indictment; for the evidence agrees with the effect of the indictment; and so the variance of the circumstances of the indictment is not material: because it shall be adjudged in law the stroke of each of them, and it is as strongly the act of the other two, as it this had struck with the Stabbe, together, and all had killed him that was slain; and both this agrees Pl. Com. 88. So it may be invited for murdering another upon malice prepense, and be found guilty of Manslaughter; he shall have hung upon that verdict; for the killing is the substance, and the malice prepense is in manner of it, and when the matter is found, judgment shall be given thereupon, although the matter be not precisely proved; and with this also agrees Pl. Com. 197, whereas if a further fact, that, when the substance of the fact, and the manner of the fact are put in mind together, if the Judges find the substance, and not the manner; judgment shall be given upon the substance. And this is the reason, that in case of killing a miner of justice in the execution of his office, the indictment may be general, viz., that the pillory is to be drawn near, &c., or malice is to be preposited, &c., without alleging any special matter; and (in that case) the substance shall well maintain the indictment, because the Landstipies malice prepense, &c., shall make it one be invited as necessary to two, and he is found necessary to one, yet the verdict is good, &c.:


III.

33. In trespass upon the case, for opposition of Common, the plaintiff's fault, that the Defendant put his Cattle upon the Common, and that they depastured there, from the 1 of May till Michaelmas, the Defendant pleads not guilty, and it was found by special verdict, that the Cattle depastured there, &c., but that the Defendant put them not upon the Common: Now (in this case) about it was argued by the Defendants Council, that the Jury had not found the wrong, whereas the Plaintiff complained, because he complained of a deposition, and they had found a Non-jurisdiction; for the Plaintiff denied that the Defendants, politis, avvidia, etc., and the Infringement or Non-jurisdiction; but that the Cattle did depasture, &c., which might be by escape, which is a Non-jurisdiction, etc. Hypothet (notwithstanding that allegation) the matter was advised maintainable enough: For Judges in finding of services rather respect substance than circumstances, &c.

Informal division

II. In an Affrontment upon a Prohibition, the plaintiff alleged the

33 In an Attachment upon a Prohibition, the plaintiff alleged the


101

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in the Lord

Southwark

in Robert

Motyer's Case.

in Pridde and

Nappes Case.
The Reason of

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When the Officer is a person able to grant, and hath power over the land, and the Debt is you any injury; but insinuates compliance, as intendment in the bill; and the Debtors being good

and rich condition to supply the estate of 3d. In exp. 9. (the

confirmation of Parties of Grants in exec. b) of the

(auxiliary) declares that the estate of the Contemplation, according to the same intent and purpose thereof, which is the Reason, and therefore in such cases must not be granted for; as

34. When a Record has been shown to judges, it ought to be brought by any trustworthy person; because (as充分体现) the Reason here is the answer of the Contemplation, and not the estate of the Contemplation, which ought to be full and entire; but when the answer of a Record is nothing contrary to another intent, and yet the estate of the same, and even the original intent to which it was to answer, is what is done by the judge, as much as if it had been done by the judge himself, but the answer of the Record was not to be taken for the intent of the Contemplation, which is the Reason, and therefore in such cases must not be granted for; as

35. The Bill upon the Merit of 3d. 3rd. 

against

dispute.
Max. 101. the Common Law.

...the meaning of the beginning and end of the terms is to no other purpose, then for the meaning of the length and shortness of the time, and that is not there material; because in such case if the Leases were made only for an hour, or for an hundred years, it is all one, as it Leases for life is charged, that he shall not alien in fee, &c. If he alien one-


36 A man be indicted for Murder, and the Jury finds him guilty of Pan-Slaughter only, yet the Judge may give judgment upon him, viz. that he shall be hanged for the Pan-Slaughter; for the Jury may give their verdict at large, and find the whole matter; and if one be arraigned for the death of a man, and pleads not guilty, the Jury may find, that he did kill him in his own defence: So in the other case, when the prisoner is arraigned for killing a man upon malice prepense, the substance of the matter is, whether he killed him or no, and the malice prepense is but of the form of circumstance of killing him; and albeit the malice prepense makes the act more odious (and so that cause the offender shall lose others advantages, which otherwise he should have, as Summary, Clergy, and the like) yet that is (it


37 The King of England immediately after the Procedens BOUHS of the Crown is absolutely King without the Ceremony of Coronation; or any other act to be done ex post facto; for, the Law both respect his title to the Crown, by birth, right, and descent, and not the circumstance of Coronation, which is (indeed) a Royal ornament, and demonstration of the Royal descent; but no part of the title of Poibevent to a Jac. before his Coronation Warden and Clerk (Semi-


in Calvinist Cae.
In an action of Debt brought against an Executor, he pleads two rescissions against him in a Court of a Corporation; (being a Court of Record,) which amount to the whole in hand, but neither met in his Court, that the Corporation had jurisdiction to hold Court, either by prescription or by patent; and it also appears by the Court in that Court, that the Action of Debt was brought for 10s. without mentioning any obligation, and therefore it was to be intended, that there was no obligation; and then the Executor was chargeable in an action upon a single contract; and in this case, albeit the Defendant in his barre acknowledged that the Debt was by obligation, yet that shall not make the Count good; for when the Count amounts circumstances of time or place, etc. that may be made good by the barre, but when the Court, Barre. Replication, et al. amount subsistence, this cannot be made good by the plea of either party.

A Day is no well proclamation to be carried about one, as an

Handicap by the Statute of 33 H. i. c. albeit a Dogge is not named in

that Statute, nor more than intimated; because a Dogge differs not from a Hound in subsistence, but barely only some small alteration in form and quantity.

When the Court or Declaration amounts time, place, or other

circumstance, it may be good by the barre, and the barre by the re-

plication, as appears by 13 E. 4. 16. but when the Court amounts

subsistence, the barre cannot make it good, and so it is also of the barre,

replication, and hath this access to 6 E. 4. 2. Exc. Cafe.

An obligation loses thus. Ad quam quidem solutum est in

bone & sfeede solvendo, debent me per præteritam, damna, &c. and faith not Sigililo moe sigilae, nam in casus est testimonian; yet by Shelley and Fitz-

herbert it is taken good, if the barre healed; for that is of subsistence, the

other being but circumstances.

The Dean and Canons of Windsor were incorporated by act of

Parliament in 12 E. 4. by this name, The Dean and Canons of the

Kings free Chapell of St. George the Martyr within his Castle of Wind-

sor; and in the Reign of P. and M. they make a Lease of certain

lands by this name, The Dean and Canons of the King and Queens

Free Chapell of St. George within the Castle of Windsor: And in this

case these variances were observed. 1 Because it was named

the King and Queens Free Chapell, whereas it should have been

only named the Kings. 2 It ought to have been 9, George the M Art-

yrs, whereas Martyr was omitted; 3 It was late within the Castle,

whereas it should have been within the Kings Castle. In this case, the

first only loses an action, a material exception, and of subsistence, but

the other two only matter of circumstance, and not material, and so

to the Lease as a whole was for the first.

Although in the Inns of Parliament of 1 Mar. these words caput Ecclesiae Anglicae, &c. were omitted contrary to the

Statutes of 26 and 35 H. 8. yet by the better opinion the Inns

were good, because it was but an Addition of circumstance, and not

parcell of the subsistence of the name of the Queen: This doubt was

also moved in the Parliament of 1 El. 2. and upon great deliberation

of like wise resolved.

The Corporation of Eaton College was erected by H. 6. per

nomine propositi & Collegii Regalis Collegii Beatris de Eaton, &c. And

in the time of E. 6. a Lease was made per nomen Propositi & soci-

orum Collegii Regalis de Eaton, omitting Collegium and Beatris Mariz,

and adjudged naught, &c.

The
45 The Lease of a Parson brings an ejectment, that, the Defendant pleads, that the Parson was deceased, the Plaintiff saith, that the Parson hath appealed to the Arch-bishop of Canterbury in Curia priogativa tua de Arcubus: and because the Words of the Statute of 24 H. 8. 12. are, that the appeals shall be to the Arch-bishop of the Province, &c. Without limiting any Court in certain, the Defendant demurred in Law: And it was held by the Justices, that the Words to the Arch-bishop of Canterbury being Words of substance were sufficient to maintain the Plea, and that the other Words being but circumstantial and for pleadings could not prejudice the Plaintiff.

46 The Deane and and Chapter of Carleil being incorporated by the name of the Deane and Chapter Eccelsi Cathedralis Sanctae & indivisae Trinitatis Carleli, made a lease by the name of Decanus Ecclesii Cathedralis Sanctae Trinitatis in Carleli, & coum Capitulum de Ecclesia praedita: And by the opinion of the Justices against this, it was held good, notwithstanding that variance, because it is not of substance of the name: Vide 35 H. 6. 4. & 5. A Prior fees by the name of Ecclesia Sancti Petri, whereas the foundation was Petri & Pauli and an judget not good because of substance.

47 Pope brings a Replevin against Skinner, who aboves the taking as a Commoner in April 11 Ja. the Plaintiff in barre saith, that one Williams was listed of an house and land, &c. Whereunto he had Common, &c. and benned the same unto him the 30 day of March in the same 11 peace; to hold from the Feast of the Annunciation next before for a peace. The Defendant traverseth the lease modo & forma, whereupon time is taken, and the Jury saith, that Williams made a lease to the Plaintiff, on the 25 day of March for one peace from thence next ensuing: And albeit this was not the same lease, that the Plaintiff pleads (for this begins on the day, and the other not so long) not was to take his limitation, but from the day extended, yet the Court gave judgement for the Plaintiff; for the substance of the lease was, whether or not the Plaintiff had such a lease from Williams as by force thereof he might Common at the time, which appeared for him in this Case, and the modo & forma in the rest is not material, &c.


102 Yet for memory and solemnity substances are to be express under Ceremonies.

1 In all Actions real, personal, or mixt, albeit the Defendant appears, and pleads a sufficient barre, yet if he makes not in his plea a lawful defence, (as in personal actions to say, &c.) the Defendant vint & injuriam quando, &c. & damna & quicquid ipsi defendere debet, &c.) judgement shall be given against him.

2 Abbet, in 8 E. 2. Absorption (indefinitly) is called a divorce between the Husband and Wife; yet every absorption is not to; for such absorption as amounts to a divorce ought to be either by authority of Parliament, or upon ordinary proceeding in Law, as in the Case of Tho. of Wyeland in 19 E. 1. Nevertheless (in that Case) proceeding in Parliament is at Law are but in the nature of circumstances; &c.
By the wisdom of our Antients a great value of solemnity was given to the covenant, and that the memory thereof might take the deeper impression in the minds of the Multants, for which this was the old Rule, Quo servaum suum liberat, in Ecclesia, vel Mercato, vel Comitum, vel Histrado coram testibus et palam factat, et liberat ei vies, et porros contambatur apertas, & Lanciam et Gladium, vel quae liberamus anim, in memoriam ei ponat, &c.

4 A deed cannot be a new invention, unless it be actually invented: for, albeit the words of the deed be, and are innumerable, &c., yet if it be not invented indeed, it is no invention: but if it be not invented, albeit the words of the deed be not, and are innumerable, &c., yet it is an invention, &c.

5 If a Lease for life be made, reserving a Rent upon Condition, &c., and the Lease holds a life of the possession to a Stranger; in this Case, albeit the Covenant is Grand to the Signatory, and so seems to have power given him of taking advantage of the Condition by force of the Statutes of 32 H. 8. cap. 34. Nevertheless without Assignment he shall not take advantage of the Condition: for, the makers of that Statute intended to make all necessary Ceremonies and incidents observed, otherwise it might be mischievous to the Lease, &c.

6 If Land be Granted to a man for three years upon Condition, that if he pay to the Grantor within the said two years 40 marks, that then he shall have Freehold Interest: provided indeed he shall not have Freehold Interest; in this Case, albeit he pay the 40 Marks within the two years, yet he shall not have Freehold Interest; but whereas there was meant at the Ceremony of the Grant: it had been otherwise if the Statute had been made unto him, &c.

7 Regularly when any man will take advantage of a Condition, if he may enter he must enter, and when he cannot enter, he must make a claim; and this reason is for that a few holding and inheritance, shall not cease without entry or claims; as it a man Grant an Advantage to a man and his heirs upon Condition, that if the Grantor, &c., pay 20 li. on such a day, &c., the State of the Grantor shall cease, and be utterly void: the Grantor pays the money, yet the State is not revealed in the Grantor before a claim is made: and that claim must be made at the Church: and so it is likewise of a Reversion to remainder, &c., of a Rent, Common, &c., of the like; for there shall must be a claim before the State be revealed on the Grantor by force of the Condition, and that claim must be made upon the Land; a fortiori in Case of a Demand, which pallets by Library of Seisin, there must be a re-entry by force of the Condition before the State be void.

8 A man bargains and settles Land by deed invented and enrolled with proviso, that if the bargainer pay, &c., that then the State shall cease and be void, he pay the money, the State is not revealed in the Bargainer before re-entry: and so it is if a bargain and sale be made of a Reversion, Remainder, Advantage, Rent, Common, &c., so it is likewise if Land be devised to a man and his heirs upon Condition, that if the devisee pay not 20 pounds at such a day, that his State shall cease and be void, the money is not paid, the State shall not be revealed in the devisee before an entry: and so it is also of a Reversion, Remainder, Advantage, Rent, Common, &c., the like.
Ad. 1. 1.

The Common Law.

10 It is agreed in 18 H. 8, 51, that where the statute of
11 This is a rule made under the 12th and 13th, 35.

12 However the common law is not subject to alteration and
corruption.

13 It is hereby said that the common law is subject to alteration and corruption.

14 So it is in the case of the common law, as it is in the case of the common law.

15 So it is in the case of the common law, as it is in the case of the common law.

16 So it is in the case of the common law, as it is in the case of the common law.

17 So it is in the case of the common law, as it is in the case of the common law.

18 So it is in the case of the common law, as it is in the case of the common law.

19 So it is in the case of the common law, as it is in the case of the common law.

20 So it is in the case of the common law, as it is in the case of the common law.

21 So it is in the case of the common law, as it is in the case of the common law.

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23 So it is in the case of the common law, as it is in the case of the common law.

24 So it is in the case of the common law, as it is in the case of the common law.

25 So it is in the case of the common law, as it is in the case of the common law.

26 So it is in the case of the common law, as it is in the case of the common law.

27 So it is in the case of the common law, as it is in the case of the common law.

28 So it is in the case of the common law, as it is in the case of the common law.

29 So it is in the case of the common law, as it is in the case of the common law.

30 So it is in the case of the common law, as it is in the case of the common law.

31 So it is in the case of the common law, as it is in the case of the common law.

32 So it is in the case of the common law, as it is in the case of the common law.

33 So it is in the case of the common law, as it is in the case of the common law.

34 So it is in the case of the common law, as it is in the case of the common law.

35 So it is in the case of the common law, as it is in the case of the common law.

36 So it is in the case of the common law, as it is in the case of the common law.

37 So it is in the case of the common law, as it is in the case of the common law.

38 So it is in the case of the common law, as it is in the case of the common law.

39 So it is in the case of the common law, as it is in the case of the common law.

40 So it is in the case of the common law, as it is in the case of the common law.
The Reason of:

396

Max. 103.

Both: for the heir cannot enter and take it as a purchaser, because it was named only to take by way of limitation of estate in course of descent.

3 If a man let lands to another for term of years, albeit the Lease be before the Lease enter, yet he may well enter into the same lands after the Lessee's death, because (in case of a Lease for 50 years) the estate is executory (and the interest of the term both alive, and well in the Lessee) before entry; and therefore the death of the Lessee cannot defeat that, which was better before.

Co. Litt. 51. b. 4

4 If the Lessee, by his Deed's licence, the Lessee for life or years (who is restrained by condition not to alien without licence) to alien, and the Lessee be before the Lessee be dead, yet it is no contravention of his licence, that he may alien; for, the licence exempted the Lessee out of the penalty of the condition, and it was executed on the part of the Lessee, as much as might be: And it was resolved M. 3. Jac. in Com. Ba. So like wise if the King licence to alien in possession and alien, the licence remaineth good, notwithstanding the King's death.

Co. Litt, p. 76 b. 3

5 If one owes a Fine executory (as furlong and render) to a man and his heirs, and he, to whom the land is granted and remaineth, dies before execution; and his heirs being within age entitle; In this case, he shall not be in Ward, for, his successor at the time of his death was not tenant to the Lord; because the Fine was not executed, yet.

Co. Litt. 12 b. 11

6 Upon plea in nullity of the person by reason of Oub lessee for the Defendant can validate the Plaintiff, the Oub lessee must be perfectly executed, and appear upon Record; for, the judgment after the Quinto action, given by the Cowans in the County Court, is not sufficient; but the Writ of Exigent must be returned; because before the Return of that Writ it is not perfectly executed, nor then appear upon Record, yet.

Co. Litt. 13 b. 4

7 A man in execution in Silva custodia shall not be delivered till judgement, for then the suit is executed, and the Law hath her course.

Co. Litt. 13 b. 3

8 In judicial Writs, which are in nature of actions, where the party hath day to appear and plead, (and therefore get somewhat to use) a protection both lie, as in Writs of scire facias upon Record, fina, Judgments, etc. Alright, by the Statute of W. 3. cap. 43. Librigues and other delapes are out of (Writs of scire facias) get a protection both lie in the same;) So it is in a Third priest o'clock, and the like: But in Writs of execution, as Habere facias solum, Legis, execution upon a Statute, Capias ad satisfaciendum, &c. facias, and the like, no protection can be cast for the Defendant, for then the suit to issue: Neither both the Defendant then any farther pay in Court, and the protection external only, ex dextris & querellas, and must be allowed by the Court, which cannot be but upon a day of appearance.

Co. Litt. 139 b. 3

9 In a Quere Impedire, if the Plaintiff be non-suiter after appearance, the Defendant that make a title, and have a Writ to the Bishop: And this is peremptory to the Plaintiff, and a good bane in another Quere Impedire: And the reason is, for that the Defendant had by judgment of the Court a Writ to the Bishop, which is a judicial Writ, and in the nature of an execution: And therefore the Incumbent that came in by that Writ shall never be removed, which is a flat bane as to that presentation; And of this opinion is Littleton in our Books: And the same Law and for the same reason it, is in, of a discontinuance.

Co. Litt. 139 b. 3

10 In an Attaint, if the Plaintiff after appearance be nonsuit, it is peremptory; but if the proceeds of the ataint be not disquieted, the Plaintiff may have another Writ of Attaint; because upon the nonsuit there is a judgment given, but not upon the discontinuance, et.

11 As
After an action to account: the Plaintiff may be non-suit, because that is only an interlocutory award of the Court, and no final judgment.

If there be two joint tenants of an estate in fee simple, and one of them acknowledges a Recogntice, or a Statute, or inferred a judgment in an action of Debt, &c. and dies before execution ban, it shall not be executed afterwards; but if execution be lain in the life of the Counsel, it shall bind the Survivor; so, if a Clerk purchase lands, and bind himself in a Recogntice, &c., if the Judge enter before execution, the Judge shall award it; but where execution thereof is had before release, the Judge shall be bound thereby, &c.

If a man grant an Annuality pro una aere, &c., pro decimis, &c., pro concilio, &c., quod pauser concilium, &c., and the Judge is evicted, the yeux warden, &c., or the Counsel related: In these cases the Annuality, &c., because this word pro yielded the cause of the Grant, and therefore antenuity to a Condition, and then (according to the Rule) the lingering cause ceased effectually: But if A, pro concilio impendio, &c., make a feoffment or a Lease for life of an acre, &c., pro una aere, &c., albeit be ejected Counsel, &c., that the acre be evicted, yet A, shall not receive, because in this case there ought to be legal words of condition or qualification; for the cause of consideration shall not avoid the State of the Feoff; &c., and the reason of this diversity is, for that the State of the land is executed, and the Annuality is only executory.

There is a diversity between a Condition annexed to a State in Leases or Conveyances upon a Feoffment, Gift in tail, &c., and a Condition of an Obligation, Recognizance, &c., such like; for if a Condition annexed to Leases be possible at the making of the Condition, and became impossible by the Act of God, yet the estate of the Feoff, &c., shall not be abated: As if a man makes a Feoffment in fee upon Condition, that the Feoffor shall within one year go to Paris, &c., and presently after the Feoffor died; so as it is more impossible by the Act of God, that the Condition should be performed; yet (in that case) the estate of the Feoffor is becomes absolute; for though the Condition be consequent to the Lease, &c., yet there is a precedent before the execution, viz., the performance of the Condition, &c., and the State of the land is executed and settled in the Feoffor, and cannot be recovered back again; but by matter subsistent, viz., the performance of the Condition: So it is also, where the Condition is, that the Feoffor shall appear in such a Court the next Term, and before the day the Feoffor died, &c. (in that case also) the estate of the Feoffor is absolute, &c.; But if a man bound by Recognition or Bond with Condition, that he shall appear in such a Court the next Term, and before the day the Feoffor died, &c., in that case also the estate of the Feoffor is absolute, &c.; But if a man bound by Recognition or Bond with Condition, that he shall appear in such a Court the next Term, and before the day the Counsel or Obligee died, &c., the Recognition or Obligation is lost, because the Bond or Recognition is a thing in Action, &c., executory, whereas no advantage can be taken, until there be a default in the Obligee, &c.; In like manner if a man make a Feoffment upon Condition, that the Feoffor shall kill 1, &c.; In that case, albeit the performance of the Condition be unmum in &c., and therefore the Condition itself may be both, that is, the estate is absolute, because executed, &c., and settled, &c.; But if a man make a Bond upon Condition, that he shall kill 1, &c.; the Condition being unlawful, as before, and the Bond a thing solely in action and executory, they are both both, &c.

Where an Estate of Leases is ipso facto void by a Condition or Limitation, no acceptance of the Rest after, can make it to take a continuance: Otherwise it is of an Estate of Leases only not voidable by entry.
16. R. brought an action in ejectment against E. to recover land and timber, which he held for years of a certain estate; E. pleaded that B. gave it to P. and X. his tenants in tail, who had since E. the Defentman, after the Donre made C. a presentee to make the land to R. for years, the remainder to P. and X. C. was made the tenant to R., but kept the remainder; wherefore, X. the tenants after his personal became minister upon R. for the Comittee, and the like, and therefore he had to Defend to R. for both D. and E. The plea was to the point, because E. maintained his entry by force of a ConditionalAct, and therefore no D. But the plea was true in action; and therefore he had to Defend to R. for both D. and E. in this case, he being true in fact was confirmed.

17. Where is a diversity between inheritances executed, and inheritances executaries, entailments executed by default, etc., cannot by statute, or custom of entailments be adjudicated afterwards, and after a Division is made to a Distributary, it cannot be adjudicated by Inheritance of entailments made afterwards, etc.

Litt. § 630, 631, 632.

Co. 333, 334

18. If a tenant in tail grant the Land to A. for life, and afterwards The life grantee the Reversion to B. in fee, and afterwards A. dies, and B. enters, and then the tenant in tail is taken away; because the Remainder of B. is executory; for it is true where the Tenant in tail grants the Land by fee, and afterwards grants away the Remainder to another, etc., in that case, both the Feoffee and Feoffee-in-remainder are executory, and the Remainder is executed in the Beneficiary: It is absolutely, whereas the tenant for which the tenant in tail grants the remainder in fee, both the Beneficiary and the Remainder are executory in the life of the tenant in tail, and neither of the tenants put to his Forester, but may retain it under the same.

19. There is a diversity between a Covenant of Agreement, which is passed and certain, and it shall take effect in certain operation, unless certain; and where a Covenant of Agreement is passed, it is to be construed to certain, and by another set of factors: For, in the one case, the parties to whom particular, others to whom it is not, etc.: As: Mr. Broke-Brooke, et al. 92. H. concludes between A. and B., that the Bound of A. shall enter the Wood of B., for, which B. gives to A., and A. extends with B. that if the marriage take not effect, etc.: A. and B. afterwards will divide out of 150 acres in D. to the use of B. and his heirs; until A. dies, etc., paid to B. 1,001, after B. both time under agreement rules, the marriage takes not effect: In this case, the fees of execution in the life of A. and B. shall have relation to the making of the Agreement: But if the grant of a Remainder die, notwithstanding can be done to his heirs: He is to also where the Deed was before the World: etc., A. Co. Bress and Rigden, etc., 696. Vide Shelly's case, where the Inheritance bound the land, albeit execution was not taken out till after his death; for the estate was executed by the Inheritance and Restraint before execution, which shall have a re-reek to the inheritance: Rom. 11 H. 72. Where the best shall have execution upon a fee: But the Feoffor of Feoffee die before entry, assignment by deed with the tenor shall not take effect: So, etc., in the Rector of Cheddington, etc., Co. 1. 155, 156, by the hands of Tho. Gresley is not certain, no; can be in his executory.

20. If the Bishop or Baron make a Lease for life, and after grant the Reversion in fee, and the Lessee lays his hand on the life of the Bishop or Baron.
the Common Law

the Bishop, «or the Baron, this is a Discontinuance: it is otherwise, if the Bishop be the Defendant, the Bishop is Baron.

32. It reserves 71. in R., and assigns it by Deed, &c. to the Bishop, &c. as Collaterals. Collaterals of the Eleventh, &c. in the Cauter, &c.:

Provisions for the Lord Treasurer, and Baron of the Exchequer, &c. any view of the several aiignment, &c. and revoke it by writing, &c. the Baron, &c. that the aignment shall be void, after the Descent being

Borough, &c. and the Judgment is affirmed, &c. The Judgment shall be void, &c. of the Deponent, &c. and Goods to the value of the Debt, &c. after which time the Baron renews the aignment after the death of the Plaintiff, &c. because the Plaintiff has satisfied the Debt, &c. &c.; and these facts for the 75. &c. &c. &c.

But it was an

Irigg, that after execution has by the Queen, which was the effect of the aignment, the Plaintiff came to life: for he had power of Redemption cannot revoke a thing judicially executed: &c. a Letter of Attorney cannot be canceled after it is executed, Vide 7 H. 3. 42. and 7 H. 4. 2. The Debt is out-laid, the Debtors, &c. to the King, the Exchequer in recess; In this case, the Debtors shall recover against the Debtors: and let the Goods of an out-laid person be sold, &c. they shall have restitution of the Goods: but upon a Fictus, Co. L. 94. 4, cas. &c. unless the value, Vide 3 E. 3. 51. Reimbursement in value once in Maning, &c. was given, shall not be made; shew the title of the De. 

Defendant is afterwards confirmed and validated. 32. If a remainder be once executed, in a Wall of Formos in the Defendant by shall notice think of that remainder, but the general Wall of Formos in the Defendant shall serve in that case, &c. and he shall cause an immediate Gift: &c. a Formos in remainder by cannot have, after the remainder in a tenure executory: But if a Lease for life be made, the remainder to tail to A. the remainder in tail to B. if A. dies without issue in the life of the Tenant for life, and B. put to his Formos in the remainder, in his Formos he ought to make mention of the remainder to A. albeit it was determined and spent; for, the Defendant in the Formos in remainder ought to make mention of all the precedent remainder in tail, because in that case the remainder was never executed by way of descent.

33. The space of London may alter the course of Justice in a cause hanging before the Sheriffs, viz. to seem for the parties, &c. to pop the fact, &c. if he find the Plaintiff's already satisfied; but if he cannot so after judgment, &c. he may do by a custom there.

14. There is a authority between a thing Collateral executory, &c. executed, for when an executory judgment is given, and after the judgment is revoked by Right of Error, Collateral executory are barred thereby, as if a man hath judgment in a Quare Impedita, and hath a Right to the Bishop, and the Bishop revokes, here the Plaintiff upon this Collateral matter of removal, may have a Quare non admissi; but if the Defendant revokes the judgment in a Right of Error, &c. after the Plaintiff in the Quare Impedita brings a Quare non admissi, the Defendant may plead no good Record: Vide 36 El 3. 75. 96. Willy and Hill. And if A. in execution at the suit of B. upon another person, were judgment, and after escape, &c. after the judgment is revoked, &c. by Error, the action upon the escape is gone, &c. he may plead no such Record, because without a Record the action is not maintainable 

but in that case if the Plaintiff brings an action of Error Against the
Sheriffs or Soveria upon the escape, and hath judgment and execution, and after the first judgment is reversed, yet this judgment upon that collateral matter being executed will remain in force, notwithstanding such reversal of the first judgment. The Courts of a Statute staple in Deince thereof upon Garnishment, recovers by erroneous judgment against the Garnishee, and hath the Statute delivered unto him, the Garnishee brings a Writ of Error, and the Courts lays execution upon the Statute and hath it; hence, albeit the Garnishee reverses the judgment, yet this execution shall not be avoided thereby, because the Statute is already executed. Likewise, if a man recover by erroneous judgment, and present to a Benefica, or enter into the possession of a Villain, and after the judgment is reversed by Error, yet, because these Collateral acts are executed, they shall not be afterwards defeated.

Col. 11. 40. 3.

in Metals.

Cave.

25 Upon an Interrogatory award of a Court, which is not definitive, a Writ of Error is not, such as are these, quod compare, that he shall take an Affidavit, in Wales to inquire of the writing in testamens to inquire of damages; in partitione facienda, quod partitio fiat; in measurement: quod admensuratio fiat, that a man shall be ousted of aide, and the like: upon which the Defendant shall not bring a Writ of Error; but after judgment in these cases he may.

Aid for answering, &c.

Col. 10. 47. b.

in Lampetus.

Cave.

26 A Lease for 500 years devolat to B. for life, and after his decease the remainder to C. and the heirs of his body, this executor's devise may be lapsed to B. but cannot be granted to a Stranger, it is the wife of an interest executed.

An executory devise not transferable.

Fitz. N. B. 83. b.

R. N. B. 130. f.

& 131. G.

27 If the Lessee devises side to marry his Daughter, and no afterward marry her, he shall not have an action against the executors of the father for that money: it is otherwise, if the were not married in his life time; so is also of the sonne not made Knight, &c.

Baron not chargeable without necessity.

28 If a man take a feme, who is invested to an alien, and the same dies before that Debt is recovered by action, in that case the Baron is not chargeable; it is otherwise, if it were recovered, living the feme, &c.

An other executed, &c.

Pl. Co. 51. 2. 1.

in Wimb. & Talk.

Cave.

29 An heir in tail, that hath a Reversion, or remainder reallyexecuted in him, shall not need to plead specially how he is heir: it is otherwise, where it is to be executed: So if Administrator be an action of Testamens for Goods taken out of their own possession, they shall not have the Letters of Administration: Otherwise it is for Goods taken in the life of the Intestate, for there the possession of the Goods were never executed in them, but to be executed: Also, if a Lease be made for life, the remainder in tail, and he in the remainder is fallen, after the death of the Tenant for life, his issue have a Formedon, and shall declare upon the immediate Gift, neither yet shall they have the Devise; otherwise it is that estate were to be executed.

An estate vested shall remain.

Pl. Co. 91. 2.

in Wimb. & Talk.

Cave.

9 H. 6. 21.

Pl. Co. 16. b. 5.

Carisse.

30 A man devolat land to one for life, the remainder to the right heirs male of the Devolat, and to the heirs of his body begotten, the Tenant for life dies, and the next heir of the Devolat being a feme enters, and after hath a somme; And there it was holden by the best opinion: that the somme shall not go out the feme, because the somme born after shall take away the land before vested in the feme, as heir, to: default of such person then in renum natura, to take the devise.

An estate vested shall remain.

Co. Inf. p. 17. a. 3.

31 If lands be given to a Villain and to the heires of his body, and the Lessee enters, and after enfranchiseth the Donor, and then the Donor hath blute, yet that hee shall never have remedie either by For- medon.
medon of entry, to recover the land, for that it was executed in the 30th before the enchainment of the Donor, and the Statute de Donis gave remedy to the heirs of the Donor that have capacity and power to take and retain such a gift, &c. So it is also, it lands be given to an Allen, and to the heirs of his body, upon office found the land is seized for the King, afterwards the King makes the Allen a Denizen, who hath issue and death, in this Case also the King shall retain the land against the Allen, &c.

3: Sale by the Sheriff, upon a fieri facias Hall Land, albeit the judgment afterwards reversed, and the Plaintiff in it recovered the value, Deier 363, 24.

33: There is a divinity aboutt twits real original, which are as things executory, & make to real Judicial, which I say from the judgment, being in the nature of a thing executed: And therefore if a coheirenys bring a real Action, and the one is summoned and severed, and after dies having issue 02, no Issue, in this Case the writ shall abate: so likewise, if 2 Jointants being an Affile of other original real Action, and the one is summoned and severed and dies, the writ shall abate, albeit the thing in demand forfeite: But if two coheirenys bring a fieri facias, which is a judicial writ upon a fine levied, &c, and the one coheirenys is summoned and severed 8 then dies without Issue, such judicial writ shall not abate: And so it is also of 2 Jointants. Potestive: If the coheirenys that dies, hath Issue, it shall abate, because the right descends.

34: It lands be given to a man and the heirs females of his body, and he makest a testament in it, and take backe an Estate to him and his heirs, and why, having Issue a Daughter, leavin his wife grossment with a Son and death, the Daughter is remitted, and albeit the Son be afterwards borne, he shall not recover the remitter, because it was executed.

35: If the Baron discontinue the land of the Feme and go beyond sea, and the discontinue leaves the land to the Feme for life, and gives her seisin, and after the Baron returns and dis-assigns to the lease and liberty of eslin made to the Feme: yet in this Case she is remitted to her ancient Estate, because the lease for life and liberty the remitter was executed in the Feme, and the Estate for life to the Feme, which brought, the remitter, is vanished and whole defeated: And therefore dis-assignment of the husband can not the Estate gained by the lease, which by the remitter was actually devoluted before.

36: A Clerk is not enabled by the Stat. of 25 E. 3. 7. (by the words poissessor) to plead in barre before invocacion 6 603 by that his position is executed, and then he is poissessor, and not before.

37: Whoso Lendates in common of an assentt make composicion, each of them shall present by term; or each of them hath once presented by his turn by virtue of the composition, in a Qual. Imp. brought after amongst them, it is not necessary to the whole the composition, because it was executed: it is otherwise in cases it were not executed: And such composition cannot be without writing: it is otherwise of coheirenys, for such composition may be by parol amongst them, because they are privies and as one heret, and are compellable to make partition.

38: Cefuy que ufe after the Statutes of 1 R. 3. 1. the 1 of May, makes a lease to one for 20 years to begin at Mid-summer next, the lessee the second of May at the Request of Cefuy que ufe make a lease of the same Land to the same Lessee for 34 years to begin also at Mid-summer: In this Case, the acceptance of the last lease is not a suourace of the first, but rather a confirmation of the 20 years.

Lit. § 675; Co. Infl. p 21; 376. b. 4.

Co. Inf. p 21: 376. b. 4.

Co. Inf. p 21: 376. b. 4.

Co. Inf. p 21: 376. b. 4.
and a new Lease for the 14 years; for albeit the Lease had such an
Interest, which he might grant or foist out, yet in regard the Rente
having not position, the Plate was only to make and execute,
and not already begun and executed, such acceptance could not be a
Surrender in Law, and the rather, for that the feoffors had a lawful
and ordinary authority in the Land to make a lease in each Case.
39 For the debt of a Common person upon a Statute after the In-
quittance and before the Liberate, the same Land may be extenuated for
the Kings debt; but it becomes to be particular after the Liberate to the
Common person; for then it is reckoned in nature of a free-hold;
Tamen quere.
40 In London upon the attachment of a Debt in a third persons
hand, albeit the Plaintiff have judgement against the third person,
yet before execution begins, the Plaintiff may resort to have judge-
ment and Execution against the Defendant; having his principal
Helps; It is possible, if the judgement against the third person has
been executed.
41 A Pecun facias (returnable Quind. Pec.) was directed to the Shie-
tire of Middlesex, who returns, quod capit bona & camilla to the value
of part of the debt: & quod remanent in custodia fuerat et perpetuam,
& quod ante return, immissivis; breve de non molestando sui directa,
quod de ulteriori executione superfecta, which must be also returned
annexed to the fieri Rector: Now this return de non molestando was
expedient in Bank by reason of a Writ of Error there brought by the De-
fendant, but the Receipt was not yet returned; because the return of
the Writ of Error was Grant. &c. and not before: In this Case,
the Question was Whether 30 to the Writ de venditioni expressi,
should be answer'd, because the Writ of Execution was perfect, but the
property of the goods altered, notwithstanding the failure, yet at
least the Writ de venditioni expressi was answer'd by Sanders and
Brown; notwithstanding the superfecta, because (as it seems) the
Writ of Error, upon which the superfecta was founded, was not express-
tive, being not then returnable.
42 The Costs of a Statute both a Rent-chargé, and being
extent purchased part of the Land: In this Case, the Rent is
gone, and then not in Execution: But it must be to be considered
if the purchase hath been after the death of the Rent expressed.
43 A fine was acknowledged by Baron and Priest of the Land of the
Feme in the Vacation after Liberty Term by deed, postr, the Feme being
then but 70 years of age; the Writ of Convent one mile after the
returnable Craft. Pur. and the deed, postr, bare mile three days after the
original, and the Audiens River was entered upon Hilary Term four
years before the death of the Feme, viz. in Venetic in Septrins Patch.
But yet the fine was not engrossed until Wednesday after, when causing
the heire of the Feme in Easter Term payable, that the fine should not
be delivered to the party, nor recorded, yet it came, notwithstanding
the utmost practices of the Baron, because after the entry of the Audiens
after before the death of the Feme, and the engrossing of the fine before
Easter Term, the fine was perfectly executed.
Possibility of things.

1. If lands be given to a man and a woman un-married, and to the heires of their two bodies, for the apparent possibility of inter-marrying they have an estate taile in them presently: So it lies where lands are given to the Husband of A. and the Wife of B. and to the heires of their bodies: for they have also a present estate taile in them, in respect of the possibility: Also if a Feme sole do enfeoffe a married man caufeth mainmoni&utm prolocuti, it is good for the possibility, se.

2. If there be Baron and Feme, and the Feme is above the age of 9 years, and under the age of 12 (that being the age of conenting to marriage) and the Baron (of what age so ever) die before the Feme attaine the age of 12; yet shall the be enfeoffed, in respect of the possibility of conenting at that age, which (implied) is the consumption of the marriage: So if a man take a Wife of the age of 7 years, and after alien the land, and after the alienation the wife attained to the age of 9 years, and after the husband died: yet here also the wife shall be enfeoffed, for the possibility of being dovable, if it attained the age of 9 years before the death of the husband: fo, by his death the possibility of Dowter be commutante, se.

3. If a man give land to a man and his Wife and to the heires of their two bodies, and they live till each of them is an hundred years old and have no issue, yet no they continue still Tenants in taile: so that the Law in that Case will not see in them an impossibility of having children, although they be never so old: It is otherwise, where land is given to a man and a woman in special taile, and woman dies without issue, for there the Law seeth an apparent impibility that the man should have inheritable issue by another woman, se.

4. The youngest son and heire apparent cannot enuado his wife ex aliensi paucis, of lands wherein the Father is tenant in fee of the nature of Borough English, in respect of the possibility that the Father may have another son; so then the husband is not heire apparent: For the same cause it is that Dowter ex servitu fratris or confanguinei is not good: because albeit he is heire apparent at that time, yet for the common possibility that the Brother or Cousin may have issue, and every man that shall have shall exclude the husband from being heire apparent, he is no such heire apparent as the Law intendeth, for the Law intendeth a constant and perpetual appearance, se.

5. If a man takes a wife issue of lands or tenements in fee and hath issue, and afterwards the wife is attainted of felony, so as the issue cannot inherit to her, yet he shall be heire by the courtesse, in respect of the issue which he had before the felony, and which by possibility might then have been inherited: But if the wife had been attainted of felony before issue was, albeit he hath issue afterwards, he shall not be heire by the courtesse: Because then there was no possibility at all, that such issue should inherit after her.

6. Dowter is given to the Feme for the possibility, that the issue, which the man bore by the Baron, may inherit his land, albeit the be barren and have no issue by the Baron: And although the Feme be 100 years old, and the husband at his death only 4 or 7 years old, yet shall the Feme be enfeoffed: For, the Law cannot judge that impossible, which
which may fall within the bounds of nature to be possible, it being certain that women in ancient time have had children at such an age, as no woman both now attains unto; and my Lord Coke saith, that he knew a woman above sixty years old to have a child, ideo non definitur in Jure, &c.

7. A rent cannot be reserved by a common person upon an estate for life of any incorporeal inheritance, as leaseholds, commons, offices, coronet, tenure of a mill, layettes, farms, parkes, liberties, privileges, franchises, and the like; because the lessor cannot have resort or recourse to disfrain for the rent arrear, and if it be upon a lease for years, yet he shall not disfrain for it, but have only an action of debt for it upon the contract: Howbeit a reversion or a remainder of lands or tenements may be granted reserving a rent, for the apparent possibility that it may come in possession, &c.

8. Albeit a copyhold tenement, that escheats, is kept for many years together in the Lord's hands, yet it still retains the quality of being demisible, in respect of the possibility that the Lord may again admit some man unto it, &c.

9. If the Interval marries his heir apparent within the age of consent, and poeth, the infant being still within the age of consent, the Lord may take the infant (if he will) into his possession, and if the infant be obtained from him, he shall recover him in a wit' of capitation of ward, and thereafter upon the infant delivered unto him; and this is in respect of the possibility that the infant may dis-agree to the marriage; Howbeit at the years of consent he agree to the marriage: neither the King nor the Lord shall have the marriage, for then it is a marriage ab initio, and there need no other marriage.

10. If the husband hath an apparent possibility of procuration, as under eighteen years, or under the age of procuration, the infant, which his wife hath, is a bastard, albeit he was then within the four seas, that is, within the jurisdiction of the King of England; but when the parties are both of full lawful age: If the husbands be within the four seas, as above-said, when the wife hath none, albeit he never came near her, yet is the Child legitimate, for the possibility that they might make together: For, (in that case) Filiatio non potest proari, &c. So it is also if the male be borne within a month of a day after marriage, for (in such case) the law will not judge of any impossibility, &c.

11. A tenant of land in fee grants it in tail to B, and afterwards grants the reversion to C. In fee by fine, in this case, the tenant in tail is not compellable to attend, in respect of the possibility that this estate (being an estate of inheritance) may continue for ever, &c.

12. If a man hath two sons and is dissatisfied, and the eldest son release the dower, by deed with warranty and die without issue, and afterwards the father dies, this is a dower warranty to the younger son; for the possibility that the younger son, might have conveyed his title to the land through the eldest son, in case the eldest son had survived the father: Otherwise it is, where the younger son conveys by deed without issue: for the eldest son can by no possibility convey his title to the land from the father through the younger son, &c.

13. If tenant in tail hath issue by his sons, and discontinues the tail in fee, and the second son release by his deed with warranty to the dower, and after the tenant in tail dies, and the second son...
the Common Law.

Don vies without Woe; here the eldest Sonne is barred to have any recovery by wit of Formedon; because the Warranty of the second Brother is collateral to him for the impossibility that he may convey any Estate to him through the second Brother: but if the eldest Sonne vies without Woe, then may the youngest Son have conveyed the descent of the land to him through the second Brother, &c.

14 If a man make a Testament with warranty and die, the heirs of the Testator shall have all the wittings, which the Testator himself might retain, albeit the heirs hath nothing by descent, fo the possibility of the descent afterwars.

15 If a Leafe be made for life the remainder to the right heires of R.S. (the same I.S. being then in rerum natura) it is good, for the common possibility, that I.S. may die during the life of the Tenant for life, Co. Inst. p. 1. 378. a. 3.

16 Albeit Filius in utero materis is part viscerum matris (vide 3. Aff. Pl. 2. 22. Aff. Pl. 94. 23 E 3. Tit. Corone 180. Stanford fol. 21.) yet the Law in many Cases hath consideration of him in respect of the apparent expectation and possibility of his birth; for which the opinion of Sanders and Browne in Stowells Case; for the doing of a fine; vide temps E 1. Tit. Guard 153. & 31 E 1. Tit. briefe. 873. for the Guard of such an infant; vide 38 E 3. 7. & 41 E 3. & 11 E 3. Tit. voucher, that he shall be bouched in vencre & merc. 3 El. Dier 186. An adulterer consults the Feme to marry the Infant, when it should be done, both if it accordingly, in this Case the adulterer is accused, yet at the time of the counsel given the Infant was in vencre & merc, &c.

17 If Celfuy que use after the Stat. of 1 R. 3. and before the Statute of 27 H. 3. had witnessed the Dielcif of his lesewis; here the use is suspended, and depends in possibility to be revived by the entry of the seffors, and yet if he make testament in Fe, that is good and shall him, in respect that the Law hath consideration of that possibility of the use.

18 H. possesed of an house for 31 years deviseth the profits thereof to I. durante vidulate, and after deviseth the term to R. and dies, I. by the saight of the Executor enters and purchaseth the house in Fe of L. who covenants with I. that the house shall be free from all former bargains, &c. And in an Action of Debt upon an Obligation for the breach of covenants, the tenant pleads covenants performed, the Plaintiffs assigns for breach the devise to I. and afterwards to R. and that after I. entering into that covenant I. had married O. upon whom R. entered, and thenceon the Plaintiffs demurred: And the great Question in the Case was, whether (R. at the time of the making of the covenant having only a possibility) the covenant did extend unto it, or no: And it was resolved, that the covenant did extend to that possibility, and that the possibility had being for that purpose, and might be considered.

19 Vide infra M. 105. in all.

20 If tenements be given to a man and to a woman, which is not his wife; and to the heirs male of their two houses, they have an Estate tain, albeit they be not married at that time, and so it is lands be given to a man which hath a Wife, and to a Woman which hath a husband, and to the heirs of their two houses, they have presently an Estate tain, for the possibility that they may marry, &c.

21 Such things as one hath by crostible hearc-lay (by the example of Lit. 6. 720) are not to be neglected, but are worthy of observation, for the apparent possibility, that they may be true.

105 And
And therefore nothing to be void, which by possibility may be good.

1 Vide supra R. 104. c. 1.
2 If lands be given to two husbands and their wives, and to the heirs of their bodies begotten, this is not a void grant for the uncertainty, but they shall take a joint estate for life, and several inheritances, viz., the one husband and his wife the one moiety, and the other husband and wife the other moiety; so if lands be given to a man and two women, and the heirs of their bodies begotten, they have a joint estate for life, and every of them several inheritances, because they cannot have one issue of their bodies, neither shall there be by any construction a possibility upon a possibility, viz., that he shall marry the one first and then the other; so it is also when land is given to two men and one woman, and to the heirs of their bodies begotten.

3 Regularly in every Lease for years the term must have a certain beginning, and a certain end; for to Bracton faith, Termine annorum certis esse debet et determinetur; and Littleton also hath these words, Por termene de certainias; nevertheless, although before the time it should take effect in possession of interest it do depend upon an uncertainty, viz., upon a possible contingent before it begin in possession or interest; or upon a limitation or condition subsequent; yet is it not void for that uncertainty; as if A. sold lands in fee to B., that when B. pays to A. xx shillings, that from thenceforth he shall have and occupy the land for 21 years, and after B. pays the twenty shillings, this is a good Lease for 21 years, from thenceforth, notwithstanding that uncertainty; because it was at first possible the twenty shillings should be paid, and that being paid, the Lease had from thenceforth a certain beginning, and therefore was not void but good ab initio, &c. So if A. lease his land to B. for so many years as B. hath in the manor of Dale, and B. hath then a term in the manor of Dale for 10 years, this is a good Lease by A. to B. of the land of A. for 10 years; for albeit there appear no certainty of years in the Lease, yet because by reference to a certainty it may be made certain it sufficeth. If the Parson of D. make a Lease of his Glebe for so many years as he shall be Parson there, this cannot be made certain by any means, for nothing is more uncertain than the time of death, Termine vix est incertus, licet nihil certum sit morte, nihil tamen incertum eft hora moris; but if he make a Lease for three years, and to from thirde to thirte years, so long as he shall be Parson, this is a good Lease for 6 years; for it is possible he may so long continue Parson there, and then it is good for so long, viz., first for these years, and then for these years more; but for the residue it is uncertain: If a man maketh a Lease to I. S. for so many years as I. N. shall name, this is not void for the uncertainty; for when I. N. hath named the years, then is it a good Lease for so many years; A man maketh a Lease for 21 years, if I. S. shall be so long live; here, albeit the end of his Lease dependeth upon an uncertainty, viz., upon the time of the death of I. S., which is uncertain, yet because it is possible at last to know the certain time of his death, and (by consequent) the determination of the Lease thereupon, the Lease is good ab initio; notwithstanding that uncertainty, &c. Vide 1. 6. fol. 34, 35. in the Bishop of Bath and Wells Cate.
In this time of vacation a Grant made to a Covent is void, by the Law of a Pope, which is not complete, but where the Pope, during the vacation, a Lease for life, or a Gift in tail be made, the remainder to the Abbot and his Successors, this remainder is good, because it is possible there may be an Abbot before the particular estate be determined; there is the Like Law of a Pope on Community, &c.

4 If a Grant the Reversion of black acres, or white acres, and the Lease assign to the Grant, here, nothing passeth at the time of the Assignment, and that also is only good in execution, and by the subsequent election of the Grantors; yet to this a void Grant, not the Assignment settelle, because upon the Grantors election they may both be void good, &c.

5 It is regularly true, that every remainder, which communely be a Pope, ought to vest in him, to whom it is limited, when liberty of estrate is to vest to him, that hath the particular estate; And yet if the person that is to take the Remainder be not in remnant natura, as if a Lease for life be made, the remainder to the right heires of I.S. (1. 5. being their alive) it illiberal, that the inheritance passeth presently out of the Lease, but cannot vest in the heir of I.S. For that (living his father) he is not in remnant natura, for non est heres viventis, nevertheless, the remainder is good for the possibility that I.S. may die during the life of the Lease; So if a man make a Lease for life to A.B. and C. and if B. forsooth C. then the remainder to B. and his heires: here, albeit the remainder is not at the time of the Liberty certainly in B., nevertheless the remainder is good for the possibility that C. may die before B. it being but a common possibility, that one may die before another.

6 If a Grant, be devised to I.S. for life, upon condition that I.S. shall by the advice of Learned Counsel, settle the same Lands with in convenient time for certain Ties, which (indeed) are prohibited by the Statute of 23 H. 8. cap. 10. Albeit such Ties are by that Act prohibited, yet if that Condition be not performed, I.S. forfeits his estate because they might have been settled by the advice of Learned Counsel, and by purchasing an Incorporation and a licence to settle Lands thereafter, &c.

7 If a Covenant with I.S. that in consideration of fatherly affection, and for the advancement of my blood, I will fund letters to the use of such of my sons, or such of my kinzdum as I.S. shall nominate; In this Case upon the nomination the use shall be raised: For the consideration is certain, and the person by matter ex post facta may be made certain.

8 A man possesse of a term for others years, devisseth the possesse thereof to one for life, and after his decease to another for the release of the years, and this, the first Devise enters by aunt of the execution, and after he in the remainder during the life of the first Devisee assigns it to another, and after the first Devisee dies: Here, albeit during the life of the first Devisee, the second Devisee had no estate, that he could assign over (for the Devise to the first Devisee was upon the matter) of all the term if he should so long live; nevertheless the second Devisee is not void for the possibility, that the second Devisee might over live the first; Howbeit, that possibility he could not assign over, &c.

9Every Lease for years ought to have a certain commencement, but that is to be understood, when it is to take effect in interest, or possession: For, if I grant to you, that if you pay unto me 20 l. at Michaelmas, I may rest a person gain, &c.
The Reason of M. 106.

If land be given to a married man and a married woman, and the heirs of their two bodies beget this, this is a good estate sale; or, of necessity death will come, and it is a common possibility, that one may die before one another, that the marriage may inter, &c.

106 Id certum est, quod certum reddi potest.

1. If a man hold of his Lord by herering his sheep in his manor of D, when the Lord keeps sometimes a greater number, sometimes a less: Here, the service being referred to the number, is uncertain, and if to, then the tenant not infirmable; for it (to it) is a Maxime, that no ultra can be taken for a service that is not certain, but the service being referred to the manor, is certain, and so the tenant infirmable for that uncertainty, because by that relation it becomes certain.

2. If Lease for years does with his lease to A, for life, albeit it is uncertain how many years A, shall hold it, yet not the Service sold to such uncertainty; because when A dies it becomes certain how many years A, was to hold it, and then also it may be certainly known how many, how many years the party, that is to have the substantive interest interest, ought also to hold it.

3. When a Charter hath only a general reference to other charters, which are upon Record, it is as much in law, as if they had been all particularly recited; because they may be certainly known by the Record.

4. Qu. Eliz. grants to the Earl of Shrewsbury, Senech Dominium five Manerionum foro non de Mansfield Bolehiver, & Harly, and no certain, where they lie; yet is not the grant for this uncertainty sold, because albeit the Queen might have others manors in the same 2; other Counties of the same Name, yet because by some of the Clauses of the Patent, or by other circumstances, it might be understood what Stewardships the mean to grant, the letters patents were adjudged good, notwithstanding such uncertainty. If the King by his letters patents grant to another all the manors and advowsons, which were Police of A, being a Police Alien, or which were I, S. who was attaint, yet such Grants are gone, albeit the County is not named, because upon inquiry they may be certainly known, as it is adjudged 3 H. 6. 20. 21. So if the King grant to the Abbot and his Succesors, that the Monks during the vacations shall have all the Temporalties of the Abbey, this is a good Grant, notwithstanding
withstanding the uncertainty of not naming the County or Counties where they lie, as it was adjudged 39 E. 3. 211. & F.N.B. 33. 1. So likewise in 23 E. 3. 211. b. The King grants unto the Queen all the properties of a Patente (a charter) until Jo. of Gaunt might be able to govern himself, and it was advanced good, &c. For in all such cases, it may be discovered by any Clause of the Patent, by any circumstance, (as the Banner Name, in whole possession it was, or the like,) by the Particular, or otherwise, what it is, that the King intended to grant, it sufficient; And if such Patente be implied, and the Plaintiff by reason of such uncertainty pleads non conclusio, and demanding Oyer of the Letters Patents demurrers thereupon, it shall be adjudged against the Plaintiff: For it is matter in fact, what Manners, &c. apace, and for y'off the rest such Clauses and circumstances, as also facts, shall be given in evidence, &c.

5 A piece of Ground or Soil, whereupon an Hospital, &c. is intended to be built, may in the Letters Patents of Incorporation be called an Hospital, albeit there be no building at that time founded thereupon, and that uncertainty shall not prejudice such a grant, because of possibility, that it may be built thereupon, y'by that means may be made certain.

6 If the King grant lands, which have come to his hands by force, and grant over to the Grantee, tales libertates, privilegia, juridictions, &c. as he that was last seller of the Lands had; here, albeit the King knew not the certainty of the Liberties and Privileges, yet the grant is good, and the grantee may require the Liberties and Privileges, that the other hands before; because that uncertainty may be reduced to certainty by inquiry, or other circumstances. Vide the Case of Strata Merces, Co. L. 19. 22. &c. 18 El. Dier. 1951.

7 In Fagges Case, albeit the quantity of the Moan was not known, when the Agreement was made with the Collectors; and so (by consequence neither the labur) what money should be paid for it; yet because the Subsidie might afterwards be known by circumstance (viz. by weighing, whereupon the King might be entitled to an action for it) the agreement was adjudged good, and the Statute performed. If one demised all his Acres in D. to I. S. for 32 years, rendering for every acre 24 d. the Lease is good, because the certainty of the Rent may be known by a Survey of the Acres, whereby the Lessee may be entitled to an action of Debt for the Rent, if it appear. If one give two acres to another, Habendum the one for life, and the other in Free; it is uncertain which of them he paid for life, and which in Free; but it afterwards the Grantee make settlement of one of them, he shall be liable to have Free in that ab initio. So if one let Black-lease, and white-lease to another for 20 life, the remainder of one of them in Free; here, it is uncertain, in which of them he hath Free; but it afterwards he licenses the Tenant for life to sell Acres in white-lease, it shall be adjudged, that he had the remainder of that Acres ab initio. In Wheelers Case, 14 H. 8. The Grant of a term upon condition, that the Grantee shall obtain the labour of the Lees, and shall pay so much as I. S. shall arbitrate, was good, when the condition was fulfilled: and the second Grant was adjudged void: And there it is helden 11. 21. that if one make a Lease for so many years as I. S. shall name, here this is uncertain at the beginning; but it afterwards I. S. name 20 years. it shall be good 30 years from the beginning, So also in 17 E. 4. in trespass for grantees taken away, there the Plaintiff and defendant had bargained, that y' defendant should go to the place where it grew, &c. if he liked it upon view, he should take it, paying the plaintiff 40 d. for every acre; this was there helden a good contract not.
The Reason of

the uncertainty of the quantity of the Grains, and of the summe he
should pay for it, because upon the Circumstances of measuring it,
the certainty might appear: And so there, albeit this were a Condi-
tional agreement and uncertain, yet it was well good Indiscretion,
if he had presently paid for it, when he carried it away. In 9 H. 6.
the King grants to the Duke of York, quantum Insulam, &c. un-
omnibus excibus amerciamentis et proficiis omnium gentium residen-
de & infra Insulam publice, in quibusceque curis nostris emergereba,
and there this grant is holiden good, for albeit the King knew not at first
what grants or amerciaments would be forfeited; yet because when
they were forfeited, they might be certainly known, the Grant was
unadjudged good. So likewise in 5 E. 4. The King grants to Carter the
Office of King of Ireland, quantum feeds, & proficiis de antiquo, &c.
here, in this Grant there was no certainty of the Fees and profits be-
longing to that Office, yet was the Grant unadjudged good, because
by inquiry they might be reheard to a certainty. Also in 30 H. 6.
The King grants all such Lands, as came to him by Attachissement, &c.
This Grant contained no certainty, yet it was held good, because it might
be reheard to a certainty: So if the King will pawn all Racks; here,
nothing is named in certaine, yet is the person good. It is holiden in
21 H. 6. that, if a Person will grant all his by the Wool of the next
year, it is a good Grant, yet the quantity of the Wool is uncertainly
at the time of the Grant: So it is also, where one grants to anoth-
er all the perquisites of his Court. If a man grant two acres (as before)
the Habendum, the one for life, the other in fee, in this case, if the
Grant lose both these acres by default, he may have a Quota defor-
ces for the one, and a Writ of Right for the other, and by that
means the certainty of the Grant is determined. If one grant a
Rent-charge, the Grantee may name, or have a Writ of Annuity,
and whether of these he will have in unceretaine; and this Grant
which loses on that respect uncertain at first, is by that means redu-
ced to a certainty, and good. So if one grant to another 30 s. 3d a
Rack; here, it is uncertain which he shall have, yet it being reheard to a
certainty, by the Writ of the Grantor, the Grant is good. If I
have two Horses in my Stable; viz. a black and a white, and I give
unto 1. S. one of those Horses, this is uncertain; yet it is a
good Grant; because by the Oblation of 1. S. it may be made cer-
taine.

6 If I give unto you so many of my Horses, as may well be
spared, this is done for the uncertain; But if I give you one of
my Horses, albeit this is also uncertain; yet because you may make
it certain by your Election, the Grant is good. So if I promise to
give you your Laws so much as it is reasonably worth, this is done
for the uncertain; But if the judgment thenser be referred to a
third person, who both adjudge it: by that means it is made
good, &c.
Sect. 2. Where there is a correspondence between the parties, the agreement is to be construed in favor of the duty. But if the agreement be made in writing, the duty is to be considered as performed, unless the writing is altered without writing, according to Rial. 27. And when the condition in the deed (by the original contract of the parties) is to pay money, there, by agreement of the parties any other thing may be given in satisfaction of the money: for, as the philosopher says, Nummos et mensuram cum munus- 
apponendum, which agrees with the rule above: And in this sense it is true, quod pecunia obediens omnia. But so it is not of other things; and it matters not, whether the money mentioned in the Condition be a collateral summe, or parcel of the obligation, or not: for, if a man be bound by obligation in 200 quarters of wheat, upon Condition to pay 20, the obligation may by agreement between them give unto him a horse, gold-ring, etc. in satisfaction of the money, albeit (in that case) the money be collateral to the obligation: And therefore if a man enforce another by Deed upon Condition, that the Feodos shall pay a certain summe of money, etc. the Feodos may (by agreement between them) give the Feodos a horse, gold-ring, etc. the like, in satisfaction, and yet the money (in that case) is collateral, having regard to the land: for, if tenant be made, and refrain, he shall never be compellable to pay the money; and therefore it is more collateral. Quia reprobata pecunia (in hoc calii) liberavit saevitiam; and with this agrees Lact., fol. 799, in the Chapter of Conditions: So also if a man be bound by obligation in 200 quarters of wheat upon Condition to pay 50 quarters, he cannot give money or any other thing in satisfaction thereof, because the original condition was not for money: So as when money is to be paid, any other thing may be paid in satisfaction; but so it is not of any other things; for then neither money, nor any other thing can be given in lieu thereof.

108. It favoureth mutual Recompence.

1. Upon partition between Co-partnmers of Lands in Feasimple, if the one (for equity of partition) grant a Rent to the other generally, the Grantee shall have a Feasimple in the Rent, without the 2000 heires, because the Grantee had a Feasimple, in consideration whereof he granted the Rent.
2 If the heir of the part of the Mother of land, wherein a war-

ranty is annexed, (in franked and bound, and judgment is given a-

gainst him, and for him to recover it, etc. and for the execution of 

the heir of the part of the Mother Hall for execution, the heir of 

the part of the Mother Hall for execution, to have it, to value against the Wounche; for the effect ought to 

be in value against the Wounche; for the effect ought to 

pursue the Castle, and the retagination shall undo the book. 

If annus be given by these things, (in frank-marriage) according 

to the Rules of Law, then these words treat of state of inher-

itance in real tail. For the consideration of marriage to (in that 
case)-more favourable to Law than any other consideration, to 
departure of the mutual reconsidered, the Leafe 

must be said, 

3 The Leafe, for yeares must be listed of the Lawes said nature, 

in every Contract there must be quod quo, because contracts of quod quo cause action; and whereas if the 

Lawes had nothing in the Law, the Lawes had not quod quo, and 

anything, for which he should pay the same; nor in that case he 

may also plead that the Leafe: non dimittam actris in subodain-

other matter. 

4 If the Father transferre his & his Bequeath, by any of his youngest 

Daughters, or others to the making of his Wife & Wifemother, advance-

ment of his Daughters, payment of his Debt by the like, and his his 

beire within age, his heir shall be in Walford for his body, and the 

part of the land, by constitution of the Statutes of 35 & 36 of H. 

but if his eldest Sonne by any of his younger Sonses purchase & 

acquisition of the Father, which are bounty by Knight-bond, being 

side-to-a reasonable value, the heir shall neither be in Walford, nor pay Parson 

famil Leonard Lovys Churf. Co.11.83, 

6 If a Disposal to a Wiffy accepts the terms and profits of the 

Lease, and the other without their cellarment, they shall 

be allowed them upon their account; but if to otherwise he: a 

Causer; for he bind his Free, and thereby suffering overthrow-

the whole delivery of the Gown delivered into him, and 

thereafter shall without the Heirs thereof, if he be releas'd 

them. 

8 The Meine ought to accept men of the Leases, being both of him in 

Frankhamargent, if all Servits to the Lord's personalit, may it 

be to make payers by their Furder, and his heirs, and to consideration of those payers the Furder, etc. be bound to pay to the 

Chief Lord, all Rents and Services being out of said Leases. 

9 The Lord grant the Bartholomew of his Demesne, by Homage 

heaven, the Demesne shall not be compelled to a pet que servitudo to 

accept, unless the Counts will grant in Court, as to the Counts and 

unto him, and if the Count's wound by force of this Warrauntcy in 

Law, it is a good Counter Plea, that the Demesne of any one of his 

Ancestors, recolice de servitio tuo, as fecit servitutem sum a, b, like 

qua cunctione de sua propria voluntate. 

10 At a Scaymar or suo particular, both Demesne and Meine 

make default, and the Demesnant hath judgment against the 

Demesnant, and after Within a Scar Fs to have Deduction, the Demesnant 

annexe a Warrauntcy Carte, or if he were implanted by a stranger, he 

may have ground; but if he have judgment to recover in value, he shall 

never have a Warrauntcy Carte, or worth again; for by this judgment 

so waarde, in value, he hath benefit of the Warrauntcy. 

11 The Lord that hath received Homage of his Demanet; being 

bound, is thereby barred to all claim.
11. By the Ancient Law of England, if the Defendant in an appeal of
Mayhem has been found guilty: the judgment against the Defen-
dant has been, that he should lose the like membet, that the Plaintiff
has lost by his damages as an head for harm, an syc for an stc, sc. 40 A. 9.
cap. 28.

12. In Lieutenons Case, 5. 260. where the eldest sister hath the in-
novation Laums, and the younger the dis-sus
cap. 1. 2. 3. the law ancient dictum: the payment of 30 l. the Obliges or
Fefto, cannot at the time appointed pay a letter summe in satisfaction
of the tisop; because is obvious, that a letter summe of money can-
not be a satisfaction for a greater.

13. Where the Condition is for the payment of 30 l. the Obligor or
Fefto, cannot at the time appointed pay a letter summe in satisfaction
of the tisop. because is obvious, that a letter summe of money can-
not be a satisfaction for a greater.

14. It to commonly held, that the Tenant in tail cannot alien to charge
the Land in tassile without the title to recovery: yet if it Difenso, make a
gift in tail, and the Deeds in consideration of a release by the Difenso
of all his right to the Domen, granted a Rent-charge to the Difenso
and his heires, proportionable to the value of his right, this shall bind
the Alien in tail; albeit the Estate taille continues: And this is in respect
of the natural recompence.

15. If there be Parson, Patron, and Ordinary, and the Par-
son, by the Indemnity and silent of the Ordinary grant an An-
nuity to another, having quid pro quo in consideration thereof, this
shall bind the Successor of the Parson; without consent of the Par-
ton.

16. Regularly a Warranty is only answerable to free-holds or in-
heritances corporeal, yet to prevent mutural recompense, it may also
be answerable to free-holds and inheritances incorporeal, which lie in grant
as advowson, and to Rents, Commons, Easements, and the like,
which arise out of Laums or Estates: And not only to such inherit-
ances in &c, but also to Rents, Commons, Easements, &c: merely creato.
As a man (some day) may grant a Rent, &c, out of the lands
for life, in tail, &c, &c, with Warranty: for albeit there can be
no title precedent to the Rent, yet there may be a title precedent to the
Land, out of which it standeth, before the grant of the Rent, which
Rent may be a grant by the recovery of the Land, in which Case the
Warranty may help himselfe by a Warranty ca
ta, upon the special matter,
and is a Warranty in Law may stand to a Rent, &c, newly created,
as in Case of a Rent granted upon exchange, &c, to quality of Parties.

17. King H. 3. gave a manum to Edward Carle of Cornw-wal, and
To the service of his house; leaving the possability of Reverter, and also,
The same behalfe the Statutes of W. 2. de dominis, &c. by which gave the
said service to another in fee with Warranty in exchange for another
service, and after the said Statutes (in the 28 of E. 1.) birth without
King, leaving after in fee simple, which warranty and estate descend-
ved upon E. 1. as CO. and heirs of the said Carle, viz. Dow a heir
of H. brother of Rich. C. of Cornw-wal, father of the E. Edward: And it
was observed, that the King as heire to the King Edward was by the
Warranty and also in the same the possibility of Reverter, which he
has express upon the land gift, albeit the Warranty and sorts descen-
ded upon the natural son of E. 1. as heire to a subject, and E. 1.
claimed

Ibid. 370. b. 4. Pl. 174. and 573. 574.
The Reason of

claimed the said Hamno, as in his Reverter, in Jure Coronis, in the
capacity of his body Politique, in which right he was) to the Gift,

18 If Prince Henry lost of H. 7. had made a Gift in tail, the Re-

mainder to H. 7. In Fe., which Remainder by the death of H. 7. had
descended to H. 8. as he had the Remainder by descent, yet might
Tenant in tail barre the Estate tail by a common Recovery, notwith-
standing the Statute of 34 H. 8. 20. But if H. 7. in consideration of
money, 03 of assurance of Land, or for other consideration by way of
Provision, had procured Prince H. by his own invention and enrolment, to
have made a Gift in tail to one of his Servants and subjects for recom-
pense of service or other consideration, the Remainder to H. 7. in Fe.,
and all this appear upon Record; This is a good provision within
the said Statute, and the Tenant in tail cannot by a common recovery
barre the Estate tail.

19 In a formedon in descense, it is a good plea to say, that the An-
cestor of the demanant exchanged the land with the Tenant for other
lands taken in exchange, which descenent to the demanant, where-
unto he hath entered and agreed; or if the demanant hath not to enter
and agree them may the Tenant plead the Warranty in law, and other
affects descended; for in such Cases, there ought to be quid pro quo.

20 Tenant in tail makes a feoument in Fe. with warranty, and
bifurcathed the discontinue, and with sealed, leaving ales to his的地-
some boll, that in respect of this suspender warranty and affects, the
issue in tail shall not be remitted; but that the discontinue shall recover
against the Male in tail; and he take advantage of his Warranty, if
any be hath; And after in a Formedon bought by the Male, the discon-
tinue shall barre him, in respect of the Warranty and Affeets; and to
(by such mutual recumpence) every man right is labor.

21 None make a feoument in Fe. without valuable consideration
to other; particular uses, so much of the use as he disposed not to
him, as his ancient use (in point of Reverter): It is otherwise if he
make such a feoument for money or other valuable consideration.

22 A feoument be made to supremanons and unjustly uses, the
Statute of 23 H. 8. 16. makes the ues sold, but the feoument re-
manes good, and the feouments shall have sealed to the ues of the feoumer
and his heirs; but if in that Case the Feoume had severed; d. Rom.
03 receive from the Feoumer d. confirmation upon the feoument, the
Feoumers shall be sealed to the ues of themselves and their heirs.

23 In Shelley's Case, albeit the Recoverer died before execution, yet
the judgment being to recover in value, the Male is thereby barred,
because he is thereby to have recumpence.

24 The Lord Pager, being sealed of the Hamno of A. B. ec.
countant with I. S. and others that in consideration of the discharge of his
funerals, and payment of his debts and legacies out of the profits of
his land, and for the advancement of his Sons and others of his blood,
and his heirs would seal sealed of the said Hamno to the ues of the
said I. S. ec. for the life of the said Lord Pager, and after his death
to the ues of Ch. P. and others for the term of 34 years, and after
the expiration of end of that term, then to the ues of Sir William
Pager; his Son in tails with divers remainders over, and after the Lord
Pager was attainted of traitor; In this Case it was unsound, that the
term to Ch. P. ec. was void, because they wanted good consideration,
in as much as Ch. P. ec. were strangers to the considerations abovea;
but if he had made them spectator, so that they might have been charg-
able to pay the payment of his debts, and to make prap to the con-

An intall;

Remitter sup-

sended by

warranty ad

affire;

An acount-

for the

feouments sold
to their own

uic.

Recovery in

value.

An acount

have good

considera-


the Common Law.

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futation, then had such consideration been given, and the Estate resided to them has such been given.

25 An Act cannot be raised by any covenant or proviso, as by bargain and sale upon a general consideration, and therefore if a man by such interment and burial according to the statutes, for whose goods conceptions bargain and sell his land to another and his tenants, while in death, for no title shall be raised upon such general consideration, because it appears not to the Court that the Bargain was quid pro quo; but if a good consideration can be averred, that shall suffice to raise an use, albeit no particular consideration be mentioned in the same. Vide plus in id.

26 Concerning the Title, Rememberer is to be in Remover by due invention and inquire, in consideration that his Names shall continue in his name and blazon, and for other good considerations, coments to Lord failed to the use of himself and the better union of his house, and for benefit of such Place to the use of Queens El. and her successors, and after Remover in title in position finding a Consideration recovery with balance: In this Case, no use was rais to the Remover by the Remover, for the words, for other good conceptions, are in general to raise an use, without special averment that some good consideration was given: So that the land shall continue in his name and blood to no continuation to raise an use to the Queen; for there wants quid pro quo, &c. And contrary discretion quasi adus contra adus.

27 L. and M. joint-tenants for life, the Remover to L. in tail, Remover to M. L. leaves a recovery severally and none without issue, and N. also dies: Here, albeit the respective recovery is severally (and by consequence not used but voluntary by want of title) yet so long as it continues in issue, N. hath no right in the moiety of the Remover in respect of the intestate remainder. So also if Remover in tail of a common recovery severally, and after the intestate remainder, his heirs shall not be obstruct: for so long as the recovery continues in force the Estate tail is barre, by reason of the decedents recovery by necessity in balance.

28 Ann and Fane are joint-tenants for life, the Remover to the husband in tail, the husband towards recovery no benefit, this benefit the Remover, albeit the Fane regenerate he hath done a lawful Remover to the precipice, and the husband coming in at your pleasure come in punity of the Estate, and the remainder goes to the Ann in tail, but if the Fane intestate he has been joint with the Remover, it might be doubted whether the Estate had been barrent (for it seems) he has been barred for the moiety, in respect of the recovery in balance of the moiety. Vide 5. 30.

29 If a man be father of two Acres, the one the nature of Borough-English, and the other in statute or seigniory, of one husband or wife be given against him, and he dividing instead of his two daughters, who make partition: In this Case, if the one be only changed, he shall have contribution and recompense against the other, so as one purchaser shall have contribution against the rest, and also against the issue, so of these two testors shall have it against the other, because they are in equal share.

30 The words in the proviso 13 El. 5. (concerning fraudulent conceptions) upon good consideration, & bona fide, shall not be rendered, of nature of Misses, but of some consideration of money; or other thing of value: so if one being Endowed to another, to make party thereof; in consideration of natural affection gives all his goods...
416  The Reason of  M. ax. 108.

 gods to his son or Colls, in this Case, in as much as the Creditor shall lose their Debts, &c. which are things of value, the intention of the Act was, that the consideration in such Case should be valuable; for equity requires, that such a Gift, which destroys others, shall be of as high and good consideration as the things, that are so defeated by it.

31 If a man before the Statute of 27 H. 8, 10. in consideration of a Marriage after to be had with A. had made an Estate of certain lands to her for life, in full satisfaction of all the debts, which after marriage might accrue to her in any of his lands, and after they intermarried, this had not been any barre of her doing at the Common Law, because she had not any title of Dover at the time of the acceptance of the satisfaction, but that accrues afterwards.

32 In every Exchange rightly made this word Exchange imports in it afe (sale) a condition and also a warranty, the one to give a re-entry, and the other a vendor and recompence, and all in respect of the reciprocal consideration, the one land being given in exchange for the other; but this is a special warranty; for upon the vendor (by force thereof) he shall not recover other land in value, but that only, which was so given by him in exchange, because in as much as the mutual Consideration is the Clance of the Warranty, therefore it shall only extend to the land reciprocally given, and not to any other land.

33 Two are bound in an Obligation jointly and severally, one is land and in execution, to the other; the Act escapes, the other brings an Audita querela; here the Audita querela lies not; for the Action against the Sheriffs upon the escape is not satisfaction of the Debt, because he may be worth nothing, and if both have been lived by one wife, and general principles, the entry shall be, that there be one execution; viz. with satisfaction; for they shall both be in execution: If the Consort of a Statute Staples or Merchant escape, his lands and goods may be extended to it; it is also if he dies in prison; for execution of the body is not satisfaction: for there is a difference between execution, which is valuable, and which is not; valuable execution (by the Common Law) cannot be had twice, as in action of lands executed, it is otherwise of valuable satisfaction: Also no new can be, where execution was final before, but there may be where execution was quaque as in the Case above.

34 E. 6. determins for 21 years, Queen El. leaves the rebellion for 21 years to B. who makes several leases in future, and 23 El. upon consideration of the Queen grants to the 2d B. for 21 years, and 26 El. upon consideration of the surrender of the letters Patents of 23 El. the grants to him for these lives from the day of the making: Here, the determins for these lives is void, being made upon consideration of the surrender of the letters Patents of 23 El. which were void, they being upon consideration of the whole Estate, which was not performed, part being leased out to where before.

35 The Custome in Com. Bucks is, that if sheane bea uppon any many ground there the owner of the ground may take the third Signet in them of the ground where they did so breeze; and it was adjured a good Custome and reasonable, because there is quid pro quo. The Lord Strange's Case in 2 R. 3. 35, and 16. cited in the Case of Swanns.

36 Judgment given against Leman in tail, with vouchcr and recompence in value shall bind the Estate tail, notwithstanding the Statute de domino, 13 E. 2. and by such recovery in value the Leman in tail.

The Obser dying a piso final, not not the ool.

The Exchange implies a war.

The Obser dying a piso final, not not the ool.

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36 Judgment given against Leman in tail, with vouchcr and recompence in value shall bind the Estate tail, notwithstanding the Statute de domino, 13 E. 2. and by such recovery in value the Leman in tail.
In a per qua servicia against an Infant, who hath the Tenancy by descent he shall not have his age but is compellable to attend; because at first the Lord departs with the Land in consideration that the Tenant shall hold of him, and shall do him services, and pay unto him a yearly Rent: For the Tenant is called in Law Tenant per-avale, because the Law presumes, that he hath honest and avails above the services that he hath and the Rent that he pays to the Lord; And therefore it is against Reason, when the heir hath the Tenancy per-avale by descent, that he shall not pay the yearly Rent, etc., which was reserved upon the creation of the tenancy: And therefore Attornment by an Infant is good, which was the principal Case there resolved, he being compellable to attend in a per qua servicia (as before is said) upon the reason aforesaid.

38. A Guardian shall not be punished for; Want done by a Stranger, but the former shall, because (as is supposed) he receveth profit out of the farme, and may therefore have an action of trespass against the stranger.

39. Albeit the Plaintiff have paid the services to the Lord Paramount, yet if the Tenant be afterwards disinsaimed for; the services, he shall have a writ of Melfie against the Melfie for it, but whether he shall recover damages, quere; yet it seems he shall have damages, because the Plaintiff shall have damages against the Lord Paramount, if he shall put his cattle into the pound for the Tenant, and the Replevin: And yet nient distaine in his default, is a good plea in a writ of Melfie.

40. A writ of Annity is maintainable against the Parson upon his Beneficce is grant by assent of Patron and Ordinary, and likewise upon an Ordinary made by the Ordinary without the Patron, if he have quid pro quo; So it is also by the Parson against the Lord upon the Ordinarys Ordinarys; if he have quid pro quo.

41. When a trespass is done an action conceived for; it, a concord Executory pleased is no barre thereof; For there being a wrong done and not denied, it must be answered with recompence, and then the Concord Executory is not any recompence de facto, neither is there any Action given thereupon to compel the party to make recompence, and so he is without recompence, and inelute of means to recover any; But upon an Arbitration where the summe is awarded in recompence to be payd at a day to come, that is a good barre, because he may have an Act of duty is for; at the day limited, and so the Trespass is converted into another thing by the Arbitrators, who are judges thereof, and to it is answered with Action, which counterballs satisfaction in deed.

42. In a Praecipe the Tenant toucheth, and at the sequitur sub suo periculo, the Tenant and the vouchse make befall, whereupon the Demanant hath judgment against the Tenant; And afterwards the Demanant brings a facia fasic against the Tenant to have execution, in this Case the Tenant may have a Warrantia Carte; And it in that Case a Stranger had brought a praecipe against the Tenant he might have vouchse again, so by the judgment given against the Tenant the Warrantia look not his force: But in such Case if the Tenant had judgment to recover in value against the vouchse, he shall not
The Reason of

Max. 109.

by reason of that Warrant, because he hath made re-
compence by taking advantage of the Warrant.

43. If an Executary redeem goods pawned by the Testator; to the
value of the goods, he may make those goods, and they shall not be
affected in his hands; for a man ought to be recompenced for that which
he hath lawfully disbursed. As a Benefactor who pays rent chargeable
upon the Land shall have it recovered in damages; Likewise if the Ex-
cutary pay with his own money the debt of the Testator, he may re-
compose to many of the goods, as amount to the summe of summes so
disbursed by him, and they shall not be affected in his hands.

44. A man recovers in a Suit of entry in the Court against Tenant
in tails upon a wanderer and recovery in value against the Common
writhe, and before ejectment copied the Tenant in tails wise, and his
rules, enter: In this Case, the recoveror may well enter upon the
Asses for the Assess cannot dislodge this recovery, because of the re-
covery over in value. P. Fitzherbert & Baldwin, fed Shelley is coun-

45. If I Bargaine and sell all my Goods in such a Case: An no
mention is made of a summe of money for the consideration, yet it
be not paid, for a competent of money; in this Case, nothing ful-
ly, because there is not Liquid pro quo, which ought to be in every
contrat.

46. The ferent of A. was arrested in London upon Trespass, and
Assumps two, who knew his Master bailed him, afterwards A. promised
them for their friend likeness to live them parcellless from the dammes and
costs, etc.: In this Case, if they be afterwards charged, an Action
upon the Case lyeth not, because there was no consideration, for
the hiring was on their own heads, and was executed before the
Assumps: But if the Master had requested it before, and assumed after
in a Case, it seems to be otherwise: As in consideration that
you have married my Daughter at my request; I will give you,
A. This to a good consideration, because the marriage answer my
request.

47. Vide Hob. 4 Lane & Malors in Assumps, the consideration
was the delivering of two Statutes Staple to the Defendant: Also
Hob. 18. Woolton: Case, in Assumps, the consideration was a long-
er wax; And 93 Nichols & Raynbrook, the consideration was promise
for promises, which must be at the same time, otherwise they are not
promis: A. Hirst & Bristed and Partridge, the consideration a license
not promised upon accompt.

48. Every Restowe works decimand. by prescription is a gift of the
Tiales of the Natural Litle.

109 De minimis non curat Lex:

Co. 2. 16. b. 1.
Knights Cutte.

Co. 6. 24. 8. 2.
S. Auth. Midd-
mays Cutte.

1. In Debts by redemption under the Chequer scale is enough to
entitle the Bign to a Chattel.

2. The Law favors Estates tails in possession but gives no re-
gard to Remainders or Reversions expectant upon an Estate in tails;
so it is answered in Caples Cutte in the 1 Report, that it Tenant in
tails suffer Common Recovery, that shall not only have the Estate
tails, and the Remainder or Reversion, but also a Rent, which he
in Remainder or Reversion hath granted; So likewise was it an-
jurisprudence in 8 El. bertwixt Terring and Trafford in the Things Bench
that a Rebellator or Remainder expectant upon an Estate of tails shall
be able to recover the same upon an obligation made by his Father
Also in 8 El. it was resolved by all the Justices of C. Pl. in Copwoods Cutte,
that it can never touch in tails, the remainder is a right solely of L. and

Chequer
scale.

Rev. or Re-
upons an es-
tails not l

lisible.
a no Tenant in tails suffer a common recovery, I.S. being then in his, this shall barre the remainder, albeit it were in abysiance and concurring ration of Law, which the Law namely favours: but de minimis non curat lex.

If Tenant lose 50 years pay a Kent lack, it is not lessen required in an Assise, against the Tenant of the Frank-tenement, in respect of the meenest and imbrace of his Estate; for at the Common Law he could prejudice not draw into question the Estate of the Frank-tenement, nor before the statute of Glyceetter could be recover, albeit a recovery were had against the Tenant of the Frank-tenement by ragaement; neither could he take a recovery before the statute of 21 H. 8, and all this by reason of the Feu-hamon of his Estate.

4 In Lexpress the Defendant pleads Allenge in the Plaintiff and he was found free and had 2 s. damages given him. In this Case the Defendant shall not have an attaint for the finding of the Plaintiff Free, because the damages are so small.

5 There is a condition in Law annexed to the keep-ship of a Park, viz, that if he do not well and lawfully keep the Park, it shall come to the Grantor and his heirs to enter: But this must be under two with a distinction: for if the keeper both not attend on the Park one, two, &c. wapes this is no forfeiture of his Office, but if in his default any Dicre be killed, whereby a damage comes to the Lord, that is a forfeiture; for non-user of it tell not without some special damages is no forfeiture of private Offices, but non-user of publicke Offices, which concern the administration of Justice or the Common Wealth, is of it tells a cause of forfeiture.

6 If a Recovery be had against a man in a precipice by default, when he is out of the Realm, he shall not (as it seems) avoid it by writ of Error, so to a man might be infinitely diverges of his Feu-hold and Inheritance, whereas the Law hath so great regard: But out-laying in a personal Action shall be avoided in that Case, quia de minimis non curat Lex, and otherwise he should be without remedy: whereas in the other Case the Tenant may refer to his writ of higher nature, so a quod ei deferen for his remedy.

7 If Lamos be given to a man in tails, who hath as much Land in Fe-Simple, and be the leading Blue two Daughters, who make partition, so as the Land in Fe-Simple happens to the youngest Daughter: Here, if the youngest Daughter Allen the Fe-Simple Land and sic, her heir shall enter for a pur part upon the entailed Lamos: And so it is also if the youngest Daughter had granted her part to another in tails; for the Reversion appear upon an estate tails is of no account in Law, because it may be cut off by tenant in tail.

8 If a man be tells of Lamos in Fe and hath Blue two Daughters and make a Gift in tails to one of them and his sister of the Reversion in Fe, which descends to both Sisters, and the Donor 03 her Lamos is unpleased, she shall not pay in case of the other Coperlences either to recover per ran, 02 to render the Warranty paramount, for that the Reversion is not of any estate in Law, and the other Dicre is a Stranger to the Estate Tails, whereas partition neither was nor could be made.
9. The Earl of Somerset had obtained a grant of the licence of tenures for perquisites, and took it in the name of Sir John Dacomb to treat for him; but the question was, whether or no, by the Earl's arrangement of the tenures was necessary; and by the opinion of all the judges, it was settled, and afterwards it was so resolved also in the Exchequer; viz. in cases of chattels real and personal, and things in Action of that sort.

180. In actions the Law yieldeth favour, when for the doing of them there is,

1. Necessity.

Co. Infr. p. 11
44. b. 3.

2. If a man maketh a Charter of feoffment, and delibers leaseth within the view, the feeor barres not enter for feare of death, but claimes the same, this shall vest the free-hold and inheritance in him: albeit by the liberer no estate passed to him neither in deed nor in Law, and this is, by reason of the necessity; so as such a claim shall be, as well to vest a new estate and right in the feoffor, as in the common case to vest an ancient estate, and right in the disseffee, &c. Am to note, that (for necessities take) a liberer in Law shall be perfected and executed by an entry in Law.

Lit. § 179
Co. ib. 219 d. 7.

4. A man let land to another for life, leaving the Reversion, and a Willain purchased the Reversion of the Leasor; in this case the Lord of the Willain may presently come to the land and claim it at the Lord of the Willain, and by this claim the Reversion is forfeit to him, for he cannot enter upon the Tenant for life, and if he lay till after his death, then he may perhaps come too late, for the Willain may have granted it to another: so it is also where a Willain purchase an hundred for life; let the Lord claim it at the Church; it shall be thereby vested in him: because it he should lay until the incumbent die, and then present his Clerk, the Willain might grant it again before, and to the Lord should be out of his presentment.

Lit. § 180.
Co. ib. b.

5. In a walt of right of Dover brought in the Court of the Exchequer, a protection is allowable, because the proceedings there may be speedy, the Court being kept over the whole week; but in a walt of Dover and nullahact, no protection is allowable, because the defendant hath nothing to live on: so also in a Quar Impediment, or a suit of carriage presentment a protection (with not) to the eminent danger of the party, nor yet in a Quar non admiss, because it is grounded upon his Quar Impediment.

Co. ib. 13. 4. 1.
& Co. 7. 7. 4.
in 1 Milbourn Cates, 49 in 3. 4. 7. 6.
44. d. 3
11. b. 7. 5.

6. For a Rent of twelve the Lord cannot affirmate in the night, but in the day teneously, and so it is also of a Rent-charge; but for damage feasant one may affirmate in the night, otherwise it may be the Lord's loss, he gone before he can take them: and with this agrees to E. 3. 38. 1. See Mackallies Cafe Co. I. 9. 66. a. 4. Vide infra B. 14. 28. 14. 2. 26. 12.

Co. Inf. p. 11. 7.
173. 1. 2.

7. The village of Oak, Intente to make all his Acts go to 31 hares, and was not amply bined him to make him to pay for his necessary meats, fishes, supplies, and other necessaries, and likewise to pay or to affix his intention, whereby he may profit himself afterwards, but he bid him tell him in Obligation of other writing with a penalty of the payment of any of these, that Obligation shall not bind him: all other things of necessity bind him, as a prestation to a benefit, for otherwise the last would incur against him.
6 Regularly it is true, that he who enthrat to a condition broken shall be held in his first estate, of that estate, which he had at the time of the estate made upon condition; yet if the tenant que rent after the statute of 17. H. 8, had a condition precedent in the estate in fee, and after had entred for the condition broken: in this case, he bad but an ease, when the condition was broken, yet now he shall be holder of the whole estate of the land, and this is by necessity, because, by the condition in fee of the tenant, the whole estate and right was transferred out of the tenants, and therefore necessity of the tenant must gain the whole estate by his entry. for the condition broken.

7 In some cases, (to necessitate) a continual claiming may be made by him that has right; and yet cannot enter, as if tenant for years, tenant by statute, he enters, and he in the execution, the lessor by the statute in the execution, may enter to the intent to make his claim, and yet his entry, as to take away the profit, is not lawful during the term; and in the same manner, when the tenant is in the execution in that case, may enter to avoid a collateral warranty, or the lessor in that case, may enter and so forth some helper may make the lesser enter, to avoid a dissent of a warranty.

8 If the possession be made continual claim, and the demesne be in continual claim, the tenant enters the possessor, as the tenant, but the other tenant, on the statute, makes a claim to the tenant, as the tenant.

9 In an action of sed entry by a tenant against the possessor for his entries, the defendant shall not have the law; because he is liable to the tenant; and yet not to the tenant, and such a defendant he is to the tenant, as the tenant is to the possessor, and the possessor is to the tenant, and the tenant is to the possessor.

10 In an action of sed brought by an Attorney for his fees, he must not have the law, because he is liable to the Attorney.

11 In a case where a tenant is not to the tenant, he is to the tenant, and the tenant is to the possessor, and the possessor is to the tenant, and the tenant is to the possessor.

12 In a case where a tenant is not to the tenant, he is to the tenant, and the tenant is to the possessor, and the possessor is to the tenant, and the tenant is to the possessor.
The Reason of

E. enters as heir of A. and B. enters for the Contumacy bought. In this Case it was objected, that the Contumacy of B. had extinguished the Contumacy, but one reason amongst the rest against that was this, that the renter of the Rent could not have been made to him; and albeit a Fine be of so high a nature, that it will not permit a maker of Aberration against the rent and Contumacy thereof, yet when the Law requires one for necessity or conformity to some other in a Fine, it permits him also to show the truth of the matter to avoid prejudice and conclusion. Vide ibid, plus upon the same ground.

Col. 3. 23, 1. 4.
Without Cafe.

The Sheriff to take note at his peril, who are in the creation, and die, and afterwards a new Sheriff is made, it behoves the new Sheriff to notice at his peril of all the Executions, which are against any person, that he may in the Case, and this for necessity; for there is none to make delivery of them, or to give him notice, who are in the creation, and who not: And it is no mischief to the Sheriff, if he keep them safe, until he hath perfect knowledge of all the Executions: but if he may with impunity suffer latter such as are in Execution to escape, great inconvenience would ensue thereupon.

Col. 1. 540. 4.; & b. 3. Derrick.

A Writ of Entry upon an Arrester's Cafe.

13. If the Sheriff hath in his custody divers persons in Execution, and die, and afterwards a new Sheriff is made, it behoves the new Sheriff to notice at his peril of all the Executions, which are against any person, that he may in the Case, and this for necessity; for there is none to make delivery of them, or to give him notice, who are in the creation, and who not: And it is no mischief to the Sheriff, if he keep them safe, until he hath perfect knowledge of all the Executions: but if he may with impunity suffer latter such as are in Execution to escape, great inconvenience would ensue thereupon.

Col. 1. 109. b.

4. Fourtage Cafe.

14. Abides (regularly) a Writ of Entry in the Post, cannot be of an Arrester, as appears by the Statutes of W. 2. cap. 5. 41. 2. 162. & 14 H. 4. 33. But of a Common Pardon, as also appears 4 E. 3. 146. & 27 H. 8. 12. For of a Common Pardon (being a common allowance, and by consent of parties) to cut off an entail, the Law (for necessities sake) permits it; but otherwise there could be no assurance of an Arrester, Common in the Code, to bars remainders or restorations expectant upon an estate tail.

Col. 1. 6. 31. b.

Butler and Goodall Cafe.

15. If a Felon be arrested for felonies, and as he is in conveying to the Goal, he dies; that is conveyed him, and in the pursuit they cannot re-take him; without killing him, and so they do kill him: If the whole matter and also the light be presented before the Coroner, or any other having authority to inquire of Felonies, albeit the party was so killed, yet he shall forfeit all his Goods and Chattels, because they were urged to do it by necessity; And with this agrees 7 E. 1, Coron. 187. 31. 3. 28. And there it appears that it is not Felonies in those that pursue him. So E. 4. For. 25. if a true man kill a thief, that would rob him (if the thief go not back) the true man shall forfeit nothing for the same reason.

Col. 1. 14. 31. 1.

Dowdington Cafe.

16. Abides by the Statute of the 21 H. 3. of non-reference the Person ought to stand upon his Resto2, viz. in the Parsonage House, and not in any other House, though it be within the Parish, (to; the Statute intends not only from the Cure, &c for Hospitality, but also for the maintenance of the Parson and habitation of the Parson, not only for himself, but likewise for his Successors, that they may also maintain Hospitalit, &c,) yet lawful imprisonment without Court, or if there be no Parsonage House to live in, are good excuses, of non-reference; and it was held in the Exchequer, Tr. 39 El. that Schneids without fraud is also a good excuse, viz. where the patient removes to advise in Asbury born side, for better ares, and for the recovery of his health; for these cases are exceptions out of the Statute by confirmation of Laws.

Col. 1. 24. 31.

A Place certaine being pleaded for necessary, or damages as forants rest.

17. In Debt against Executors, the Defendant pleads duly admitted, the Plaintiff replies, that he had Acts in Erex, and the Yarp Ads Acts in Ireland, and it was assign'd for the Plaintiff; For when the place is material, as when it is parcel of the issue, there the Jarosz cannot find the point in issue in any other place; &c by special pleading the point in issue is restrained to a certain place; But
Was when the place is only named for necessity and conformity, and is also a part of the lawn, there the Jurors may be Assizes in any other County or place, than where they were arraigned in the Procession: Do allow't to El. 271. Dyer, in Debt against the heir, he proves rooms per aliquum generally; in this case the Plaintiff cannot repel it to general manners; Yet then no trial could be made there, but in such case for conformity and necessity of a trial, he ought to name a certain place, as he did (in that case) viz. in a Park and near London, and upon evidence given by the Plaintiff the Jury found Moot in Cornwall, and it was abjured good: So the Law is, that the Plaintiff shall have the Execution all the Lands that the debt holds; And therefore in such case a certain place is named for necessity, yet the Jurors may find all that, which by the Law shall be chargeable in such case, to what County or County it be.

18 In Brediman's Case in the Rep. It was said, that if there be a Lord and Tenant, and the Tenant makes a Deedment in Fee, here below notice and tender of the Arreages the Feoffor may give of a Rent, because he is Tenant as to the Abolish, fol. 5, 18. so-in such case if the Lord восs the Feoffor, who, tender of the Arreages, be not those them; as it is agréed in 7 El. 3, and 7 H. 4. So and therefore in as much as in such Case the Common Law forces the Judge to award upon the Feoffor, for that reason at the Common Law each by the Feoffor (neeessitas causa) was good.

19 Regularly, a Queere Impediment brought against the Bishop and Incumbent, without naming the Patron, abates; Yet if the King presents to a Benefice, and his Clerk is admitted, excluded, &c. In this case a Queere Impediment may be brought for necessity against the Bishop or Incumbent, for it lies not against the King, so it was also of the Pope, if he was admitted; 12 H. 3, 32, 41, 7, 15, &c.

20 Albeit, (regularly) the Alcor general cannot excommunicate without a certificate, when the Bishop is in remosis a transliteration, viz. beyond Sea in the Kings Service, but the Court must be acquainted therewith by matter of Recourse, viz. by Write out of the Chancery to bring them, and not by the curtesy of the party, and their necessity, (which is always the Law of time, so, necessities est exemplis) the Certificates of the Alcor General shall be allowed, because no other can then do it; so he only ought to certificate, to whom the Court may write to abate the party, as the Bishop, or the Chancellor of the Universitietes.

21 Revolution in the Queen upon an estate tails, he grants it to T, in title, upon Condition, that if he pay 50, at the estate of the Exchanger, he shall have the said Revolution in Fee, the Condition is performed, the tenant in title loses a Fine, and his title is barred; And in this case the principal point was, whether by the Revolution performed, the Revolution passed to T. And it was held, that presently upon payment of the 50, by operation of law the Fee was devolved out of the Queen, and vested in T. And this by necessity, yet if it would not vest at the time of the Condition performed, it would never vest: And therefore as if in this Case either Office, Position, Monstrance be done, or other thing should be requisite, that would make the Queen's Grant void, and would enable the Queen to make back a Grant; And this is according to the Lord Lovel's Case.
in the Commentaries; for there it is said, when the Condition is performed, the Feasimple shall be immediately out of the King, without Petition, Monstrance de droit, or other circumstances, for if he must tarry such circumstances, then can it not well presently, and (by consequent) shall never well; because if the estate be not enlarged at the time of the enlargement appointed, then shall it never be enlarged; And therefore in such Cases as necessity the Feasimple passeth out of the Queen without any such circumstances: with this also agrees Label Goodheaps Case, (49 E. 3.) who being beaten in Fe of an House in London, holder of the King; delivereth it to Richard Goodheaps, and the husband of his body, and for want of such Thing to be sold by her Executors, and the makes W. D. W. W. and I, de T. her Executors, and dies without peer, Rich. Goodheaps dies without issue, whereby the Poule escheats to the King, and after one of the Executors dies, W. W. retelleth, and W. D. les the Poule, and here the question was whether or the Sale by one Executor was good, but it was agreed by all, that if the Sale were good, it shall devest the Poule out of the King, and the cause thereof is by necessity of Law; for if the Sale did not devest the Poule at the time of such Sale, then could there be no Sale at all, and the Executors, who had but a power, could not have any petition, Monstrance de droit, or other remedy.

22. There is a universal betwixt mean acts done in Execution of a Title, which are compellative, and acts, which are voluntary; and therefore if erroneous judgment be given in Debt, and the Sheriff force of a Priory facias, tell the Defendants term, and after the judgment is overruled by a Writ of Error, yet the term shall not be restorèd, but only the summe, &c. But if a Capias ulterior be assurèd, whereby the Sheriff is commanded to take the body, ut bona & cælè, quæ per inquisitionem in venerit in manus nostras capias, & de vero valore, &c. And by force of this Writ the Sheriff by inquisition takes the Goods and Chattels of the out-lawed perdon, and sells them, and after the Out-law is overruled, in this case the party shall be restored to his Goods and Chattels, because the Sheriff was not commanded, not compelled by the King's Writ to sell them.

23. King James grants to the Earl of Shrewsbury the Stewardship of the Manors of M. and B. but in the Patent power of making a Deputy was omitted; nevertheless it was adjudged, that he might make one; for if such an Office descend to an Infant, idiot, or man of non facere memorie; they by necessity ought to execute it by Deputy; So an Earl for the necessity, that the Law intends of his attendance upon the King and the Common-wealth, this Stewardship of a half Court shall be exercised by Deputy.

An arrest in the night is lawful, as well at the suit of a Subject, as of the King, for the Officer ought to arrest him, when he can find him, otherwise he may perhaps never arrest him, læ Qui malè agit odic lucem, and if the Officer do not then do it, the Plaintiff may have an Action upon the Case against him and recover his loss in damages; Therefore by necessity an arrest in the night is lawful.

25. The Lord's day is not Dies juridicus, and therefore judicial acts ought not to be done upon that day; but Ministerial acts may in some Cases be lawfully executed upon that day (as an arrest) for otherwise perhaps they might never be executed, and Christ permits Works of Merit to be done upon that day, bonum ut beneficere in Sab- baro.

26.
the Common Law.

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The Bishop, or other person appointed by the Bishop, shall demand the acknowledgment of the judgment, and shall enforce the payment of the same, by power of execution. But if the party so convicted shall not comply within the space of thirty days, the Bishop may, at his discretion, cause the said judgment to be recorded in the registry of the Bishop, and shall thereupon declare the same to be a sentence of excommunication, and shall publish the same in the same manner as a sentence of excommunication in cases of debt. Any person who shall fail to pay the amount of such judgment within thirty days after the same shall have been recorded in the registry of the Bishop, shall, on the application of the Bishop, be declared guilty of contempt of court, and shall be subject to all the penalties and proceedings for contempt of court as if the same had been committed in a court of law.
The Reason of

M.A. 119

as also the escape of the Navigator, other hang upon an horse, a
Robbery, and sometimes upon a whole County, &c. and this neces-
sarily, by reason of the uncertain knowledge of the parties attempt-
ing, and the multitude of the number.

29. Cession of Wast and the killing of men are prohibited by the
Common Law, yet every man to his own defence, and as a Thug-
proof is trial in a Watt of Men, and the like, may kill others, and
here the one is for the occasion of killing in his nature, and the so-
for the wanton peril; for the rules by the Common, Cession
of the Realm's Indubious are changeful, till the goods of their Goods
being left to improve out of their houses, yet if their houses be
broken by the King's Governors, and to the goods taken from them,
they shall not be changeful therewith: For in reason such violence
cannot be resisted, and whereas it shall bechase the violence of the
Cession; as in the Regent Caeo in the Composition, when by
reason of the tempst part of the Mean was cast into the sea, and
thereby the quantity remaining could not be, whereas it批次t before
it was altered, as the agreement made with the Censor between the landing thereof was anadvancement, and
to the rigor of the tempst wish the rigour of the statute.

30. The B & Leam: is Hereby by the Statute of Ne-
tranguline prisoners, yet it is such, as he deals, and try that the
of which are here declared, the Sheriff to save their lives, this shall be executed by the
sexuality of the things; 16 H. 2. 11, 15, 17, 19, 20. And, where
in the said composition, if there be no great tempst to take the house where they were, and
accepted themselves; and if, how these hold, that they should not
answer thereof; but their Sheriff Commissioners, have held and for the
sexuality of the occasion, whereas otherwise they signify heresy, pre-
diously unvisited.

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accepted themselves; and if, how these hold, that they should not
answer thereof; but their Sheriff Commissioners, have held and for the
sexuality of the occasion, whereas otherwise they signify heresy, pre-
diously unvisited.

32. The Law of God prohibit the eating of Proposition Brand,
pies; as was enjoined (by C.I R. T. &c.) to be lawful for Davis to
seat it in a tree of necessity to possess famine: So also upon the like
occasion, when it lawful for Christ to Apollo to wail the Cases of other
main Cases, and to our present. 

33. In a prudent consideration, the moment shall exceed his vent by
the Statute of Wiltshire, and put other vent, established in Law,
does not the immaculate of the Court, but to that he could not with-
out part of nearly oppose, the sexuality of the occasion, yet this Caeo shall
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occasion, when it lawful for Christ to Apollo to wail the Cases of other
main Cases, and to our present. 

36. If the Sheriff of Middlesex lies on a voluntary escape of a
prisoner, and making itself safe after him, takes him in Surry,
whereby is not necessary; yet he may justify the taking of him there;
and when if one comes on voluntarist pie, whereupon, and the Sheriff
taking him self, may then there the Law may put the them to his hands taken when in the act of

37. No puritans or escape of a different
the Common Law.

land they are, albeit they are out of his Authority: For the pursuit and the possession after shall be adjudged as a possession with continuance, when it is to Rent-serve: But it is otherwise for damage feint, and to the diversity is held rej. e. 4. fol. ro. pet H. & R. 2. abs.

per Fret. Ref. cons 11. It is held also justifiable for damage feint; and all this is allowed for the necessity of the occasion, and in favour of right and justice.

38 If a man hold as of a Seigniory in gross, which hath not a

Manor, where the Lord may keep any Court, in such Case the

Tenant may sue Briefs de droit patent in the King's Court, and the

Lord shall not have any Action against him for it, not by any means

annul his Action, because he hath not any Court to hold plea thereof;

And therefore he is compelled by necessity to sue immediately in the

King's Court.

39 If the Baron give part of his Manor in tail to hold of him

and use, the Same shall sue her writ of Right of Dower in the Court

of the Heire of the Baron against the Donor in tail, and the writ

shall be directed to the Heire: But if the Baron make a Gift in tail, of

all the Land be hold and use, here the Heire of the Baron cannot

keep any Court, because he hath not a Seigniory in gross; and there-

fore in such Case it seems reasonable, that the same have her writ of

right of Dower against the Donor in tail, directed to the Barbise and

returnable in the Common Place, and there shall be this Clause in the

Writ, Qua B. Capitalis Dominus feodi illius nobis inde remitto

Curiam suam. So it is also if the Baron lease all his Land for life, there

also the same shall sue such a Writ against the Tenant for life, returnable

in the Common Place, because the Heire of the Baron in that

case also can keep no Court, having but a Seigniory in gross: And in these Cases and the like the Lord shall not have a prohibition to the

Justice of that Court, that they should not proceed in such pleas; so

that the same in such Cases is allowed by necessity to do it.

40 If an Infant or Feme covert present not within 6 months, the

Bishop shall present by laps, for there is a necessity the Church should

be served.

41 Where writ is made by the King's enemies, or by tempest, the

Tenant shall not be punished for it.

42 Ubi aliud suadet necessitas, cedat humanus constitutionis, cedat & vo-


43 A Decimus Potesfacent was granted to receive an Attorney for

the Defendant in a Quod Juris clamor, albeit no former Potesfacent

could be found for it, and this was allowed per Curiam, by reason of

the weakness of the Defendant, who could not appear in person with-

out manifest danger of life.

44 Hob. 13. Bridgman's Case, per Hobart concerning the manner

imposing of another man's ship at sea for necessity of saving another

provision.

45 An Action of Trespass and Conversion may be brought in a Lu-

name's own name, for graine towns upon his Copi-hold land and

carried away by a stranger, and that for necessity, because it can be

brought in no man's name else.
The Reason of

111. 2 Conveniencie.

1 If a Papishke be granted to an Earl, without intent to make a Deputy, yet he may keep it by his levanters: for the Law only allows others acts (so) convenient in respect of the Dignity of the person, as if Licence be given to a Duke to hunt in a Parks, the Law is convenient given him such attendances, as are requisite to the Dignity of his Estate, Vide, 12 H. 7. 25. & 23 H. 7. 10. So when a Bishop is rising forth, or upon the way, it is not convenient for his Estate and Degree to be then forced to examine the Ability of a Clerk, but he ought to attend his convenient leisure. 14 H. 7. 21. 15 H. 7. 7. & 8.

2 At the first institution of this Monarchy by an Earl was Prefestus, or Propositus Comitatus; for to the Patron wood Shire-reve imports; The Romans called him Saturas, from the Persius, viz. Prefectus Province; And the Sheriff at this day (called Vice-comites,quasi vicarius generofui vicilis Comitis,) hath the whole authority for the Administration and Execution of Justice, that the Earl had, and if the King do not by his Letters Patent commit unto the Sheriff custodiam Comitatus, without express words to make a Deputy, yet he (who comes in the place of the Earl,) may make a Sub-vicem-comites, viz. a Deputy, who was in times past Seneschallus Vice-comitis, and by Wetl. 2. cap. 39. Sub-vicem-comites, and by 11 H. 7. cap. 13. Shire-Clerk.

3 If before the Statutes of Quia Emptores terrarum, 18 E. I. the King or any other have given Leave to hold of him in Knights-lordship, viz. to attend the King 40 days in his Court sufficiently armed, so in this Case the Law had such regard to the honor of Knavish-kind, (which is the lowest Degree of Dignity,) that he might find an able person to go with the King in his Marches, Vide, 7 E. 3. 29. and this was not convenient, and this was for convenient智造.

4. E. 11. by Patent granted to the Castle of Shrewsbury, Seneschal Dominiorum five Manoriorum de Mansfield, Bollower, & Hodley, with this, giving them power thereby to make a Deputy, yet it might make a Deputy; because it was not convenient that the Earl should keep such Courts himself.

5 The Statutes of Marlbridge, prohibits that none shall bring a Distress into one County out another, yet it is lawful there to Curiously; by 11, 14, 16, 21, 4. (abrogated by P. & T. T. D. 1. 1.) that though his Gantions parts into two Counties, the Lord may render these Counties; and bring the Distress into the nearest County where the amours, and this is to avoid the mischief and inconvenience, that without intent, the King shall not be restrained from bringing the Distress to his shires. But the contrary abrogated in 30. E. 3. 9.

6 If the Condition of a Bond or Fessentment be to pay, or to walk use sooner, no place being appointed, where it should be paid, in such Case, the Oblige 01 Fessorie is bound, (at the rate of payment,) to find out the Oblige 01 Fessorie to make payment, or to take them of, if he be in England, but if the Bond or Fessentment be without 20 Quarters of Wheat, or 20 Lores of Linen, or the like; In such Case, the Oblige 01 Fessorie is not bound to carry the same about, 01 to seek the Oblige 01 Fessorie, but in such Case the Oblige 01 Fessorie must go to the Oblige 01 Fess, before the rate of payment, and know where he will appoint to receive it, and there it must be delivered; and this the Law allows for the convenience: So if rent be
be(-ing) out of Land, it ought to be tendered upon the Land; But
Hommage or any other special corporeal Service, may be done to the
person of the Lord, and the Tenant ought (by the Law of contemn-
ence) to seek him, to whom the Service is to be done, in any place
within England: If like manner if a man be bound to pay 20 l. at-
any time during his life, at a certain place; the Obligeor cannot tend-
er the Money at the place, when he will, for then the Obligeor should
be bound to be present at the time of payment, at the place of the
Tenant, so that, if the Obligeor (respite of the uncertainty of the time,
and of convenience taken,) would give the Obligeor notice, that on such a
day at the place limited, he will pay the Money, and then the Obligeor must attend there to receive it: for, if the Obligeor then, and there tender the Money, he shall there-
by lose the penalty of the Bond for other: There is the same Law; if
a man makes a settlement in fee upon Condition, that if the service;
at any time during his life, pay the service 20 l. at such a place certain,
than, &e. In this Case, also the service must give notice to the cir-
cumstance, when he will pay it: but in both these last Cases, if the Oblige-
or of service, at any time meet the Obligeor; service at the place, he
may tender the Money: Likewise K. A. be bound to D. with Condition,
that C. shall bond D. on such a day, here C. is bound to seek D.,
to give him notice, when he will do it.

7 Man of Religion (Regular or Secular), when he both Homa-
;age shall pay, I become your man, for that were inconvenient, be-
because he hath professed himself the man of God; yet shall he be no Homa-
egage, and pay, I do unto you Homage, and will be unto you Faithful and
Loyal, &c. And this Hommage of Ecclesiastical persons in the old
Books and Records of the Law is called Peake, for that it went
with those Words, I become your man, yet in judgment of Law it is Hom-
age, because he saith, I do unto you Homage, &c. There is the same
Law also of a Dame, for it is not fit that she should pay to her
Lord, I become your woman, but shall pay, I do you Homage, &c. Ar-
gumentum ab inconvenienti plurimum valet in legge: Non solum quod licet,
sed quod et conveniens, et considerandum Nihil, quod et in inconvenienti,
est licitum.

3 Agreement is appointed by Law to avert Inconveniences, see
Co. Inst. part. 509. a. 3. & Max. 121. cap. 3:

112. 3 Conformity.

1 In ancient time when a man who owned his Wife ad olim Ec-
clesiar, he did there openly declare the quantity and certainty of the
Land, whereas he was to be employed; for the Law (for Conven-
cience sake) both delight, that men and women be to be openly and
sincerely done.

2 If a woman bring a Bill of Divorce of 20 pounds Kent-shilling,
and the same judgment to recover the third part, Abide it be certain
that the Mill has 40 s., yet she cannot retain for the 40 s. because the
Sheriff do never the same to her; For, here, because the woman has
nothing in certain, but only a third part of the Rent, She shall not
retain so: it is before Creation fine, and therefore a third part thereof doth not occur in certain by the Sheriff; It is otherwise
of Land Kent, or other Things remaining in certain, &c. in such ca-
ses the Exemption after judgment may enter and remain before
those which are by the Sheriff upon a Bill of Habere sociis sidibus.
Also when the Wife of a Lease or Common tenure a third part of a moiety, yet after judgment she cannot enter, until the Sheriff
self-
The Reason of

deliver had the third part, albeit such delivery of the Sheriff shall reduce to no more certainty, then it had before, and all this is for conformity sake, that the proceeding may be orderly. 3. More shall have an Action of Wripe, unless he have the immediate State of Inheritance; yet sometimes another shall join with him for conformity, as if a Reversion be granted to two, and the Heires of one, two shall join in an Action of Wripe; so likewise shall the furnishing Co-parcer, and the Tenant by the Court, so shall join: if there be two Joint-tenants, and to the Heires of one of them, and they make a Lease for life, they shall join in an Action of Wripe for the same reason.

4. In the case of a Hanno, with an Actuall Appagnent by Immer- ture bargains and sells the Hanno, to A, and covenants to suffer a Recovery, and leaves a Fine to A. in Fee, and that the said A. shall render by the Fine to B. 4s. 1d. per annum Kent; provided that A. shall grant the Actuall to B. for life, and if he die before any assurance, then one turns to his Executors, and it was further Covenant that all Assurances to be made should be to the said Aces: The Recovery is had, B. and A. abide a Fine to P. who renders the Hanno, both the Actuall to A. in Fine, and the Kent to B. Proclamations passe; A. dies before the Grant of the Actuall, the Church becomes void in the life of B. E. enters as Peer to A. B. enters, and without any request for the Actuall, bargains and sells to the Lord Cromwell, for whom it is adjudged: And in this Case, it was resolved, that albeit the Fine was not acknowledged by B. to A. according to the Covenant, yet the acknowledgment by B. and A. to a Stranger was adjudged a good performance of the Covenant; because B. and A. joined in the Fine fo conformity, to the end (by that means) A. might take the Hanno, and B. the Kent, but B. had the Hanno again, because the Condition was not performed.

5. Albeit a Fine is of to high a nature, that the Law does not suffer any bare Assurnance against the purpose, and Consequence of a Fine, yet when the Law requires one for conformity to join with another in a Fine, it suffers him to set the truth of the matter, for the avowing of prejudice and conclusion: So in 30 and 31 El. in a Suit of Error, to reverse a Fine levied by Baron and Name, for the non-age of the same, the Baron and same had Restitution presently, and the Court could not detain the Land during the Coverture, because all the Estates passed from the same, and the Baron solely joined for conformity Vide Pl. ibid.

6. In Debt against Executors, the Defendant pleads place administrative, the Plaintiff replies that he hath Allots in E. and the Jury finds Allots in Ireland, and the Plaintiff recovers; for when the place is material, or when it is parcel of the issue, there the Jurors cannot find the point in issue in any other place, because in such case, by special pleading the point in issue is restrained to a certain place; for there is a diversity, when the place is named only for conformity and necessity, and when it is parcel of the issue, as in the Case of 46 El. Dyer 277. In Debt against the Peer, he pleads riens per different generally, in this Case the Plaintiff cannot reply in such a general manner, for then there could be no trial of it, but in such Case for conformity and necessity of a Trial, he ought to name a certain place, as he did there in a Parish and Ward in London, nevertheless there the Jurors might find Allots in any other County of England, &c.
the Common Law:

113. 4 Colour.

1 If a man sells of Land both [the two] houses, and ship[sell], and the purchaser enters by abatement, and both ships and ships horses, and theテンベースes of the land, and the land enters; the purchaser had colour to enter as heir, for it is also the land he, the seller, and the ship, and the horses, and the land enters; for he hath more colour to keep it as whole signified; than in the stables: colour; and therefore the Muller in such case is left without remedy, and hath left the land for ever, whereas the other are left in their heirs: And it is bold, that albeit the heir be under age at the time of the conveyances, yet that shall not bar it, for the law will give legitimation before infancy; because there being no claim at this time, the law implies legitimation; and when the seller is sold, and the purchaser is sold, he must not be sold, but the Muller, who sold it, becomes the Muller, and it being then he his, the Muller has sufficient colour to vitiate, and therefore in that case the Muller shall not enter.

3 If there be Land and Covenant by death only, and the Land is conveyed the Land for Rent, whereas the Land is in the possession of the Muller against the Lord, who justifies for life only, and the Lord, and the Muller, and to the Muller, he holds by death only; yet the Muller shall have, because he holds by death, and the matter in which, together he holds of him or of the Lord, and being taken he the Lord has sufficient colour to vitiate him, and therefore in that case the Muller shall not enter.

5 If a man sells of Land both [the two] houses, and ship[sell], and the purchaser enters by abatement, and both ships and ships horses, and theテンベースes of the land, and the land enters; the purchaser had colour to enter as heir, for it is also the land he, the seller, and the ship, and the horses, and the land enters; for he hath more colour to keep it as whole signified; than in the stables: colour; and therefore the Muller in such case is left without remedy, and hath left the land for ever, whereas the other are left in their heirs: And it is bold, that albeit the heir be under age at the time of the conveyances, yet that shall not bar it, for the law will give legitimation before infancy; because there being no claim at this time, the law implies legitimation; and when the seller is sold, and the purchaser is sold, he must not be sold, but the Muller, who sold it, becomes the Muller, and it being then he his, the Muller has sufficient colour to vitiate, and therefore in that case the Muller shall not enter.

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7 In 41 E.3. 19. Rich. Tompion had Anne by Joan (before marriage) one Agnes, and after he married Joan, and makes testament in fee, and renews the Estate to himselfe for life, remaindere to Agnes filiam predict. Rich E.3. it was not agaid that this was a good remainder, notwithstanding that what was known to be their Daughter; but also by the Common Law the like not their Daughter, yet as much as the said heirs are to be allowed under the lawes, and the Estate by this Law to remaine and continue in peaceable possession of the Daughter, and of the heirs demised, as to the Agnes. Here the right of the Muller is not ever bound, because he only couetd of legitimation by the Law of Holy Church, and the Common Law renews legitimation, before the abovesaid Matter prevailed.

18. So that by taking his Wife after Michaelmas moneytakes that in the Bailiff's list of Robbery, it is utterly void, being coam non publicum. But if the Court of the Common Bench in a plea of Debt against a Capis against a Duke, Caris or, &c., which by the Law 1642 not against them, and that appears in the writ it tells, here the Sheriff add them up: the Capis, albeit the writ be against Latre, &c., because that the Duke hath jurisdiction of the same, the Sheriff hath power to do it, and it is executed, and more with success Diet L. & E. 15. 4. So and in a Justice of Peace make a warrant to arrest one of his Body, who is not accused; albeit the Justice ever intending the warrant, yet he that makes the arrest by force of that warrant shall not be punished by writ of false imprisonment, because the Justice is Judge of the Cause.

19. So in 8 Ch. 6, it is said that (I) grant to B. that land which doe not form the land for 10 acres; here, if my Tenant be implied, B. may lawfully maintained in respect of the Colour of title be b-7. to the Land.

16. Entry into Religion and Protection of Muller: That not cause a tenant to toll the entry of the Dissolve, because it is the Dissolve's, since A, and not the A of God, as hee be, yet if there be Before title and Muller public, and the Muller before claims' enters into Religion, it is also such a tenant shall toll the entry of the Muller, by reason of the colour of title that the Muller had to the Land, and such an Jesse that adth his age.

114 It prizeth the Acts of God and of the Law more than those, that are done, by the party.

1 For example, being, (as Lincolne saith,) the largest Case of Importance, that is, one Fee Simple cannot depend upon another by the grant of the party, and Land be given to B. To long as B. hath parties of his body, the Requisite ought in the F. hee, but the Remainder is void; yet in several persons by A in Law a reversion, may be in F. Simple in one, and a F. Simple determinable in another by matter export facis, and a F. in 'tale he is made to a Billin, and the Lord enter the Lord hath a F. Simple qualified and the Donor, a reversion in F., but if the Lord enforces the Donor, now both F. Simple are united; and he hath but one F. Simple in him.
When a man giveth lands to another man and the heirs female of his body by death, the daughter, the daughter shall inherit for the will of the donee: (the Stat. working with it, which is upon the matter an act in law) shall be observed, but in case of a purchase it is otherwise; for if A bate (give a son or a daughter, a lease for life is made, the remainder to the heirs females of the body of A. A. with the heir female cannot take nothing, because she is not heir, for she must be both heir and heir female, which she is not, because the brother is heir, and therefore the will of the giver cannot be observed, because there is no gift, and therefore the statute cannot work thereupon, so it is, if a man hath a son and daughter and son, lands are given to the daughter and the heir female of the body of her father, the daughter shall take nothing but an estate for life, because there is no such person, the being not heir, but where a gift is made to a man, and to the heir female of his body, there the donee, being the first taker, is capable by purchase, and the heir female by aliquot, secundam formam doni.

3: Regularly estates cannot be altered from one to another, unless all that have interest join in the alteration thereof; but by the Act of God estates may be changed without any act done by the parties, that are interested: as if lands be given to a man and the heirs that he shall engender of the body of his wife; here the wife hath nothing; and the man is tenant in special title; therefore in this case the female descents without land in the body begotten by the Baron, the estate in special title, (by the act of God) changes into tenancy in tail after possibility of issue extinct.

4 If a testament in fee be made to the use of a man and his wife for the term of their lives, and after to the use of their next male issue in tail, and after to the use of the Baron and Feme and the heirs of their two houses, having no heir at that time: in this case the Baron and Feme are tenants in special title executed; and after they have a son they are become tenants for life, the remainder to the son in tail, the remainder to them in special title: and here, albeit (living the son) they are but bare tenants for life; yet if the Baron when having no other time, and then the son without issue, the Feme shall be restored to the privileges belonging to tenant in tail after possibility of issue extinct, as appears in Lewes Bowies Case, Co. I. 11. fol. 80. for (as there is said) the estate of the Feme (in such case) is created by the act of God, and not by the limitation of the party, ex ditojzone legis, and not ex proviso hominis: but if lands be given to Baron and Feme, and the heirs of their two houses, and after they are obliged to a counter contracta, consanguinitatis or affinitatis; their estate of inheritance is turned to a joint estate for life, and albeit they have once an inheritance in them, yet for that the estate is altered by their own act, and not by the Act of God, after the death of either of them without issue, the other shall not be tenant in tail after possibility of issue extinct.

5 If a man take an alien to wife, and after the husband alien’s land, and then she is made denizen, the husband, wife, she shall not be simple, so, it is otherwise, if she be naturalized by act of Parliament.

6 The Feme shall not be enfranchised after the Civil death of the Baron, (entering into Religion, &c.) being the act of the party, but after the natural death, which is the Act of God.

7 If two or more joint-tenants of lands, one of them may assign over the whole to the wife of a third part in certainty, and this shall bind his companions, because they were compellable to do the same by law: but if one of them assigns a rent out of the land to the wife, this shall not bind his companions, because he was not compellable by the law thereunto.
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the Common Law.

Lett to 40 acres of Land by entail and 20 1. Kent, if the Tenant make a Gift in tail, or a lease for life 30 years; or parcel thereof to the Lord, in this Case the Rent shall be apportioned for any part, but the Rent shall be suspended for the whole, so it is also if the Lessee enter upon the Lots x; or life 30 years into part, and thereof off set x; or put out the Lots, here the Rent is suspended in the whole, and shall not be apportioned for any part; and where our Law speaks of an appartment in Case where the Lessee enters upon the Lots in part, they are to be understood, where the Lots enters fathom, or upon a scarcely, &c. as the like, where the Rent is lastly settled in part; yet given in this Case service may be suspended in part, and in case for part, as when the Guardian or Childbirth entered into the land of his wards within age, now is the settlement suspended, but in this Case if the wife of the Tenant be endowed of a third part of the terrain; the shall pay to the Lord a third part of the rent: so it is also where the Tenant gives a part of the terrain to the father of the Lord to tail, the father died, and this devolves to the Lord, in this Case also by Act in Law the settlement is suspended in part, and in case for part; And the same Law is of a Rent-charge, which also cannot be apportioned but by Act in Law, so if a man hath a rent-charge to him and his heirs making out lands, and shall purchase part thereof, in this Case the whole rent is entire; but if a man hath a Rent-charge and his father purchase part of the land, out of which he then, in the same, and life, and that parcel devolves to the son, that both the rent-charge, in that Case, the Rent-charge shall be apportioned according to the value of the land, because the part of land purchased by the father comes not to the son by his own Act, but by descent and course of Law: So also if the Tenant give the father of the grand of part of the land in tail, and this devolves to the granter the rent shall be suspended; and so by an Act in Law a rent-charge may be suspended for one part, and in case for another: or vice versa, if the father by grants of a rent, and the son purchases part of the land charged, and the father died, after whose death the rent devolves to the son, here also the rent shall be apportioned, causa qui supra.

Lir. 2 Statute 5 1564.

Co. Bl. 149.b.4

15. If the father within age purchase part of the land charged, and alienated within age and death, the son recovered by a waste of sum he as waste, so entitle, in this Case the Act of Law is met with the Act of the party, and yet the rent shall be apportioned, as after the recovery, or enter the son hath the land by descent: so it is also where the son recoverts part of the land upon an alteration by his father, even not by composit mensis, for the cause above-Law.

Co. Bl. 150.a.3

16. A man sells a leases in his takes title, and makes a testament in it, the lessor grants a rent-charge of 10 1. out of the land to the feoffor, and his wife, and to the heirs of the husband, the husband died, the wife recoverts the moiety for her own by the customs; the Rent-charge shall be apportioned, and the sum strikes $30 the pound, which is the moiety of the rent: and here albeit her obverse act must concur with the Act in Law, yet shall the Rent be apportioned.

Co. Bl. 122, 123, 124.

17. If there be Lease Pecuse and Tenant, and the Tenant holds of the Seque by 5 1. rent, and Pecuse holds over of the 8,000 by 12 1. rent, here the Seque hath 4. rent in sequelegage: Now in this Case if the Lord purchases the terrain, the Seque shall have the 4. yearly as rent 1b, and yep shall discharge for: for taxing the moiety in time, the Law relates the whole to the Rents, and the Seque in such Case shall by act by Law be preferred, quia quando lex autque concedat concedere videatur & id, quae quis res ipsa effer non ponat. And therefore if a man make a lease for life, referring a rent, and bind himself in a

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Statute, whereupon the Rent is extorted and delivered to the Countee; here, the Countee shall distrain for the Rent, because he cometh to it by course of law; but if a rent-tenant be made, a rent-tench by grant of the lord, the grantee shall not distrain for it; so that the distress in that case remains with the fealty: So likewise if there be Lord, Heire, and Tenant, and the moiety is a Manor having divers free-holders, and the 2d purchase one of the Tenancies, and there is a Rent by surplusage, this rent, although it be changed into another nature, is parcel of the Manor; yet by purchase of part of the land, the whole Rent is extorted, albeit the Law did preferre it.

18 There is a diversitie between a distant, which is an Act of the Law, and a purchase which is an Act of the party; so if a man be tenant of lands in Fee having Two Daughters, and one of the Daughters is attainted of felony, the Father with, both Daughters being alive, the one moiety shall be issued to the one daughter, and the other moiety shall escheate: But if a man make a Lease for life, the remainder to the right heires of A., being dead, who left sixe two Daughters, whereas the one is attainted of felony: In this case some have said, that the remainder is not good for the moiety, but both for the whole; because both the Daughters should have been (as Littleton saith) but one before.

19 A Rent-charge is intire and against Common right; and yet it may be divided between cooperencers; and by Act in law the Tenant of the land is subject to severall distresses, and in that case also partition may be made before seizin of the Rent.

20 If there be two Cooperencers of lands with warranty, and they make partition, in this case the warranty that remains, because they are compellable by law to make partition: it is otherwise of joint-tenants, for they were not by the Common law compellable to make partition.

21 When partition is made betwixt Cooperencers, the eldest after both the choice; and this is called Entia part of Eigne, or Eldest, but this privilege is personal to her alone, and shall not ascend to her heire (so then the next Elfre bat b) because this partition is made personally by the Act of the parties, but where the law both give the eldest any privilege with, or her Act there that privilege shall descend: As if there be divers cooperencers of an advowson and they cannot agree to present, the law both give the first presentation to the eldest, and this privilege shall descend to her issue, or any her assigns shall have it, and to shall her husband that is Tenant by the courtevelle have it also.

22 A partition between joint-tenants is not good without deed, although it be of land, or other things, which may passe without deed, as where they be now compellable to make partition by the Statute of 33 H. 8. c. 31 H. & 8, 32 because they must purge one of these Acts (as their cause is) by writ de partitione facienda, and a partition between joint-tenants without deed remains at the common law as it was before those Statutes, which could not be done by parol, and therefore such partition is merely by Act of the parties: So it is also and for the same reason of tenants in common: But between Cooperencers partition may be made by parol without deed, and that not only of lands and other things, that may passe by livery without deed, but like wise of things that do lie in grant, as rents, Commons, Advowsons, and the like, that cannot passe by grant without deed, and that whether they be in one and the same County, or in several Counties: because in such partitions the act of the parties co-operates with the act of law; so likewise if two tenants in common make partition.
partitions by parol & outside the same in severally by liberry, this is good and sufficient in Law, because here also the act of the party would be together with the Liberty, which is an Act of Law: And therefore where Books say, thatJoint tenants make partition without Due, it must be intended of Tenants in Common, and executed by Liberty: But the chiefest Reason why Perceasers have this Privilege above Joint tenants or Tenants in Common is, because they come to their Estates by Distinct, which is an Act in Law, but these by Purchase, which is an Act of the parties: And the Reason why Joint tenants cannot make partition by Parol, with Liberty, as Tenants in Common may, is because between Tenants in Common, there is only poyalty in possession, but between Joint tenants, there is as well poyalty in State, as poyalty in possession, and therefore they cannot convey their Estates one to another, without Due, as Tenants in Common may, who have several Estates, and claim under several Titles.

27 In Exchange of Lands in the same County may be without Due, but a Rent granted for Equality of the same Exchanger cannot be without Due: yet if two Sidefinds descend to two Co-perceasers the one worth 20s. per annum, and the other worth 5s. the Adjustment of 5s. per annum, to be paid to the Co-perceaser; that hath the Sidefind of 10s. per annum, and her Heirs, is good by Parol without Due: And the Reason of this is, because Co-perceasers are in by Distant, which is an Act of Law; but the Exchange is the Act of the parties: So it is also of Common of Horror, a Cordiv, Common of Pasture, &c. of a Way granted by one Co-perceaser to the other; A which (and the like,) albeit they lie in Distant, yet may they upon the Partition be granted without Due, and a qua qua scire.

28 If there be thir Co-perceasers, and one of them be married, and for Equality of partition the Husband and Wife grant a Rent to the other two, out of the part of the Feme Covert, His partition (albeit it be not by Fine) being equal, shall charge the part of the Feme Covert for ever, causa qua scire.

29 If two Co-perceasers of Lands take Barons; and they add their Barons make Partition, if the Partition was un-equal, at the time it was made; after the Barons which it may be reassembled, and it shall not bind the Co-perceaser that was amonged; but if then the Partition was equal, (albeit it was not by Fine) it shall bind them for ever; because the Partition is made as well by Act of Law, as by that of the parties, the Barons and Femies being compellable by Law to make Partition: And therefore if after such Partition made, the Land become un-equal, by any matter subsequent, as by surrounding, if Husbandry, or the like, by the Partition remains good: Solikewise in Case of an Infant; if the Partition be equal at the time of the Actment, it shall bind him for ever, because he is compellable by Law to make Partition, and he had not have his age in a partitione facienda; And though the Partition be un-equal, and the Infant hath the fater part, yet is not the Partition valid, but nobly by his entry; for it he take the whole points of the un-equal part for his full age, the Partition is made good for ever; And therefore Littleton (35a, 258.) gives him a Cavec, that in that Case he take not the whole points of his un-equal part, neither that un-equal part in the Partition bind an Infant: but a Partition made by the Wills of Partitione facienda, by the Sheriff upon the Duty of 12 men, and judgment thereon given, shall bind the Infant, though his part by
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be unequal, for this is by Act of Law: And generally whatsoever an Infant is bound to do by Law, the same shall bind him, albeit he both it without suit of Law; as if an Infant be Executor, here, upon payment of any Debt due to the Legates, he may make an acquittance, but in that Case a Release without payment (before his age of 21 years) is void.

26 Partition amongst Co-perseters makes no Discontinuance for; if Lands be given to a man in tail, who hath as much Land in Fee-Simple, and he hath three Daughters andDies, and the Daughters make partition, so as all the Fee-Simple Lands are allotted to the youngest Sister, and the entailed lands to the eldest, in this Case, after the Death of the youngest Sister, her share (after the alienation of Fee-Simple Lands by her Mother) may enter into the entailed Lands, and hold them in property with her Ant, because the same has no compensation for the moiety of the entailed Land, and such Partition made no Discontinuance; because (in that Case) it passes not by Liberty of Seisin, which is an Act in Law, but the Partition is in truth like them a Giant, for that it makes no degree, but such Co-perseter is by Distinct from the Common Ancestor.

27 If there be three or four Percesters, who make Partition; and the part of one of them is vested by lawful entry, in this Case the other shares both her other Sisters, and so is it also between the surviving Percesters; and the Heirs of the other, or both the Heirs of Percesters, all being dead; It is ownership of Percesters, that make Partition by Deed, for that is by Act of the parties, and then the Warrantry is destroyed; but if Percesters make a Partition by Writ upon the Statutes of 32 33 34 of H. 8. the Warrantry continues, because that is by Act, and in Courts of Law: but Percesters and their Heirs coming in by Act of Law, visc. by Distinct have the same Privilege above Percesters after Partition, as before.

28 There is a Diversity between Authorities created by the part for private Causes, and Authority created by Law, for Creation of Justice; As if a man make a Letter of Authority to live, to do with the, if one of them dies, the survivor shall not do it, but if a Venice Heir, be answered to four Co-heirs to inspect and return the Same? So is a Charter of Foundation be made, and a Letter of Authority to four or six spokesmen of Foundation to wittell the, two of them cannot make Liberty, because it is either by them four or six spokesmen, but by any of them generally; but if the Charter upon a Capitulation of four, make a Letter to four or six spokesmen, it is otherwise, because Co-heretics come in by Distinct, but Percesters by purchase, the Act being; the Act of Law, and the other the Act of the Power.

29 It be the Common Law before the Statutes of 32 33 34, the Co-heretics a Right therein an Estate for life of years could not take advantage of a Condition in Fee, as if it was Incast for life.

30 In the Common Law, before the Statutes of 52 53 54, the

31 The Reason is because Co-heretics come in by Distinct, but Percesters by purchase, the Act being; the Act of Law, and the other the Act of the Power.

32 Condition.

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the Common Law.

39. A man may mortgag his land to another, upon Condition that if he fail to pay the rent when due, the rent and his heirs might re-enter, here if the Grant of the Reversion could not (before that Statute) take advantage of Entry upon the breach of that Condition for the non-payment of the Rent at the time limited by the Statute: But before that Statute and since, the Grant of a Reversion may take advantage of a Condition in Law; as if a man makes a Lease for life, there is a Condition in Law annexed unto it, that if the Lessee shall make a greater Estate, &c., that then the Lessee may enter; and if this and the like Conditions in Law, which do give an Entry to the Lessee, the Lessee himself and his Heirs shall not equally take benefit of it, but also his Assigns, and the Lord by Election, every one; for the Condition in Law broken in that same time.

32. Since the making of the said Statute of 32 H. the Grantor of 319. a. 3 part of the Reversion did not take advantage of this Condition, as if a Lease be made of three acres, covering a Rent upon Condition, &c., and the Reversion is granted of two acres, the REnt shall be apportioned by the Act of the Parties, but the Condition is broken, for that it is intire, and against Common Right: But by act in Law a two acres, a previous estate might be apportioned, as if a lease for years be made of two acres, one in the Nature of Bozobach Estates, and the other in the Common Law, and the latter having the two surgeons, divide each of them half, and enter for the Condition broken; for the Reversion, Rent, and Commons, are divided by act in Law: In the King's Case also the Condition in such Case shall not be tropon, but shall remain in the King.

33. As a man mortgag his land to another, upon Condition that the Mortgagee, and I. S. pay 20 s. at such a day to the Mortgagee, that then he shall re-enter, here, if the Mortgagee being in full life, will not pay the Money, but refuse to pay it, and I. S. alone knows it, the Mortgagee may refuse it: But if the Mortgagee be before the day, and I. S. pays the Money to the Mortgagee, this is a good performance of the Condition, and yet the Letter of the Condition is not performed, but because the Mortgagee was by the Act of God, that he shall not be able to pay the Money; so also if I. S. has paid before the day, the Mortgagee may have paid it.

34. Regularly, a man by his Will shall not beget an Estate of a Tenement, or a right of a Condition, without he produce the Proof of the Condition in writing, &c., yet if a Guardian in Chivalry in the Right of
of the heir enter for a Condition broken, he shall plead the State upon Condition withoutונg of any Deed, because his Interest is created by the Law: So it is also of a Tenant by Statute Merchant of House, or Tenant by Estate: Likewise Tenant in Power shall plead a Condition; or, withoutpleading of the Deed, and the Reason of these Cases and the like is, for that the Law only creates these Estates, and they come not in by him, that was to enter for the Condition broken, so as they might provide for the pleading of the Deed, but they come into the Land by Authority of Law, and therefore the Law will allow them to plead the Condition without pleading of it, yet the Deed by Court (albeit this Estate be also created by Law) shall not plead a Condition to defeat a Freehold without pleading of it, but this is because it is conceived the Deed belongs to him: neither yet shall a Tenant by the Court plead a Condition made by the Wife, and a re-entry for a Condition broken, without pleading of the Deed, for albeit his Estate is also created by Law, yet because the Law presumes that he had the Possession of the Deeds and Conveniences belonging to his Wife, it will not allow him that Possession.

Vide infra Ru. 56.

CoIb. 264, b. 4.

35. Where is a diversity between a Release in Deed, and a Release in Law; so if the Heir of the Distellor make a lease for life, and the Distellor releases his Right to the lease for his life, his Right is gone for ever; but if the Distellor both volsess and the Deed of the Distellor, and make him a lease for life, by this Release in law the Right is released, but during the life of the lessee: for a Release in Law shall be expounded more favourably, (according to the intent and meaning of the parties) then a Release in Deed, which is the act of the party, and shall be taken most strongly against himself.

Co. lb. 265, 8.

36. Rights are distinguished by these kinds, Jus proprietatis, Jus possessioins, and Jus proprietatis & possessioins, alias, Jus duplicatum, &c. drot: For example, if a man be distellor of an acre of land, the Distellor hath Jus proprietatis, the Distellor Jus possessioins, and if the Distellor release to the Distellor, then he hath Jus proprietatis & possessioins: Now regularly it is held true, that when a naked Right to land is released to one that hath Jus possessioins, and another by a mean Titel recover the land from him, the Right of Possession shall volses the naked Right with it, and shall not leave a Right in him, to whom the Release is made: So the Heir of the Distellor being in by Distellor, A, both volsess him, and the Distellor released to A, now hath the mere Right of the land; but if the Heir of the Distellor enter into the Land, and regain the Possession, that shall volsse with it the mere Right to the land, and shall not regain the Possession only, and leave the mere Right in A, but by the continuance of the Possession, the mere Right is therewith volsed in the Heir of the Distellor; And the Reason of this is, because the Right is conveyed by Release, which is the act of Party; but when the mere Right is subsisting, and transferred by act in law, there albeit the Possession be re-continued, yet that shall not volsse the naked Right with it; but shall leave it in him: As if the Heir of the Distellor be volsed, and the Distellor; enso the Heir apparent of the Distellor being of full age, & then the Distellor which, the naked right descends to his Heir, and the Heir of the Distellor recovers the land against him, yet both he leaves the naked right in the Heir of the Distellor: So if the Distellor of Tenant in Tail enso the issue in Tail of full age, and Tenant in Tail ase, and then the Distellor recovers the Land against him, yet he leaves the naked right in the issue.
the Common Law.

37 If the heire of the Distello be distello, and the Distello release to the Distello, upon Condition, if the Condition be broken, it shall recover the naked right: so likewise if the Distello had entered upon the heire of the Distello, and made a settlement in fee upon Condition, he entered for the Condition broken; and the heire of the Distello entered upon him, the naked right should be left in the Distello: but in these Cases, if the heire of the Distello had entered before the Condition broken, then the right of the Distello had been gone of ever, because the right (in these cases) was conveyed by release and settlement, which are Acts of the party, it had been otherwise, if they had been transferred by Acts of law, as in the Cases put before in the example last aforesaid.

There is a diversity between a Right which is burdened in law, and a Condition created by the party, which is amiss in law, for that it defrays Estates, and therefore a Right may be released upon Condition, and if the Condition be broken, the Right shall work: but if a Condition be released upon Condition, the release is good, but the Condition void.

39 In a right Action a release of all Actions real is a good barre; and so is a release of all Actions personal; for a man by his owne act cannot alter the nature of his action; and therefore if the Lease for life or Lease for years do waste, now is an Action of waste given to the Lessee, wherein he shall recover two things, viz. the place wasted, and treble damages: and in this Case, if the Lessee release all Actions Real, he shall not have an action of waste in the personalty only; also if he release all Actions Personal, he shall not have an action of waste in the realty only: and so it is also, where the Lease both wastes, and after surmanzement to the Lessee his Estate, and the Lessee accept thereof, here also the Lessee shall not have an action of waste; but this by act in law in the nature of the action may be prejudiced, as it may make lease pur terme d'autre vie, and the Lease part waste, and then Celley que vie est, in this Case an action of waste shall lie for damages only, because the other is determined by act in Law; so likewise if an action of waste be brought against Tenant pur autre vie, and hanging the waste Celley que vie est, the waste shall not abate but the Plaintiff shall recover damages only, because if Celley que vie had died before any action brought, the Lessee might have had an action of waste for the damages as aforesaid.

40 Grant of a Rent-lease without attornment is not good: for the grantee cannot obstruct for it without attornment, or else otherwise, because it is conveyed by the single act of the parties: But if the lease be Land, Seine and Tenant, and the Seine grant over his maladie by deed, the Seine relaseth to the Tenant, whereby the malady is extinghished by act in Law, in this case, if there be a Rent by surmanzement, it is now changed into a Rent-lease, and albeit there be no express attornment for it, as a Rent-lease, and that the quality of that part of the Rent is attorned from a rent-service to a rent-lease; yet because it is altered by act in Law, the attornment to the grant of the malady is a good attornment for that Rent-lease by surmanzement. Vid. supra. 17.

41 If an house fall by tempest, or other act of God, the lessee for life of years hath, special Interest to take the great Timber, to build the house again, if he will; for his habitation: but if the lease pull down the house, the lessee may take the great timber, as a thing, which was parted of his inheritance, and in which the interest of the lessee is determined (as in case of trees and for the same reason) and yet he may have an action of waste, and recover treble damages.
42 If Tenant in tail be restrained by Statute to demise his estate otherwise than by reserving thereupon verum & antiquum redditionw, and the estate being a Gemmon consisting of Fre-rents, Copy-rents, and Lease-rents, be demise the whole Gemmon, reserving a rent amounting to the summe of all those rents, whereas the demise thes ought to be formerly demise renduing rent; or if his estate were two Farmes anciently left, viz. one at 10l. per an. and the other of 10l. per an. and he demise them both together by one Inventare, reserving 30l. per an. In these and the like Cases, such demise was only hold farms and the fire of the Tenant in tail, and after his death his issue shall divide them; for here the true and ancient rent is not reserved, and being thus altered by the act of the party, they shall not bind the issue in tail: But if there be two Coperceners fallen of land in tail, which was formerly let at 10l. per an.; one of them may demise her part or whole at 10l. per an., and it shall bind her part: Likewise if a Gemmon hath been always demise at 10l. per an., and after a tenancy, of estates, yet it may be still demise at 10l. per an. and yet it may be laid, that now the 10l. per an. is not venus & antiquus reddition, so no rent was ever yet reserved out of the land of estates: But these two last Cases differ from the former, in as much as Coperceners, and the Lord by aithethe are in by act of 10l. and of God, which shall not prejudice any: But if the Lord had purchased the tenantry, it had been otherwise: so then he was to be by his own Act, and not by Act of Laws.

43 When the Condition of an Obligation consists of two parts, and both are possible at the time of the Obligation made, and after one of them becomes impossible by the Act of God, the obliged is not bound to perform either part: So if a be bound to B upon Condition, that if A, marry B, and togeth which I, will sell the land of B. If then A, by purchase to B, and her beffo to so much land, as the money received by the other with sold amount unto, do she shall leave her worthy to much of her estate, that then, etc. In this Case, albeit A, marry B, and they join to the sale of her land, yet if A, marry B, it is impossible by the Act of God to perform the first part of the obligating condition, viz. to convey land unto her, and therefore he is also discharged of the last part also.

44 Tenant for life pays for years, the Tenant owes the land, and before the grante to give the Tenant for life vies, here the interest of the grante as in the Lease for years, who may lawfully enter and take it, when it is ripe: for the Tenant for lives vies is by act of God, which shall prejudice none: So if there be Tenant for life remainder in Fee, the Tenant for life demise the for years, the Tenant for years is vies, and the Tenant for life vies, the Vies, for years, and the Tenant for life vies, the Tenant for life vies before the grant is ripe, he in the remainder enters, the vies of the vies enters upon him; he in remainder being an Action of trespass: In this Case, he in remainder may take his entry, but hath no right in the vies: also the vies of the vies may take the taking of the vies, because of his possession, but the mere right of the vies is in the Lease of the Tenant for life, and he shall recover in trespass against the vies for the damages for the vies.
Act of Law, as by recovery in a Cestui of parcel of the tenancy all the entire forcible are gone; but if parcel descends to the Lord, where the tenure is by a Surety, boise, or the like, there he is otherwise; because that comes to him Angrily by Act in Law: Holwood, where such service is to be performed by Coperencers, where (by the Statute of Malbridge c. 9.) one is to do the service, and the rest are to contribute (the usual Law being also of their demesne by equity) there if any part come to the Lord either by Act of the party or of Law, yet the whole service is gone; so there contribution fails, and the Law will rather suffer things against the principles of the Lord, than a man shall be without remedy, according to Rule 144. 46 If there be grant any render by nine of the demesnes of a Sanner, here albeit this be done in an infant, so as there was no transformation of any possession, yet the demesnes being once by Act of the party absolutely severed in the fee-simple from the services of the Sanner, the Sanner is destroyed for ever: So likewise if a man hath a Sanner, and he grants part of the demesnes and part of the services to another he hath not have a Sanner, so a man by his own Act cannot create a Sanner; at this way: But if there be two Coperencers of a Sanner, and upon the partition the demesnes be allotted to one; and the services to another, here albeit in this Case there is an absolute severance, yet if one of them did without title, and the demesnes descend to her, that hath the services, the Sanner is again revived; because upon the partition they were in by Act in Law, and the demesnes and services were again revived by the Act in Law: So also if upon the partition an abovision appertainer be allotted to one, and the Sanner, unto which it is appertaining, be allotted to the other, and after one of them dies without title, whereby the Law uniteth them again, in this Case, the abovision which was once severed, shall be again appertaining to the Sanner; also if two Coperencers have a Sanner, and upon the partition each hath parcel of the demesnes; and parcel of the services: here because each of them is in by Act of Law, each of them hath a Sanner. 47 The Office of Parish of the Kings Bench cannot be granted for terms of years, because being then a Chattel and an Office of trust, by the death of the Lefte it may happen to fall into the hands of such persons as are not fit to be trusted with that place: but yet, by Act of Law, a term (which is but a Chattel) may be in such an Office, as appears in 1 Eliz. 4 & 5, for the Duke of Norfolk had an Estate taile in an Office holden of the King in Capite, and dissipate his heir within age and it was found by Office: In this Case the King had a Chattel in that Office, viz. during the minority, and in that Case if the King die, he fall to the next King, and shall not go to his Executors or Administrators: for an Act in Law shall not introduce any inconvenience: for the King having such an Office during the minority; it leemeth he cannot grant it for life, 27 years, 27 during the minority; because that may prove inconvenient for the reasons above alleged; but at will may grant it, so that is no certain Estate. 48 By the Act of the party (whether right or wrong) all a Seigniory, &c. may be suspended: And therefore if the Lord do suffer the life or out the Covenant; Life of any part, all is suspended: also if a Commoner take a Lease of any part of the land, in which; &c. all the Common is suspended: But by Act of Law a Seigniory may be suspended in part and in life for the other part: So off a Lord take the Manotship of the Lady of his Covenant, by Act of Law, in Sir Molyne Finster's Case.
The Reason of

Knight, l. 10. 94.

b. 3. Doctor.

Leysfieldl. Cafe.

Knight's 4. 1. 10. 94.

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Showing forth of a
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52 If a man uy to upon an Infant and present, which the other had an Attendan by pittance, and afer the Incumbent the, the In-
stant shall present, and the be attorned, he shall also an Act as darr-
sing presentment: But if the Infant purchas the Hx'son's ten nterpre-
tment, and after the Church is own, and a stranger presents, and stay-
ning upon the Infant, and after the Incumbent dies, in this Case the
Instant shall not have an Act of darrsing presentment, but shall be
put to his own right: because in the Book Case he is by Act in
Laws, viz. pittance, but in the late Case by act of the par-

53 If a man us to an Infant and present, which the other had an Attendan by pittance, and after the Incumbent the, the In-
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sing presentment: But if the Infant purchas the Hx'son's ten nterpre-
tment, and after the Church is own, and a stranger presents, and stay-
ning upon the Infant, and after the Incumbent dies, in this Case the
Instant shall not have an Act of darrsing presentment, but shall be
put to his own right: because in the Book Case he is by Act in
Laws, viz. pittance, but in the late Case by act of the party.

53 The
18. The Grant of a Redemption by Fine shall not have a Writ of Right against the Tenant, before the Tenant hath attornied, but if a Redemption be given to the Lord, he shall have a Writ of Right against the Tenant without any Attornment: So if the Lord of a Tenant claim a Redemption, that the Tenant had, since the Lord hath a Writ of Right against the Tenant, if he make Writs without Attornment; So also if the King grant a Redemption by his Letters-Patent, the Sheriff shall have a Writ of Right without Attornment, because the Grant being in his matter of Record, he is contented in no point of Law, in the same manner as (before or since the Statutes of Wills,) man good-willed a Redemption to one in Fee, the Sheriff shall have a Writ of Right against the Tenant without Attornment for banishing the Law: statute he was in by Custom, and arises by Statute by some of the same Statutes, which are now in Force.

54. If Tenant for life be restrained by the Lord Permanently by Writ, a Writ of Meine with not lye to him against him in remains, or by reason, but against the Heirs, yet in this Case Tenant in Dover Hall have a Writ of Meine against the Redemptioner, because he comes to by Estates by Act of Law.

55. In real original, if one be summoned and testified, and afterwards dies, (which is the Act of God;) this shall abide the Writ: but the taking of Tenant of Entry into the Law, by the party, that is so summoned and testified, shall not abate the Writ; because these are two of the party, and the Writ by such acts (where there is no Summoning of Intentions) becomes absolutely.

56. If a Man cannot plead in any action, that the Estate was made in Fee, File, etc., etatis like upon Condition, without being a real estate, or having a Writting under Seal, proving the real Condition; but if a Tenant in Chivalry in the right of the Heirs arraigned for a Condition broken, he shall plead the Statute upon Condition, without knowing of any Detail; because his interest is declared by the Law: and so it is also of a Tenant by Statute, etc.

57. Vide Max. 148. 21.

58. An Action of Debt for a rent-redress upon a Lease for years, as in any grantee upon a Liberty, and if the Liberty fail the action also fails, and so it is in Debt for 19. 6. that if a man make a Lease for years, removing rent, and the Lease after three years, or upon the idem, the Action of Debt for years passeth into the party; but in 9. 6. a man makes a Lease for years removing rent, e the Lesser grants the rent-redress to a stranger the grantee shall not have an action of debt for rent, because he was not party, but a stranger to the lessor and tenant: Dowered, when the Lord makes a prayer it is notwithstanding, as if a Lease be made to secure years removing rent, and the Lease makes the Extent, and vice versa action of Debt lies against the Grantee for the rent, because he is made party by the Law.

59. At the Common Law there could be no attachment of debt, by the act of the party, but only by act of Law, for the Tenant before the Statute of Quia Emptores cessarum, Anno 12 Ed. 3. had made a Freshgrant in Fee of part of the Land, the Law might discomfort that part, for all the rent, but at the Common Law if a man had made a Lease for years of two acres of Land: the one in Borough
Knight-shows, not is the Sovereignty subsumed, but if the guardian appoints the Feve of the Tenant of a third part of the Revenue, who is the third part of the Sovereignty casued, and the Tenant in some other shall as apparent upon the guardian for the third part of the Sovereignty, because Tenant in respect to is by Act of Law, and for the same reason, if many parts of Revenues be taken Feve, and exchanges another, the Tenant grants a rent-charged to the Baron and Feve and to the others of the Baron, the Baron also, the Feve be ascribed of a third part of the land out of which the rent cunning, in this Case the third part of the rent, which the Feve hath for life, in perpetuity, and two parts of the rent remains to her, taking out of the other two parts of the land, although it be a rent-charged, which regular is cannot be appoineded, but by Act in Law it shall be appoineded: so like wise if the Guardian in Knight-service sells the land of one co-heirs within age, the other being of full age, there the Sovereignty is subsumed for a moiety, and forfeiture the other moiety: And it there be two Covenants of a Sovereignty, and the one discloses the land Temeant, or comes to the land by divisible title, the other will divest her for her moiety of the Sovereignty: because there also comes in by Act of Law.

Co. 1. 10. 94.  

b. 3. In Alia  

Layfield's Cale.

Shewing  

forth of a  

deed.

51 A Tale ought not to be granted after a full appearing and is taken away, and yet it should not be charged, and after without notice given in Court any of them is taken away by death, which is the Act of God, if that Case a Tale shall be a warrant, and no plea venire procapito, and with this account 12 T. 4. 10. to himself it any of the parties summarily his before they appear, and that appears by the Star's return, the Warrant shall not move; but in such by a Tale shall be a warrant, Vide 20 E. 4. 12.

F.N.B. 31. m.

If a man utters upon an Infant and present, which infant hath an Appoideon by picture, and after the Incumbent dies, the Infant had present, and then he abdicates, he shall have an Adde to darre presentations: But if the Infant purchases the Incumbent's new present, and after the Church is sold, and a stranger presents and picture upon the Infant, and after the Incumbent dies, in this Case the Infant shall not have an Amy of darre presentations, but shall be put to his will of right, because in the last Case he is in by Act in Law, and, second, but not in the last Case he by act of the party.

52 At a Pension upon a Deed.

F.N.R. 34.

A Pension an Advowson.

53 If a person gives an Advowson, and after a man and the Church is sold, and a stranger presents, and the Baron delivers this sum present here by this, after which the Warrant shall be out of production after the Baron's death; and he put to her land right of Advowson, or the last present before, but the barren present before, this without recovery: because, the Lady is otherwise, whereas the Feve hath the Advowson by direct or by courts of Customance, which is an Act in Law.
In the Grant of a Reversion by Fine shall not have a Writ of Writs against the Tenant, before the Tenant hath attorned, but if a Reversion vesteth to the Lord, he shall have a Writ of Writs against the Tenant without any Attornment: So if the Lord of a Subtenement a Reversion, that the Writ issue, but not to the Lord without a Writ of Writs against the Tenant, if he make Writs without Attornment: So also if the King grant a Reversion by his letters-patent, the Grantor shall have a Writ of Writs without Attornment, because the Grant being in by matter of Record, is in continuance in by act of Law; in like manner, if (besides the Letters-patent) a Grant vesteth to one in Fee, the Writ of Writs is against the Tenant, without Attornment: For being the fees, the Tenant he was in by Customs, and these Attornments by those of the same Statute, which are new in Law.

54 If Tenant for life be estranged by the Lord Paramount by Fine, N.B.136. Services, a Writ of Meine not yet due for him against him in remainders, or for reversion, but against the Meine, yet in this Case Tenant in Deバー Writ shall have a Writ of Meine against the Reversioner, because he comes to her Estates by Act of Law.

55 In real Writs original, it was by summons and demand, and afterwards was (which is the Act of God) this Writ above the Writ: but the taking of Baron or Gentry into the Laws, by the party, that is so summoned and demanded, shall not abate the Writ, because these are not of the party, and the Writ by such as (where there is no Statuten no evidence) becomes absolutely.

56 A man cannot plead in any action, that the Estate was man's in Fine, Fine-only, or Fine with Condition, without mentioning the condition, 6th being a Writting under seal, proving the party Condition; but if a Guardian in Chancery in the right of the Deバー arraigned for a Condition broken, he shall place the Estates upon Condition, without anything of any Deバー; because his interest is/create by the Laws: And to it is also of a Levd by Statute, of Simple, 57 by Erection. Provided the Lord by Erection, although a Controversy, and his Estate he created by Laws, shall not plead a Condition to create a Fee-sold, without pleading a Deバー, because the Deバー which belong unto him, Vide supra Ru. 34.

57 Vide Max. 140. 21.

58 An Action of Debt (for a rent return upon a Land to pay a peres Dyer 53.) is always grounded upon a privitity, and if the privitity fail, the action also fails, and so it is in actions in 19 H. 6. that if a man make a Lease for peres, returning rent, albeit the Letters order notices, or occasion the less, yet the Action of Debt lay for the peres: But in 9 H. 6. a man makes a lease for peres varying rent, if the Letters grants the rentings on to a stranger the grantees shall not have an action of debt for the rent, because he was not party, but stranger to the Lea. Deバー: Provided, when the Lord makes a privitity it is to the Lords, as if a Lords be made to ousted peres varying rent, and the same make his Exemption, and there is an action of Debt lies against the Exemption for the rent, because he was not party by the Law.

59 At the Common Law there could be no assignement of rent, by the act of the party, but only by act of Law, but if the Tenant be the Statutes of Quia Emptores terminarum. Anno 13. E. 2. had therein a Frequent to Fee of part of the Comarcy, the Lord might assignate in that part for all the rent; but at the Common Law a man also made a Lea of peres two acres of land; the one in borough English,
English, and the other in Gavelkind) and had two sons and a daughter; in this case, this rent should be apportioned, because this rent descended to them by Conveyance. Some Letters to years make a Feoffment of parcel of the land leased, and the Lease enter for the Forfeiture into that parcel; in this case also the rent shall be apportioned, because this Little of Entry is given to the Lees by the Law.

60 After the Transfer of a Writ of Covenant, and the Deeds postorially, and the Conveyance of a Fine taken of a Feme sole, and before the day in Bank, to record and engross the Convey, the Feeme-taking Baron, yet it shall be received and engraved at the title of the same sole; for he has done all that in his lay to do; And insuring shall bind the same and his Heres, and also the Baron, as to Feeme, so the marriage of the Feeme was her own Act:It had been otherwise if in that mean time the had also, being the Act of God, so then the Writ of Covenant has abated.

115 Bisque forterris, est dispositio Legis, quam hominis.

1 If a reversion be granted to a man and a woman, they are to have moles in law, but if they inter-married, and then attornment be had, they shall have no moles (and yet by the purport of the Grant they are to have moles,) because it is by Act in Law. Vide Pl. Co. 483. a. 1.

2 If a reversion be granted for life, the remainder in tail, the remainder in fee, attornment to the Grantor for life shall entitle them in the remainder in tail, the remainder in fee; and in this case, albeit the Tenant upon the Attornment should lay, in do attornment to the Grantor, for life; but that it shall not benefit any of them in remainder; after his death, yet the Attornment is good to them all; for having attorned to the Tenant for life, the law (which cannot remove) admit also all the remainders, according to the purport of the Grant.

3 Regularly, the Grant of a Seigniory is not good without Attornment, yet if there be Lord, Heirs, and Tenant, and the Seigniory be used, the Servities of his Tenant to another in fee, and after the Tenant die without Heir, so as the Seigniory comes to the Lord paramount, by way of Escheat, and after the Servities of the Seigniory are in receipt; in this case, the Lord paramount may determine the Tenant, albeit he never attorned; for the Seigniory being by Act in law, by the Escheat, in the Tenant, the Law shall have as much benefit of the Servities of the Seigniory, as he had of the Seigniory in fee, and the rather so that the law calls it upon him, and he is not removed to compel the Tenant to attorn.

4 If the reversion of a Tenant for life be granted by fine to another in fee, and the Grantee, after attornment, die without Heir, then thereby the reversion escheats to the Lord; if afterwards the Lord make waste, the Lord shall have a right of waste against him, albeit he never attorned; and yet, where men claim by force of a Grant made by fine, viz. as Heir, or as Assigns, etc. there shall not a word or a word, nor have a mention of waste, without Attornment; in the reversion of the former case is, because the Lord is in by Escheat, which is a mere Act in Law: However, it is also (though it partly be in Law), and partly by the Act of the party, as thus, Constable of a Statute Merchant extended a Seigniory over yeild, he shall disfrain without any Attornment, because he is in by force of a
of the Statute: So also if a man make a Lease for life or years, and after lease a fine to A., to the use of B. and his heirs, B. shall infringe and have an action of waste, albeit the Consecution never had any Attornment, because the revolution is vested in him by force of the Statute, and he hath no remedy to compel the Lease to attorn. There is the same Law also of a Bargain and Sale by Deed invented and involved, for in that Case also the Bargaine be in by force of the Statute.

5 A Surrender in Law is in some Cases of great Use, it is a Surrender in Deed: As if a man make a Lease for years to begin at Michaelmas next, this future Interest cannot be surrendered, because there is no revolution, wherein it may be divorced; but by a Surrender in Law it may be divorced; and if the Lease be made in Michaelmas take a new Lease for years, either to begin presently, or at Michaelmas this is a Surrender in Law of the former Lease: Power & appecies of dispositio legis, quarn hominis.

6 A Gift in Wills is made to B., the remainder to C. in Fee, B. not conveying, and takes back an Estate in tail, the remainder in F to the King by Deed involves, Tenant in Fee with: In this Case, his Issue is remitted, and (consequently) the remainder: But the difference is between an act in Law (that may denote an Estate out of the King,) and a question Act or Error, or a case where recovery against Tenant to life or tail, which would indeed any Estate, Remainder, or Reservation out of the King: But a Recovery by good Title against Tenant for life, or in tail, where the Remainder is to the King by defeasible title, shall affect the Remainder out of the King, and cause and remit the right owners.

7 If a man listed of an Avulsion in Cap by his Deed grants the next presentation to A., and before the Church beomethvoid, by another Deed grants the next presentation of the same Church to B. In this Case, the second Grant to void; for A. had the same granted to him before, and the Grantee had not have the same avoulted by Consecution, viz. to have the next avoidance after it, which the Grantor might lawfully grant; For the Grant of the next avoidance cannot impugn the second presentation: But if a man listed of an Avulsion in Cap take wills now by Act in Law to the same entities to the third presentation, if the husband die before: In this Case if the husband grant the third presentation to another, and then the husband die, the heir shall present twice, and the wife shall have the third presentation, and then the Grantee the fourth: for the fourth presentation on bills in this Case he taken to be the third, which he might lawfully grant; And to note a diversly between a Writ by Act in Law, and by act of the party for the act in law shall work no prejudice to the grantee.

8 An express Warrantee shall never bind the heirs of him that made the Warrantee, unless they be named: For example (Littlejohn flay) Ego & heredes mei, but in Case of Warrantees in law in many Cases the heirs shall be bound to Warrantee, albeit they be not named, as Tenant in Dower (who hath a Warrantee in Law) being impeached, shall bough and recover in value a third part of the two parts, whereof the is valuable, etc.

9 It is a Maxim in Law, that the heir shall never be bound to any express warranty, but where the Ancestor was bound by the same warranty: And therefore if Tenant in tail alien his land to his brother in Fee, and hath issue, and die, and after his brother devise the same land to another in fee, and bind him and his heirs to warranty, etc., and die without issue, this warranty shall not bind the

Co. 318, a. 2.
Co. 1, 6, 96, b. 3.
Co. 1, 10, 67, b.
Co. 155, 24.
Lit. 5, 673.
Co. 318, a. 2.
Co. 318, a. 2.
Co. 318, a. 2.
Lit. 5, 736.
The Reason of

Nec in tall, because this warranty did not ascend to the file in tall, in regard the uncle of the file himself was not bound to the warranty in his life time, nor chargeable with it, so that the Devil takes not effect until after his death: Also if a man make a footement in fee, and bind his heres to warranty, this is void by the Warrant of this Maxime, as to the heres, because the Ancesstor himself was not bound: In like manner, if a man bind his heres to pay a summe of money, this is void; And vice versa, if a man bind himself to warranty, and bind not his heres, they are not bound: for he must say, Ego & heredes mei warranceramminunus: And Fleta faith, Nota, quod heres non tenetur in Anglia ad debita antecessoris reddenda, nisi per antecessorem ad hoc fuerit obligatus, praterquam debita Regis canum; A Portion, in Case of warranty, which is in the reality: Howbeit, the warranty in L. is bind the heres, although it never bound the ancestor, and this also may be created by a last will and testament; As if a man devile lands to another for life; or in tall referring a rent, the Devil for life or in tail shall take advantage of this warranty in L. and the ancestor was not bound, and such a Devil shall also bind his heres to warranty, albeit they are not named.

If a man covenant to lease all the file of himself for life, the remainders to A. in tail, the remainders to B. in tail: and Penton, that if any of the remainders in tail shall resolve to alien, that then the Grant of him to refining should cease, as if he were naturally dead, and that it should then go to him in the next remainder; here this Devil is void and against Law so the repugnance; so by the words or act of the party an Estate cannot be limited to cease, as to one, and from the fourth to be in another: For if a man make a lease for life, upon condition, that if he do not pay so.1. such a day, that another shall have the land, this future limitation is void, also if a man make a footement in fee of L. to the use of A. and his heres every Sunday, and to the use of B. and his heres every Tuesday, and to the use of C. and his heres every Wednesday, these limitations are void, and we find no such fractions of Estates in the Law; And if coparablers agree to present by Law, this is a partition as to the possession, yet nevertheless they shall in a Wife of Right; So also partition, that one of them shall have the land from Easter to Lammas, and the other from Lammas to Easter, in severalty, this is good, as to the possession and taking of the profits, but it is no seigeance of the Grant of Inheritance; Howbeit, an act of Parliament or the Common Law may make an Estate void as to one, and good as to another, but a man by his woots, and the breath of his mouth cannot do it: As if Lam be given to Barton and some, and the heres of their two bodys, and the Baron be in a line with posessions, and hath title and dies, now this line by force of the Statute of 33 H. 8. 36. shall barre the issue in tail; but shall not barre the same, and to in respect of one it is a good barre, and in respect of another no barre; Also in a Paper, if one be wouched, here as to the De- missant the Wouches is L. and a Release to him by the De- missant is good, but as to a stranger he is not L.; and there- fore a Release to him by a stranger is void; in like manner (one hath a Town for 3 years as Erector, and surrender it, here, in one respect the term is extirp., but in another it is L.): So that an act of Parliament or the Law may do that in such Cases, which a man by his woots cannot do.

If there be at any time law in lieu of her Power was any barre of

Co. l. 41. b. 3.
in Ferma
Cafe.

Dover 150.
her power at the common law before the Stat. of 27 H. 8. 10. albeit after the death of her husband the executors thereof had accepted thereof in recompense of her power, because by the marriage she being entitled to a threefourths for life, that title shall not afterw small be省委 by any collateral satisfaction: Now, whether, according to the Ecclesiastical, or other particular conditions of her power, if she enter into the hands so assigned after the death of her husband for the law next allows thereby being made liable to form, the law requires those kinsmen of power to assent: This either must, where the power is made by the Act of marriage, and assigned in and therefore if B. entices to the use of himself for life, the remainder is liable for life, upon exhibition to perform his last will and for his jointure; and after the death of her husband she accepts thereof, yet she is not bound by it.

13. Of two joint-tenants (since the Stat. of 27 H. 8. 1) which vested them a joint of partitions facienda) to make a partition by way without law, albeit they are held compulsable by that statute to make a partition, yet although they do not vitiate the Statute, to make a partition by the Statute, such partition remains at the common law, and to (by consequence) the judgment originally ordered to their Estate is good, but (they make a partition by will) provided by the Act. (to which story one being much more can have any idoneity by the operation thereof) the unratified remainder hose therefore taking such partition in Seve after the Statute by the act of parties, but the other is operation of the Statute, whether to an Act into title, so all if two joint-tenants with warranty, and the one awhile the other, and the estate brings an Action hereafter the Plaintiff's recovery in Seve, yet he shall recover generally, and in the C.A. also the warranty shall be preferred, because he recovers by Court of Law, and with this agrees 28 Lib. All. Pl. 3, 4, Sir Ed. Coke. Aliv. de Part.: albeit there is some notice, that he shall have judgment to hold the Warranty, as to E. 3. 40. & to. Aff. Pl. 17, 18.

When a deed is requisite to be intermediate juris, it ought to be heard by Court, although it concerns a thing collateral, and present, to be done otherwise, as if the Prayor and Conventy of London have writ from the life of 1. 5. 1 (in this Case) the Prayor and Conventy attended to the restraint of the relation, the law requires, that it should be by the Act, and without proving that the grantee cannot distinguish that act, and as this the warranty is a bar, a complete act; and in pleading, the deed of Warranty ought to be the deed, for in this Matter the deed is requisite, ex constitutione Legis: but when a deed is only requisite ex provinio hominis, (in this Case) the provision of a man shall not charge the judgment of the action, as it a man make a deed 10 years of age to A. upon condition, that he shall not assign it over but by deed, assw by power: in this Case ex proviso hominis the assignment ought to be by deed, yet because ex constitutione legis, the deed is not requisite for the assignee, he may plead the assignment without showing the deed.

14. Porior et ceteris est dispositio legis quae homines, and therefore he that with a future interest cannot render it by any especial timer, but by taking of a new estate (which is an Act and amount to a transfer in law) it may be rendered; in another agreement, as it happened in 36 & 37. 21., wide Utrum cap. 5. But if the father be entitled in fee, and the son endeavor not to rendred the land to hold and his Interest, here the assignment shall be void, but if the father endeavor his sons and heirs apparent, with warranty, and in this Case the heir (being in truth assignee) would answer: For this deed, which hath determined the Warranty of the father to the heir, he shall give the ten benefit of the first warranty, admissions where I am 43 E. 3. 5, by which story, that he act in two cases both occurring
and more equal, then the Act of the King can be, so also is the Law of God. In ye power immediately to B., & to 10, ye persons was then the reformation being a hindrance to B., and his heirs, was out of the power of B., and D., as the future upon B. here, the act of B. is a good evidence for B. and stronger than any opposite attestation.

15. Almost a man to know to me, Obligation to know so, also, or, as to my understanding it, it is a man cannot by his own Act make such an authority, power as, although, shall not be countermanded, by the Act, also, to its own present to countermandation, and if I make a letter of intent to make my request to the Act in my name, if I make a letter of intent to make an attempt, or if I make any my words to submit to an Act, although there be made by opposite means irreconcilable, if I bind by not, that they shall be irreconcilable, yet they may be reconciled; so if I make my word irreconcilable, yet I may other means reconcile it: for my Act or my words after, the language of the Act, made such, is reconcilable, which of their own nature to reconcile.


17. Teunis tale die possibilities, so as sought to be a Menehune and sciences of a Chaste Male, and this by the Act of God, and not by the limitation of the party, or the justice Logan, allowed at present domestic, and therefore it is a man makes a Chaste in Law upon Covetous, that if we, by us, by us, do that they have not it, but for life; he is not the Laws of the Male, but by us, for this to ex domestic, but by us, we may not change, but it is the Laws of the Male now, this is not the Male; this is not the Male now, this inclination to the Male shall be the same, that happened in the Male, according to the description, as appears in 129, 4. 11.

19. If the Male makes all, to the force of the Male, then by the right is gone in judgment of Law, for whom a man hath not, any other means to come by his own, but only by the faculty of the Male, the relation of his right is lost in judgment of Law gone, because of the state that he hath been the life of all men and manners to receive of divine determination; but if the help of the Male is, makes a Male in life, the
the remainder in fee, and the dilleté release to the Tenant for life all
actions, which he hath against him, and after Tenant for life use, the
dilleté shall have an action, not withstanding such release, against him
in remainder, for he did but release the action, and the act in law, will
never extend the act of the party more largely, than his present knows;
as if the Lord dilleté his Tenant, and make a lease for life, this re-
lease in law shall not extend further than the life of the lesser; for this
it is, Fortior & potentior est dispensio Legis, quam hominis, and in is as
true, Fortior & equirior est dispensio Legis, quam hominiis.

19. A joint-tenant to Tenant in common shall not have a Quare Im-
pedic for the adwolition which they have in jointure of in common; in
Case one of them present alone against his companion, that so presenta;
but if two Copercener cannot agree in presenting, the eldest first shall
have the first presentation, and so shall also have, that hath her Estate
and is either of them be disturbred by the other Copercener, either of
them shall have a Quare Impedic against the other ; And Coperceners,
and those, who have their Estates had present as Coperceners
ought to do, viz. the eldest first, and then the second after her the third,
and to the rest in order according to their ages; and the diversity between
joint-tenants or tenants in common, and Copercenaristicy from this
ground, because they are in by grant, which is the act of the party; but
these are originally in by act in law.

20. If an Abbot make waste in the Lands, which he hath in ward,
and dies, the Bisse: shall not be charged therewith, because his
death is the Act of God: it is otherwise, if he be departed, for then
the Successor shall be chargeable with it, because that is the Act of the
party.

21. If there be Lord, Seine, and Tenant, and the Lord grant by
fine the services of his Tenant to another in fee, here if the services of
the Seine be arrears, the grantee shall not restrain the Tenant's benefi-
attainment: Howbeit if the grantee lie without tierce, whereas the
mutuality escheat to the Lord Paramount: In that Case, if the services
of the Seine be arrears, the Lord Paramount may restrain the Ten-
nant without attainment: because the grantee came to the mutuality
by the act of the party, but the Lord Paramount comes to it in Act in
Law.

22. An actual entry into land is merely the Act of the party, and
therefore is called an entry in deed, and albeit a claim be also an
Act of the party, yet it is also mixt with force of Law, and therefore
it is called an Entry in Law, and is not only as possible, but an
Entry in Deed, but because it is as well an Act of Law as of
the party; it gives to the party a greater privilege, than an Entry in
Deed both: for a continual claim of the Delinites being an Entry in
Law shall vex the possession, and seem in him for his advantage; but
never for his disadvantage: and therefore if the Delinites bring an
Mile, and hanging the Mile he make continual claims, this shall
not abate the Mile, but he shall recover damages from the beginning:
but it is otherwise of an Entry in Deed.

23. Upon a Lease for peace by intenture, the Lessee covenants
and grants, that if he his Executors or Assignes alien, it shall be law-
ful for the Lessee to re-enter, and after he makes his Mile Executry
and dies, the Feme takes a new husband, who alienes: In this
Case some hold there is no breach of the Condition, because the Ba-
aron is in by the Law and not Assignes of the Lessee, as it is of Ten-
ant by the Custelier; or Lord of a Milein: but others hold the con-
trary, ide quare.
The Reason of

432

Dier 41. 3.
31 H. 8.

24 A lease in naked form, or terms of years; upon Condition that if the
Lease assigning his life, assigns the term to any other without the Assent
of the Lessor, that then the Lessee may re-enter, and the Lease
forthwith returns by its will to another without Assent; Or (by Brooke
note) this is a forfeiture, because the Devise shall be said to be
in the assignment; that the Devise made during his life, and if the
Grantees had enjoyed the estate, that had being no forfeiture, because
in that Case the Law makes the assignment. Tamen quere.

310. b. 3.

25 If a reversion of land be granted to an Alien by deed, and places
attornment the alien to make return, and then the attornment is
made: In this Case the King upon office found shall have the land;
for to the parties it was not by Deed, but by Statute, it is
otherwise, where land is granted to a man and a woman, and
they intermarry, and then attornment is had, for which Vide supra.

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Dier 50. 12. 13
36 H. 8.

26 Where is a diversity, where the body of a man in execution to
sit at liberty by authority of Law, and when without authority, as by
the voluntary escape in a Sheriffs, or the like: For the Law taken
all rights: as in Case of Aliences: to whom the Kings presence is a
Bannaty: where the Lord cannot seize him, without a forfeiture
out of his presence to make, because the Law gives the Tenant in
possess pro tempore, but if the Lord himself enforces him by
manumission (inwards in Law) for one hour, he is free for ever to
inviolable libertys; demande that is the Act of the Lord himselfe: So if a
man be taken in execution and be suffered to escape by the Sheriffs,
this is an absolute discharge of the estate, and the Plaintiff is to have
his remedy against the Sheriffs by action of debt: But if a Member of
Parliament be arrested by a Sheriff upon an execution, and he after
been freed by the privilege, which the law gives him; that is an
affair of the State, but that when he refealth to be a Member, he may
be imprisoned again upon the same judgement. et.

Dier 68. 24. in
Kidwells
Cafe.
4. 3. E. 5.

27 Where possession of Rent is to be made by the law (as where no
particular intimation to the payment thereof, the law itself in the place)
these it is not sufficient for the party to come in person and present
petition, but brought to being instrument with him, and in this case
ought to make an express demand of the Rent upon the law, as
here. I had and no manner (such a Rent, as the like) albeit
would be there present to pay the Rent: But when the Rent by the
agreement of the party payable out of the land, the R. confiscated not known
to demand it, but the party is to recovers that his rent.

Dier 140. Pl.
39.
3. 4. P.M.

28 When a man's personal being once entered (through having
his number) is a tenant, and gives for ever, when it is by the owner
sentiment of the party himselfe, into what interest in it: But when it is
by the Act of Law, is to the possessor, as the Sale is in 6. 4. E.
then which is constrained in, restitution may comport, so entailing obliga-
and subsisting, hence the maxim: of the Law, that, to
the time that he had the thing in possession, imposed; but after surrender
was revived.
It requires that a man will deal for their own best advantage.

1. Upon this ground it is, that a party cannot be Wilful in his own Costs; to the above premises, he will speak for his own better advantage; and therefore neither that the party to an action Costs be admitted to be a Wilful against the party, in such effect he should be held in propria causa, and should avoid his own Costs and Abatements, and discharge himself of the Money borrowed, and abide by his solemnly doing up an Informer to exhibit the Information. But in such a case he is the party; and honestly in effect against Britton, that he that challenges a right in the thing in question, cannot be a Wilful, for that he is a party in interest, and will advantage himself as much as he can.

2. If an Instant of Entry ad terminum qui pretendi; he against the Tenant at suffer: me, the holding over his term; but this is rather exemption of the Demesne than for any estate of Freehold, that is in him; tojudgment of Law he hath a right to Satisfaction; so if Tenant put terms of sueteric in his tenement after the statute of 6 & 7 Hen. 6, the Tenant for years incomew over his term, in this Case the Tenant cannot have an action of Trepass before Entry; but he may have a Suit of Entry, if he will thereby admit himself to have a Freehold; and the Land takes him to do, because the Law presumes that he will not to admit himself without some hope of advantage, that may return to himself thereby.

3. A Tenant's holloth of his Lord certainty, law in Hootage, to pay yearly aares of gift Squires of the livings in the Heed of Easter; in this Case, the Rent is uncertain; and the Tenant may pay which of them he will at the Head, and may also pay which of them he will to the Tenant, but if he pay not when he ought, then the Land also diffeine for which he will: Inattered in that Case the Lend not presently (that is, as presently, and as conveniently, as he may), and under circumstances (well) I alter the wreck of the Deed, ready upon the Land to pay Rentes, the Land may by Statute, for which of them he will, at the Tenant's warrant either of them according to the Law, and, when for the Land into these ready to receive it, yet the Land may minister for which which was tendered, or his pleasure. For if all such Canthe lands imposed, that a man will deal for his own best advantage.

4. Upon a Reformation of a Rent of on a Freeholder in fee by Deed embodied, the Feodar shall not have a Writ of Amenity, because the Writs of Amenity, as recondo, Iscondo, Excondo, referendo, &c., are the words of the Feodar, and not of the Feodori; yet if afterwards the Feodar except of the Estate, he is thereby bound, and is subject to a Writ of Amenity.

5. Upon this ground also it is, that all just Challenges, both to the Army, and to the Poll, are allowed in Law; by which is the quotation in the margin.

6. Where Laws are given by Frank:marriages, and other laws differ to the other Sister in F: Simple, if the Donors will not do the
the first act, viz. put their Land in Hotchpot, the Law presumes they are satisfied, and therefore (in such Case) allows them no part of the Feoffment Land offered by Waif of partition or otherwise, because non tenant infinita & per indiviso.

8 If Tenant is tall makes a Feoffment in fee upon Condition, and dully, and the site in tall within both enter for the Condition broken; in this Case, he shall be held in, as Tenant in fee-simple, as heir to his father; and (consequently) shall be instantly removed: but if the ter be of tall age, he shall not be removed, because he might have had his formed against the fee, and the Entry to the Condition is his own Act.

9 When an Obligation of a Feoffment in fee is made upon Condition, that the fee; fee, oblige, or a stranger shall be a Sole & of Labour, as to go to Rome, Jerusalem, &c. In such the like Cases, the fee; fee, oblige, or stranger have time during their lives to do it, and cannot be applied by request; so in such Cases the Law gives them credit, that they will take the most convenient time for the doing thereof.

10 If in a personal action the Defendant be Quinto eradicus, upon the Exigent, and maketh default, the judgment is Ideo autager, per Judicium Coram Animo; 0 (in London) per Judicium Recordatoris; and then upon the Return of the Exigent he is out-laid: Heould be, in this Case the Plaintiff recovers nothing, but the King takes the whole benefit thereof, which is the forfeiture of all his Goods; for the Law intends, that the Defendant will rather appear and answer the Plaintiff, etc., than to forfeit all his Goods and Chattels, Debts, and Duties to the King, by his default and contumacy.

11 The Pia of every man shall be confirmed strongly against him that pleads it; for every man is presumed to make the best of his own Cafe.

12 Upon this ground also it is, that when two things are offered to be taken, it is in the Election of him that hath interest or power in them, to take which of them he pleaseth; so A. lesse of a Hammo, part in Demelne, part in Service, venligth, bargains, and takes the Hammo to W. here it is in the Election of W. to take it either by Demile at the Common Law, or by Bargaine and Sale according to the Statute.

13 It was said, that if the Leis or Align his term; the Leis for may charge the Leis or his Alignees at his Election, but if the Leis; accept the Rent of the Alignees, he hath determined his Election, and shall not have an option against the Leis afterwards for Rent one after the Alignement, no more then if the Lord once accept the Rent of the fee, he shall abate upon the fee;

14 Upon this Rule likewise it is, that the Law both allow Agreement, or Disagreeement to an interest offered to the party, that is to have it; So if there be Lord and Tenant, and the Tenant by Descent seizes the Lord and a stranger, s make levey to the stranger in name of both, in this case, if the Lord emble by Parol Disagreement to the Lease, it is nothing worth; for a Frank-tenement shall not be so lightly debated by naked Parol in pais: but on the other side, if the Lord enters into the Land generally, and take the profits, this at Ball amount to an Agreement to the Feoffment; Heould it he enter into the Land, and disposes for; his Seigniorship, this at Ball amount to a Disagreement of the Feoffment; and dispossess the Frank-tenement out of him; and this accords to Eq.1, by all the Justices.
19. If bonds be given to Baron and Feme in tail, and after the
Statute of 32 El. 3-36, the Baron alienates the same to the use of his
son and his heirs, and after demise it to his Wife for life and resid.,
here the Feme inter-claiming by parol, the Estate by life, this is a good
Vestiture to the Statute of Uses, and a good Agreement to the
Estate for life, and with this agrees 13 El. 3-35. 1. Dyer, but the
Baron gives his power to take which of them the will.

16. If A. make an Obligation to B. and bailee it to C. to the use of
this, this is the use of A. presently; but when C. offers it to B. here
B. may refuse it in pais, and thereby the Obligation shall lose his
value, but this is accorded, 7 El. El. R. 4-43. In Tawes Case, reported
by Horstman Boxouy, and by Dyer 167. But in this Case it seems on
an action brought for it he cannot plead non est factum, because it
was once his own. There is the same Law also of a Gift of Goods
and Chattels to the use of the Donor's Goods and Chattels are to the
Donor presently before notice 9 agreement, but the Donor may make refusal in pais, and thereby the property and
“Habere-factum-bailee,
and such Vestiture may not be in any

17. A Common Recovery is not restrained by the Statute de donis
but it shall depend on the issue in tail, because of the inferior recondem,20
without the Remitter in tail thence to be content, the Law hereupon permitting, that to to induce the Recovery seems rather to his
harmless than profitable.

18. B. enrolls another to the use of himself for life, the remainder
to his Wife for life for her livors, upon Condition to perform his
Wills, and then wise, the Wife enters and agrees to it, and after doing the Will of Power, but her acceptance bars her right of
Wife; this shows her Power was an absolute Estate for life, and
that a Conditional Estate, yet it being an Estate for life, and the
acceptance thence, the Law promises she retains it a greater time
longer, then to have her Power, it being in her power after the death
of her Husband to take the instanter. So if a man makes a Foundation
due to the use of himself for life, and after to the use of his Wife,
then and thence, for her life, 20 after the death of her husband
the accept thereof, it shall have been of her Power.

19. Before the Statute of 32 El. 3-36, 6 and has a Benefice with
Cour, an acceptor another Benefice with Cour, the 6th Benefice
was void: Bower: this was not an accommodation by the Common Law, but by the condition of the Pope, of which accommodation the Patron might take notice, if he would, and might protect if he would, first,
and any Dispensation.

20. Feme Commodat's Life makes a Lease at will rendering Rent,
and often takes Baron, and him and his Baron brings an action of
Wrong to the remainder after the marriage; In this Case, the right
is not determined by the inter-marriage; for albeit the same by
taking Baron, but submitted his life to his Will, as her Power, yet
therein is no device made to the Baron to have the Lease determinable,
so upon he might into the Remain at the very last Rents day after the
marriage) and it cannot prejudice the same at all to bar it sometimes, nor is it being in the power of the Baron to make it continue or
determine, the right continued it to continue.

21. Tenant by Merchant as Staple, 6, shall not be held to
Shaw in a Case to Courts for the maintenance of this Estate, for they
compe the Production of the Lease by Proceed 6. 6. 6. against the
Case, of him, that hath the Power; but it is of the voids of a Lease by life,

22. Notice in the Common Law.
The Reason of

Mux. 116.

6. Yeere, &c. because he comes in by the Levee, and might have taken a Covenant or other security, for his peaceable enjoying of the Land to him demised.

22. Lessee in this lease for yeere and days; here, the right of sevther Guardian may avoid it: but if after his full age he accepteth of the rent, the Lease is continued to re-continue during the term, &c.

23. In Arbitration, when all matters in Controversy should rest upon Arbitrators to end; here as well there are others matters of in difference between the parties, yet if one only be made known to the Arbitrators, he may make an award of that alone; for the Arbitrator is in the place of the Judge, and his Office is to vindicate secundum allegata & probata, and the duty is to acquit him of their premissions, and with all the Causes of their differences, whether they be either of them emit to do, the Law presumes it to be their own advantage to conceal them; and therefore such Consequence shall annul the award, that is made, albeit it be made openly at part.

24. It is presumed, that every one will make the best of his West. Case: And therefore in any suit of action, when the Plaintiff makes Replication, Defenence, &c. whereby it appears that upon the whole Record, the Plaintiff hath no cause of Action, he shall not take Judgment, albeit the Barre, Respondent, &c. be insufficient in particular, for the Court ought to judge upon the whole Record, and will suppose, that the Plaintiff hath managed his own cause, as well as his own: So in an Action of Debt brought against an Executor, he pleadeth two Recoveries against him in a Court of Records, which amount to the whole in his hands, but afterwards that, the Corporation had jurisdiction to hold Court, either by Descriptibi, or by Patent; And it did also appear by the Court in that Court, the whole Right of Debt had brought for 100l. without mentioning any Obligation, and therefore it was to be intended, that there was no Obligation, and then the Executor was not charged in an action of Debt upon a single Contract; And in this Case, albeit the Defendant in his Barre acknowledged, that the Debt was by Obligation, yet that shall not make the Court good, which the Law presumes the Plaintiff hath made as full as he could.

25. In Debt upon an Obligation with Consent to perform Consecu tories in an Instrument, the Defendant pleaseth performance of all the Covenants generally, and it appeareth to the Court that whereof some are in the Negative; Disscriptive, and of the Plea being in the general Alternative is insufficient, yet if the Plaintiff reply and shal one breach of one of the Covenants, which by his own doing is not any breach, upon which the Defendant demures; In this Case, judgment shall be given against the Plaintiff, because (upon the whole Record) it appears, that the Plaintiff had no Cause of Action, and it will be always intended, that every one will make the best of his own Cause.

6. In Debt to Administrators upon Administration committed by the Bishop of R. the Defendant pleaseth Administration committed to himselfe by the Arch-Bishop of Canterbury, because the Administrat had bona notabilia, the Plaintiff replies, that that Administration was opposed; In this Case, because the Defendant did not show in his Barre, that the Inhabitante had bona notabilia in certenies; It shall be presumed, that he had not bona notabilia in divers Dioceses, yet the Administration committed by the P. of C. is not (in this case) good, but only volatile.
27 It is not expected that the Tenant by Statute or Easement, shall a

28 The suggestion of the party being inserted in Letters Patent

29 If a Parson or Vicar holds a pension out of another Church, and

30 If the Baron exchange land, and after die, if the Feme hath

31 Upon grant of an Amenity out of land for fees, fees, life, or in

32 Where a man is to have benefit upon an act, which is first to be

33, In Wimborne and Talsbois Case in the Commentaries one argu-

34 Anu 34
The Reason of

458.

34. The King grants lands to A., in tail, to hold by Knight-service.

A. makes a lease in B. for 21 years, relating rent, A. dies, his son and heirs of full age, and all this is found by Oath alone here, as to the King.

This lease is not of force; for he had his prime feoff, as of land in possession; but after liberty the Lease may enter, and then if the time in tail

accept the Rent, the lease shall bind him. For the Kings primer

shall not take away the legacy of the time in tail; because it

may in the Rent was better then the land, and so the Law will pre

sume, that his acceptance tended to his advantage; and therefore he

shall be bound thereby. In like manner Tenant in tail makes lease

20; 40 years, relating a Rent, to begin 10 years after, Tenants in
tail, the Moneys were not assigned A, the ten years expire, the

lessee enters; now in this Case also, if A. accept the Rent, the Lease

is good, for he shall have the same Estate, that the time in tail had,

unless to make it good, he stipulates it; But because the lease accepts the

Rent, the Law presumes it was for his advantage to do, and therefore

thereupon enforces the Lease still on the Law; not withstanding such entry

of the lessee before it commenced.

33. If there be Law and Estant, and the Tenant take Feme, and

the Feme grants the Services to the Feme and her heirs, and the

Baron accept the Possess: In this Case, after the death of the Baron,

the Feme and her heirs shall have the services, for the acceptance of the
date by the Baron be good attornment; altho' the services are in full,

considering the subsistence of the tenant; so likewise, if a man let land to another

tenor of life, and after so many years by his own the Grant of the Tenant

for life, the remainder to another in fee, and the Tenant to life,

accepts the lease, this is again assignment in law to make the Estate in

remaining good.

36. Every Lease hold he intended to be leasethwith proclamation,

according to the Statutes in that behalf provided, because that

is most beneficial for the County.

37. There were four Defendants in an Affidavit of this Plea

llaging, 3 of whom specially maintained the Tenancy of the federal

Possession, and upon several breaches, and to the residue Nullop, the

court takes upon the latter tenure of all, without that, et. and please

also house at large. In this Case, the Plaintiff at his peril to

to the latter Tenants, because the law presumes, that he will do it for his

best advantage.

147. And therefore the Law believeth against the party

whichever to his prejudice.

467.

8. If name as Occupier to another tenant to his owne

heire, he pass himselfe out of possession, because it is his owne

act, and the presentee comes by the instigation an invasion of the

Occupier.

467.

2. If a Leasehold is not for the land, and the lease determining

his Will, so wise, before the grantee to vice, yet the lease shall

be holden; because in either of the last Cases; the end of the term is

unterminable, when one the Will of death of the lessee, which cannot

come within the lessee power to practice: but it lasts for years,

who may know the end of the term, till the land the shall not have

the清晨; hence his term is certain; and therefore the law will

attribute the termination of the land to his own suffice: so it lasts at will

with the ground with grantor, so, and after he himselfe determining his

will and ratified to occupy the ground: In that Case, the lessee shall

have

Feoffees.

Accession.

Feoffees.

Affidavit.

Prefixes.

Benefit.

Tenant.

Sover.
have the grain; for otherwise the lessor should have his Rent, and the
lessor hath determined it by his own act: In like manner, if a husband,
that solutely land during viduariam, sott the ground, and take his hus-
band, the lessor shall have the emoluments, because the determination
of the Tenet grew by her own act: So likewise, where the Court of the
land being uncertain is determinate by a right paramount, or the lessor
determines by the act of the lessor, as by testament; condition, &c., there he hath the right paramount, or that entreaty
for any estatuer, &c., shall have the Count, causa quippe supra.

If there be Land and Tenant by Knight-service, and the Tenant
leth his heir being within term, the Lord wardeth his wardship (as
he may) and taketh himself to his Seignory: In this Case the Lord
shall not have relief at his full age, because he might have hav
the wardship of the boys any land, if he had not neglected his

By the Civil suit, the person is bound to warrant the King, that
he looketh of severally, whether there be no express warrant; but the
Common Law knoweth him not unless there be a warranty in law.
In Law, the Common Law delivereth against the party things done
to his presence, and therefore in such Case, Caeur Emperor.

If a man be brought into a Court of Record by course of Law
thereat at knowledge simulac to be a Witten (albeit he was not a
Lettin before) and is to be ever after a Witten to grove; and therefore
if a precipice he brought against one be may confesse himself Witten to
Stranger; and that he hold his land in Willeinge of him, and this to-gow
and shall him; and it (in that Case) the Demant repile, that
the Tenant the say of his vost purchase was a Frey-man, and thereupon
this is taked, and he is tried to be free, yet he shall remain Witten to
the Stranger in respect of his condition: So Mowever in a
use of cario hacedo, if the Plaintiff (as he sought) ordere in his
Count to prove the Willeinge by the Cuisine and bimest of the De-
Sendant, and thereupon promisethe the Willeinge of the Defendant, who
upon examination confesse themselves to be Witten to the Dem-
Sendant, this condition being entries of record both to bind, that albeit
they were free before, yet they and the heirs of their house are by this
condition bound and Witten for ever, &c.

If the Lord settler Witten to his Witten, to hold the said
land, so long, or for years, or make him any other certain estate;
for, if the Lord sue against his Witten a precipice only and
recover or be non-lituit, &c. or against his Witten any other personal
action, as debt, account, covenants, trespass, or the like: Those
are manumissions, because (in the first Case) the Lord may enter
into the land of his Witten, and in (the other) may imprison his Witten,
and take his goods (at his pleasure) without suit: but by force into
the Lord maketh the Witten to be a person able to remove the Lord
(in the first Case) the land, and (in the other) damages by course of
Law: In like manner, if before indictment the Lord by an appeal
of felony against his Witten, thereupon the Witten to acquit, this
is an enfranchisement, because upon the alicant the said recover
damage against the Lord by the Statute of West. 2, cap. 12. When it
from, wherefor the Lord griefeth to the Witten a full cause of Action; he is enfranchised; and therefore if the Lord
kill his Witten, his son and heir shall have an appeale, and thereby
the heir shall be enfranchised, because the offence of the Lord gree
to the said a full cause of Action against the Lord.

If there be two Responders, and the one being a Rationabili
purchaser, as a Nuper obje against the other, and the defendant claims by

1003
purchased, and defiles it in the blood; here, the Plaintiff shall have a
Mordanceler against her as a stranger for the whole.

Co. ib. 170. b. 4

8. When partition is made by the two Barons in the life time of these
Femce Coparceners, although such partition be unequal, yet it is not
void, but voidable; for, if after the decease of the husband, the wife
enters into the unequal part, and agrees thereto, this shall bind
her and her heirs for ever; where the same Law is of an Infant,
when his part is unequal, for by his entry at full age the partition
is made good for ever.

Co. ib. 171. 2. 4

9. If a man having three two Daughters die seized of F. & Simple
lands and also of as much in tail, and the eldest sister takes the
entailed land for her proper part, and the youngest sister enters into the
F. Simple lands and having thus aliens them to a Stranger, and dies: In
this Case, the issue in tail may enter into the intailed lands, and occupy
them in Coparcenary with her Aunt: for it was the folly of the
eldest sister to take the entailed lands for her part.

Co. ib. 171. 3 & 173. a. 3 &

Lit. §. 360. 2 &

161.

10. If there be joint-tenants in fee, and the one granted a Rent
charge out of his part, and dies: In this Case, the Survivors shall
hold the land discharged of the Rent: because he claimed the land
by a title paramount, viz. from the first seisin, and not by his com-
panion: but here, if after the land is charged with the rent, the other joint-
tenant accept of a release from his companion, that so charged the land,
in such case, he shall hold the land charged with the rent, for now by acces-
tance of such release he is not in by survivorship, but from his companion.

Co. ib. 202. 2, 3

11. The demand of a Rent or other sum to take advantage of a re-entry
of condition broken ought (by the law) to be made (where no other place
of time is limited for the payment thereof) upon the Land at the most
notorious place there (as at the first seisin, or the like) and at the
last part of the day, to as the money may be conveniently numbered
before hand let; yet it upon the day of payment thereof the lessee or
heirs happen to meet the lessee or seisin upon any part of the land,
(although it be not the most notorious place) or at any time of the last
day (although it be not the last part, as aforesaid) in such case if
the lessee or seisin refuse it, he shall not take advantage of a re-entry
of condition broken, as aforesaid; for by such refusal (being his
own Act,) he hath barred himself of that advantage.

Co. ib. 305. 3

12. A is bound to B. to pay 10l. to C. A tenders to C, and be re-
sately, in this Case, the bond is seisin; for it shall be imputed the
foes of A to undertake to pay it to C, of whom he had no power,
to compel him to receive it.


13. If a man be bound to A. in an obligation with condition to entitle
B (who is a more Stranger) before a day, the obligor not offer to en-
title B, and he refuses, the obligation is seisin; for, the obligor hath
taken upon him to entitle him, and his refusal cannot satisfy the con-
dition, because no seisin is made, but if the seisin be made, or after
the condition to be made to the obligee, or to any other for his benefit or
interest, in such Case, a tender and refusal shall take the bond; because
he himself, upon the matter in the cause, whereas the Condition
could not be performed, and therefore shall not give himself cause of
action also if A. be bound to B. with Condition, that C. shall entitle
D. In this Case, if C. tender, and D. refuse, the obligation is seisin
for the obligors himself undertake to do no act, but that a stranger shall
entitle a stranger; and in such case it shall be intimated, that the seisin
should be made for the benefit of the obligee.

Lit. §. 340

14. If A. make seisin of B, with condition to pay 20l. at such a day, no place being limited for the payment thereof, here A. is
bound
bound to cease B. (if he be in England) to make payment or suffer thereof, for the law presumes that it was so intended when the feoffor or obligez both not limit any place in certain for the payment thereof.

15 Where the condition is for 20 l. the obligation or feoffor cannot at the time appointed pay a letter sum in satisfaction of the whole, because it is apparent that a letter sum of money cannot be a satisfaction of a greater; but if the feoffor or obligz do at the day receive part, and thereupon make an acquittance under his seal in full satisfaction of the whole, it is sufficient, because the deed amounted to an acquittance of the whole: So if the obligz or lessee pay a letter sum, either before the day, or at another place, then is limited by the condition, and the obligz or lessee received it, this is a good satisfaction.

16 Where the condition is for 20 l. the obligz or feoffor cannot at the time appointed pay a letter sum in satisfaction of the whole, because it is apparent that a letter sum of money cannot be a satisfaction of a greater; but if the feoffor or obligz do at the day receive part, and thereupon make an acquittance under his seal in full satisfaction of the whole, it is sufficient, because the deed amounted to an acquittance of the whole: So if the obligz or lessee pay a letter sum, either before the day, or at another place, then is limited by the condition, and the obligz or lessee received it, this is a good satisfaction.

17 Where the condition is made upon condition to give the land to the feoffor and his wife and the heirs of their two bodies, the remainder to the right heirs of the seeress; in se; In this Case (Littleton's case) if the feoffor be before such estate made, the feoffor ought to grant the land to the feoffor for life without imprisonment of wife, the remainder to the heirs of the seeress; in se, and yet here, if the feoffor accept of any estate for life, without this clause; without imprisonment of wife, it is good.

18 Officers that have no other profit, but a bare collateral fee, may be discharged of their offices and service, but yet they shall have their fees; and where these fees issue out of the profits of the land, the grantor cannot discharge them of their service or attendance: but in all Cases, where the officer relinquished his office, and refused to attend, he lost his office, fees, profit, and all.

19 If there be Lord and Tenant, and the Tenant is disfessed, and the cestui que vendeurs are taken: in this Case (by reason of the necessity before the Lord and the disfesse) the disfesse may compel the Lord to abate upon him; yet here, if the Lord have before accepted the services of the disfesse, the disfesse cannot enforce the Lord to abate upon him: So likewise, where a man have title to have a writ of escheate; if afterwards he accept homage or fealty of the Tenant, he is barred of his writ of escheate: It is otherwise with acceptance of Rent, (for that may be received by a Bailiff) unless he abate for it in a Court of Record: So likewise if the Lord accept the Rent by the hands of the heire of the seeress: or of his seeress, because they are in title, this shall barre him of his seeress: But forthwith concerning Arrears the ancient law is now altered by the Statute of 21 H. 8. 19. which see, &c.

20 If there be Lord and Tenant, and the Rent is behind by other persons, and the Tenant makes a satisfaction in se, if the Lord accept the service of Rent of the seeress, in his time, he shall lose the arrears due in the time of the seeress: for after such acceptance he shall not abate upon the seeress, nor upon the seeress, for the arrears incurred in the time of the seeress.

21 A man cannot be disfessed of a rent-service in gross, a rent-charge, or a rent-decree by attornment or payment of such a rent to a stranger, but
but at the Election of him, to whom such Rent is paid: for, Nemo reddere alius invitio domino precario aut possessor pecunia: put the 

vixissices in an Affidavit such a person, as takes of such Rent, 

he hath thereby admit himselfe out of possession thereof: for otherwise, 

a visissce of a Rent in gross bribeth not the right owner, but that he 

may ordain, albeit he admitted himselfe out of possession, and deter- 

mined his Election, as by bringing an Affidavit, or the like. 

22 In Case of such Rents, if the Tenant gives a Stranger any 

thing in name of Appurtenance, and then the right owner relateth the 

Stranger, such release to both, because an appurtenance only can be 

no visissce of such a Rent: but if the Tenant of the Laud pays the 

Rent to a Stranger, and then the right owner relateth to him, this 

release is good, because he thereby admitted himselfe to break of pos- 

session. 

22 If Tenant in tale of a Rent-service, &c. of a creditor, or 

remainder in tale, &c. grant the same in his own warrantee, and 

beauty acts in Fe-Cunple, and vixissces, this is another barres not dis- 

continuance to the issue in tale, but he may relateth to the Rent-as 

service, or enter into the land after the decease of the Tenant for life: 

but if the issue being a Formedom in descenduer, and thereby stand 

himselfe out of possession, he shall be barred by the Warrantee and addes. 

Co 1.3.8.a In the Cases of Fines, 

24 A Church Parochial may be domatative except from all ordinariate 

speculation, and the Incumbar may resign to the Patron, and not 

to the Diocesane, neither can the ordinary taker but the Patron, by Com- 

mittees to be appointed by him, and (by Littlecouns Rule s. 4, 8,) 

the Patron and Incumbar may charge the Globe, and although it be 

domatative by a Layman, yet more Laws is not capable of it, but an able 

Clerke infra facros ordinces; to; albeit he come in by lay donation, and 

not by donation or institution, yet his somatony is perfect and, if such 

a Clerke domatative be disturbed, the Patron shall have a habe south- 

dir of this Church domatative, and the whole shall lay, God permitat inter 

sum praetentarem ad Ecclesiam, &c. and declare the special matter in his 

declaration: and so it is also of a Priemae, Chantery, Chappel, 

Donatiae, and the like, and no laps that injures to the Diocesane, 

except it be so specially provided in the constitution, nevertheless, if the 

Patron of such a Church, Chantery, Chappel, &c. Donatiae, now 

once present to the Diocesane, and his Clerke is admitter and institu- 

tes, it is now become presentable, and never shall be nonattent after, and 

then also laps shall insecure to the Diocesane, as it should of 

other benefices presentable: but a presentation of such a Donatiae by 

a Stranger, and admitter and institution thereupon, is hereby 

void. 

25 If the Tenant make a lease of the land to the Lord for yeares, 

or the Lord be Guardian of the Lamb, or have it by Statutum or Elegin, 

and then make testament in fee thereof to a Stranger: here, albeit as 

to the Lord; this is a vixissce, yet hereby the Lord hath extinglyshed 

his Seignory. 

26 Hardward and wife Leantns in special tale, of certaines land in 

the hands like a Daughter, the wife united, the husband by a second 

wife hath more another Daughter, and vixissces, both the Daughter- 

sire (where the eldest is only ineritable) and make partition: in this case 

the eldest Daughter is concluded during her life to impeach the partition, 

or to lay that the youngest is not here, So likewise I. S. follov of lands 

in fee hath nine two daughters, Rose, battered signe, and Anne, mater 

puine, who enter and make partition, in this Case, Anne and her pieces 

are concluded for ever. 

27 A
27. A is bound with Condition that he and his son shall at any time after make better assurance of his debt to B, B, tenents a writing unto them, the terms being not lettered, without time; to be sealed of it, which being sealed, he does not deliver it. In this Case, albeit a man unlettered is answerable in the Law, so as it is not his Act, if the writing be not return'd unto him, as rightly expounded, although he believes it; yet here, because A. undertake that his son would make, and no certain time was limited for the doing thereof, the bond in this Case is forest, for the time for doing of it was peremptory.

28. A lap-man not lettered is not bound to deliver a new, if there be not a person present, that can read or expound the bond to him in such language as he understands, neither to be bonds thereby, if he be read or expounded to him in another manner; then the words and matter thereof import, and it concerns the party, that should take it, to fee that none, if the party that should deliver it require the same; but if the party, that shall deliver the writing requires it not to be done, he shall be bound by the bond, although it be lettered contrary to his meaning.

29. The King grants a lease of land, held by copy to A, who assigns to the Copy-holder, the King grants the possession in fee to B, the same as young spires; here, the entry of B. is lawful, and, by the acceptance of the assignment of the term, the copy-hold is antecedent.

30. As to the parts of the testate's testament, one joint-tenant may prejudice another; for there is a public and public servant, and therefore once of them take all the parts of the lately, or all the estate, the other hath no remedy; for the same language it is to his duty to joint himselfs in estate with such a person, as will beke his trust: So likewise if there be two Lords and a Tenant of land holden by knight's service, and the Tenant die his heir within age: here, the Lords have Election either to seiz the estate, or to perform the service, and so to waint the Ward, as it is agreed in 1 3. But in this Case if one of them take the Ward, and the other difference to the service, he that first lettered or disfranchises shall bind the other.

31. A makes B. a Grantor with an Indiavision appertaining upon Condition, that A. shall grant B. the Indiavision saying his life A. dies before he grants it: In this Case, the Condition is broken: For, since the lease or grant upon Condition is to make by Copy to the Leasing or grantee, no time is limited for the doing thereof; regularly it is true, that the Lease hath time some before his life, if the Lease or grant of do not happen by request, but self-sufficient, and a day or time limited, when will be done it none, the lease or grant, ought to do it self-sufficiently; but no Repetition be made, and the Lease or grantee, who ought to perform the Condition, via, in this Case the Condition is broken: for he hath not performed the Condition within the time prescribed to him, by the Indiavision; which was during his life. But this general Rule admits some exceptions, which never, these last are agreeable to this supposition, for by this Case of a Indiavision A. hath not time during his life, albeit no request be made, but also upon this contingence, viz: if no assignation fall in the mean time: say if the grantor lay until an assignation fall, then ipso facto, the Condtion is broken; for then B. cannot have the whole estate, that by the re-grant be sought to have, because that it is, to have all the vestigations vestiges: so the Indiavision to become in another place; then it was in before: for A. undertake B. the 1 of May upon condition that he shall grant in his inventory of rents during his life succeed a grantee at Nich.
The Reason of

and L. d. a. in this Case the Testate hath not time during his life to make this grant, but ought to do it before Mich. for otherwise he shall not have the Annuity of Rent during his life, and it may be collected upon the Books of 14 Ed. 3d. 5. 6, that in Case of the grant of a rent he shall not have time during his life; Likewise if two not married be entailed upon Condition to re-entail the Dower on the testate, sc. and one of them die: yet the other may perform the Condition; but if be that survives hath a wife, then is the Condition broken: 32. If he made the re-entailment, yet shall his wife be enailed: And in all these Cases and the like the Law imputeth it to the Laches and folly of the grantee, that he will not perform the Condition, while he may, and believe against him these and the like things done to his own prejudice.

If be, that hath a Rent-serve, 2d. Rent-leases, accept the Rent one at the last day, sue for, the Statute of Malbridge, cap. 8. making such settlement by Collusion void; and of no effect as to the LORD, if the LORD will affirm the settlement and waive the benefit of that act by acceptance of the leases for his Tenant, he shall thereby purge the collation, and therefore worthily to lose the war.

If there be LORD and Tenant by Knight-serve, and the Tenent entails his land and estate within age by Collusion: In this Case, if the LORD accept the services by the hands of the testate, he shall lose the war; for the Statute of Malbridge, cap. 8. making such settlement by Collusion void; and of no effect as to the LORD, if the LORD will affirm the settlement and waive the benefit of that act by acceptance of the leases for his Tenant, he shall thereby purge the collation, and therefore worthily to lose the war.

If be, that hath a Rent-serve for life, remainder to his wife for life, with Condition to perform his last will and to; her jointure; and ties, the wife enters, agrees to it, and after dying her life of dower; In this Case, if after the death of the husband the wife accept of that conditional Estate, such acceptance shall barre her from taking dower; 34. Allbeit dower at the Common Law (in like whereof a jointure is granted) be an absolute Estate for life, yet in as much as an Estate for life upon Condition is an Estate for life, it is within the words and intent of the Statute of 27 H. 8. 10. to barre the wife of her dower, if after the death of her husband the accept thereof. So if the husband enails to the use of himselfe for life, the remainder to the use of his wife during viduitate for; her jointure, this is an Estate to her for life, and cannot determine without her own Act, and therefore a jointure also within the Statute, if after the husbands death the accept thereof.

If there be LORD and Tenant by fealty and Rent, and the LORD grant over the fealty saving the Rent, 35. It a man make a gift in tail; or lease for life rendering Rent, and grant over the reversion, except the Rent, in those Cases, the nature of the Rent, is altered by the parties owning Act; and therefore the ancient fealty, when it was Rent-serve, will not in such case indite, because by his own act the nature of the Rent is changed, neither can he have it an Allie as of a Rent-lease, because he was never feter of any such Rent.

If there be LORD and Tenant by fealty and two holdings Rent, 36. And the LORD by encroachment (viz. by the voluntary payment) of the Tenant; happens fealty of more Rent, then he ought to have, the Tenant shall
the Common Law.

shall not (in aboveth) abate such lesser had by accroachment, unless it be in some special Cases, which see ubi supra.

37 If A. hath Rent-tertices or Rent-charge in se for life; and the Rent is arraied, and after A. grants over the Rent to another, and the Tenant attornies, and after A. dies, his Executors are not within the branch of the Statute of 32 H. 8. 37, which gives power to Executors, etc. to recover debt due to the Tenant at the time of his death, for by the grant over the arrearages were lost, and were not due to the Tenant at the time of his death: and therefore when the Tenant by his own Act in his life time had dispenc'd with the arrearages, the said Act gives no remedy to recover them.

38 If a Feme sole make a Will, and after take Baron, this is a revocation thereof; for the making of a Will is but the Inception thereof, and it takes not any effect, until the death of the Devisor: because, saith Testamentum mortis consummatur est; & voluntas est ambulatoria, utique ad extremam vires euncta. And therefore it being no perfect Will when the taker Husband, and after marriage her Will being her Husband and subject to it, by taking Husband the said wholly revoked the Will formerly made.

39 A. setteth l. and to B. till 100 l. he raised for the performance of his daughters A. dies, C. being heir conveys the Will, and enters: In this Case, B. shall have allowance for the time, that the Will was concealed, and that time shall not be accounted parcel of the time for the paying of the money: But if B. had surrendered to C. upon Condition, and has entered for the Condition broken, that should have been accounted parcel of the time, for that was his own Act.

40 At the Common Law (before the Statute of Gloucester cap. 5, 6 E. 1.) no remedy lies for rents (either voluntary or permitting) against Lease for life or years, because the Lease hath Interest in the Land by the Act of the Lease; and it was his folly to make such a lease, and not to restrain him (by covenant, condition, or otherwise) from making rents: And for the same reason it is, that at this day Landlord at will shall not be punished for permitting rents: but for voluntary rents, he may according to Littleton fol. 15.

41 A. demiseth the Spannoz of D. to B. for 30 years, except the under two growing upon it, and after demiseth the underwood to him for 62 years without impeachment of rents, afterwards B. accepts a lease of 20 years of the Spannoz after the expiration of the first 30 years; In this Case, because the demise of the underwood did not lease it from the Spannoz, (the future franklentment notwithstanding such demise remaining still in the Lease) by his acceptance of the last lease for 30 years the former two leases were lannured, and so (by consequent) if afterwards the Lease remain to bale, he is subject to an Action for it.

42 If a man be bound to make another before such a time such a residue, as the Judge of the Pergative Court shall advise and appoint: In this Case, if the Obligee do not only the first Act, but likewise procure the Judge to advise and direct the relate before the time limited, the bond is lost; for in as much as the Judge is a stranger to the Condition, and the Condition is for the benefit of the Obligee; and the performance thereof shall have his obligation, he hath undertaken to perform it at his peril.

43 If a man be bound to make, to another a sufficient and lawful Estate in certain Lands by the advice of I. D. If he make an Estate to him according to the advice of I. D. be it sufficient or not, or lawful or not lawful, yet he loseth the Obligation: so, if it be in sufficient or...
The Reason of

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Excess is his own wrong.

Co. 4, 32, 44.
in Reader et.

44 If after the death of a man, none takes upon him to be his Execut; or if he dies intestate, none takes out letters of administration; in such Case, if a stranger use the goods of the dead; or takes them into his possession, which is the office of an Executor or Administrator, such Stranger may be charged as Executor of his own wrong; for the Creditors of the dead person have not in such Case any other, against whom they may bring their actions for the recovery of their debts, or albeit there be an Executor that Administers, yet if the Stranger take the goods, and claiming to be Executor, pays debts, and receives debts, or pays Legacies, and intermeddle as Executor, in such Case also by such opposite Administration as Executor, he may be charged as Executor of his own wrong, Vide Dier 166. 10, 7, El.

Co. ibid. 14, 8.

45 If the Lessee demands Rent of his Lessee according to the Condition of re-entry, and the Lessee pay the Rent to the Lessor, and he receives it and put it in his purse or pocket, and after upon re-entering thereof at the same time, he finds amongst the money, that he had received some counterfeit pieces, and thereupon refused to carry away the money, but re-enters for the Condition broken: in such Case, it is said it was an agreement between one Vane and Scudley, that the entry was not lawful; so when the Lessee had once received the money, it was at his peril, and after such allowance, he did not take exception to it.

Co. lib. 5, 116, 3, 5, Lords Cae.

46 A Feme Copital-holdor of certain land, during viduitate sua, according to the Customs of the Baron; sells the Land; and before the surrender of the grantees takes Baron: in this Case the Lion shall have the grantees; for albeit at the time of selling the grantees, the Estate of the selle was uncertain, and although the Estate was determined by implication, and not by condition, either in his (as in Case of re-entry) or in Law (as by forfeiture) yet because it determined by the Act of the Lessor, the Lion shall have the grantees and not the Baron: so if a Feme follow of land (during viduitate sua) make a lease to others, and the Lion sold the land, and after the Feme, that made the lease, takes Baron; here, the Lessor shall not have the grantees; for albeit his Estate is determined by the Act of a Stranger, yet he shall not be (as to the Lessee) in a better Case, then his Lessor was, and the law imposes it to the folly to depose upon his lease a thing as the will of a woman, especially, in point of marriage.

Co. ib. 2, 4.

47 At Tenant at will into the land, and after the will is terminated, the Lion shall have the grantees, but if the Lessor himself determines the will before the surrender of the grantees, he shall not have them; because he had determined his Interest by his own Act: So if Lessee at will is out-lawed, whereby the Will is determined; in this Case, the Lion shall have the profits, and the Lion shall enjoy the grantees; but if Lessee at will be out-lawed, whereby the will is determined, in such Case the Lion shall have the grantees, Vide 9 H. 6-20, 8 71, & Dier 173. 15.

Co. ib. b. 1.

48 If a lease be made to Baron and Feme during the coverture, and the Baron sold the land, and after they are divorced; and such preconcubin, the Baron shall have the grantees and not the Lessor; for albeit the latter is the Act of the party, yet the sentence, which disposes the marriage, is the judgment of law, et judicium redditur in invitam, but it a lease be made to one until he make divorce, and he goes to the grantees, and after making Waft, he shall not have the grantees, Vide Max. 30-34.
In Debt upon an Obligation of 10 l. the Plaintiff pleads that one F. was bound by the same Debt with him, and each of them in the whole, and that the Plaintiff made an acquittance to E. having paid the obligation, but delivered after, by which acquittance he acknowledged himself to be paid 205. in full satisfaction of the 10 l. and this was assigned a good barre; for if a man will assign knowledge himselfe to be satisfied by Den, this is a good barre without receiving any thing: Vide 36 H. 6. Barre 17. 13 K. 24 Barre 243. & 10 H. 7. Yet payment of a letter sum in satisfaction of a greater is not good satisfaction, because a letter sum cannot by no possibility be satisfaction for a greater.

Hence hold his land of his Lord by an entire annual service, as a Sparrer, Bosle, or the like, and after his parcel thereof to another; in this Case the alienes shall hold by the same entire service, because such entire service cannot be appoincteed, and the land is setten by his owne Act; so also if in such Case the Lord purchase parcel of the tenancy, such entire services are gone, in like manner as if the Lord had released his Seignior in part of the tenancy; because he hath discharged part of the land by his owne Act.

When a writ abates by default of the Clerke, as a large Latin, variance, 0. want of time, or title by the Sheriffs fault, by want of good idemmons, in such Cases the Demanant shall have the benefit of a new writ by Journeys accounts; but if the first writ abate by the default of the Demanant himselfe, as by his mis-information of the name of the Tenant, or of the Leuse, there the Demanant shall never have a writ by Journeys accounts: Vide Dice 55, 7, 34, 35 H. 8.

If there be two joint-tenants in Fie, and one of them grants a Rent-charg in Fie, and after releaseth to the other; In this Case, albeit to some intent he, to whom the release is made, is in by the first Feates, and no negrice is made betwixt them, yet as to the grantee of the Rent-charg, he is in under the joint-tenant; that releaseth; and he, that furnishes, shall not avoid it after the death of him, that releaseth; for he that furnishes by acceptance of the release hath deprived himselfe of the way and means to avoid the charge, because Jus accetelendi (the right furnishing) was the sole mean to avoid it, and that right is taken away by the release.

If a Quare Impedic within the six moneths abate for falsa Latin, insufficiency of time, or mistaking of the Plaintiff or Defendant (as the Plaintiff conteste) the Defendant shall not have a writ to the Bishop but the Plaintiff may have a new writ of Quare Impedic, for that may be the Clerkes fault: Potest, in such Case; if the Plaintiff be non-fait after appearance, discontinue his fault, or he be made Knight, hanging the writ, these are peremptory, and therefore upon the writ abate, and the Plaintiff shall not have a new writ, because they are done by his own Act; and in such Cases the Defendant shall have a writ to the Bishop.

If a man be by bound obligation with Condition to hand to an Arbitraton to be made before Michaelmas, and before Mich. he changes the Arbitraton to make wit it: in this Case, albeit the obligor may by such writ charge the power to given to the Arbitraton, so as no Arbitraton may be made, yet the obligation is lost and isingle without a condition: because the obligor by his own act made the Condition of the obligation (which was inserted for his own benefit); viz. to lave him from the penalty of the obligation impossible to be performed, and (by consequence) the obligation is become single.
The Reason of Max. 117

...arm without the benefit or apo of any Condition, so that he hath bil
ables himsle to perform it: In like manner, if one be bound in an
Dishonour with Condition, that the Obligor shall gibe to the
Obligee by the space of 7 years to carrie word, &c. Is this Case
also, whether he give him licence, yet if he after-wards within the 7 years
confesss him, he shal not discharge the Obligee; the Obligation is lost.
57 Massan be bound in an Obligation to observe the arbitration
of i. & 1. is. makes the arbitration. In this Case, if the Dil-
gos neglects to inquire after it to know whether i. s. hath name an arbi-
tration or no, and for want of such inquiry omits to perform it, this
Obligation is forfeited: the Obligee ought to take notice thereof at his
peril, because he hath bound himself to it, and in such Case no notice is
required to be given unto him, as it is held in H. 7. 5.

56 If a man be bound upon Condition to account before an Auditor,
to be assigned by the Obligee, when he shall be required thereto,
and to pay the arrears found upon such account: In Debt, though
upon such an Obligation the Obligee at his peril takes notice of the
arrears found before the Auditor; for he having bound himself to satisfy
them, shall also (without notice) inquire after them to know what
they are, because he hath bound himselfe to it, and if he do not
his Obligation for such neglect is forfeited: And so it was adjudged per
Curiam in 18 E. 4. 18, & 24. And there Brian, Vavaro, and Carstey
Justices, against it for Law; and said it had been formerly condemned
in the B.R.

58 A Commission of Administration granted by the Kings to the
Obligee shall not extinguish the Debt, but the Debt shall remain:
Houbeit if the Obligee make the Obligo his Executry, this is a re-
lease in Law of the Debt, because it is the Act of the Obligo himselfe,
and with this accord 8 E. 4. 3, & 7 E. 4. 2, b. So likewise, if a Feme
obliges: the take the Obligo as one of the obligos to execute, this is appa-
lent in Law of the debt, because it is by the Act of the obligos bar table, and
with this accord 11 H. 7. 4. & 21 H. 7. 9.

59 If a recovery be suffered without consideration or limitation to
what uses, it shall enure to the use of the recovery and his heirs:
unless the recoverer may afterwards by a subsequent Innsurements agree
other uses thereof, and that shall enure by way of attost against the
recoverer and his heirs: for, albeit by such a recovery the use is vested
in the recoverer; yet such a declaration by a subsequent Innsurements,
shall be void, because the covenant thereof is the recovery under Act.
60 In a writ of Distress, the heir of the Baron may plead davestt of
the obesttce, houbeit if the parch have delivered the chattel to the
feme he shall not plead davestt thereof because the feme hath them by
his own Act.

61 The Dyvany of his Deputies or Commissaries may sell the
goods of the person deceased without being questioned for the same:
yet if they meddle with the goods and pay not Debts, an action lay
against them at the Common Law before the Statutes of Welts. a. 3.
which (indeed) is nothing else but an attendance of the Common Law.

62 In Trepsa against two, if the Actors find one guilty at one
time, and the other at another time, several damazes may he
taken; but if the Plaintifft himselfe confesss, that they commissed
the Trepsa severally, there the last shall abide: and to obstse the
obesttce between the finding of an Jury, and the condition of the party,
because this is his own Act, but that the Act of the Actors.

63 It there be Lord and Tenant, and the Tenants pays the Lords
a greater Rent, there is due to him, and that voluntarily without com-
"
heron of distress: here, the Lord having gained lesse of so much Rent, may disallow the Tenant for such imprisonment of Rent, and the Tenant cannot appeal the Lord in his abode; because of the lesse, which the Lord had of so much Rent: But when he may have remedy by the writ of N|e unjuste vepes, grounded upon the Statutes of Magna Carta cap. 10. that before that Statute he had no remedy; as it

63. In a writ of Entry for disuse, if the original writ wanted these words, Quam clam anim error loquitur, it is error, yet if the Plaintiff omit the writ, and pleads to the action and joinder, he shall not allege this default in the writ for error, because he hath omitted the writ by his plea: So likewise in a writ of demur of Charters, if the Plaintiff in his County declare not the certainty of the land, it is a just plea of error; yet if the Defendant admit the County good ane plea to the Action and joinder by judgment in a writ of error done by him, he shall not allege this default in the County for error, because he hath admitted it for good by his plea: Tamen quaerit.

64. A man may have an Affile of darrein presentment, albeit neither he renoz his uncle's prescription to the last abouse; as if Tenant had life of years, or in Deuter 03 by the custom of an usurpation of the Church, &c. and see, be in writution, that is great to the Anneges, that last presented shall have an Affile of darrein presentment, if he be disturbed; But if a man presents and after grants the Abaddon for life to another, who suffers an usurpation (or two, or three usurpations) and dies; In this Case, at the next avoidance he in the rejection shall not have an Affile of darrein presentment, if he be disturbed to present, because the Lessee was in by his own Act: Potest his bire may have it, but that is by the provision of Welt. 2. cap. 9. So likewise it a man present to an Abaddon, and after let it for term of years, and then the Church becomes void, and the Tenant for years presence, and after the Incumbent dies; and the Lessee presents and is disturbed; in this Case it tismes the Lessee shall not have an Affile of darrein presentment, canta quia supra: And the termer for years presents in his own right.

65. If a man hath a Chappell or Chantry Donative, and he presents once to the Ordinary his Clerks to that Chappell or Chantry; In this Case, he shall never make Colation afterwards, but he ought to present to the Bishop, and if he present not within six months, the Ordinary shall have advantage of the.Last,

66. If a Patron receive Rent of the Tenant for the land aliened by his Predecessor, he shall not have a jurisdiccion during his life, but his Successor may have it.

67. If the Recognizor enforce a Stranger of one parcel of the land charged, and likewise enforce the Recognizor of another parcel thereof, and afterwards the Recognizor fines execution against the Recognizor and the other feoffee; In this Case, the feoffee shall have an Audie quarta against the Recognizor, and thereby discharge his land, because the Recognizor hath discharged his parcel of the land by his own Act.

68. If a man be impeached in any Acton, in which he may touch the party, against whom he hath a warrantee, in such Case, he shall not have a warrantee cart against him, but he ought to touch him to warrantee, and if he touch him not in such Action, he shall never after have any acton of warrantee cart against him to maintain his title.
The Reason of

M. de. 117.

60 If there Lessor and Tenant, and the Tenant make atonement by
colusion, and the Lessor accept the services of the Tenant; in this Case,
the Lessor shall not afterwards have the warship of the Tenants here,
no: where the Colusion.

70 If a man be entitled to have a Writ of Ejectment, and he accepts
the hommage of the Tenant; in this Case, he shall not have a Writ of
Ejectment against him afterwards, because he hath accepted him for his
Tenant; So also it seems reasonable, if he accept fealty of him, that
in such Case also he shall not have a Writ of Ejectment: Holbeck, it
is not so of Kent; because the former are tenure services, which the
law respects more then Kent, Vide supra Max. 20, Pl. 19.

71 When a man demurres, he is to do it generally, and not upon
any special matter; for otherwise he is tied up to that special matter, and
cannot take advantage of any other error or default in the declaration
or other pleading: Am therefore in Dine and Maninghams Case in the
Commentaries, where the Defendant concludes, unde ex quor scriptum
practicum non sui factum sub tale conditione, quai per Statuam heri
dereter, & petijudicum. Here, this special conclusion hath so strengthen
the Defendant, that if the obligation were void for any other cause,
that what is mentioned in the conclusion, the Defendant could not have
benefit thereof by Doctoro Latino: So also in 34 H. 6. (which is here
also quoted) where one debited a reversion of a Tenant for life to an
other in the, per nomem omnium terrarum & tenementorum, quae in man-
bus le Devizor ad tunc fuerunt, and the heire of the Devizor being an
Heir of the, reciting in his count the special grant, ut supra. And
the Defendant saith, ex quor pro narrationem practicam apparent, that the
Devizor did not debite the reversion, but by the woods, ut supra, and
the Tenant for life then held the tenements, and that nothing of the
reversion by the general woods passed to the Devizor, and so he de-
names judgment, &c. And thereupon the Plaintiff also demurred:
And there it was held, that in as much as the Defendant had demur-
red in a point in special, and hath rejected the cause of his demurrer,
that if there were any other matter in the declaration, whereas the
Defendant might have advantage, he could not take any benefit as
advantage thereof.

72 In a count or declaration, if the Plaintiff recite a Statute,
whereby he needs not so (being a general Statute, whereas the Judges
are bound to take compliance) in such Case, he may recite it (as in
the note) or otherwise) his count shall abate; for though it was not
requisite to recite it, yet he making use of the by way of recital, he ought
to recite it as in truth it is; because then he hath grounded his action
upon the Statute by his recite, where it appears to the Court In-
dividually, that there was no such Statute at that time, and so he hath
abated his count by his own beforeg, &c.

73 If atonement be made upon Condition, that the seco...

Co. Inst. p. 1

107. 2. 2.

F. M. B. 144. 6.

F. N. B. 141. 5.

Pl. Co. 66. & 2.
in Dine and
Maninghams
Cafe.
The Common Law.

Dyer 30, 107.

Sec. 471

... the tender and refusal (wherein he mind and try; and take the money in Court (if the Plaintiff will not take receive it, but take Mine upon the tender, and the same be taken against him, he hath lost the money for ever, because he hath made two refusals, when he might have had it.)

74 C. purchaseth a Copyhold of A. to him his wife and their children for their lives, A. lets the land to B. for life for woman, and liberty and tenant, to abide accordingly: Afterwards A. leaves a fine for conscience. It is recorded, and C. accepts the Kent of B. In this Court it seems, that by the acceptance of the Kent of B. the Copyhold of C. is gone; so if a Dissolution make a lease for life for woman, and after grant the reversion to the Dissolution; and he accept the Kent of the Lease, he shall never after own him: Quod furit concordium per quodam.

75 One of the Clerks of the Chancery was such in the Case, and process continued till the exigent, and the Defendant (who was the Clerk) had a superfees to the Exchequer, quia impromis, and after he takes a writ of priviledge out of the Chancery directed to the Judges of the B. reciting the priviledge of Chancery and requires the Judges to suraize it. In this Case, the prilèdige was vis-allowed and the Clerk put to answer, because the Court was lawfully fessed of the plea by the Act of the Defendant himself: for in so much as he hired out the superfees quia impromis, he thereby affirmed the suraization of the Court for that every, superfees quia impromis recites the Defendant's appearance in Court by an Attorney, and names him, and therefore it was his own default: But if he had hired such a vis (notwithstanding the exigent) the priviledge had been allowed him, and then after the writ of priviledge come to the Judges, they ought to have sent a special superfees to the Exchequer of the Court, reciting the priviledge: And this resolution agreed with President's Showers in Court.

76 In Dover, the Case was on unique seise que Dover luy puy, and a Dier of seimment was unto the Baron was by the Defendant given in evidence to the inquest, and produced in Court: whereas it was answered, that before the seimment the Baron was tisled of Faith to him and his former wife in special tals, and that after he made discontinuance, and took the Exchequer by the seimment aforesaid, and of such Exchequer died tisled, whereby the dier, who is 90, is remitted, and therefore the second Feme could not be knowed: In this Case, albeit the matter allredges might have abode the Dover, if it been festerly pleased, yet here the Case being only ne unique seise, &c. the Judges were of opinion, that the Jury ought to and; for the Defendant, &c.
The Reason of

Max. 117.

that concerns himself. Non profunt dominis, que profunt omnibus artes; and in tuo quique negotio habitior est, quam in aliena: And therefore in the new inventions of Justic Richel (an Irish-man) in R. 2. time, and of Thiring in H. 4. time, there were found many imperfections; and Richel was overthrown in an Action upon the Case by his own drawing in 2 H. 4. 40. 1 vide Co. L. 88a. 2 in Corbet's Case.

79 A man enforces two upon Condition, that the securers before a certain day shall make an Estate again to the Feoffor for term of his life, the remainder over in fee to a stranger, one of the securers makes an Estate accordingly; in this Case, albeit the Condition was entire, yet it was conceived by many, that it is good for the moity, because the party to the Condition hath dispenses with the Condition by his acceptance of the Estate.

80 A lease for years by adventure accept of another lease (though it be by parol) to begin immediately, this is a surrender in law of his first lease, because by his acceptance of the last lease, he admits himself out of possession, and that the lease hath lawful power to demise him a new one. Vide Dier 299. 11.

81 The Statutes of 27 E. 3. 8. and 28 E. 3. 13. of the Staple were made for the benefit and in favor of alienenarum for trials per medietem lingue, yet if an Alien be Plaintiff, and omit the advantage of requesting it, whereupon a general venire facias much out and is returned, some laps, that thereby he hath spent his time, and that the Judges are not bound ex officio to award any such special writ by reason of the said Statute; for it appeared not unto them by the Record, quod una pars per alienenarum, and by the Common Law the trial was by all English: Wholebod Creation shall not be tried per medietem lingue.

82 If a Guest come to a Common Place to lodge there, and the Host faith, that his house is already full of Guests, and is not willing to admit him, and the Guest faith, that he will make Shift amongst the other Guests; and is there robbed of his goods; in such Case the host shall not be charged therewith, because he refused him, but the Guest shall bear the loss himselfe. Vide Dier 266. 9.

83 If a man hath goods to value of 100 l. and is in Debt 30 l. and by his will gives his wife the moiety of all his goods; to be equally divided between her and his Executors, and then he makes Executors and dies; in this Case, if the Executors discharge the Debt to the Creditor by sale of other satisfaction out of the goods themselves; the Feme Hall have only the moiety of the residue, viz. 40 l. but if they pay the Debt by their own money, the Feme Hall have the moiety of all the goods viz. to the value of 50 l. as the Executors have assisting.

84 The King demandeth a Message running Rent, and afterwards the lease takes a patent of the office of the keeping of the said house; this lesse to be a surrender in law of the lease.

85 In an Ejectione firmae against two, one appears and pleads the general issue, and procede is continues against the other; who also appears, and pleads entry of the Plaintiff into the land since the last continuance, in abatement of the suit, whereupon the Plaintiff remonstrates; after words the same above was found; the Plaintiff, yet he shall not have judgment; so by the remonster he hath confess the entry, which abates his own suit.

86 The raising of a lease in any place (though not material) by the Rising.

87 In Easements in 3 acres of Pasture in Tolland Royal, the Defendant pleads, that W. E. of Salisbury was lessee of Cranborne Chase; And
Max. 118. the Common Law.

And to prescribe in liberty of Chaste, and that the said Chaste be extend as well in and through the said 8 acres, as the said Towne of Rodhard Ioyal, and subsides the 1600lts of rise of the Chaste: The Plaintifie maintaines his declaration, and traverseth, that the Chaste extends not so well as to the 8 Acres, as to the whole Towne: And this issue being found for the Plaintifie, it was moved in arrest of judgment, that this issue and verdict were faulty, because if the Chaste did extend to the 8 Acres only, it was move enough for the Defendant, and therefore the finding of the Jury, that it did extend as well to the whole Towne, as to the 8 Acres, did not contain against the Defendants right in the 8 Acres, which was only in question; But it was answered by the Court, that there was no fault in the issue, much issue in the Verdict, which was acceding to the issue; but the fault was in the Defendants plea, who takes the exception, for he put in his plea worse than he needed, viz. the whole Towne, which being to his own ill-advantage, and to the advantage of the Plaintifie, there was no reason for the Plaintifie to demur upon it, but rather to admit as he did, and to support it in issue: And so judgment was given for the Plaintifie.

118 When several remedies are given, the party, to whom the Law gives them, hath thereby also election given him to take which he will.

1 If a man grant by his deed a Rent-charge to another, and the Rent is arrear, the grantee may chuse, whether he will have a suit of Annuity, or differently for the Rent arrear; but in this Case he shall but chuse once; so if he receive in a suit of Annuity, he shall never after different; or if the different an action in Court of Record, he shall never after being a suit of Annuity; because an annuity in a Court of Record, being in nature of an Action, is a determination of his election before any judgment given.

2 A Rent-charge be granted to A. and B. and their heires, A. pleads the Bials of the grantor: who saith a reply in, A. abesth for himself and any other person to be; B. A. with B. himselfs: Here, B. shall not have a suit of Annuity; for in that Case, the Election and abvity for the Rent of A. barth B. of his election to make it an Annuity, albeit he attended not to the abvity. And here, is a diversity to be observed between the Case above said, where the grantee makes it either real or personal at his election, real, when he vitnaces, or personal, when he brings his lease of Annuity, and where a man may have Election to have several remeys for a thing that is merely personal or merely real from the beginning: As if a man may have an Action of account as an Action of Debt at his pleasure, and he brings an Action of account, and appearc to it, and after in nonsuit, he may have an Action of debt afterwards, because both actions charge the person: The like Law is of an Action, and of a writ of entry in nature of an Action, and the like.

2 If a testament be made of a man, upon Condition to pay a certain Rent, the Demand ought to be made at the Wool-gate, or at some high way leading through the Land, or other most convenient place.
place there: And if one place be as notorious as another, the feoffee, with election to demand it at which he will, and albeit the feoffee be in some other part of the land ready to pay the Rent, yet that shall not avail him, &c. de similibus.

3 If upon a Mortgage the money be limited to be paid to the feoffee, and before the day of payment he make his Executors, and die, in this Case the Mortgagor shall pay it to the Executors, albeit they be not named, or if it be limited to be paid to the Mortgagor or his heirs, then, if he die, it ought to be paid to his heirs, because names; but if to his heirs or executors, the Mortgagor hath election to pay it to either; So likewise if the Condition be to pay it to the feoffee his heirs or assigns, and the feoffee make testament over, it is in the election of the feoffee to pay the money to the A & B, or second feoffee, at his pleasure, and so if the first feoffee die, the feoffee may pay the money either to the heir of the first feoffee, or to the second feoffee at his election; for the Law will not enforce the feoffee to take knowledge of the second testament, nor of the validity thereof, whether the same be effectual or not, but at his pleasure.

4 If testament in fee be made referring Rent, and for default of payment a re-entry; this is a Rent-seeks, and in this Case, if the feoffee be once tenant of the Rent, which after is vested in him, it is at his election whether he will have an Affidavit of Novel diction for the rent arrears; or enter for the Condition broken: but after a recovery in Affidavit he cannot have recourse to his re-entry, because by bringing the Affidavit he affirms the continuance of the Estate.

5 Before the Statute of 21 H. 8. 19. the diestelle might compel the Lord to abow upon him, but since that Statute the Lord must make upon any of the Lando and Conements bolden, &c. he may abow, &c. upon the same Land, &c. as in Lando, &c. within his fee or Seigniory, &c. without naming of any person certain, and without making abow upon a person certain, and therefore at this day the Lord hath his Election, either to abow according to the Common Law: or by force of the said Statute, as by the word may in the same Statute is importet.

6 If a man be dissolutely by an Infant, who aliens in fe, and the alien is deceased, and his heirsicter, the feoffor being still within age: In this Case, it is in the Election of the Diestelle to have a writ of dum huc infra radam, or a writ of right against the alien, &c. otherwise he may make his entry into the land without any suit or recovery: And so it is to be observed, that many times the Law both give a man several remedies and of several kinds, as in this Case by action and by entry, by action, either by writ of right, or dum huc infra radam.

7 When a man hath several remedies for one of the same thing, he it real personal or mist, albeit he released one of his remedies, yet he may use the other: So where a man may enter into lands, and also have an Action real given him by the Law to recover them: In this Case, if the Demandant release to the Tenant all manner of actions real, yet the Daimandant entry is not thereby taken away, because nothing is released but the Action: And so it is to all of things personal, as if a man wrongfully takes my goods, albeit I release to him all actions personal, yet I may by Law take my goods out of his possession; In the manner if I have any cause to have a writ of deposition of my goods against another; here, albeit I release unto him all Actions personal, yet I may by Law take my goods out of his custody: because no right of the goods is released, but only the Action.
8. If one hold of me by Rent-service, which is a service in gross, and not by reason of my Husband, and another, that hath no right; claims the Rent and receiveth it of my Tenant by cession of different or otherwise, and discharges me by taking the Rent; albeit such a mistake, he so seises in taking the Rent, yet after his death it is at my election, either to discharge for the Rent, or taking him to be a distressor to have an Action against the person of the profits.

If an Aboi, Bishop, or Husband in the right of his Wife, seizes of a Rent, or any other Inheritance, that lies in grant and altered, it is in the Election of the Successor or Wife (after the death of the Husband) to claim the Rent, &c. or to bring an Action; for such alienation did not break a discontinuance, and do it is also (by construction) of the Statutes of Wills, &c. cap. r.) in Case of Tenant in Cases.

If Lands be given to the Husband and Wife and their heirs, the Husband makes a settlement in fee, the feeble gives the land to the Husband and Wife, and the heirs of their two bodies, the Husband died; In this Case, the Wife may elect which of the Estates the Will, for both Estates are warable, and her time of Election and power of waiver accession unto her first after the decease of her Husband.

In resigning a warranty against heirs in Greveling, the elector may be vouch'd as heir to the warranty, and the other parties also in respect of the Inheritance decently admitted unto them: So likewise the heir at the Common Law, and the heir of the part of the mother may be both vouch'd: yet in both these Cases the heir at the Common Law may be vouch'd alone at the election of the Tenant.

When a man conveys a thing to another by several Wills, which will admit several acceptations, the interest of the thing granted passeth presently, and the grantee, his heirs, or executors may make their election when and in what manner they shall take it: And therefore if a man sold of a Pannor part in demeine and part in lease vested, bargained, and its to another for years, the Lease may make his election, whether he shall take it by demise at the Common Law, or by bargain and sale: So also in Sir Rowland Heywards Cafe, in the second Report it was said, if a man give two Acres of land, half and the one acre in fee and the other in tail, and he alien both, and hath Issue and uses, in this Case, the Issue may bring a Formedon-in-defender, for which Acre be pleasably, so the election was not determined by the grantor's death because the Estate pass presently by the liberty, and the Issue is determined by descent.

If a settlement be made to two, and the heirs of one, and the other, that hath the free uses, and after he Tenant for life uses, in this Case, the Tenant hath election to have a Mordance; o) a seire facias, o) a Formedon in remainder at his pleasure.

If there be Lord and Tenant by Knight-service, and the Tenant die his heire within age, here the Lord hath election either to take the Ward, o) to discharge for the ferdices and waive the Ward, Per Popham.

If Tenant in tail of a Rent, by appointment, Estates; Common, or other such things, which lie in grant, grants them by deed in free and uses, the grant is not absolutely determined by his death, but it is at the Election of the Issue to make the grant voidable of both at his pleasure; so if he bring a Formedon for the Rent, &c. he makes the grant voidable, but if he discharges for the rent, &c. claims it upon the Ward, he thereby determines his election and makes it void.

The Common Law.

Co. B. 37. b. 4.

Rowland Heywards Cafe.
16 If a man sells of land in the lease the same for life remaining, 
and bestyle himself and his heirs to Warrant, here 
the express warranty takes not away the Warranty in Law; so 
if he in writing grant over his reversion, and the Lease attains, 
and after is implanted, it is at his Election whether he be will 
doth the grant by the warranty in Law, or the Lease by 
the express warranty, Vide 20 E. 3. Tit. Counterplea de Garrant 

e.

17 If a man noblybeth demiseth or limited by way of use of his land to another 
until 300 l. be raised for the performance of his duties, and dues, 
and the heirs, or he in Reversion or Remainder enter upon him, to 
whom the land is nobly, demised, or limited, as above-said, and 
expel him: In this Case, it is in the Election of the person to expel 
his, either to bring his Action and recover the yearly profits, 
which shall be accounted parcel of the summe, or he may re-enter and hold 
the Land, until he may make the whole summe, and the time, in 
which he was so expelled, shall not be accounted parcel: There is the 
same Law in other Cases, viz. of Tenant by Elegit, Statute Mer 
chant, Statuts, Staple, Guardian, who holds over for the double 
tenures: If he in the Reversion, who is to have the Land, acts 
them, they have each Election, as above-said, either to hold over, or 
by their action.

28 For money due upon the sale of goods, or the like, it is in 
the election of the Plaintiff to bring an Action upon the Case, or an 
Action of Debt, 1 For the greater number of Presumptions and Judg 
ment in the point, 2 Every contract executory, where the 
Sum is recoverable in an Action upon the Case barred in Debt. 4 It 
is the more speedy Action, 5 So if the payment be at several rates, no 
rate lies till the last, this lies upon the next breach, 6 It is a forced 
Action in the Register, and maylie, where Debt lies, as 
appears there, Fol. 97, 98, 100, 103, See Dyer 20, 113. 13 H. 8. Gore 
& Woddeys Cafe.

29 When the Register hath two Writs for one of the same Case, it 
is at the election of the party to take and use either the one of the other, 
and it appears by divers Cases in the Register, that an action upon 
the Case will lie, albeit the Plaintiff may have for the same thing 
So if a Man hath a Hannah within an Hone, and hath a List within 
his Hannah, so his own Tenants, if he be his Tenants are disbarred 
by the Lord of the Hone to come to the List of the Hone, he that 
is so disbarred may have a general writ of Trespass, or a special must 
upon his Case: So if an Officer take tell of him, who ought to be 
quitted of toll, he shall have a general writ of Trespass, or an action 
upon his Case, as appears by Fizt. ibid. If a Pole or other Prelate 
be rising upon his journey, and one disbarres the house, upon which 
he rides, when he might disbarre other of his goods, in this Case, he 
may have a general action of Trespass, or an action upon his Case, 
as appears by the Register fol. 100, & F. N. B. 93, 9. So if a Sheriff 
suffer one in execution upon a Statute Merchant to escape, the Count 
sole may have an Action of debt, or an action upon the Case, as 
appears by the Register 98, 9. & F. N. B. 92, 9. & Register 97, 
and yet they may also have an Execution there, or Trespass: 1 As in all 
Cases, when the Register hath two Writs for one and the same Case, it is 
at the election of the party to take either the one or the other.

20 Where
26 Where a Widow is the Ringleader, and ought to have tithes of another spiritual person, he may have either by law for subtraction of his tithes in the Ecclesiastical Court, or in the Exchequer, and set the pretended and rightful one was Ecclesiastical.

27 For offences committed in the Last Case, as relating to take this body of Confiscation, or in like, the Lord may by his action of Libel, vitiate goods and set them, or vitiate and impose them at his Election.

28 If the Treasurer and Under-Treasurer of the Exchequer give power to one by an un-warranted manner to receive money of one and some of the Officers of that Court, it is in the Ringleader to charge the party that receives them, or (in Case he do) his Executors, or otherwise to charge the Treasurer and Under-treasurer, that there is such habitual consent.

29 If a man's western is of his Western-ship of a Nunnery, or as another extends the place taking the pretended case, for his restoration the county upon the other either in Nunnery, the Case, or otherwise is null, as it is at his Election.

30 If the Nunnery was raided, and one at the Nunnery, into all the lands and before the rest. In this Case, the other sisters may come until the Nunnery is open with the power of their action at their Election; the whole house in the Exchequer, O as Nunnery enter into all the lands, and out his Executors here also (if the Nunnery is opened) the other Brothers may give a whole relationship, or, as further obiter, as there Election.

31 If there be Lord and Convent, and the, Lord incorporated other cures than they are unto him, as Nunnery, Georgina, or the like. In this Case, the Monastery may have bread in the Nunnery in a Nunnery made by the Lord for such services, because the Nunnery may evidence the manner of the Church, and so that, being of this Lord by bond and seisin. Rent only, without that, that he holds on the Nunnery, generally; and upon manner as others as the Nunnery is made. By otherwise he may bring a writ to the justice, if he pleads, at his Election.

32 If a man recover in a want of Right of Adnulitie, at the next annuity being several, and shall have a. There impediment without alienating any presentment in him, or his Heirs, but shall not have the Nunnery; or else, he may have a sure possession by agreement, or otherwise.

27 In a manner, by an Act therein against a Partying Laws and Covenants by Writ, and the Nunnery may use him of the Nunnery, and so: Nunnery. In this Case, a, Kissing in a Case, the Nunnery may have bread in the Nunnery, but not in a like manner of the Nunnery. In this Case, a, Kissing in a Case, the Nunnery may have bread in the Nunnery, but not in a like manner of the Nunnery. In this Case, a, Kissing in a Case, the Nunnery may have bread in the Nunnery, but not in a like manner of the Nunnery. In this Case, a, Kissing in a Case, the Nunnery may have bread in the Nunnery, but not in a like manner of the Nunnery.
32 If Baron and Feme bequeath the land of the Feme, the Baron bequeath, the Feme may have a hypotethic will, or a Caution, at her Election.

F. N. B. 92d.
33 A will of reception may be out of the Common Places, or the Chancellor at the Election of the Plaintiff, or a mistake by mutual law, or in a statute which has not been passed, or the like, out of the Common Places, or any of the Tents of his Election.

F. N. B. 104d.
34 Where the Recognizance purchased a sum, made which the Recognizance to obtain judgment: In this Case, the Recognizance may have an absolute quittance, or otherwise may enter and file the Recognizance without any such suit, at the Election.

F. N. B. 112d.
35 If a man may act a will as void upon a statute, Statute, Statute, or otherwise, he may act his execution upon those Statutes, at his Election.

F. N. B. 117d.
36 If a man commences in debt, or names have been in county, the Plaintiff may have an Edict in such County to the whole debt of names, or names, or to make voids of his debt, null and void, in quasi decem libras, &c. to quasi alias decem libras, &c. &c. as names, at his election, Vide M. & E. 7. E. 3. in a suit against Executors these names of such debts, were altered into several Constabularies, the whole debt: Lin in Bullock 39 H. 6, N. 103. the Plaintiff for the whole names of these debts of Edicts to several Constabularies for the whole.

Dier 16d. 31.
44, 5, P. M.
37 When grants a Mayor-charge without these terms per & per, readiness, or any wise, the grantor brings a will of Annuity against the Feme, and after discharge in his suit and annuities, and if it was annuages well done, because the Election to make it an Annuity was determined by the death of the Father.

Annuity.

119 Caues of divisa, alterans of Election.

Co. latt. p. 17.
166. b. 2. a
Lit. §. 245.
Hob. 107. the
Bishop of Cam.
Bury Cate.

2 When partition amongs Coparceners, the same shall have the Election; for the shall have Civitates pattern, but if the testator make the partition, he takes her privilege of Election, and shall take last.

3 If a partition shall have the right of went, as above, that then the Partition shall be the Partition and binding up of the lot, such Partition without from 60 part shall truly pay unto the Receiver; and an act of Parliament, of the wicked house of the land subsoil, &c. the tenth part thereof, without any right of touch of the nine parts by the Receiver to a deed partition; for it is against common reason, that any man should take of such Partition, and there the choice of his oblation, against the Rule of Lit. & 245. by the tenth of the tenth part upon the proportion he owes with the same parts, therefore for the partitioner, who is in the name of the unanswer to the Partition in this Case, to set one part of the touch, which he may attempt to be just, to give him partly power to the other, and the partition was as reasonable as to lay plainly, that he should be able to set out what title they pleaded.
1. Where the Tenant or Demissant may please a general lease; thereupon the general lease pleased, he may give in evidence as many distinct matters to have the action of right to the Demissant or Plaintiff, as he can.

2. Where a special Mortgage contains bounds as a trade matter, the Tenant or Demissant may either make choice of one matter, and be pleased to have the Demissant or Plaintiff, or to have the general lease, and to take advantage of all, or he may please to part one of the plans in here, as to another part another plan, and to the conclusion of his plea that above described.

3. In Executions being used as Administrators, and in actions by plea, that he be Executor; for in such cases, he may determine being used as Executor: For he was barred, as to the action of the debt, to have Dod by Administrators, but not to the action.

4. Who was more bound jointly and severally in an Obligation, the one bond made, remitted, and taken in Satisfaction, and he (not long after) was the other: Then afterwards the act shifting, the other brought an Audite quærum; but it was not admitted: for when the Plaintiff might have had his action against the Defendant upon the act, yet until he be satisfied thereon, the other shall not be entitled, nor have his Audite quærum: because the execution upon the act, that actuates, was not capable, being without satisfaction.

5. If one be barred by plea to the writ, he may have the same writ again: if by plea to the Action of the debt, he may have his right Action: If the plea be to the Action, and he be barred by judgment, controller or pervert, in personal Actions it is a bar to the same; but in real Actions he may have a wright of an higher nature, and shall also the same right again, because it concerned his Feudatory and Surtains: So if one be barred for a Novel distinction, yet upon a being a distinct or other special matter, he may have an Action of Mortmain, Aid; Beaid, a writ of Grant for distinction of the Mortmain or the like: And if it happen to fall in any such real action yet may he have (half of all) his right of right, in which the whole matter shall be reduced without again: Novell, Novell; in Mortmain in every other way and in a suit of suit in the nature of an Aid, because they are both of the same profession and of the same matter: he done by a right of Aid, he brought a right of Aid, because they are another one of the same matter: yet in a Formacion to defend, about the Warrant be barred by pervert or trespasser, yet the issue in case may have some succor in this case: But this is the constitution of W. 4. 2. and 8. of the Statute; if the Statute he breaks a suit of Aid upon a Henry by other name to the Tenant, yet this suit shall have a new suit of Aid: Yet he claimed to this court as before, and pervert, and then by the Statute he shall not be barred upon a former exclusion of the Statute, to bring to the Rights of the in that distinction, and may this accords to H. 6. 4. and 3. Eliz. 13. 9. 13, 14, 15 Eliz. 13. Doth he Base Heir of Aid.

6. In Trespass the Defendant makes title, for that A. W. being false in the, leased to him, the Plaintiff makes title by tenant, and trespass the lease, and give; for it may be true, that A. W. was true, and yet that a tenant was call to the Plaintiff, therefore the lease is not material to be trespass: Moreover it comes, that either the one.
The other may be traversed. So in Trepass the Defendant pleads, that A. was taken, who embossed B. who embossed C. who embossed D. who stole the Defendant's horse; here, the Defendant may traverse which of them may be pleaded.

If a man releaseth, squam Jus generally, all his rights are thereby released; but if the Viscounty releaseth to the plaintiff's conveyance, viz. recoverandri, five profoquendi in judicio, thereby his right of equity is irreleseth: for, when a man hath divers actions to come to his right, he may release one of them in special, and retain benefit of the other, and with this advice Léc. fol. 135 b. & 136 a. Pl. 36, 6. 421 H. & 33, 21 H. 7. 34. 18.

8. Mortmain in the Statute of 14 H. 6, the Lord may at this day upon a person certain, so upon the Steward, according to the Common Law; For the Statute taketh not away the Common Law in that Case, but gives liberty to the Lord to put the one on the other.

9. At the Léech. (2d & 3d Wm. peregrine in Case of Pleas) by present, when the Lord and his Bailiff comes to distrain, it being beyond the action, he may well make return, and to release himself, as it was resolved in Revils in Co. lib. 4, 41 and others, and other Judges (which see in the Case of Advowson Co. 9, 21 and others) otherwise, he may have an Action of Trepsal against the Lord, ofallis.

10. Vide supra. Max. 3b, 22, 23, 12 H. 3. 42. 4b, where perseveray behiers in Gavelkind may have a writ of recovery, and have a suit by assise; being written by one of their Corporations. See also supra. Max. 18, 20 and 21.

F.N.B. 8. e.

At a man baronness, and sendo into Warranyn, and other, he may have a suit of county, and assign the Covenants, which he sue upon, because the Defendant to the Plaintiff, as before the Defendant and Plaintiff. He in repossession, not being written by one of your Corporations. See also supra. Max. 18, 20 and 21.

F.N.B. 20.

If a man baronness, and sendo into Warranyn, and other, he may have a suit of county, and assign the Covenants, which he sue upon, because the Defendant to the Plaintiff, as before the Defendant and Plaintiff. He in repossession, not being written by one of your Corporations. See also supra. Max. 18, 20 and 21.

By reliefe, action for remainder.

The Lessee may appear, as before the Sir. upon the right, and the Plaintiffs.

Upon the right, and the Plaintiffs.

F.N.B. 29.

It is a principal case, 3d Wm. peregrine against Baron, for whom he did. In Blank, the Baron appoints in proper person, and the Feme to the Baron. He hath now a sufficient warrant; and after upon judgment, from upon the default of the Feme against, a suit may proceed to 3d Wm. peregrine against the Baron, and to the Defendant, and that is proper to be recovered.

F.N.B. 135 d.

And 3d Wm. peregrine against Baron, where he was, though in the Mote, that was brought against him; and if he be in the Warranyn, and afterwards left in the Action against him, in which he hath obtained against him, that is now recovered, the Defendant, then shall he have a suit of habeas corpus as usual, and shall have the amount of the judgment, and a suit of habeas corpus as usual.

Recovery of value.

F.N.B. 39.

F.N.B. 135 d.

3d Wm. peregrine against Baron, where he was, though in the Mote, that was brought against him; and if he be in the Warranyn, and afterwards left in the Action against him, in which he hath obtained against him, that is now recovered, the Defendant, then shall he have a suit of habeas corpus as usual, and shall have the amount of the judgment, and a suit of habeas corpus as usual.

He is in a suit of habeas corpus as usual.

Recovery of value.

F.N.B. 9, 6.

14. For Heere's a case, where the Lord may either allege na suit, and to be only two sutorial actions to come by it.
Consenlus nullus Erratum.

1. When in a suit of right the Jury, that are to try the main right, are once impartial by the four Knights with the content of both parties, none of the 12 to colour can be challenge; because it is by content of parties.

2. At the Parish of a Church charge the Glebe of his Church by his Deed, and the Patron (having the Templ to the Advowson) and the Diocesan confirms that grant; such grant shall stand in force according to the purpose thereof; because none by the joint content of all the parties that can claim any interest in the Advowson: So likewise the Patron and Incumbent of a Chantery, no party charge the lands, upon the true reason: because the whole interest resides in them, and the Diocesan is not to meddle therewith.

3. To avoid many inconvenience, Attachment was appointed by the Law, which is nothing else but the content of the particular Tenant to the Advowson's grant: And therefore it is said in the old Book, Si Dominus attornatus, potest terram semper conger voluntatem tenentis, tale sequatur incontinentem, quod pollutum subhujus Capitali inimico fio, & per quod tenentur, hoc quidem dedicatius facere cire, qui eum damnificaret intende. For that content of the Tenant is conclusive, and him the Tenant not the purchaser the Rent; and to perform all other services voided of in respect of the land.

4. In & Ejaculation hereupon the Plaintiff's makes suggestion to the Court; that he, the Defendant, and one of the Comers of the Owner of the Castle of Woltercot, and therefore that he had caused the Venire facias to be pressed to the other Comers, and the Defendant also, concerning the suggestion; the venire facias was allowed accordingly; and upon the trial the Verdict passed for the Plaintiff: However afterwards, the Court was power to arrested judgment because the suggestion did not contain principal challenge; fed non placearn; because the venire facias was awarded ex aliensi partim.

5. A Common Recovery differs from the judgment upon pressing in other real actions, for this reason (amongst others) because it is had by the mutual content of the parties, 39 E. 3. 2. The Defendant and Tenant content, that two of the four in a suit of right shall be Esquires, albeit by the Law they ought to be all Knights, and well; because by content, 44 E. 3. 3. Trial of Villainage ater natural trial by content, 7 H. 6. 7. Placer of sequestration in upon Condition without Deed and re-entry, is good, if the other part contents the Condition, 34 E. 3. 3. Title Office de Court, 12. If he be twome and one depart, another of the Panel (by content) may be twome, and with the 11 give the Verdict, 11 H. 6. 13. The Court in a Quare, impedia fresh (by content) give longer day, then is limited by the Statutes of Marlbridge H. 4. The Statutes of 2 E. 3. & 23 E. 3. provide, that neither for the great Seal, not little Seal, Justice shall be provided, yet when the matter concerns the King only, if he command it, it may be Payo. F. N. Br. 21. b. 37 H. 8. A Tenure may be created at this day by content of all, notwithstanding the Statutes of que comprores terrarum, 6 E. 6. Dier 78. By special content of the Parties re-entry may be for default of payment of Rent, without demand thereof.

6. In a suit of Tert, to recover a fine, the Tert assigns was so that the suit of Covenant bare Tite the 24 of April, responsible 23 March, which in truth was 15 of April, and so returns before
the Testa. And it was resolved that per toam Curiam, that it should be amended; because lines and common recoveries are but common assurances had by the mutual consent of the parties, and therefore such misprisions may be amended; to short in other actions the assessment shall be in such case: 84th 12 b. 2 El. inter Norreys and Bulstrode.

And Mr. C. above to enforce a recovery in 19 H. 8. and the Testa was a day after the return; nevertheless, because it appears to be the mistake of the Clerks, and was in the case of a Common recovery (which perhaps in content) it was amended.

7. Where there is a diversity between the parties, the court in its discretion, may adjudge and decree the land, &c., and whereby the agreement amongst朋友; for true it is in controversies adversarial to the possession of the Common Pless that the patronage of the same, or the estate thereof, or common proper, or common ruin, or common the necessary to be brought to the return, as it was to 33 12 El. for such Common recovery, 41 H. 8.

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Land may be amostitised by Licences granted by the King and all
the Lords immediate, and mediate of whom the land is holien; for it is
a Rule in Law, that in the case of a grantor prohibited, contentu
tamen ornatum, in qvorum favorem prohibunt eft, potest fieri, and
qui libet potest renunciare, &c. And the Licence of Lords immediate
and mediate in this Case shall not be to tenents, viz. to a dispensation both of the Statute
of Quia captas et terram, and also of the Statute of Mortmain.

1. If a man make a gift in trust upon Condition, that he shall not
make a Lease for his owne life, or if a man make a lease for life of
years upon Condition, that they shall not grant over their Grant to let the
land to others: In these Cases and the like, alcast Tenant in tail
path power by the Law to make a lease for his owne life, and the
Lease for life of years to grant end let, yet by the Condition, and their
owne agreement they have restrained themselves of the liberty
which the Law gives them: So likewise if a man make a gift in tail
upon Condition that he shall not make a lease for three lives of
years according to the Statute of 32 H.8. In this Case also the Con-
dition is good to restrain the Tenant in tail from making such leases;
For, albeit the Statute both gives him power to make such leases, yet
that power may be restrained by Condition and his own agreement,
because this power is not incident to the Grant, but given to him
collaterally by the Act, according to that Rule of Law, Quilibet potest
renunciate, &c.

2. Where he Lord and Tenant, whilst Tenant holds of his Lord
by life and 20s; Rent, here, if the Lord by his Deed conforme the
Bcates of his Tenant, to hold by 2s d. or by a penny, or a halfs penny:
In this Case, the Tenant is discharged of all the other services, and
shall render nothing to the Lord, but what is comprised in the same
confirmation: For, the Lord by his confirmation to hold by lesse fees,
blesk hath abdicated himselfe of the power and interest, which was be-
fore legally due to him.

3. By the Common Law, if Patron, Diodracy, and Incumbent,
has joined in a grant of the Rectory or Vicarage, they might have chas-
ged it, or conveyed it to whom they pleased; because they all together
had the whole right in them, viz. the Patron, to present, the Diod-
cracy to admit, Institute and bound and the Incumbent, to enjoy the
giles, tithe, and other profits; and all these had liberty to depart with
their several rights and interests at their pleasure.

4. I. A be owne to of land or in possession, and be afterwards
in lesse; in this Case, A hath a good lawful right, and yet if A being
out of possession granted away the land, or contracted for it with an-
other, he hath now made his good right of entry, presence within the
Statute of 32 B. & C. 9. and both the grantor, and grantee within the

5. A enforces B. upon Condition, A. and B. joyn in the grant of a
Rentcharge out of the land to C. the Condition is broken, A. enters,
In the case, it was objected that this grant entred, as the grant of
B. and the confirmation of A., which confirmation could not alter the
quality of the Grant: Potest, it was rejoined and assur’d that the
land was chargeable with the Rent, and one of the tenants appeared
for it was, that every fee may be charged one way or other, and when
both joyn in the grant, they have the whole interest in the land; it must
nede be charged with the Rent, for if it cannot be done by their joint
grant, there is no other way to do it.
7 A. and B. joint-l Cormants for life, and to the heirs of the body of A. intermarried, and have issue C. who after the death of A. deceased B. and
inheret a Common recovery, and B. releases with warranty and uses;
In this Case, the Estate taken had been barred; albeit B. had not re-
leased with warranty: so it is reasonable, that the entail should be
cut off this way, as well as by joining in a fine, or surrender of B.,
and recovery after against the heir: because they both had power to
barre the Estate taken one way or other, having the whole Estate in
them subject to be docket.

8 Littleton faith, cap. Difficult. fol. 144. that it is a Partime in the
Law, that land in sole-simple may be charged one way or other: So
also it is a Partime in the Law, that every right, title, or interest
in present or futuro by the joining of one, that may claim any such Right,
Little, or Interest, may be barred of extince; And therefore at the Com-
mon Law if the Donor and Donee have joined in the grant of a rent-
charge, and after the Donor has died without issue, and the fee has
reverted to the Donor, that he should have held it charged, and yet he
has but a possibility at the time of the charge made; Because all those
who had any Estate or Interest therein in present or in futuro did Jove
in the charge: So likewise (a fortiori) if they have joined in a lease for
years, and the Donor has died without issue, the lease has been good
against the Donor. In like manner, Lease for 400 years destroys life
to his executor, the remainder to M. and B. M. marries, her
husband and the release to the Executor; In this Case, albeit M. had
but a possibility, yet a release by her Husband and her to the Tenant
in possession takes the whole interest of the term of 400 years in the
Executor; because none other has interest in present or in futuro but those
that Joins in the release, and both condescend to it, the one in releasing
and the other in accepting thereof. For if they have joined in an align-
ment of the term, it had also been good, causa qua supra; And in Case
both Joins in a grant; it is the grant of him; that hath the term, and the
release of confirmation of the other.

9 If a man make a lease to another for 21 years, if the Lease shall
be long life; here, if the Lease, and Lease Joine in the grant of a term,
by Dem to another and after the Lease be within the term to granted,
the grantee shall enjoy the land during the residue of the term absolutely.
Nulla reus per Montagius, Hales, Molinieux, & Browne.

10 In the Statute of 23 H. 6. 10. which enjoyns Sherifts to take
bail of prisoners within their guard for appearance upon reasonable
security of sufficient persons, &c. Here these words, Reasonable security
of sufficient persons, do not to restrain the Sheriff, but that he may (if
he pleases) take security of single person; for the Statute leaves it
to his discretion to take such security as he thinks fit; because he is to
be answer'd, if the party appears not at the day in the writ, and therefore
because it is at his peril, if he take not good security of the party arrested,
and he hath liberty to imploy that power by taking security, then
the statute mentioned: for those words import rather than a
command, and Quibus poeit remunicare &c.

11 A man seised of land in right of his wife makes a settlement in fee
to his own wife, and declares his will to be, that the feoffess shall
be seised to the use of his wife for life; and then comes the statute
of Wills 27 H. 8. 10. which saith, that the Wife shall be deemed in
possession of such an Estate as he has in the use; Here, the Question
was whether 02 no the Feme should be remitted: And (by Shelley) it
follows the is remitted, because the comes in not by her own Act; but
by an Act in Law, viz. by the Statute, and there is none against whom
the Common Law.

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12 A Lease is made for years, upon Condition, that the Lease shall not alien to any person without the Leissee Licence the land nor any part thereof, the Lessee gives him Licence to alien part, the Lease alters the residue without Licence; and it was adjudged that the Leslee might enter, notwithstanding the dispensation with the condition in part, and that the condition was entire.

13 Baron and Feme are Leases in special tails, the Baron alone leaves a fine to his own use, and devises the land to the Feme for life (the remainder over) rending Rent, the Baron dies, the Feme enters, and pays the Rent, and dies; In this Case, the fine is barred for two causes, 1 By the fine, which hath barred his conveyance to the entail, 2 By the Remitter waived by the mother.

124 Omnis Ratihabito rei-a-trabitur, & mandato seu licentia equitariarum.

1 If there be Mortgageor and Mortgage of Land, and at the

case of payment of the Pempe for; the redemption of the Land a

Stranger ( of his own head ) in the name of the Mortgagee of

his bate ( but without his consent ) must tender the money,

and the mortgagee accepted thereof; In this Case, the Mortgagee

of his bate agreeing thereunto, it is a good tender and satisfac-
tion, and the Mortgagee; or his bate may re-enter into the Land

mortgages immediately after such tender and consent thereunto: for

Omnis Ratihabitio, &c. bowbeit the mortgagee or his bate may bis-agree

thereunto, if he will.

2 In Case of Bagger egine and Mulier pusilne; regularly none

shall enter upon the Bagger to sell the Estate in the Mulier, but

the Mulier himselfe, or some other by his special command; no more

then in Case of a fine to abode it by claim within five years;

for there also, a Stranger cannot ( of his own head ) in the name

of him, that right hath, enter within the five years to abode the

fine; bowbeit in both these Cases, 1 If the Mulier agree there-

unto before the desirous of the Bagger: Di 2 It be that right

hath before the five years be per done: then thereunto, the claim

good, and all avoid the Estate both of the Bagger and of the

Consort; as it was holden in the Lord Audley's Case, Mich. 38,

& 39 Eliz. in B. R. per Curiam: Quius omnium Ratihabitio, &c. and

the last Case shewed well with the words of the Statute, So that they

purse their title, &c. by way of Action or entry, &c. and so also is the


3 If an Infant make a Testament in Fea a Stranger ( of his own

head ) cannot enter to the use of the Infant, for the Estate is voidable;

as it was held P. 39 Eliz. in Co. B. per Cur. But where an Infant or a

man of full age is disinherited, an entry by a Stranger ( of his own head )
The Reason of

Max. 125.

is good and well, eth presently the Estate in the Infants or other person: So it is also if Tenant for life makes a settlement in fee, and a stranger enter for a feoffment in the name of the Reviver of the Estate shall be thereby vested in the Reviver of the Estate.

4 If an Infant of a man of full age have any right of Entry into any lands, any stranger in the name and to the use of the Infant of a man of full age may enter into the lands, and (regularly) this shall vest the lands in them without any commandment precedent or agreement subsequent: But if a settlees, levies a fine with proclamation according to the Statute, a stranger without a commandment precedent or agreement subsequent within the five years cannot enter in the name of the settlees to avoid the fine, Co. I. s. fol. 106. s. in the Lord Awdleys Cafe: And that resolution was grounded upon the constitution of the Statute of 4 H. 7, 24. boldbatt a tenant subsequent within the 5 years to sufficient, as is above said.

5 The Lord of a Manor may by parol retain one to be Steward of his Manor; and so may he do a Bailiff by parol solely; and each retainer shall serve, until they be discharged; for his permitting of him to be Steward or Bailiff without commandment is a ratification of his Office.

6 If another man make a difference to my use, and afterwards I agree to it. In this Cafe, I am a Distel, ab initio: albeit the agreement therunto was after the fact done: So if one rabish a woman, and the afterwards affente to the Awdleys, in this Cafe, this agreement that have a retrospect to the first Act, and shall be then said to be executed.

125 Nemo regnatur accedere seipsum.

In trial of Challenges, if the cause of the Challenge touch the Commons or interest of the Jurors, he shall not be examined upon his oath concerning the same: but in all other Cases he shall be examined upon oath, the better thereby to inform the triers.

2 Regularly, none shall be compelled to answer that which makes against him; so every one ought to answer that which makes for him, and is for his advantage: Am therefore in all Cases, when an interest or Estate commences upon Condition precedent, be the Condition or Act to be performed by the Plaintiff, or Defendant, or any other, and be the Condition in the affirmative or negative, there the Plaintiff ought to know that in his Court, and aver the performance thereof: So in such Case the interest or Estate commences in him, by the performance of the Condition, and is not in him, until the Condition be performed: but it is otherwise, when the interest or Estate passeth presently and vest in the grantee, and is to be defeated by matter ex parte facto, or Condition subsequent, be the Condition or Act to be performed by the Plaintiff, Defendant, or any other, and be the Condition in the affirmative or negative: So in such Case, the Plaintiff may count generally without involving the performance thereof, and this shall be placed by him, that will take advantage of the Condition or Act ex parte facto, and not by the Plaintiff; so no man is bound to betray his own cause. Vide plus ibid.

3 In Foggasles Cafe in the Commentaries, there was an agreement with the Customer before the landing of the goods, and if there has been any default in the Defendant afterwards to have made the agreement good.
the Common Law.

Max. 126-127.

...votv«K inili«, itonght to hshe Veen stiesvgev the A»lo,«er snv not
b? the Dekenvsnt , decsukettmsoe sgsmlt htm : So ttül.z tt.7. i 1.
tls Äherttketske one b? kozceok s «pi« , he vothwen , dut tthetbere-
«?on returne » non ettinvcnrus, he lhsitde «juvgeo a trerMKz »b
Inicio: Snv in korh Cske, in lslletmpztkonment bzonght sgstn« htm,
ttskutktctentkozhtmtosvesvge , thsthetossShertike, »n« thstthe
«vis« csmc s« htm,»nv thstb? kozcethereokhe t«Ke »nv tmp:tkonev ths
psrt?, »nv then rovemsnv , i^memsisMon, snosughtnottol«?,
thsthe returnev , nonek inveoms, becsokethst mskes sgstntthtm,
thstts, mskeshim s trerpslro^äbimri«: b« theKtke rltume onght to
be sSesvgeo b? theVlstntttre, tsho tsto tske svvsntsge thereok.

4 If the Ecclesiastical Court will enjoin a man to be examined
upon oath for the discovery of any Cohen or Freed concerning himself,
a Habeas Corpus; for albeit the original cause belongs to their Co-
trigue, yet the Cohen and Freed are essential, and the enjoining of the
Act to be done base side to punishable both in the torture-chamber, and
by the penal Law of fraudulent gifts, and therefore not to be erected
out of himstle by his oath.

126 Nec se infortunios & periculis exposcere.

1 In making continual claim, if the adverse party be in waitte in
the way with Weapons, or by words menace to heat, mayhem, or
kill the party, that should enter; in such Case, the Law allows a
claim, made at once the land as he were approach to scare of Eath,
or other bodily hurt: Potusveht (fame &rion) Tali debet esse mens,
qui cadere potest in vnnam constantem; & qui in re continere mortis periculum,
& corporis cruciacionum; Et nemo tuncris se infortunis & periculis exposcere.
And therefore every doubt of stray is not sufficient; so it must con-
cerns the safety of the person of the man, and not his houses or gods,
for the scare of burning his houses, or taking away, or spoiling his
goods, is not sufficient, because he may recover the same, or banna-
ges to the value thereof without any corporeal hurt; But if the Jury
upon a special Merit be bind, that the assistance did not come for scare
of corporeal hurt, this is insufficient and it shall be intended, that they
had evidence to prove the same: And it is certain that scare of Impson-
ment is insufficient; because such a scare insufficient to annoy a born, or a
Witt; for the Law hath a special regard to the safety and liberty of a
man, and imprisonment is a corporeal summage, a restrain of liberty, and
a kind of captivity.

For the time of doing things it coundenanceth more.

127 Things done in time of Peace, than in time of Warre.

1 If a man be taken of tenements in fee by occupation in time of
Warre and thereof be taken in time of Warre, and the tenements
belong to his herte, such tenant shall not out any man of his entry,
Vide 7. E. 2. Now s time of Peace is, when the Courts of Justice be
open, and the Judges and Officers of the same may by Law protect
man from wrong and violence, and distribute Justice to all: on the
other side, whereby invasion, intersections, rebellions, or the like,
the passable courts of Justice is distracted and stopped, as the Courts
of Justice be (as it were) hut up (nam inter arma silent Leges) then it
is laid to be a time of Warre: And the trial thereof is by the records
and Judges of the Courts of Justice: so by them it will appear,
The Reason of

Whether Justice had her equal course of proceeding at that time, or no: And this shall not be tried by Jury, but by them, as afore-said: And therefore albeit during these late troubles the Courts of Justice sat only at Westminster, as in other times of Peace, yet quære, whether an occupation so excellent at that time within the Kings Quarter's would barre the dičtess, so; although they late, yet had they no power there to execute their judgment.

2. If a man be distrest in time of Peace; and the distress is cast in the time of Warre, this shall not take away the entry of the dičtess; so likewise in real Actions, the Explees, or taking of the profits, are laid tempore pacis; so if they were taken tempore belli, they are not accounted off in Law: And as it is in Cases of distress, so is it also in Cases of presentation: for no usurpation in time of Warre puttheth the right Patron out of possession, albeit the Incumbent come in by institution and induction: And time of Warre both not only give pričilege to them, that be actually in Warre, but to all others within the Kingsome; And albeit the assumption and induction be in time of Peace, yet if the presentment were in time of warre, it puttheth not the right Patron out of possession.

3. The Law counterenanceth none the proceeding against a Felon in time of peace, then in time of Warre: And therefore if a man commit Felony in time of Peace, he shall by judgment forfeit his lands, this manner of bypes; 1 quia supellex per column, 2 quia abjuravit regnum, 3 quia ululatus est; but they, who are hanged by spurious Law, (in favorem belli) forfeit no lands.

128 Things done in the day more then those done in the night.

1. It is not lawful to hold pleas in the night time o, before Sun-rise; And therefore the Marroir faitheth, Abusion est que lon tient pleas par Dîmenches (v. Sundayes) ou par autres jours defendres, or devant le Soledîx, ou neidianter, &c.

2. For damage slaine a man may dislikes in the night, because otherwise, it may be the beasts will be gone, before he can take them, but le a Knt o, Device the Lawe cannot dislikes in the night, but it ought to be done in the day time, and do it is also of a Rent-charged. Vide supra 110. R. 4.

3. For Robbery committed in the morning, ante lucem, the summe shall not be charged: And albeit no time be specified in the Statutes of Winchester 17. E. 1, yet it shall not extend to Robbery done in the night; because no laches or negligence can be adjudged in the Hypothese by defect of a good guard in the night: Rather can they in the night make pursuit or inquire after them; 3o as the Scripture faitheth, The day is made for man to labour in, and the night to rest. Note that the Statutes of 27 El. 3, hath altered this Law.

4. At the Common Law, if one be slaine in a Towne by day, viz. so long as there is full day light, and be that slaine him escape, the Towne, where the Felony was committed, shall be amerried to the escape; And so is it held in 31. E. 3. Tit. Corone 238. Dum quis Felonicex occisus fuit per diem ni fi felo capax fuit, tota Villata illam oterturer; and with this agrees 3 E. 3. But if such a Murder o, Sponsties be committed in the night, the Towne shall not be a merried by the Common Law, because no laches or negligence can be attributed to them. Vide plus ibid.
Max. 129,130.  

The Common Law.  

When things are fit to be straightened to a certain time, it restetheth, according to the nature of the things.

129 Sometimes a whole day sufficient.

1 Where goods are lost in warre, and recovered from the enemy by another of the Kings subjects, the owner shall pate them again, if he make forth suit before the Sun-set, otherwise no.

130 Sometimes a whole yeare:

1 No protection either protecture or morature shall endure longer, than a year and a day next after the Term or date of it; and to it is also of an Easoin de service de Roy: If a protection bear date 7 die Januarii, and have allowance pro uno anno, the re-luminons, re-attachment, or re-garntment may be sued 8 Januarii the next yeare: ytowe Britton (fol. 180, 182, & 183.) treating of an Easoin Beyond the Grecian fees in a Pilgrimage, 

ce, faith thus, Aucun gent ne credit et puchafent nost letters de protection patents durable a x an. ou 2, ou 3 ans, & Jaloususy font attorneys generals sui par nous letters patents: Et ceux font bien et juge-ment; car nul grand Seignior ne Chevaler de nostre Realme ne droit prendre chinon sans nostre congé, car issuit poet le Realme disigner de fort genere.

2 The Law in many Cases hath limited a year and a day to be a legal and convenient time for many purposes; As at the Common Law upon a fine or final judgment, and execution in a writ of right, the party grieved had a year and a day to make his claime; So the Wife or heire hath a peace and a day to bring an appeals of death: If a Willam remaineth a peace and a day in ancient demeline, he was privileged: If a man be wounded, poplous, 02, &c, and dieth thereof within the peace and the day, it is felony: By the ancient Law if the Feoffor of a devisor hath continued a peace and a day, the entry of the devisee for his negligence been taken away; After judgment given in a real Action, the Plaistiff within the peace and the day may have a Habere facias feiemam, and in an Action of Debt, or a Capias, fieri facias, or a levari facias. And in many other Cases: But this time of a peace and a day in Case of continual claime is since alter- ed by the Statute of 32 H. 8.

3 By the Statute of Wilt. 1, cap. 4. It is provided, that if a man; Dog, or Cat escape alive out of the Dip, nothing, which was therein, shall be assigned towse; but that the things shall be kept safe by the view of the Sheriffe, Coroner, or other Bailiffe of the King, &c. So as if any come in and prove, that they are his Lords, or perish in his carrage, they shall be remitted unto him without delay; and this is but a declaration of the Common Law: for Bracton (who wrote before this Statute, viz. Tempore H. 3.) velteth the same in substance; and if the right owner die, his Executors or Administrators, may make the like prize within the same time: So it is also of FESCian, JETian, and LAGian: And if any living creature come a loose: or the goods may be known by the marks or covert, it feasted.
The Reason of

Max. 131

4 In many cases concerning time, the Law demands a year and a day a convenient time, as in Case of an Estate, if the owner (proclamations being made) do not claim it within a year and a day, it is forfeit: the like time is also given in Case of descent after entry of claims; but in Case of waste, the year and day shall be accounted from the taking or seizure of the goods as waste; for albeit the property is in law vested in the owner before seizure, yet until he seize and take them into his actual possession, it is not known, who claims the waste; no to whom the owner shall resort to make his claim, and to manifest his protest: And if the owner bring his Action for them within the year and day, it sufficiently, albeit the Writ be not given for the recovery of them, until afterwards.

5 If a man be imprisoned upon a Capias pro fine at the Kings last within a year after the judgment passed against him at the suit of the party; and the Coasier suffer him to escape the party shall have an Action of Debt against the Coasier for his damages recovered by the judgment, although he was not imprisoned at his suit, but if he be taken after the year, the party is put to his feite facias, &c. Vide infra 189. 41.

131 Sometimes the last part of the last day.

1 The time of demand of a Rent is such a convenient time before the Sun setting of the last day of payment, as that the money may be numbered and received: Howbeit if the tenant be made to him that is to receive it, upon any part of the Land, at any time of the last day of payment, and he refuseth, the Condition is saved for that time; for by the express reservation the money is to be paid on the day immediately, and convenient time before the last instant, is the utmost time appointed by Law, to the intent that then both parties should meet together; the one to demand and receive, and the other to pay it, so as the one should not prevent the other. Vide Dier 130. b. 70. & 222. 27.

2 If the reservation of the Rent be (as Liti. put it) the Case S. 325. at certain Feasts, with Condition that if it happen the Rent to be behind by the space of a week after any day of payment, &c. In this Case, the Feasor wetheth not demand it on the Feast day, but the utmost time for demand is a convenient time (as above-said) before the last day of the week, unless before that the Feasor met the Feasor upon the land and tender the Rent, as is above-said.

3 If Rent be granted payable at a certain day, and if it be behind and demanded, that the grantee shall distrain for it: In this Case, the grantee nieo not demand it at the day, but if he demand it at any time after, he shall distrain for it: For the grantee hath election in this Case to demand it when he will, to enable him to distrain.

4 If Rent be granted payable upon Michaelmas day or within 20 days after; it seems the grantee must demand it a convenient time before Sun-setting both upon Michaelmas day, and the last of the 20 days; for in this Case, it seems to be in the election of the grantor; to render and pay it upon Michaelmas day, or the twenty-first day at his pleasure. Tamen quere.

5 If Rent be referred to be pays upon Michaelmas day, and if it happen to be behind fifty days after, that then the Leesor may re-enter; In this Case, the Leesor must demand it a convenient time before Sun-setting upon the fortieth day, to give advantage of re-entry: Howbeit
the Common Law.

6 If the Rent be referred to be paid at the Feasts of Michaelmas and the Annunciation, or within a month after the said Feasts by equal portions, and if it happen the Rent to be deferred after any of the said Feasts and paid by the space of 8 weeks, that then, &c. In this Case, it seemed to Sanders Chief Justice, Whiddon, and others, that the 8 weeks should be accounted from the 8 day after the Feast, because that makes for the benefit of the Lessee and against the Lessor; who grants, and the 8 day is a day of payment at the Election of the Lessee, as well as the first Feast and day: Tamen quare, because no Feast and day certain is mentioned before, but the Feast day; and the money is not any day, nor comprehends any day in certain, &c.

7 In Case of forfeiture of a Copy-hold upon non-payment either of Rent or Fine, there must be a demand thereof, at the time it grew due, or some time after, of the person of the Tenant.

When no time is limited, the Law appointeth the most convenient, and in some Cases, the immediate time.

If a Feasment be made upon Condition, that if the Feasor pay a certain summe of money to the Feassee, that then it shall be lawful for the Feasor and his heirs to enter; in this Case, if the Feasor die before the payment made, tenant by the heir is void; because it was limited to be paid by the Feasor himselfe, viz. during his life; for living no time is limited, the Law doth appoint the time, and that is, during the life of the Feasor; wherein others diversities are worthy the observation; As first, between the said Case of the Condition of a feasment in Fe, for the payment of money, where no time is limited: And the Condition of a bond for the payment of a sum of money where no time is limited: For in such a Condition of a bond the money is to be paid presently, viz. in convenient time. Any yet in Case of a Condition of a bond there is a diversity between a Condition of an obligation, which concerns the doing of a transitory Act without limitation of any time, as payment of money, delivery Charters, or the like; for there the Condition is to be performed presently, that is, in convenient time, and whereby the Condition of the Obligation the Act that is to be done to the Obligee is of his own nature local; For there the Obligee (no time being limited) hath time during his life to perform it as to make a feasment, &c. In Case where the Obligee doth not happen the same by request. Again, where the Condition of the Obligation is local, there is also a diversity, when the concurrence of the Obligee and Obligee is requisite, (as in the Case of a feasment, &c.) and when the Obligee may perform it in the absence of the Obligee, as to acknowledge satisfaction in the Court of the Upper-Bench; for here albeit the knowledge of satisfaction is local, yet because he may do it in the absence of the Obligee, he must do it in convenient time and hath no time during his life.

2 Thos
There is a diversity between a Condition of an Obligation, and a
Condition upon a testament, where the Act, that is Local, is to be done
in another Ca. The Lord Cromwell Ca.
also in Basties Ca. in the Lord Cromwell Ca.
also in Basties Cafe.

3 Where is a diversity, when the Obligo; Feokos, is to en-
force a Stranger, and when a Stranger is to enforce the Feokos.
Obligation: As if A. enforce B. of Black-ace, with Condition, that if C.
enforces B. of White-ace, A. shall re-enter; in this Case C. hath time
during his life to enforce B. if B. both not fallen by request; and so it
is also of an Obligation.

4 In some Cases, albeit the Condition be collateral, and is to be per-
fected to the Obligo, and no time limited to the using thereof, yet in
respect of the nature of the thing, the Obligo shall not have time during
his life to perform it: If the Condition of an Obligation be, to grant
a Nuncupatry or yearly Rent, to the Obligo during his life, payable
yearly at the Feast of Easter, this Nuncupatry or yearly Rent must be
ganted before Easter; or else the Obligo shall not have it yearly at that
Feast during his life, &c, de similibus, and so it was resolved by the
Judges of the Common Pleas, which see in Diez 14 Eliz. 3 &c.

5 When the Obligo, Feokos, is to do a sole Act, or labour,
as to go to Rome, Jerusalem, &c. In such and the like Cases, the Obli-
geois, Feokos, is, or Feokos hath time during his life to perform it, and
cannot be hindered by request: And so it is also if a stranger to the obli-
gation, and a testament were to do such an Act; he also hath time to do it
at any time during his life.

6 If a testament be made upon Condition, that the Feokos shall con-
vey the land to the Feokoi and his wife, to have and hold to them
and the heires of their two bodies, and for want of such heir to the right
heires of the Feokoi: And if the testament be, to give the land to the
Feokoi by the Law, before his death, the Feokoi is called the
Feokoi, and the heires of his body; And if the testament be, to give
the land to the Feokoi by the Law, before his death, the Feokoi, as
Lindleton teacheth, ought to make a conveyance thereof as near to the intent of the
Condition, as may be, viz. to the Feokoi for life without impeachment of Waste, the Remain-
der to the heires of his body on the Feme engrossed, and for default of
such heir, to the right heires of the Feokoi: And yet in this Case
also (albeit the Feme be a stranger) the Feokoi hath time during his
life to make the conveyance, and is not bound to make it in convenient
time, as in some other Cases he shall, when a stranger is to take
the estate; because the Feokoi, who was wife to the Condition,
to take jointure with the Feme: So it is likewise, where the Con-
dition is to enforce the Feokoi, and a stranger, for then also the Feokoi
hath time during his life, unless he be hindered by request; Otherwise
this is (as hath been said) where the Condition is to enforce a stranger or
strangers only.
If a Remainder in Fee be upon Condition, that the Feejee shall make a gift in tail to the Feoffor: the Remainder to a Stranger in Fee; there the Feejee hath time during his life, as is aforesaid; because the Feoffor who is party and privy to the Condition, is to take the Re Estate: But if the Condition were to make a gift in tail to a Stranger, the Remainder to the Feoffor in Fee; In this Case, the Feoffor ought to do it in convenient time; For that the stranger is not privy to the Condition, and he ought to have the profits presently.

8. The Statute of Winchester 13 E. 1. obviates, that upon a Robbery committed in the day time, the Vnaczen shall satisfy the damage to the party Robbed, and the time here intended is not between Sun and Sun, but between twilight and twilight.

9. In the Statute of Welfin. 2. cap. 12. De servientibus, Balivis, &c. qui ad computum reddendum tenenunt, &c. cum Dominus hujiusmodi servientium dederit ecsc auditores compoti, & contingat ipsos cisc in arrerragis super computum lium, &c. arreitentur corpora eorum, &c. per testimonium auditoorum ejusdem compoti mittatur & liberetur proxime. Gaude Domini Regis in partibus illis, &c. In this Case, albeit no time be limited, when the accompt shall be impounded, yet it ought to be done presently; as it is held in 27 H. 6. 8. And the reason thereof is rendered in Fogallaces Case in Pl. Com. 17. viz. that the generality of the time shall be restrained to the present; for the benefit of him, upon whom the pains shall be inflicted, and with this also agrees Pl. Com. in Stradlings Cafe 206. b.

10. A man granted a Rent out of certain land pro confilio impendo & impendendo; to have and hold to him and to his Assignes; for term of his life payable at four Feasts in the year, and for default of payment upon demand, it should be lawful for him to distrain; the grantee granted the Rent over; The Assignes after one of the days demanded the Rent, and distrained, and the Uterelle was adjudged lawful; For (in this Case) he needed not to make a demand at any of the days; as in the Case of re-entry, but he might demand it when he pleased, because it was once to entitle him to his remedy for his mere duty: For it is not necessary, that the grantee of a Rent-charge, or Seekes should demand it at the very time, when it becomes due, but at any time after it is insufficient; because this is not like a demand of a Rent upon a Condition, in as much as that is by law and custom; but the whole Estate, and therefore (in that Case) the time of demand must be certain, to the end the Lease, Done; or, Feejee, may be there to pay the Rent; But the demand of a Rent-Seekes or Rent-charge is only a formal mean to recover that, which is one, and therefore (in that Case) it may be demanded after it is behind at any time, whether the Tenant be present or no, because remedies to right are ever favourably extended. Vide Ho. 207, 208.

11. As to the payment of Rent falling out of land, there are 4 times of payment. The 2 voluntary and not satisfacoy, and yet good to some special purpose; The 2 voluntary, and in Cafe satisfacoy and in Cafe not; The 3 legal and satisfacoy absolutely, and not coercive, And the 4 legal, satisfacoy, and coercive. As to the 1st Lease, &c. pay his Rent before the day, this is voluntary, and not satisfacoy, but if it be paid in name of lesse of Rent, although it shall not secure by way of satisfaction, yet it shall give sufficient lease to an Affid or other remedy for the Rent. For the 2 if the Rent be payable at Easter, in that Case, if the Tenant pay the rent in the morning, and the Lesse within two hours before none of the same day, this payment was voluntary, and yet is good
The Reason of

satisfaction against the heire, but not against the King. As to the third, the legal time is a convenient time before the last instant of the day, and is the most convenient time, and is satisfactory and not coercive, for until the end of the day no remedy by Law is given, 21 H. 6. 40. As to the fourth, that is when the Kent being one and according to recover by order of Law, and this is satisfactory, but coercive without, concerning all which several times the Poet saith.

Juditis officium est, ut res, in tempora rerum
Querere, quiesco tempore, tuta est.

The third offence is esteemed most heinous.
1 The third will not returneth by the Sheriff is a contempt, where Sheriff is
an attachment listh, Finch fol. 10 b.

The place also ought to be convenient.
2 When the Kent is staying out of Land, and no place limited, and which shall be payed, the land is the debtor, and the Kent must be demanded upon the land: boilly, if there be houses and lands, a demand upon the land is sufficient, unless it be for a Contunity broken, so then it ought to be at the house.
3 If the Rent is payable, he receiveth a receipt of the Rent payable at his receipt at Westminster; and after the Rent granted the retention to another and his heire: In this Case, the grants shall demand the Kent upon the land, and not at the Kings receipt at Westminster. For as the Law without express the words both appoint the Lease in the Kings Case to pay it at the Kings receipt, so in Case of a subje, the Law appoints the demand to be on the land.
4 If there be a house upon the land, the Kent must be demanded at the house, and that, not at the back-door, but at the forward to there of, because the demand must be ever made at the most notorious place, and it is not material, whether any person be there or no: and albeit the Frotes or Leases be in the hall or other part of the house, yet the Frotes or Leases did come no further, then to the forward: for that is the place appointed by Law, although it be open.
If a Tenant be made of a Wood only, the demand must be made at the gate of the Wood, or at some high way leading through the Wood, or other most notorious place; and if one place be as notorious as another, the Tenant hath election to demand at which he will: And albeit the Tenant be in some other part of the Wood ready to pay the rent, yet that shall not avail him; Ex fess de similibus.

6 If the Feoffee demand the rent on the ground at a place which is not most notorious, as at the back Doore of a House, etc. And in pleading the Feoffee alledge a demand of the rent generally at the House, the Feoffee may traverse the demand, and upon the Evidence it shall be found for him; so that such a demand is void, and (indeed) no demand at all.

7 If rent be referred to be paid at any place from the land, yet if being in Law a rent, the Feoffee or Lessee must demand it at the place appointed and agreed upon by the parties, observing the former Rule concerning the most notorious place.

8 When the Feoffee or Lessee are absent, then the most notorious place is to be observed, as hath been said before: But if the Feoffee commeth to the Feoffee at any place upon any part of the ground at the day of payment, and offer his rent; albeit they be not at the most notorious place, nor at the lastinstant of the day, yet the Feoffe is bound to receive it; so else he shall not take any advantage of any Demand of the Rent for that Day.

9 Claim of a Remainder by force of a Condition ought to be up on the Land, and a Claim thereof made out of the Land is not sufficient: So if a Willain purchase a Reversion, the Claim of the Lord ought to be upon the Land, See Lid., fol. 49. and the Book in 15 Cot. Pl. 12. is good Law, that a Distress upon the Land after the Condition happened, amounts to a Claim of the Seigniory, unto which it was annexed.

10 A recovers 20l. against B. in the Common Pleas by Action laid in Norfolke, and dies; C. in the Name of A. (upon the judgment before Execution) out-laws B. in London, and afterwards takes him upon a Capias Ultragiurum in Norfolke, and imprisons him there two Pontes: Hereupon B. brings his Action of the Case against C. in Norfolke, and counts, that to out-law him Malicios & de capite machinatus eft: And the doubt in this Case was, whether of no, the Action of the Case were rightly laid in Norfolke, as should have rather been laid in London, where the Out-lawy was had, which caused the imprisonment, and a forfeiture of all the Goods of B. But it was resolved, that it was well laid in Norfolke, because the first Action was brought there, and there also was the habeas test; viz., the Imprisonment: Foz, is a Maxime in Law, Quod ibi semper spectat, ali quod an accidet quiemque facturus est, nisi exanguate etiam inuitation. When matter in one County dependeth upon matter in another County, the Plaintiff hath Election to bring his Action, in which of the two he pleaseth, (except the Plaintiff upon the general issue pleaded, may be prejudiced in his trial) as if two conspire in one County to milit against another in another County; and so, an Action may be brought in either; Howbeit, if any other but the Conspirators himself, it shall be brought, where the Conspiracy was.

P. Manasse be mad in Exet, whereby my Tenants receive in London. I shall have my Action in Exet, and not in London, for I have nothing in London. If an action be founded upon two things material and transferable in two several Counties, an Action may be brought in either...
either of them. An Amenity granted in one County to be paid in another, the action shall be brought, where the Grant was. But that a robb'd man may have an Appeal of Felony for it in every County, where the Goods; but an Appeal of Robbery will lie only, where the fact was done, a Lease for years made in one County, of Land in another, Debt shall be brought, where the Lease was made, and valuable also where the Land ipseth. Every Action which concerns the life of a man, shall be brought, where the offence was committed, every issue which arises upon an action, in which Land shall be recovered, shall be brought where the Land ipseth, as in right of Wards of Land or Body, Intrusion of Ward, sequestration of Marriages, marriage, and Quare impedit: But Raviemtment of Ward, where the Raviement was, and a Quare non admissit, where the refusal was. Before the Statute of 7 & 8. cap. 10. An Action for Land in divers Counties, or for Common in one County appertaining to Land in another, was brought by several Writt in both Counties; but since that Statute by on Writt in Consino Comitatum: A per quod servilia shall be brought, where the note of the fine was levied.

At the Common Law if a man had been wounded in one County, and had died in another, the Venue to try the Issue should have been out of both Counties, (except in London and Middlesex, because such a Jury there could not join;) and in such case the Issue was only tryable in the K. B. but this Law is altered by 2 & 3. E. 6. 24.

An appeal was brought against two accessories for abetting in London to a Robbery committed in the County of Wills, and the appeal was brought in the County of Wills, but by the better opinion it seems it ought to have been brought in London, where the Abetment was, because the Jury there might have best notice thereof; but this is now also settled by 2 & 3. E. 6. 24.

If a man makes a Lease for years, redeeming rent, and if the rent be behind by the space of a Quarter after the day of payment, that then the term shall cease; In this case if the rent is referred to be paid at some place out of the Land, upon failure of payment or due tender of the rent at that place, the Lessee may enter without making any Demand upon the Land; but if the rent were payable upon the Land, or no place names, where it would be paid, upon such failure, the Lessee cannot enter without demanding the rent upon the Land, because the rent is payable three of right.

If Place be done and sold openly in a Scrivener's Shop upon the Packet day, (for every day in London is Packet day, except Sunday,) such Sale shall not alter the property, but the party shall have restitution; for a Scrivener's Shop is not a Packet over for Place; because none will look there for any such thing, Et sic de similibus, &c. but if the Sale be been openly in a Goldsmith's Shop in London, so as every one that would know or see the Shop, might have seen it, such Sale shall alter the property; Howbeit, if such Sale be in a Goldsmith's Shop, behind a curtain, hanging, cubboud, in a Warehouse, or some other part of the House; So as passengers cannot observe it, such Sale shall not alter the property; for such places are no Packet over; And observe, that the reason of this case extends to all the packet overs in England. Vide Max. 186. 32. & 191. 3.

In Debt upon an Obligation to perform Covenants brought in London, the Issue was, whether or no the Defendant was verae possessor of certaine Lands in the County of Bedford, at the time of the Inden-
18. 

19. 

Maximes of Reason taken out of Morality.

135. The Law favoureth Charity.

1. Upon a Mortgage, if the Mortgagee die, his Heirs within age of 14 yeares, (where the Land is held in soccage,) the Guardian in soccage: or within age of 21 yeares, (the Land being held by Knight-service,) the Lord ought to tender the Money for the recompense of the Land: but if the Heiress be an Heiress, of what age soever, any man may make the tender for him, in respect of his absolute disability: for the Law in this, and in like Cases, is grounded upon Charity.

2. Alibit upon the foundation of any Lay Hospital; or after, it was ordained, that one or more Priests should be there maintained to celebrate Service to the Poor, and to pray for the Soul of the Founder, and all Christian Soules, of the like kind, and that the poor there should make like Diffusions, per such Hospital is not within any of the Statutes of 27, 31, 32, & 37 H. 8. of 1 E. 6. for the makers of those Statutes never intended to overthow works of Charity, but to take away the abuse, and such Hospitals being Lay, and not Religious, and for the most part foundne 02 ordained in that manner.

3. In an Attaint, if the Plaintiff after appearance be non-suit, it is peremptory, and the reason is for the faith and credit; that the Law (in Charity) gives to the verdict, and for the terrible and fearful judgment, that would be given against the Art Jury, if they should be convicted: and therefore upon such non-suit the Plaintiff shall be impositioned, and his Sureties amerced.

4. Good and Charitable Uses are not taken away by the Statute of 23 H. 8. 10. albeit the words of the Statute are general, viz. all like cases; but the intention of the Makers of that Statute was merely to take away Superstition Uses, and not Good and Charitable Uses.

5. Regularly where entire Services are reserved, if the Lord purchase part of the Land, the whole Service is extin: Howbeit when such entire Services are reserved for Works of devotion, Priest, or Charity, as to marry a poor Virgin yearly, (which Tenure you shall and in 24 H. 8. Be Tenures 5;) or to find a Preacher, or Ornaments.
for such a Church (as you have it in 35 H. 6. 6.) in such cases, altho'
the Land purchase part, yet the entire service shall remain.

6 The Kings Licence by Charter to found an Hospital, Chantry,
&c. are sufficient to make Corporations capable of endowments,
though they be not yet built, or prepared for such purposes or employ-
ments: because the Kings Charters for Creation of Pious and Char-
itable Works are to be taken in the most beneigne and beneficial
sense.

7 Regularly, a copy or proof of a Deed shall not be given in evi-
dence, to the Deed it self ought to be produced; yet if a man
hath by casually had all his Writings burnt, so as he cannot possibly
produce it, if that be proved to the Judges, they may in favour of him,
that hath sustained to great Loss, suffer him upon the general issue to
prove the Deed by wittneses in evidence to the Jury; least they should
abide affliction to affliction: And if the Jury find it, albeit it were not
shown in evidence, yet is it good enough, as appears 28 Afl. p. 3. And
this in charity to him, that hath suffered such losse. Vide 28 H. 8. Dyer
29. b. PL 199.

8 A Devisa of Lands to a College is good, notwithstanding the
Statutes of Mortmain, because within the Statute of 43 Eliz. of Cha-
ritable Uses, under these words limited and appointed: See there also
the next Case, a Devisa for the repair of an High way; where albeit
the Devisa be void, yet the Statute of 43. by reason of the said words
(limited and appointed) both reach it, Collisions Case.

Devisa.

1 If there Ballard signe and Mulier pulse, and the Ballard have
true, and die settled of the Land without claim of the Mulier, in this
case the Mulier is barred for ever, albeit the Mulier were under age at
the time of the distant case, whereas the distant (in their cases) only
puts him that right hath to his action, and both not barre him for ever:
And one of the reasons hereof is to be, because after the Ballard's
death, he shall not be branded by the name of Ballard, to the prejudice
of him and his issue after him: For, Julium non est aliquem post morte-
em facere bardadum, quia toto tempore vitae sive pro legimento habeatur:
And therefore if there be Ballard sige, and a Daughter Mulier pulse,
and we be covert at the time of the Distant, yet to the barred; Alfo if the
Ballard die not, but enter into Religion, by which a Distant is
cast, that shall also barre the Mulier for ever: Legitimes distant of Ser-
vices, Rents, Requisitions upon an Estate tall, or for life, ge. which
barre not the entry of those, that right have, shall barre the Mulier for
ever: So if the Ballard die, and his issue know the Ballard's wills, the
Mulier cannot enter upon the widow, but is barred causa qua supra.

2 A Sentence of Divorce may be repealed after the death of the per-
ties, but after their death there can be no Sentence of Divorce given
unto declare the marriage void: for that were to reduce the Dead, and to
ballardise the issue to the deceased.

3 If a Ballard signe enter, and his settle, his wife being with child
of a Sonne, and after the Sonne is borne, he shall inherit the Land for
as much as the Father died in posession, without interruption, the
Mulier shall not alledge against the issue Ballard in his Father after
his death.

137 And
137 And therefore, it hateth malice and oppression.

1. The Common Law abhorre malice in seeking the blood of another without cause: And therefore if A. hath the Goods of B. by bailement 02 trover, and B. brings an appeal of Robbery against A. 03 taking them feloniously, and it is found, that they were the Goods of the Plaintiff and that the Defendant came by them lawfully; In this Case, the Plaintiff shall forfeit those goods to the King for his false and malicious appeals, as it is assuaged in 3 E. 3. Title Corone, 367.

2. It seems reasonable, that one, who is in Pilton upon a recognizance, shall have a writ of conspiracy upon the Statute called Agricultuper cartas, 28 E. 1. 10. against the Recognizant, if he turn him not Bread and water in Pilton.

3. Albeit a man in Pilton by precedee of Law ought to be kept in salva & curta custody, and by the Law ought not to go out; though it be with a & per, and with the leave of the Gaoler; But yet imprisonment must be, custody and not pena; 10, Career ad homines cuitodiendi - non ad puniendos dari debit.

4. To prevent and avoid oppression, injury, and injustice, the Law prohibits, that a Right 02 Choice in Action should be granted 02 transferred to a Stranger: And therefore faith the Mirror (cap. 2. 17.) Nul charter, nul vende, ne nul done vault pro penitentiam, file Donor non sit esse al temps de contracta de deux droits, viz. Del droit de possession, Et del droit de proprietie: Howbeit such a right 02 thing in Action may be released, because that quites and confirms the present possession and property, and causeth no disturbance; 02 injustice; but rather prevents them.

138 It favoureth Virtue.

139 Hateth Vice.

1. A Remainder may enure upon Condition to marry my Daughter, or 02 any other unlawful Condition precedent; But if the Condition be to kill a man, 02 to do any other unlawful Act, the Remainder shall not be good, for the Condition being unlawful, it shall not be of force to gain any thing in our Law.

2. A man makes a Lease for life to B, Remainder to the eldest Male male of B. and to the heires males of his body, B. hath made a Bastard sonne, he shall not take the Remainder; for, qui ex damnato coitu nascitur inter liberos non reputetur: So it is also if a man make a Lease for life to B, the Remainder to the eldest Male male of B, to be begotten of the body of Jane S. whether the same Jane be legitimate or illegitimate, B. hath made a Bastard on the body of Jane S. this Sonne 02 Jane shall not take the Remainder, causa qua supra; And it semeth also, if after the birth of the Jane B. had married Jane S. so as thereby the Jane becomes Bastard eigne, and had a possibility to inherit, yet shall be not take the Remainder by the word Iane.

3. If the Wilse Ellpe from her Husband, that is, if the Wilse leave her Husband, and goeth away and tarryeth with an Aouterer, the shall lose her dower, until her husband willingly without covention Ecclesiastical be reconciled to her, and permit her to co-habit with him, all which is comprehended shortly in these two verses:

Sponte virum mulier fugiens & adultera fata,
Dote sua caret, nisi sponte retracta.

And
And if the goeth willingily with o3 to the Absolventer, this a departure and a carrying, albeit he remaineth not continually with the Absolventer, o3 tarrieth with him against her will, o3 he turne her away; also if the co-habit with her Husband by the Ceremery of the Church: In all those Cases the loyth her Dowter; See more of this matter in the exposition upon the Statue of Welt. 2. 34. 13. E. 1. Vide Co. Init. part. 2.

4 Some bold, that the Battar or a Plie shall be a Vailain, and others bold, that if a Wilene hath a Battar by a Woman, and after marrieth the Woman - that this Battar is a Vailain, but the Law is contrary (in both Cases): For, Vice is to odious in Law, that albeit a Battar be a reputed Sonne, yet is he not such a Sonne, in consideration whereof an use may be raised, because in judgment of Law he is nullius filius: And for the same reason, where the Statue of 32 H. 8. of Wills speaketh of Children, Battar-chidren are not within that Statute, neither is the Battar of a Woman a Child within that Statute, where the mother conveys lands unto him. It was found by Tertul. that Henry the Sonne of Beatrix, which was the Wife of Robert Radwel deceased was borne per undecim dies post ultimum tempus legitimum multibus constabatam, and thereupon it was and judged, quod dicas Henricus dicit non debet filius predicati Roberti fecundum Legem & Confuentidinem Angliae constabatam, that being nine moneths, according to that of Edfras, Vide & interroga pregnant, si quando impleverint novem menses fuos, adhue poterit matrix ejus retinere partum in fe­metipsea? & dixi non potest, Domine; Haubiet the Prince of Conde (fa­ther of the Prince now living, and in Rebellion against the King of France this present years 1652) was borne 14 moneths after the death of his father; and it was adjudged possible by the unanimous opinion of the Physicians of Montpellier, by reason of the exercitie griefs, which the Lord was conceived to take at the death of his husband.

5 Regularly a Vailain cannot sue an Action against his Loya, yet sune and vice are to odious in the eye of the Law, that he may have against his Loya an Action of the death of the death of his father or other Ancestor, whole where he is: And if in such an Action of death it be found for the Plaintiffs, the Wilene is entrencht for ever: He enim est, quod si ipso sunt hujusmodi Domini fervos fuos amissi, cum de injuris fuerint convicti, and there is no stricte herein, whether he be a Vailain regardant or in grosse, although some have held otherwise. Likewise, if a be be ravished by her Loya, the may have an Action of Rape against him: For by the general purview of the Statutes of Welt. 1. 13. Welt. 2. 35. 6 R. 2. 6. 11 H. 4. 13; & 1 E. 4. 1. that give the Action of Rape, that the Plie shall have an Action of Rape against her Loya: And it seemeth by the ancient Authors of the Lawes, that this so heinous an offence was severly punished by loss of eyes and pitty members: However of old time it was felon, which you may see at large in the second part of the Institutes upon Welt. 1. 13: see also more of Rape in the third part of the Institutes, cap. Rape.

6 Obligations or other transations, with everyone man to use any Act, which is malum in se, are invalid and not in Law: As if a man be bound, upon Condition, that he shall kill J. S. the bond is void: So if a man make a testament, upon Condition, that the ESTATE shall kill: S. the Estate is absolute and the Condition void: So as he, who intend any unlawful Act, is still by the Law crost in the designs, or purpote, he almes at.

7 Vice is so odious in the eye of the Law, that it will not suffer any to inherit, who deserts his title through blood tainted with any Capital Blood or rup.
Capital offence: If a man had two sons, and the eldest in the life of the father is attainted for felony, and dies leaving the father, and after the father dies, eldest of the land in fee, this land descends to the younger son, as heir to his father, if the eldest son had no issue living, but if he had issue in life, who by the law should inherit the law, if it were not for the attainder, and albeit he had committed no offence, yet the land shall not descend to him, not yet to the younger brother, but shall escheat to the Lord of the fee.

140 Interest Reipublicae, ne maleficia remanente impunita.

1 Where an Indictment is found insufficient, the offender may be indicted again; for in such Case Autre fois acquitt, or convict is no good plea; because that plea is allowed upon that Partime of the Common Law, viz. that the life of a man shall not be put in jeopardy twice for one and the same offence; notwithstanding this is intended upon a lawful acquittal or Condition, for otherwise his life was never put in jeopardy; but when the Indictment; or other proceeding against him are insufficient, he may be re-indicted: For the law both observe, that great offences should passe un-punished, according to these ancient Maximes of the Law and State, Maleficia non debent remanere impunita, & impunitus continuum spectat tribuit delinquendo, & minitum innocentem, qui parce nocentius. Nevertheless it upon an insufficient Indictment of felony a man hath had judgment, quod suspenderat & collum, and so is attainted, which is the judgment and end, that the law hath appointed for felony, in this case, he shall not be arraigned and arraigned, until that judgment be reversed by Error.

2 The Reason why bona avariata, (viz. such theems goods as a felon in lying wastes, or leaves behind him) are forsett to the King, and that the owner shall in such Case lose his property in them, is, because of the negligence and default in the owner; for that he may not fresh suit to apprehend the felon; for, Interest Reipublicae, ne maleficia remanente impunita, & impunitus continuum spectat tribuit delinquendo, & minitum innocentem, qui parce nocentius. Nevertheless the law imposed this penalty upon the owner, that if the felon by his industry, and fresh suit be not taken, by such default be shall lose all his goods which the felon should leave behind him.

3 In many Cases Penal Statutes Hall be taken by Intendment; and not according to the opposite words thereof, especially when it is to remedy a mischief, in advancement of Justice, and for the suppression of Crimes and heinous offences, of which in many examples in the book at large quoted in the margin.

4 In a suit of Reception, where after Replevin the party obtaines again for that same thing, the Sherifke is comemaded to apprehend the party, to offend, and to charge him by amerclament, quod cattigatio illa in causa contumili simorem aliis psebeat delinquendi.

5 A man was put into the Stocks upon suffisition of Felony, and another comes, who lets him go at large, this is felony at the Common Law de frangend. prison. albeit the party, that escaped, be not indicted for felony.

6 In Banco Reg. in the Case of one Tripcony the Jury to the Nisi prius gave the Plaintiff but 40 L. damages for the cutting of his right hand, and they were increas'd by the Justices to 100 L. because this was matter apparent to the Court, and the offence and trespass therein was caried about with the perfon; notwithstanding, in the Case of Sir John Bonham against
The Reason of

against the Lo. Sturton for damage, where the damages were 500 Marks; the Justices said they could not belief them.

7 By the better opinion, albeit the Statutes of 27 H. 8 & 28 H. 8. 17. Admin.
be penal, and odious, that Commissions to hear and determine pleas
shall be abrogated to the Admiral and others to be named by the
Chancellor, yet the Lord Keeper (being no Chancellor) may grant such
Commissions, and that for the necessity to punish such offences.

141 It favoureth Justice and right.

1 In a writ of Writ in the 

Homage is
central contend.

2 If there be Lord and Tenant by Homage Ancesirel, and the Tens

3 Before the Statute of Quia emporis terrarium if a man hath made a test

4 Remedies for rights are always favourably extended: and there

Lit. § 309.
5 If a man be defeated, and the Diffisio make seisin to two men in Fe, and the Diffisio released by his son to one of the Diffisio;

Co. 194 a & 6.
6 The Statutes of 3 & 4 E. 6. cap. 4. and 13 El. cap. 6. which obtain Conts & Confinas and Inlleximus of letters Patents are to be favourably con

Co. 135 a & 3.
7 Ckople,
7. Chapels, which being the Interest of the Land (as the taking of a
lease of a man's own land by him invented, and the like) being spe-
cially found by the Jury, the Court ought to judge according to the
special matter; for, although Chapels regularly must be pleaded and relied
upon by an apt conclusion, and the Jury is sworn ad veritatem descendent,
yet when they give veritatem facit, they purge with their oath, and the
Court ought to judge according to Law and right: So also may the
Jury find a warranty being given in evidence, though it be not pleased,
because it beeth the right, except it be in a writ of Right, when
the Mle is joyned upon the mere right.

8. Albiet the Statute of 32 H. 8: 33. (which gives entry to the Dis-
sellor, or his heirs, if the Dissellor were not in peaceable possession five
years before the adverse right) be a penal Statute, yet it is taken fa-
vorably for the advancement of the ancient right: For whether the
dissellin be with force or without force, it is within the Statute: and
albeit the Statute speaketh of him, that at the time of the dissellor had
title of Entry, &c. or his heirs; yet the Successors of honest Poli
tique; Coypural (to you hold your selves to a dissellor) are within the re-
medy of this Statute; but an Abate, Intrendor, or the Feoffor or Dis-
sellor, are not within the Statute; yet he in revolution, or remainder, that
had not right of Entry at the time of the adverse right.

9. Albiet the Law giveth much favour to vecents, yet when the title
of a dissent commenced by wrong, for the advancement of the ancient
right, the Law tieted a dissent to false terms: and therefore when a
dissent is cast, it immediately after, there be not a person capable of it
which may take it, such dissent cannot toll the entry of him, that right
hath, but his Entry is incontestable. As if a Feme be settled of land in Fex;
wherein I have title of Entry, and the Feme takes Baron, and they have
issue, and after the Feme dies settled, and after the Baron dies, and the
issue enters, &c. In this Case, I may enter upon the possession of the
issue, because the issue comes not to the tenement immediately by dis-
cent after the death of his mother, but by the death of his father; For
here was but a dissent of a revolution at the time of the being settled,
as to the Fex: and transtentrum together did not immediately after the
decase of the Feme, enter to the heire; and if a being settled takest
not along the Entry of him, that right hath, at the time of the dissent,
it shall not do it by any matter ex post facto: So if a dissellor be without
heire, his Wife priviment enceint with an issue, and after the issue is
born, who entret into the land: In this Case, he hath the land by
dissent, and yet thereby the Entry of the Dissellor shall not be taken
away, because (as Littleton saith) the issue cometh not to the landes imme-
diately by dissent after the decease of his father: Likewise, if a Dissel-
lor make a gift in talle, the remainder in Fex, and the Donor without
issue, leaving his Wife priviment enceint with a sonne, and he in the
remainder enter, and after the sonne be born, who entret into land,
this dissent shall not take away the entry of the Dissellor, causa
qua supera.

10. B. Tenants in talle encezeth A. in Fex, A. hath issue within age
and die, B. abateeth and dieth settled, the issue of A. being still within
age, this dissent shall bind the infant for the issue in talle is remitted:
And the Law both more respect an ancient right in this Case, then the
judgement of an Infant, that had but a defeasible Estate.

11. So glorious pretext of an Act (who thought it be of Religion) that
shall bring in wrong to a stranger, that hath right; to barre him of his
entry; but it must be done by the Act of God, viz. by death: and there-
fore if the Dissellor have issue and enter into Religion, such a dissent
shall
The Reason of

Max. 14.

If a man hath cause of entry into others lands in several Counties, in the same County, if he enter in any parcel thereof in the name of all, by such entry he shall obtain a good possession and title in all; The like also may be said of liberty of entail: and this is in favour of right of Justice.

If a man is held by two, and be released to one of them, he to whom the release is made, shall hold out his Companion, and by such release shall gain the sole possession and Estate in the land: but if the Distressor enforces two in Fee, and the Distress release to one of them, this shall enure to them both; because these come in by testament, but those by wrong.

If two Distressors be, and they enfeoff another, and take back an Estate for life or in Fee; here, albeit they remain Distressors to the Distressor, as to have an Allot against them, yet if the Distressor release to one of them, the release shall hold out his Companion, because their Estate in the land is by testament: Again, if there be two Distressors, and they be Distressors, and release to their Distressor, and then the Distressor release one to both of them, yet the second Distressor shall re-enter, for they shall not hold the land against their own release: If their be two houses joint Distressors, and the one takes such husband, and the Distressor release to the other, he is solely allowed, and shall hold out the husband and wife, because the claims by a joint title, viz. by the release, but they came in by wrong.

Motion is right in the use of the Law, that the Law preferred it from death and destruction; trodden down it may be, but never trodden out; for where it is said, that a release of right both in some Cases ensues by way of extinguishment; It is to be understood (as Littleton both § 478.) in respect of him, that makes the release, as in respect that by construction of Law it entreats not alone to him, to whom it is made, but to others also, who be Strangers to the release, which is a quality of an inheritance extinguished: As if there be Lord and Tenant, and the Tenant make a lease for life the remainder in fee, the Lord release to the Tenant for life, the Rent is wholly extinguished, and he in remainder shall take benefit thereon; So when the heir of a Distressor is dispossessed, and the Distressor make a lease for life, the remainder in fee, if the first distress release to the Tenant for life, this is said to ensure by way of extinguishment, for so that it shall ensue to him in remainder, who is a Stranger to the release, and yet in truth the right is not extinct, but both follow the possession, viz. the Tenant for life hath it during his time, and he in remainder to him and his heirs, and the right of the inheritance is in him in the remainder; for a right to land cannot be, he be extinct in Use: and therefore it after the death of Tenant for life, the heir of the Distressor being a Wit of Right against him in the remainder, and he join the Mile upon the more right, it shall be known for him, because in judgment of Law he hath by the false release the right of the first Distressor.

Remedies to come to rights or duties are always taken laborably: and therefore there is a diversity between money given by way of Atonement, and where it is given as parcel of a Rent by way of cessation of the Rent: for albeit the Rent be not due before the day, yet a payment of parcel of the Rent before hand is an Actual cessation of the Rent to have an Allot; and to it is also, if he gives an Oxe, an Ass, a Shove, a knife, or any other valuable thing in name of cessation of the Rent.
Rent before hand, this is good, whereas money of any other thing given in name of attornment is only a lessee in law, which the grantor hath done at actual lessee: So as a payment of part of the rent in name of lessee is more beneficial to the grantor, being both an actual lessee and an attornment in law also; and yet being given before the day on which the rent is due, it shall not be abated out of the rent, in such case that, as to give lessee of the rent: It is taken as part of the rent, but as to the payment of the rent, it is accounted as no part of the rent; and such proceedings the law permits, when a right is concerned.

17 If tenant in tail discontinue, and hath a daughter, and no, and the daughter being of full age takes baron, and the discontinue releaseth to the baron and feele for their lives, this is a remitter to the feele, and the feele shall be in by force of the attornment; because remitters to ancient rights are much allowed in law: It is otherwise in a different, so if a woman be dispossessed, being of full age, a husband, and then the attornment void itself, discontinue that from the wife, albeit the law to perpetuate, when the discontinue was cast; because the being of full age, when the to be baron, do not declare her interest in the land.

18 Where hath been a question in our bookes upon the point of the statute of Wills, cap. 4. (by default) as for example, whether a recovery being had by default in an action of waste against tenant in power; by the Court, a Quod ei depercut. It is by the said statute, but (doubtless) it wrong: albeit the deponent may give in evidences, if he knoweth it: yet when he makes default, the law presumeth he knoweth not of it, and it may be, that in truth knew not of it; and therefore it is reason, that saving the statute, which is a beneficial statute, hath given it him that be committed to his Quod ei depercut, in which wise the truth and right shall be tried: Am to it is also of a recovery by default in an affr. albeit the recognisances of the affr. give a tenant, a Quod ei depercut. It is by all this, as to this point was resolved in P. 33 El. Roc. 1125. And so he in doubt in 41 B. 3. 8. is well resolved: if tenant for life make default after default; and he in reversion in receives and pleads to issue, and it is found by terles to the demandant, the default and terles are causes of the judgment, and yet the tenant shall have a Quod ei depercut, in favour of right and justice, especially when the statute intimeth him as much.

19 If the baron discontinue the land of the feele, and the discontinue semis the same land to the feele for term of her life, and beft good accordingly: In this case, it seems whether the baron agree of visages to the liber, it is a remitter to the feele, it is otherwise if he the baron issue: but one of the reasons why in that case she is remitted is, for that the law having once restored her ancient and better right will not suffer the disagreement of the husband to bevest it out of her, and so to revive the discontinuance; and revolt the wrongful estate in the discontinue; because remitters tending to the advancement of ancient rights are very much favoured in law: so likewise, if lands be given to a man and the heirs of females of his body, and he make a testament in fe, and taketh back an estate to him and his heirs, and death having issue a daughter, and leaving his wife Golfenemen, effin a woman, in this case also, the daughter is remitted, and albeit the woman be afterwards borne; he shall not revolt the remitter.
The Reason of

20 If the Baron discontinue the land of the Feme, and the discontinue is assisted, and after the discontinue the Baron of Feme for term of their lives, this is a Remitter to the Feme; for Remitters that relieve ancient right are so much favoured in Law, that the Estate made by the discontinue (who cometh to the land by wrong and upon whom the entry of the discontinue is lawful) both remit the will, and do be

21 When the entry of a man of full age is comearable, if he take an

22 Where alienation was made in mortmaine, 17 E. 3. 7. Tit. 20. A

23 The Lady of a Copyholder for a peace may maintain an Eje-

24 An Executor before probate may release an Action, albeit before probate he cannot bring an Action, because of the right of Action that is in him at the Common Law, it is otherwise of an Administrator, for if A. release, and after take administration, the shall not bare him, for the right of Action was not in him at the time of the release made, Vide 18 H. 6. 43. a. Greysbrooke's Case, Plovw. 777, 778. 21 E. 4. 24. To Executors prove the will, and the third released, yet he may afterwards release, for the ancient right, that remains in him. Lit. fol. 17. If one be bound to pay a summe at the day to come, before the day he cannot bring an Action of debt, yet a release of all actions before the day bare him, because of the present right and duty that he had in him.

25 If a man hold land by the service of paying the Sheriff, to be High-Constable of England, which are for the advancement of Justice (for the determination of divers cases belong to the Court of the Con-

26 In Caresbies Case in the 5 Rep. the single point in question was, whether the 12 months of laps to give the Bishop power to collate would be accounted by 28 days for each month, or by the half year, and one of the reasons there assigned for the account by the half year was this: when a computation in such case is ambiguous; it is always requisite to determine it for the reliefs a remedy of him, that right path.
Max. 141.

the Common Law.

vix. of the Patron, and for the preservation of his right to allow him the
longest time of the two, to the end he may not lose his right.

37. When the Statute of 35 H. 8. 6, to return a Trespass, albeit the title thereto
of is usually deemed Trespass, let the Sheriff (although there be, but one
Trespass appears as, all be challenges not one) may at first return 11 to
that one, because it is for the speedy trial, and that Statute being
otherwise for the more speedy and advancement of expediency in justice
shall have a benign and favourable interpretation.

38. If a man be defiled of a Spermo, to which an Abbession is ap-
pellant, and the Abbession happen to be sold, the Spermo may present,
and have a Quire Impedii, albeit he hath not entered into the Spermo, by
reason of the ancient right that is in him.

39. If a man traverse an Office found of a Spermo, to which an Ab-
boisyon is appellant, and upon the traverse the King remitted the Sper-
mo to him without making any mention of the Abboisyon, and after
the Church is sold, here, he that tenders the traverse shall have the
presentment, if the traverse be found for him.

40. If a man recover an Abboisyon, and the six months are past, yet
if the Church be sold, the Patron may pray a writ to the Bishop, and
shall have it, and if the Church be sold, when the writ comes to the
Bishop, the Bishop is bound to admit his Clerk; and it seems also rea-
son, if the Patron after the six months present to the Bishop, the
Church being then sold, that the Bishop ought to present his Clerk,
in respect of the right, that is in the Patron.

41. If the King write to the Justices to piorogue the Assize, because
the defendant is in his service, or, yet the Justices ought to proceed, and not
to cause the writ, because it is for the advancement of justice and
to no right.

32. In Dive and Manningham's Case in the Commentaries, albeit the
Defendant had pleaded Judgment in Action, whereas he ought to have
pleaded non est factum (Dive the Sheriff having taken a bond of a man
in execution to secure himselfe, which was void by the express words
of the Statute of 32 H. 6. 10.) notwithstanding such default in right
plaining, the Judges finding the Sheriff to have no just cause of action
(because that Statute made the bond clearly void) gave judgment
against Dive the Plaintiff. So H. 7. E. 4. 31. Fiz. Title judgment, 30,
where an action of trespass was brought against Tilly and Woddy for
two boxes with writings taken, &c. Tilly pleads not guilty, and Woddy
makes title to him by a gift, and the Plaintiff travesled the gift, and
upon these matters they were at Mace, and Tilly was found guilty,
and the lease was found for Woddy against the Plaintiff; And
here albeit the Mace was found against Tilly, yet by the clear opinion
of the Court the Plaintiff hath not have judgment against him, for
it was found between the Plaintiff and Woddy; that the Plaintiff
had no title, and therefore the Judges (ex officio) ought to give judg-
ment against him, vide post ibid.

33. If land be given to Baron and Feme in special talls, and after the
husband alien the land in fee, and take back an Estate to him and his
wife for their lives; in this Case, if husband against his own alienation
(If he had taken the estate to himselfe alone) could not have been remis-
ted; but when the estate is made to the husband and wife; albeit they be
but one person in law and no matters between them, yet for that the
wife cannot be remitted in this case, unless the husband be remitted
also, and for that remitters are much favoured in law, because thereby
the more ancient and better rights are restored again, therefore in this
case in judgment of law both husbands and wife are remitted.

34. 
The Reason of

34 A release by the d mandates one of the mandates shall make him to hold out his companion, because they are in mercy of wrong; howbeit if two men do usurp by a wrongfull presentation to a Church, and their Clerk is admitted, instituted and invested, and the rightful Patron release to one of them, this shall come to them both: that the usurpers came not in mercy by wrong; but their Clerk is in by admission in

stitution, which are Judicial Acts: and usurpation shall work a Remitter to one that hath a former right.

35 Where is a diversity between a bare agent without any right of interest, and an agent coupled with a right of interest: and therefore an Agreement cannot be made for a time of upon Condition, because that is a bare agent; but if a Patron make a lease for 200 years, the Patron and Ordinary may confirm so of those years, for they have an interest, and may change in time of Vacation: so if a missett; make a lease for 100 years, the missett may confirm parcel of those years, but then it must be by apt words: lest he make not confirm the lease or demise; or the Estate of the Left, because then the action for parcel of the term would be repugnant, when the whole was confirmed before: but the confirmation must be of the time for part of the term.

36 If a missetteth B. to the use of C. and B. releasteth to A. this shall take away the agreement of C. to the missett, because otherwise it should make him a wrong-doer: so if the missett be otherwise, and the missett releasteth to the second missett; this would make the right of the first missett bad against the second; for creation of an Estate gained by wrong hath never been an Estate subsequent gained by right; against a single opinion in 14 H. 6. 9. words become by any other law.

37 If the Under-sheriffs Covenant with the High Sheriffs, that he will not serve operations of above 20 l. without his special warrant, this Covenant is void, because it is against Law and Justice.

142 That, which is not tortious in itself, cannot be tortuous to any.

1 If there be Tenant in tail, Remainder in tail, the Reversion in

in Fee to the Tenant in tail, the Tenant in tail bargains and his the land and devises a Finkel to the bargainer, who enboises 1 S. in this Case, by the testament of the bargainer to 1 S. the Remainder in tail is not displaced or put to a right; for the bargainer had an Estate in Fee simple determinable upon the death of the Tenant in tail without fine, and when he made the testament his determinable Fee simple in possession and his absolute Fee simple expectant upon the Estate tail in remainder did pass and did not devest the remainder: for the testament, which is not tortious in it itself, cannot be tortious to another.
the Common Law.

143. Interesse reipublicae, nec Curia Domini Regis desicere in
Justicia exhibenda.

1. If a man make a Letter of Attorney to two, to do any act, if one Co. Inst. part
of them dye, the survivors shall not do it, but if in Venire facias be awarded
four Coopers to impanel and return a Jury, and one of them dye,
et the other shall execute and return the same, because this last is for
the execution of justice.

2. If there be two Tenants in Common in 20 s. Kent, a pound of
Pepper, or such like thing as will admit sedereance, if they be unripe,
they shall bring severall Assises for them, because of their several titles;
but if the Rent be an entire thing, which cannot be severed or divided,
as an Hawke, Horse, or the like, in such case they shall joyn in the
Assize, for otherwise they should be without remedy; and thus they must
do, Ne Curia Dom. regis, &c. And Lex non debet desicere conquiritus
in justicia exhibenda; besides, if they should not joyn, they should
have damnum & injuriam, and yet should have no remedy by Law,
which would be inconvenient, for the Law will that in every case where
a man is wronged and enamaged, that he shall have remedy: Aliquid
conceditur ne injuria remanent impunita, quod alias non concederetur.
Vide plus ibidem.

3. A man cannot be properly said to be disposed of a Willain, either Co. ibid. 307;
in grosse, or regardant (unless he be disposed of the $, too) for a,
theirwise the Law would have given a remedy against the wrong, more,
as the Law doth in case of a Warr, because the Lord may seize his Willain
wheresoever he finds him.

4. The Letter of a Copyholder for a year may maintain an Ejectione Co. 1. 4. 16. a.
firm, for as much as his term is warranted by the Law, by force
cf the general custome of the Realm, it is reason, that if he be ejected
he should have an Ejectione firm, for otherwise he should be without re-
medy: Vide Interest reipublicae, ne Curia, &c.

5. The Statute of Weilh. 2. ca. 28 provis, Quod quotiesque
un de cetero exercerit in Cancelleria, quod in uno caso repetarum
breve, & in consimili casa, cadente sub codem jure, & simili indigente
remedio, non repeterit: concordant Clerici in Cancelleria in brevi fac-
ciendo, &c. vel ad proprium Parliamentum de consimilium Jurisprudentor
fari breve. And then concludes with this Maxime in Law, Quod Curia
Domini Regis non debet desicere conquiritus in justicia persequenda.
Upon which Statute and ground divers things are admitted, in consimili
cas, Vide plus ibidem.

6. The Defendant in account, after judgment to account, and before Co. 17. 4. 4. a.
judgment small things Etres, but it was not allowed; so in an action
bought against two, one pleads to the issue, and the other consoled it,
and thereupon judgment passed against him, yet he shall not have Es-
rot till the plea be determined against the other: Vide plus ibidem.
And the reason of these and the like cases is, because if the Reciproc
should be removed before the whole matter be determined, there would be a
Failure of Right; for the Judges in the Kings Bench cannot proceed
upon a matter which is not yet determined.

7. If a Sheriff returne upon a Replevin (alias 02 pluries) that F. N. B. 60.
heath sent to the Bailiff of the Franchise, who hath made him no return, 02
that he will not make delibarance of the Cattle, in such case a Non
omnara shall issue forth (alias pluries) to cause the Sheriff to enter
the Liberty, and to make returne; or 02 if the Bailiff make no return,
02 will not make delibarance, it seems that by the Statute of Weil.

A a a a 1 cap.
1. ca. 27. upon such returns the Sheriff may (without Writ) enter
the Liberty and make deliverance of the Cattell, in like manner as the
Sheriff may do by the Statutes of Marlbridge. In 29th where a plea De
vetit. Nav. is in the County by plaint before the Sheriff, and the De-
siriff sends to the Bailiff of the Liberty to make deliverance, and he doth
nothing, in this case also the Sheriff may (without Writ) enter
the Liberty and do it. Likewise if the Sheriff upon a Pluries returns, that
the Defendant hath conveyed the Cattell into another County, or that
he hath commanded the Bailiff of the Franchise, who returns that the
Cattell are elined into divers Liberties, so that he cannot have the
view of the cattell to make deliverance, so that the Defendant hath eloi-
ned the Cattell into divers places unknown, so that the Defendant hath
imparted them in the Registry of the Church of O. that he cannot
make deliverance, &c. Upon these returns of the Sheriff the Plains-
tiff shall have a Writ of Widernam, to take so many of the De-
sendants Cattell, and detain them in Pounds, until the Defen-
dant produce the Plaintiffes: And all this is, Ne Curia Domini Re-
gis, &c.

8. The Statute of 2 R. 2. 12, which gives an action of debt against
the Warden of the Fleet for suffering a Pilferer (being in open
Judgement) to go at large without Writ, is extended by equity to all
other Keepers of Prisons, although it be a penal Statute; and that is
for the better execution of justice, and that the Creditors debts may be
the sooner discharged.

Co. Inst. pars
2. 374. 4.

Co. 1. 7. 4. 4 in 81 wers
case.

If there be not sure Knights in the County for the election of
Writs for the twelve chosen for the trial of the meere right in a Writ of
Right, when the Mule is joined upon the meere Right, the next to
them in the County shall be taken, Ne Curia Regis, &c.

10. If there be Lord and Tenant, and the Tenancy extends into Two Wipgs
Two Counties; in this case, if the rents and servites be arrears, the
Count Lord shall have several Writs of the Customs and Servites, for
each County a Writ, and shall have them returnable at one day in
the Bench; but he shall have but one Count upon them as his case is.
Quia alter Curia Domini Regis desperet conquistibus in justitia pro-
quiendo.

K. N. B. 16. ch.

11. Upon a Rescous returned by the Sheriff, and thereupon an A's Rescous,
taken at large returned against the party, in this case he shall not appear by
Attomey but in person, and shall immediately upon his appearance be
committed to the Fleet, Nam expedite reipublice, &c.

Lit. 5. 418.
Co. Inst. pars
2. 150. 4. 3.

Dyer 1. 9. etc.
p. 4 H. 8.

12. Alb. if the Law in divers respects laboureth a Pilferer, so as a
Recovers then had against him by default, shall be reversed by Error,
a descent then case against him shall not annoy him; yet it will not
privilege him from suits, 02 Outlawries: so if the Tenant of a De-
sendant be in Pern. he shall upon motion, by order of the Court,
be brought to the Barr, and either answer according to Law, or else, the
same being recorded, the Law shall passed against him, and he shall
take no advantage of his imprisonment.

13. A Writ of error was brought by the Secrest of the Convene of a
Statute, because the Convene had led execution two years before the
day of payment; albeit the Secrest was a Stranger to the Record, 18
B. So also in 32. 3. A Scire facias was brought by the Grantor of the
rebellion against him that had execution of the Land by reason of a
Statute Merchant, and to obtain the Scire facias alleged, that the
Convene had received his duty, &c. And yet the grantee was neither par-
ty and party: likewise if a Parion hath an annuity and recever, and
after the Church is appropriated to a religious House, the Sovereign of the
the Common Law.

1. Power being a thing one of Common right, it may be assigned without Liberry of sale, or writing, and before the Guardian in Chivalry enter, the Heire within age may assign Power, causa qua supra.

2. Where the Tenant holds his land of his Lord by fealty and certain rent, or by homage, fealty, and certain rent, or by other services and certain rent, and the rent is arrear, at a day when it ought to be paid, in this case the Lord may distrain for the rent of common right, so if a man demised land to another by Deed without Deed, for life 21 years, remitting rent, if it be arrear, &c. the Letters may distrain for it of common right, albeit there be no clause of distress compiled in the Deed, or otherwise: And when it is said, What a man may do a thing of common right, it is as much as to say, that he may do it by the common Law: And the common Law is called Common right, because it is the best and most common birth-right that the Subject hath for the safeguard and defence, not only of goods, lands, and revenues, but of his Wife and Children, his body, fame, and life also: And when it is said, that a man may distrain, or do, or have any thing of common right, it is as much as if it were said, he may do or have it by the common Law, without any reservation or provision of the party. It is worth observation, that the common Law of England is sometimes called Right, sometimes common Right, sometimes Communitis judicis: The French also call their municipal Law, Droit, which in their vulgar tongue signifies Right. In the great Charter the common law is called Right, Rectum: Nulli venenum, nulli negabimus, aut differrems Judicialia vel rectum. In Weel. 2. ca. 1. it is called Common Droit: In primos voet le Roy & commande, que le pais de sainte Eglise, & de la terre soit bien garde & maintene en tout points, & que Common Droit soit fait a tous, axiobien aux provers, come aux riches fans regard de nul-lus: which agreeeth with the ancient law of King Edgar, Porro autem has populo, quas servet, proponimus leges, primum publici Juris beneficio quasquam frutur idque ex aquo & bono, five is divers five inops fuerit, jus Redditor, &c. A. 3.

144. It favoureth Common Right.
3. If a man hath a Rent charge to him and his heirs issuing out of certain land, if he purchase parcel thereof to him and his heirs, all the Rent-charge is extinct, and the annuity also, and one of the reasons thereof is, because the grant of a Rent-charge out of Land is against Common right.

4. By the Common Law no Grantee or Assignee of a Reversion could take advantage of a rent-charge by force of a Condition, because it was against Common right: but this is now altered by the Statute of 32 H. 8. ca. 34. Yet at this day since the Statute, a Grantee of part of the Reversion shall not take advantage of a Condition no more than he could before that Statute: As if the Leases be of three acres, reserving a rent upon Condition, and the Reversion is granted of two acres; in this case, albeit the rent shall be apportioned by the act of the parties, yet is the Condition destroyed, so that it is entire, and also against common right, and therefore shall not be taken by Equity or implication upon the words of the Statute, being without the express words thereof.

5. There is a difference between a rent and a re-entry, for upon a gift in tail of a Lease for life, a rent may be reserved without Deed, because it is natural and agreeable to Law, that rent should be reserved out of Land: but a Condition with a re-entry cannot be reserved in these cases without Deed, because that is collateral, unnatural, and against Common right.

6. There is a difference between Common appellant and Common appurtenant, for Common appellant may be apportioned, because it is of Common right, and therefore (in that case) if the Common purchaser parcel of the land, in which, &c. yet the Common shall be apportioned, as if the Lord purchase parcel of the tenancy, the rent (being not entire) shall be apportioned; so if A. hath Common appurtenant in twenty acres of land, &c. and B. of parcel thereof, this Common shall be apportioned, and B. shall have Common pro rata, and if he be indebted, shall make a special prescription for his Common. It is otherwise of Common appurtenant, which is against common right; so by purchase of part of the land, in which, &c. the whole common is extinct.

7. Leases for years pays a rent feck, this is not such a feftin as is required in an Assize against the tenant of the frank tenement, and one of the reasons alleged for this resolution is, because a rent feck is against common right, and therefore shall not be availed in Law, but the fisment ought to be given by the tenant of the frank tenement himself: And upon the grant of a rent charge to rent feck, attornment to feftin ought to be made by all the ter-tenants that have interest in the land, out of which, &c. because they are against common right, and therefore not availed in Law.

8. In most cases where the Lord purchase part of the tenancy (especially if the tenant bold by an Intire servitute) the whole servitute is extinct, howbeit although the Lord purchase parcel of the tenancy, Homage and Fealty shall remain, for the residue, because they are due of common right.

9. When an Act of Parliament is against common right and reason, as repugnant, as impossible to be performed, the common Law both controli, and accordingly such an Act void: And therefore in 3 E. 3. 30 Thomas Tregors cafe, upon the Statute of Wilm. 2. &c. and Artic. super Car. cap. 9. Here the law, some Statutes are made against Law and right, which those that made them, perceiving, would not put them in execution. The Statute of Wilm. 2. cap. 21. gives a Writ of Cassavict heredi potenti super heredem tenementum, & super eos, quibus alienatum fuerit hujusmodi tenementum. And yet where in 33 Eliz. tit. CassavICT 42.
there were two Coparceners Lords and Tenant by feality and certaine rent, the one Coparcener had issue and eves, the other and the Heire could not joyn in a Cellavit, because the heire could not have a Cellavit for the Lease in the time of her Ancestor (F. N. B. 209. f. and with this accord Plowd. Com. 110.) and the reason hereof is, because in Cellavit the tenant before judgment may render the arrearages and damages, &c. and retain his Land, and this he cannot do when the heire bring Cellavit for the Lease in the time of his Ancestor, for the arrearages occurred in the life of his Ancestor belonging not to him; and therefore, upon the law, At www against common right and reason, the common Law (as that point) anijured it both. Vide plus ibidem.

10. Quota pars, viz. decima pars (which we call dismes or tythes) is an Ecclesiasticall inheritance, collateral to the estate of the Land, which cannot be either extint or suspended by quality of possession, because they are one of common right: And thereof if a Plea, having cale.

11. The Law of a Lease cannot intitule to distraint for the certainty of the Lease, because it is collateral and against common right, and for the private profit of the Lord of the Lease, which the Lord cannot have without prescription, and therfore as he ought to prescribe in the principal, so ought he to prescribe in the distrease: Howbeit although for an amercement in a Court Baron the Lord cannot distraint without prescription (Vide 44 E. 3. 13.) yet for a Fine and all amercements in a Court Leet, distrease isincident of common right: And therefore, if the certainty be not duly payd, the Deremer or Capitall pledge, that collecte it, may first be amerced, and then distraint for his negligence.

12. If Leases upon a lease at will reserve an annwalt rent, he may distrain for the rent arrear, or have an action of debt for it at his Co. Inst. par election; because power of distraint is (in that case) given him of Co. Inst. pars.

13. Where Coparceners make partition by Patol, and for equality of partition one of them is to have a rent out of the land, in this case they may distrain for the rent arrear of common right.

14. In an Allis of Novel disseisin for Land, (since the Statute of 32 H. 8. 7.) forWITH, the ten-tenant need not be named in the Count, but only the distrease; It is otherwise in an Allis of Rent, charge of lack, because they are things against common right.

145. And therefore it suffeth, things against principles of Law, rather then the party should be without remedy.
The Reason of

Robbery per prematum Joanne procreatio foror & heredi predicti Roberti descendere debet performam donationis predictae. And yet in truth the land did not descend unto her from Robert, but because she could have no other Writ, it was adjourned to be good: In which case it is to be observed, that albeit Robert being heire, took an estate by pur-
chase, and the Daughter was no heire of his body at the time of the gift, yet she recovered the land per formam doni, by the name of Heire of the body of her Father, which (instead) her husband was, and was also capable at the time of the gift, whereas when the gift was made, she tooks nothing but in expectancy, when she should become heire per for-
man doni: And yet the law permits her to have a Writ in some aforesaid, least otherwise the Sheald have been without remedy.

Remedy for

An action of debt for relief as for seque

2. The lord Shall not have an action of debt for relief of sc

due unto him, because he hath other remedy to recover the same, viz. by relie,

4. And if Writs for yeares be disturbed of his way, for remedy thereof he shall have his special action upon the case, but if it be a common way

(two a booy multiplicitate of suits) it ought to be presented and reformed in the Least of the Warne, and no particular person shall bring any action for it, unless he suffer particular damage by the nuisance (as if he and his horse fall into a ditch to make in the common way, or the like)

The Law obtained a Writ for: him called Ex gravi querela, and this Writ without any particular usage was incident to the custom to devile; because otherwise, if a different had been cast before the devile had entered, the devile had been without remedy, there being no other way prohibited for him to recover his land.

In Cities and Burrows, where Tenements were debitable, if the hei

5. In Cities and Burrows, where Tenements were debitable, if the hei
de of the devile had entered, and had held out the devile, albeit the devile might have entered (as Lit. faith, S. 167.) Yet, besides, the Law obtained a Writ for: him called Ex gravi querela, and this Writ without any particular usage was incident to the custom to devile; because otherwise, if a different had been cast before the devile had entered, the devile had been without remedy, there being no other way prohibited for him to recover his land.

6. If a Villain purchase a Signior, rent, or other proft out of land, of a reverstion after an estate for yeares, life, in tails, by Statute Per-

Clai me of

chant, Statute Staple, or Elegit, and attornment is made unto him according to the grant; in such cases, the Lord may come upon the land and claim the reversion, and in so doing shall not be adjourned a trespasser, for he hath no other means to come by the reversion, because if he

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the Common Law.

So shall stay un till the reversion should fall, the Villain might alien it to another before his entry, and so prevent him of his just title thereto: Also upon grant of an Adow eney to a Villain, claims must be made immediately at the Church, though it be then full of an Incumbent, for if he stay till an avo yance, he may be prevented, as aforesaid, vide infra. 35.

7. Regularly an outlawed person cannot sue, and if he do, it is a good plea in unavailability of his person, to say, that he is outlawed: yet in a suit of Ex any Strangers suit shall not disable the Plaintiff, because if he be in that action should be disabled, and were outlaws at several mens suits, he should never recover any of them.

8. Albert Aliens (though in annuity) are excluded from many privileges that Subjects hope enjoy, yet such an Alien may maintain personal actions, for an Alien may trade and trafficke, buy and sell, and therefore of necessity he must be of ability to have personal actions, and an Alien that is condemned in an Information shall have a suit of Ex to relieve himselfe, Ex eis de similibus, for otherwise they should be without remedy.

9. If a Monk of other spiritual person profess, were beaten, wounded, or balked, he is prohibited to sue (as in a suit, l. 200.) because he is a dead person in Law: but here the Law gives a remedy, for in that case the Monk and Shoulds shall have in an Action against the wrong doer, and if the Writ be Ad damnum ipsius Priores, the Writ be good, if it be Ad damnum ipforum, it is good also: yet in this case the Abbots of Prog (in his person) was not wounded. Also if a Monk were by Conspiracy falsely and maliciously indicted of Felony and Robbery, and afterwards was rightfully acquitted, his Sovereign and he should have joined in a suit of Conspiracy, and the like: There is the same Law also of a Sarne, Sanconmonias, mutatis mutandis: And if the Law did not provide such a course, they might have been injured and left without remedy.

10. A Feme Covent is disabled to sue without her Husband, and yet we read that (in some cases) a Wife hath had ability to sue and to be sued without her Husband: for the Wife of Sir Rob. Belknap (one of the Justices of the Court of Common Pleas) who was banished beyond Sea, did sue a Writ in her own name, without her Husband, he being alive, whereof one said:

Eccae modo mirum, quod sano mime fret breve Regis
Non nominando virum conjunctim robore Legis.

Also E. 3. brought a Quare Impedire against the Lady Maltravers, and the plea ed, that she was Covent of Baron, whereunto it was replied for the King, that her husband, the Lord Maltravers was put in enire for a certain cause, the said was ruled to answer. Vide many examples hereof in Coke, ubi supra, where this difference is put, that if the Husband be condemned to perpetual banishment, his wife in his absence, and in her own name, shall sue and be sued; but if it be but Relegation for a time, it seems to be otherwise: And all this, least the parties that have cause of Action, should remain without remedy; for when he is condemned to perpetual banishment, he is as a Monk profess, dead in Law: Where is the same Law also of perpetual abjuration.

11. If a man grant a Rent-charg out of his Land, with Proviso that the Santee shall not charge his person: in such case (regularly) the Land shall be only charged, and his person free: And yet in some case where there is such a Proviso in the Grant, that the person of the Santee.
The Reason of

Max. 45

12. Where in a Dower 27 upon Partition betwixt parcemors, a rent Equity of pr
is granted to supply the thirds, 22 for equity of partition; in such case, the Law both give a Dictree to the Granter should be without remedy, having in lieu thereof departed with a valuable recompense in

13. For twenty shillings rent, a pound of Pepper payable year ly, two tenants in common ought to have severall Allies, because they have them by severable titles; as one tenant in common may have an Allie of the moiety of twenty shillings, 28 of the moiety of a pound of Pepper (de mediatee unus libre piperis, but not of ten shillings, 29 de dimidio libre piperis.) And for that these things are in themselves severable: Howbeit, for an Allie, Hose, 30 the like, which are intire, albeit they be tenants in common, yet shall they joyn in an Allie, because, otherwise, they should be without remedy; so, one of them cannot make his plaint in Allie of the moiety of a Allie, Hose, 31c. et. that were against the order of nature, which the Law will not suffer: and if they should not joyn, they should have Damnum & injuriam, and yet should have no remedy by Law, which would be inconvenient: for the Law will, that in every case, where a man is wronged and embarrassed, that he shall have remedy, Aliquid conceditur, no injuria remanerent imputata, quod alias non concederetur: so also shall they joyn in a Quare impedit, in a Writ of right ward, 32 ravishment of ward for the body, for the same reason.

14. If there be two Tenants in common of an Abstention, and a Stranger usurps, so as the right is turned to an action, and they bring a Writ of Quare impedit, which concerns the reality, the fit momentis paix, and the one byth: In this case the Writ shall not abate, but the Survivors shall recover, for otherwise there would be no remedy by Law, which would be inconvenient: for the Law will, that in every case, where a man is wronged and embarrassed, that he shall have remedy, Aliquid conceditur, no injuria remanere imputata, quod alias non concederetur: so also shall they joyn in a Quare impedit, in a Writ of right ward, 32 ravishment of ward for the body, for the same reason.

15. It is regularly true, that a man shall not plead or take advantage of a Condition, without thowing forth theproof thereof in writing: And yet, if land be mortgaged upon condition, and the Mortgagee letteth the Lands for years, referring a rent, the condition is performed, the mortgagor re-enters: In an action of debt bought for the rent, the Lessee shall plead the condition and the rent, without thowing forth any Deed: so in an Allie the tenant pleads a Feoffment of the Ancestor unto him, &c. the Plaintiff saith, The Feoffment was upon condition, and the condition was broken, and pleas a rent, and that the tenant entered and took away the Chief, in which the Deed was, and yet retained the same, the Plaintiff shall not in this case be informed to show the Deed: Also if a woman give Lands to a man and his heires by Deed 33 without generally, she may in pleading aver the same to be Causa matrimonii prelocati, albeit she hath nothing in writing to prove the same: And the reason of these cases and the like is, let the parties that should prove the conditions should (upon failure thereof) be utterly left without remedy.

16. If the Feoffee of Land in fee upon condition be seized, this different (if the condition be broken) shall not take away the entry of the Feoffee or his heires: but if the Feoffee upon condition be seised, and the different dye, whereby a descent is cast, this shall take away the entry.
entry of the Feoffee; because he hath a right to the land, and therefore his entry may be taken away, for that he may recover his right by action: But the Feoffor, that hath but a Condition, his title of entry cannot be taken away by any descent, because he hath no remedy by action to recover the land, and therefore if a descent should take away his entry, it should bar him for ever: And the Law (in this case) is all one, whether the descent were before the condition broken or after: Also he that hath a title to enter upon a Possession shall not be barred by a descent, because then he should be without all remedy: So it is also where a Woman hath a title to enter, Caena matrimonii prelocuti, no descent shall take away her entry, because she hath but a title, and no remedy by action. If a man be seized of lands in Fee, and in writing deviseth the same to another in Fee, and death, and the Heir before any entry made by the Devisee, enthr and verbally leased, this descent shall not take away the entry of the Devisee; so if the descent (which is an act in Law) should take away his entry, the Law should barre him of his right, and leave him utterly without remedy: So it is also of him that enthr for content to a ravidgment, and was so resolved in the case of Martin Trotte, 32 Eliz. in Communi Banco, and according was the Dict of the Court of Common Pleas, Falch. 1. Jac. So this may be added as a like Case, The King's Patentee before he enter, &c. which you may observe a diversity between a right, for which the Law giveth a remedy by action, and a Title, for which the Law giveth no remedy, but by entry only.

17. Regularly, Continuall claimes cannot be lawfullie made, but where hee that makes the claimes hath present right of title to enter, and yet in some cases (where a man is left without other remedy) a Continuall claim may be made by him, that hath right and cannot enter: As if Tenant for years, Statutes Pecurant, Staple, or Elie- gie, be outer, and he in the reversion disciled, the Letto or he in re- version may enter to the intent to make his claimes, and yet his entry, as to take any profites, is not lawfull during the terme: So likewise the Letto or Reversioner may in such case enter to ablowe a collateral Warrantie, or the Letto in that case may recover in an Affire: And so (as some have holde) may a Letto enter in case of a Lease for life, to the intent to ablowe a Descence or Warrantie. If the Devisee make Continuall claimes, and the Devisee be seised within the yeare, his Heire within age, and by Office the King is intituled to Wardship; in this case, albeit the entry of the Devisee be not lawfull, yet may he make Continuall claimes to ablowe a Descence.

18. When a man for fear of death, or some coposall hurt dare not make an actuall entry into land, he may appoache as near there; 1. 2 53. b. 4. unto, as he dare for such fear, and claim the Land, and this claim, which is an entry in Law, doth best the possession and servant in him (for his advantage, but not for any thing which may tend to his vilen- Vantage) as if he had made an actuall entry into the land, because otherwise he should be left without remedy.

19. If a Recovery be had against a man in a Précipe by default, when he was extra quariori, at shall not be reverfed by a Writ of Error for that cause, for that he is not left without remedy, but may have his action of an higher nature, or a Quod ei deforecat; Howbeit, if a man be outlawed in a personal action, being then extra quariori mar- ria, he may reverfe it by a Writ of Error, for otherwise he should be without remedy, and (besides) de Minimus non curat Lex.

20. Where a man cannot have advantage of the speciall matter by
21. If a Seigniory be granted to one for life, the remainder to another in fee, the appoinment of the Tenant to the Tenant for life is an appointment to the remainder also: Postvoid, it acquittal ought to be made as other privilege had: in such case, albeit appointment be made to the Tenant for life, and he acknowledge the acquittal, &c. Yet after his decease bee in remainder shall not sustain, until he acknowledge the Acquittal also, notwithstanding the Appointment of the Tenant for life, for otherwise the Tenant should be without remedy.

22. By the policy of the Law, The Abbot (termed the suobraine) albeit (indeed) he be but a Pope or secular person dead in Law, yet hath he capacity and ability to sue and be sued, to enforce, give, demes, and Lease to others, and to purchase and take from others; for otherwise they who right have, should not have their lawful remedy, nor the Hune remedy against any other, that did them wrong.

23. Regularly, a man cannot be remitted against his own alienation, yet if there be Baron and Feme in special ties, and the Baron alien the Land to another in fee, and take an estate back to him and his Wife for their lives; in this case, the Baron is remitted against his own alienation, as well as the Feme: for the Feme cannot be remitted without the Baron be remitted also, and rather then the Feme should not by Remitter have remedy and her ancient right restored to her, the Baron shall be also remitted against his own Grant: And therefore (in that case) if there were any remainders in tails upon the special tals, and last of all a reversion or remainder in fee above them, upon taking backe of the estate for lives by the Baron, all those in remainder or reversion are also remitted.

24. By the Rule of Law, a Warrantie made by the Father defends upon his heire at the common Law, and he onely is to be bouched to maintain the same; yet in some cases lett the Toucher be without remedy, they that are not heires at Law may be bouched: As if a man enfeoffeth another of an acre of land with warranty, and hath little two Sons, and yesth fells of another acre of land of the nature of Burrow English, the Feoffor is implanted; here, albeit the Warranty defended onely upon the eldest Son, yet may he bouche them both, the one as heire to the Warranty, and the other as heire to the land: For if he should buche the eldest Son onely, then should he not have the fruit of his Warranty, viz. a recovery in balance, and the youngest Son onely he cannot ouche, because he is not heire at the common Law, upon whom the Warranty defended: So it is also of heirs in Coheirship, the eldest may be bouched as heire to the Warranty, and the other Sons in respect of the Hierarchy defended unto them: In like lust the heire at the common Law, and the heire of the part of the Mother shall be bouched: Postvoid the heire at Law may be bouched as long as both those cases, at the election of the Tenant, &c de similibus: In the same manner if a man yse fells of certaine lands in fee, having issue
the Common Law.

Was a Son and a Daughter by one benter, and a Son by another, the eldest Son entretth and peibth, and the land descends to the Sitter; in this case, the Warrantee descends on the Son, and he may be touch, as heire, and the sitter, as heire of the land: In which and the other case of Barrow English, the Sonne and heire at Law, having nothing by descent, the whole issue of the Recovery vyeth upon the heires of the Land, albeit they be no heires to the Warrantee.

25. If a man doe warrant Land to another without this word (Veires) his heires shall not touch, and regularly, if bee warrant Land to a man and his heires, without naming Allignes, his assignee shall not touch: Howbeit, if the Father be enfeoffed with Warran- ty to him and his heires, and the Father enfeoffeth his eldest Sonne with warranty and yeath: In this case, albeit the Warranty between the Father and the Son is by as in Law exact, yet the Law giveth to the Son advantagge of the Warranty made to the Father, because (otherwise) hee should be without remedy, occasioned by an act of Law, which can do no wrong.

26. It is against a Rule in Law, that a man should touch himselfe, Vide R. 54. Ex. 14. And yet if a man be enfeoffd with warranty a.1. to him and his heires of greene acre, and is also seised in fee of black acre in Barrow English, and having two Sonnes, enfeoffeth his eldest Sonne of greene acre, in this case, if the eldest Sonne be implessed, hee shall touch himselfe, and his younger Brother (being heire in Barrow English) for otherwise the eldest Sonne should be without remedy; because the act in Law (Viz. the descent) hath determined the Warranty between the Father and the eldest Sonne.

27. Baron and Feme being one person in Law, it is against the Rule of Law, that they Should touch one another, neither shall a Warranty be made use of, while it is in suspence: And yet if a man enfeoffeth a woman with Warranty, and they intermarry, and are implessed, and upon defect of the Husband the Feme is received; in this case, the Feme shall touch her Husband, &c. notwithstanding the Warranty was put in suspence by the intermarriage: No likewise on the other side, if a woman enfeoff a man with Warranty, and they intermarry, and are implessed, in this case, the Husband shall touch himselfe and his Wife by force of the said Warranty: Albeit it be against another Rule of Law (Viz. 34. before cited) that a man shoule doe an act to himselfe: And all this least the Husband or Wife, in their severall cases, should be without remedy.

28. Regularly, the Feofee of one Coparcener shall not have any of the other Coparcener to deraigne a Warranty paramount: And yet if there be two Coparceners, and they make partition, and the one of them enfeoffs her Sonne and heire apparent and yeath, and the Son is implessed: In this case, albeit he be in by the seement of his Brother, yet shall he be pay in aide of the other Coparcener to have the Warranty: And the reason of the granting of this ypper is for that the warranty between the Brother and the Sonne is by Law annulled, and therefore least the Sonne should be prejudiced by Law (which can do no wrong) and to be left without remedy, the Law giveth him (albeit he is in by seement) to pay in aide of the other coparcener to deraigne the warranty paramount.

Bbb 2
The Reason of

Max. 148

Co. 1. 3. 5. 3.
3. in Sir wil
Harriso, cafe.

29. In Debt against the heire upon an obligation made by the Heir.
Debt against the Heir.
Creditor, the creditor could not (at the common Law) have had execution against any part of the Land, whereas the debt was (founded, in the life of the debtor himself); but after his decease he might have had all the land descended upon the heir in execution, until he should be satisfied the debt, because the common law giving action of debt against the heir, if the debtor should not have had execution of the Land against the heir, he should not have had any fruit of his action, and so should have been left without remedy: for the goods and chattels of the debtor did belong to his Executores s3 Administratores, so as if land should not have been liable to a debt of a common person; at the common Law, the creditor had been without remedy: and yet the common phrase is, Lands pay no debts.

Co. 1. 4. 30.
b. 3. in Smew
and Thom‘son cafe.

30. In a Court Baron the damages to be recovered ought not to see
Dower.
Coyoholl.
reed forty Hillings, yet in a Copyhold Manor where the custom is
that a Ferry shall be endowed, if he receive Dower with damages in
the Lords Court, albeit those damages exceed forty Hillings, yet are
they recoverable in the same Court, for otherwise hee should be with
out remedy, because they are not recoverable by the common Law, but
only by the Court of the Lord by Lavery facias.

Co. 1. 5. 88. a.
3. in Garvis cafe.

31. At the common Law, if a man had judgement in an action of
debt, and after judgement outlawed the Defendant: in this case the
Plaintiff was not at the end of his suit, as to any process to be further
sued by himselfe, for hee could not have a Scire facias, nor any other pro-
cesse upon the Judgement, but was put to his new Original, as it is
agreed in 13 H. 4. 1. a. 21 E. 3. 55. and 20 E. 3. Nonabity G. And
albeit before the statute of 25 E. 3. ca. . Capias did not lie in debt,
not the body of the Defendant before that Statute was subject to execu-
tion for debt; yet in these cases if the Defendant be taken by Capias or
lagerum at the Kings suit (no Laches being in the Plaintiff in con-
formance of his process) he shall be in execution for the Plaintiff, if he
will: for albeit the property of all the Defendants goods and profits
of his Lands are by the Dutillary belked in the King, yet rather then
the Plaintiff should be without remedy, he shall hold in execution for
his debt, and for that reason he shall (in such case) participate of the
benefit as well as the King.

Co. 1. 6. 41. b.
3. in Sir Anthon-
by Mildmade
case.& Co. 1. 59. b. in Lit-
lingsbank case.

32. If a man by Deed grant a rent to another for his life, provided
that he shall not charge his person; in this case, if the rent be secured,
and the Gantee vye, his Executores shall charge the person of the grantee
in an action of debt, for otherwise they should be without remedy. Vide
supra 11.

Co. 1. 8. 57. b.
2. in Bredamin case.

33. Regularly, a Precipe lyeth not against a Lermo, because he can
not tender fealin: However, against a Guardian in Civility, who is
upon the matter but a Lermo, being but possessor of a Chattell (viz.
the Wardship) a Writ of Dower lyeth, because otherwise the tenant
in Dower shoule be without remedy, for (in such case) no Writ of
Dower lyeth against the Heire, as it is adjudged in 9 H. 6. 6. Trevis
Cafe.

Co. 1. 6. 69.
b. 3. in Sir
Matie Finchess
case.

34. If William Abbot of Worceker purchase a Writ by the name of
Thomas Abbot of Worceker, the Writ shall abate, because he may
purchase a new one: However, if he with the content of the Covenant,
grant to the Burgesses of Worceker common of certain lands by the name of Thomas Abbot of Worceker, where his name is
William, the grant is good, because there is certainty enougeh to make
certain the name of the Sexpand, viz. Abbot of W. (Nobil fact error no-
minus sum conilat de persona.) Any, otherwise, the Sexpand should be
without remedy, for they cannot have a new Grant.

35. If
35. If a man be seised of a manor, part whereof in Lease for life, and part in Lease for years, and he derives a Fine to A. to the use of B. in tail, without the remainder over: In such case B. shall aver for the rent, and have an action of Waste without any attachment: for, when a reversion is vested in any in judgment of Law, and he hath not any possible means to compel the Tenant to attain, and no Laches or default is in him, in such case he shall aver and have an action of Waste without attachment, for the Rule is, Quod remedio definitum, ipse re valet si culpa abit. So in 20 E. 3. Contra formam Collat. because the founder cannot have the Waste of Contra formam Collations of an Advowson, he shall present without any fault, because otherwise he should be without remedy. Likewise in 7 E. 3. and 3 H. 7. A man shall be Tenant by the Curtesy, of a rent or Advowson, albeit the woman dye before the day incur, or the abidance fail: Also the Lord in Postmain 23 of a Villaine claims a reversion, by such claim the Law beeth the reversion in him, and he shall aver and have an action of Waste without attachment, because he hath no means to compel the Tenant to attain: There is the same law of Letters Patents, and of a bannet of a reversion, as appears in 34 H. 6. for in all these cases, abett culpa, and the party should be (otherwise) left without remedy, Vide supra 6.

36. If a Quare impediem be brought against the Patron and Incum- bent, and the Patron vye, hanging the Waste, the death of the Patron shall not abate the Waste, as it is adjudged in 9 H. 6. 31. For there are two miscarries, the one if the Waste shall abate the disturbance shall be left unanswering, and albeit the Waste be well commended, yet the Plaintiff shall be without remedy, for there shall want a disturber; and the other miscarrie is, if the Waste do not abate, but the Plaintiff proceed to Judgment and Execution, the true Patron shall be out of possession: And therefore in so much as in the one case, if the right Patron be put out of possession, he hath remedy by a Waste of right to recon- time the Advowson, and in the other case, if the Waste shall abate, the Plaintiff shall be without remedy, which (of the two) is the greater miscarrie, for this case the Waste shall stand and shall not be abated; with which agrees 7 H. 4. 20. b. 13 H. 8. 13. 9 H. 6. 57. For the same reason it is, that a Quare impediem brought by Coparceners or Inven- turers shall not abate by the death of one of them, or brought by Baron and Feme shall not abate by the death of the Baron: because, otherwise, the Plaintiff (if the 6 months be past) shall be without remedy, as the Books are in F. N. B. 35. b. 38 E. 3. 14. 37 H. 6. 11. 7 H. 4. 19. 14 H. 4. 12. 9 H. 6. 30. 57. 1 H. 5. 43. 17 E. 3. 11. 7 E. 3. 304.

37. At the common Law (regularly) by demise of the King all suits were discontinued, for remedy whereof the Statute of 1 E. 6. 7. was made; but since that Statute if an Original were not returned before the death of the King, it was left, for the words of that Statute are: Depending in any Court: Howbeit (at the Common Law before that Statute) in an Appeal of death, if the Waste were delivered to the Sher- iff within the year, and before the return thereof, or the Sheriff with any thing in it, the King vye, and the peace is expired before the day of the return: In this case the common Law gave remedy to the Plaintiff, viz. a Certiorari out of the Chancery returnable in the Kings Bench, and thereupon the Plaintiff had re-attachment, although it came not in by the return of the Sheriff, but by the Certiorari: And the reason is, for the necessity of the matter, for (otherwise) the Plaintiff, who lawfully purchased his Waste within the year without any default in him, shall lose his appeal, the peace being past: And therefore in so much as by an in Law the Waste is discontinued, the Laws gives a
means to revive it, to the end the party should not be without remedy:

So if a man purchase a Formedon against the Parity of the profits within a year after the title accords, if before the return of the Writ, &c. the King demiseth his Crown, the Writ shall be removed into the Common Bench by Certiorari, and thereupon he shall have a Re-

summons for the mischief, &c. for otherwise he should be left without remedy, as is holden in 10 E. 4. 13. b. and 14. a.

38. If a man grant a rent-charge for life out of his land, with Pro-

viso not to charge his person, and the rent is arrear, and the Grantor

indef A. and the rent is arrear in his time, and after A. enforces B. Execu-

and the rent is also arrear in his time, and after the Grantee dies, his

Executors shall have an action of debt against any of them for the

rent arrear in his time, because, otherwise, the Executors should be

without remedy and Qui fentit commodum sentire debeber & omnes. Vid-

e supra 11. and 32.

39. It seems incongruous and against reason, that the ter-

tenant who is already seised of the land, should have a Writ of Novel dis-

senting concerning the same land: And yet in some cases (rather then he

should be left without remedy) he shall have it: As if the Lord, &c.

vitrains his tenant to often, that he cannot manure his land, in this

case the ter-tenant may have an Affile, and the Writ shall be general,

but he shall make a special Plead, that the Lord, &c. Soquent vis vi-

trains, &c. And the Judgement shall not be, Quod queres recuperabil-

bit seisinam tenementorum predictorum, for the Plaintiff himselfse

is seised of the land, but the judgement shall be, that he shall have and

hold the land, abique multiple distriictione, &c. So likewise, in case

quo quis poscit alienum separale. The ter-tenant shall have an Affile by

the common Law: And the Statute of West. 2. ca. 23. that gives an

Affile of Novel dissension de libero tenemento in such cases, is but an as-

sumption of the common Law: for in like manner he shall have an Affile

for lying in his several Pileary, 23 for Pileary, Common, &c. and

the Writ shall be general, as appears by that Statute, but the Plains-
tiff in his plaint ought to show that the Defendant claiming common

piause in his several, with his Cattle disturbeth him, &c. And the

Judgement shall not be, that he shall recover the seisin of the tenements,

&c. but that he shall have and hold them in severalty, for the Plaintiff

himself is already in seisin of the frank tenement: In which cases,

and the like, it may be observed, that the Judgement doth not pursue

the Writ, which (regularly) it should, for then it should adjudge him

the Land it seises, which is needlesse, because he hath it already: How-

beit least he should be without remedy, it gives him the Writ, by which

Land is usually recovered.

40. If the Lessore pay his rent voluntarily before the day, albeit this

payment be voluntary, yet is it not satisfactory, so to satisfy the rent

not then due: Howbeit if the rent, 02 any part thereof be given before

the day of payment in name of seisin of the rent, this payment shall give

sufficient Seisin to have an Affile: 02 other remedy for the rent, because

the Law delighteth in giving remedies.

41. If there be Lord and Tenant of a Seigniory in gosse, for which

the Lord (for want of litigatos) cannot keep Court; in this case, the

Tenant may sue in the Kings Court without licence of the Lord, be-

cause, otherwise, he should be without remedy, and the Lord shall not

have an action against the Tenant for so doing, 02 any means to an-

null the Tenants action; and in the end of the Writ 02 words shall be

infected, Quia Dominus remissus curiam fuit.

42. If the Baron give parcel of his Domain in taile, to hold of him,

and defe, the Same shall sue per Writ of right of Power in the Court

of.
of the Heire of the Baron against the Domee in tail, and the Wzit shall be directed to the heire; but if the Baron make a gift in tail of all the Land which he hath, and yseth, and the Feme is to take a Wzit of Right of Power of that Land, here the heire of the Baron cannot have any Court, because he hath but a Seigniory in gross; and therefore (in such case) the heire shall have a Wzit of Right of Power against the tenant in tail, directed to the Sheriff, and returnable in the Common Bench, and this clause shall be in the Wzit, Quia B. Capitalis Dominus feodi illius nobis inde remissicuriam suam. So likewise if the Baron makes a Lease of all his Land for term of life to a Stranger, and yseth, and the Feme is to have a Wzit of Right of Power; in such case also, the Feme shall have a Wzit of Right of Power against the Leesee for term of life in the Common Bench, because the Heerioner hath not any Court: And albeit this clause, viz. Quia B. Capitalis Dominus, &c. be put in the Wzit; yet because the Lord hath one by a Seigniory in gross, and hath not any remotene Land to hold a Court, and albeit the Lord never remitted his Court, no; that there is any matter apparent, or bemurrer in Chantry to prove the assent and will of the Lord to remit his Court, yet the Wzit returnable in the common Bench before the Justices there, is good, and they shall proceed thereupon, if the Lord hath not any Court to hold plea upon that matter: And it seems, that the Lord shall not have an Action against the Demandant for the suit of that writ in the Co. Ba. if he hath not a court to hold plea thereupon, and to do right to the party, so if the party might not have liberty to sue in the Co. Ba. in that case, the heire should be left without remedy: Holobiet (indeed) if the Lord had a court to hold plea, then he might sue a Wzit of Prohibition to the Justices of the Co. Ba. that they should not proceed upon that Plea; but otherwise not.

43. If one man hath the nomination to an Advowson, and another the presentation, if he name his Clerk, and the other that should present, present another clerk, he that hath the nomination shall have a Quare Impedic, and the Wzit shall be Quod peremptor ipsum præsentare; albeit, he hath but the nomination, so (otherwise) he should be without remedy: upon the same reason it is, that upon disturbance to one to present to a priory or Chantry donative to the King or a Bishop, or the like, a Quare Impedic lyseth, and the Wzit shall be, Quod peremptor ipsum præsentare: and yet those words are not proper in such cases, but because there is no other Wzit, hereby the party may have right done him, rather than he should be without remedy, the Law permits that Wzit to be used.

44. Regularly, a man shall not have a Quare Impedic, if he cannot allege a presentment in himselfe, or in his Ancestor, or in some other person, by whom he claims the Advowson: yet if a man by the Kings licence make a Parish Church, or other Chantry, which shall be presentable, &c. if he be disturbed to present the cure, he shall have a Quare Impedic without alleging any presentment in any person, &c. shall count upon the special matter: also likewise if one recover an Advowson by Wzit of right against another, when the Church is both, he shall present, and if he be disturbed, he shall have a Quare Impedic, &c. alleging presentment in him, against whom he recovered it, without alleging any other presentment: And a man shall have a Quare Impedic, and alleging a presentment by his procurator, and it shall be good without alleging any presentment by himselfe, &c. soz (otherwise) in these cases and the like he should be without remedy: So if an Abbot has been Parson imparson time out of mind, &c. and after the Abbey were dissolved, &c. In this case he of whom the Advowson was holden, shall present, and if he were disturbed, he might have had a Quare Impedic without alleging any presentment in the Count, but therein shall show the speciail matter.
45. One would think it a vain act for a man to procure a Repli- 

when his cattle are already come home of their own accord, as when he 

bath them again safe in his own possession: yet if the Lord take the 
cattle of his Tenant totally, and after the cattle come home again to 
the Tenant: in this case, albeit the Tenant is already possessor of 
them, yet shall he have a Repli- 

46. In a Repli- 

47. A man cannot be properly laid to recover Land from another, A Writ 

who never entred into the Land, nor ever had the actual possession 
thereof: And yet in a Precipe quod reddat, if the Sheriff return the 
Tenant summoned, where he was not summoned, whereby the Tenant upon the 
grand Cape returned last the Land by default, in this case the Tenant 
shall have a Writ of Decret fit against him that recovered, and also 
against the Sheriff for his false return, and by such Writ of Decret the 
Tenant shall be restored to his Land again: And this Writ may be 
bought by the Tenant after Judgement, and before any Entry in pos- 
session made by the Demandant: For if the Tenant should not have this 
Writ before the Demandant enter, it may be the Demandant will not 
enter until the Summonsers in the Precipe quod reddat, and the Sum-

moneurs, Weyzoz, and Pernez in the grand Cape are all dead: And so 
should the Tenant be left without remedy to recover the Land: for, 
after the decease of all the Summonsers, Weyzoz, and Pernez, he cannot 
have such a Writ, because whether he were summoned or no, is to be 
tried by their examination, &c.

48. Next to life, the person and estate of a man are much favoured 
in Law (Vide Max. 92.) so as at the common Law a Capias lay not but 

in case of Trepassers, vi & armis, Felony, &c. yet if an English Per-

chant hath his goods taken away from him beyond Sea by a Merchant 
Stranger, and there he prosecutes the Law to have Justice done him and 
restitution, and cannot have it, this matter is testified to the King 
in his Chancery by credible witnesses: upon such bare testimony (par-
te in audita altera) if such Merchant Stranger come afterwards into 
England with goods, both body and goods shall be arrested and detained, 
until the party accused be satisfied all his damages, by Writ out of the 
Chancery, to be directed to the Officers or Merchants strangers of the 
place where he is, or hath goods: for (otherwise) the English Merchant 
should be without remedy: And such Writs may issue to the several 
Posts, where the Merchant Stranger hath any goods, to each of them 
one, &c.

49. At this day the Ordinary shall not have an Action of Debt against 
the Creditor of the Intestate, because that Action is now given to the Ad-

ministrator by the Statute of 11 E. 3. 11. and the Ordinary may com-
mit the Administration of the goods and credits, when he pleaseth: but 
before that Statute Fitzhardinge seems to be of opinion, that he might, 
because it is requisite, some person should have that power: for (other-
wise) the Intestates debts could never have been recovered.

50. If the Lease let the term by Deed pol, and afterwards out the 
Lease,
Action against the Coarer on an escape, 51. If none be in Wilson upon execution for debt and makes an escape, in this case the Debtor is discharged of the debt, so as the Creditor cannot recover his execution to take him again: And therefore in as much as after the escape the Plaintiff is without remedy against the Defendant in the first suit, the Common law, which is common Reason, provides that the Plaintiff should have an action of debt against the Coarer, in whose default the execution of the Plaintiff was discharged; for (otherwise) the Common Law should be defective in that point, which must not be: And therefore will rather permit the Plaintiff to recover against the Coarer, then that he should be left without remedy, albeit there never was any contract between them.

52. Regularly, when any man will take advantage of a Condition, if he may enter, he must enter, and when he cannot enter he must make a claim; so that the Freehold and Inheritance shall not cease without entry or claim: And yet if Land be granted to a man for terms of five years, upon condition, that if he pay the Grantor within the first two years forty pounds, that then he shall have fee, or otherwise but for the term of five years, and liberty of litison is made unto him by lase of the Grantor: In this case, if the Grantee pay not unto the Grantor forty pounds within the first two years, then immediately after the first two years he and Frankement shall be adjudged in the Grantor, without entry, because the Grantor cannot presently after the two years enter upon the Grantee, for that the Grantee hath yet a term of three years in the Land, and in as much as hee cannot enter, hee shall not be driven to make any claim to the Reversion: For seeing by construction of Law, the Freehold and Inheritance (if the Condition been perfore) was to pass: Maintained out of the Lessee, by the like construction the Freehold and Inheritance by the default of the Lessee shall be recovered in the Lessee without entry or claim: Where is the same Law of a Grant by Deed, Lease and Release, Bargain and Sale by Deed Indented and Inrolled, &c. whether it be of an Auditor, Reversion, Remainder, Kent, Condition, or any other thing that lies in Grant.

53. The Husband is the Wives head, and regularly shee can do nothing without him: and yet in an action of Waste if the Baron make default to the great Distresse, the Feme (upon paper) shall be received and shall show the whole matter, and how she is in her Remitter, and shall barre the Lessee of his Action: And, albeit this priviledge be given the Feme by Writs, 2. cap. 3. yet ancient Authors, who wrote before that statute, do speak of such a kind of receipt at the Common Law, for otherwise the Feme would be without remedy.

54. It seems irregular, that Judgement shou'd be given upon a man already dead: And yet in 3 Ed. 3. Judgement 225. the Defense want in an appeal of death did wage Battell and was slain in the Field, yet Judgement was afterwards given that he should be hanged, and the Justices say'd, such Judgement was necessary, because otherwise the Lord could not have a Writ of Civitate, and to would be without remedy.

55. Regularly,
55. Regularly, there cannot be two recoveries in value upon one warrant, and yet in some special cases rather than a man shall be without remedy, there shall be two such recoveries; for if a lessor give lands to the Husband and Wife and to the heirs of the Husband, the Husband alienated in fee with warranty and death, the Wife brings to a Cui in vita, the Tenant vouchsafes and recovereth in value, if after the death of the Wife, the Defendant being a Precipe against the Allevne, he shall touch and recover in value again.

56. In all actions real and personal, if part be found for the Deman-
dant or Plaintiff, and part against him, or all part against the one
Tenant or Defendant, and nothing but part against the other, the De-
mandant or Plaintiff shall be amerced: Howbeit, in trespass of Bat-
tery against Baron and Feme, supposing the battery to be done by them
both, and the Feme is only found guilty, &c. and the Baron acquit, yet
( in this case ) the Plaintiff shall not be amerced, because the Plaintiff
( in such case ) can have no other Wilt, and therefore he shall be excused,
Vide Max. 149. 41.

57. Vide 143. 15.

58. In a Wilt of Ward, the Wilt supposed that B. held the land, &c. and the Count declared that B. was but Cefuy que us, so as the Freeees
held the land, and not B. Here, this variance is no Error, because the
Statute of 4 H. 7, which gives the wardship of Cefuy que us appoints
no special Wilt for it, and therefore the general Wilt and special
Count sufficeth; for otherwise the Lord shoul not be without remedy,
which the Wilt will not permit: So in a Warratn Carse, the worst
of the Wilt are Unde cartam baced, and yet the Count may be upon
warrant for Homage Ancefore.

59. A Wilt of Night ( Qvia Dominus renunici Caria, &c. ) was Fine Com-
bought by Baron and Feme, the Feme being under age, the Feme ap-
pears by Prochein amic, who was admitted by the Court, and upon
the Tenants boucher and default of the Nounces the had judgment
small, &c. without their Husband appearing in the action. Vide supra
10.

60. A man makes a Leafe for yeares to begin at a day to come, and
before the day the rebention is granted over divers times, afterwards
the Cernor enters and makes wakke, and the fourth Assigine being
wakke, and counts of the assignment and tenure of each of them, to
whom the Land came after the Leafe, albeit there was no tenure be-
fore the commencement of the Leafe, and it was held good, and so it is
also in the Regeder.

61. Albeit ( regularly ) a warranty ought only to be annexed to a
freehold, and not to any lower estate, yet when the breach of impairing
is not of a Freehold, but of a chattell, Viz. of a Leafe for yeares, for which
there can neither be Woucher, Rebutter, nor Warratye Carte, an action
of Covenant may be grounded upon such a Warranty: As if A. dem-
phet the Womor of D. to B. for one and thirty yeares, and afterwirds
grants it to C. in possession for life, with warranty against him and his
Ancefore, C. may bring an action of Covenant upon that Warraty,
and shall recover damages thereupon. See the Book at large.

62. Lands in Ancient demesne, where the possession is firmer, can be
not be recovered but within their owne Franchise or Jurisdiction, and
this is regularly true; yet actions at the Common Law, upon which
no remedy can be had in ancient demesne, do lie in the Kings Court,
though they sit the possession, as in a Quare impend. 7 H. 6. 35. be-
cause they cannot write to the Bishop: And the reason is, because the
Common Law being as ancient as their jurisdiction, will not enforce
that by presence of Pritileges there should be a Failur of Original
Right.
the Common Law.

146. It hateth Wrong.

1. The Lord both hate and abhors the obious and corrupt dealing of any man, and rather let it be unparished: And therefore in cases of a Marry, where he is disbarred by his Guardian, the Lord both abhors the obious dealing of the Guardian, to whom the custody of the estate is committed; and his pernicious profession of honourable Spousage, the most ignominious means Inheritance, that albeit the heirship the age of fourteen may dissent to it, and to disbar it by such his disbarment, yet the Law intented upon the Guardian for his at

Co. Infr. pars 10. b. 2.

tention, the intent of the wardously from such disbarment, according to the Statutes of Heroes, cap. 6, being but an assurance of the Com

Co. ibid. 161.

mand Law:

2. If a Lord of a Magna, &c. come to his Tenants land to dis

Co. ibid. 161.

bar the rent for rent arrears, and he takes the wages as gates that to that he cannot take the Tenants goods or cattle, without breaking open the wages, gates, or other inclosures: In this case, albeit the Law gives him power to disbar, it without licence him to break open the wages, gates, or other inclosures, to disbar; for by doing he becomes wrong payer: Wherefore, if he were before actually settled of the rent, if they be that, on purpose to prevent him done disbar, it amounts to a disbarment of the rent.

3. If diverse persons disbar each other, the use of one of them, as of Co. ibid. 184 another that attends; in this case, albeit he tends, to whole use the sic.

Co. ibid. 161.

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The Reason of

An estate by wrong makes a degree, whereby to grant a Writ of Entry in the person, but it ought to be upon a legal and a written instrument, or trust upon a will make no degree.

If an infant make a Feoffment in fee, a stranger (of his own head) cannot enter to the use of the infant; for the estate is upon lawfully evidenced, though provable, but where an infant of a man of full age is disaffiliated, an entry by a stranger of his own head is good, and he receiveth the estate in the infant, or other disaffiliated, and if the infant, his life make Feoffment in fee, albeit that it be a lawful Conveyance, yet because such a Feoffment is a wrong to the Reversioner, by the title of a stranger, to a Feoffment by the name of the Reversioner, the estate shall be immediately vested in the Reversioner.

The Statute gives only treble damages to the party injured; yet he shall also have treble costs allowed him, if he recovers: for although the Statute be penal, and (in that respect) should be favourably expounded, yet in as much as it is a wrong of a high nature, treble costs are also interpreted to be given by it.

If an alien be a Dilettant, and obtain Letters of Administration, and the Statute gives one treble damages to the party injured; yet he shall also have treble costs allowed him, if he recovers: for although the Statute be penal, and (in that respect) should be favourably expounded, yet in as much as it is a wrong of a high nature, treble costs are also interpreted to be given by it.

Warrant by the Statute of Gloucester cap. 3. 6. 1. All legal warrants, either by率达, and probable cause to bar the heir: but at the common law (before that Statute), the warrant, that his conduct be disaffiliated, were never any bar to the heir: because they had commenced by cor. viz. by disaffiliation: for (regularly) the Conveyance, whereto such warranty is annexed, both made the disaffiliation: As if the Father, or other Ancistro, be Tenant of the lands of the King for years, at will, by Erection, Statute-merchant, or Statute-capable, and the Father, or other Ancistro, be a Feoffment in fee of the land to a stranger with warrant, this warranty shall not bar the heir, unless he have other lands, that may be offered, by descent from the same father, or other Ancistro, respectively, in all which cases the disaffiliation is immediately in the heirs: notwithstanding cases, albeit the disaffiliation be not done immediately to the heir, yet the warrant shall not bar him: As if the Father be Tenant by life, the remainder to the Son in fee, the Father having content made a Lease for years, in the end that the Lessee shall make a Feoffment in fee, to whom the Father shall release with security, and all is executed accordingl, the Father death, this warranty shall not bind him, albeit the disaffiliation was not done immediately to the Son, for the Feoffment of the Lessee is a disaffiliation to the Father, who is particeps crimes: so that, if a son another in trust, another with warrant, the uncle devise the Domes, y, unless another with warrant, the uncle devise, and the warranty descends upon the Domes, and the Domes devise without issue: there, albeit the disaffiliation was not done to the Domes, and not to the Domes, yet the warranty shall not bind him. The Father, the Son, and a third person, are Joint tenants in fee, the Father maketh a Feoffment in fee of the whole with warranty, y, whilst, the Son devise, the 3. person shall not only avoid the Feoffment for his own part, but also for the part of the Son, y, he shall take advantage that the warranty commended by disaffiliation, though the disaffiliation be done to another. If a man commit a disaffiliation to the intent to make a Feoffment in fee with warranty, albeit
he make the Testament many years after the devise, yet because the warranty was done to that intent and purpose, the Law shall advance upon the whole matter, and by the intent couple the devise and warranty together: And all this, because such devises commence by wrong: So it is also of a warranty that commences by abatement or intrusion (that is when the abatement or intrusion is made of intent to make a Testament in fee with warranty) for neither shall that bind the right here or make then a warranty that commences by devise, because they do also commence by wrong: Likewise, if the Tenant yeath without heirs, and the Ancestry of the Lord enter before the entry of the Lord, and make a Testament in fee with warranty, and yeath, this Warranty shall not bind the Lord, because it commences also by wrong, being in the nature of an Abatement, Ex le de similibus.

10. This exception in the Statute of Gloucester cap. 3. & E. 1. (whereof no Fine is levied in the Kings Court) are to be understood lawfully levied; And therefore if the Baron will levy a Fine of the Venees Land without the Feme, the Judges (being constant thereof) ought not to take it, because it worked a wrong to the Feme, and if it be with warranty to the petre also: Neither (indeed) ought the Judges to take a Fine, which worked a wrong to a third person.

11. Domini pro tempore of a Coppolyo Sannoy, who are in by lawful title, though it be only for years, by Statutes. Merchant, Staple, or Electors, at will, for worship in Chirbury, etc. may hold Courts, make admissions, and grant voluntary Copies of ancient Coppolyo Lands, which come into their hands, and such voluntary grants by Copy made by such particular Leases, as aforesaid, shall bind him that hath the Freehold and Inheritance, because all these be lawfull Lords pro tempore, Alio Milites, Abates, Intrudors, Leases at inheritance, &c. such Leases, who come in by act, and hold by defensible titles, may hold Courts, and make admissions of ancient Coppolyo lands which shall stand good against them that right have: because these are lawfull acts, and they are compellable to do them: But voluntary Grants by Copy made by Milites, Abates, Intrudors, Leases at inheritance, &c. others, that have defensible titles, shall not bind the Dileatee, no there, that right have, because they come in by act, as aforesaid.

12. If Testament be made of a Pellagne, cum pertinentiis, the Lawe doth not bind the thing thereby but onely that which is parcell of the house, viz. the buildings, curtilage, and garden; because the keeping of the possession of a house, any parcell of the thing hemifured against trespass entry and expulsion by the Lease, is not onely possession of all that may pass by the name of Pellelagne, of such parcell, but of all the Land, &c. which are hemifured therewith by one entire ensole in the same County: And therefore, if a Lease for years be made of an house, a close, and others other Lands, and the Leelo makes Liberty of the Close, in the name of the whole in Lease, the Loss is being then in the house, and no body for him in the close: In this case, the Liberty is void, for the possession of the house by the Leese at the time of the Liberty made is possession also of all the Lands, &c. contained in the ensole: because it is to preserve the first right and interest of the Leese against force, and the trespass entry of the Leelo; It is to also, albeit the Leelo has then ensole that close by will: but othersife, if he had ensole it for years; for that had made a severence of it from the rest of the Pellelagne and Lands ensole.

13. If one ensole another of tree acres, to have and hold the one for life, and the other in tail: In this case, the Heesee hath election to chose, which shall have for life, and which in tail: Provided, if before this election he makes Testament in fee of both the acres: In such case, the...
The Reason of

the Feotkoj shall enter into which of the acres he pleaseth for the Foxtel- ture, for the Feotkoj by his own act and the wrong done to the Feotkoj hath lost his election.

14. Tenant for life, leaves for years, and then grants to A. : by life from a day to come, the Leesee for years attains after the day, the term expires, and A. enters and leaves only, the Leesee for life having a Fine Come coo, &c. to the Tenant at will, and then the Remainder enters for the Foxtelture: In this case, the Fine lodged to the Tenant at will is a Foxtelture, and the Remainder may thereupon well enter upon the Tenant at will; and thereby charge the villein: And here, albeit neither the Tenant for life, nor the Tenant at will have any thing in the Land (for the interest of the Tenant for life is part along to A. and the title of the Tenant at will, is of little or no consideration in Law, and also vanished, because vested from A. who had no interest, because granted in future, and therefore both) yet both of them are agree to say, Quod partes finis nihil habuerunt: And of suchroppels,which are by matter of Kecep, and trench to the wrong and disturbance of such in Remainder or Reversion, they shall take advantage, albeit they are not parties therunto; as of an Ayde prior of a Stranger, as by accept- ance of a Fine Sur comans de droit come coe, &c. albeit the Reves- senter or Remainder be not partes to the Kecep, yet he is privy in estate to take advantage of a Foxtelture by any matter of Kecep done to his otherwise.

15. Tenant at will is not chargeable with permissio to waive, as many literally suffer the house to be burnt, as the like: but if Tenant at will commit voluntary waiver, viz. in destroying the houses, telling the wood, or the like, in such case a general Action of trespass brevis ag- ainst him (Vide Lenz. fol. 15.) for when Tenant at will takes upon him to do unlawful Act, and such as none may do but the owner of the Land, they amount to a determination of the will, and of his position, and the Leess (in such case) shall have a general Action of trespasses without any Entry: So if the Bailees of goods, as a simple, acc. fill them, the Bailie shall have a general Action of trespasses, for by the sitting the privity is determined: And (in some cases) when consequence is put in the party, if any wrong be done, an Action upon the Case may also lie for negligence, albeit the Defendant came to the Foxtelture by the Act of the Plaintiff, as whereas a man delivers a House to another to be lately kept, and the Defendant equum ipsum cum negotio custodii, quid ob defectum bona cadexier interius, here an Action upon the case will lie: So it is also against a Shepherd, that keeps any sheep to negligently, that some of them are thereby wasted, or otherwise de- stroyed.

16. Regularly, the King shall not be bound by an Act of Parliament, unless be be therein particularly named, and yet all Statutes, which are made to suppress wrong, and to take away fram shall him the King, albeit be be not named in them by express words, for Religion, Justice, and Truth are the sure supporters of the Diemems of Kings: And therefore it is agreed in 35 H. 36. 60. that the King shall be bound by the Statute of Weft. 2. cap. 5. which makes partition against devastation usurpations, although the King be not named in the Act: So in the Lord Barkley's case (reported by Saffier FlodDEN) if a gift in tail be made to the King, he shall not alien to descend him in the Reversion or his Mines, but is bound by the Statute of Weft. 2. de donis conditionalistibus.

17. An Inland Exemptions bring an Action of Trover and Condemnation for a Chest with others sommes of money and Ineis in it, the Defen- dant pleas a release of the Plaintiff: In this case, albeit a release be given upon payment of money, or delivery of a Leggey, and all Acts in par- lice...
finance of his office of Executoz are strong and good, yet a release (in this case) is not given to bind him; because, first, it would amount to a devastation, and then the infant would be chargeable to answer it of his own goods: and secondly, it would be a wrong which an infant by his release can never do.

18. If a man make a gift in tail, upon condition that he shall not alien, this condition to some intent is good, and to other come void for he make a feoffment in fee, or any other estate, whereby the Reversion is discontinued to the Donor; shall enter for the condition broken; for every act, that is prohibited by Law, makes a tort, a man may prohibit by condition (Vide rol. 7. 11.) Howbeit if in such case the Donor suffer a common Recoverer, the condition cannot by the Law extend to it, because that is lawful, whereas the other is tortious and against Law: So if Feoffment be made to Baron and Ferme in fee, upon condition, that they shall not alien: in this case, they are not thereby restrained to alien by living a fine both of them together, because that is lawful, and incident to their estate; but they cannot alien by deed, because that is tortious and against Law: likewise, if a man ensonced an Infant in fee, upon condition, that he shall not alien, this shall not restrain him to alien at his full age, for that were repugnant to the liberty, that the Law gives in case of Fee-simple (according to Litt. co. 84. a.) Howbeit such a condition shall restrain him from tinuring during his non-age, for that is tortious and against Law, and therefore the Feoffee shall enter, &c.

19. There is such an extreme entity between an estate gained by wrong, and the ancient right, that the right cannot possibly incorporate it take with an estate gained by wrong, but it will rather suffer extinction, then pass with it: And therefore if the Donor be dlsfeas, and the Donor disfeas the Disfeasi, and make Feoffment in fee, and the Donor make resease, the Donor shall not have the Reversion but the Disfeasi; for there is a diversity between an estate and a right, as where the Reversioner disfeaseth the Donor to Leese for life, and then makes Feoffment in fee, upon resease of the Donor to Leese, the Reversion is left in the Feeor, and this is by force of the Feoffment, but where the Donor to Leese is disfeas, here the Reversioner hath but a right, which he cannot transfer to another; and therefore when he disfeaseth the Disfeasi and makes Feoffment, this passeth the estate, which he gained by Disfeasi, and extinguisheth his ancient right, which he could not transfer to another, and then the first Disfeasi hath the first portion, and a better right then the Feeor of the Reversioner, because he comes in under him, who disfeaseth the first Disfeasi, and hereby the ancient right is extinct: for the Reversioner cannot have it, because that would be repugnant to his own giant, neither can the Feeor have it, because a right cannot be transferred, and the Law will not (in this case) suffer the Disfeasi to have it, because right and wrong cannot cohabit together, and therefore it shall rather extinguish: So likewise if the Disfeasi disfeaseth the heir of the Disfeasi, here he gains the estate by wrong, viz. by Disfeasi, having the ancient right, in this case, if he make Feoffment in fee to another, he thereby passeth away the estate which he gained by Disfeasi, and extinguisheth his ancient right, so that the heir, when he re-enters, shall retain the Land as well against the Feeor as against the Feeor.

20. If a Disfeasi make Feoffment in fee, and the Feeor cuts down Trees, Cattle, Grain, growing upon the ground, &c. If the Disfeasi 3. 4. in Reor, re-enter, he shall not have an Action of trespass vi et armis against the Literal Case; Feeor, that came in by title; so it is also if he had made a gift in tail as a lease for life or years of the Land, because they come in by title, but in
in such case the Distrelor shall recover all the moneys profits against the Distrelor, as the Distrelor (in such cases) should have recovered damages against the Distrelor in an Action at the common Law before the Statute of Gloucester cap. 1. There is in the same Law also, if the Distrelor be distrelor, an Action of Trespass both not by the second Distrelor, for he may come in by title, and if he should be charged, he might then be doubly charged, viz. both by the Distrelor and also by the first Distrelor; and this Action of Law, that the Frank-tenement hath always continued in the Distrelor (which ought to be the ground of the Action of Trespass) shall not have relation to make him, that comes in by title, oz upon a second Distrelor to be a wrong-doer, against whom an Action of Trespass may be brought: Howbeit, if one distrelor me, and during the Distrelor he came down the Trees, Gats, Bain, etc. and after I entered, in this case, I shall have an Action of Trespass vi & arms against him for the Trees, Gats, Bain, etc. for after my trespass the Law (by action) as to the Distrelor and his Serrants supposes that the Frank-tenement hath always continued in me, and he solely (by construction of Law) shall be adjudged the wrong-doer, which Action cannot extend to him that comes in by title, oz upon a second Distrelor, etc.

21. The Statute of West. 2. cap. 5. Quod quotiescunque aliquis in The Law habens tempore huicmodi cunctodiet ur, &c. prefentaverit, &c. which was made to suppress wrong, shall bind the King: And therefore it is well said in 24 E. 3. 41. That the Law is reason and equity to be right all, and to preserve men from wrong and mischief, so the Law will never make construction against Law, Equity and Right.

22. Albeit the Statute of 33 H. 6. 10. (which prohibits Sheriffs to take security of persons taken in execution, to the end to let them go at large) had not been made, yet a Bond had been void at the Common Law: For such a Plaintiff by the Common Law is not mainparable, and then the letting of him goe at large by Painpale is a wrong, and a thing done against the Law, and (by consequent) the Obligation is made to aye the Sheriff for a wrong done by him, in which case (even by the order and course of the Common Law) the Obligation is void: So if an Obligation be made to save one harmlesse for killing such a man, oz to commit such a Trespass, &c. in such cases, the Obligation is void by the Common Law: And therefore if the Plaintiff in a Repugnare hath a Withernam out of the Common Pleas, by force whereof one of the Sheriffs Bajllists takes some beasts in the name of Withernam, and after delivers them againe to the Defendant, and the Defendant is bound to save the Bajllists harmlesse for the some beasts, who afterwards being dammified, bring his Action of debt upon the Obligation: In this case (as it held by the better opinion in M. 3. H. 4. fol. 9. Fiz. Obligation 23. and Br. 20.) the Obligation is void, for the Writ of Withernam is, Copias in Withernam, &c. et ex deinceps quoniam, &c. in as the Sheriff ought to have kept the Cattell, and not to have delivered them to the party, for that was a wrong, and therefore the Obligation made to defend him for that wrong is void.

147. So as none shall take benefit or advantage of their own wrong.

1. Upon a gift in tail the Rule of Law is, that the Donees and their Tenure by issues shall do to the Donor and his heires such servies, as the Donor doth to his Lord Paramont: And yet if a man feele in right of his wife of Land held by Knight-service in tail, that Land generally, the Donee 

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shall not hold of him by Knight service; because his wife held the land,
and he had nothing but in her right, and (in that case) the Baron hav-
ing gained a new Redemption by wrong shall not take advantage of his
own wrong, but such aDonee shall only hold by Reality, which is inci-
dent to all tenures.

2. Regularly, a whole Rent-charge is extint by the purchase, as to Co. ibid. 148.
thevise gaining of the Possession of part of the Land, out of which it
is issuing: And yet in some cases a Rent-charge shall not be wholly
extinct, where the Grantee claimed from and under the Grantor: As
if B. maketh a Lease for life of one Acre to A. and A. is seized of an-
other Acre in fee, A. ganteth a Rent-charge to B. out of both the Acres,
and both waste in the Acre which he holdeth for life, B. recovereth in
waste: In this case, the whole Rent is not extint, but shall be ap-
portioned, and yet B. claimed the one Acre under A. and the reason hereof
is, to no man shall take advantage of his own wrong, Nullus com-
modum capere potest de injuria sua propria: so succeeding the waste was
committed by the A., and wrong of the Lease, he shall not take advan-
tage thereof to extinguish the whole Rent: And the whole Rent cannot
issue only out of the other Acre, because the Lease hath the one Acre
under the estate of the Lease, and therefore in such case it shall be ap-
portioned: So it is also if A. had made a Feoffment in fee, and B.
had entred for the Feoffiture, in that case also the Rent shall be ap-
portioned, and shall not wholly extint: quod qua supra.

3. A re-vestin both he against the Re-vestisso, but likewise as Co. ibid. 154.
against his Feoffee; for, otherwise the Re-vestisso might prevent the b. 2.
Plaintiff of his Re-vestisso, and to take advantage of his own wrong.

4. If the Plaintiff or Defendant have an Action of debt against the Co. ibid. 155.
Sheriff, this is a good cause of challenge to the Array, but albeit the
Sheriff hath an Action of debt against either party, this is no good
cause of challenge: for, the lesser of paying a debt to the Sheriff is a
wrong, and against Law, and if either party might challenge for such
case, he would take advantage of his own wrong.

5. If the Lord come to distrain Cattell, which he leeth then within his see, and the Leman or any other (in his behalf) to prevent the Lord to distrain, give the Cattell out of the Lords fee into some other place, yet may the Lord freely follow, and distrain the Cattell, and the Leman cannot make resort, albeit the place, in which the Distress is taken, is out of his fee: for by such a shift the Leman might pre-
vent the Lord of his Distress, he should take advantage of his own wrong.
And therefore in such case in Judgment of Law the Distress is taken
within his fee, and so shall the Right of resort suppose, in case the Cat-
tell be rescued: but it is otherwise of cottell to be distrained for Damag-
esealant, yet they must be Damage-sealant at the time of the Distress.

6. If a man make a Feoffment in fee upon Condition, that the Fee Co. ibid. 164.
after shall re-enfoit him before such a day, and before that day the Feoffee b. 2.
distis the Feoffee, and hold him out by force until the day be past: In
this case, the estate of the Feoffee is absolute, for the Feofage is the cause
whereof the condition cannot be performed, and therefore shall never
take advantage for the non-performance thereof: So it is also if A. be
bound to B. that J. S. shall marry J. G. before such a day, and before the
day B. marry with J. he shall never take advantage of the Bond, for that
he himself is the means, that the Condition could not be performed.

7. If a man be bound to A. in an Obligation to enfoit B. (who is a Co. ibid. 109.
mere Stranger) before a day, and be repugned: In this case, the Obligation is equelle, for the Ob-
ligeor hath taken upon him to enfoit him, and his refusal cannot ca-
stitute the Condition: but if the Feoffment had been by the condition to be
The Reason of  

Madvn the Obliger, or to any other for his benefit or behoof, a tender and refillall Hame the HAND, because he himself (upon the matter) is the cause, whereas the Condition connt not be perquant, and therefore shall not take advantage thereof to give himselfe cause of action thereby.

9. If Feodsee be made upon Condition to pay the Feodsee twenty pounds upon a certain day: In this case, the Feodsee is bound to pay out the Feodsee, and to make tender thereof unto him if he be in England; but if he be out of the Land, he is not bound to seek him, noz to go out of the Realme unto him: Faster Ball the Feodsee take advantage of his own absence, but the Feodsee shall enter into the Land, as if he had only tendered it according to the Condition, because the Feodsee himselfe was the cause: that the Feodsee could not make one tender at the day limited to the payment thereof.

10. If Feodsee be made upon condition to enfow another, noz to make a gift in tall to another, etc. And the Feodsee before the performance of the Condition enfoweth a stranger, noz makes a lease by terms of life: In this case, his Feodsee to Lessee shall not have the Land, so then he would take advantage of his own wrong, but the Feodsee and his Heires may enter, because the Feodsee hath disabled himselfe to perform the Condition: But is also if he had made but a Lease for years, for the estate ought to be in the same plight at the time of the reenforcement, that it was in at the time, when he took the estate.

11. If there be Grandfather, Father, and Son, and the Son willed both one, and enfoweth the Grandfather, who willed the, and the Land descended to the Father: How is the Entry of the Disileese taken away; but if the Father willed the and the Land descended to the Son? In this case, is the Entry of the Disileese voided, and he may enter upon the Son, who shall take no advantage of the descent, because he did the wrong unto the Disileese: And the Land then the same, if the Land had not descended to the Son, but the Sonn had been taken by purchase, as by Feodsee in fee, in tall, or for life, from his Father, may the Disileese enter upon him, foz he shall in no kind take advantage of his own wrong.

12. If a Disileese inherit his Father in fee, and the Father willed both, whereby the Land descends to the Disileese, as his son and Heire, etc. In this case, the Disileese may well enter upon the Disileese, notwithstanding the descent, because he being parti-cipes criminalis, shall take no advantage of his own wrong: soz albeit is descent be made, and the Entry of the Disileese taken away, yet if the Disileese comes to the Land againe, other by descent or poss- sess of any estate of Free-hold, the Disileese may enter upon him as have his Heire against him, as if no descent or mean corrience had been, causa qua supra.
14. Profession in Religion shall not make a defendant to take a way Entry, because it is the Dissenters own act, whereas neither he nor his heirs shall take advantage: So if a man be Tenant to Defendant in a real or personal Act, and hanging the Suit, the Tenant of Defendant entrench into Religion, by this the Bail shall not abate; Caufa qua supra, there is the same Law of a Relegation, &c. but not of a Deposition or Deprivation, because he is expelled by Judgement, and yet his offence, &c. was the cause thereof: Sed in presumptione legis, Judicium tampeh redditur individum.

15. If Land be given to a Feme sole for life, and after she take Baron, and the Reversioner confirms the estate of the Baron and Feme to hold for their two lives; here the Baron hath an estate for life in the Land by way of Remainder (as Littleton termes it, S. 575.) as (as others call it) by way of Reversion, but however it shews to him by way of encroach or enlargement of estate, as otherwise, he is sold of an estate for life in the Land: And yet in this case, if the Husband commit waste, an Acton of waste shall be against Husband and Wife, notwithstanding the mean Remainer, because the Husband himself commits the waste and both the wrong, and therefore shall not excuse himself for his committing of waste, in respect he himself hath the Remainer, no more then if a man lesseth to A. during the life of B. the Remainer to him during the life of C. if he commit waste, an Acton of waste shall be against him.

16. A. Tenant for life, the Remainder to B. for life, the Remainder Co. ibid. 304. in tail, the Remainder to the right heirs of B. A. and B. Joyn in a &c. Fee-Smock by Deed; here, albeit it may be said, that this is the Fee-Smock of A. and the confirmation of B. and consequently he in the Remainder in tail cannot enter for the forfeiture during the life of B. yet because B. joyned in the Fee-Smock, which was tions to him in the Remainder in tails, and is particeps crimini, they have both forfeited their estates, and he in the Remainder in tail shall enter for the forfeiture.

17. If the Baron discontinue the Land of the Feme, and the Dissentor, in this case the Feme is remitted, albeit the Baron were (in this case) of covin with the Dissentor, but if the Baron and Feme were of Cobin, that the Dissentor should be done, in that case the Feme is not remitted, for the shall not any way take advantage of her own wrong: So if Tenant in tail and his issue disposses the Dissentor, to the use of the Father, and the Father dyeth, and the Land dispossessed to the issue: In this case, the issue is not remitted against the Discontinue, in respect he was party and party to the wrong wherein therefore he shall not take any advantage, but in respect of all others he is remitted and shall desire the first warrant.

18. A. and B. Joyn-tenants are entitled to a real Acton against the Heire of the Dissentor, A. causeth the heire to be dispossesed, against whom A. and B. recover and sue execution: In this case, B. is remitted, for that he was not party to the Cobin, and shall hold in common with A. but A. is not remitted, because he was of Cobin, and shall not take advantage of his own wrong.

19. A. destineth Land to his Wife, upon Condition that she conveys them in convenient time to certaine persons in trust for the use of a maintenance of a Free-Schools: the Lectoratus pays, and his Wife cases disposed the Land to a Stranger for pears: In this case the Condition is broken, and the next Heire shall enter, because by the
The Reason of

Max. 147.

...ven... ene himself disabled her self to convey them according to the Condition, viz. in the same plight the had them, and therefore shall not take advantage of her own wrong.

20. If Donee in full make a Feoffment in fee, in this case the Donee had neither Just in rei veritate, nor Just ad rem: for by his own he had departed with all the estate that was in him; and yet after this the Donee may extinguish or diminish his rent by release or confirmation made to him by the Donee, because (as to the Donee) the Donee shall still remain Tenant, and of necessity for the rent the Donee shall abo upon the Donee, for he cannot abo upon the Discontinuance: because then by his own drawing the Redemption, to which the rent is incident, should be deduct out of him by the Feoffment, and by consequent he could not then maintain his Action for the rent; and therefore of necessity he shall abo upon the Donee, notwithstanding he had devected himself of all his estate, for it is no reason, that the Feoffment, which is the Donee own act, and by which wrong is done, alters the Donee to bar the Donee of his rent; so then the Donee, that made the discontinuance, should take advantage of his own wrong.

21. If one in execution escape of his own wrong be redded, he shall not have an Andis Querela to discharge himself of his Impishment: because he shall not take advantage of his own wrong, and in such case, it is lawful for the Stoker to re-take him, in what place soever he finds him: And albeit the Prisoner in the pursuit be out of view (at the turn of a corner of the like) yet the Sheriff or Stoker may re-take him, and although it be in places without their Jurisdiction: but the Plaintiff may bring an Action against the Sheriff before he can take him, and he shall be answerable for an escape, albeit the Sheriff re-take him afterwards: However, the Sheriff may then submit to retain the Prisoner, until he take him harmless from the Plaintiff's Action, or may bring an Action of Expulsion upon the acte against him for the damages he shall suffer by the Plaintiff's Action: Also after the escape, if the Capias ad satisfaciendum be not returned and filed, it may be remedied against the Prisoner.

22. A man leaves his Land, upon condition that the Lessee shall not assign any part thereof, the condition is broken, and the Lessee before notice of the assignment accepts the rent due after such assignment: In this ease, the condition being collateral, the breaking thereof may be so secretly contrived, that it is not possible for the Lessee to come to the knowledge thereof, and therefore notice in this case is material and inuouable: so (otherwise) the Lessee should take advantage of his own fraud: It is otherwise, if a Lessee be made with condition of sereignty up on non-payment of the rent, for in such case both parties may take notice thereof by the Incurrence, and therefore by acceptance of the rent afterwards, the Lessee dispenceth with the Condition, and confirms the Lease.

23. A possessed of divers parcels of Land within the Panum of S. for years, at will, and by copy, and also of others there in fee, demised the whole to B. for life, and thereupon lesbies a Fine to B. of so many acres as amount to the whole Land, continues possession, and pays the rents to the Land: In this case, albeit five years paie, yet the Land is not barred: for it is unreasonable to give the Lessee benefit (in this case) of the Lessee non-claim, when the test and cabin of the Lessee is the cause of his non-claim, for a man shall not take advantage of his own cabin of wrong.

24. A. devisehis Land to B. till eight hundred pounds be raised for the preferment of his Daughters, and leave, C. his heir conceals the Will, enters, and pays: In this case B. shall have allowance of the time,
time, that the will was concealed, and shall hold the land so much the longer, according to the time that the will was so concealed, until the eight hundred pounds may be raised, for it is against reason, that the heir should enter upon the land so much the sooner, because of the concealment of the will was a wrong, and then he should take advantage of his own wrong.

25. A demelth a close to B. wherein there is a Coleman acco-4
B. opens the Stone and assigns his term to C, except all stones, C. puts stones out of the Stone, and A. brings an Action of waste against C. in this A. shall recover locum vastatum, and the exception shall not excuse it, for the opening of the Stone by B. was a tort, and that being committed, if B. should excuse or obtain it by the exception, he should thereby take advantage of his own wrong.

26. If A. grants to B. one hundred acres of land to be cut down, and taken by the assignment of A. If A. at convenient time after request by B. do not assign them, B. may take them himself without any assignment, for the grantor (in such case) by his own act as default shall not bar-3

gate from his grant, not take advantage by such his neglect of non-align-4

ment, there is the same Law of Trustees, &c. to be assigned by the Bap-
tiss of a Spann, &c.

27. An Executory of his own wrong shall not retain goods in his own hands to satisfy his proper debt, for then he should take advantage of his own wrong, which the Law will not permit.

28. Regularly, in all real actions at the Common Law, if the Lessee be within age, and in his person, he shall have his age: Possibly, if the Act be founded upon his own wrong, as in Cestuis, upon his center: in such case, he shall not have his age: For then he should take advantage of his own wrong.

29. A. hath Judgement in an Action of debt upon an Obligation, the Defendant brings a Suit of Error, and hanging the Suit of Error, the Plaintiff brings a new Action of debt upon the same Obligation: but it was adjudged he could not, for, until the Judgment be reversed by Error, the Obligation remains qualified, and if there be Error in the proceeding, that is the Plaintiff's fault, and he shall not take advantage of his own tort or default.

30. A. and B. are Hoyent-tenants for life, and Judgement is had a-4
gainst A. in debt, who relates to B. and B. owes: In this case, albeit the term is expired, so as the Reversioner may enter, yet the Land shall stand charged with the Judgement during the life of A. for (other-4

tise) A. should take advantage of his own Act, and thereby avoid the debt and Judgement of the Cestuis, who is a Stranger to the res-4

lease.

31. A. recovers against B. in the Common Pleas, and, ases, C. upon the Judgment in the name of H. outlives B. in the Holdings of London, die, and the proximity of the soil Simonis & Judas, and thereupon P. is taken by a Capias Ulitratum in Norfolk, and there appointed, whereupon B. brings an Action upon the case against C. Qnis malicioso & deceptive machinariae et. &c. And in this case it was objected, that the Capias Ul-3

itratum was erroneous, because the Dutiumpy was therein rected to be proximatus anti feltem, &c. but that objection was not allowed, because the error in the Wilt, which the Defendant C. had purposely purused, shall give no advantage to himself: but in as much as B. the Plain-4

tiff was impulisoned and molested thereby, he had thereupon good cane of Action.

32. Where lands were conveyed to Baron and Feme, and to the heirs of the Baron, and the Baron gives them in tail, the Baron owes the Feme, the Baron recovers the Land against the Pawnor by a writ of Cui in vita, supporting.

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supposing that he had the Land to her and her heires in se, the Feme after the Recovery entitles another and vges, the Punee in tail vges without issue, the issue of Baron and Feme brings a Forcemon in Rever-

sion against the Feoffee of the Feme; And (in this case) albeit the 

issue was herite to the Feme, and thereby effort by the Recovery in the 

Cui in via to say, that the Feme had a less estate then Freecome, yet 

the time, who claimed the Reversion of the Land as herire to the Baron, 

shall not be bound by that Cuiy chapel made by the Feme, although he was 

heire to her also; for then the Feme who had but an estate for life, might 

by her own act have barred the herire, that right had, and claimed as herire 

to his Father.

33. If a man make a Lease for years, upon Condition, that if the 

Lessee out him within the Term, that he shall have fee, and the Lessee 
dow out him accordingly; in this case, albeit the interest of the term 
is by such outtter turned to a right, yet the Lessee in such case shall have 
see: so that such outter is the act am cort of the Lessee himselfe, where-

of he shall take no advantage.

34. In debt against an Executary, he pleads a Recovery against him 
in such a Court, which amounts to the whole in his hands: the Plain-
tiff repies, that the recoverer hath accepted composition, and that the 

Defendant delays to accept a release, with purpose to defend the Plain-
tiff: In this case, the deferring to accept the release is a cort, and as 

against the may of an Executary, and therefore cannot help himself, so if any 

prudence happen to him thereby, it is by his own cort and default, and 

therefore he shall not take any benefit thereby.

35. Upon an arrest, if the party arrested submit himselfe peaceably 
thereunto, and gives the Servants or Bailiffs convenient scenario to ac-
quant him with their business, they ought Upon demand to show him their 
warrant, and to let him know the occasion thereof, as it was aasured in the 

Counties of Rutland cases, in the 6. Rep. so. 55. But if he make re-

sistance, and obey not their warrant, they are not bound to show it, no, 

&c. and if then any of them be killed, it is murder: so the Pluffier 

shall not in such case take advantage of his own wrong.

36. In real Wits; original, if he that is summoned and seeder Smill 

vges (which is the act of God) the Wilt shall abate, but taking of 

iron o2 entering into the Land by him that is summoned and seeder (o2 

where there is no summons and severance) shall not abate the Wilt, 

but only make it abatesable, because these are the parties oon act, where-

of they shall not take advantage.

37. If a Tenant for life 25 years fell Limber Trees, o2 pull down Wale 
the Houses, the Lessee shall have the Limber, for the Lessee cannot 

dow have them by his demisce, but as things annered to the foile: And there-

des it is absurd in reason, that when by his own act and wrong he hath 

severed them from the Land, he should gain a greater property in them, 

then he had by the demisce.

The Tenant may fell Trees to reprise the Houses: but if the 

Houses be fallen into decay by his default, if then he fell Trees to re-

prise them, it is wale, so he shall not usurp the power of telling Trees 
to amend the Houses, when the cause why they wanted repairing was by 

his own neglect.

38. In fogass cases in the Commentaries, the not impeing of the Nor 

woad is referred to the Collect; And therefore the Collect shall not 

by his neglect take advantage in the Kings behalfe of the not impeing 
thereof, and by that means cause Foggas to foset the fame.

39. The Condition of an Obligation was this, That the Oblige 

should surrender certaine Coppilold Land, and also that he should suffer 

the Obliger and his heires peaceably to enjoy the Land without the in-

terruption
And therefore the Law of it self prejudiceth none.

1. Any goods may be distrained for damage-seasant, by reason of the necessity (See Max. 110. Ex. 4.) and such Distresse may also be made in the night time, for the same reason (Vide M. 128. E. 2.) However for rent, nothing can be distrained in the night time, or which cannot be resued in as good plight, as it was in at the time of the Distresse taken, as sheaves or stocks of Corn, or the like, cannot be distrained for rent, because when a Distresse is made for rent it is in the custody of the Law, and repellibale, and during the time it so remains, the Law will not suffer the owner thereof to suffer prejudice by the detainer, and (in such case) there is no such necessity, but that the Distresse may be made in a seasonable time, and of convenient goods: However Waggons or Cartes laden with grains (Hayes and all) may be distrained for rent, because they may be restored in the same condition they were in, when they were taken: And yet Beasts belonging to the Plough (Swarri cars) shall not be distrained, no any Utensils or Instruments of a mans Trade or Profession, as the Axe of the Carpenter, the Books of a Schooller, &c. while other Beasts or Goods (which Bracton calls animalia, or catalla octiosa) may be distrained, so that they are un-charitable and an injury to the publicke, whereas the Law (if possibly it may be otherwise) will not be guilty. Vide plus ubi supra.

2. If the Guardian both wake, and the heire within age brings an Action of wake, the Guardian shall lose the Wardship, but if the heir being an Action of wake at his full age, he shall then recover treble damages; for when the Law at his age of one and twenty years takes away from him his advantage of hading the Forfeiture of the Wardship, in lieu thereof it gives him treble damages, because (otherwise) the Guardian might do him an injury, and make no recompence for it, for then the Guardian cannot lose the Wardship.

3. Littleton faith, That the heire of a Tenant by Knight-service ought not to pay releif, until his age of twenty one years, yet in some cases the Heire shall pay releif, when he was within that age at the time of the death of his Ancestor: As if a man holdeth Lands of the King by Knight-service in Capite, and of a common person other Lands by Knight-service, and also, his heire being within age; here, the King hath the Wardship both of body and Lands by his Peerage, until the full age of the heire, and therefore (in this case) the Heire (though he be within age) shall immediately pay releif to the other Lord: so as the Law giveth away the Wardship to the King by reason of his Peerage, so both it in respect thereof referre to the other Lord all that conveniently may be refered, viz. his releif.

4. A man feiled of Land holden by Knight-service hath issue a Lit. S. 113. Daughter, who takes Baron, and hath issue a Son, the Tenant byco. ibid. 83. and 8. 3.
The Reason of
Max. 141.

and also the Father; in this case, the Son shall not be in ward for his body living his Father, but yet the Law shall have the Wardship of the Land until the full age of the Son; for albeit (in this case) the Law both give the custody of the body to the Father and barrell the Land thereof, yet the Lord shall have the Wardship of the Land by force of the tenure of the first creation thereof: So it is also if the Father marries his niece within age and duty, in this case also the Lord shall have the Wardship of the Land.

Co. ibid. 88. Father Gar.

Where the Father is Guardian of his Son for Land helden in Knight service, this is in respect of his paternall natuall custody, and therefore in such case he shall not be answerable for his marriage or custody of his Lands; but where the Father is Guardian by reason of a tenure in Socage, he must by Law be accountable to the Son both for his marriage and also for the proceeds of his Lands, which he should not be, if he had the custody of his eldest Son (in this case) as his Father in respect of nature; And because the Law both appoint him to be Guardian in Socage, it compels him also to be accountable: for the act of Law both never any man wrong.

Co. ibid. 134. b. b. 3.

Aris. super carta, cap. 13. Authority of the Law, who wrote before that Statute, that this was the ancient common Law: And the reason of giving so many cases in real Actions, was (the Recovery being so dangerous) that the Tenant might the better provide himself both of answerers and proofs.

Co. ibid. 133. b. b. 2.

If I be deceased, and my Brother releaseth the Warrant, and is afterwards profess in Religion, and thereby the Warrant depend upon me: In this case, albeit the Law binds me by the Warrant, yet (I being his heir) the Law gives me by descent such Inheritance as my Brother had at the time of his Profession.

Co. ibid. 137. b. S. 3.

Litt. S. 103.

A man may have damnum, yet (in such cases) it is always absolute injuria, as if a Ward enter into Religion and be profest: hereby the Lord loseth the Wardship of the Land, which may be laid damnum: for by such profession the Ward is civilliter mortuus, a dead man in the Law, and cannot hold any Inheritance, neither can the Guardian continue the Wardship of the land, because by the civil death of the Ward, the Inheritance is defended to another, but this damnum is absolute injuria, for by such profession the land depends to another, who is either to be in Ward, or to pay releif: And therefore (in such case) the law giveth the Guardian no remedy, neither by any formed Wit, nor by Action upon the case.

Co. Inf. part 1. 132. a. 3.

If Tenant for another mens life by his Deed grant a Rent-charge to one for twenty one years, Cally que vie, whereby the Rent-charge is determined, and yet the Grantee may have during the years a Wit of Annuity for the arrearages incurred after the death of Cally que vie, because the Rent charge did determine by the act of God and the course of time, Asbus Legis nemini facit injuriam: So it is also, if land, out of which a Rent Charge is granted, be recovered by an event title, and thereby the Rent-charge is abopes; yet the Grantee shall have a Wit of Annuity, because the Rent-charge is abopes by the course of law, and so it was helden in Wards case, cited in Co. 1. 2. fo. 36. in Heywood's case, against an opinion obiter in 6 H. 6. 42. a. Vide Max. 114. Ex. 13.

Co. ibid. 149. a. 1.

10. A. hath common of Pasture sans number in twenty Acres of land, and ten of these Acres descend to A. the common Sans number is infinite and uncertain, and cannot be apportioned, but shall remaine, but if it had been a Common certaine (as for ten Beasts) in that case the Common
the Common Law.

11. Of Common vs Coposy certaines (as so far ten barters, to many Co. ibid. 264.
Bilbes in certaines, &c.) partition amongst Capparencers as Appo-
pointment may be made; for this can worke no wrong to the Ter-
tenant; But if a man have reasonable Oxeters (as Houfe-boot, Hoy-boot, &c.)
Appendant to his Free-hold, they are to intire that they shall not be bi-
divised amongst Capparencers; So likewise if a Coposy uncertaine be
granted to a man and his heire, and he hath issue where Daughters, this
Coposy shall not be divided betwene them; there is the same Law al-
so of Common land number; fay (in these cases and the like) if Oxeto-
ders, Common, Pilotar, or Coposy uncertaine should be partable
amongst Biffers, such partition would worke a wrong to the Ter-
tenant, who should be oppossed and over-charg'd thereby, which the Law will not
suffer: But in such cases one of the Capparencers bath it, and the re-
ter satisfied otherwise, as if there be nothing but such intire Inherit-
ances, that will not admit ofere, then they are to have the profit thereof
by furnes, &c. vide pl. ibid.

12. If two hold jointlie certaine Lands with warranty, and make Co. lid. 265;
partition, in this case the Warrantie is gone, because they are not comp-
CEllable by the Common Law to make partition: But if Copar-
ners hold Land with Warrantie, and make partition, yet the
Warrantie will remaine, for they are compellable by the Common
Law to make partition, and therefore the Law preserves their
Warrantie.

13. If Tenant for life make a Lease generally, this shall be taken (by Co. ibid. 265;
construction of Law) to be an estate for his own life, that made the
Lease; so if it should be a Lease for the life of the Leffer, it would worke
a wrong to him in the Reversion; So it is likewise, if Tenant in tail
make a Lease generally, the Law shall contrive this to be such a Lease
as he may lawfully make, and that is for terme of his owne life, so if
it should be for the life of the Leffer, it would be a Discontinuance, and
(consequently) the estate which should passe by construction of Law
would worke a wrong, which the Law will not permit; because, Legis
Construption omnium factis injuriam.

14. In case of a Defent case, there is a Diversity between coposall Co. ibid. 257.
Inheritances, as Houses; Land, &c. which do lie in Liperty, and Inhe-
ritances incorporeal, as Abutments, Kents, Commons, &c. which lie
in Grant, for a Defent case of these shall not put the Defeller to his
Action, but he may claim them notwithstanding such Defent: How-
beit a Defent case of the other puts the Defeller to his Action; be-
cause Houses forbode for the habitation of men, and Land to be manured
for their sustenance; and therefore an heire shall not after a Defent of
them be molested or disturbed in them by Entry.

15. If a man for fear of Battery, mayhem, or death, bare not go to Co. ibid. 256;
the Land to make his Entry, the Law (to prevent danger) gives him a 4. Lit. S.
leave (in such case) to go as near the Land as he bare; although he be 431.
not within the view thereof.

16. If a Feme Obliger take the Obliger to Husband, this is a release Co. ibid. 264.
in Law, the like Law is if there be two Femes oblique, and the one take b. 4.
the Obliger to Husband, this is also a release in Law of the whole debt:
But if a Feme Executrix take the Debt to Husband, this is no
release in Law, for that should be a wrong to the debt, and in Law
Cess.
The Reason of

17. If there be Lord and Tenant, and the rent is behind by

years, and the Tenant make a forbearance in fee, if the Lord accept the

service or rest of the Feoffee due in his time, he shall lose the arrears
due in the time of the Feoffor; for after such acceptance he shall not

now upon the Feoffor, not upon the Feoffor for the arrears incurred
in the time of the Feoffor; but in that case if the Feoffor yea, albeit the

Lord accept the rent or service by the hand of the Feoffor due in his time,

he shall not lose the arrears; for now the Law compelled him to a

now upon the Feoffor, and that which the Law compelled him unto shall

not prejudice him: So if there be Lord, Seigne, and Tenant, and the

rent due by the Seigne is behind, and after the Tenant gave the

Seigne, and the Lord receive the services of the Seignory, which issue out of

the Seignory, he shall not be barred of the arrears, which issue out of

the Seignory, so likewise if the rent be behind and the Tenant yea, the

acceptance of the services by the hand of the heir shall not bar him of the

arrears, causa qua supra; and in all these cases, albeit the parties be

altered, yet the Lord both accept the services of him, who only ought to do

them, which being caused by act in Law, it will not suffer him to be pro-

nounced thereby.

18. If Tenant, pur antic vice, being an Alisle, and Ceiloy que vice dixit, Alise. se

hanging the Wilt, here albeit the Wiltit were well commenced, yet the

Wilt it shall abate because no Alisle can be maintainable for damages on

by: but where an Action is begun, and part of the Action determined by

Act in Law, and yet the like Action for the residue is given, there the

Wilt it shall not abate but proceed; As if an Action of Wilt it be brought

against Tenant pur antic vice, and hanging the Wilt Ceiloy que sic: yea,

the Wilt it shall not abate, but the Plaintiff shall recover damages, because

to Ceiloy que sic had been before any Action brought, the Feoffor

might here have had an Action of Wilt it for the damages, and the Act in

Law shall not prejudice him: So in an Ejection in name, if the term be

hanging the Action, yet shall the Action proceed for damages, because an

Ejection lyeth after the term be for damages, which he shall recover, not

withstanding the term be by Law determined. If a Conspiracy be

brought against two, and one of them yea, hanging the Wilt, nevertheless

lose it shall proceed.

19. Albeit a man may by the Law grant away a Seignory, res. c.,

Reversion, Remainder, &c. yet such Grant shall not be good without

Assignment; that is, the consent of the present Tenant of the Land,

by which the old Books render this reason, Si dominus astrens pos-

sit servitium tenentis contra voluntatem tenentis, tale sequestrum in-

convenien, quod posse eum subjugare capitali immico suo, &c. per quod

removere sacramentum Redemptoris facere, qui eadem incarcerare inte-

rret.

20. When Tenant in tail makes Feoffment, &c. the Entry of the

Donor, who hath the Reversion, and also of him in Remainder is taken

away, and they are put to their Action, viz. A Feemond in Reversion for

the one, and in Remainder for the other; And the reason, why these alter-

ations in these several cases to make a discontinuance, and put him in

Reversion of Remainder that right has to his Action, and take away his

Entry is, to the end that every man right may be preserved, viz. to the

Demandant his ancient right, & to the Feoffor or Purchas for the benefit

of his Warranty, which course is founded upon great reason and equity,

for the benefit of Warranty would be prevented and avoided if the Entry

of him that right had were lawfull, hereby also the danger that many

times happeneth by taking of Possessions is entirely prevented by Acto:
Grant of the
next property.

Warranty.

Assignment of
flows.

Assignment of
power.

Agreement to be in
evidence.

Receipt of
money;

The Common Law.

21. If a man seizes of an advowson in fee by his deed, grants the next presentation to A., and before the Church becometh void, by another deed grants the next presentation of the same Church to B., the second Grant is void, for A. had the same granted to him before, and the Grants shall not have the second abrogance by confirmation, to have the next abrogation, which the Grants might lawfully grant; because the Grant of the next abrogation both not import the second presentation: but if a man seizes of an advowson in fee, take wife, now by act in Law is the wife intituled to the third Presentation, if the husband dyes before her; and in this case, if the husband grant the third Presentation to another and wife, the wife shall present twice, the wife shall have the third Presentation, and the Grant the fourth; for in this case it shall be taken the third Presentation, which he might lawfully grant: And to note a diversity by a title by act in Law, and by act of the party, so the act in Law shall work no prejudice to the Grants.

22. If a man doth warrant Land to another without this word (Heirs) his heirs shall not vouch; and (regularly) if he warrant Land to a man and his heirs without naming assignees, his Assignee shall not vouch: but if the father be enfeoffed with warranty to him and his heirs, the father enfeoffeth his eldest son with warranty and dower, the Law giveth to the son advantage of the warranty made to his father; because by act in Law the warranty between the father and the son is extant, which act in Law shall not prejudice him.

23. An Assignment of power by a Diocesan, Abate, Introit, &c. Co. ibid. 384; if there be no reason, is good, unless where it is prejudicial to the Diocese, &c. As if the husband enfeoffeth the younger son with warranty and dower, the eldest diocesan the younger son, and endoweth the widow. In this case, the younger son shall have this Assignment, so otherwise he shall lose his warranty: But a Diocesan, Abate, Introit, &c., cannot assign a rent out of the Land to her for her power, to bind the Diocesan, &c.

24. Vide 33. 5.

25. The Law gives favour to an agreement, which tends to the Co. 1st. 69. 4; advantage of the party, so that may be done in his absence, as well as in his presence; but to it it is not of a dis-agreement, so that ought to be done in his presence, because the Law conceives the party interested may use persuasions to the other party; and so induce him to agree; so Assignment is good, though the Grantee be absent.

26. If there be a tenant for life, the Remainder in fee of land holden by Knight's service, and the Lord grants his Seigniory for life, and after he in the Remainder in fee dyes, his heir within age, and after the Grantee for life of the Seigniory dyes, and then the tenant for life dyes, he in Reversion of the Seigniory shall have the Ward: So likewise, if he in the Remainder dyes, his heir within age, or supersede, and after the Lord dyes, and then the tenant for life dyes, the heir of the Lord in this case shall have the Ward; so the act in Law shall not prejudice any, and his Grantee cannot have it, because it was not a Chattell held in the Lactata.

27. If a man having Kent service or Kent charge, accept the Kent due at the last day, and thereof make an acquaintance, thereby all the arrearages due before are discharged, as it was adjudged in Hopkins and Morrots case, Hill Rot. 950. in C. B. Vide 10. Eliz. 271. Dyer, but if a man make a Lease for life rending Kent, if there be Lord and tenant by Healty and Kent, and the Kent is arrear by 2. years, and after the Lessee 2. Lord dislish the Let-tenant, and the tenant recovers in a court, and the Kent which incurreth, is recovered in damages, yet the Lord 2. Lessee shall recover in Action the arrearages incurred before the Dislish, and the bar of the last years rent shall not be a bar of the former arrearages.

28. If
28. If there be Lord and Tenant, and the Kent is assure, and the Tenant makes Feoffment in see; In this case, if the Lord accept the Kent of Service of the Feoffee, he shall lose the arrearages in the time of the Feoffor, albeit he made him no acquittance; so after such acceptance he shall not avow upon the Feoffor at all, nor yet upon the Feofferee, late only for the services, which incurred in his time, as appears in 4 E. 3. 22. 7 E. 3. 8. 7 E. 4. 27. 28 H. 8. Br. Avowry 111. Notwithstanding, in such cases, if the Feoffor dye, although the Lord accept the Kent of Service by the hand of the Feoffee, yet shall he not lose the arrearages: so now the Lord can avow upon none but the Feoffee, and that whereas the Law compels a man shall never prejudice him: So if there be Lord, Posen, and Tenant, and the Kent due by the Posen is assure, and after the Tenant lose-judges the Posen, and the Lord receives the services of the Posen, which now issue immediately out of the Tenancy, yet shall he not be barred of the arrearages, which issue out of the Penalty: likewise, if the Kent be assure, and the Tenant dye, the acceptance of the services by the hand of the Posen shall not bar him of the arrearages, causa qua supra: So in all these cases, albeit the pardon be altered, yet the Lord accepts the Kent and Services of him, who only ought by the Law to use them: Vide 4 E 3. 22. 7 E. 3. 4. 7 E. 4. 27. 9 H. 8. Br. Avowry 111. before cited. Neither shall acceptance of Kent bar a relents, because that is as a blossom fallen from the Tree, and a fruit of improvement of the Services.

29. If a Sheriff dye, and before another is made, one in execution breaks the Goale and goes at large, this is no escape, for when a Sheriff dye, all the Prisoners are in the custody of the Law, until a new Sheriff be made, and albeit they be in the interim free out of the walls of the Goale, yet the Law hath the custody of them, and preserves them in execution without any fresh Suit, in what place soever they be, and therefore they may (in such case) be again taken in execution at any time after: so no escape can happen in prejudice of the party, but when some body may be charged therewith, and the Law decrees nowe.

30. If since the Statute of 31 H. 8. 1. Jougnt-tenants make partition with consent by Deed, the Warranty annexed to their estate is gone: but if they use a Will of Partition according to that Act, they may vouch as before, and such partition will not prejudice them, being founded upon a Statute Law, whereunto all persons give consent: so if there be two Jougnt-tenants with Warranty, and the one disaffected the other, and the Differency brings an Allegy: In this case, it seems to be the better opinion, that the Differency shall not recover in fealty, but generally, neither is the Warranty gone by such Recovery, as it was adjudged in 28. lib. Ass. Pl. 35. because the Recovery is an Act in Law, which prejudiced none; albeit some Books are against it, as 10 E. 3. 40. & 10. lib. Ass. 17.

31. Viscount Montague with licence of the Queen suffers a Recovery No Fine in to B. and D. to mine, with power of revocation and limitation of other mine, he reboths and limits new mines, in this case, no Fine shall be paid to the Queen for alienation: For when licence is granted to Alien to A. and the alienation is to the use of B. here, no Fine is to be paid for the alienation to the use of B. because the use is executed by the Statute of 27 H. 8. which can wrong no man.

32. P. Copy holder for life, Remainder for life, the Lord Bargains and sells, and devises a fine with Proclamations to P. five years past without any claim by those in Remainder, yet are they not barred: because P. the Bargainee was in by force of the Statute of 27 H. 8. upon a bargain and sale by Deed invented and intercalled, and an act of Parliament can never do wrong. See there also the Lady Greshams cafe, where an
Act of Parliament seemed a fine for alienation of Land in Capite without licence, upon the same reason.

33. Where a Feoffment was made to Feoffees to the use of another before the Statute of 37 H. 8. of aliens, and then that Statute was made, which transfers the Possession to Ceftuy que uie: In this case, the gift passes from the Feoffees to Ceftuy que uie by the Parliament, because the content of the Feoffees is involved in that Act of Parliament, and it cannot be said, that the Parliament gave it to Ceftuy que uie: for if it should be the gift of another then of the Feoffees, then should the Parliament to the Feoffees wrong in taking a thing from them, and making another the Donor thereof, which an Act of Parliament cannot do: See there also the Restor of Edingtons case, 19 H. 6. 62. Fitz. Grant 10. & Br. 40. & Parl. 88. to the like purpose.

34. A woman coheir is not within the Statute of Weft. 2. cap. 39. Concerning ravishment of Ward, part of the words are, 'Si heredem post annos nubies maritaverit, & de maritio satisfacere non potuerit, abjuret regnum, vel habeat pridem imperium, &c. sed a fema coheir being by Law disabled to satisfy, she shall not be by Law punished with banishment or perpetual imprisonement, and the husband being innocent ought not to be punished, because the punishment is personal, Vide pl. ibid. & infra Max. 136.

35. Wheres an Abbot (holding in Frankalmoine) together with his Coebent, aliens the Land to a secular man, he cannot hold as they hold, viz. in Frankalmigne, and (of necessity) he must hold of some body, and by some service, so that the Law will enjoy him to do, so hold the inconvenient of holding of none: And therefore in regard the Law is (in this case) to create him a new tenure, it shall be the longest (viz. in socage) and with the best service that can be done, and nearest to the freedom of the former service. Vide 184. § 3.

36. In a suit of Mene the Parol Shall not be used for the nomination of the Plaintiff, because it is not reason, that the Infant should be disrelished of the services of the Mene during his nonage, and yet he to have no remedy until his full age, but in regard his nonage shall not prejudice him from the payment of the Rent during his nonage, the Law shall also give him remedy during that time.

149. Especially for things that cannot be imputed to their own folly, or neglect.

Tenor by the curtesy. Things that he by Grant.

1. Tenant by the Curtesy Shall have after his Wifes death a Kent, or Abnewton, albeit the Kent day was not then come, nor the Church then hold, and (by consequent) he not actually settled thereof before his Wifes death, because there was no Laches of default in him no possibility to get sealed, and therefore the Law in respect of the issue begotten by him, will give him an estate by the Curtesy of England therein, albeit he was not thereof actually settled as aforesaid: It is otherwise, where he buyeth (in right of his Wife) title of Entry into Lands, and in her life neglects it, so that is imputed to his own laches and folly: Neither shall a man be Tenant by the curtesy of a bare right, title, use, of a Reversion ox Remainder excepted upon an estate of Freehold, unless the particular estate be determined or ended during the Curtesy.

2. A man shall not be Tenant by the Curtesy of a Seisin in Law without Entry, but he ought to be actually settled in the life of his Wife: Howbeit, a woman shall be endowed of a Seisin in Law, as where Lands or Tenements belong to the Husband, here before Entry
He hath but a Heiress in Law, and yet the Wife shall be endowed therof, albeit it be not reduced to an actual possession, for it lust not in the power of the Wife to bring it into an actual Heiress, as the Husband may do of the Wifes Lands, when he is to be Tenant by Courtise.

3. When Cattell are restrained they are to be put in a pound covert, Ditto, oxen, within three miles, in the same County, as into a piniola made for such purposes, as in his own close, or the close of another by his consent: to the end the owner may give his Cattell meat and drink without trespass to any other, and then if the Cattell miscarry, he that restrains them is excused, so it cannot be imputed to any neglect of his, the Owner (in such case) being bound to sustain them at his peril: but if the Cattell be put into a pound covert of close, as in a house, where the Owner cannot come at them: in such case, they are to be sustained with meat and drink at the peril of him that restrains, and he shall have no recompence for the charge of keeping them, and if any of these miscarry he shall make them good; so in this case it cannot be imputed to the folly or neglect of the Owner, if they be killed or miscarry, because he could not come at them to sustain them.

4. It is permissive waste in the Tenant to suffer the house to be unsailable, covered, whereby the Spars or Battens, Planche, or other Limber of the House become rotten: likewise, if the House be unsailable, when the Tenant cometh in, it is no waste in the Tenant, to suffer the same to fall down: so in such case it cannot be imputed to his neglect but the Owners: So likewise, if a wall be unsailable, when the Tenant cometh in, it is no waste, though be suffer it to decay: Also if the house fall down by tempest, or be burnt by lightning, or proscribed by enemies, or the like, without any default in the Tenant, or be ruinous at his coming in and fall downe: this is not waste in the Tenant; but he may build the same againe with such materials as remaine, and with other Limber, which he may take growing upon the ground, for his habitation: but he must not make the house longer then it was.

5. It is waste to suffer a Wall of the Sea to be in decay, so as by flowing and resounding of the Sea, the Meadow or Marsh is surrounded, whereby the same becomes unprofitable: likewise, if it be surrounded suddenly by the rage and violence of the Sea, occasioned by wind, tempest or the like, without any default of the Tenant, this is no waste punishable, because it cannot be imputed to the Tenant: the Tenant neglected of decay in that case: According to pleaes, rule, Fortuna, ignis, & hujusmodi eventus inopinatissimi omnium tenentes excusat.

6. Tenant at will shall reap the crop which he tilled in peace before his Lessee determined his will, whether it be graine, bemp, flaxe, or any other annual profit; so it cannot be imputed to his folly, that he knew not his Lessee's intention, that he would determine his will before they might be ripe, there is the same law and reason of Tenant by the custom, in Dover, for life, pur anter vie, or any other uncertain estate, viz. when the term will determine; and if such Tenant happen to dye, his Executors, &c. shall enjoy the crop: If Tenant by Statute Perchant into the ground, and then a sudden and casual profit fal len, by which he is satisfied, yet shall he have the emblements, caus a qua supra. And in all these cases, it is not material whether the graine, &c. be not ripe, or be first ripe, ready to be cut, for by the same reason they may be taken, though they be not ripe, they may also be taken when ripe: Although Littleton faith, Apes lembleier & devant que les blees font matieres.

7. Where there is Lessee and Lessee at will, the Lessee may by act of Tenant at all Entry to the ground determine his will in the absence of the Letter, will, &c. no but tice require.
the Common Law.

but by words spoken from the ground the will is not determined, until the Letter have notice; no more then the discharge of a Factor, Attorney, or such like in their absence is sufficient in Law, until they have notice thereof.

6. If a Letter for years, that knonde the end of his terms, towards the Land, if the term be determined before he can cut them, the Letters shall have them; because the end of his term was certain, and it was his duty to sell them, when he might know beforehand, that he could not render them in one season: Yetsoever, where a Lease for years depends upon an uncertainty, as upon death of Tenant for life being made by him, or a Husband leased in right of his wife, or the like, there it is other- wise.

7. A person, not the deceased, having notice of the Death of the Tenant, shall not have Notice of the End of the term, because he could not render them in one season.

2. The Letters, having notice of the Death of the Tenant, by the Will of the Tenant, shall have notice of the End of the term, because he could not render them in one season.

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9. The Letters, having notice of the Death of the Tenant, by the Will of the Tenant, shall have notice of the End of the term, because he could not render them in one season.

10. If a Guardian in Sorge having received the rents & profits of the Land of the Prince, happen to be robbed of the same without his default or negligence, he shall be discharged thereof upon his account; so also shall a Bailiff of a Manor, a Receiver, a Factor of a Merchant, or the like: It is otherwise with a Carrier, for he by taking his hire thereby implicitly undertake the delivery of the goods delivered unto him: So it is likewise, if goods be delivered to a man to be kept or to be safely kept (which is all one in Law) and after those goods are fallen from him, this shall not excuse him; for by the acceptance he undertook to keep them safely, and therefore he must keep them at his peril: But if the goods be delivered unto him to be kept as he would keep his own, there if they be fallen from him without his default or negligence, he shall be discharged: Is if goods be delivered to one as a gage or pledge, and they be fallen, he shall be discharged; because he hath a property in them, and therefore ought to keep them otherwise then his own; but if he that gages them removes the money before the Sealing, and the other refused to deliver them, then so this default in him he shall be charged.

11. If A. leave a Cheek locked with B. to be kept, and taketh away the key with him, and acquainteth not B. what is in the Cheek, and the Cheek, together with the goods of B. are fallen away, B. shall not be charged therewith; because A. did not trust B. with them, as this case is, neither were they left by the default of negligence of A. And in all such cases, what is said of Sealing is also to be understood of Shipwreck by Sea. fire by lightning, and other like inevitable accidents. And therefofe when a man receives another's goods to keep, it is good to receive them with this caution, To keep them as his own, as at the peril of the Donor.

12. If upon a sequatur sub suo periculo, the Sheriff returns, that the Bouchee hath nothing, albeit the Demendant shall have Judgement against the Tenant, yet he shall not have Judgement to recover in value, because the Bouchee was not warned.

13. If a man be bound to pay twenty pounds at any time during his life at a place certaine, and the Oblige tends the money at the place without giving notice to the Bouchee, this is no good tender: So it is also.
also where a man makes a Fessment in fee upon Condition, that if the Fessor pay twenty pounds to the Fessee at a place certaine at any time during his life, that then, &c. in this case also the tender is not good without notice: so for the time (in these cases) being uncertaine, it cannot be imputed to the default or negligence of the Obligee as Fessor, if he be not present at the payement thereof ready to receive it; Vide pl.

14. If a Feme sole be seised of Lands in fee, and is dispossessed, and then takes Husband, in this case, the Husband and Wife (as in the right of the Wife) have right to enter, and yet the being seised of the Dispossessor in that case shall take away the Entry of the Wife after the death of her Husband: because it shall be accounted her folly, that when the same sole she did not enter, and also so that the should take such an Husband as would not enter before the Descent; But if Baron and Feme have title of Entry into Lands in right of the Wife, and the Tenant vee seised, the Entry of the Baron is taken away, but if the Baron vee, then may the Feme enter upon the Yeire, that is in by Descent: so it shall be accounted Ladies in the Baron, and not in the Feme, nor any way turns to the prejudice of her to her Yeires: So if the woman were within age at the time of her taking of Husband, then also the being seised shall not after the decease of her Husband take away her Entry: because no mistake can be accounted in her, so that the was within age, when the Lords Husband, and after coverture she could not enter without her Husband.

It is otherwise where a Condition is to be performed, which see ubi supra.

15. If there be a Tenant for life, Remainder for life, Remainder in fee, and the Tenant for life alienis the Land to another in fee, and be in the Remainder for life makes continual claim before the being seised of the Alienor, and after the Alienor vee seised, and he in Remainder for life also vee before any Entry made by him? In this case, he in the Remainder in fee may enter upon the Yeire of the Alienor, by reason of the continual claim made by him in the Remainder for life, because such right as he had to enter that remain to him in the Remainder after him, in as much as he in the Remainder in fee could not enter upon the Alienor in fee during the life of the Remainder for life, and because he could not make continual claim, so none can make continual claim, but he that hath title of Entry.

16. There are other wages of excuting a mauns not appearing in Court, and all allowed by Law, as by Impollonment, whereof Lilecton speaketh, S. 438. also, per inunctionem aquarum, tempesfatem, pontem fractionum, Navigium subfracitum per fraudem potens, minorem atatem, defensionem simmonitionis per legem, mortem Attornati, breve de warrantia dies: Also, si petens eonionit at, vel si placent mutatur finem: But schneese (as one saith) is no cause of saving a default: because it may be to artificially counterfeited, that it cannot be known.

17. If a man be dispossessed, and he arraigne an Affr to the Dispossessor, and the Recognitours of the Affr shant for the Plaintiff, and the Justices of Affr will be advised of their Judgement, until the next Affr, &c. and in the interim the Dispossessor vee seised: In this case, this being seised shall not tell the Entry of the Dispossessor: because the being seised of the Affr amounted to a continual claim, and there was no default or neglect in the Dispossessor. Note, that this is a Quere in Litt. but since resolved to be Law.

18. In an Action of Waste, upon the Plea, null waste saved, he cannot give in evidence Indubitable waste, as to repair the House, as the like: but he ought to plead it specially: But if, the waste be such as came not by any default or neglect in him, he may upon the Plea, null waste saved.
the Common Law.

being in evidence that the wall was done by tempest, lightning, enemies, or the like, and he shall be thereupon excused, &c.

19. If my Tenant which pays me a Rent-service in gross, attorns and pays it to a Stranger, this shall not put me out of Possession of the Rent; no, albeit I bring an Action against the Stranger for the Rent, b. 3, and thereby admit my self out of Possession, a, although the Stranger die, and a Defendent is call; for, I may detain my Tenant for all the rent arrears; because it cannot be imputed to my neglect or folly that the Rent was paid to a Stranger.

20. If Tenant in tail enfeoff his Son and another of Land in tail by his Deed in fee, and Liberty of Seisin is made to the other according to the Deed, and the Son knowing nothing thereof, agrees not to the Feastment, and after that he takes the Liberty of Seisin dyes, and the Son not occupying the Land, nor the profits thereof, during the life of the Father, and then the Father dyes; Here, this is a Remitter to the Son, because, the Frank-tenant is call upon the survivor, and no default was in him, so that he never agreed to the Feastment.

21. If a man be dissailed, and the Dissilage makes Feastment to A. B. and C. and Liberty is made to A. and B. but C. was not at the Liberty, nor agrees to the Feastment, nor takes any profit of the Land, and after A. and B. dyes, and C. survives them, and the Dissilage brings his Wit Sur dissail before him against C. who derives all the matter, how be he agrees to the Feastment, and he shall be discharged of the damages, albeit he was Tenant of the Frank tenement of the Land, and that the Statute of Gloskeller will, that the Dissillage shall recover damages in a Suit of Entry grounded Sur dissail against him that is found Tenant, yet here, because C. was in no default, the Dissillage shall not recover damages against him.

22. If two make a Feastment in fee, and warrant the Land to the Co. ibid. 394. Feejee and his Heirs, and the Feejee relases one of the Feejees to the a. t. warranty, yet be shall touch the other for the property; So likewise if one enfeoff two with warranty, and the one relases the warranty, yet the other shall touch for his property, could pater.

23. If a Lease be made rending rent at a certain day with clause of Co. 1. 4. 64. 25. Re-entry upon non-payment thereof, and the rent is behind two years, 4. Penalties. In this case, if the Lessee accept the last half years rent, all the arrears are discharged, and by such acceptance the Lease is confirmed; but if the Condition be, that if he alien any part of the Land without the Lessee's licence, then it shall be lawfull for him to re-enter; In this case, if the Condition be broken, and the Lessee to afterwards accept the rent, this is no confirmation of the Lease, because such assignment may be done so secretly that the Lessee cannot possibly discover it; So in the first case the Lessee may know the time when the Condition ought to be performed, but not in the other: See the like case adjuged in Com. Banc. Mich. 39. & 40. El. which Pies begins Term. Hill. 39 El. Roc. 1303, in Treppale inter March & Curteis.

24. The Sheriffs of London at the end of their office, delivered by Indenture, B. in execution to the new Sheriffs, and whereas he was in execution at the suit of C. and D. D. was only named in the Indenture, B. after such Deliver makes an escape, C. bring an Action of debt against the old Sheriffs upon this escape, and recovers; because here, the default was in the old Sheriffs, fix that they bid omit the execution of C. in their Indenture; and therefore albeit B. was within the Walls of the Palace after such Deliver by Indenture, yet was be not Pioinnee to the new Sheriffs, but it was an escape from such Deliver: Nevertheless there was no reason that C. should be without remedy.
remedy in this case: so that no default of negligence could be imputed to him in that miscarryage.

25. A. possessed of others parcels of Land within the Spannor of S. Fine land, in years, at will, and by copy, and of others in fee there, beneath the whole to E. for life, and then leaves a Fine to him and his heirs of so many Acres as amount to the whole Land, continues Possession, and pays the rents to the Lord, as if no such thing had been done. In this case, albeit five years passed, yet the Lord was not barred, and yet in the Statute of 4 H. 7, the saving is of such right, as first shall grow, remaine, &c. And there, the right first accorded to the Lessee after the Fine in the Feoffiture: Nevertheless, the Lord (in this case) shall not be barred, because A. having Lands within the same Spannor, and still continuing the Possession and paying the Rents, the Lord could not possibly take notice of the Coven: So if Lessee for life (having Lands in the same Spannor) levy a Fine, the Statute shall be confined against the Issue, and the Lessee shall be allowed five years after the death of the Lessee for life, and in that case Non-claime shall not prejudice him; because he was forced to it by the Lessee, whose Conveyance was so close, that he could have no notice, that any Fine was levied of his Land.

26. The Statute of 32 H. 8. c. 2, for limitation of Rent or Service (to have actual Seisin thereof within forty years, &c.) extends not to such a Rent or Service, as by common possibility cannot happen to become due within forty years, as if a Heiress and Fealty needy, for the Lessee may live above sixty years after they are made: So if the Service be to cover the Lords Hall, so to go with him, when there shall be a Warre between the King and any of his Enemies, such casual Services as by common possibility cannot happen within forty years, are not within that Statute; neither in the Lord bound by it, because it is not his default or neglect, that he cannot prove himself lessee of the Services within forty years, according to the limitation of that Statute: There is the same Law of a Formosus in defender, for the Lessee in tail may live sixty years after the Pardon continuance: So his wife, if the Lord release to the Lessee so long as I. S. hath heirs of his body, and sixty years palle, and I. S. be without heirs of his body; in this case also, albeit the sixty years palle, yet the Lord may disfrain them when he pleaseth, because they are not within the purview of the Statutes, causa qua supra.

27. Where a Feeme, Tenant for life of a Copyhold, takes Barne, Walk he by, and the Baron commits Waste against the Cultivation of the Spannor and Tyne, the estate of the Feeme is (in this case) forfeited by the act of the Baron, because it was her folly to take such a Spannor as to wrong commit Waste: But if a Stranger commit the Waste without the consent of the Baron, that is because it cannot be then imputed to her folly.

28. When a thing is due in right and truth, and becomes ruinable by no default in the party, to whom it is due, but by the Act of God, as by the death of the party, or the like: In such cases, Acts of Parliament, which are made to give remedy in such cases ought to have a favourable construction, which may extend to advance the remedy proportionably to the mischief and defect in Law, according to the meaning of the words thereof. And therefore if a man grants a Rent-Charge out of his Lands, and after alienates the Lord to a Stranger, who lets it to will to another, the rent is arrear, and the Grantee despairs: In this case, the Executors of the Grantee may disclaim the arrearage by the Statute of 32 H. 8. c. 37. And that the words of that Statute are, That it shall be lawful for the Executor, &c. to disclaim for the arrerrage, &c. upon the Lands so long (only) as they remain in the Seisin of Possession of the Ten

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**Col. 1. 4. 15. 5. in the Chart of Administration and the Office of the Executive.

Col. 1. 4. 50. in Andrew Ogier's cafe.

Exposition of that.

Arrangement coveringable EXECUTORS.
nent in Demesne, who ought immediately to have paid the Rent, or of any other claiming by and from him, &c. Here, by the words of this Statute the Executors may only detain the Grantee of his immediate Grantor (by and from being in the Conjunctive; ) Yet in the case above they may detain the Tenant at will, and the word and shall be taken for or to the end the Letter at will may be understood to derive his estate from him, and to be comprehended within the purview of that Statute, for the reason above alluded.

29. By the Statute of 3 H. 7. c. 1. An Appeale cannot be brought against the Felon after Clergy had, but (by consequence) before Clergy it may: And yet if a Felon be indicted, and upon his trial confesses the fact, and prays Clergy, and the Judges take time, and will be further advised, and then an Appeale is brought: In this case, the act of the Court (to be advised as to the allowance of the Clergy) shall not prejudice the party, especially in case of life: there being no default in him, why he had not his Clergy, when he prayed it.

30. If a Clerke be presented, admitted, and instituted, to a benefice with cure, above the value of 8 l. and after and before induction to the first he accepts another benefice with cure, and is therunto induced; In this case, the first is void by the Statute of 2 H. 8. for the words of the Statute are, If any parson having one benefice with cure, &c. accept and take one other, &c. and he that is instituted to a benefice is says in Law to accept and have a benefice: Howbeit, although by such institution to the second benefice, the first is void by the ecclesiastical Law without any perpetuation of sentence declaratory, yet no laps Hall (in this case) incur against the Patron without giving notice to him, no more then if the Church had become void by renunciation of perpetuation, and yet the Patron may take notice thereof, if he please, and may present according to the law constitution, but he is not bound to take notice thereof at his peril: It is otherwise, if he had been indicted, for then he is to take notice at his peril, because the appearance after induction is declared by act of Parliament, whereunto every one is party, per Popham & tocam Curiam.

Waste. Ten- Co. 1. 4. 9 bl. 3. in Dig. nant at will, the benefices own.

Benefice. Ear.

Lapse.

Clergy. Appeal.
which one of them escapes, and to the debt as to him is discharged, and
the Plaintiff is to have his remedy against the Sheriff: Here, albeit
the debt seems to be discharged against the other also (because they
were jointly bound, and it was but one entire debt) yet the other re-
maining in Pilion shall not have his Audita quercia, but shall there con-
tinue until the whole debt and damages be fully satisfied: because cap-
pass, imprisonment is not valuable satisfaction of the debt, and it was
not in the Plaintiff's default, that he was escape.

Co. 1. 5. 24.

34. Upon a Writ brought by Journeys accounts, if the first Writ & A Writ
dated by the default of the Demendant himselfe, as by his misinforma-
tion of the name of the Comante, or of the Comante, &c. in such case, the
Demendant shall not have a Writ by Journeys accounts, as the
118. But if the Writ abate by the default of the Clerk, as
where it abates for false Latin, or variance, or for default of home,
&c. there, the Demendant shall have the benefit of a new Writ by
Journeys accounts, because it was the default of the Clerk of the Chance-
cy, and not the default of the Demendant himselfe, as the Books are a-
given in 26 E. 3. 54. 48 E. 3. 5. 14 H. 4. 23. &c. So likewise, when the Writ abates for want of new Summons,
for that is the default of the Sheriff, and no default in the Demendant:
and therefore in such case also the Demendant shall have a new Writ by
Journeys accounts.

35. If a Robbery done in the morning ante locum, the Plaintiff has not
shall not be charged, because the Robbery was done in the night: And
albeit no time be reported in the Statute of Winchester, 13 E. 1. yet by
good exposition it shall not extend to Robbery done in the night; for no
Laches or negligence can be attributed to the Plaintiff for default of well
guarding the Country in the night, also in the night they cannot make
pursuit after the offenders, or inquiry for them, and then to charge them,
when they are deprived of their convenient means, would be hard.
Vide 57. 50.

At the Common Law, if one were slain in a Comante in the night.
The Towne

36. At the Common Law, if one were slain in a Comante in the night, the Towne

the time, viz. so long as there was full day light, and be that he was covered
scared, the Comante where the felony was committed was to be assercric
for it, and so it is held in 3 E. 3. Corone 238. Dum quis sedosse occi-
sus fueri per diem, nil felo captus futu. Tota villara illa onere: But if
such a murder or homicide were done in the night, the Comante shall not
be assercric by the Common Law: Because, in such case, we Laches or negligence can be imputed to the Inhabitants of the Comante: For God
hath ordained the day for men to work in, and the night for them to rest
in: And therefore the Prophet saith, Pooiathi cemrav. & feda ad nos, in qua perennare benefic silve, &c. sub orienet & congregati sunt, exit
homo ad opus & operationem & redit vespere: And the Poet saith:
Ur juget hominibus forsete de nocte stratones.

37. If the Plaintiff in a Quare Impedic be undoubted after appa-
rance, that is peremptory, and a good bar in another Quare Impediss, al-
beit that it be brought within the six moneths; because in such case the
Defendant upon title made shall have a Writ to the Bishop to admit
his Clerk, which is a good bar in another Quare Impedic, and with this
decrops 19 E. 4. 9. 22 E. 6. 7. 44. 45. 33 H. 6. 15. 55. 20 E. 4. 14. 32 E.
4. 2. b. &c. F.N. B. 38. b. So if the Plaintiff in a Quare Impedic his
continue the suit, the Defendant upon whose made that have a Writ to the
Bishop, and therefore this is also peremptory, and with this accords
3: H. 6. 15. Likewise, if the Plaintiff be made a Knight, hanging the
Writ, the Writ shall abate, and the Defendant shall in that case also
have a Writ to the Bishop; and (by consequence) that is also pre-
emptory:
the Common Law.

Co. 1. 6. d. 

Caly's cafe.

39. In all Writs of Precipe quod rector, as Writs of right, Forma
don, Ass, Entry, &c. Precipe quod permittis, as to have Executors, Commissary, &c. Precipe quod faciat, as Writs of Custodies, Services, &c. if the Demandant be barred, or non-suited, or is not lost, or the Writ abate for being vice in matter or form, as it shall be amerced: but if there be two Demandants, and the Writ abates by the death of one of them, then shall not be amerced, 48 El. 3. 46 E. 3. Account 40. 3 E. 3. 3. &c. H. 6. 7. 38 E. 3. 3. 7 H. 6. 36. 41 Aff. 14.

40. In all personal Actions, as Suit, Time, and the like, without force or defect to the Court, and also in Actions, which comprehend force or defect to a Court of Record, if the Plaintiff be barred, non-suited, or if the Writ abates for being vice in matter or form, he shall be only amerced, or, but if the Writ abates by the death of one of the Demandants, or if one of the Demandants appeare and the other be non-suited, or, which is Law to personal Actions, is a non-suit of both he shall be only at the Apparatus shall not be emmerced, for there was no default in him: but only to him that appeared not: 47 E. 3. 6. 43 Aff. 3. 7 H. 4. 3. 32. 33. 91 Aff. 24.

41. In all Actions real and personal, if part be found for the De, Co. 1. 6. d. 

Communite of Plaintiff, and part against him, or all against each other
in demand.

The Demandant or Plaintiff shall be amerced except no default be found in any of the Demandants, and there therefore in Cases of Battery against Barne and Feme, supposing the Battery to be done by both, and the Feme is only found guilty, &c. and the Baron acquit yet the Plaintiff shall not be amerced, for the Plaintiff cannot have any other Writ in such cases, and therefore because no default was found in him, he shall not be amerced in this case.

42. The Kings Cenem in Capite under age is to remaine in Ward, Co. 1. 174. a. Holm's cafe.

and the King is to receive the profits of his land until he be his proper 
and that cannot be until he be of full age: and the King is to receive the profits of his land until he be his proper. 

he is to have three months to perfect it: But if after such tenure, by the Act of God (viz. death) he is prevented to perfect it, the King shall not receive the poffess after such tenure:
The Reason of

but the next here shall have them, and after such tender he might in that
case sell the Land or any part thereof, and the case shall be good, notwith-
standing the Kings hands upon it.

43. It is a Kine in Law, that where the Tenant might have waged
his Law, his Executors shall not be charged with that duty, &c. con-
because that advantage is lost by the Act of God (viz. by death) and
therefore shall not be imputed to any default of his: So we desist not as
gainst Executors for the Deed of their Tenant, because he might (in that
case) have waged his Law, and to have fixed himself thereon, which ad-
antage being lost by his death (and no fault of his) his Executors, who
represent his person, shall not be prejudiced thereby: Howbeit, if a
Pisitioner in the Cooler for Reason receive his diet of the Lieutenant,
and yet, the Lieutenant shall have an Act of debt against his Execu-
tors for such diet of the Tenant; and the reason is, because (in that
case) the Tenant could not in his life time have waged his Law, as it
is adjourned in 27 H. 6. 4. b. in Thomas Boddgar Case: And the reason
why no wager of Law (in such case is, because every Stater ought
to keep his Pisitioner, in salvo & seco catholica, and so much of necessity
find him vacuall, &c. Vide pl. ibid.

44. In 14 H. 6. 19. b. R. G. bring a Writ of debt of ten marks as
against T. T. and others, Executors of W. W. and counted, that the Ten-
ant had retained the Plaintiff to be with him for a peace in the art of
Limming of Books, paying him ten marks per annum; and there Mar-
tin held, that the Act of the Executors was not maintainable: And
he took a difference between this case of a Limmer, and that of a common
Labourer; for a Labourer shall be compelled to labour, and his salary
is put in certaine by the Statute; and therefore there is no reason that
the Servant should lose by the death of his Master (being bound by the
Law to serve) which shall not be laid to be his default, but the Act of
God and the Law; Howbeit, in the case of a Limmer, he was not com-
pelled by the Law to serve; And so when he made the Covenant, it was
his own act and folly, and no act in Law; and he might have taken a
Specialty: And this is good Law: but the true reason of that di-
ference is, because in the Case of a common Labourer, the Tenant
could not wage his Law, but in that of a Limmer he might, &c. Vide
pl. ibid.

45. If the Court of Common Bench in Plea of debt a Writ of 
Capias against a Duke, Earl, &c. which by the Law lyes not against
them, and this appears in the Writ it wrote: yet if the Sheriff arrest
them by force of the Capias, albeit the Writ is against Law, notwith-
less the Court having Jurisdiction of the Case, the Sheriff shall be ac-
cused, because there is no defect in him but in the Court, and with this
agrees 38 H. 8. Dyer 60. b. So it is likewise, as a Justice of Peace
makes a warrant to arrest one for Felony, who is not indicted, albeit the
Justice is in the Warrant, yet he, that makes the arrest by force of that
Warrant, shall not be punished by a Writ of False imprisonment, because
is is not his fault, but the Justices, who is Judge of the case: and with
this agrees 14 H. 4. 16.

46. If the Obligee himself alters the Obligation in any point mate-
rial or not material by interlining, addition, rasing, or the like, that
shall make the Obligation void: but if a Stranger doth without the Obli-
gee's privity in a point not material, that shall not affect the Debt: as
if an Obligation be to be made to the Sheriff for appasants, &c. and in
the Obligation after the sealing and delivery thereof, these words, Vice-
com. Comit. Oxon, are interlined by a Stranger without the privity of
the Sheriff, yet the Obligation remains good, notwithstanding such in-
terlining by a Stranger without the Obligee's privity, in regard it was
not conceived to be a point material, Benedicto Winchcombe, his name and
surname being there inserted before, and being done by a stranger it
shall not in that case prejudice the Obligee.

47. Where the Bishop refuseth the Clerk of the Patron fot now, N. B. 33. 4.
ability as crime, he shall not payant by Laps, unless he have first given
notice to the Patron of the insufficiency of his Clerk, the Patron neglet
to present within the six months; for (in such case) after the six months
past, the Patron shall have a right to the Bishop, if the Church be void,
and the Bishop have not in the meantime time collated.

48. If one left another a piece of Cloath and warrant it to be of a cer
F. B. 92. 4.
time length; in this case, if the piece be not of that length, a Writ of
Distress liege against the Venitor, albeit the Warranty be but by
Parol.

49. In Foggassee case in the Coment, the storage at Sea being a
thing, that could by no possible means be prevented, and that causing
the uncertainty of the quantity of the Wood, and there being no means
of knowing the certainty thereof before it should be landed and weighed,
and that uncertainty being caused by no folly in the Defendant Foggas,
there was great reason he should be excused, and not made liable to be
found the Wood, albeit he had not observed the strict words at that
place.

50. If a man hath a Rent-Charge granted him, Pro consistio impenenda,
Dyer. 3. 6.
and afterwards he is attainted of treason and cast into Prison, as the
Rent-Charge cannot have access to him for his counsel, yet he shall have the
want during his Imprisonment; for he may give counsel as well in
Prison as at large, and there is no fault in him, that the Grantee came
not at him.

A Sheep-bite.

51. If a man hath a Dog that kills Sheep, the Mapper of the Dog Dyer 24. 1.
being ignorant of the Dogs condition, he shall not be punished for it: If 163. 6 H. 4.
is otherwise if he had notice of the Dogs condition and quality, for then
it may be imputed to his own folly and neglect: See also Dyer 29. 195.

52. A Lease was made of a Beacon burning upon the River of Exe Dyer 33. 10.
in Devon by Dyer indented, and the Lessee commanded to maintain and
repair the Banks of the River, in paine of ten pounds, and afterwards
by reason of a sudden blow upon destruction of certaine Weares in De-
von, the Banks were decayed and perished, de, and by the opinion of
Fitz and Shelley, the Lessee shall be exonerated from the Penalty, as if it
had been of an House that had been burnt by lightning or ignition done
by others, which are the act of God and cannot be resitted: Howbeit, in
this case he ought to repair the Banks in convenient time.

removing rent, and all the Sheep are 5 H. 8.
positioned, because it was the act of God and no default of neglect of the
Lessee.

54. In debt upon an Obligation, it after non est factum pleased and Dyer 59. 1. 12.
entered, the Labels by the negligence of the Clarke is eaten off with
spice, it seems this shall not prejudice the Obligee, because it did not
happen by his default.

55. A man being beyond sea out of the Realme is disabled, and Dyer 143. 177.
after he returns into the Realme, and then departs out againe, dur

ing which time there is a Defe lent salt: In this case, if it cannot be
proved, that he had notice of the Distillation when he was in the Realme,
it seems this Entry is not taken away, for by intendment of Law he
could not have notice of the Distillation, at the time when it was done: So
if an Infant be disabled, and at his full age he goes beyond Sea, or takes
Baron, or is imprisoned, during which time there is a Defe lent, his En
try
try shall be taken away for this Laches after his full age; but if he were within age, when he did such an act, it shall be otherwise.

56. A Capias ad satisfacendum returnable Tres Trin. being not served, the Solicitor of the Plaintiff takes it again of the Sheriff, and one of the Petitionaries Clerks makes the Tres Trin. Tres Mich. and then the Solicitor re-delivers it to the Sheriff unsealed, viz. to the Sheriff of London, who makes Warrant thereupon to a Servant, who arrests the Defendant, and afterwards the Writ is sealed; and in this case, albeit the offenders for this undue practice were committed to the Fleet, yet afterwards it appearing upon examination, that the Plaintiff was ignorant of the practice, the Writ was received, and the Defendant committed t. b. also to the Fleet in execution.

57. Partition against two, the one confesses the Partition, and the Partition other pleads to Abuse, and in the Record of Nisi prius, the name of the Defendant was omitted by the negligence of the Clerk, being written & precedus similiter, without more; Also the Jury was hereafter the Plaintiff and both the Defendants, whereas one of them was not party to the Abuse, which errors being apparent were amended by the direction of the Justices of Nisi prius (quod nona) and to the Jury taken.

58. The Earl of Kent being reputed but an Esquire, brings a Writ against Entry by the name of Esquire, and the Pannell was returned; now by the Heraldus he was then newly declared Earl, and thereupon he challenged the Array, because there was no Knight in the Pannell, but it was not allowed, for that there was no default in the Sheriff, he being commonly reputed an Esquire.

150. Nemo debet rem suam sine facienda vel defendenda suo amittere.

Litt. S. 442, Co. Inst. par. 81, b. 262, b. 1. 267. b.

2. If a man be displeased and he arraign an Alias against the Distraits, and the Recognizances of the Alias chant for the Plaintiff, and the Justices of Alias will be adviced of their Judgment, until the next Alias, &c. and in the interim the Distraits eyes fell: In this case, this being soed shall not toll the Entry of the Distraits, because the bringing of the Alias amounted to a continuall claim, and Nemo debet rem suam sine facto vel defendenda suo amittere. Note, that this is a Quære in Litt. 1. or 2. of Vol. 149, Ex. 17.

Litt. S. 443, Colbod 263, b. 1. &c.

3. If an Abbot dye, and during the Vacation, a man honourably enters into part of the Land belonging to the Monastery, and eyes thereof, and afterwards a new Abbot is elected; this Abbot shall not toll the Entry of the new elected Abbot: because this Entry and Descent was not occasioned by any act of default of as in the new Abbot, the Land being during the vacation in abasance and custody of the Law, and too that by the death of the former Abbot (which is the act of God) there was no person able to make continuall claim. This is also a Quære in Litt. It is so likewise of Dean and Chapter, Papiz and Commonality, Paxter and Fellows of a College, &c. any other Corporation aggregate of many, where such a Descent happens when they want their head, viz. Dean, Papiz, Paxter, &c. so then they are not in a capacity to make claim: Also if an Absure to a Church he had in time of Vacation, this shall not prejudice the Successors to put him out of Possession, but that at the next abasance he shall present.

Rem. S. 588, Co. ibid. 313, b. 3.

3. If my Tenant, who pays me a Kent service in goate, attires and pays it to a Stranger, this shall not put me out of possesion of the Kent; albeit the Stranger vie and a Descent is cast: for still I may
Release of warranty.

A Donative.

Debt. Execution.

Seisin of rent.

Grant with or without Attorney.

Here impeached.

10. A Quare Impetit against the Bishop and Incumbent, without naming the Patron, shall abide: for otherwise, the Patronage shall be in that case recovered against him who hath nothing in the Patronage: and it is against reason, that he, who is Patron, should be stripped and ousted of his Patronage, when he is a Stranger and no party to the Suit.

11. A by a writing purporting his Will, deviseth Land to B. and his Heirs, but afterwards (without the knowledge of B.) enters C. to the use of B. for life, with divers Remainders over, provided that B. disturbs not the Executors of A. from carrying away the goods: A. byes, B. disturbs the Executors, the next in Remainder enters upon B. into the Land: In this case, albeit B. had made disturbance against the words of the Proviso, yet he shall not thereby forfeit his term without notice of the Condition; for none shall lose any Estate or Interest, which he lawfully hath, without some act or


damage without notice.

the Common Law.
defaults in himself; and therefore (in this case) inasmuch as B. was a stranger to the Testament, he shall not lose his estate without notice given him of the Writ: Quod nostrum et sine loco maius est nostrum amisit; in alium transferri non posset; which accords with the opinion of Brough in Mallorics case in the 5. Report 213. b. that the Feoffes of Land or bargain of a Redemption by Deep imputed and interest shall not take advantage of a Condition for non-payment of rent re- called upon a Lease upon Demand thereof, without giving notice there- to of the Lessee.

12. If the estate of the Lord of a Hanover cease by limitation of an use, whereby the use and estate thereof is transfered to another, the a. 4. in the demand of the rent of a Copy-holer, who denies to pay it to him, cannot no forfeiture without giving notice to the Copy-holer of the alteration of the use and estate: And so it was judged Hill. i. Soc. in Trespass, inter Beconshaw Plaintiff, and Southcohe, and other Defendants. So likewise the Bargain of a Hanover by Deep imputed and enrolled shall not take advantage of a forfeiture of a Copy-holer for non-payment of payment of rent without notice to him given of the bargain and sale; for the Law will never compel a man to take notice of acts done as Co. 2. 15. amongst strangers, or of any uncertainty upon pains of suffering a man's estate or interest, but in such cases notice ought to be given to those that are to suffer the loss: It is expedite when a man finds himself to do a thing, as to perform an Arbitration, to pay the oven, which such an Arbitrator assigned shall charge him withal, as the like; for in such case he takes upon himself to do it.

13. A Fine was levied of a Hanover and other Lands, to the value of 2000 Marks per annum, so as the Kings-halter was forty shillings, which was paid, but in entering of it upon the Writ of Covenant, the Hanover was omitted, and therefore Error was brought, but after that, albeit the transcript of the Fine was remitted into the Kings B. the Judges of the Common Place amended the Record, because it appeared to them, that the Kings-halter was paid for the Hanover; and whereas the Writ of Covenant was, Deed issued, so Teste issued, they amended that also, and certificed it into the K. B. upon Diminution, and it was allowed; but it was against reason, that the Solicitition of the Officer or Clerk should prejudice the Converse, when it happens not by any default or neglect in him. Vide Dyer 223. 34.

14. At a Nisi prius the Jury after departure came again, and said, that they were all agreed save one, who had eaten and drunk, whereupon they were remanded at the request of the Plaintiff, and after gave Verdict for him, and this was held good: Nisi prius was given in Bank to assize a Fine upon the late Jury, and the Fine was assized at twenty pounds, but the Plaintiff had Judgment.

15. The Solicitors of the Sheriff and the Sheriff espouse to arrest one condemned in debt, and after process a Capias ad satisfaciendum, and the Prisoner being brought into the Court upon the returns of the Writ, had the matter examined, and it so was found, ut supra, yet because the Plaintiff was not parties of criminal, he remained Nisi for execution, and the Sheriff and Solicitors were amerced, viz. the Sheriff at ten pounds, and the Solicitors at five pounds.
151. It driveth not a man to shew, take notice of, or do that which by intendment he knoweth not, or should or cannot do.

Men in one County take no notice of things done in another.

Waste.

1. Because the Inhabitants of one County do not accompany together with men of another County at County Courts, Earthen, Leases, and other Courts, therefore in Judgement of Law they shall take no notice of a Liver in another County to parte Lands: in their own County.

2. If waste be done Sparsum (here and there) in Woods, the whole Wood shall be recovered: So likewise in Houses so many whole Rooms shall be recovered, wherein the Waste is done: for it would be impossible, as (at least) inconvenient for the Plaintiff to recover only part of the Wood, or part of the Rooms of the Houses; because (in such case) he could not be able conveniently to make any use of them.

3. A protection may be cast either by a stranger as by the party himself: so, an Infant, his coewt, Sonke, any other may cast a protection for the Tenant or Defendant; and this difference there is, when a stranger casteth it, and when the Tenant or Defendant casteth it himself; so, the Defendant as Tenant casteth it, he must show cause wherefore he ought to take advantage of the protection, but a stranger need not know the cause, save only that the Tenant or Defendant is thereby protected, because it is presumed the stranger may not know the cause.

Challenge.

4. That challenge for the Hundred must shew in what Hundred it is, and not make the other party to shew it.

Not to shew writings.

5. If Land be moyagges upon Condition, and the MOYAGGE be held the Lands for years, reserving a rent, the Condition is performed, the MOYAGGE re-enters, in an Action of Debt brought for the rent, the Leesse shall plead the Condition and RE-ENTRY without showing toth any Deed: So in an Affray the Tenant pleads a Forfeiture of the ANCESTRY of the Plaintiff unto him, &c. the Plaintiff faith: What the Forfeiture was upon Condition, &c. and that the Condition was broke, and pleads a RE-ENTRY, and that the Tenant entered and took away the Chattel, in which the Deed was, and yet detained the same: In this case, the Plaintiff shall not be enforced to shew the Deed.

Wager.

6. Wherefor a man is charged as Executor of Administrato, he shall not wage his Law, so no man shall wage his Law of another. If the Mans Deed, because the Law presumes he is not acquainted therewith: It is otherwise of a Succesor to an Abbott, for that the Abbey asserteth.

Acceptance of rent, no confirmation.

7. P. Leaves on Condition the Leesse shall not alien any part thereof to another. This acceptance is no confirmation of the Leafe; because the Agreement may be so secret, that the Leesse cannot know it: It is otherwise, where a Leafe is made renting rent at a certaine day with clause of RE-ENTRY upon non-payment of the Rent; in this case, if the Leesse hath advantage of RE-ENTRY upon non-payment of the Rent at the day, acceptance of the Rent after confirms the Lease; because the Leesse in such case might have made the Day and time of payment of the rent.

Certaine quantitiges of water not required.

8. In an Action upon the case for divertiage a Sreame of water from a SPIll, the Plaintiff may alledge the divertiage of a great quantity of water without shewing how much in certaine; so it is impossible to shew how much water in certaine runs by the SPIll, and the quantity of water is not material.
9. Where a Copy-holder pays a certain fine, he ought to pay it at the Court upon his admission; but where the fine is uncertain, the Copy-holder is not bound to pay it presently, because he knew not what fine the Lord will assess; & nemo rector divinare; & nemo, because he cannot then prove any certain summe, he shall have a convenient time to pay it, in cases where the Lord limits in certain time for the payment thereof.

10. A travesty or house in the balance of the cartillage of A. in this case; if A. alien his house, and B. his cartillage, the Feodes of B. shall not be bound to a Compendi prayer of A. before notice, given to the Feodes of A. to abate the nuisance; because he was a stranger to it, and (by consequence) might be ignorant thereof: Husband, B. might have brought it against A. without notice, for that A. was the Author of the nuisance.

11. If the Leese in the absence of the Leese his tenant and make Headsment, and the Leese tenant, about this amounted to an Assignment by Law, yet without notice given of this Headsment to the Leese, the Headsment shall not make bargain of the Head return upon the Leese by Entry to the Conditional tenant: for, although he may (in that case) after ten years have an Act of Debt for the Rent, as an Act of Warrant (because in his capacity as Court, he may allege the Headsment was of the Leese might then have notice) yet he cannot recover the rent upon the Condition without notice; for then it would not be possible for the Leese to know to whom he should pay the rent, to judge his terms and the nature of the Headsment in such case, whereas he had not desired his term: So if the Leese bargain and sell the Headsment by Heads intention and intent, the Bargaine (although there needs no Assignment) shall never take benefit of a Conditional, upon demand of a year, without giving notice to the Leese of the bargain and sale: for although the bargain was made by Deed intention and intent by upon Headsent, yet for as much as it may be intailed in to many Courts in the same manner, the Law will not save all the Farms of England, where there have Headsintall Leases, to make every sixty months such infinite search, to take their terms, but the Law (in such cases) for the preservation of the Interest and Terms of the Leese compells the Bargaine (who is to take benefit of the Conditional) to give notice thereof to the Leese, who is a meer stranger therunto. For Popham, and not damns by the rest of the Judges.

12. Confinement of the passages in debt need not to be allayed: Deed; specially, so if sufficient (in such cases) to say, malicious & destructive machinements find, &c. without allayng particular; because such passages are to secret and uncertain, that they cannot be known at first.

13. Robbery of an house by any way by night is neither within the law: Robbery, for this meaning of the Statute of Winchester, E. 2. because when a Robbery is done in an house, it is to secrecy done, that the Swornazz cannot take notice thereof: It is otherwise of Robbery upon the High way, so that is openly done, and therefore the Swornazz may of themtake notice thereof.

14. If the Defendant be Tenant plead a false Deed made to him, of many his OWN Deed, and be found against him, as if reliefa verisimiliter cogunt actionem, he shall be fined for his falseness, Quis cui debent esse de proprio faeco: but if one with the Deed of his Antecessor he plead a Deed made to his Antecessor, and it is found against him, yet he shall not be fined but only americit, Quis de alieno faeco: So if one deny a Robbery or other Erie he is party, he shall not be fined; for it is not his act but the Act of the Court, and he doth not know the Robbery absolutely, but on occasion the record ment.
the Common Law.

The pedigree of the Dower not named.

15. If a man brings a Beganoned in Rescver to Remainder, as in
plain, in the possession on the part of the Dower, or of him in
Remainder only above the Miles; but on the part of the Dower,
which the Dower has many luggings in the lineal descent ineritable to
the estate tails, and which held the Land, the Remainder was not named any of the above in the
Clause, as he post mortem, but be shall say, as he post mortem in Dower ad
slum severi debet, so good le Dower obiit without Alice, because the
Remainder is a stranger to the possession of the Dower, and trespasses (by
intenient) justly of it.

16. In estate against an Administreat, the Defendant pleads one
recognizance of eight hundred pounds, and another of one thousand
pounds, the Plaintiff replies, that the eight hundred pounds Recognizance
was for the payment of 100l, which is paid, that the 1000l Recognizance
was for the performance of Commissions, which are not broken, yet
both were on the condition by Cohen to the Defendant: In this case,
the replication of the Plaintiff is good notwithstanding the uncertain
try, for albeit he would please a Demurrer for the performance of the
eight hundred pounds, not what Cohen did in particular there were, for
which the one thousand pounds Recognizance was entered into, yet the
replication is good; because the Commissions is a stranger to them, and hath no
reasons by Law to know the particular uncertainly.

17. He that claims a thing as one Right as Interest out of the flat
right in the Crown, in such cases the First Grant ought to be produ-
ced; as the second Grant of a Re-adjudge shall show the First
Grant, and to shall his Bolus, be, but where a man is a stranger to a
Deed, and claims nothing contained in the Grant, may any thing out of
it, nor both any thing in the right of the Grantee, as Bolus or Exer-
cise, there he may plead the Patent as Dead without meeting it.

18. There is a Disadvain between personal Actions and real Actions,
wherein damages are to be restored, for in personal Actions the Plant-
ish shall count the damages; because he may know in certain what
damage he hath suffered before the Writ purchased, and shall be
only tender, but in real Actions the Demainder shall never count for
damages, because he is to recover damages, hanging the Writ, which
being uncertain, he shall not count for them, but shall have them assis-
ted after by Writ of Inquisition, or an Writ of Entry for Definieum,
in the nature of Affidavit, as it was held in 33 H. 6. 47. 8.

19. When a thing is beyond time of memory, a man is not complai-
ned to prove the Commencement thereof, as where a Pie is on
his Acquaintance have been Parous Impersoners of a Church, for that
the Commencement thereof, and whether it were by ap-
propriation or union is disputed without: because (by intention) of
such proof cannot be made.

20. If a man having cause to bring an Action of Account against one
as his Receipt at Receiver, makes his Executors and Use: In this case,
has Executors shall have that Action, for where the Executors may by cons-
tails and otherwise know how to charge them: but an Action of Ac-
count lies not against the Executors of a Receipt or Receiver for the reg-
eat occupation of their Executors: because (by intention) they
being ignorant of the accounts of their Executors, are not able to defend
themselves: So likewise, the Executors of a Receipt shall have an
Action of Account against another Receipt, but not against the Execu-
tors of a Merchant.

21. Cohen need not be certainly pleasant, but may be allowed gen-
early; for Cohen is a secret thing contained in the heart of a man,
Mistero (by intention) another man can have no knowledge, and
then
then the law will never force a man to do that, which by intendment of Law lies not within his cognizance: And therefore a man shall have power of a rent-charge without showing the use of the grant; because it belongs not to him.

23. A general action need not be specially pleaded; for the Judges Plac'd ought to take notice thereof without special pleading; but a particular

Act, as a particular Act in a particular (as when it concerns a certain sort of men, as Sheriffs, Justices, or the like) ought to be specially pleaded; at least the branch thereof, which concerns the present matter: for (by intendment) the Judges cannot take such notice thereof as of an Act which generally concerns all the people of England, within which number they themselves are included.

24. In an action brought against the Sheriff upon the Statute of 3 H. 8, for making an untrue return of the Knights of Parliament, the Plaintiff shall not be compelled to plead a certain number of the Letters; because he can by no means come to the knowledge of them, and therefore shall exciple them generally by the greater number, without giving the number of them in certain: So in debt against an executor, the Defendant pleads, noe unques executor, noe administrator come executor, to this the Plaintiff may say, that at such a place be administrator, without showing what things he there administered, because he cannot come to the knowledge of number of them, being not posible thereof: And so it is also of things of an infinite number, as if a man be bound to False the Sheriff harrimette of all things concerning his office, he shall allege, that he hath discharged him generally, without showing the things in certaine, because the things are of so great a number, that the certainty thereof cannot (by intendment) be remembered or known: Also, if a man be bound to swear yearly the Thepe of the Obligs going in such a pasture, he shall say that he hath shown them without showing the number, for peradventure some years there were more, some years fewer, so as he cannot (by intendment) remember the certaine number.

25. A brings an action of debt against B. upon an Obligation by the father, wherein he bound himself and his heirs, B. pleads rians per descent, A. maintains thatassets at D. in com. S. descend unto him: And upon a Nisi prius before Sir Christopher Wray the descent was passed, and agreed; whereupon B. the defendant gives in evidence, that long before the action commenced, he esposed one C. of the Land, which was also confessed; but A. the plaintiff proves likewise, that that testament was made by fraud to deceive him of his action, and therefore owes by the Statute of 13 Eliz. 2. Now it was strongly argued, that this ought to have been pleaded, and could not upon the issue (Rians per descent, 

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the Common Law.

Your brief purchase be brought in evidence: But it was resolved that it might be brought in evidence without pleading; because fraud and cabin (for that they are omens) are so publicly hatched in an hollow tree (in a shore cave & copace) and so artificially covered and concealed, that the partie giveth by no means to know or know them, and then to force the Plaintiff to plead the testament (whereas he hath no notice) and also that it was done by fraud, is both against Law and reason, being indeed very mitchieous to creditors, and tending much to the maintenence and increas of fraud and cabin.

26. A. entit RES. R. up on condition, that if A. after the death of B. pay unto theheirs, executors, or administrators of B. 100 l. that then the testament shall be void, afterwtrres B. enters in C. and C. enters in D. & B. dies, A. pays the 100 l. to the heir of B. In this case, the condition is performed, albeit the heir was then a stranger to the Land, because the heir is the person expressly named in the condition, to whom the payment shall be made, and the feoffor is a stranger to the conveyances, which the feoffor and his assigns have made, and therefore the feoffor shall not take notice of his peril of the valutice thereof, nor of the conditions or limitations annred thereunto.

27. In the Exchequer the Kings Farmer bring a Quo minus, and in his Court entitles Qu. Eliz. to the reverson of his term by the grant of his leas (who was Sir Richard Sackville) of the reverson to the Duke of Norumberland with his attinement to the said Duke, and after the Duke grants it over to E. 6. in fee, he be enrolled, and both not alaise expressly that Sir Richard Sackville grants the reverson by but generally, quod consectur revensionem hadendar in se, ad quam quidem concecisionem idem quernes se inde. Atururavit: And in this case the Court (per Dyer) was good without laying per carum, and without producing it into Court: because the Farmer was a stranger to the deed or grant, and had not the power of it, for that it belonged not to him, neither did he convey any title to him under it; so in an. 17. H. 6. While, the plaintiff was made of land and rent, and the tenant conveyed them unto him by the grant of A. in title, the remainder to the king in fee, and payen line of the king without showing the deed, and without laying, convey consentry tenementum per carum, & habito. Auxilia, &c.

28. In a Foremedon in Reverser the power not shew the pedigrees of the issues of the same, no who was last sealed, because he is a stranger to the pedigrees, and by intention cannot come to the knowledge of it: It is necessarily in a Foremedon in descender; Quo in Remainder.

29. The Leses of a Parson bring an Ejectione simn, the defendant pleads that the parson was deceased, the Plaintiff said, that the parson hath appealed to the Arch-Bishop of Canterbury in Curia fra prerogativa de Arcbuc, and because the words at the statute of 24. H. 8. 12. are, the appeal that shall be to the Arch-Bishop of the Province, &c. without limiting any Court in certaine, the Defendant demurred; And these words to the Arch-Bishop of Canterbury were held sufficient, because of subsance, &c. And in this argument although it appeared by the Civilians that the Arches were not the Prerogative Court, yet because the Defendant did not shew it, but demurred generally, the Commonall Judges were not bound to take notice of their Jusdictions.

30. In a Foremedon in Remainder brought upon a Remainder in use after the statute of 27. H. 8. It was held by the Judges, that the demandant need not shew the deed of the remainder r. because (in this case) the remainder might be created without deed, 2. so that the deed did appertain to the feoffor, and not to Celfay que uie, and therefore might not be in his power to produce.

Co. 1. g. 8. b. 1. in Gerall. c. 65.

Dyer 274.
18.
1. 3. Eliz.

Dyer 516.
16. 4. Eliz.

Dyer 240, 46.
7. Eliz.

Dyer 277.
18. 10. Eliz.
172. Nor to do that, which were in vain for him to do.

1. If an heiress female be married within the age of 14, in the life of Tender of her ancestor, and the ancestor die, the being still within the age of 14, the Lord shall have but the ward of the land until her age of 14, and shall not within the two years after tender her marriage, according to the Statute, it being vain for the Lord to tender her marriage, when she is already married: Natura non facit vacuum, nec Lex supernvacuum.

2. If a villain purchase a redemption, the Lord (after attornment) Claims to the land to entitle himselfe thereto: so it is also of a rent, common, or other inheritance issuing out of land: but if a villain purchase the feignory, or a rent, common, &c. issuing out of the land of the Lord himselfe; it is said, that the feignory, rent, common, &c. are extinguished in the Lords possession without any claim; so it is needless to claim them upon the Land, when he himselfe is possessed of the land, out of which they are issuing.

3. A villain shall not have an appeal of Robberie against his Lord, Appeal. Leg. for that the Lord may lawfully take the goods of the villain as his own: and then it would be in vain to bring an appeal against the Lord for taking his own goods.

4. If the Lord mayhem his villain, he may be indiluted for it at the Appellate suit of the King, and thereupon make fine for his offence; but the villain shall not have an appeal of mayhem against his Lord; because in such appeals he shall recover only damages, which the Lord after execution may take againe, and so the Indemnity would become indeile and illudice, and sapiens incipit a fine, and the law never gives an action, where the end of it can bring no profit to benefit the Plaintiff.

5. A man seised of 15 acres of land of equal value, and having two Hocpor. Daughters, gives 15 acres with one of them in frankmarriage and dies, and the other 15 acres defends to the other Daughter: In this case, there shall be no calling into hocpor, because the lands were of equal value at the time of the partition; so it were in waine to put them into hochpor, being equal, no alteration since (by the act of God) otherwise where the lands are bettered or impared, being to be had in consideration.

6. If there be two tenants in common of a rent, as money, gaines, &c. Tenants is any severable thing, and they be dissolved thereof, they shall being common several allises for the recoventy thereof, because they have by severall titles: Commonall, if the rent be a Hocpor, hoipe, &c. any other thing which cannot be severed, they shall argue in an allise for it: because the Law will never enforce a man to demand that, which he cannot recover, and a man cannot recover the mortgage of an Hocpor, hoipe, or the like, Lex neminem cogit ad vane seu inutilia.

7. If I grant a rent charge in fee out of my land upon condition, there if the condition be broken, the rent shall be extinct in my hand; because

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Litt. S. 103.
Co. Inf. pars 1. 79. a. 2.

Litt. S. 179.
Co. ibid. 119. a 3.

Litt. S. 194.
Co. ibid. 116. b. 3.

Litt. S. 273.
Co. ibid. 178. b. 40.

Co. ibid. 19.
Co. ibid. 118. a 4.
because I (that am in Possession of the Land) need make no claims upon the Land, and therefore the Land shall adjudge the rent both, without any claim.

8. If a man make a Testament unto me in fee, upon condition that I shall pay unto him twenty pounds at a day, &c. and before the day I let unto him the Land for years reserving a rent, and after failure of paying the twenty pounds: In this case, the Feoffor shall retain the Land to him and his Heirs, and the rent is determined and extinct; for that the Feoffor could not enter, neither hath he need to claim unto the Land, because he himselfe was in Possession, and the Condition being collateral is not suspended by the Lease.

9. If a man by his Deed in consideration of Fatherly love, &c. ibid. b. 1. &c. grant to the tenant to be made to the use of himselfe for life, and after his decreas to the use of his eldest Son in tail, the Remainder to his second Son in tail, the Remainder to his third Son in fee, with a provision of reversion, &c. The father makes a renovation according to the provision. In this case, the whole estate is immediately (upon the Renovation) reverted in him without Entry of Claims, causa qua supra.

10. A Release to a Tenant at sufferance (as to one that holds other his term) is void, but a Release to a Tenant at will by the Owner of the Land is good to convey the inheritance unto him, because there is between them a Possession with a privy, so it would be in being to make an estate by Liberty to him who hath already Possession of the Tenements by the Owners consent.

11. That which is apparent to the Court by necessary collection out Co. ibid. 320. of the Recopo need not be avered, so it were baine to aver that, which b. 3. is apparent to the Court already.

12. Albeit Tenant in tail may attain where the Redevision of Co. ibid. 316. his estate is granted over, yet he is not compellable to attain, although such Grant of the Redevision be by Fine, because he hath an estate of Inheritance, which may continue for ever: and therefore, if it were a vain thing to require any Attainment from him.

13. If a Lease be made for life, the Remainder to another in tail, the Remainder to the right heires of the Tenant for life: In this case, if the Tenant for life grant his Remainder in fee, that Remainder passeth without Attainment; for here, if any should attain it should be the Tenant for life, and it were in bain to the Tenant for life to attain upon his own Grant.

14. In such cases following, the Tenant is not compellable to attain; because he should have it here in bain to him to do: As 1. if an Infant levy a Fine, the Tenant shall not be compelled to attain, because the Fine is defeasible by Statute of Uses during his minority: If the Land be held in ancient demise, and he in the Redevision is with a Fine of the Redevision at the common Law, in this case, the Tenant shall not be compellable to attain, because the estate that passed is reversionable by a Statute of Uses: Also if Tenant in tail (before the Statutes of 4 H. 7. and 22 H. 8.) had levy a Fine, the Tenant should not have been compelled to attain, because it was defeasible by the Statute in tail: but since those Statutes (which give strength to fines to bar the Issue in tail) the reason of the common Law being taken away, the Tenant in this case shall now be compelled to attain, as it was adjudged in Justice Windham's case, Co. l. 3. fol. 38. Lastly, if an alienation be in Sportmaine, the Tenant shall not be compelled to attain, because the Lord Paramont may defeat it.

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19. Colour shall not be given in any Acton, where the Petition is in bar of the right: for it were in vain to give colour of right, and to bar it after: As in Allize is: Estat of Entry of Native of an Allize, if collateral Warrant be pleased, and the Defendant rejoin upon it, as if an Expiation be pleaded, for lies legally with Proclamations, &c., there is no need of any colour to be given, because the Plaintiff is barred, as he has not right: So it is also where the Plaintiff sues the title and his Letters Patent of the King, &c., by Act of Parliament: that bars the right, &c., it is elsewhere, where the Petitioner is so much barred, &c., vide p. 32; ibid.

20. When a man is not bound to use a title, in spite of a title concerning it, he need not make another Petition: as in Pouges cafe exception was taken, for that the matter was not named...
named, that was bound for answering the same, and it was said that, because the Statute speaks of no surety, and the agreement might be good without surety, it had been in vain to speak of it, to make any other thing resolute, and thereupon that exception passed.

21. In a Formedon in Nadvicter as Remainder, a man shall not have the death of the particular Tenant, because it is but a Contingency, Colchift or not not transferable not insusible: So in Colchift and Bevithain's case, for Remainder, the Defendant shall not have the deaths of Henry and Eleanor Bevithain, before the Plaintiff Colchift should have travelled it, and fail, that they were alive, he should confess, that he had not title to the Land because their lives; and would have destroyed his own Action; And therefore in regard their deaths were not transferable, it was in bane for the Defendant to New it, (by consequent) he shall not be compelled to do it.

22. A man need not have any special raise of Coffin when it is apparent; as when Feme Tenant in tail for her Fortunite by Coffin in Simlish appears in a Formedon in Remainder bought against her by one that pretends title in Remainder, and he appears the first year without Badene, &c. and Judgement is had against her by null dictum. Here the Coffin is apparent and need not be specially showed, for it is in bane to show that, which is apparent of itself: So it is a vain thing to aver, that an Page bought, which wants eyes, is blind, when it is apparent that he must be blind when he takes eyes: If the Landant endow his skin within age by collusion, the Lord shall sette him for his Ward, and shall not be forced to show his Creation special, caufes supra.

23. In an Action upon the Statute of 32 H. 8. 9. against buying pretended titles, the Plaintiff need not aver the title or right to be pretended, because the Statute declares and intends the title to be pretended, when neither his Ancestors, nor those, from whom he claims, have injoyed the Land in Possession, Reversion, or Remainder, nor receiva the rents or pitts thereof for as a yeare before the purchase thereof: and therefore because it were in bane for him to aver the pretended title, because the Statute makes it to; he shall not do it.

153. Non liceat, quod dispensa liceat.
354. It favors Truth, Faith, and Certainty. Vide Max. 64, 39.

Co. Inst. part. 139. a. 3.

1. Regularly, upon a complaint the Damamment or Plaintiff may, next day commence an action of this nature, &c. Hence, in an Action, unless the Plaintiff, after appearance, he consent, it's desperate, and he is thereby barred from ever bringing an attainder against the first jury—gale, and the reason is, for the Truth that the Law gives to the parties, and for the terrible and final judgment, that should be given against the first Jury, if they should be considered, and therefore upon the present the Plaintiff shall be imposed, and the pleasings—america. Vide infra 52.

Co. ibid. 197.

2. A special verdict, not at large, may be given in any action, and a solid upon any time, as the facts generally or special; because the truth of the case may be the better elucidated and assailed, and justice and sufficient. to if a man asked of laws to see, let them for life without Dean naming rent, upon condition of security upon management of the rent, whereas in the latter enter, if the house be an abode at Novel Defitum, the jurors may ask the matter at large, and the action ought by analogy it for the tenant, albeit regularly a condition is not available without Dean them, and although the latter show an Proof.

Co. Inst. part. 140. b. 4.

1. An action of Debt (the better to disclose the truth) Wager of Wron.

2. If is allowed, that is to take an oath (for example) that he almo., not the Debt demanded of him nor any person thereof. It is called Wager of False, because of ancient time the Defendant put in question to make the Law of such a way: It is also called, asking of his Laws, opponent the Laws (for the discovery of the truth) which give such a special benefit to the Defendant to bar the plaintiff for ever in such cases. Howbeit for the further manifestation of the truth, the Defendant ought to bring with him eleven persons of his neighbours, that will as now upon their oaths, that in their consciences he faith truth, so as he himselfe must be Hughes De credulitate, and the eleven De credulitate.

Co. ibid. 303.

4. A Count of Declaration, which anciently (and yet) is called Truth and Certainty. Vide Max. 64, 39.

B. 3.

1. Narratio ought to contain two things viz. certainty and verity, for that it is the foundation of the false, whereunto the adverse party must answer, and whenever the Court is to give judgment, Cerra debe et al., intention & narratio, & certa fundamentum & certa res, que ducimus in Judicium. Inst. lib. 2. 140. Howbeit, it must be underthond, that there are three kinds of certainties: First, to a common intent, and that is sufficient in a Barre, which is to defend the partiz and to exonerate him, a Second, a certain intent in general, as in Counts, Replication, and other pleading of the Plaintiff, that is to conduct the defendant, and to in Inditances, &c. Thirdly, a certain intent in every part of the declaration, as in Stipula; because, in respect they conclude a man to all the truth, they ought to be certain to every intent, animal to be taken by argument of inference.

Co. ibid. 352.

6. Where the verity is apparent upon Reasow, the answer is, Fibu. 358. the Plaintiff shall not be stopped to take advantage of the truth, for he cannot be stopped to allege the truth, when the truth appears of Reasow. Stipula. Fine by length without any original, it is v纂ible, but not whole: because if an original, be brought, and a Retraction entered, and after
After that a remiss is made, as a fine is laid, null to write, in replied the
verity appeareth of record; Likewise, an Impropriation is made after
the death of an Impropriant to the Bishop and his successors, the Bishop by
Abstinence rendered the Parishage 40 years. To begin after the
death of the Impropriant, the Chapter and Chapter continue it, the Impropri-ant
there, that verily shall not continue, so far it appeareth, that
he had nothing in the Impropriation till after the death of the Impropri-ant.

6. If a man setteth upon a statute, he must retake it truly, for men
knowing the statute and instruction of the, excepted error, unless as to the
substance of its declarations, it might have omitted it, because a De-
claration ought to show 1. Certainty, it is all the defendant may be
shown to make matter; And therefore shown of necessity a string must
be shown in substance in the Declaration, it must by no means be unde-
cret. 2. Certainty, which ought to be joined with certainty; so if it
appear to the Court, that falseness is punished in deed of truth,
the party, that false be, only contrived and armed plat-ed
false.

7. If the tenant doth latter walk to be borne in parents, yet it he re-
pone them before any action brought, there no no action of walk against
him: Pattie. 1635. in that he cannot plead Noit fail, for that is not true,
but he ought to plead the special matter, as the truth of his case

V F.N. B. 104.

Indo quodat.

Saying Lear-
ning other

Dues.

8. The letters of an assignee of a Patentee shall not insinuate his estate by
producing only his lease or assignment, but he ought to bring the whole,
and letters of the Patentee, as a true copy thereof, proved upon oath, to
the end the Judges and Jury severally (as it behoves to them) may give cer-
tain judgment of the instrument, as according thereto (vide
Dyer 28 H. 8. 19. b. pl. 199.) And it is also of other original Deeds,
which are not Letters patents. Vide Dyer 171. 9.

9. It was agreed by the Judges of the C. B. At a man entreate a
lease, and make Liberty to one in the name of all, this is not good with-
out Deed of tenement, because as (it letters) their names being, ap-
ppear in a Deed of tenement, it may be certainly known who are the
letters, unto whom the letters intended to confide the estate.

10. In an Assumption the Plaintiff shall not give made to evidence that
produce more solicited, then to give as produced to the Pettie Jury;
but contentwise the Defendant is allowed to give and produce same
in appearance of the right service, vide supra 1.

11. In nono of H. 8. A Perchent obtains a licence to him and his
assignee to import cattle in any vessel he likes, notwithstanding
the Statute of 4 H. 7. 10. the assigner of the Patents upon
an Information brought against him, pleads the Letters Patents of
license and his assignment, but produceth not the Letters Pat-
ten into Court, for want whereof his Plea was an unjustified insuf-
ficient.

12. If the King grant all his lands, which he had by the Acquisition of
I. S. and a man will convey the lands into himselfe by such a grant, he
ought to averre, that I. S. had such lands: So in case of a Common-
person, who makes a release of all such Lands as descended unto
him the part of his mother in B, there ought to be an averment,
what lands descended unto him there on his mother's part; for other-

Averment.

Co. I. 162. 92.

Co. 4. 162. 19. 21.

Co. Inf. part.

Dyer 35. 26.

Dyer 54. 18.

Dyer 55. 17.

Dyer 54. 18.

Dyer 55. 17.

Dyer 87.
wife the release is void by reason of the generality and uncertainty thereof, &c.

14. In Debt upon an Obligation to ratify & confirm, and allow at all times the estate of the Obligee, it is no good plea to say, that Debt he hath ratified, confirmed, &c. for the confirmation ought to be pleased by Debt, that it may appear to the Court to be certain.

15. Where was a submission to an Award by Obligation, so as it should be made and peid in Writing at or before Michaelmas, &c. the Plaintiffs say, that the Arbitrators by arbitrement in writing just & partibus before the day deliberat. make an award, &c. and assign the breach, the Defendant demurs, and the Court gave it against the Plaintiff. Because it is no direct but only an argumentative affirma- mance, that the Arbitrators deliver the award. 2. He should have pleased the deliverie according to the condition, viz. that it was delivered at or before, &c. and not before only: 3. Reddity had been a more apt way to answer yeielded, then deliberatum.

16. Upon an Assumpsit brought by an Administratrix for a promise to the Intestate, it is not enough for him to plead the Letters of administration, but he ought to produce them in Court, that it may appear to them, that it is as he hath pleased; So upon plea of a Debt, the Debt must be yeilded in Court.

17. The Auditing of the Court of Wards could set no charge, or award proceed to answer any charge, but upon a Record, an office, or the like. Sir Thomas Puckeringcafe.

255. It Disavourereth Impossibilities.

1. It lands be given to a man and two women, and the heirs of their Landes bodies begotten; in this case, they have a joint estate for life, and every of them several Inheritance, because they cannot have one issue of their bodies, neither shall there be by any contrivance a possibility upon a possibility, viz. that he shall have the one half, and then the other; And the same law it is, when land is given to two men and one woman, and to the Heires of their bodies begotten.

2. Lands are given to the husband and wife, and to the heirs of the husband, the remainder to the husband and wife, and to the heirs of their two bodies begotten, the husband dies without issue. In this case, the wife shall not be tenant in tail after possibility, &c. for the rent in special tail was utterly void, so that it could never take effect; because so long as the husband should have issue, it should inherit by force of the general tail, and if the husband die without issue, then the special tail cannot take effect, in as much as the issue, which should inherit the special, must be begotten by the husband, and to the general which is larger and greater, hath frustrated the special, which is less; and the wife in that case shall be punished for void.

3. A man shall be tenant by the courtesy of a Commons iams number, but a woman shall not be endowed thereof, because it is Impossible to divide it.

4. If a man be lesse of an house and of several chores several closes in the same County in fee, and makes a lease thereof for years, and afterward makes a feoffment in fee of the same, and makes liberty of lessee in the closes (the lease of his wife or servants being then in the house) the Liberty's value for the whole; because it is impossible for the lessee to be upon every parcel of the land to him benifited, for the preservation and continuance of his possession thereby, and therefore his being in the house
house as Nine Part of the land to him willed, is sufficient to pass over and continue his possession in the whole from being marked of by persons.

5. A single person may do damage either in the same right as in the Co. titl. 44, right of another, as the husband and wife in right of the latter. The husband in right of his husband, &c. for the tenant are good persons in law: But a Corporation aggregate of many (though capable persons, be the same Ecclesiasticall or Commercill) cannot be a person, as Dones and Chapter, manager and Commercill, and the like, albeit they be seizing of a whole whole by hommage, because hommage must be done in person, and it is not possible for a Corporation aggregate of many to appo. in person: For albeit the Division natural, whereupon the Royal Policie consists, may be done yet the mode magistral or politicall of fait cannot be scene, nor may set at by Attorney, and hommage must else be done in per. son.

6. A tenant helieth of his Land consists Landes in susteage to pay Co. titl. 46 yearly a proof of quitus inures to 5 s. an amount at the seat of Castle r. 4. In this case, the rent is uncertain, and the tenant may pay which of the rent he will to the relief, but the tenant must be subject upon his Lord at the feast of Christmas to pay. In that case, the relief must be 29 s. because this impossible to double the testaments upon his Lord at Christmas.

7. In case of an extra war. the heir shall be charged but Co. titl. 10a, mostly discovered as he hath by ancient from the same ancestor, who presented the warranty, but in case of hommage Ansell, Acq. ill warranty, he shall not pay which of the rent he will to the relief, but the rent he must be subject upon his Lord at the time of the tenant.

No heir female whilst in heir male.

8. In case the lands to another, and to the heires males of his his Co. titl. 164, which is upon condition, that the die without heire female of his body, that then the donee shall enter, this condition is utterly void, for it is impossible, that he should have an heir female, so long as he hath an heir male.

Condition.

9. In every case, it is true, that he, who entreats for a condition broken Co. titl. 104, shall be fallen in his first estate, or of that estate, which he had at the time of the estate made upon condition. Hundred, this falsehood there is no Impossibility it should be so: As if a man seizes of lands on right of his child, and commits a condition in Sec. by deed intested, upon condition, that the testator should Demise the land to the testator for his life, the condition is broken; In this case, the price of the husband shall enter for the condition broken, but it is impossible for him to have the estate, that the testator had at the time of the condition made; for therein he had put an estate in the right of his wife, whereas by the condition it was dissolved; And therefore, when the heir hath entered for the condition broken, and defeated the condition, his estate both vanish, and presently the estate is vested in the whole.

Impossible conditions voi. d.
is possible at the time of the making of the condition, and before the
same can be performed, the condition becomes Impossible by the act of
Con, of the Law, of the Obligee, &c. there the Obligation, &c. is
saved: but if the condition of a bond, &c. be Impossible at the time of
the making of the condition, the Obligation, &c. is single: And so it
is also in case of a testament in fee with a condition subsequent, that is
Impossible; In that case, also the estate of the feoffee is absolute: but
if the condition precedent be Impossible, no State or interest shall grow
thereupon: As if a man be bound in an Obligation, &c. with condition
that if the Obligee go from the Church of Saint Peter in Westminster,
to the Church of Saint Peter in Rome within 3 hours, that then the
Obligation shall be void; In this case, the condition is void, and im-
possible, and the Obligation lasted good. So likewise, if a testament
be made, upon condition, that the feoffee shall go, as is stated, the
state of the feoffee is absolute, and the condition impossible and void:
In like manner, if a man make a lease for life upon condition, that if
the lessor go to Rome, as is stated, that then he shall have fee; Here,
the condition precedent is Impossible and void, and therefore no fees
simple shall (in this case) accrue to the lessor.

11. If a Lease be made with Condition to have fee upon payment of
money to the Lessee: if his Petition at a certain day, before the day the
Lessee is attained of treason or felony, and also before the day is ex-
ecuted, How is the Condition become impossible by the act and offence
of the Lessee, and yet the Lessee shall not have fee, because a precedent
Condition to enure an estate must be performed, and if it became im-
possible, no estate shall accrue.

12. If a Caparnermen agrees to present by turns, this may be done being Re-
partition, as to the Possession: so if they agree, that one of them shall
have it from Easter to Lamas, and the other from Lamas to Easter, this
is good, and may be done as to the possession and the taking of the profits,
but they cannot make severance of the estate of Inheritance in the Land,
as the one to have it for one time and the other for another, for such a
agreement were impossible and void: And therefore if a man intails his
Land to his eldest son, provided, if he go about to alien, &c. that
then his second son shall have it, &c. this is void; for it is impossible
and against reason, that an estate should cease as to one, and yet con-
tinue, as to another, or that (in such case) the eldest son should be dead,
when one beholds him, and in full life, when another looks upon him,
and so to make him (as it were) half alive and half dead. Vide pl.

13. If there be Tenant in tail, the Remainder in tail grants all his Reade-va.
estate for the life of Tenant in tail, the Remainder to Queen Eliz. In
this case, the Remainder to the Queen is void; because the particular
estate, which should support it, is void: for that it is impossible, that
the Remainder granted during the life of the Tenant in tail should ever
take effect in Possession, 03 the Grantee enter to have any benefit of such
a Grant, and therefore void: besides, when the Remainder in tail had
granted all his estate for the life of Tenant in tail, it is not possible the
Queen should take any thing, when all her estate was granted away be-
fore to the first Grantee; but in such case, the Inheritance in obe-
yance, &c.

14. Ifone say, that I.S. is a perjured old knave, and that is to be Slander.
proved by a take parting the Land of A. and B. These words by reason
of the intenfibility, and impossibility of them are not actionable; for it is
impossible, that a Sake should prove any thing.

15. Regularly, if Land be granted to two and their heirs, they shall
joynt Grant take Joyntly: However, if a Lease be made to an Abbot and a secular
monk, Bye
man, to a gift to two men or two women, and the heires of their two bodies begotten, in one case the Possession, and in the other the Inheritance, is several; because it is impossible, that an Abbot (being a Corporation) should take jointly with a secular person, or that two men or two women should have Issue of their two bodies, unless one of them be an Perpetuities.

The payment of a lesser summe at the day in satisfaction of a greater, cannot be satisfaction for all, so that by no possibility a letter Indenture in Placita

be Satisfaction for a greater, but before the day the lesser sum be paid, it may be taken in satisfaction of a greater; and to make any thing else, as an

Hoggs, Hawke, &c. like, upon the day or before the day, because the money paid before the day, or as a Hoggs, Hawke, &c. may be so demised for the party, as if the money had been paid at the day.

17. One chief reason; to prove the first point in the Prince's case (another of no matter) the Duchy of Cornwall was to be always in the eldest

Son of the King, by the Charter of the 11 of B. 5. by Act of Parliament confirming that (Charter) was; because there were other privileges granted therein, which could not possibly be granted by Charter, but much of necessity be by Act of Parliament. Vide pl. ibid.

18. A Meleni: inquirendum to find, what Land S. held of King James at the time of his death; being in the 40 of Queen Eliz. shall be

quantum for the impossibility thereof, for it is impossible, that S. should hold any Land of King James in the 40 years of Queen Eliz. he being also, then King of Scotland.

156. Non cogit ad impossibilitatem: & Impotentiam exsursum Legem.

I. If a Deed remaine in one Court it may be pleaded in another Co.Inf. part

Court without shewing it forth; because he cannot have it out of the o

ther Court, and Lex non cogit ad impossibilitatem, vide Co. 1. 5. 74. b. 4. in

Wymark's case.

2. Regularly, where a man hath lost then the commandment of an,Lit. 5. 474.

thothe committed to him, there (the commandment of authority beingCo. ibid. 298.

not pursued) the Act is void, and imposes a man both that, which he is An.

chosen to doe, and more, there is no good for that which is warranted,

and which for the act; for both these rules have video exceptions, and

amongst the rest this is one, that if a man be sick, that he cannot go to

the Land for any part thereof to make his claim, and he commands his

Servant to do it, and the Servant dare not go to the Land for fear of

some bodily hurt; in this case, if the Servant go as meer the Land as

he dare, and there make claim for his Master, that shall suffice, albeit

it is his Master have him go to the Land, because Impotentia exsursum Legem,

for letting the Master cannot, and the Servant dare not enter into the

Land; it sufficiently that he come as meer the Land as he dare.

3. Descent shall not take away Entry of a man in Prison at the time,Lit. 5. 443.

do the Descent case, because he could not make continuall claim, when Co. ibid. 159.

he was in Prison, being there kept (as it is presumed in Law) in ala.

& aucta custodia, without intelligence of things abroad.

4. A Descent case during the Vacation of an Abbey, shall not take,Lit. 5. 443.

away the Entry of the next Successor, because, seeing by the death of Co. ibid. 269.

the Abbot (which is the Act of God) no person is able to make continu-

all claime, therefore a Descent during that time shall not prejudice the

Successor; for, Impotentia exsursum Legem.
The Reason of

5. Where the Condition of an obligation is in the disjunctive, viz. for

the obligor either to do one thing or another, and both the things partial

at the time of the novation, and afterwards none of them becomes impossible

by the Act of God; in this case the obligor is not bound to perform

the other; for impotency excuses legem.

6. If a man be bound to pay 4000l. at such a day, if he tender it in,

bytes, it is insufficient; for it is not possible it should be received within

the compasate of one day.

7. Lawfull Implimentation without Coode, the bond of a Perpetu

House, and schinmell without form (when the Incumbent by the ad

vice of his Mislissian removes for better ease, as the likes) one good spec

les for non-residence, against the Statute of 31 H. 8. c. 29.

8. If the Peere holding of the King by Knights Service tender his

Liberty, that includes tender of homage, and therefore after such ten

ber he may fell any part of his Land, and if he presents tender, noe but

proselyt he libery freed, the King shall not have the profits of his lands

longer than the time of the Tenant; because he, his Heit/ (whereas in

the Act of God) the abating of his libery to become impossible;

and impotency excuses legem.

9. A man covert is not the same Statute of Waste, 2. c. 59.

concerning Marriages of Children, for the Laws, that disables her to posses

any thing, whereas here to satisfy the taint of the Marriage, and she

free her from the punishment of Marriage and Impotency; now

canes it is impossible the Shold satisfy it when the last writing to be

witted; soz, Lex non ologic ad impossibilia, & c. vide Max. 34.

10. If a man be bound to repair a Wall against the flowing of

the Sea, if it fall into decay by his desert and negligence, he shall be

solely charged with the repair thereof; but if it be overthrown of enm

ages by the violence of the water without his fault, by the Stat. of 23

H.8, they are to be equally charged, who have lost by it, soz, Impotenc

cia excusar legem, vide Pl. ibid.


1. A man hath an absolute undistrpct and property in his

Adventures, as he hath in L cantidad rents, yet he shall not please, that he t ele

thereof, in Dominico is scund; because that Inheritance is not

not De domino, cannot either ferbe for the undertaking of him in his

possessio, neither can any thing be reciev ed for the same the

laying of charges; and therefore he cannot say, that he is deliver thereof.

in Dominico nolo de scundo: Whereby it appeared how the Common

Law doth detest Symmetry and all except Burgharities for

Pertinence up to any Benefices, but that Idenes persona for the

bitcher of the cure should be presented freely without Expectation of any thing,

the Common Law doth caution in this point, that the Plaintiff in

10 Scudo, he shall receive no Damages for the toole of his P

sentation, until the Statute of Westminster 2. c. 5. But if is

the reason, that Guardian in Dedegia Wall not present to an

Adventu, because he calls nothing for it, whereas to make it

for the Law he can vindicate without nothing, that he cannot account

to: So in a State of Right of Adveudia, the Patron Wall not

attends the Expenses in himselfe, but in the Arundiment; for which

Reasons, an an Advendoria a man shall plead, that he is led, De seco

catione ut de scundo & jure.

2. In
In a Writ of Dower, if the Tenant (being in by different) plead Co. ibid. 33, his Plea, he shall answer all the damages from the time of the Husband's death, albeit for some part of that time he enjoyed not the Land, yet received any profit thereof: as it appears in a notable Record between Belfield and Rowe, Mich. 8, & 9. Eliz. Rot. 904. in Com. Ba. In which duite, the Tenant as to parcel pleads non tenure, and for the residue desinet of Charters, upon which pleads they were at issue, and both issues found by the Jury against the Tenant, and found further, that the Husband died seized such a rod and yeare, and had issue a Son, and that the Demandant and the Son for 15 years, after the decease of the Husband, together took the profits of the Land, and after the Son such a day and years died without Issue, after where decease the Land assigned to the Tenant, as Uncle and Heir to him, by force thereof he entered and took the profits, until the purchasing of the Original Chart, and found the value of the Land by the yeare, and affected damages for the detaining of the Dower, and costs of Suit; upon which Words (after much debating) the Demandant had Judgement to recover her damages for all the time from the death of her Husband, without any recalculation: And this was chiefly caused by his false Plea, whereas he might have avoided the answering of the damages for the 15 years, if he had truly pleased according to the truth of his case.

3. If an Assignment of Dower be made by any Distress, Abates, or Dower by Easement, any young deer, in Lands and Tenements, if they came to those extents by collation and coven between the Widow and them; albeit the Woods hath just cause of Action, and the Assignment be indifferently made after Judgement by the Sheriff of an equal third part, yet shall the Distress, &c. abate it; 120, coven (in this case) shall suffocate the right, that appertained to her, and so the wrongfull manner shall abate the matter, that is lawfull. See Pl. Co. 51. a.

4. If a man grant a Rent-charge out of two acres, and after the Grant, the recovereth one of the Acres against the Grantor by a little Parce, the whole rent shall issue out of the other Acre; but if the Recovery be by a faint title by Covin, then the rent is extinct for the whole, because he claimeth under the Grantor.

5. If Tenant for the plea proceedeth, to the disparition of him in the Petition, this is a Distress upon Record.

6. The Dist. of 7 H. 8. 19. (which gives to the Lord Avice upon the lands without naming any person certain) being made to suppress fraud, that be taken with equity, and therefore where the words of the Statute be, If the Lord discharges upon the Lands and Tenements within, yet if the Lord come to discharge, and the Tenant chase away his Beasts, which were within view, out of the Land within, and there the Lord discharges; albeit the Distress be (in that case) taken out of his fee and Seigniory, yet it is within that Statute, for in Judgment of Law the Distress is lawful, and as taken within his fee and Seigniory; because that Statute being made to prevent fraud and coven admits an equitable interpretation, as aforesaid: So it is also, if his Herifit do it, came quere de hoc, but for Damages of the Distress the Distress must be taken upon the Land, &c.

7. Perjury (which is a false boon of fraud in a high degree) is grievously punished by the common Laws, and therefore in an Actant (which is a Writ that leech where a false Merit in Court.) 1. Record upon an Actant joined by the parties to give) if the petty Jury be attainted of a false oath, they are stained with perjury, and infamous for ever: for, the Judgment at the common Law importeth 8 grievous punishments, 1. Quodemitter liberam legem imperetum, viz. that they shall be infamous for ever, and never be received to be a witnesse, 9 of a Jury, 2. Fereisfaciunt omnia bona & catala tua, 3. Terræ & tenementa in manus domini.
The Reason of Law

Regia capiantur, 4. Illores & liberis extra domos suas officiuntur, 5. Domus suo prostrantur, 6. Arboribus sua exspirantur. 7. Prae sua ventum, 8. Corpora sua canceri mancipatur. And the Law esteemed persons in this kind the most worthy, and affixed the greater punishment thereupon, because the trials of all Actions, civil, personal, and mixed, are fixed upon the only of twelve men, and prudent Antiquity induced a strange and fierce punishment upon them, if they were adjudged of falsehood and perjury, or poena ad pacnum, mea ad omnes perniciem; so, there is misericordia puniens, and there is also cruiditas pacuens. But this punishment is altered by the Statute of 23 H. 8. cap. 3.

Co. ibid. b. 5. 8. The Statute of 23 H. 8. cap. 3. (made to prevent perjury and false Writings) shall be taken with equity; for, 1. where the Statute holds, that the party grievous shall have an Attaint against the party, who shall have Judgment upon the Writ, yet the Attaint shall be maintained upon that Statute against the Executors of that party: But, if, it must be between party and party, 2. In the Kings Bench at Common Pleas, 3. Consider what pleas may be pleaded in an Attaint by force of that Statute, and what not.

Litt. 675. 9. If a man let Land to a Feme for life, and afterwards one against him obtained and false Action against the Feme and recovers the Land against her by default, so as the Feme may have a Quod ei forespect, according to the Statute of Wilt. 2. cap. 4. The Law gives so much respect to a Recovery, that it makes a Discontinuance, so as the Recoverer shall a. & 365. a. not have an Action of Waste, &c. But, if Tenant for life suffer a common Recovery, or any other Recovery by coheir and content between the Tenant for life, and the Recoverer, this is a forfeiture of his estate, and is in the Recoverer may presently enter for the Furniture: See the Statute of 14 Eliz. cap. 8. concerning this matter, and Co. l. 2. 15. Sir William Petthams case, & l. 3. 60. &c.

Litt. 678. 10. If the Baron discontinue the Land of the Feme, and the Discontinuee is divided, and after the Divisition the Land to the Baron and Feme for life, this is a Remitter to the Feme; but if the Baron and Feme were of cabin and content, that the Divisition should be made, then is it no Remitter to the Feme, because she is then a Divisitione rêse, and participate criminis: But, if the Baron were only of cabin and content to the Divisition, and the Feme; in that case, the Feme shall be remitted: So as here, cabin and content of Baron and Feme both hinder the Remitter of the Feme; and so cabin both (in many cases) choake a meer Right, and the ill manner both many times makes a good matter unlawful.

Co. ibid. 357. a. 4. 11. If a Divisition, Introdux, 43 Abato, do enow a woman, that hath lawful title of Dower, this is good, and shall bind him that right hath: but if a woman be lawfully entitled to have Dower, and the is of cabin and content, that one shall divide the Tenant of the Land, against whom the may recover her lawfull Dower, all which is done acquiescibly: In this case, the Tenant may lawfully enter upon her, and cause the Recovery in respect of the cabin.

Co. ibid. b. 2. 12. In all cases, where a man hath a rightfull and just case of Action, yet if be of cabin and content do raise up a Tenant by wrong, a against whom he may recover, the Cabin both deactivate the right, that the Recovery (though upon good title) shall not bind, of refuse the Demandant to his right: So if Tenent in fall and his .5e does the Discontinuee to the use of the Father, and the Father yeteth, and the Land descendeth to the ; in this case, the is not remitted a against the Discontinuee, in respect he was put to party in the wrong, but in respect of all others he is remitted, and shall bring the first Warranty: And so note, a man may be remitted against one, and not against another.

13. A.
13. A. and B. joint tenants were entitled to a civil action against the Heire of the Waitelake, A. caused the Heire to be dismissed, against whom A. and B. recover the execution; In this case, B. is remitted, for that he was not party to the suit, and shall hold in common with A. but A. is not remitted, causa sua supra.

Falck Plea. 14. He that will have the benefit of the Statute of Gloucester, cap. 3.

6 B. 1. must plead the truth of the case, viz. the Warrant, acknowledge the title of the Demendant, and pay, that the advantage of the Statute may be faced to him, and then if afterwards others defend, the Leman upon this Record shall have a Seire facias, &c. But if the Leman plead the Warrant, and plead further, that others descend, &c. and the Demendant takeeth Issue, that Issue doth not descend, &c. which Issue is found for the Demendant, whereas upon he recovereth; In this case, the Leman, albeit others do afterwards descend, shall never have a Seire facias upon the said Judgment; for that by his false Plea he hath lost the benefit of the Statute.

15. Implemption is a good cause to return an Outlawry, if it Co. Inf. para. (be) Process of Law in invicem, but if it be by consent and coiven, such Implemption shall not avoid an Outlawry, because upon the matrix it is in his own act.

16. Where the Leman hath notice, that the Seigniory was granted but to one, as that the Robertson was granted but of one Acre, as that the Robertson was granted for fewer years, as that the Robertson was Grant for life only with no Remainder other, whereas it was in any of the cases otherwise; in such case, general Assignment without true notice of the Grant is void, for the usual pleading (which intent is the object of the Law) is, to which Grant he attorned, and therefore if he hath not notice of the Grant, as which is all one, true notice thereof, the attend, which he giveth to it (which in truth is but part of the Grant) the Law (which always takesgood) will not continue to be Assignment to the true Grant.

17. A man possessed of divers parcels of Land within the Hamon of D. Whereof some he held for years, others at will, others by copy, and some also in fee, dimitted the whole to another for life, and then beaves a Fine to the Leman for life and his Heire of so many Acres as amount to the whole Land, continues Possession, and pays the rents to the Lord five years palle; yet (in this case) the Land is not barred by the Statute of 4 H. 7. cap. 24. For the matters of that Statute did never intend that such a Fine beven by fraud and practice of Leman for years, at will, or by copy, which pretend no title to the Inheritance, but intend the disposition of their Leestos 0f Lords, should bar them of their Inheritance, and this appears by the preamble of the said Act, where it is said, that Fines ought to be of greate strength to avoid fries and debates: but when Leman for years, at will, or by copy, make Feevment by assent and covin, that a Fine should be levied, this is not to avoid Fries and debate, but by assent and covin, to begin and lie them up; And therefore that Statute did not intend to establish any such estate made and created by such fraud and practice, which (being fraudulent) is (upon the matter) no estate at all, &c. vide pl. ibid.

18. The grant of goods, albeit it be made upon good consideration, yet if it be not bona fide, but hath trick in it, as other bagges of fraud, as if the Grantor keep them still in his own Possession, with them as his own in disposing of them, as otherwise, as if they be Deed, and the Grantor bane them with his own mark, as when he grants all his Goods and body not except so much as his wearing apparel, as the like; such a Grant is within the Statute of 13 Eliz. 3. and upon a Fierie facias at another suit, the Sheriff may seize them, as it no Grant at all had
than was inserted on purpose to reverse the Statute, that had been in force, and was agreed and contrary to the Statute.

24. A. leus. 1. 109 l. to say 20 l. for the Lant of it for one year, if the form of A. shall be then finding this to Error within the Statute, for if this shall be out of the Statute, by reason of the uncertainty of the life, the Statute shall be of little effect, but because, by the same reason that he may not only live, but to his name give the Statute at pleasure, that Industry being like a Mathematicall line, viz. Divisibilities in indifferibility.

25. If a Deed be pleased and lodged in Court, and be read, then it shall witness remain in Court, to the end that if it be found not his Deed, it should be sworn for the validity thereof.

26. The Statute of 11 H. 8. 4. being made to supersede Fraud and Device, shall be taken and held as beneficial; and therefore whereas the word of that Act says, 'where Tenant for life or years have demised or granted, to the intent that those in Reversion, viz. their Heirs, their Successors and Assigns, should not know their names, and afterwards the first Tenant or executorally occupy the Lands, &c. and make Warrant, &c. it is declared, &c. that he in Reversion (in such case) shall maintain a Warrant against the first Tenant for life or years; past, Nary Assignee of the said Lands equivalent to immediate to within the face, albeit not the immediate; &c. who he in Reversion is free to make the Act, as well as he in Reverssion; abode both in the Pleas and Body of the Act, there to only minister made of itself in Reversion.

27. In Fornition the Tenant for life, the Perpetual lease, that he have more a Perpetual to provide no assignation with purpose to through him of the Tenant, and still makes the pledge; In this case, the certainty of the pledge, and the Warrant is transferable, &c. 16. 7. 9.

28. The father Tenant for life, Reassigned to the Lord, makes its passage to A. holds a devise to the Don. A. renders B. to comply the Father relations with Warrant, and dies; In this case, the Lord is not burdened by this Warrant, being the Warrant, that begins by necessity, as he, as it is said in our books (and true it is) that Warrant is much easier to be lawed, because it extends to establish him, that to the Perpetual in possession, yet when Warranties are most witty, Cobin, (likely to be omitted into too much unorder in Law) they lose not only their interest but these also, the Cobin is not the person, that enters every good thing, which which it is, wise, &c. 16. 5. 6:

29. The essence of ancient Rights in the Thinking, upon pretence afterwards when the Bursemen and the Bailiffers and the Officers of this Court, or the Lieutenants of the Lieutenants to the 1st of May, to prevent an escape upon the 2nd of May, was condemned by all the Court of Starre and Chamber in the County, and the Court of Common Pleas caused to Law and Justice, and the Cobin and Justice to be the Burse of wrong and Injustice.

30. If a. having a Kentish Right out of the Pains of D. granted unto him, but no tenant thereof, plots with B. to disguise the Land, and, to the end that after such disguise B. may give him title of the Kent, this title shall not into the disguise, as he that right hath; for the Cobin makes it understand.

31. The Father leaves by Frank, and gives, the Son knowing of it, °o not sells the Land, in this case the Member shall add those Lands, by the Letters of 27 Eliz. 4. so it is also where the Father leaves to the Son, who assigns fraudulently, and then sells the Land, &c. 14. 14: 1. in estrians.

32. A man buyeth the Deed of his Ancestor, 2d plan a Deed made by his Ancestor, and it is found against him, yet he shall not be sued. 14. 2. 6.
but only americted, quia de aliiuo delicto, &c. But if the Lezanct
Defendant plead a false Deed made to him, as being his own Deed, and
it is found against him, as if he refus'd verifications, cognosce actionem,
he shall be finis for his falsity, quia certi debemus caele de proprio
fato.

32. Where the custom is, that no Foraigner shall sell in any open
Inward Shop, in pains to be fined, he is a greater offender that trades there in
an Inward Shop of Chamber; for such places are more dangerous and
offensive then outward Shops, because they may there use deceit, and
are not subject to search: Qui male agit odit lucem, & omnia delicta in a-
perto levisura sunt. See there likewise the case of the Prince of Dunstable
to the like purpose.

33. Anan Executors plead pleni administrativ, and affects he found by
the Jury in his hands, they shall pay the debt, as far as they shall answer,
but if they come short, he shall answer for the damages of his own goods, for
his false plea.

34. If a man hating title of Dower do deceitfully detain the Debtor a
Charter, which concerns the Lands, out of which he has Dower assigned,
that is a good reverter of the Nation in a Wilt of Dower
bought by her against the Petre: So if he deceitfully, conceale and
where the Custom is, that no Foraigner shall sell in an open
the debt, the Guarian in Chivalry may plea, against her in
Inward Shop; but he cannot plead therein
her of her Dower: for he cannot plead therein
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to deceive the Purchaser, and after he sells the Land for a valuable con-

sideration, and makes conveyance according, in this case, the Pur-

chaser shall enjoy the Land against the Queen by the Statute of 27 Eliz. 4.

The Purchaser is not excepted, yet the act being generally, and made to

sufficing of fraud, shall bind the Queen, &c. vide pl. ibid.

tinues in tail by cobin, to the intent to enforce the Ame in tail within age,

who had no knowledge of the cobin, he enforces him according: in this
case. (by the better opinion) the Ame in tail shall not be remitted, not

withstanding his good title, and the onely cause hereof is the comonous

intient, for cobin may alter the matter, where the title is good: so if

my Ancestor disfigure me, to the intent to make Feoffment with war-

rants to bar me: here, albeit the Ame be made twenty months after,

yet this Ame begins by disfigure, so the intent makes the act
to unsure otherwise than it would do: for when cobin is mixt with the

truth, it makes all unsavoury: So in Wimbish and Talbois case in the

Com. Eliz. Talbois joining by cobin with W. Talbois in being taken by

nihil dicit, he was to lose his estate by force of the Stat. of 11 H. 7. and the

Ame in tail might before that Statute subsist a settled Recovery by

cabin.

38. The 11 H. 7. 10. and all other Statutes made for the supple-
of land shall be extended by equity: the words of the Statute of Marle-

bridge cap. 6 are, de his, qui primogenitio & heredes suos infra atemen

existentes seco saepe, and yet if the first be dead, and he enforces his

second son, which is his heire, that is within the equity of the Statute, as

he let any fine to him, which is matter of Record, that is also within

the equity of the Statute, albeit the Statute speaks of Feoffment: And

the reason is, because cobin is always abjured in our Law, and Statutes

made for the suppression thereof, are made for the publick good, and thence

shall be extended by equity: In like manner, 1 H. 7. cap. 1. which

gives a Wilt of Formedon in Remainder against the pyners of the pro-

kis, was made for the suppression of cobin, for a Feoffment made to per-

tons unknown to demand those that right had, was great cobin and deceit

in the Law, and therefore a Scire facias to execute a Remainder shall

be maintaineable against the pyners of the prokis, as it is adjudged in 14

H. 7. fo. 31. And to these Statutes and the like made for the supple-
of land and cobin are always to be extended by equity, and to have a fa-

vourable interpretation and construction: And therefore the Statute of

32 H. 8. cap. 9 shall be also extended by equity, being obtained for the

suppression of cobin and cobin in buying of pretended titles, so that Lea-

tes for 32 years as well as higher estates shall be intended by it.

39. The Father Conant for life, the Remainder to the Son and

Peire apparent in tail, Leases to A. for 3 years with intent, that A. shall

enforce B. unto whom the Father would release with warranty, all

which is done according: This is a warranty, that commenceth by

Disfigure; so, albeit the Warranty be not made at the time of the Dis-

figure (which was upon the Feoffment to B.) yet (by construction of Law)
it shall be adjudged to be Warranty, that begins by Disfigure by

reason of the practice and cobin betwixt the confederates: so if the Fa-

ther had made the Feoffment to B. with Warranty and had voided,

this Warranty bad barred the Peire, &c. vide pl. ibid.

40. A false Verdict is a contradiction in it self, and to obvious in the Co Inf. para

Law, that in an Statute, Dutiatamy in the Plaintiff cannot be pleaded in

disability of the person.

41. The Statute of 31 Eliz. 6. to prevent Simonie is to be largely ex,

Hob. 75. pounded, though penal. The King against the Bishop of Norwich.
The Reason of

158. *Jus & Frans numquam Cohabitan*

1. The Statute of 14 Eliz. cap. 8. both not extenu to preferve any
Reversion or Remainder expectant upon an estate tail, or where the
Tenant for life is impeached, and Tenant in tail is bound; so, the
title of the Act is, For avoiding of Recoveries suffered by collusion by
Tenant for life, &c. but a Recovery cannot be said to be by collusion,
where Tenant in tail is in the Recovery, either Tenant in Faiz as
Tenant in Law, as Tenant; for the Law (as an incident to his estate)
has made the Land and all Remainders and Reversions subject to his
pleasure, and be hath right and power to bar them all, and *Jus & Frans
numquam Cohabitan*; And therefore the title of the Act being, For a-
voing of Recoveries by collusion, &c. it cannot extend to a Recovery,
where Tenant in tail is party to it.

2. When truth is mixed with cobin (that wicked speech) as cobin
with truth, that conjunction and mixture makes all bitter and unaf-
ry, and goodness is perverted into wickednesse, so they cannot continue
together, no more then fire and water.

3. *A Verdita* is said to be veri dictum, which ought to have truth in Verita-
it, and no semblance of fraud or partiality to either party; And there-
fore if a Jury before their agreement, eat or drinke at the charge of either
of the parties, it is good cause of Error to rebute the Judgement upon
such a Verdita, for there cannot be truth in such a Verdita, which party
such a usage of fraud and falsehood, because such practice implies parti-
ality and insipience.

159. *Quando aliquid prohibetur fieri, ex directo prohibetur &
per obliquum.*

1. If a Testament in fee be made upon Condition, that the Feoffee
shall not enter I. S. or any of his Heirs as Mines, &c. this is good; yet
he both not restrain the Feoffee of all his power; howbeit if he enter-
I. N. with intent and purpose, that he should enter I. S. some hold, that
it is a breach of the Condition: So if a Testament be made upon Con-
dition, that the Feoffee shall not alien in Mortmaine, this is good, be-
cause such alienation is prohibited by Law, and (regularity) whatsoever
is prohibited by Law, may be prohibited by Condition; but (in this
case) if the Feoffee enters I. S. with intent, that he shall alien the Law
in Mortmaine, it seems to be a breach of the Condition: Its ancient
Means of Testament in fee there was usually this clause, Quod hicres-
torio rem datam dare vel vendere cui volueris, exceptis viris religiosis
& Judaeis.

2. In an Action upon the case, the Plaintiff declared for speaking of Insinc-
itudeous words (which is transdict) and laid the words to be spoken
in London. the Defendant pleads a Concealed speaking of words in all
the Counties of England, save in London, and traversed the speaking of
the words in London: the Plaintiff in his replication denied the Con-
cept, whereupon the Defendant demurred, and Judgment was given
for the Plaintiff; for the Court said, if the Concealed (in that case) Would
not be traversed, it would follow, that by a new and subtle intention of
pleading, an ancient Principle in Law (that for transdict causes of
Action the Plaintiff might allege the same in what place of Court he
would) should be subverted, which ought not to be suffered, and there-
fore the Judges of both Courts allowed a Concealed upon a Concems in
that case: And the wisdom of the Judges and Sages of the Law have
always...
alleges appellee's new and oblique intentions in derogation of the common law: whereas it is said by the judges in one book (38 E. 3.) we will not change the law, which hath been always used; and another faint (3 H. 4. 18.) it is better that it be turned to a default, then the law should be changed, or any innovation made.

3. The father tenant for life, the remainder to the son and heirs apparent in tail, leaves to A. for years with purpose, that A. should exhibit unto whom the father should release with warranty, all which is done accordingly: thus is a warranty that begins by dilution; so albeit the warranty be not made at the time of the demise (which was upon the foistment to B.) yet by construction of law it shall be adjudged to be warranty, that begins by dilution, this warranty binds not, because of the covin.

4. The Parker and Fellows of Magdalen College in Cambridge, Co. 1. 11. 77. grant an house in London to Queen Eliz. upon condition that the heirs in three months should convey it to Benedict Spinoles and his tenants, who both to accordingly: this grant of the college is void by the statute of the 12 Eliz. 10. and was not helped by the statute of confirmation of the 18 Eliz. 2. for it appears, that the intent of the Parker and Fellows was, that they should convey the said house to Benedict Spinoles and his tenants; and therefore that which they could not do directly, they attempt to do obliquely, to grant it to the Queen and her successors, but upon condition contained in the same grant, that the Queen within three months should grant the house to B. Sp. and his tenants, so as it was by this device evaded, that the Queen, who was the fountain of justice, should be made an instrument of injury and wrong, and of the violation of a plious and excellent law, which the heretics had made for the maintenance of religion, advancement of learning, and subsistence of poor people.

In 17 E. 3. 60. 59. The Fryers Carmelites (who had not then any place of habitation) obtained of one John Mericke, who was lester of ten acres of Meadow, bolden of the Bishop of Winchelsea, to have the said ten acres of Meadow, for a place of habitation for them, and because John Mericke could not grant unto them the ten acres by reason of the statute of Mortmain, by covin contributed betwixt Mericke and the Fryers, to waft the Bishop of his Seigniory, Mericke (to stand the statute of Mortmain) grants the ten acres to the King, his Heirs and Successors, whereby the Bishops Seigniory might be extinta, to the end that the King should grant them over to the Fryers, which he did accordingly: hence, because here there was a practice betwixt Mericke and the Fryers to take away the Bishops Seigniory, it was adjudged, that the Charter should be repealed, and that the Carmelites should be discontented to deliver it to be cancelled.

6. In Term. Trin. 24. E. 3. Rot. 4. in the Exchequer, one Walter Chirton, the Kings Custome, had purchased certaine Lands with the Kings money, and by covin had caused the Venues to entitle his tenants in fee to demanst the King, and yet nevertheless took the Mines and profits of the Land to his owne use, and those Lands were by inquisition returned with the values into the Exchequer, and there by judgement were seised into the Kings hands, until, &c. so albeit the estate of the Land was never in Chirton, yet the taking of the estate in the names of others, and he in the mean time receiving the profits thereof, was all one; as if he had taken the estate in his owne name, especially in the Kings case, and the lands being bought with the Kings money.

7. Due Venues in the 34 H. 6. being in execution in the Fleet for mine debts, as also for fines to the King returned into the Exchequer, caused himselfe to be indatd of Felony, with an intent
160. *Resumps est indicus sui & obligati.*

1. In the Case of Sutton's Hospital, Sir Edward Coke expressly says, that from considering the Objections in that case at large, (being, as he fancy'd, the most part of no great moment) by producing manifest and fallible proofs of the validity of that Incorporation; alleging this Maxim, "by the greatest of all, Ressump & index sui & obligati."

2. *Forsens.*

161. *It disfavour all Improbabilities.*

1. If Lands be given to a man and a woman being not his wife, and Land be in the Heirs males of their two bodies, they have an Estate in Law, at id.

2. If Lands be given to two husbands and their Wives, and to the Heirs of their Bodies begotten, they have a joint Estate for life, and several Inheritances, viz. The one Husband and Wife the one Estate, and the other Husband and Wife the other Estate, and so continue Remainders or other possibilities, (for the Improbabilities thereof) shall be allowed in Law, where it is once stated and takes effect; so likewise if Lands be given to a man and two women, and the Heirs of their bodies begotten, in this case, they have a joint Estate for life, and such as, at them a several Inheritance, because they cannot have the two other Estates, neither shall there be by any Construction a possibility upon a possibility, (for the Improbabilities thereof) viz. that he shall marry the one first and then the other: The same Law it is also, when Land is given to two men and one woman, and to the Heirs of their Bodies begotten.

3. A remote possibility is never intended by Law: And therefore, where A. was Remainder in Estate, Remainder in Estate to B. B. grants all his Estate to C. for the life of A. this Grant is void, because it is impossible it should ever take effect; and whereas (in that case) it was objected that A. might enter into Religion and be professed, whereasupon the Grantor might enter and enjoy the Land, during the natural life of A. it was answered and resolved, That that was a Fortunate possibility, and not probable nor imaginable in Law; it is a possibility which makes a Remainder good, must be Focenia propriis a common possibility, and not Focenia remote: And therefore if a Remainder took effect, it is a thing
Obligation payable before

Constatus.

4. When a man by Indenture limits Lands to himself for life, He,

5. In Bar to an Ancestry by Lords in 300 acres of common field

162. Uncertainties, by which the truth may be veiigel.

1. If a man do enfranchise a Villain Cm tota sequela sua, that is not Co.Inf.5t.2 r.

2. If a man gives Lands to one, to have and hold to him of his heirs, Co Inf.2.8.b.


3. To avoid uncertainty, which is commonly the mother of contentions, words which may be termed Vocabulary arise to express definite things, which cannot significantly be expressed by any other words, as by any Periphrasis or circumlocution without them, as the word heirs for the descent of inheritance, which do not only extend to his immediate heir, but to his heirs remote, and most remote, born and to be born, Sub quibus vocabulis, hereditas juris, omnes heredes propinqui, & remoti, nat & natae. And Heredum appellations veniens heredes heredum in infinitum, faith Fleta, lib. 3, cap. 8. So likewise the law useth peculiar words for Tenures, Persons, Defences, Forms of Original Wills, Warranty, Exchange, &c. and all this to procure certain expressions, and to prevent uncertainty for the reason aforesaid.

4. If a man give lands to A. et hereditas de co-possesso suo, the Res. A grant to B. In forma predicta, this is a good Estate, Title to B. so that the words, In forma predicta, do include the other, but if a man give lands to A. for life, the Remainder to B. in Taille, the Remainder to C. In forma predicta, this Remainder is void for the uncertainty.

5. In a Document ad omissum ecclesiae, to the end it may have certainty, which is the purpose of quiet and repose, and to a void after contention, omission voids the Law requisite, that it be done openly, and may be assigned in certain, to be enjoyed instantly by it self, and not in Common.

6. In all cases where the demand of Power is certain, as in case of Adjudged Power ad omissum ecclesiae, or Ex absentee parvis, Where the wife after the death of her Husband may enter, but where the demand is uncertain, as in Wills of Power at the Common Law, there albeit the thing is settled, yet shall he not take it without Assignment, as if a woman being a Wifet of Power of three millings rent, albeit she ought to be endowed of one millings, yet cannot the after judgment disannul for 3 d. before Assignment, because the demand was uncertain: So it is if two Tenants in Common be, and the wife of one of them being a Wife of Power to be endowed of a third part of a moiety, and the judgment to recover, yet cannot the enter without assignment, albeit the Assignment cannot give her any certainty, because her Husband's Estate was uncertain: So if a woman being a Wife of Power of six pounds rent charge, an the path judgment to recover the third part, albeit it be certain, that the shall have faire millings, yet cannot the disannul for faire millings, before the Sheriff dodeliver the same unto her: It is otherwise, where a Wifet demands Land, Kent, or other things in certaine; for there the Demandant after Judgement may enter and disannul before any Seflin delivered to him by the Sheriff upon a Wifet of Haber sas feisomena, &c.

7. If a man make a Lease for so many yeares as he shall live, this is Lease void for the uncertainty.

8. If the Parson of D. make a Lease of his Glebe for so many yeares as he shall be Parson there, this cannot be made certaine by any means, for nothing is more uncertain then the time of death, Terminus vice est incerti, & licet nihil certius sit morte, nihil tamincerti quum hora morito; But if he make a Lease for three yeares, and so from three yeares to three yeares, so long as he shall be Parson, this is a good Lease for six yeares, if he continue Parson so long, viz. Fifte, for three yeares, and after that for three yeares, and for the residue uncertain.

9. If A. be to make a Feoffment to B. and C. and their heirs with Life, out Deed, and A. makes Liberty to B in the absence of C. in the name of both, and to their heirs; this Liberty is void to C. because a man being absent, cannot take a Freethold by a Liberty, but by his Attorney lawfully constituted by Deed to receive Liberty; unless the Feoffment be
be made by Deed, and then the Liberry to one in the name of both, is
good, and the reason thereof seems to be, because the Testament being
made without Letter of Attorney or Deed, it is uncertain whether or
no he consented therunto, which is apparent by his sealing of the Let-
ter of Attorney or Deed of Testament. Note, That a Deed sealed may
be delivered without words, because there is sufficient certainty expressed
in the Deed, what is meant by the Deliverer, but Liberry of Seilln re-
scribed words to express it, and also Ceremony, to the end it may be cer-
tainly known what is intended by it; and a man absent can neither take
no make Liberry without Deed.

10. A fine of so many Acres of Land, Peasoby, and Pasture, in cer-
tain is good, because the quantity of an Acre is certainly known by 3. 4.
the Statute, De teris mensurandis; but a fine De una virgata terra
shall not be received for the uncertainty; because it contains in some
places more, in others less, and therefore Prior faith well in 3 H. 6. 29.
That a Plow may till more Land in one year in one Country, than in
another.

11. There may be a certainty in uncertainty, as it a man hold
of his Lord to here all the sheep depasturing within the Lords
Manors, this is certain enough, albeit the Lord hath sometimes
a greater and sometimes a lesser number there; for this uncertainty
being referred to the Manors, which is certain, the Lord may disallain
by this uncertainty: Howbeit no distrikel can be taken for any Ser-
vices, that are not put into certainty, nor can be reduced to any cer-
tainty, (for in certin et quod certum reddi potest) because Oportet
quod certa deducitur in judicium, and upon the Lord's Damages
cannot be recovered for, that neither hath certainty, nor can be
reduced to any certainty.

12. A Protection, as well morature as profectur, must be regularly
in some place out of the Realme of England, and must be also to some b. 4.
place in certine, as super salva custodia Calicis, &c. and not to Carile
or Wales, which are within the Realm, or the like, but it may be to
Ireland or Scotland, because they are within Kingdomes, or to Calice,
Aquitaine, or the like, but a Protection granted to one, &c. until be re-
turne from Scotland was in E. 3. 25, disallowed for the uncertainty of
the time; so likewise a Protection. Qui moratur super altum mare,
will not serve, not only because (as some think) that Mare non mora-
re, or for that a great part of the Sea is within the Realmes of
England, but likewise for the uncertainty of the place.

13. If a Bishop certifie, that another Bishop hath certifie him, that
Co. ibid. 154.
the party, which is his Priscian, is excommunicate, this certificate upon 2. 3.
another's report is not sufficient for the uncertainty, there is the same
reason also of an Heres lay in evidence.

14. If the Lord make a Lease to his Villain for life 23 years by Deed
or without Deed, this is an infranchisement of the Villain; but if he
make him a Lease at will by Deed or without Deed, it is no infranchi-
sement, because he hath no certainty of his estate, but the Lord may put
him out when he will.

15. If an Earl hath his signity to him, and his Heirs and preyeth, ha
Co. ibid. 165.
ing none one only Daughter, the Dignity shall descen to the Daugh-
ter and her posterity, as well as any other Inheritance, as it fell out
in Sampson Leod's case, who married Margaret the only Sister and
Heire of Gregory Finis Lord Dacre of the South, and in the case of
William Lord Rolle, &c. in such case there can be no uncertainty, when
there is but one Daughter, or Sister: Howbeit, where there are more
Daughters then one, the eldest shall not have the Dignity and power of
the Earl, viz. to be a Conistelle; but (in such case) the King, who is
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the subsigns of honor and dignity, may for the uncertainty confer the dignity upon which of the Daughters he please; Pudibint the Lands shall be divided betwixt them, as amongst Partners, so they are divisible and certain.

16. If a man be bound to pay twenty pounds at any time during his life at a place certain, the Obligor cannot tender the money at the place when he will, for then the Obligee should be bound to perpetually attendane, and therefore the Obligor in respect of the uncertainty of the time must give the Obligee notice, that on such a day at the place limited, he will pay the money, and then the Obligee must attend there to receive it; so if the Obligor then and there tender the money, he shall thereby save the penalty of the Bond for ever: So likewise, if a man make a Feoffment in fee upon Condition, that if the Feoffor at any time during his life pay to the Feoffee twenty pounds at such a place certain, that then, &c. In this case also the Feoffor must give notice to the Feoffee, when he will pay it; for without such notice, as aforesaid, the tender will not be sufficient: Alto if A. be bound to B. with Condition that C. shall enfeoff D. on such a day, C. must give notice thereof to D. and request him to be on the Land at the day to receive the Feoffment, and (in such case) he is bound to seek D. and to give him notice: In all which cases it is to be observed, that what the contract of the parties leaves uncertain, the Law (to prevent contention) reduces to a certainty: And therefore (in such cases) Lifeconts advices is wholesome counsel, viz. Not one to limit a certain place and day, but likewise to set down in the Condition a certain time of the day, as betwixt the hours of two and four, or the like: And (indeed) it is good in Consequances to set down every thing in certainty and particularity, for certainty is the mother of quietness and repose and uncertainty the cause of variance and contention: And therefore for the obtaining of the one, and aborting of the other, the best means is in all assurances, to take counsel of learned and well experienced men, and not to trust only (without advice) to a Presumption: for the Rule is concerning the Rate of a mans body, Nullum medicamentum is idem omnibus, so in the Rate and assurance of a man's Lands, Nullum exemplum est idem omnibus.

17. A Lease is made to a man and a woman for their lives upon Condition that which of them two shall marry first, that one shall have the fee, they intermarry: In this case, neither of them shall have fee, for the uncertainty.

18. If the Jury give a Verdict of the whole Issue, and of none, &c. that is surprisalge, and shall not Say Judgement, so, utile per inutilis non viatur, and necessary incidents required by Law, the Jury may and: Pudibint a Verdict finding matter uncertainly as ambiguously is insufficient, and no Judgement shall be given thereupon; as if an Executor plead plene administrav, and Issue is joined thereupon, and the Jury finds, that the Defendant hath goods in his hands to be administered, but and not to what value, this is uncertain, and therefore insufficient: so a Verdict, that finds part of the Issue, and nothing for the residue, is insufficient for the whole, because they have not tried the whole Issue, whereas they are charged: As if an Information of Intromission be brought against one for intruding into a Possession, and one hundred Acres of land, upon the general Issue, the Jury find against the Defendant for the Land, but say nothing for the House, this is insufficient for the whole, and so it was twice adjudged, viz. H. 25 Eliz. in a Suit of Error, in the Chequer Chamber inter Brice and the Queene, and M. 28, & 29 Eliz. inter Gomerfall and Gomerfall in account in Banco Regis.

19. A Feoffee to the use of A. and his Heirs, and the Heiress, or an ul.

H. 8. f.2 money bargaineth and felleteth the Land to C. and his Heirs, or an ul. who
who hath no notice of the former use, yet no use pasteth by this bargain and
sale; for there cannot be two uses in esse of one and the same Land, and
being there is no transmutation of Possession by the Lessee, the
former use can neither be extinct nor altered: And if there could be two
uses of one and the same Land, then could not the Statute of Uses execute
either of them for the uncertainty.

20. A Writ of Detinue ipseth no good delivered at found, when the
Plaintiff can declare in certain what they are, but it ipseth not for money
out of a Bag or Cheek, for Come out of a sack, as the like; because there
cannot be dividing taken from other money or Coone: So likewise an
Action of Detinue ipseth for Charters, which concern the Inheritance of
Land, if he know them in certaine, and what Land they concern, as if
they be in a Bag sealed, or Cheek locked, albeit he know not the certainty
of them, but the Writings, as (at least) the Bag or Cheek he must know
in certaine, otherwise that Action ipseth not, and in case of a Bag or
Cheek it is good to declare (if he can) of one Writing in certaine, for
then the Decevant cannot impe his Law, which otherwise he may.

21. In dilatory Pleas there may be duplicity and multiplicity of di-
stant matter, in their time and place a man may use divers of them,
but in Pleas perpetuall and peremptory, there ought not to be duplicity
or multiplicity of distant matter to one and the same thing, wherein
diverse answers (admitting each of them to be good) are required, for
that is not allowable in Law for the uncertainty; Whereof Bracton and Piets
speak notably, sicut: Ador una aione debet expediri (suidem illa duran-
tce) sic oportet tenentem una exceptione, dum tamen peremptoria (quod
in dilatorio non est tenendum) qua si liceret pluribus uti exceptionibus
peremptorij finalem et semel, Sicut sieri potest in dilatorio, sic sequetur,
quod in probatone unius defecerit, ad aliam probandum potest habere re-
curium, quod non est permisibile non magis quam aliquem se defendere
duobus bacalis in duello, cum unus tantum sufficiat. Vide pl. ibid. per tonum
paganum, for departure, double Pleas, &c.

22. If the Law first grant the Services of his Tenant to one, and af-
fterwards by another Deed of a later date grants the same services to an-
other; In this case, if the Tenant attaine to the last Grantee, it makes
his Grant good, and albeit he afterwards attone to the other Grantee,
yet cannot that make the first Grant good; because the Attornment
took effect in perfecting the last Grant: Yoweth (in the same case) if the
Tenant attone to them both, the Attornment is void to both for the uncer-
tainty, so if a Reversion be granted for life, and after it is granted to
the same Grantee 60 years, and the Tenant attorne to both the Grantes,
this is also void for the uncertainty: A Fencion, if the £20 by one Deed
grant his Seignior to 1. Bishop of London and to his Heirs, and by ano-
other Deed to 1. Bishop of London, and to his Succeeders, and the Tenant
attone to both Grantes, this Attornment is void for both Grantes; so al-
bout the Grantes he but one person, yet he having several capacities, and
the Grantes being severall, the Attornment is not according to either
of the Grantes, and (by consequent) void for the uncertainty.

23. If Land be given by Deed to two, to have and to hold to them,
hereditim, it is void for the intendibility and uncertainty; And although
it hath a clause of Warranty to them and their heirs, that shall not make
the first words which are uncertaine and intensible, to be of force and
effect in Law, albeit his Intent appeareth; but his intent ought to be decla-
red by words certaine and conformant to Law.

24. In an Inventur of bargaine and sale for twenty pounds, there
are divers Coivants, and in the end there are these words, Ad quas con-
ventiones perimplendas obligo me in 40 l. &c. Here, in debt thought for
the 40 l. payment of the 50 l is no Plea without an Acquittance, albeit,
proofs may be made of the payment of the 30 l yet without an Acquittance:

non double

not multiplic-

d.
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Max. 12.

25. If a bond be made to four by Deed, Liberty to one is good for all; it is otherwise, if it be without Deed for the uncertainty.

26. A negative pregnant is disapproved in Law, for the uncertainty, as in a writ of entry in confinable cases, supposing the allegation to be true, the Tenant faith, that the Tenant for life did not alienate in fee, which implies that he did alienate, though not in fee; for notwithstanding that Plea, the Tenant for life might alienate for another life 25 in tail, and therefor there was no good Plea for the uncertainty.

27. If a man buy twenty quarters of Caine, and be to have them by No Deed delivered at such a place upon such a day, and the contract is not performed for price, by the Vendor; in this case, the Vendor cannot have an Action of Pen- tance for the Caine for the uncertainty, because one quarter of Caine cannot be known from another quarter of the same Caine, there is the like Law of Caine.

28. An Inquest remained pro defeun hundredorum, and the Plaintiffs by the Command made suggestion to the Court, that there were no Freemen in the Hundred, but all Copyholders, and an Inquest of the uncertainty thereon; and therupon prayed Bishop A, de proxim. hundred. adja- cente, & non potuit habere; for the Court are not to believe the Com- pletion, and the uncertainty thereof, but ought to have it certain- ed by the returns of the Sheriff, who is a known Printer.

29. If Land be given to A. in tail, the Remainder to B. in tail, with A. and B. other Remainders over, upon Condition, that if any of them shall in their own right on the land estate, his estate shall cease as if he were naturally dead, and it shall be to the next in Remainder: This is a void Pre- tice for the uncertainty; for Judges ought to know the intention of the parties by certain and sensible words, which are agreeable and consistent to the rules of Law.

30. A man possess of certain Land for forty years in consideration of a marriage to be had between his Son and the Daughter of another, venality the Land to his Son for seventy years, to begin after his death, and after the Leases were, in the case the Lease is good, because, whilst the Land is venal, Habeum after the death of the Leasing for seventy years, there was sufficient certainty, and no apparent uncertainty in the Deed, as it was agreed in Locrots case, M. 34. & 35 Eliz. But if a man possess of a Lease for forty years grants to B. so many of the years as shall be behind, temnpor morris sui, this is void for the uncertainty, as it is agreed in 7 E. 6. Br. Grants 134. and in Pl. Com. 520. a. But it a man take a Lease for life by Deed indenrred with Provision, that if the Liability were within forty years, that the Executors of the Lessee shall have it for so many years as shall be behind at the time of his death, this is but a Covenent, and not a Lease for the uncertainty: Vide 3 & 4. P. & M. Gravencors case, Dyer 150. & 22. A. P. 37.

31. In debt by P. against M. the Defendant pleads the Land was upon a Condition, that P. should enjoy the Land, which he held by Feasfment Plea, from M. discharged and indemnified, and that M. and his Son should perform such Land for further assurance, as by P. should be devised; and then he pleads further, that he had kept P. discharged and indemnifi- ed, and issued a release by P. And this Plea was held insufficient, for the uncertainty. 1. Because it should have stated how the Defendant had kept the Plaintiff indemnified, being in the affirmative, but if he had pleaded in the negative, not damned, it had been well enough. 2. Because the Defendant did not show, that the Release concerned the Land.
the Common Law.

32. If I covenant with you, that in consideration of Fatherly affection, and for the advancement of my blood, I will leave settled to the use of any of my sons, as fact of my cousinas, as you will name, upon non-foction made the use shall be created, for here the consideration is particular and certain; and the person by matter, ex post facto, may be made certain; but if a per personer actions covenants covenant with you, that I will leave settled to the use of such an one as you shall name, here albeit you promise, in my son or cousin, get no such title hereby be raised, because for the general and uncertain this was void ab initio, and no Averment shall make it good or reduce it to any certainty, for the intent of the Con- covenant was as general and uncertain as his words were: Neither near the Covenant (in such case) referre power to make Leaves for the same reason.

33. The King a common person grants omnium illius meeitugia in te- parte Johannis Browne fuituratu in Willes: whereas in truth they lye in D. In this case, the grant is void for the uncertainly.

34. A Error. The Record of a Recovery was of the Paney of Merle- ton cum pertin. and the Writ of Error; was to remove a Recovery of the Paney of Merlelyon cum pertin. This is no good remo- mo. - The Record for the uncertainly, because the true Record was not remo- mo. Tamen quaque.

Remainder in contingency. A Remainder in contingency.

35: If A. make a Feoffment to the use of B. until C. shall return. From Rome into England, and after such return from Rome into Eng- land, to remaine over in fee, this Remainder is void for the contingen- cy and uncertainly, it being altogether uncertain, whether or no C. will ever return from Rome into England, for when a Remainder is limi- ted to take effect upon the doing of an Act, which Act shall be the determi- nation of the particular estate; here if the Act depend upon a casualty as a mere uncertainly whether it will ever happen or no, in such case the Remainder depends upon an uncertainy and in contingency, and therefore shall not hold presently.


36. If the King grant to one and his heires, bona & Cathala felonum & intrigorum, 24 ut lagorum fines aemercimentos, &c. within such a Town- ny Paney. In this case he cannot devise them to another, noz leave them to descend for a third part according to the Statutes of 32. & 34 H. 8. of Willes, because the yearly value of such Hereditaments is altoget- her uncertain, and therefore they are usually called casualties.

37. If Land be conveyed to a Feme before marriage for part of her su- ployment, and after marriage more Land is conveyed unto her for her full sumployment, and in satisfaction of all her dowel, and after the Baron- dyes; in this case, if the Son waive the Land conveyed unto her after marriage, the shall have the Land conveyed unto her before the coper- ture, and her Dowel also in the re- dure; for Land conveyed to a Feme for part of her sumployment, as in satisfaction of part of her Dowel, is bar of any part of her Dowel for the uncertainy: So if a Debtor give to the Creatix an Hosp of any other thing in satisfaction of part of his debt, this shall be a bar for no part thereof for the uncertainy.

38. In Ander, both the perdon and clandestine wrongs ought to be certai- nite and apparent, and not to want an innuendo to make them out, as when two are talking together of I. S. and one of them saith, he is a noto- rious thief; in this case, I. S. in his count may Bein, that there was speech of him betwixt them, and that the one said of him, he innuendo pred. I. S. is a notorious Theif; for the Office of an Innuendo is to design the same person which was named in certaine before, and in effect Nan- nth in the place of a Predicte. But an Innuendo cannot make that perdon certain which was uncertaine before, as if one lay without any precedent Communication, that one of the Servants of I. S. (he having viders)
is a notorious felsen of tread, an is the uncertainty of the
Peron, no motion Yet, and an immuno cannot make it certain: if it one day generally, I know one near about I.S. who is a notorious Thesis, and the like: nor on an immuno cannot make the peroni certain which was uncertain before, is an immuno cannot alter the matter on sans of the words themselves, as if one speaking of I.S. faith, he is full of the
Focks, here the Plaintiff cannot say immuno, the French Pocks, for thereby he tries to extend the general means. The Pocks in the French pocks by imagination of an Intent, which was not apparent by any present words, which the Law will not gather for the uncertainty; as it would be inconvenient, that Actions should be maintained upon a mere imagination of an Intent, which appears not by the means, upon which the Action is grounded, but is altogether uncertain, and subject to a broad conjecture.

Col. 3. 3a. 4. in 20xers cafe.

39. The Queen grants Totam ilman portionem decemorum, sec. in D. Coase, 
nunc vel super in tenurato Cores, mor Cores mortem has NIX crusa this Grant is void for the uncertainty in the case of a common portion. A 
portion, in the Queens.

Col. 4. 40. b. in Tonges cafe.

40. In an Inquisition there was this opposition, Vdento plagues mean
calamities cither means, and it was answered insufficient for the uncertaini
by it might be in the neck, in the arm, in the belly, and an In
vestigation ought to expose in certain as well in what part the miscellaneous, as the depth and breadth of it, to the end it may appear to the Court to be manifest: and because it was said that he was De valesc,
dos & plagiis predict, and on one of them was uncertainty alleged, which made the Inquisition insufficient as to all.

Col. 4. 41. A. 4 in Palmers cafe.

41. An Inquisition was thus returned, that the Queen's Debtor was
possess of a certain Term, Pro termino quorundam annum annu
venturo, and it was answered insufficient, for a Term cannot be extened
without the commencement and certain of the Menses, to the end that (the Debt being satisfied) the Party may have the Tercme again, if any part thereof shall remain, which ought to appear, and thereupon the party may have remedy to remove the terms of the Menses
of any other person, and so it was adjudged M. 32. & 39. Eliz. in Ecoc.

Col. 4. 410. b. 4. Adams and Lambecas cafe & ib. 10. b. 2. in the same cafe, see there also 113 a. Sir North. Reads cafe.

42. If lands of the yearly value of 10. per ann, be given upon condition
on to fire a Plee to pay the bonds, and that the Plee shall have yearly
rol thereof; and bond, and shall distribute other bond bonds to cer
tain poor people; in this case by the Statute of 16. 6. 14. the being shall
have but the rol. Limited to the Plee, and not the Land; howbeit of
the same Land were given to one the Plee, and for the maintenance of 20 poor men, in this case the King shall have all the Land, albeit the
Plee hath rol. thereof, and the poor men the other rol. And the reason of this diversity is, because in the first case there was a good use separate and distinct in certain from the superficies itself, but in the other case it was left altogether uncertain how much the poor men should have, and therefore in such case the King shall have all.

Col. 4. 411. 5. 3. Twomey cafe in Ad. a d Lamb cafe.

43. A man leased of certain houses of the yearly value of 4. 1. 6s. The
8 d. debited them upon Condition to have an Obst, spending thereof so much as the devises should in their discretions think fit. the Debts cons
pons only upon the Obst, 6 s. 8 d. per annum, and it was adjudged that the Queen Elizabeth, should have all the houses, because the appoint
ment was uncertain, albeit the imprisonment was certain.

Col. 5. 1. 2. 4. in Adain cafe.

44. Adventures of beantie were ingredated bearing Date the 26 day of
May, Anno 35. Eliz. to have and to hold for three years from henceforth, and they were delivered at four a clock in the afternoon upon the 20 day of June anno 35.
45. An Indebtedness may be granted to two, vel calidber corum, as to make Liberty or the like, but an Interest cannot be so granted, as if A. covenants with two, &c. to quick bet debors, they cannot two severally, unless their interests were severally, as if a man by Indenture devised Black Acre to A. White Acre to B. and Green Acre to C. and covenanted with them, &c. to quick bet debors, that he be landall owner of the said Acre; in this case in respect of their several interests, by the done, quick bet debors, the Covenant is made severally; but if he demise the acres to them jointly, then the moans, &c. to quick bet debors are made for the uncertainty; for albeit divers persons may bind themselves, & quick bet debors, and to the Obligation shall be joint severally, of the election of the Obligee, yet a man cannot bind himself to three, and to each of them to make it joint or severally at the election of several persons for one and the same cause, for the Court will be in doubt by which of them to give judgment, which the Law will not suffer: As it was held in 11.4.4. where one brought a Replevin for one breach against two, who made several assurances, each of them by himself in his own right, and there (by the advice of all the Justices) both the assurances abated for the inconvenience and uncertainty; because, if both the Parties should have been found for the Assumptions, the Court could not have given Judgment to them severally of the same thing.

46. It is the duty of a Declaration, to reduce the generality of the Writ into certainty, otherwise the issue will be general and uncertain, and (by consequent) the writ the like, and then the Jury cannot be attained, if they happen to give a false verdict.

47. Where a Bishop refused to admit a Clarke, it is not a sufficient cause to allege in general, that he is Schismaticus incorruptus, for that is causa vegae & incerta, but he ought to charge him in particular with some particular Schisme, and to whose body and whereas he is a Schismaticus.

48. M. is Baili for C. In an Action where H. is Plaintiff; H. hath Judgment, and Sire facies against C. and in his default against the Baili, who pleads the Plaintiff's release before Judgment, this is held an insufficient plea, because a certain duty with a Condition subsequent may be released, as an Obligation; not an uncertain duty with a condition precedent before the time, because the debt and damages are uncertain. See also Col. 9.31. a. 5. in Pleas in Equity cale.

49. The Plaintiff and Defendant submit themselves to the Arbitrement of A. who awards, that the Defendant shall enter into Bond, that the Plaintiff and his wife shall enjoy such land quietly. This is a valid award, because of the uncertainty of the sum in the Bond, which ought to be (at least) to the value of the land, also the award is void to as to the fine, because there is a stranger to the submission.

50. A Patron is not bound any way to take notice of a Laps for the Incumbrances not reading the Articles according to the Statutes of 23 E. 1. in Generalis 1. a. 2. but from the Ordinary himselfe, and no laps will inure if that be done, and such notice ought to be certain and particular, and therefore it is not sufficient for the Ordinary in such case to give Notice, that the Patron hath not read the Articles and subscriptions, generally, but he ought particularly to inform the Patron, that he hath not read the Articles, &c. for which default he is negitve, and that thereupon it belongs to the Patron to protest, by Notitia dictum noscendo, and Evi terminin, it ought to be special and certain, for Notitia non debet claudicar.
The Reason of

51. If one let the Sannny of D. to I.S. for so many years, as I.N. hath in the Sannny of S. am he hath ten years in it, such Term shall I.S. have in the Sannny of D. so if a Lease be made to another during the minority of I.S. and he is of the age of ten years, this is a good Lease for 11 years, if I.S. so long live, because such Leases have a certain commencement and a certain end, but if the wife of I.S. be great with child, and a Lease he made until the issue in venture be mere, shall come to full age, this is no good Lease for the uncertainty, for at the time when the Lease is to take effect, it is uncertain when the child will be begotten, and (by consequent) the commencement, continuance, and end, of that Lease is uncertain, and therefore void: So if a man let Land of the value of 20l. per annum, until 21 I. be levied of the Blues and profits, without Library, this is but a Lease at Will for the uncertainty, for it is not certain that the Land will belong to be every years of one and the same yearly taking, vid. plus ibidem.

52. Vide Max. 36. 1.

53. Common by reason of Commonancy is against reason, for such a Common is transitory and utterly uncertain, because it follows the person and that for no certain time or state, but only during his inhabitancy, which kind of Interest the law will not suffer, for custom ought to extend to that which hath certainty and continuance.

54. A Bishop certifies in general, that I.S. is conveyance, this is not good for the uncertainty, so he ought to certify the particular cause in certain, wherefore he was conveyance.

55. If Land be devised to I.S. upon condition that he suffers his Executory to carry away his goods, disturbance by Parol is no breach of the Condition, but the heir that claims interest must allege some special all disturbance in certain by some act done, as by shutting the doors upon them, lying hands upon them, or the like, whereunto the other party may make a certain answer, and whereupon a certain issue may be taken, whereas the Jury may enquire, and the Court may judge whether it be a sufficient breach of the Proviso or no.

56. Regularly, those that have power to impose Fine and Imposition, Uncertainty (except a Court of Judicature) shall plead the particular cause pleas, in certain wherefore the party was so fined or imposed, and not in a general or uncertain manner, because in such Cases upon an Action brought by the party fined or imposed, the cause is transferable, as the Fine and Imposition in Doctor Bonhams case, and the Acts and Deeds of Commissioners of Bankrupts, for they are transferable, and therefore ought not to be uncertainly pleaded.

57. An Administrator cannot plead uncertainty and in general, that the Intestate had Bona notabilia; but he ought to plead them in certain, for otherwise it will be intended that the Intestate had not Bona notabilia, in severall Dioceses.

58. If a man by Deed gives goods to one of the sons of I.S. who hath divers Bona; here, he shall not take a demurment which can be meant, for by judgment of Law upon this Deed, this gift is void for the uncertainty, which cannot be happenned by abatement, Vide 11 E. 4.2.

59. In Dover, upon plea of detainer of Charters, in bar thereof, the Detainer's heir being the certainty of the Charters, so that they are in a close Charter, 02 box, locked or sealed, to the end that a certain Issue may be opened thereupon, and it is not enough to plead detainer of Charters in general, so that this is an insufficient plea for the uncertainty, See also Col. 1. 9.

60. In the case of the Abbot De Strata Mercella, the Defendant plea Uncertainty deo, Quod pred. Abbas licite habuit bona selonum, et. And yet therein plea, not his case in so certain and special manner that the Court might s—
The Common Law:

631.

unworth whether the Abettor by the Law had Helme goods of no; And the reason his plea was adjudged insufficient for the Uncertainty: So also it is agreed in 22 E. 4. 40. The Lord Lisle's case, where one was bound in an Obligation upon Contingent that he should come to B. but a day and showed the Debtor to his Councill a sufficient discharge of art Money of 40s. which he claimed out of two horses, &c. And in Debt upon this Obligation, the Defendant pleased, that he came to B. at the day assigned, and there offered to the Plaintiff and his Councill a sufficient discharge, and that they refused to see it; upon which the Plaintiff demurred in Law; And it was adjudged that the plea was insufficient, for the plea ought to have alleged what manner of discharge in certain he offered to them, viz. a Release, unity of possession, or without manner of discharge, whereupon the Court might have adjudged whether it had been sufficient, or no.

62. In Revivishement de Gard, (according to the Statute of Wales.) The Jurors found generally, that the Ward was married, and that at the time of his marriage, he was eighteen years old and upwards, &c. and this was adjudged an insufficient Verdict; because it is not by hereby left uncertain who procured him to be married, viz. Whether the Husband, a stranger, or the Plaintiff himself, or that the Ward of his own accord married himself; but also it is uncertain in the time when he was married, whether before or after the Marriage; And therefore it is well said in 30 E. 3. 23. That the Verdict ought to be such that the Jurors may clearly proceed to Judgment, and (by consequent) ambiguous and uncertain Verdicts are insufficient and void, as in 40 E. 3. 15. In Debt against Grecativo, they pleased fully administered, &c. the Jurors found that they have goods in their name, but do not say to what value, and for this uncertainty their Verdict was held insufficient and void; but more authorities, ut supra.

61. A. sales of the Panmoo of D. letters a Fine to uses with power of Revocation, upon payment of 40s. to the Comer, &c. being likewise sales of the Panmoo of S. letters another Fine thereunto to the same Council, but to other uses, with like power of Revocation upon payment of 40s. to the said Council. Afterwards A. pays 40s. to the Council for revocation of all the uses called upon both the Fluxes, and this payment was allowed in satisfying under the Hands of the parties. In this case none of the uses are revoked, but the Revocation is utterly void for the uncertainty; because two several Panmoo of 40s. should have been tenanted, and not one summe only, as they were several Inventories, and several Panmoo, and could not be satisfied by one summe, because it was thereby left uncertain, which used, and of which Panmoo the Revocation was meant.

60. In debre against an Grecativo, he ought not to plead. Quod ipsa non habet, &c. aliqua bona, &c. prater bona, &c. quae non sufficient ad facticienda debita predida; but he ought to plead, Quod non habet, &c. bona, &c. prater quam bona &c. cxsilis ad valentiam of a certain summe. Ex non utra, quae existens debitus obligar, &c. inequitabilis existit, &c. for the first plea is insufficient for the uncertainty, because the Plaintiff cannot reply thereupon, so as a certain Issue may be taken.

64. When there is uncertainty in the person, to whom a Release of any Grant is made, such Release or grant cannot be good. And therefore if a Release be made, the Remainder to the right heirs of F. & S. and the Release is witnessed, and the eldest son of F. & S. released to the releasee, and after I.S. years; In this case the Release is void for the uncertainty, whether it be that he be right heir at the death of his father; But likewise in 17 Eliz. a man lets to Baron and Feur for 21 years, the Remainder to the surviving of them for 21 years, and the Baron grants over this term, here also the grant is void for the uncertainty of the person, for albeit of
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The Reason of

all Chattels real, which are the Femes, the Baron may dispose, yet in this case neither the Baron no Feme had any thing until the Sheriff, &c.

65. The reason why colour is given in a Suit of Entre for distinguishing Colour in

Suit of Entre in the nature of an Affiz, an Affiz, Trespass, &c. is, for pleading

that the Law (which prefers and favours certainty as the mother of

quiet and repose) to the intent that either the Court may adjudge upon it, if the Plaintiff demur, so that a certain Issue may be taken upon a

certain point, requires that the Defendant, when he pleads such a spec-

ial Plea (notwithstanding which the Plaintiff may have right) shall
give colour to the Plaintiff, to the end that his Plea should not amount to a general Issue, and so leave all the matter at large to the Jurors,

which would be uncertain and full of multiplicity and perplexity of

matter.

66. In Trespass the Plaintiff counts for damages twenty marks,

Defendant pleads not guilty, the Jurors for damages and costs against

at twenty two marks; In this case the Verdict cannot stand, for it ap-

pears not how much is for damages, and how much for costs; and there-

fore the Plaintiff can have Judgement but for twenty marks for the un-

certainty.

67. An Ejection firmus brought de omnibus & omnimodis decimas in

uncertain

W. without saying garborum, seni, laws, &c. this is not rightly laid

alligation, for the uncertainty, because there is no certainty alleganced of the nature

of quality of the titles, whereupon a certaine Indemnity may be given, or execution by habeac facias possesionem habet,Ann this also appears in an

Affiz brought de quado portione decimarum, &c. in 7 E. 6. Dry. 84.

F. N. B. 41. a.

68. The Bishop shall not cite or distrust any to appear before him

to make suit at the pleasure of the Bishop against the will of him, that

is so summoned or cited, for such general citations, which the Bishops

make to cite men to appear before them, prodole animo, without ex-

pecting any cause in speciall, are against Law, for which the party

grieved may file a prohibition against the Bishop, and therupon an At-

tachment, if the prohibition be not obeyed; And such cause ought to be

only Patrimoniall or Eccenshmary.

Plow. 56. a.1.

umbish and

Talbies cafe.

69. A Bar, which is certain to a common intent, is good; but Re-

lications, Titles, Pleas in Abatement of title, and Opelus ought

to contain Certainty; to the Law (which is grounded upon reason)

opines, that Replications which make the Issue, should be certain,

to the end that neither the Court nor Jurors (who try the Issue) should

be misled; or weighed by uncertainty; and therefore albeit a man may

plead in Bar que estate, without giving how he comes by the estate,

yet in a Replication if he plead que estate generally, it is not good, as it is

held in 2 E. 4. but he ought to show how he comes by the estate for the

case aforesaid.

70. Where a Recovery is had of two hundred Acres, upon occasion of

pleading that Recovery, to plead a Recovery of one hundred Acres,

inter alia, is not good for the uncertainty, as in 22 E. 4. in a Scire facias

to have execution of two hundred acres of Land, the Tenant pleads that

since the Scire facias sued, I.S. bought a Formeden of one hundred Acres

inter alia, and recovered and had execution, Judgment of the Suit for

that parcel, and this Plea was not held good, so it is not the right

soume of pleading such a Recovery, because a Recovery ought to be cer-

tainly pleaded to every intent, and these words inter alia are certain to

no intent; but there is held, that he ought to have pleaded, that I.S.
bought a Formeden of two hundred Acres, whereas those one hundred

Acres now in demand are parcel, and hath recovered, and hath had ex-

ecution.

71. The
the Common Law.

72. In debt upon an Obligation for performance of Covenants; Dyer 51. 217.

73. When the right of Fee, Simple is perpetually by Judgment of Co. Inst. part Law in abeyance without any expectation to come in esse, there he that 1. 343. 2. 3. hath the qualified see, and to many purposes is no more than a bare Tenant for life (concurrentibus his, quae in jure requiruntur) may charge or alien it, as in case of a baron, vicar, &c. when the Patron and Ordinary joyns with him in the Charge of Grant: for in this case (at the common Law) when all that had an Interest in the thing did joyn, the Charge of Grant might have been thereby made certain and inassignable: but where the Fee-Simple is in Abeyance, and also by constancy it may every where come in esse, yet it is altogether uncertain, when or whether ever or never that may happen: In such case, the Fee-Simple cannot be charged until it come in esse, so as it may be certainly charged or aliened: As if a Lease for life to m'r, the Remainder to the right Heirs of I. S. Here the Fee-Simple cannot be charged or aliened before I. S. be dead, in case I. S. m'r, living the Tenant for life, but if the Tenant for life happen to die before I. S. then is the Remainder banished and gone, because it cannot immediately fall after the death of the Tenant for life.

Second deliv

74. Upon a second delivence the Defendant being a Widow, Dyer 144. 51. les by an estate for life, if the is long continue a Widow, and avereth not, that she is the same woman, to whom the estate was made, not that the is still a Widow, for which uncertainty and others concerning the place, where the Cattell were taken, the Plaintiff had Judgement &c.

Inquisition.

75. Inquitio capta apud D. of Land in S. without deliving in what County either D. of S. is, was awarded insufficient for the uncertainty, 3. 4. 8. because upon a Traverse it could not be tried for want of the knowledge, where the Venue should be taken.
76. In debt for rent arrears, the Plaintiff counts, that his terms Deed for
were delivered to the Defendant the terms and use, and that the Defendant
enters and was possessed, and that for arrears of rent the Action of
sufficient to this the Defendant demands, 1 because he hath not alleged, that
the Debitor made Covenants, and that the Defendant entered with their
agreement: 2 for that he hath not, vertue enquis legationis, the De-
fendant was possessor: 3 for which uncertainties the Court was advisedly
insufficient: 4 for if the Defendant were in of any other estate or title
then as Alligance of the Lesser, an Action of debt legally against him
for want of privity.

77. A new Allignment was in one Acre, terrae five prati in campo Nova-
 vocat. N. the Defendant pleads not guilty, but for the uncertainty, when
their Land of Peasow, and also because there was no abutments, the Jury
were discharged.

78. In an Action upon the case by Thomas against Axworth, the Slain
trous were, This is John Thomas his writing, innumendo the Plaintiff,
and he innumendo, &c. hath forsooth this Warrant, the Sheriffs Warrant at the Suit
of M. Hog against the Defendant, Innumendo: And in this case it was
helpful, that the Innumendo would not support the Action, the Warrant
being of an uncertain sense, and the matter of the Action shall not
be enlarged as aforesaid by the Innumendo, as Pox, innumendo, the French

79. An office was found by Commissioneres after the death of Wil-
liam Dartry, whereupon a Melius Inquisition went forth and recited,
but then, Cum per quodnam Inquisitionem caput apud Chichester, &c.
did not say, that it was either by Commission or a Suit, or before
whom: and it was held false for the uncertainty, and the office also, that
was taken upon the Melius, fo by the Melius it ought to appear, that
the first office was by warrant, &c.

80. In an Electione from the Plaintiff counts of a Wittage, &c.
with Appurtenances called Dizard in Cornwall, to hold for five years,
the Defendant pleads not guilty, whereupon the Plaintiff had Judge-
ment: And the Defendant assignes for Error, that the Plaintiff hath not
known in what Countys, Parishes, Hamlets, &c. place the Wittage lay, but
in the generall County, and thereupon the Judgement was reverted in
the Exchequer Chamber, 13. Jac. for here was a triall without a
Vine.

81. Vide Hob. 90. Keere and Owen upon an Elegie, Error for omitting
the Entry of a clause in the Roll, which were expressed in the Return.

82. Two Informations exhibited the same day against the same per-
y for one and the same offence, Judgement shall be given for neither,
for the uncertainty. Vide Hob. ibid. for an Inrolment of a Deed, &c. 139.
Wiltron, for an Amerciament in a Load.

163. Impersonalitas non conclusit nec ligas.

1. An Error shall not be spoken impersonally, as to say, we dicent, An Error
not the like; but it ought to be a precise affirmation of that which maketh
the Error, neither yet both a recital conclude any thing, because it
is no direct affirmation. The Earle of Leccesters case in Plowd.
164. Generale nihil certi implicat.

1. If the thing complained of in a suit lie in another place, words in it may be proved in a Court generally, by the law of nations, Co. Inst. 1. 3d. Ser. 1. 9, 19. in a Court of Admiralty. in W. 1. 9, whereas in truth they lie in B. In this case, the Courts must decide in such a case, the Grant is general, and is referred to a certain Nature, the Plaintiff or Defendant must not have any limits out of that Nature, unless which the generality of the Grant refers.

2. If one oath to another, that he hath sworn in such a Court, every oath of another are actionable, by the law of nations, that he hath sworn himself to a juridical proceeding, but it was laid to another, that he hath a Charter, and hath gotten it by swearing and forswearing, that oath until leaves no Aution; because they are too general, and words which shall charge any party an Aution, in which there is not a specific oath, ought to have convenient certainty: So if one call another William, who he shall know, to be a lie, as tells him that he is fastworm, such words are not actionable, because they are accounted words of heat and passion, and benignior sententia in verbi generalibus non dubii est preferenda; so Autions of slander shall not be maintained by any strained construction of argument, because they are more frequent nowadayes, than in times past. 

Schilline.

3. It is not a sufficient allegation for the Bishop (who resteth to present to a benefice) to say that the Plaintiff is a Schilline in general, but he ought to accuse him of some Schilline or heretic in certain, to the end the Court may consult with Divines to know whether it be Schilline or no, and thereupon make Judgment whether the original cause of refusal be just or no.

Arraith.

4. When the Subjicet, that dissent or arrest one, it is not to the Arent or to say in general all words are arrest you, but they ought upon the arrest to them of Bishop Swift, out of what Court, for what cause they have, and when the Plote is returnable; to the end that it be upon an Execution, he may pay it and free his person from Impoisonment, and it upon a meanes Procede, either to agree with the party, or to put in bail according to Law.

Errors.

5. In Assignment of Errors a general Assignment is not good, so to F. N. B. 20. say, in omnibus certatur et, so that expressly no certainty; but the Assignment ought to be specific and certain, as to say, in hoc certatur et, &c. and to shew the certainty of the things, and againe to say, &c. in hoc certatur et, and to shew another thing, &c. de singularis, in which he will allege Errors.

Arbitrant.

6. The Submission is an award between A. and B. was general, viz. Co. Inst. 1. 8. &c. of all Aclions, Demands, &c. And the Award was that A. should pay B. twenty pounds: And in this case it was objected, that it did not appear that the matter of the Arbitrement was the matter only that was before them, because the Subdivision was general, as to all Aclions, Demands, &c. And therefore if the Arbitrement were not made of all the matters in controversy, the award was null: Thisbeit, the award was annulled good, because when the Submission is general of all Aclions, Demands, &c. General nihil certi Implicat, and therefore it looks well with the generality of the words, that there was but one cause depending in controversy between them.
165. Dolosus versatur in generalibus.

1. P. being indebted to T. in four hundred pounds, and to C. in two hundred pounds, C. brings an Action of debt, P. pollutes goods to the value of three hundred pounds makes a gift to T. in part of payment, by the name of all his Goods and Chattels, but continues the Perseverance and improperly them to his own use, to prevent the execution of a Fieri facias at the suit of C. Here one of the badges of fraud already in that Grant, was, for that it was general, viz. of all his Goods, &c.

2. It is not a sufficient allegation for a Bishop upon refusal of a Clerk to say in general, that he is a Schismatic, Perigote, or the like; but he ought to accuse him of some crime, as Error in particular; because if such general allegation shall be admitted, Bishops (at this day) might at their pleasure depose all Patrons of their Presentations. Vide 164.

3. In Dolosus versatur, &c.

166. Variance.

1. A material Variance between a Protection, and the Record only Proceeds, above it.

2. If the Tenant do as suffer waste to be done in Houses, yet if he repair them before any Action brought, there is not an Action of Waste against him: Howbeit he cannot in such case plead Non waki faíc, for by reason of the Variance between the Evidence and such a Plea, the Issue will be found against him; but he must plead the special matter according to the truth of his case.

3. In Battery Not guilty is a good Issue, where the Defendant came Baur, omitted no Battery at all, but regularly (at the common Law) if the Defendant hath cause of Justification to excuse, then can he not plead not guilty; for then upon the Evidence he shall be found against him, because by such a Plea he confesseth the Battery, and upon the Issue cannot justify it; but he must plead the special matter, and confesse and justify the Battery; for otherwise the Variance of the Evidence from his Plea will cause the Jury to find him guilty. The like Law is in many other cases, and therefore it is a learning necessary to be known, because the losses of many causes dependeth thereupon: As in Battery if the Defendant can justify the same to be done of the Plaintiff's own assault, he must plead it specially, and must not plead the general Issue.

4. In trespass of breaking his Close, upon not guilty he cannot give Tractate in Evidence that the Woods came through the Plaintiff's Fence, which he ought to keep, nor upon the general Issue justify by reason of a Rent-charge, Common, or the like.

5. In Pettine the Defendant pleadeth non delinе, in this case he Delines cannot give in Evidence that the goods were put upon to him for money, and that it is not paid, but he ought to plead it: Howbeit he may give in Evidence a gift from the Plaintiff, for that probity he detained not the Plaintiff's goods.

6. In Waste upon the Plea non facit vasum, he may give in Evidence Waste any thing, that proves it no Waste, as by tempests, lightning, enemies, or the like; but he cannot give in Evidence justifiable Waste, as to repair the House, or the like; for that will cause a Variance between the Evidence and the Issue.

7. If two men be bound in a Bond jointly, and the one is sued alone, Joyce he may plead this matter in Abatement of the Suit, but he cannot plead non est factum, for it is his Deed, though it be not his sole Deed.
Whelpdale's case, where a man may safely plead non est locus, & where not, and former books that treat of that matter, well reconciled: See Co. Inst. 1:303. Also more of this matter Co. Inst. ubi supra, &c. And here note, that in 4. matter of pleading (in present variance) each party must be very circuits to be heard in the covering thereof, lest his Replication depart from his Count, as his Rejoinder from his Dam. Et &c de ceteris. Likewise what is de, parture in pleading and what not, See Co. Inst. 1:304. per totam paginam, & pl. Co. 103. b.

In an Action upon the case Variance was found betwixt the Writ and the Count in the Defendants name, for in the Count he was named George, and in the Writ Christopher, and after Judgement for the Plaintiff in the Common Place upon a Writ of Error in the K. B. Writ, the Judgement was reversed by reason of that variance; for the Statute of 18 Eliz. 14 gives remedy where there is no Original Writ, but not where there is a Writ and a material variance betwixt the Writ and Count, &c.

There ought not to be any variance betwixt the Original and the Judgement, because it is grounded thereupon: And by the same, therefore in Embattlement of War, if the Action be grounded upon the Statute of Weltm. 2:35. according to the course of the Writ there prescribed, the Plaintiff cannot have Judgement at the Common Law, but the Judgement ought to be confinable and pursuant to the Original Writ, which is the Foundation and ground of the Judgement, Vide plus ubi supra.

The Dean and Canons of Windsor, were incorporate by the Statute of 32 E. 4. by this name, The Dean and Canons of the King's Free Chappell, &c. And in the Coigne of F. and M. they made a Lease of certain Lands by this name, The Dean and Canons of the King's and Queen's Free Chappell, &c. And in an Ejectment, bought by Hob. 114. Wingate against Hall, M. 29. and 30. Eliz. the Lease for that Variance was abjured void.

Merton College in Oxford, was incorporate by Act of Parlia. Co. ibi. 129. ment anno 1. M. Per nomen Guardiani & Scholarium Domus five Collegii Scholarium de Merton, &c. And they made a Lease, per nomen domus five Collegii de Merton, omitting Scholarium; And in an Ejectment, March, H. 30. Eliz. This omission was agreed to be a Variance in substance, and it was to adjourn the Lease; so the Case at hath Baptized the College by the B.R. name of the College of the Scholars of Merton, and they made the lease by the name of the College of Merton himselfe, who, (in truth) was the Founder.

In an Audita querela, Variance betwixt the Writ and the Record F.N.B. 104. shall cause the Writ to abate.

In Debat upon the Statute of 32 H. 8. 9. made against buying Pl. Co. 79 b. 4. pretended Titles, &c. That Statute was recited in the Count to come Partridge, the 28 of April anno 32 H. 8. whereas it did begin the 28 of April anno 31 H. 8. and was continued by productions until 32 H. 8. and for that variance the Count was abjured void.

In 20 H. 6. A man being a Writ of Foerger of false Weights, Plibid. b. 4. and the Writ was diversa factura & minimenta, &c. and he counts but of Poison only, and Per totam curiam, for that variance the Writ shall abate.

In a Writ De confusendinibus & serviciis, if the Demandant pay, F.N.B. 15. 1. De reddibus & arreraginis, &c. These ways prove that the Demandant himselfe was lessee of the Servicles, and then if he count in such a Writ of the Petition of his Ancestor, and not of his own Seilinn, for that variance the Writ shall abate.
The Reign of

The Corporation of Bacon College was created by H. 3. 1275. A void in.

3. P.M.

15. The Corporation of Bacon College was created by H. 3. 1275. A void in.

16. A man declares for the debt of 201. upon the file of Ione, and also, in virtue of a verdict, it shall be found for the Defendant, as if there has been variance in the things said, Tames Quante there be no difference, for the Ione is Good willing Debarim and debet, So in the Extrem of a chain of three coins, where it weighs but two coins, the Law lay 2 E. 4.

17. A man declares for the debt of 201. upon the file of Ione, and also, in virtue of a verdict, it shall be found for the Defendant, as if there has been variance in the things said, Tames Quante there be no difference, for the Ione is Good willing Debarim and debet, So in the Extrem of a chain of three coins, where it weighs but two coins, the Law lay 2 E. 4.

18. A man declares for the debt of 201. upon the file of Ione, and also, in virtue of a verdict, it shall be found for the Defendant, as if there has been variance in the things said, Tames Quante there be no difference, for the Ione is Good willing Debarim and debet, So in the Extrem of a chain of three coins, where it weighs but two coins, the Law lay 2 E. 4.

19. A man declares for the debt of 201. upon the file of Ione, and also, in virtue of a verdict, it shall be found for the Defendant, as if there has been variance in the things said, Tames Quante there be no difference, for the Ione is Good willing Debarim and debet, So in the Extrem of a chain of three coins, where it weighs but two coins, the Law lay 2 E. 4.

20. In an appeal of the death of a Brother against I. B. of M. 1275. as April, principal, and one F. as acceding, whereas the name of the principal T.S. The acceding appears and protests, Not in in remotum, as L.S. the day of the Writ purchased, not at any time since. In this with the two Chief Justices held. What ableor there were another L.S. in another County, if it were not in the same County, where the Court off H. 1275. If the person dead before the Writ purchased, the Idea doubtless, and there also it was held, that in Favorum vice, a man might traduce the Sheriff Return.

21. In Black, if more Copies be mentioned in the Declaration there was in the Writ, where the Writ is supposed to be done, the Black may up date. The Earl of Cumberland's case.

22. In a Case Implead for the Marriages of Leeds, the house Vercariam was inserted instead of Vicariam, and exception being taken thereunto, it was amended by the Curitor in open Court.

Vide 40. 55.

1. Contrariety and Repugnancy. And therefore, Vide 40. 55.

1. Contrariety and Repugnancy. And therefore,

Col.Inf. 1. 97. 3. If Lands were given to hold. In libera Eleemosinia, reddendo, a Rent, the Reveston of the Rent uniformly to be doth, because it in repugnant and contrary to the former grant, in libera Eleemosinia.

2. Col.Inf. 142. 8. A man upon his Speech 2d. Assessants cannot refer, to his selfe parcel of the unman profit themselves, as to resolve the Extrem 2d. Heritage of the Land, as the like, for that would be repugnant to the Grant; Non debet enim efferesatio, de profris ipso, quin ex conci- dundum, fed de reddito novo extra proficia.

3. Col.Inf. 146. 2. When in a general grant the Law doth give two remedies, the Grantor may provide, that the Grantee shall not use one of them, and may leave him to take the other, as upon the Grant of an annuity, the Grantor may provide, that the Grantee shall not charge his person but where the Grantee hath but one remedy, there that remedy cannot be barred by any Proviso, so such a Proviso would be repugnant to the Grant.

4. Col.Inf. 81. 4. If a man by his Deed granteth a rent charge out of the lammas. The Ele of D. (wherein the Grantor hath nothing) with a Proviso that it shall
not charge his person; here, albeit the Repugnancy both not appear in
the Doxe, yet the Proviso taketh away the whole effect of the Grant, and
therefore is (in Judgement of Law) repugnant, for upon the matter it is
to a Grant of an Annuity, provided that it shall not charge his person.

5. If a man by his Deed grant a Rents charge out of Land, provided Coib. 16.4.
that it shall not charge the Land; here, albeit the Grantee hath a dou-
ble Remedy, as above is said exam. 3. yet the Proviso is repugnant, be-
cause the Land is expressly charged with the Kent, but the Wit of na-
ture is but implied in the Grant, and therefore that may be restrained
without any repugnancy, and sufficient Remedy befores left for the
Grantee.

6. If a man give Lands to another, and to the Heires male of his Coib.16.4.2.a.
body, upon Condition that if he die without heir female of his body, that
then the Donate shall re-enter, this Condition is utterly void; for he can-
not have an heir female, so long as he hath an heir male.

7. If a man make a Feoffment in Fee upon Condition that he shall Coib.16.4.2.b.
not alien, this Condition is repugnant and against Law, and the Estate
of the Feoffee is absolute: But if the Feoffee be bound in a Bond, that
the Feoffee and his Heires shall not alien, this is good: for he may not,
withstanding alien, if he will foyst his bond that he himself hath made:
so it is also if a man make a Feoffment in Fee upon Condition that the
Feoffee shall not take the profits of the Land, this Condition is repug-
nant, and against Law, and the Estate conveyed is absolute: But a Bond
with a condition that the Feoffee shall not take the profits of the Land,
is good. If a man be bound with Condition to enter his wife, the Con-
viction is void and against Law, because it is against a Maxime of Law,
yet such a Bond is good: so if he be bound to pay his wife money, that is
good also. Ec de similibus, whereof there be Plentiefull Authoritie in
our Books.

8. If a man make a Feoffment in Fee upon Condition that the Devisee shall not Coib.11.1.
alien, the Condition is void; and so it is of a Grant, Release, Confir-
mination, or any other Conveyance, whereby a Fee-Simple both pass, for
it is absurd and repugnant to reason, that he, who hath no possibility to
have the Land revert to him, should restrain the Feoffee, Devisee, or
Grantee, in fee simple, or all his power to alien.

9. If a man make a Feoffment of a Lease for years, or of an House, or of any Coib.11.1.
other Chattell, real or personal, and give or sell his whole Interest of
Property therein, upon Condition that the Donate or Tenedor shall not
alien the same, this is a void Condition; because his whole Interest and
Property is out of him, so as he hath no possibility of a Reverter, and it
is also against Erate and Eratrick, and bargaining and contracting be-
twixt man and man. Inquirum est ingenius hominibus non esse liberam re-
run suarum alienationem: Again, Rerum suarum quieter est moderatot
& arbitror: Lacie alio his Rule, Regulariter non vaeet pactum de re mens
non alienandis.

10. If a man be seized of a Seigniory, Kent, &c., Coib.11.1.
and any other Inheritance that beeth in Grant, and by his Deed granteth the
same to a man and to his Heires, upon Condition that he shall not alien,
this Condition is also void for the repugnancy: Howbeit some have says,
that a man may grant a Kent charge newly created out of Lands to a
man and his Heires upon such Condition, and that in such case it shall
be good, because the Kent is of his own Creation, but this is against the
reason and opinion of Littleton (Sect. 360.) and also against the height
and purity of a Fee simple: Howbeit, the examples aforesaid are to be
understood of Conditions annexed to the Grant or Sale it self, in respect
of the Repugnancy, and not to any collateral thing; As if A, be frised

the Common Law. 639
of Black acre in fee; and B. entrooketh him of white Acre, upon Condition that A. shall not alien black acre, the Condition is good, because the Condition is annexed to other Lands, and only not the Freehold of his power to alien the Land, whereas the Freehold is made, and is no Repugnancy to the State passed by the Freehold; And so is it of Gifts of Sales, of Chattels real or personal: Above, A man before the Statute of Quia Empeors terrarum, might have made a Freehold in Fee, and above further, that if he or his Heirs did alien without Licence, that then he should pay a Fine, this has been good: And it is said, that then the Lord might have restrained the Alienation of his Tenant by Condition, because the Lord had a possibility of Reverter, &c. so it is in the Kings case at this day, because he may reserve a Tenure to himself.

11. If a gift in Challe be made upon Condition, that the Donee, &c. shall not alien, this Condition is good to some intents, and void to other; so as to all those alienations, which amount to any discontinuance of the Estate Challe, (as Littleton speaketh, Sect. 362.) as are against the Statute of Westminster 2. the Condition is good without question; but as to a common Recovery, the Condition is void, because this is no discontinuance but a Bar, and this common Recovery is not restrained by the said Statute of Westminster 2. and therefore such a Condition is repugnant to the Estate Challe; for it is to be observed, That to this Estate Challe there be diverse incidents, First, To be dispensible of Law. Secondly, The Wife of the Donee in Challe shall be endowed. Thirdly, That the Husband of the Free Donee after this Hall be Tenant by the Curtesy. Fourthly, What Tenant in Challe may suffer a common Recovery: And therefore if a man make a gift in Challe upon condition to restrain him of any of these incidents, the condition is repugnant and void in Law: And it is futher to be observed, That a collateral Warranty of lineal without assets in respect of the compence is not restrained by the Statute De dominis, no more is a common Recovery in respect of the intended compence: And Littleton ubi supra, to the intent to exclude the Common Recovery, faith, Tiel alienation & discontinuance, joining them together.

Inf. para 1 Co. 234. & b. 12. If a man before the Statute De dominis, has made a gift to a man, and to the Heirs of his Body, upon Condition, that after his he should not have power to sell, this Condition has been repugnant and void; Par ratone, after the Statute a man makes a gift in Challe, this Law, Tacice, gives him power to suffer a common Recovery, therefore to and a Condition, that he shall have no power to suffer a common Recovery, is repugnant and void.

Col. ibidem. 13. If a man make a Freehold to Baron and Feme in Fee, upon Condition that they shall not alien, to some intent this is good, and to some other intent it is void, for to restrain an alienation by Feoffment, it is good; because such an alienation is cautious and voidable: But to restrain their alienation by Fine is repugnant and void, because it is lawful and unvoidable.

14. It is said, that if a man enteoff an Infant in Fee, upon condition, that he shall not alien, this is good to restrain alienations during his minority, but not after his full age.

15. It is likewise said, that a man by Licence may give Land to a spirit, etc.

16. A
Confirmation. 16. A devisee makes a Lease for one hundred years, and the devisee confirms the estate of the lease for fifty of those years, this is a confirmation of the whole term; for when he had once confirmed the lease, the whole estate was thereby confirmed, and therefore afterwards to limit the term to fifty years only, when the whole term was confirmed before, is repugnant and void; but the Confirmation ought to have been of the land for part of the term; to likewise might the devisee confirm part of the land for part of the term, &c. Vide infra 52.

Habendum. 17. In a Deed of other Conveyance of land, when the Habendum Co. ibid. 195, both either agree in substance with the Piemisses, or enlarge them, the Habendum is good, but when it abridgeth the Piemisses, it is repugnant and void. Vide Dyer 272. 30.

Repugnant covenant. 18. John de Marre made a Charter to John de Burford of Fee-Simple Co. ibid. 217, and the same day it was confirmed between them, that John de Burford b. 3, 11 E. 5, should hold the same Tenements for eight years, and if Jo. de Marre did not pay to Jo. de Burford one hundred marks at the end of the term, then the Land should remain to Jo. de Burford and his heirs: In this case, the subsequent Covenant was repugnant and void; for first, the Charter of the Fee-Simple was absolute, and the Covenant being made after the Charter, could neither alter the absolute Charter, nor upon a Condition precedent give him a Fee-Simple, that had a Fee-Simple before.

A saving Repugnance. 19. I. S. being seized of certaine Land in Fee, the same Land is given Co. l. 1. 47. 5. by Act of Parliament to the King in Fee, saving the Estates, Rights, in Alton woods &c. of all persons. In this case, the Estate of I. S. (the owner of the land) is not saved, for that would be repugnant, and make the expresse gift void, and vaine.

Act of Parliament repugnant. 20. It appears in our Books, that a saving in an Act of Parliament Co. l. 1. 47. 14, which is repugnant to the body of the Act is void, as in Plowden's Alton Woods Commentaries fol. 563. b. where the supposed Attainer of the Duke of Yorke. Norfolk was by Act of Parliament in primo Maria declared to be void and null, ab initio, saving the Estates and Leases made by E. 6. This saving was void, for when the Attainer was declared to be void, the saving was against the body of the Act, and therefore repugnant and void.

The like. 21. It is enacted by the Statute of 21 H. 8. cap. 13, that all Houses of Religion, and their Possessions then or afterwards to be dissolved Hall Co. ibid. 6. 34, be the Kings in the same estate and condition, as they were at the time of the making of the said Act, saving to all Strangers their Interests, &c. After the said Act the Abbot of Ramsey grants the next abovance of a Church of his Patronage, and after the Abbey is dissolved, and it was adjudged (Mich. 6. & 7. Eliz. Dyer 231.) that the Grant was void, and the saving repugnant to the body of the Act, for if the Abbotson were in the King in the same estate and condition, as it was at the time of the making of the Act, then a Grant made after cannot be saved.

The like. 22. If land escheat to the King by Forefeiture of Execlion, and after Co. ibid. this Land is given to another by Act of Parliament, saving to all others b. 3. Dodec. their Rents, Services, &c. This saving is repugnant and void, for they were extant by the Forefeiture 14 Eliz. Dyer 313.

The like. 23. By the Statute of 1 E. 6. of Chanteries, all Services, Rents, Co. ibid. &c. are saved, yet this saving as to Services is repugnant and void, for as the King cannot hold of any, as it is held 14 Eliz. Dyer 313. a.

The like. 24. In the case of Alton Woods, the Hannow of Abboteley being Co. ibid. &c. expressly given to the King, by the Statute of 28 H. 8. the general for 51 b. 1, the King cannot extend to save the estate, &c. of him, that was seised of the Land, for that would be repugnant to the body of the Act, and would make the Act vaine and idle.
The Reason of

C. Covenants to Land fallen to his own use for life, the Remainder to R. in tail, the Remainder to A. in tail, &c. When this Condition is repugnant, if any of these shall resolve to bar the latter estate, then his estate shall cease, as if it were naturally void, and be to the next Remainder: Here, this Proviso is repugnant and against Law, for an estate tail cannot cease by the only death of the Remain, in tail, but by his death without issue, and death natural or civil is requisite to every Descent, Reversion, as Remainder upon the determination of an estate tail. Vide pl. ibid.

26. An 8 Ass. Pl. 33. A man gives Land to Mary and John as joint tenants, and hereditibus de corporibus earum legiem cognoscit (whereby they had a joint estate for life, and General Hertidences) and the Province (intending that neither of them should break the Jointure, but that the survivors should have all, per jus accretendi) added this clause, Sub hac forma quad illa qua illarum diversum finem tertium seram illam integram; however, as much as he intended contrary to Law, if the Jointure were fettered by Fine due, the surviving shall not have the part to be therof by the said clause, which he had infused of his own conceit and imagination repugnant to Law and reason.

27. In Pleasontone's case in 6 R. 2. (which see tit. Quid juris clausae). A man makes a Lease upon Condition, that if the Lessee grants the Reversion, that then the Lease shall have fee: In this case, if the Land is granted the Reversion by Fine, the Lessee shall have fee, for the Condition is repugnant and void. Vide Pl. Com. 94. 2. 4. Colbridge and Berwick.

28. When an use is raised in consideration of Father's love, &c. (which see tit. Proviso) b. i. Middlesex a Proviso to make Leaves, the Proviso is repugnant and void; because when the Judicature is once sealed and delivered, his power of making Leaves is taken away: it is otherwise where uses are raised upon a Fine, Recovery, or Settlement, so there needs no consideration.

29. In Baldwyn's case in 2 Rep. these Resolutions were agreed for Law: 1. As to things which take their essence and effect by the Delivery of the Deed without other ceremony, and which lie in Grant, when there is variance between the Premisses and the Habendum; In such case, the estate which is passed by the delivery of the Deed, and is most advantageous to the Grantee shall stand, and the other shall be void for the repugnancy; So if a man grants rent on Condition, &c. out of his Land by the Premisses of the Deed to a man and his Heirs, Habendum to the Grantee for years of life: in this case, the Habendum is repugnant, for he passed in the Premisses by the delivery of the Deed, and therefore the Habendum for years of life is repugnant and void. 2. If a man by Deed grant a Rent in esse, as a seignory in the Premisses to one and his Heirs, Habendum to the Grantee for years of life, about another thing as ceremony is requisite (viz. Attornment) between the delivery of the Deed, yet in as much as the thing lies in Grant, and both the estates, viz. as well the estate in esse, as the estate for years of life, ought to have one and the same ceremony (viz. Attornment) to pass it; so that cause (in such case) the Habendum is also repugnant and void. 3. When a man gives in fee by the Premisses, Habendum to the Lessee for life; in this case the Habendum is repugnant and void, for one and the same ceremony (viz. Liberty) is requisite to both the estates, and therefore when Liberty is made according to the same and effect of the Deed, it shall be taken most forcibly against the Feoffor, and most for the advantage of the Feoffee, and the Habendum (in such case) is repugnant and void, and until Liberty the Feoffee hath but an estate at will. 4. When to an estate limited by the Premisses a ceremony
mony is requisite to the perfection of the Estate, and to the Estate limited by the Habendum nothing is requisite to the perfection and essence thereof, but only the delivery of the Deed, there albeit the Habendum be of a lease Estate, then is it mentioned in the premises, yet the Habendum shall stand, and the premises are repugnant and void, as it fell out in the principal case in Baldwin's case; so A. covenants, grants, and lets to farm to B. and C. and to the heirs of C. to take for ninety nine years, &c. here the Estate for yeares limited by the Habendum took effect by the delivery of the Deed, whereas the Estate mentioned in the premises could not take effect without Liberty, and so that cause was adjudged repugnant and void.

30. Where a Wound was given the fourth of August, and the party nght the nineteenth of December after; An Indictment against A. and B. as Abettors to the Felony, was had in these words, Et pred. A. & B. tempore felonia & mordrum pred. &c. viz. 4: Aug. &c. Felonia furunt pretentes, &c. ad felonenam & mordrum præd. in forma præd. faciendo: And this Indictment as to A. and & the Abettors, was adjudged insufficient for the Repugnancy, because no Felony was committed until the death of the party, and none shall be adjudged a Felon by relation, which is but a Fiction in Law.

31. In an Appeal of Parker, the Wound was laid in the Count to be given at Westwood, and the death to be at Westborne, and then he concludes, Et sic præd. L.O. spud Westwood præd. modo in forma præd. the said A. H. Felonia, &c. Mordravit. And it was resolved, that the Count was repugnant and insufficient, so it cannot be said that he murdered him at the place where the wound was given, but where the party he'd. The like is adjudged in Wrottes case, Col. 1:42. 4.

32. As precedent leaves for twenty yeares, the Deane and Chap. eter (being the Patron) confirms, dimissionem præd. in the Forme of a Feoffment, for one and fifty yeares, and further, this confirms the entire Comitement; so after the Comitement is confirmed, one and fifty yeares are repugnant and void: It has been otherwise if they had elected the Leave for twenty yeares, and then confirmed the Land for one and fifty yeares. vide supra, 16.

33. It hath beene layd, if a man make a gift in Taille upon Condition that he shall not make Feoffment, this is a good Condition, but if the Condition be, that he shall not make a Charter of Feoffment, this is not good, for this without Liberty (as Listerin faith, so. 15) amounts but to a Tenancy at Will, which Tenant in Taille cannot be restrained to do: So if a man make a gift in Taille, upon Condition that he shall not make a Leave for his owne life, this is void and repugnant, so when a man makes a gift in Taille (which is an Estate of Inheritance, and by possibility may continue for ever) and thereby makes the Donee the Principal owner of the land, he cannot restrain him from doing any lawful Act, or making any Estate, which is no wrong to any, and which by the Law he may lawfully do as make: Howbeit, if a man make a Lease for Life of Yeares, with Condition that he shall not alienate as deme, this is good, because the Lessor hath the Redress, whereby he hath power to restrain the Lessee; so if a man deme a Copy-hold Pannone for Life of Yeare, with Condition, that he shall make no voluntary Gift of any Copy-hold Lands, according to the Custom of the Pannone, this is good: but if a man grant in tail a Copy-hold Pannone, with such a Condition, the Condition is void for the repugnancy.
The Reason of

34. It was an exception, that the custom of the County of S. was, that every Inhabitant within it had also, etc. to have Common (by reason of Commonamory) within the place in the County of T., which was another County, and it was adjourned insufficient for the requisition.

35. A deed of blank Acre in S., and possession of blank Acre for years, grants a Rent-charge to B. for life out of both of them. A. assigns and above in blank Acre, concluding that it was feigned in blank, etc. he was held in dominium suo de libertate tenemento pro remissione etc. and the A. being was adjourned insufficient and repentant, because he could not have a Franc-requies out of a term or so. 

36. When an Act of Parliament is against common right and reason, as repugnant or impossible to be performed, the common law shall prevail and annul such an Act, as the Statute of West. 2, cap. 21, gives a Wilt of Caslicr heredi etnent in super hereditum, & super sae, quibus alinum vivus injustificato inveminentem, and yet it is adjourned in 33 E. 3, Tit. Caslicr 42. that the heire Romdo not have a Caslicr: The case was this, there were then differences between Lords, and Tenant by Deed and certain A and B, the one occupier hath right and deed, in this case the Amt and the Tenant shall not join in a Caslicr, because the heire cannot have it for the Celler in the time of their Ancestor, in regard the arraignment do not belong to the, etc. (See F. N. B. 109. E. & P. Com. 110.) it lies in a Caslicr the Tenant before judgment may render the arraignment and damages, and can not be done, when for an heire brings a Caslicr for the Celler in the time of his Ancestor, because the arraignment was therefore not belong to him, as supposed.

37. Where there is a Parish over and correction in any a Preston is payable on to sell tenements in private houses or other places out of the open Parish is repugnant and void, because the seller may use the sale and is not liable to be searched, Qui male agent odic locum. The pretext in as pecus leviora sunt, Sec 11 H. 6. 19. The Price of Dogables cafe.

38. When a man hath lawful evidence to proy by prescription time out of mind, another Cusums which is also time out of mind, cannot take it away, because that were repugnant, the one being as ancient as the other; as if a man hath a way it the Land of A. to his Frank-reques by Prescription time out of mind, Sec. A cannot allege Prescriptive of Cusums to stop the way way.

39. In Debt against an Administrator, the pleas in War, Quod ipa ple seple administrativ coming bona, & quae furent, & quae idem etc. habet non., & quae fuerunt, & nec habebit die impertinentes hirum, & prater bona & caralla ad valentiam, of the Kings debts, and of several Recognizances, by which plea the countessly, that the had insufficient in her hands to satisfy the debt, and Recognizances, and then the pleas further. Quod ipsa nulla alia, five plures habet bona, & quae fuerunt, & prater quam & caralla, & caralla, qua non sufficient ad satisfiendum Pecie perila debitas: Which is clearly and Ex diametro repentant that the had control before; and thereupon the land Bar was adjourned insufficient.

40. A Feme brings a suit in vi, quod clamor tenere ad viam, and maintains it in her Count by a gift of Special Tat to her and her Husband, and that her Husband is dead within five, and the Writ abated for the contrary of the take, in the War the named her false, but a bare Tenant for life, whereas in her Count it appeared, that the had such an Estate for life, which had greater privileges incident unto it, then a bare Estate for life hath, Vide 18 E. 3. 37.

F. N. B. 21. b. 41. In a Wilt of Error upon a Judgement given in the Common Benth.
The like.

43. If a Lease for life be made upon Condition, that if a Stranger pay to the Lessee twenty pounds, that then after the death of the Tenant by life, it shall remain to the Stranger, this is a good Remnant, but if a Lease for life be made to Barn and Feme, and it is appointed by the said Lease, that if A. their eldest Son, by living the Barn and Feme, that then it shall remain to B. their second Son for life, this is also a good Remnant; so in these cases there is no contrariety, but in the first the Stranger shall have it expressly after the death of Tenant for life, and in the other it is indorsable that B. shall have the Remnant after the death of Barn and Feme: But if a Lease for life be made upon Condition, that if a Stranger pay to the Lessee twenty pounds, that then immediately the landlord shall remain to the same stranger, this Remnant is void for the contrariety, because the Tenant for life ought not to have it during his life, during which time the stranger cannot have it.

44. C makes B. and a Feme his Executors; provided that B. shall not administer his Goods. This Proviso is void for the repugnancy, for when C. had made them his Executors, the several powers limited to them afterwards are void, because when the intent of a man, who makes a Settlement, agrees not with the Law, his intent shall be taken as void, as if a man devise to F. in fee, and it he be without heir, that M. shall have the Land, this devise is void for the repugnancy as to M. for one fee-simple cannot be pern upon another Fee-simple, by the Law.

45. The Custome of London is, that a man may devise his Purchases Dyer 33. 12. Land in Postmaine, and a Purchase; devised by his Will, that the Pr. 28. 29 H. B. and Coven of Saint Bartholomew, and their Survellors should have the Land, its good reddent annuatim Decano & Capitulo Sancti Pauli 16. Mar. But if they failed of payment, that their estate should cease, and that then the said Dean and Chapter should have it, and for the Condition broken those of Pauls entered; and it seemed clear to Baldwin and Fich, that the Condition was viole, for no estate could remain after the Fee-simple given away, because the Fronck had determined his Interest and Right, and then a stranger could not enter for the Condition broken, but the heirs ought to do it.

46. In debt against the Sheriffs of London, for an escape of a Wife Dyer 66. 12. longer out of Ludgate, they plead, that those years before Serveis and Curries their Prerogatives lettered the same Prisoner to escape to Lambeth in Surrey, he being then in their Guard in Ludgate Gate London, which is impossible; for the former Sheriffs could not let them go at large, when he was imprisoned and in their custody at the time of the escape, and then the escape ought to have been supposed in London, where the Prisoner was; for which repugnancy and other errors the Prize was adjudged void.

47. An
The Reason of

An Indictment of Purser was adjourned intestitute, for that Indict.

the place of the affianct was set down, and not the place of the Purser, and
these words, ad locum & ibidem, inserted in the Indictment, in case the
Affiant and Purser were not at one and the same place; And this was for
the uncertainty, because the Affiant and the Purser are of differing
natures, and might be done at several places.

A Leave is made for years upon Condition, that if the Leas.

grant the Reversion, the Leases shall have fee, the Leases letters a Fine,
the Converse brings a Qua juris claim, the Cawraw claims fee, this is a
Frozeiture, because the Condition was repugnant: And note the
Judgement there, that the terms shall be fastset, the Court might en-
ter, and the Fine shall be engrossed. Vide Plowd. Sanders against Free-
man, and Pleffontus case, 6 R. 2.

Baron and Pem being Terms of the three Conyes in Fleet.

Lease, the Baron leased part of the terms by these words, the Trustees
called the three Conyes with all the Chambers, Sellars, and Shops, ex-
cept to the Baron the Shops, ad proprium opus quas, the Fees en-
teres into the Shops, and then bring Ejection time, and per Gzarn
the exception is but temporary to the Baron himselfe, there being no
mention of Executions of Assignes, and all the exception is for the
Shops, because repugnant to the demise of the Shops.

If a common person grant the Patron of P except the Courts
and perquisites, the exception is for the repugnancy, and the Grants
fee shall keep Courts and have the perquisites, notwithstanding such
exception: Howsoever, it is otherwise in the Kngs case. Vide Max. 8 a.
103.

If an Under-Sheriff covenant with his High-Sheriff, that he
will not execute any Writ of execution for any debt above twenty pounds
without special Warrant from the High-Sheriff; This Covenant is
void for the repugnancy; for albeit he may cause not to make an Under-
Sheriff at all, he may make him at his will, and remove him also if he
pleases, yet he cannot leave him an Under-Sheriff, and yet abridge his
power, no more then the King may, in case of the Sherifl him selfe. Vi.
65. 25.

An Office was found, that A. being seised of the Patron of D. in Off.
fee, entailed B. in fee, to the use of himselfe for life, the Remainder to C.
in fee, and that A. being seised of the Premises, upon thereof to seised ;
And this Office was ajuaned void for the repugnancy.

168. It will not drive a man to justify or shew that,
which he goeth about to defeat, or which
makes against him.

The Parquette of Winchester grants the Captainship of a Fast,
and for the exercising of that Office, and for having a Gunner, and the
Soldiers, he grants him an Annuity of two and thirty pounds yearly,
upon Suit for this Annuity exception was taken to the Court, for that
the Plaintiff had not therein abjured his exercising of the Office :
but the exception was over-ruled by the Court; because in all cases
when an Interest of Estate commences upon a Condition precedent,
be the Condition of Act to be performed by the Plaintiff as
Defendant, or any other, and be the Condition in the affirmative as
negative, there the Plaintiff ought to shew it in his Court, and to a-
ver the performance thereof, for then the Interest of Estate commences
in him by the performance of the Condition, and is not in him until the
Condition be performed; but it is otherwise when the Interest of Estate
passed presently and bells in the minutes, and is to be defeated by matter, ex post facto, or Condition subsequent, be the Condition as to be performed by the Plaintiff or Defendant, or any other, and be the Condition in the affirmative or negative; In such case the Plaintiff may count generally without showing the performance thereof, and it shall be pleaded by him that will take advantage of the Condition as matter, ex post facto, so every one ought to allege that, which makes for him, and which is for his advantage, and no man shall be forced to allege that, which makes against him. Vide plus ibidem.

3. If I grant to one, that when he shall be promoted to a benefice, Pl. Com. 128., that then he shall have an Annuity; In this case, if he demand the Annuity, he ought first to shew that he is promoted to a Benefice; but if an Annuity be granted to one, until he be promoted to a Benefice, in such case he shall have a Wit of Annuity, and shall not shew that he is yet promoted, because the Annuity proceeds, and the promotion is subsequent, and goes in defeasance of the annuity, and therefore ought to be shewn on the contrary part, and not by the Plaintiff, because it makes against him. Vide 15 H. 7. fol. 1. Br. Annuity 22. & Cases 43. & Co. 1. 7.

3. In Colh. and Beverhams case, Pl. Com. The Grange was to remain Pl. Com. ibid. to Peter Beverhams for life, Si vellet inhabitare, &c. durante termino, which 36. 6. 7. 30. a. was the whole Loms, and immediately after the death of Henry and Eliz., and therefore it was allowed, that he should have showed in his bar the time of his entry, and his abode thereupon; but it was resolved, that the bar was good notwithstanding that exception, because by common intendment it shall be taken, that his entry was immemorial after the Remainder fell, and if it were not so, the Plaintiff ought to have showed it, and not the Defendant in his Bar, because it made against him, being in defeasance of his Estate, &c.

4. If I grant to one, that when he shall so such an Act, that then he shall have a Rent charge out of my Land, in this case, he shall not admit to the a. of Beverhams that is, unless he first shew the performance of the Condition, therefore it can not be shewn by him to the Kent; but if I grant to one out of my Land a Rent charge, upon Condition, that he shall be such a thing, here he shall admit for the rent without shewing the thing to be done, for the Condition is subsequent and goes in defeasance of the Estate, which he that would have the Estate to continue ought not to shew, because it makes against him.

2. A Copy-hold Leas in living on a Fine upon attainder, now not Ho. 1. 31. for a Fine upon the Copy-hold was reasonable, because Dennis and that might perhaps make against him, if it should be allowed by the Court unreasonable; but the unreasonable ness of the Fine ought to be pleaded on the Copyholders part.

169. Non potest addisci exceptione ejusdem rei, eujus petitor diffusio.

1. If Tenant in tail of Lambs make a gift in tail, or a Lease for life, Co. 1. & a. part remitting a rent, and yet, and the other having a Formedon in the 1. b. 2. Defender, in this case, the Keeper and Kent shall not bar the Defendant, because by his Formedon he is to defeate the Keeper and Kent. Eer non potest adduci, &c.

2. If the Tenant disclaim, he shall not have a Wit of Error against his Disclaim, because by his Disclaim he hath barred himselfe of his a. in Beversh right in the Land; for the words of the Disclaim of the Tenant are, cafe. Nihil habet nec habere clamat in illa terra, nec die imperatricis brevis originalis, &c. habuit five clamavir, sed aliquid in illa terrae habere devo- ran & disclaim; And against this he cannot have a Wit of Error.
The Reason of

None shall take exception to an Error or Act, which operateth to his own advantage.

1. C. and F. Augent-tenants serf life, and to the heires of the body of C. Collateral
entermanny, and have Alice E. who after the death of C. billiseth F. and
Warranty, (offers a common Recovery. F. releasted to the recoverya with War-
ranty and vyes, also E. vyes without Alice, and R. as heire male of the
body of C. bring his Formedon in Descender, and here the question
was, whether 22 to the collateral Warranty of F. vis bar the Deman-
don, as that the heire in tail might have the Land by force of the Statute
of 11 H. 7. 20 which gives Entry to the next Heire upon Discontina-
ce, &c. of the Inheritance of the Husband by the Feme; But it was
resolved, that this case was out of the intention of the said Act, because
the intention of that Act was to restraine such women to make Disconta-
uncie, Warranty, or Recovery in bar, or prejudice of the heire in
tail, 22 of them in Remaner, &c. but when the heir in tail himself con-
days, as assures the Land to others, the releaste or confirmation of the Feme
with Warranty is but to make perfect and corrobate the Estate, which
the heire in tail hath made, and therefore such Warranty is not restrains-
ed by the said Act; nor shall it be intended for the benefit of the heire
in tail, and not to their prejudice: And this is also the reason, why a com-
mon Recovery in respect of the intened recompence was not restrains-
ed by the Statute of W. e.

2. For the reverfall of a Judgement a man shall not assign for Error a
rash, that which maketh for his advantage, as to alwaste that he was Erro-
retned, where he ought not to have been exloued, as that he had a longer
day then the common day, or that he had his grant of him; where it was
not grantable, as the like. Vide 7 E. 3. 25. pet Herie, £ 51. 2. 11 H. 4. &

F. N. B. 23. d.

3. M. bring a Witt of Annuity against B. and they being at Misc. Insuffici-
ent, the Jury found for the Plaintiff, and also the arrearges, but did not Vered.
affe a damages 2 costs; whereas the verdict was imperfect, neither
could it be supplied by a Writ to inquiere the damages; Howbeit,
afterwards the Plaintiff releasted his damages and costs, and thereupon
had Judgement: Whereupon the Defendant bring a Witt of Error, and
assigns for Error, the insufficiency of the verdict, but the Judgment
was affirmed, because the Plaintiffs releaste of the damages and costs
was for the Defendants benefit and advantage, and therefore ought not
to him to be exloued against. Vide 22 Eliz. Dyer 369, 70. But here in a
Witt of Ejectione Custodie terrs & heredis, the Jurors assest damages
entirely, which was insufficient, so it lyeth not for the heire, yet the
Plaintiff releasted his damages and had Judgment for the Land; there-
that, that insufficient Assestment of damages and no Assestment is all
one.

F. N. B. 23. d.

4. It is not Error to suffer one to make an Attorney in an Action, in Atterne-
y, which he ought not to make an Attorney, because that is for his advan-
tage.

171. Proo
171 Nemo tenetur armsre adversariorum suum contrase.

1 He that challengeth a Juro for the hundred, or for Coinage, must assure in what hundred he hath no land, and how he is of him, and v. 157, a. 3. shall not dispute the other party to show it.

2 The Plaintiff in a Replevin pleaseth in bar of an Abatement for damage entail, that he hath common of pasture by custom in the place, where, &c. belonging to his Coppholder, which custom was transferred, and it was found that he had such Common there, but withall that every Coppholder had used to pay time out of mind, &c. pro peremptor communis unam Gallinam, & quinquies annationem: and it was unjudged, that upon this basis the Plaintiff should have Judgement, albeit he omitted in his bar the yearly payment of the Hen and the eggs; And the reason was, because the Plaintiff was not bound to them more than what made for him, and tended to his advantage.

172 It favoureth Diligence; And therefore hateth Folly and Negligence.

1 Waste may be done in houses by sufferings them (by negligence) to be uncovered, whereby the spars, rafters, planchers, or other timber of the house become rotten; So likewise if he suffer a wall of the sea to be in decay, so as by the flowing and resting of the sea the Shewdow or Saltly adjacent is surrounded, whereby the fame becomes unprofitable; Also the burning of an house by negligence or mishap is waste.

2 A prohibition of waste did lie at the Common law against tenant by the Curtesy, tenant in Dover, and a Guardian in Chivalry, because they were in by the Law; but not against tenant for life 02 years, because they come in by the Act of the lease; himself; and therefore it is imputed to his own folly and negligence, if upon granting the term, he make not sufficient provision against committing of waste, fo3 in that case the Law did not aid him. Vide Co. 1. 4. 62. b. 3. in Herliskenden cafe, & Co. l. 5. 13. b. 3. in the Counts of Salope cafe.

3 If Guardian in socage marry the heir under 14 years of age without a convenient fortune, he is compellable to make it good upon his account; fo3 it will be imputed to his own folly, that he married him without provision of a convenient portion answerable to his estate.

4 If goods be delivered to one as a gage or pledge, and be afterwards sold from him, yet he shall be discharged of them, because

5 In real actions where Voucher lieth, if the Sheriff return that the Wouche is summone[s], and he make default, then a Magnum Cape ad valentiam is awarded, when he make default again, then Judgement is to be given against the tenant; And if the bower be appear, and after make default, then a Parvum Cape ad valentiam is awarded, and if he thereupon make default again, then Judgment is to be given, as before.

6 If a Hellein purchase land, and alien the land to another before
the Lord enter; In that case, the Lord cannot enter, for it shall be adjudged his folly, that he entered not, when the land was in the Willem's hand; So it is likewise, if a free man hath issue, and afterwards by confession becomes bond, and purchase lands in fee, and before the Lord enter, he died seized, and the land defends to his issue, which is free, in this case also the Lord shall not enter: The like Law is, if the land so purchased by the Willem escheats to the Lord of the fee before any entry made by the Lord of the Willem; as if the Willem dyed without heir, or be childless or outlawed for felony; or if a recovery be had against the Willem in a Civil suit, or the like, in all such cases, it will be impeded to the folly of the Lord of the Willem, that he entered not in time, when he might; Also if a Willem be dissuaded before the Lord both enter, the Lord may enter into the land in the name of the Willem, and thereby gain the Inheritance of the land; but if there be a delictum factum, so as the entry of the Willem is taken away, then the Willem must reconstrue the estate of the land by judgment and execution, before the Lord of the Willem can enter: So if the Willem purchase lands in tail and alien before the Lord enter, the Lords entry is taken away causa supra; but if the Willem dyed, and his issue recover the land entailed in a Formacion, then the Lord may enter: The like law is also of Seigniories, Abдовiforms, Executions, Remainders, Rents, Commons certain, and such like certain Inheritances: And all the reasons of these cases is, because the Lord's folly and negligence) because the Lord before his entry hath no interest, but only a bare possibility; Howbeit it is otherwise in the Kings case after office found, because nullum tempus occurri Regi.

7 If a Willem purchase goods or chattels, and sell or give them a way before the Lord sold them, his title to the goods is gone, yet the Law imputeth it to his folly and negligence, as before of lands, se. for a base claim of the goods of the Willem is not sufficient in Law, but he must sell some part in the name of all the residue, so that the goods be within the view of the Lord, so the claim and view amount to a leisure, as the claim of a Ward (being present) by word is a sufficient leisure, albeit the Guardian layeth no hands of him: And here under the name of goods and chattels are comprehended not only personal goods, as an Horse, a Cow, Houses, &c., and the like; but also chattels real, as Warships, Leases for years, Interests by Statute: Exple, Statute merchant, Regio, or the like; and the gifts of sequestration do not only extend to gifts in deed, but likewise to gifts in Law; And therefore if a Willem hath goods and taketh Baron, upon this gift in Law by force of the marriage, the land is barren; So likewise if a Willem having goods make his executors and devise, by this gift in Law the Lord is barred for his folly and negligence.

8 In an action where a Protection lyeth, if after it is allowed the party tariffs in the Country without going to the service (so which he was relieved) above a convenient time after the Protection had, or otherwise withdraw himself from the service, upon Information thereof to the Lord Chancelor, he shall repeal the Protection in that case, by an Innotelsima. See the Statute of 13 R. 2, 4.

9 If lands be given to a man in tail, who hath as much free simple lands, and hath two or more two daughters, and dipes, and the daughters make partition, and the fee simple lands are assigned to the youngest daughter for her party, and the entailed lands to the elder, and the young daughter alienates the fee simple lands, and having liske dies; In this case the issue of the youngest daughter may enter into the moiety of the entailed lands notwithstanding such partition, for it will be imputed to the folly of the eldest daughter, that the agreed to such a Partition,

The Reason of of

Max. 171

Co. ibid. 118.

2. 4 & b. 3.

Litil. § 177.

Co. ibid. 131.

a. 4.

Litil. § 161.

Co. ibid. 173.

a. 4.

Vil. 183.

The Lord's feeless of Goods.

Proc. 46.

Part. 9.
Partition, whereas he might have had upon the Partition the dispose-
ty of the one and also of the other; because in a will of Partition she
was not compellable to take the whole estate in taml, but might have
challenges moities in each, as aforesaid, and that ex provisione legis:
But when the will not submit her self to the policy and provision of
Law, but betake her self to her own policy and provision, there the
Law will not aby her; So likewise if a man be seised of these Vamnos
in several equal value, and takeeth wife, and chargeth one of the Vamnos
with a rent-charge, and dieth, the wise may by the provision of the Law
take a third part of all the Vamnos, and hold them discharged, but if the
will (in folly) accept the entire Vamnos charged, the hall hold it char-
ged with the rent.

10. If the mortgagee tender the money at the day to the mortga-
ges, and the mortgagee refuse it, and the mortgagee thereupon enter,
the mortgage is without remedy at the Common Law, for it will be
imputed to his folly, that be refused it, and lawfull tender thereof
was made unto him. Vide Max. 50. case 24.

11. If there be a backard estate and mulier pains, and after the
father’s death the backard enter, and peacefully enjoys the land with-
out entry of the mulier all his life, and having title viex title; In
this case the mulier is barred for ever; for it is imputed to the folly
and negligence of the Mulier, that he entered not during the life of the
backard; and albeit the Mulier were under age, ‘tis covert baron at
the time of the descent cast, ‘tis that after the death of the backard the
Mulier entered before the heir of the backard, yet none of these cases
shall aid, help the mulier. Vide infra 35.

12. If a feme covert have title of entry into lands, and her husband
neglects to do it, and during his life a deed: it is cast, yet after her hus-
bands death the feme may enter not withstanding the descent; But if
a feme sole be seised of lands in fee and is disfessed, and then takeeth
husband, ‘tis this case, the dying seised of the disfessed shall take away
the entry of the wife after the death of her husband; because it will be
accounted folly in the feme, as well for that the fide not enter when
the feme was sole, as that afterwards she took an husband, who would not
enter before the descent cast: It is other wise, if the woman were
under age at her marriage, (‘tis then it will not be imputed to her fol-
ly, but her husbands) ‘tis if the land were entailed, and only discon-
cluded.

13. If a man be disfessed, and the disfessor his fellow within a year
and a day after the disfession made, whereby the tenants descend to
his heir; In this case the entry of the disfessor is taken away; ‘tis the
year and day shall not be taken from the time of his title of entry accrued,
but only from the time of the claim by him made; and therefore if
it will be accounted his folly, that he made not his entry immediately
after the disfession committed, which he ought to have done: However,
this in now holpen by the State of 32 H. s. cap. 35. for now by statute
If the disfessor was seised within five years after the disfession,
though there be no continual claim made, it shall not take away the
entry of the disfessor; but after the five years there must be such con-
tinual claim as was at the Common: Also that statute extends not to any foolish 02 Dances of the disfession, immediate 03 mediate,
but they remain still at the Common Law, ac they were before the
making of the said statute. Vide infra 35.

14. If tenant in tail seize on his heir apparent, the heir being of full
age at the time of the testament, and after the tenant in tail dies, this
is no remitter to the heir, because it was his folly, that he being of full
age would take such a testament; For albeit the heir apparent should
have

\[ \begin{align*}
|\text{Litt. § 335} | \text{Co. ibid. 207} \\
\text{Litt. § 399} | \text{Co. ibid. 244} \\
|\text{Litt. § 401} | \text{Co. ibid. 244} \\
|\text{Litt. § 401} | \text{Co. ibid. 244} \\
|\text{Litt. § 440} | \text{Co. ibid. 244} \\
|\text{Litt. § 664} | \text{Co. ibid. 350} \\
|\text{Litt. § 664} | \text{Co. ibid. 350} \\
|\text{Litt. § 664} | \text{Co. ibid. 350} \\
|\text{Litt. § 664} | \text{Co. ibid. 350} \\
|\text{Litt. § 664} | \text{Co. ibid. 350} \\
|\text{Litt. § 664} | \text{Co. ibid. 350} \\
|\text{Litt. § 664} | \text{Co. ibid. 350} \\
\end{align*} \]
The Reason of

have some ben eff there by in the life of his ancestor, yet was he by taking such a testament (besides his own) last for during his life to all charges and incumbrances made or suffered by his ancestor; howbeit, it is otherwise, if be were under age, in respect of his tender years and want of experience.

15 If tenant in tail hath issue two sons of full age, and he bequeaths the land to the eldest son for life, the remainder to the younger son also for life, and dies: In this case the eldest son is not remainder-man, being yet under age; In such case they might have entered upon the estate, because no issue of folep could be adjudged to them (being under age) that they did not enter in the life time of the tenant. But if the heir, remainder-man, be under age at the time of the alienation, and becoming of full age in the life of such tenant, did not enter, they were barred by such warranty, because it was imputed to their folep, that they being of full age entered not in the life time of the tenant in Dower for life.

16 At the Common Law before the Statute of the 11 H.7. 30. If tenant in Dower for life hath aliened the land with warranty, and the warranty had descended upon the heir, remainder-man, being yet under age; In such case they might have entered upon the estate, because no issue of folep could be adjudged to them (being under age) that they did not enter in the life time of the tenant. But if the heir, remainder-man, be under age at the time of the alienation, and becoming of full age in the life of such tenant, did not enter, they were barred by such warranty, because it was imputed to their folep, that they being of full age entered not in the life time of the tenant in Dower for life.

17 Where a lease is both in Law, yet if one ignorant of the Law taking upon him to know the Law, and meddling in a matter, that be hard nothing to do withall, will report and affirm openly, that such a lease is good, to the prejudice of another's title, that other may have an action upon the case against the reporter, and recover damages according to his prejudice, for in such case Ignorantia Juris non excusat.

18 By the Statute of 13 El. 7. distribution is to be made to all the creditors, rate and rate-like, viz. to such of them as are willing to come in as Creditors: but a creditor, that either obstinately refuseth, or carelessly neglects to come before the Commissioners, and pay the benefit of the Statute, shall not be admitted to have any share with the rest, for vigilantibus et non dormientibus Leges subvenient.

19 Seisin of one yearly service is not seisin of another yearly service, as if there be Lord and tenant by fealty, rent of 10s. and three week-days yearly, seisin of the rent is not seisin of the week-days, either is seisin of the rent, seisin of fate of Court, which is annual. Vide 16 El. Dyer 330. and the reason is, because it shall be imputed to the folep of the Lord, that he did not obtain seisin of that, which was yearly one unto him; and besides, it would be mischief to the tenant, for peradventure in antient time the week-days were discharged, which now cannot be obliged, whereupon might ensue lates and trouble.

20 If a man be robbed in his house in the day time or in the night, the damage, in which that house is situate, shall not be charged therefor; nor the words of the Statute of Winchester are general, without mentioning any place in special, yet such Robbery is not within the said Act, for divers reasons, among which this is one, viz. because the house of every one is his castle, which he ought to keep and defend at his peril; and therefore if any be robbed in his house, it shall be imputed to his own negligence and default.

21 By the Statute of 32 H.8. 42. Wiltonhouse by fire by the husband of the woman's lands, shall not bar her entry after his death, yet if she make not her entry within five years after her husband's death, the
the Common Law.

22 If there be Lord Seine, and tenant, and the Lord restrains the tenant for rent arrear, &c. In this case, the tenant ought to request the Seine to put his Cattel into the pound, and thereby release the tenants and if the Seine refuse so to do, or otherwise acquit not the tenant, by payment of the rent, &c. the tenant may have a Writ of Messe. But if the tenant will reply by the Cattel and have deliverance of them himself, and then the Lord abdou upon a Stranger, In this case the tenant is without remedy by his own default, so it will be accounted folly in the tenant, that he did not request the Seine to acquit him as above said.

23 A Prisoner cannot wage his law for meat and drink had of the Gavel, because the Gavel being enjoyed by Law to keep the prisoner in jaya & area cujusdie, is compellable to find him victuals: But if a Maintaller or an Innkeeper bring an action of debt for the victuals delivered to his Guest, the Guest may wage his Law, for the Maintailer or Innkeeper is not compellable to deliver his victuals to his Guest, until he be paid for them; and therefore it is folly to part with them, until he be paid money in hand for them.

24 If a tenant purchase an Abowston, and takes baron, and the Church is void, and the baron suffers an Annutation; in this case, F.N.B. 34. 5; the same, if he had presented before, is put to his want of right of Abowston, but if he had not presented before, she is without recovery; for it will be attributed to his folly, that the man such an husband, as would not present upon the abasance, but suffer an annutation. It is otherwise if the Abowston came to her by descent. Vide Max. 114.

25 If a man hath issue a Ballard, and deth, and the Ballard entered and deth settled, and the land descendeth to his issue; in this case the Collateral heir of the father is bound, as well as where the father hath two sons, Ballard eigne, and Spulier paine: So likewise if a man hath issue two daughters, the eldest being a Ballard, and they enter and hold the land peaceably as heirs, now the Law in favour of legitimation, both not to adjudge the whole possession in the Mulier (who then had the only right) but in both, so as if the Ballard hath issue and deth, her issue shall inherit; and in the same case if both daughters enter and make partition, this partition shall bind the Mulier for ever. Vide supra 11.

26 A bargainée of land for 600 l. by another Indenture covenants to make back to the bargainee and his heirs for assurance of the land, as the Counsel of the bargainee should settle within the year next ensuing, promised, that if the bendee made default in the assurance, if he then should not pay 500 l. to the bendee, that he would stand liable to the use of the bondee, the bondee; tenders no assurance, and the 500 l. is not paid. In this case, the bondee hath the right of the land; for it was the folly of the bondee, that he required not the Assurance. Win.

Negligentia semper habet infortuniurn Comitem.
after marriage, rescuing a rent, and for default of payment a re-entry:
In that case, the laches of the baron Hall defeats the wife for ever:
And so it is of an infant, his laches for non-performance of a condition
annexed to an estate, either made to his ancestor, or to himself,
shall have of the right of the land for ever: And therefore if a
man make a testament in fee to another referring a rent, and if he
pay not the rent within a month, that he shall double the rent, and the
testator, his heir within age, the infant pays not the rent, albeit
the infant at this day shall not by this laches forfeit anything; yet in
such case a term covert Hall; and the reason and cause of this diversity
is, for that the infant is provided for by the Statute of Merton cap.

5. Non current usura contra alaquum infra artem existit, &c. but
before that Statute he could not have avowed such a penalty; neither
yet both that Statute extend to a term covert, or to a condition of a re-
entry, which an infant ought to perform, because the break thereof
cannot be properly called usura.

2. If the father be distelfed, and make claim, and the distelfed dieth,
then the father also dieth; in this case, his heir may enter, because the
deficient was cast in his father's time, and the right of entry, which the
father gained by his claim, shall descend to his heir: But if the father
make continual claim and dieth, and the son make no continual claim,
and within the year and day after the claim made by the father the dis-
telfed dieth, this shall take away the entry of the son, for that the
deficient was cast in his time, and the claim made by the father shall
not abate him, that might have claimed himself; because no continual
claim can avoid a deficient, unless it be made by him, that hath title to
enter, and in whose life the being fellow was: The same like wise hol-
deth in all respects of the predecessor and successor: Also if tenant for
life make continual claim, this shall not give away benefit to him in the
remainder, unless the deficient also in the life of the tenant for life,
causa qua supra.

3. Upon Ballment of goods to keep, where there is a confidence put
in the Ballor, an action upon the case will lie for negligence, notwith-
standing the deficiency of them by the Ballors; as in 12 El. 4. 3. A
man delivers an horse to another to keep safely, the defendant equus
illuminavit neglegit, &c.avit, quod ob obitiuom bona custodiae inter-
stit, here an action upon the case is good for the breach of the trust repa-
ised in the Ballor: to like wise in 2 H. 7. 11. If my Worship, whom I
trust with my sheep, by negligence sufferers them to be drowned, or,
otherwise to perish, here also an action lies.

4. By the default and negligence of the owner of goods trusted in
not making fresh pursue after the felon and prosecuting him in an ap-
peal of the same felony, he shall lose his property in them, and the
King shall have them as goods trusted, and this course is obtained by
the Law to prevent felonies; so interest reipublicae maiestatis rema-
nant imponita, &c. and imputa semper ad deteriorem invitata: Also if the
owner be negligent, and omit any of the goods stolen from him out of
his appeal, the King shall likewise have the goods to omitted, because
perhaps by leaving them out the felon might have escape.

5. If a man upon an appeal; indictment of felony be to negligence,
that he comes not in, but terres the Exigent; in this case, albeit he be
afterwards (when he comes in) acquit of the felony, yet he shall for-
feit his goods to the King for such his default and negligence.

6. In 17 El. 3. 34. In debt upon an obligation of 20 l. judgment
was obtained before the Bailor of Newcastle, and execution had there-
upon, and because the obligation was not quitted (as it ought to have
been) the suit was then, being the Plaintiff had judgment in another
action
action upon the same obligation; And the defendant upon pleading the first judgment could not be relieved, because it was imputed to his negligence, that he did not prosecute the obligation to be cancelled upon the first Judgement. Vide 17 E. 3. 24.

7. Tenant by Copy in fee (where the custom is, that the lease both in thee Courts and proclamations made, shall be barred, if he claims not) dies, his heir being then beyond sea, and until the three Courts and proclamations be paid, but then returns and claims his right: In this case, he shall not be barred, no more than by non-claim upon a fine; but if he went beyond sea after the death of his ancestor, he shall be barred, because of his neglect to take admittance of his Copyhold before he went his journey.

8. If one be bound by prescription to keep a sea-bank in good repair, and by a sudden and unusual encroache of waters it is beaten down; in such case the Commissioners of Sewers, by the Statute of 23 H. 8. 5, may charge all other persons and their lands, that may receive any loss or damage thereby; but if any default or negligence be found in him that should to repair it, as that he hath not kept the banks so high nor so well in repair as they had been formerly to be kept; or that the danger was not to insurable but that he might well have prevented it, the Commissioners may charge him only with the repair thereof, and if by his negligence the danger became insurable, or he be not able to repair it, so as the charge is laid upon others, each person to charges may have an action upon the cove against him, that should to repair it, and recover damages according to their los.

9. In a Quare impedi, if the defendant's clerk was admitted and instituted at the time of the quit purchase, and the Plaintiff purchase the quit only against the Patron, not naming the Incumbent, albeit the Plaintiff recover, yet he shall not abate the defendant clerk, because he neglected to insert his name in the Quare impedi.

10. In a Quare impedi, if the Plaintiff's clerk being servant makes default to the distressed, and the Incumbent abate the quit by plea, yet there shall be no suit awarded to the Bishop for the Patron by reason of his default and negligence.

11. Upon a native habendo brought by the Lord, the Willen was a liberate probanda, E oblucat fe at the fourth day against the Lord, who did not appear but made default, upon which default the Willen was estranchit, and had a writ to the Sheriff, that the Sheriff should not suffer the Lord to be him afterwards; so if the Lord be non-suit after appearance, the Willen 03 Clerk shall be estranchit.

12. Upon an Audita querela sued, the plaintiff shall have a supercedes in the same writ to cause execution; but if he be non-suit, he may have a new Audite querela, but then he shall not have a supercedes to stay execution.

13. Non-suit in attaint after appearance is peremptory, and to like-wise is a Recusancy entred of Record, so as the plaintiff in attaint shall not being a new attaint afterwards.

14. At the day of the return of the Habeas corpus, 02 Distriegas, if the Inp and defendant appear, albeit the writ be not returned, yet if the Plaintiff make default he shall be non-suit, because the parties have day by the Roll. Quere, nam dominatur in Banco Regis.

15. The Queen grants the bord of the body of A. who dies at full age, no tender of Marriage being made by the grantees; In this case the land shall not be retained in Curia Wardorum, for it was his folly and negligence not to tender a Marriage.

16. In debt upon an obligation against the daughters and heirs of Hensingham entred into by their father, the Plaintiff recurred upon Nihil.
Nihil dicat, and hath general judgement: Afterwards upon the Scire facias to have execution, the defendants pleased none per demense for the day of the first writ purchased; since: Howbeit the opinion was, that after recovery by Nihil dict, non sunt informatis, no confession, the heir comes too late to plead none, &c. but he ought at first to plead on Zetw th: certainty, when, &c. And per Dyer, if the profits received after the death of the ancestor; until the writ purchased, were sufficient to satisfy the debt, then the plaintiff should have general judgement against the heir.

At an Allen born pray not medidatem linguæ before the Venire facias is awarded, he comes too late after, for non confit Curiae, that he is an Allen. Spinoles cafe.

174 Vigilantibus non Dormientibus Leges subveniunt.

1 At the Common Law upon every continuance 2d day given order, before judgement, the plaintiff might have been nonjudged, and therefore before the Statute of 2 H. 4. cap. 7. after writ given, if the Court gave a day to be advised, at that day the plaintiff was nonjudged, and might have been nonjudged, for vigilantibus non dormientibus, &c.

2 A. devised his land to B. till 800 l. be raised for the purchase of Dyer, his daughter, &c. the heir of A. conceals the will, enters, &c. diet: in this case B. shall have allowance for the time that the will was concealed, but albeit B. had not notice of the will, yet it a stranger had occupied the land, the devisee ought to take notice of the devise at his peril, for vigilantibus non dormientibus, &c. And in such case notice is bound to give him notice.

3 Where the defendant swears a deed to the Court, the plaintiff may pray the same Term, that it may be entered in his verba, and so he may demurr, or take issue at his pleasure; but if he neglect to pray it that term, he shall never have it to enter afterwards.

4 In a Quare impedit if the plaintiff be nonjudged after appearance, 2d. quare impetit, &c. and the defendant becomes Acos, and shall immediately have a writ to the Bishop, &c.

5 At the Common Law before the Statute of Westm. 2. cap. 4. if any had suffered a recovery in any real action by default (if he were lawfully summoned, and there were no error in the proceeding; he could not have (the case of an Infant only excepted) any remedy, but by writ of right; and therefore the writ of Quod ei deofore loss by that Statute given to tenant in tail, by the Curtesy, in Dowry, and for life, after recovery had against them by default.

6 In a writ of Error, when the record is come into the Court, if the plaintiff all that Term do not assign his errors, and albeit he then assigns the errors, yet if he do not then also sue out a Scire facias ad audientiam erros against the defendant returnable the same term of the next term following, all the matter is discontinued.

7 An Infant at full age brings an Audita quærela in Chancery to avoid a recognisance in the nature of a Statute Staple by him made within age, but because his age was to be tried by the inspection of the Court, it was adjudged, that it did not lie: so also it had been, if he had died within age; for in such case he should have brought the Audita quærela before his full age.

8 A Quare impeditus made against the Archbishop of Canterbury, the Bishop of Lincoln, and the Incumbent, who made default to the great distress, whereupon the plaintiff made title, that he might have a writ to
the Common Law.

to the Bishop, and a writ was assigned to enquire de damnis, de pleni-tudine, ad causas praesentationem, quantum temporis elapsus & vacatio-ne, et quantum Ecclesis vult per annum, all which points were returned
by inquisition, and accordingly Judgement was given, that the
plaintiff should recover the praesentment, and should have a writ to the
Bishop of Lincoln, and damages to the value of the Church by half a
year, and the defendants in miliicioria.

If a writ of Error be delivered to the Chief Justice of the C. B. of
the Clerk of the Great Seal there, this is a Superficial in Law, and a
stop to award execution; Howbeit, if the plaintiff do not create the
removal of the record before the return of the writ of Error, the Justices
may then award execution. Vide 6 H. 7. 16.

175 It favoureth speeding of mens Causes;
And therefore

1. In an ancient time, when Noblemen and others purchased by Let-
ters Patents from the King protections, either Profession, or Mor-
ture, to go or remain beyond the Grecian sea, or elsewhere, they were
also by other Letters Patents to purchase licence to make their gen-
eral Attorneys in all Courts, as no actions or suits should be thereby
delayed, which Britton commends to be bien et fageinent fair, fol.
282.

2. In an Assise of Novel disseisin a Protection is not allowable, no-
yet in a Certificate upon an Assise, because an Assise is iidemum re-
medium to refuse the disseisin to his freehold, whereas he is in jural-
ly and without Judgement disseised: And therefore in this action the
defendant shall not be entitled, no pay in aid but only of the King,
no bond to a Stranger, no any part to the writ, unless he will immedi-
ately enter into the warrant; there is the same Law also of receipt,
neither shall the Paroll Pay for the non-age either of the plaintiff or
defendant, and in many other respects an Assise is remedium maximae
sefianum.

3. In Doover, if in appeal brought by the sonne of the death of her
husband, if in an Assise brought by a female, which was the wife of B.
if the tenant or defendant plead, that the baron is in falsidike, the tryal
thereof shall not be by the Jury, but by the Justices upon examination
made before them, and that course is taken for the greater expedi-
tion.

4. If the tenant in a real action touch A, as heir within age, if
the tenant for his life be impeaded and pay in aid of A in reversion with-
in age, and pay also, that the Paroll may demur, &c. In both these
cases, if the defendant reply, that he is in full age, this shall not be
tried by the Country for the great delay of the defendant, but a writ
of Venire facias shall issue to the Sheriff to bring A, before the Justices
to be inspected by them, whether he be of age, or no.

5. Of all actions an Assise is most favoured in Law, because it
gives the most speedy remedy, and thereupon the Statute of Westm.
cap. 25. tithofit, & quis non est aliquod breve in Cancelleria per
quod querences habent tam fessimum remedium sicur per breve novae
fissellae, &c. And as the Law favours an Assise, to likewise it favours
all such things, as may speed and expedite it, and abhors any thing,
that may hinder or return it; And therefore upon a bare wrinkle, that
the Sheriff is alised to either party, the writ shall be first directed to
the Constables, and this shall be no exception to abate the writ, and
many other exceptions, which abate other writs, shall not abate an
Assise,
The Reason of

176 Hatch Delays.

1 Some say, that the demandant in a suit of Dower, who procured of such delays in that suit, shall not recover damages.

2 The cause of an Amercement in a plea real, personal or mist (where the King is to have a fine) is so; that the tenant or defendant ought to render the demand (as he is commanded by the King's writ) the first day, which it be, he shall not be amerced; so as for the delay which the tenant or defendant both enfeoff himself, he shall be amerced.

3 If the defendant plead in sustainability of the person an Outlawry of the same Court, he shall not need to show it forth presently, or if he plead an outlawry in bar, and it be denied, then he shall have a day to bring it in: But if he plead an outlawry, and offer writ to show it to the Court, he must show to the record of the Outlawry maintainer sub pede figilii; because the plea is not bilateral.

4 After challenge to the Array, and trial only returned, if the same party take a challenge to the P lis, he must their cause presently; so if a Feez be formerly known, if he be then challenged, the party challenge must he in cause presently, and that cause must rise since he was known; likewise when the King is party, or in an appeal of seloys, the defendant, that challenge for cause, must the cause presently.

5 To Counterplead the plaintiff in an Allse, by which he is delayed, make him, that pleaseth it, a difficult: Otherwise if it, if he had pleaded Null cor, etc.

6 If a man be out of the Realm, and a recovery he had against him in a Precipe by default; In this case, he shall not be a valid such recovery; because by such means a man might be infinitely delayed of his freethold and Inheritance, whereas the Law hath to great regard; and few 02 none go over, but of their own free will, neither is he in such case without his ordinary remedy; either by his will of a higher nature, or by a Quod si deficens: Potestit it is otherwise of outlawry in a personal action, for de minimis non curat lex, and he should otherwise be without remedy: Also as to a recovery, there is a difference between being beyond sea, and imprisonment, etc.

7 If a man be convicted of delay by verdict, and delivered to the Vouchery to make purgation, he cannot be voucher; so that the time of his purgation (if any should be) is uncertain, and the demandant cannot be delayed upon such an uncertainty; besides the tenant is not without remedy, so he may have his warrantia causa.

8 If the King grant a protection in a Quare Impedie, or an Allse with a non obstante of any Libro to the contrary, that grant is void; so by the Common Law a Protection lieth not in either of these cases; for the damage that may happen to the plaintiff by such great delay, and a non obstante cannot avail, when by the Common Law the King cannot grant the thing it fell.

9 The
177 Unnecessary Circumstances; And therefore, 

Frustra sit per prælia, quod fieri potest per Pauciora.

1. In a praecipe, where the demandant is to recover damages, if the tenant pleads non-tenancy or disclaimer, the demandant may aver him to be tenant of the land, as the wife supposeth, for the benefit of his damages, which otherwise he should lose, or otherwise he may pray judgment and enter; at his election: but where no damages are to be recovered, as in a Formedon in decedent, and the like, there he cannot aver him tenant, but pray his judgment and enter; for thereby he hath the effect of his fide, and Frustra sit per prælia, &c. And therefore if tenant in tail discontinue, and his issue bring a Formedon against the discontinue, and the discontinue pleads that he is not tenant, but utterly disclaims in the tenancy of the land; In this case, the judgment shall be, that the tenant shall go without pay, and after such judgment the issue may enter into the land, notwithstanding the discontinue.

2. When the King was to grant a reversion, the antient form was to recite the first grant, and then to grant the reversion, and besides by another patent to grant the lands in possession, by which was a good estate passed to the patentee; Holtowell, to pass these several grants in one and the same patent, is as good and effectual in Law, as to pass them in several patents; and Frustra sit per prælia, &c.

3. If the Office of the Stathelshc be forfeit, the King shall be in possession thereof by seisin without office; so it is also of the Tenements, offices, &c. which are local, and whereas continual profit may be taken, as where it is found by office, that a condition is broken, or that...
that one attainted of felony is seized of land, &c. in case of the
ward of land, &c. In all these cases the King is in possession by office
without any seizure.

2 H. 6. 1. b. 
Finch, fol. 14.

4 One that is in Court ready to join with the defendant may do it
without process, as the borbmer (the lease of the plaintiff being prayed
in aid of) when the defendant in a replevin abounds upon him : Do the
Meane, when the Lord paramount abounds upon him: but joiner in aid
be by Attorney without process.

Col. 5. 21.
Sir Anthony
Maimes case.

5 M. leaves 10 31 years unto S. and covenants to make a new
lease to S. upon the surrender of the old, M. leaves to another by
sale 10 31 years, and herupon S. without surrender of the old lease being
an action of Covenant against M. In this case, the covenant is host-
er, albeit S. do not surrender (which ought to be the first act) because
it were in vain for him to do it, in regard M. hath disabled himself to
take the surrender, 03 to make a new lease.

E. 3. 170.

6 The demandant may write fine upon Counterplea of boucher,
and grant the boucher ; 03 if the Enquest pass, the tenant cannot
have more.

H. 6. 4. b.

7 One that is a debtor to the King of Record in the Exchequer, if
he be seen in Court, may be brought in to answer without process.

36 H. 8.

8 In Replevin the defendant hath return awarded upon Nonissue of
the plaintiff, and upon Returno habendo the Sheriff returns averia elon-
gata per Quercem, and thereupon Witheram is awarded, and the
defendant hath delivered unto him as many of the plaintiffs goods,
whereupon the Plaintiff is to sue a second delivrance ; in this case,
he shall sue the second delivrance for the first delivres, and not for
the Cattel the being delivered upon the Witheram, fo3 the Cattel of the first
delivres (being the cause of the Witheram) being delivred, the other
upon the Witheram will be also discharg'd.

2. 3. Eli.

9 The Sheriff of Midd. has an attachment of privilege against one
Kemp, and likewise a Capia ad satisfaciendum against him at the same
plaintifs suit, both returnable the same term into the C. B. but the
attachment was returnable first; upon which he brings his body into
Court, and said he would return the Ca. fa. at the day of return
thereof: Bothbeit, upon motion of one of the Ptocketories, the Ju-
kices sent the defendant to the Fleet, and discharged the Sheriff of
him, and would not lay until the return of the Ca. fa. there being a
former judgment against him upon Record. Vide Dyer 314. 47.

Dyer 204. 2.
2. Eliz.

Upon nihil dict in waste, a writ writeth, that the Sheriff in propria
persona accedat ad locum vastarium, to enquire of the damages, and it
was held good, and not to enquire of the waste, for that was consist by
the Nihil dicte ; neither is it in such case necessary, that he should then
go in person, according to Wel. 2. cap. 25. fo3 that is only in valto
inquirendo, where the Defendant makes default to the delivres.

178 Expedit Reipublice, ut sit finis Litium.

1 Regularly, an Abbot, Prior, Bishop, or other sole Corporation
cannot disclaim, 03 do any act to the prejudice of their house or bene-
cifice, but what may be aboied by the succesor; yet if an Abbot, Bis-
shop, &c. acknowledge the action in a suit of Annuity, this shall bind
the succesor, because he cannot dismiss it in higher action, and Ex-
pedit reipublice, ut sit finis Litium. Vide supra Max. 7. case 4. 8 & 93.
10 So it is likewise in an action of debt upon an Obligation, Statute,
or Recognisance ; fo3 there must be an end of suits, and Res judicata
pro veritate accipitur.

2. If
2 If the plaintiff allege a cause of challenge against the Sheriff, the process shall be directed to the Constables, and if any cause against any of the Constables, process shall be served on the reef, if against all of them, then the Court shall appoint certain Bailors or Bailors (so named of the French word eleirs, to choose, because they are named by the Court) against whose return no challenge shall be taken to the array: Howbeit, challenge may be put made to the Folks, but that shall be also presently examined and stiled in Court: For Expedite Reipublica, &c.

3 A partition of intailed lands between parceners, being equal at the time of the partition, shall bind the issues in tail to ever, albeit the one do alien her part. See Dyer P. 1 Mar. 98.b. p. 52.

4 The Rolls of a Court of Record being the Records and memorials of the Judges of the same Courts, impost in them such incontrollable credit and verisimile, as they admit no aberrment, plea, or proof to the contrary; And if such a Record be alleged, and it be pleaded that there is no such record, it shall be tried only by it felt: And the reason hereof is apparent, for otherwise (as our old Authors say, and that truly) there should never be any end of Controversies, which would be inconvenient: Howbeit, during the Term, wherein any Judicial act is done, the Record remaineth in the hand of the Judges of the Court, and in their remembrance, and therefore (in such case) the Roll is alterable during that term, as the Judges shall direct; but when that term is past, then the Record is in the Roll, and admitted no alteration, aberration, or proof to the contrary.

5 At the Common Law, before the Statute of Non-claim 34 E. 3: cap. 16, after a fine leased of land, if a stranger having title thereunto had not made claim within a year and a day after such fine, he had been barred to ever, and the reason thereof was alleged to be, Quia finis finem lixibus imponebat; but this is now helped by the Statute of 4 H. 7, 24, which gives 5 years, after the fine and proclamations.

6 Before the Statute of 32 H. 8, 3, if an extent had been insufficient in Law, there might have issued out a new extent; But it appears by the Preamble of the said Statute, and also by divers Books and resolutions of the Judges, that (before that Statute) after a full and perfect execution had by extent returned and of Record, there could never be any re-extent upon any sation; And there are many inconveniences yet, which are not remedied by that Statute; for which see Co. ibid. fol. 289. & 290. Vide supra. 32. 21.

7 Where the judgment is to be final, there the Oath of the Grand Assize 2d Jurp ought to be absolute, and not to their knowledge; as in a writ of right, when the Mise is joyned upon the meer right, in an Attaint, in wager of Law; for the judgment in every of these three is final.

8 In a writ of right when the Mise is joyned upon the meer right, and the tenant tends a Demy mak., that the grand Assize may also inquire, whether the demandants ancestor were settled in the time of the thing, as he had Counted; In this case, albeit the verdict of the Grand Assize be given only upon this last point, yet judgment final shall be had thereupon: so it is likewise if the tenant after the Mise joyned make default, or confess the action, or if the demandant be non-suit, and yet in none of these cases may the Grand Assize give their verdict upon the meer right; but the reason is, because the Law alms at peace and quiet, and that there might be an end of suits and controversies. Vide F. N. B. 5. n.

9 Every plea that a man pleaseth ought to be triable, for that without trial the cause can receive no end: Expedite Reipublica, &c.
The Reason of

Max. 178.

10 If there be tenant for life the remainder in fee by lawful and
full title, he in the remainder may obtain and get a pretence title of
any stranger (notwithstanding the Statute of 32 H. 8, 9.) not only
because the particular estate and the remainder are all one, but for
that it is a means to extingquish the seeds of troubles and suits, and
cannot be to the prejudice of any.

11 If one tell another that he is persecuted, or that he had to strown
himself in such Court, these words are actionable, because by these
words it appears, that he had to strown himself in a Judicial proce-
ossing: but words of heat and passion, and a lay to one, that he had to
strown himself, or that he is a Misan, Rogue, Marek, or the like, by
these or such like words an action ought not to be maintained, for,
both Judicial interest lies diremarch; and the rather, because such frivo-
rous actions are now more frequent than they have been in former
ages, in hisstis hominum eff abriandum. Vide 183. 1.

12 The plaintiffs and defendant submit themselves to the arbitra-
tion of A. who awards, that the defendant shall enter into bond, that
the plaintiff and his toes shall enjoy certain lands quietly; and this
award is void, because the uncertainty of the same, whereas the defendant
shall be bound, may be an occasion of a new suit and controversy, to
that the Arbitrator not naming the same, he cannot assign his power to
the plaintiff, defendant, or any one else to do it.

13 When any house is recovered by any real action, or by Ejec-
tio firme, the Sheriff may break open the house, and deliver the tenant or
possession thereof to the defendant or plaintiff, (for the words of the
writ are Habere facias legeinam, or possessionem, &c.) because other-
wise there would be no end of such suits: and after judgment it is not
(in right and judgement of Law) the house of the tenant or de-
defendant.

14 When one is barred in any action real or personal by judge-
ment upon demurref, confession, verdict, &c. he is barred as to that if
the like action of the same nature for the same thing; &c. vide Ex-
posite Republica, &c. Vide supra, 93, 9.

15 At the Common Law before the Statute of Marlbridge, cap.
29. if land had been conveyed out of the degrees, so as the deman-
rant could not have a wit of Entry in the per, or in the per and cui, the de-
mantant was put to his wit of right; &c. there was no wit of En-
try in the Post before that Law was given by the said Statute: And the rea-
son why the Law was so to that Statute, was, quod fit finis litium,
and that he that right had not should not be negligent, but take his
remedy by wit of Entry before there should be more than two alle-
ations.

16 In debt upon an obligation the defendant pleads, That the
plaintiff hath recovered upon the same bond, and that the judgement
thereupon is removed by Error into the King's Bench and was not yet
reverted; And this was adjudged a good plea, because the judg-
ment takes away the strength of the bond, and if after judgement he
might sue the same party upon the same bond, he might do it infinite-
ly, and (consequentely) the defendant might be infinitely amsersed;
for upon every Judgement the defendant shall be amsersed, and if be
be a Peer of the Realm, the amscertinament is 100. and to the de-
endant might be infinitely amsersed upon one and the same obliga-
tion, which would be mischiefous, Et interest Republica ut sic fins
litium.

17 A bill of reviver upon a bill of reviver shall not be suffered to
the infiniteness, no more than a wit by Journeys accomps upon a
former wit of the same nature, &c. to they might he had infinitely.
18 A Barrister is in judgement of Law accounted one of the most dangerous and pernicious vellins in the Commonwealth, because whereas the Law endeavoureth to settle peace and amity, and to suppress discord and contention, he is sedimentor litium, & oppressor vicinorum suorum, either by force and open maintenance of falseions, or the like, or by fraud and malice under colour of Law, as by multiplicity of unjust and designed falseions, informations, or the like, to the end he may by that means enforce poor people (ad redimendum venenosem) to give him money, or otherwise to compound with him, &c.

19 Upon an award albeit the parties do not discover all their differences to the Arbitrators, so as they determine some, and leave the rest undetermined, yet the award is good; because otherwise many Arbitrations might be avoided, for the one so the other of the parties may conceal a trespass done to him, or some other secret cause of affair, and so avoid the Arbitrement, which were inconvenient, for expedite relief publick, &c.

20 Accidents are much favoured in Law, because they prevent and compose cases and controversies amongst neighbours (Ex concordia parva res creantur, discordia maxima dilabatur) and therefore it was adjured P. 36. ac. rot. 1033. that an Accident with satisfaction was a good plea in bar, in Eden and Blakes cafe.

21 The general Statute of 32 H. 8. 36. of Fines shall bind the King, though he do not name, because it was ordained to settle and quieting of estates, and the prevention of debates and controversies in the Commonwealth, in Magdalen College cafe.

22 The Statute of Gloucester in 6 El. 1. cap. 3. opines, that whereas tenant by the curtilage alters his wife's inheritance with warranty, if the heirs descend from the heir, he shall be barred to the value of the inheritance to descend, and it lands after descend, so that the tenant shall recover against the heir of the titter of his mother, viz. out of the residue of his mother's lands so much as the heirs afterwards descend shall amount unto: Here, albeit at the making of this Act (being in 6 El. 1.) there were no intailled lands (for all inheritance was then, viz. before W esteem. 21. being 13 El. 1.) see example absolute or conditional, yet intailled lands are since taken to be within the equity of the said Act of Glocester, but not to retain or recover the lands intailled, but only the lands which should so descend; because otherwise there would be occasion of new suits and contention, which the Law hates and abhors; for if the tenant after heirs descended might retain or recover the lands intailled, then if the heirs were aliened, the intailled estate might be sold by W. of Forme to descend and recover the intailled lands again, which would beget a new suit, and no way answer the Intention of the said Act, being (indeed) a good provision for example lands, but not for lands entailed, without such a construction by equity, as above said; and therefore in cases of entailed lands to aliened with warranty, the tenant shall have a Sciros facias out of the Rolls of the Justices, before whom the suit depends, to recover the lands descended according to the provision of the said Act of Glocester; which in jute and proportionable equity agrees with the case of the intailled lands, and the Intention of the same Act. Vide supra 15. 9. & infra 136. 8.
179 Circuit of Action.

Co. Inst. part 1. 165. 3. 3. Littleton's case, 6. 446. If the father be dissised, and the son (having only a possibility) release to the dississe, without warranty, such release is void; Holdwell, if there be a warranty annexed to the release, then the son shall be barred; for albeit the release cannot bar the right, because the son had no right in the land in the life of the father, yet the warranty may rebut, and bar him and his heirs of a future right, which was not in him at that time: And the reason (which in all cases is to be sought out) whereby a warranty being a covenant real, shall bar a future right, is for avoiding of circuit of action, which is not favoured in Law, viz. That he who made the warranty would recover the land against the Terce-tenant, and then the Terce-tenant by force of the warranty should have as much land in value against the warranty, which course would occasion Circuit of action, and more trouble than needs.

2 Where the father enfoetched his son and heir apparent with warranty, and death, the son in a precipite brought against him may immediately touch his fathers coffer, for the Law shall not suffer him to touch himself, according to Max. 54, and 10, when he comes in as vouches, he may bar and appoint the first warranty, to avoid Circuit of Action, Finch fol. 14, Fr. Edit.

F. N. B. 18, 1, 3 In false Judgement against an Abbot, the plaintiff was non-suit, and the Abbot had a Scire facias against the plaintiff to have cause, why he should not have execution returnable quindecies Pachis, at which day the plaintiff appears and assigns his errors, and tenders security to sue cum effectis, and poss a Scire facias against the Abbot ad auditum errores, and the opinion of the Court was, that he might assign his errors against the Abbot, without suing out any Scire facias against him.

Finch, pag. 55.

4 In an action of waste upon a lease for years by deed, wherein the lessee granted to the lessee, that he shall not be impeached of waste, the lessee may plead this in bar of the action of waste, without bringing his action of Covenant.

Finch, ibid.

5 Upon the grant of a ward with warranty, the defendant in a suit of right of ward, may rebut the plaintiff by that warranty, and shall not be ipso jure bring an action of Covenant upon the grant, to abate circuit of action.


6 One that hath rent finding out of land dissised the Terce-tenant, in an Alisfe by the dissise the dissise shall recoup the rent in the damages; and the reason is for avoiding circuit of action; for otherwise when the dissise re-enters, the action for the arrears of rent shall be received; but Circuitus eft evitandus, & boni judiciis effe lites dirimere, ne liis ex lute oriatur. Vide Co. L. 5, 51. 3. 2. in Coulters case.

180 Matter of Vexation; And therefore
money or chattels due unto them, either by the custom of London, or by any devise or legacy in the will of their Antecessors, or to have account. In such cases, a prohibition is to be because the government of the Orphans of London belongs to the Mayor and Aldermen of that City, and they have Jurisdiction over them: And (per Popham) if the Lord of a Manor hath probate of testaments within his Manor, if any will prove such a will in the Ecclesiastical Court, a prohibition lies, because the Jurisdiction thereof belongs to another: And the reason of this is, for that otherwise the party might have doubts of action and trouble.

3 Where a man hath judgement upon an Obligation, he shall not afterwards bring an action of debt upon the same obligation against the same party; not only because the judgement hath consumed the bond by changing it into a matter of record, but likewise for, that if he that to recovers might have another new action and another new judgment, he might also (by consequent) have infinite actions and infinite judgments, to the perpetual vexation and charge of the defendant, and infinitum in rege probarum: And therefore if a man brings an action of debt upon an Obligation, and is barred by the judgment, as he (so long as that judgment stands in force) cannot have a new action; Parli raions, when he hath judgment in an action upon the same Obligation, so long as that judgement stands in force, he shall not have a new action.

4 If any use the Countenance of Law (which was instituted to prevent, and make an end of controversies and vexation) for double vexation, he shall be fined: As if a man sue in the Common pleas, and afterwards for the same cause sue the defendant in London, or in any other Court, the plaintiff shall be fined for this unjust vexation, 9 H. 6, 55, 14 H. 7, 71. And in a Recount the plaintiff shall recover damages, and the defendant shall be fined, and imprisoned for his double vexation. Vide F. N. B. 71. & f. m. & infra, 181, 7.

5 In good discretion no melius inquirendum shall be awarded after office found against the King, without view of some Record, or some other pregnant matter for the King, to avoid further vexation of the subject: And therefore where upon a Diem clausum exreemum it was found, that the land was held of the Queen, sed per quae servicia Juratores ignorant, and thereupon a melius inquirendum awarded, where by the tenure was found of a subject, and all other points certainly found; In this case the first office was adjudged void by the sense of 2 & 3 El. 6. and the rather, because it should give no further occasion of vexing the subject, for that the natural course was upon a double ignorant to adjust a tenure for the King in Capite.

181 Pendentie Lite nibilinnovetur.

1 At the Common Law, if hanging a Quare impedit against the

Ordinary for refusing the Patrons Clerk, and before the Church were full, the Patron had brought a Quare impedit against the Bishop, and hanging the fiate, the Bishop had admitted and instituted a Clerk at the presentation of another: In this case if judgment were given for the Patron against the Bishop, the Patron might have had a writ to the Bishop, and removed the Incumbent, that came in pendentie lice by usurpation, for pendentie lice nibil innovetur; And therefore at the Common Law it was good policy to by the Quare impedit against the Bishop as speedily as might be.
The Reason of

Max. 18.

In Real actions depending, as Formed on, due suit infra resonem, writ of right, or the like, the defendant shall have a writ of Esrepresent, to inhibit the tenant from committing waste as esrepresent, hanging the tute; the like writ also may be had after judgement, and before execution. Vide the Statute of Gloucester, s 1. cap. 13. It ipso also in an action of waste; and the Hoods of the writ are, Tibi praecipimus, quod ad melissumum praud. personaliter accedens. totaliter ordinarius facias, quod vatum esse esrepresenta non eodem melissagio, contra formam Statui praud, non facilite. pendente platio praud. indulg.

Co. 1. 15. b.

PFloating cafe.

F.N.B. 60 a.

In Green's case.

F.N.B. 70 c.

In a writ of Error after errors assigned and hire factis assigned against the defendant upon such assignment, the plaintiff shall not assign any errors in fact, as to allege that the plaintiff in the other action was dead before the time of the judgement, or before the judgment, or the like; and if the plaintiff may assign errors in fact, he shall assign but one error of that kind, but he may assign as many errors as appear in the record, because this shall be tried by the Justice, but that by a Jury, which innovation will much delay and prejudice the defendant in the writ of error.

F.N.B. 374.

4 In a Quare impedit, 01 darrein presentmunt, if the plaintiff alleged, that the Bishop (hanging the plea) will admit the defendant Clerk, the same gives the plaintiff a writ of Ne admitter within the se monaster, to inhibit the Bishop to inordinate, to his prudence, hanging the plea; the cause of the writ are these; Problemmus vohis ne admitteris persona ad esse in. que vacant, ut dictum, & de cujus advocatione contentio obtit est in Curia nostra inter A. & B. dono discussione fuerit in eadem Curia, ad quem eorum pertinent ejusdem ecclesiam.

Advocatio.

F. N. B. 434.

6 If a man sue a Quare impedit, and deliver it upon record, as he may, and after the defendant or his clerk files a citation against the presence of the plaintiff; In this case, the plaintiffs in the Quare impedit shall have a prohibition in the Common Place, before the return of the Quare impedit, because it appears upon record, that such a Quare impedit to depending.

F.N.B. 480.

7 If a man have a Quare impedit, and he sue a Ne admitteris to the Bishop, and after the Bishop enunciates the Church within the se monaster, with his own Chaplain, or with the Chaplain of the defendant, here, the plaintiff shall have a writ of Quare incumbavit, to prevent such disturbance hanging the tute in the Quare impedit.

F.N.B. 71 c.

8 If a man distress for rent or service, and after (hanging the plea) distresses again for the same rent or service; In such case he is that is so distressed shall have a writ of Reception, and shall recover his damages for the first distress to taken, and he that distresses shall make fine for the wrong he hath done, albeit the first distress was lawfully made, and the rent is still in arrear.

182 Infiniteness and multiplicity of sues.
to go that way, or if a bitch be made over and burnt the way, so as a man cannot pass, yet he shall not have an action upon his case; and this the Law hath provided for avoiding multiplicity of suits, for if any one man might have an action, all men might have the like: But the Law for this common nuance hath provided an apt remedy, and that is by presentment in the Act 22 in the Turn, unless any man have a particular damage, as if he and his horse fall into the ditch, whereby he receiveth hurt and loss, there for this special damage, which is not common to others, he hath an action upon the case: And all this was resolved in the King's Bench 27 H. 8, 27. And in that case it was laid, that it had been adjudged in that Court between Welbury and Powell, that where the inhabitants of Southwark Law by custom had a water place for their cart, which was stopped by Powell, that in that case any inhabitant of Southwark might have an action; for otherwise they should be without remedy, because such a nuisance is not presentable in the Act 22 Turn.

3. If a recovery be had by A. against B. and before execution B. his fellow, this present shall not take away the entry of the Recoveror, and so it is also in case of a fine; for if that were admitted, there would be no end of suits, but a new one would be occasioned: So likewise if a recovery be had against tenant to use, where the remainder is over in fee, tenant to his death, he in the remainder entitled before execution, and birth fellow; but also the entry of the Recoveror is lawful, not only because he in the remainder is privity in estate, but likewise for that otherwise it would occasion a new fine: But the Act is otherwise in Real action, for which vide ubi supra.

4. The Common Law, for avoiding of maintenance, suppression of right, and stirring of suits at Law, hath provided, that nothing in action, entry or re-entry, shall be granted over, because under colour thereof pretended titles might be granted to great men, whereby right might be trodden down, and the weak oppressed, which the Common Law abhors; as also that men should grant any thing before they be in possession thereof, which might occasion suits and troubles.

5. A man that by prescription hath had Divine service celebrated, & Co. 1. 5. 73. the Sacraments administered upon a very Sunday and Holyday at his own Chapel within the same; or D. for his own family, upon feater thereof may have an action upon the case against the Chaplain that neglects to perform it, because such a prescription will be intended to commence
The Reason of

commence by some grant: But when the Chapel is not a private Chapel; for him and his family only, but publick and common to all his tenants of the said Grange, which may be many. In such case no action of the case[4] for the Lord; so then every tenant may also have an action upon his case, as well as the Lord, and so there might be infinite actions for one default; neither yet are they in such case without remedy, so that they may and ought to sue in the Court Chancery, and there shall have it redressed.

6 A man cannot have an action upon the case for damage by the Pigeons of a Dove-house, because then every man might have the like; And therefore it hath been held, that if any man (except the Lord of a Manor) erects a Dove-house, it is presentable in the Law; Sed quere de hac, for it hath been since otherwise adjudged; See the C. of Northumberland's case, Poph. Rep. 141. Trin. 16. Jac.

7 If the plaintiff be barred by judgement, upon demurrer, confession, or verdict, in personal actions he is barred for ever, and in real actions he must have recourse to his action of an higher nature, and at last shall be finally barred in his writ of right, if the Grand Assize find against him: So likewise (before the Statute of Marlbridge) when the degrees were past, and (before the Statute of Westm. 2.) upon lot's by default, there was no remedy but by writ of right: And the reason of the Common Law in these and the like cases, was to avoid Multiplicity and Infiniteness of suits, trials, recoveries, and judgments in one and the same case; And therefore in the judgement of the Law it was thought more probable for the Commonwealth, and more for the honour of the Law, (in some cases) rather to leave some without remedy, and to put others to their writ of right, without any respect of Coverture, Insolvency, or the like, than that there should not be a convenient time for the ending of actions and suits: See the judgement in Redcliffe and post dict. F. N. B. 188, 190, and the punishment inflicted by the Law in such case: See also the Register 206. & 208. And (indeed) without such a trial course there may be much oppression committed under colour and pretence of Law; for so a rich and malicious man may by actions and suits infinitely vex him that hath right, and in the end (for the avoiding of charge and vexation) Compell him to (for) sake his right, all which was remedied by the Rule and Reason of the ancient Common Law, the neglect whereof (by introducing trials of rights and titles of Inheritance and Francisco in personal actions, in which there is no end or limit of suits) had brought with it four main Inconveniences; 1. Infiniteness of verdicts, recoveries, and judgments in one and the same cause; 2. Sometimes contrarietie of verdicts and judgments one against another; 3. Continuance of suits by 20, 30, and 40 years, to the utter impoverishing of the parties; 4. All this tends to the weakness of the Common Law, which utterly aburd's Infiniteness and protraction of suits: And herein the excellency of the Common Law is to be observed, viz. That the receiving from the true institution thereof, introduced many Inconveniences, and the obserbation of it is always accompani'd with peace and quiet, the end and center of all human laws. See the Epistle to the 4. Report. fol. 2, b.

Vide Max. 180. ca. 3. & 186, 25.
183 The Law construe things with Equity and Moderation.

1. In 1 B. 4. 22. A man is bound to make an obligation immedi-
ately, yet he shall have convenient time to do it. In Butler and Bakers' case.

2. For as much as Escapes are very penal to Sheriffs; Bailiffs of Co. L. 3. 44; in the Judges have always made a

 lethal construction, as the Law will pervert, in labour of

 them, being Officers, and Ministers of Justice, and will never allow

 one to make an escape upon any slight construction; so also

 the Sheriff or other officer, that keeps prisoners, ought not to suffer

 one in execution to be at large by Wall or Baston, but ought to keep

 them in jail & jails, and do, according to the Statute of Wills,

 2. cap. 11, which provides, quod carrieri muncipiorum in ferris, to the

 end they may the latter pay their Creditors; pet if one be arrested

 upon a Capias ad satisfac. and the Bailiffs upon a habeas Corpus bring

 him to Wetham. and at his request carry him to Lambeth in Surrey, and

 at the day of return deliver him to the King's Bench. This shall be

 adjudged no escape, neither shall the prisoner thereupon have an Au-

 dice querela against the Creditors; so it is likewise if the prisoner

 had of his own accord gone to Lambeth, so as he had returned in time

 to be delivered into Court at the return of the writ, as it was adjudge-

 es in Hennocks case. Sheriff of the Countys of Bed. in 3 Eliz. So if one

 be Sheriff of two Counties, he hath several prisoners in execution in each

 County, upon two habeas Corpora against two of them, he may bring

 the prisoner out of the one County into the other, and then carry

 both the prisoners up according to the several writs to him directed,

 so shall not be adjudged any escape in the Sheriff: Also, if a

 prisoner in execution escape and lie into another County, and the

 Gaoler make fresh lute after him, and taking him puts him into the

 Gaol again, this shall be adjudged no escape; for upon fresh

 lute the Gaoler took him again, and put him in prison before any

 action brought against him: And in the cases above produced upon habeas

 Corpus the Sheriff is not strictly bound to keep the direct way to

 Wetham, in reda lines, so as he bade him at the return of the writ, and

 then deliver him into Court; so if the effect of the writ be purposed, it

 sufficiently.

3 Where fines in a Copphold Plane are uncertain, the Lord

 ought not to demand or exact excessive or unreasonable fines, and if

 he do, the Coppholder may demur to pay it without danger of forfeiture,

 and it shall be determined by the opinion of the Justices, before whom

 the matter depends, upon a demurrer, or at the trial, whether the fine

 demanded were reasonable or no; for if Lords might assess fines ex-

 cessively at their pleasure, all the estates of Coppholders, which are a

 great part of the Realm, and have continued time out of mind, would

 be at the will of the Lords to defeat and destroy, which would be in-

 convenient; And thus it was adjudged in the Common place in

 Hoddisons case.

4 Notwithstanding that the work of the Commission of Severs

 give authority to the Commissioners to do according to their discre-

 tion, yet their proceedings ought to be limited and bounded by the

 Rule of Law and reason; for discretion is a science of discerning

 truth from fallacy, right from wrong, shadows from substance, and

 betwixt equity and colourable glosses and pretences, and not to

 accept
accompanying their own wills and private affections.

5 If tenant in tail suffer an intemperance and die, the title in tail is removable by the equity of the first branch of Winstm. 2. cap. 5. by the

cause after the Statute of Winstm. 2. cap. 1. (which created the estate mission and was made by the same Parliament) the title in tail could not have a just right of inheritance, and therefore shall be declared by the

first such branch, act to be in Nov. 24. 25. 26. 27. Winstm. II. pl. 4.


These exceptions, whether they are to be admitted in Interior

Courts by the Judges, or in Superior Courts by the Judges, are

all termed Mississippi, because whatever hath the assurance of them,

ought to be great moderation.

7 The Reasonableness of lines in Courts, different, американ

reasons, and lines of the half of the R. J. shall be judged by the In-

dictions, and if they be extraordinary, and excessive, and (by consequence)

injust and against the State, they have power to moderate them.

8 When an expropriation is excessive as extravagances in a Court

Magna, or other Court, which is not a Court of Record, for reasons,

of many other reasons, the Act has hitherto the title of Mississippi to be given to the Lords of the same Court of his Bailiffs, appropriating them to a moderate expropriation according to the

quantity of the expenses, &c. and therefore the party granted may have an Alias, Fine, and Attachment if he pleases; See the Statutes of Magna Carta, cap. 14. and Winstm. 2. cap. 6.

F.N.B. 103. b. 4. &c. in Act.

Statute of103.

9. If a man be found in a State [merchant, and after make some

business of parcel of his hands to one man, and of another parcel thereof

another, and the recognizance has execution upon the Statute, and

both execution against the one person; here, this task of the bail on

another person against the other person, to their cause why the recogni-

zance hath not execution against his lands, as well as against the lands

which he hath, 

&c.

F.N.B. 75. &c.

Pl. Co. 17 a.

Powers and Privileges of those against whom the

Penalty is to be inflicted; As the Statute of Winstm. 2. cap.


11 At the Common Law before the Statute of 23 H. 8. 10. the Sharia had commandment and authority to let to bail such as were un-

moral; for the Common Law (which is Common reason) would allow these base persons taken by hostel, &c. warrant upon personal

actions, or Indemnities of trespasses, to be enlarged by bailable,

for that in a manner it stands indifferent, whether they are guilty

no, and then if they should not be guilty, and put restrained of their li-

berty, it would be a great inconvenience, which the Law would never suffer.


184 Restrainteth
184. Restraint in a general Act or Rule, and (sometimes also) a particular contract, if there be found any mischief or inconvenience in them.

1 Regularly, any person of competent age and discretion, and a gainst whom there is no just exception by reason of perjury, corruption of seals, or the like, may be admitted a witness in any cause, yet in the case, in a case upon the Statute of Bankruptcy, it was adjudged, that a wife cannot be produced as a witness either against her husband, or for her husband, for that it might be a cause of imputable evil and discretion between the husband and wife, and a means of great inconvenience.

2 By the Statute of Westminster, 1, cap. 22, Tenant of Bargage to an heir female before the age of fourteen is held, which is to be understood, where the land may hold the land the two years after the 14, for within that time the Statute appointeth the tender; but where the Lord cannot have the two years, he may tender a marriage to the heir female at any times after the age of 14, and before 14, so as to have none at the Common Law.

3 An Argument drawn from inconvenience is feeble in Law, and the Law, that is the perfection of Reason, cannot suffer any thing which is inconvenient; and therefore the Law saith, It is better to suffer a mischief (viz. peculiar to one) than an inconvenience, that may pass upon many: Frankmarriage is so called, because it ought to be tried of all service to the wrong, until the fourth degree be paid, yet the tenant in Frankmarriage shall make fealty to the wrong, for it were inconvenient that he should hold land, and do his service at all; so likewise in Frankmarriage, albeit he be tried from all temporal service, yet he shall pay divine service, for his Lord, for it were inconvenient that he should do no service at all to the land he holds of his Lord.

4 If an Abbott holds in Frankmarriage, and he and the Crown under their Common Seal alien the land to a Layman: In this case the secular man shall make fealty, albeit the Alienesse hold not by sealty nor any temporal service, but only by spiritual services, and those uncertain; for in such case the Law createth a new Corporate service out of the land to be done by the Alienesse (wherein the Abbott was not formerly charged) for the avoiding of an Inconvenienct, viz. that the service should be no manner of service, and (consequently) that the land should be holde of no man, which would be inconvenient; for that all land is holde of one or other; and immediately of the King, because they did originally come from the Crown. Vide 148. 15.

5 Regularly, tenant by Grand Serjeancy must perform that service in proper person, and shall not make a deputy without the Kings licence: yet at the Coronation of King R. 2, John Wildes a Citizen of London, who held certain lands in Heydon in the County of Essex of the King by Grand Serjeancy, viz. by holding a Towell when the King should visit his lands before dinner, the day of his Coronation, was upon his petition exhibited to the High Steward of England in his Court was admitted to make a deputy to perform it, because it was inconvenient for him (being a Citizen) to execute so high an office himself; and therefore he deputed Edmund Earl of Cambridge to perform the service by holding the Towell that day to the King. See at the Laws Coronation.
Cozonation William Furnival, who held the Than of Barnham in Com. Buck, by Grand Serjeancy, viz to find the King a glove for his right hand, and to support the King's right hand the cap of his Coronation, while he held in his hand the Verge Royal, could not have executed that place in person, but by some honourable deputy, had not the King that cap made him a Knight, and by that means made him also capable of performing that office itself. Also Anne the wife of Sir John Haling Earl of Pembroke, who held the Than of Ashley in Norfolk of the King by Grand Serjeancy, viz. to perform the office of the Paperer at his Coronation, was adjudged to make a deputy, because a woman could not do it in person, and therefore he delivered Sir Thomas Blane Knight, who performed the service in her right, &c.

6 It is a Rule in Law, that what the Willem hath the Lord upon discretion or claim, yet if the Willem purchase a Common land number, the Lord shall not have it, for the Lord may not charge it, which would be a prejudice to the tenure tenant; there is the same law also of a Copodie uncertain granted to a Willem, as such like incapacitates, &c.

7 In any late Outlawy is a good exception in disability of the person, yet in a suit of Error to reverse an Outlawy, Outlawy in that suit, or at any stranger's suit, shall not disable the plaintiff, because it be in that action should be disabled, if he were Outlawed at several mens suits, he should never reverse any of them, which would be inconvenient; So likewise in an attain Outlawy in the plaintiff cannot be pleased in disability of the person.

8 A protection cannot be seal for the demandant or plaintiff, because the tenant or defendant cannot live a resummonee or a re-attachment, but the demandant or plaintiff that fuses out the summonee or attachment, &c. must also sue forth the resummonee or re-attachment.

9 In a writ of Power unde nihil habe no protection is allowable, because the demandant hath nothing to live upon; otherwise it is in a writ of right of power: Likewise in a Quare impedit, and unless in the presentment a Protection ipso fit, for the eminent danger of the lap; neither ipso is a protection in an Assize of Novel disseizin, because it is sethun remedium, to restore the disseizer to his freedom, whereas he is wrongfully and without judgment disseized: It feth not in a Quare non admissic, because it is grounded upon the Quare impedit, nor in a Certificate upon an Assize, for the like reason, &c. de similio; yet regularly and in most cases protections are allowable. An Infant was bounted, and at the Pluries venire facias a protection was caused for the Infant, but disallowed, because his age must be adjudged by the Inspection of the Court.

10 If an Executor or Administrator sue an action, Outlawy in the plaintiff shall not disable him, because the suit is in a writ droit, viz. in the right of the testator, and not in his own right, but if an executor or administrator be excommunicate, he may be disabled, albeit he sue in a writ droit, because they, who contends with a person excommunicate, are excommunicate also.

11 The Law giveth power to the Lord to raise his Willem where he finds him, yet if a Willem enter into Religion and become a professed, the Lord cannot take him out of his Cloister, because then he could not live as a dead person, not according to his Religion, which were inconvenient.

12 Upon the grant of a rent-charge the grantee may make his election, either to recover it by writ of Annuity or by suitless, (for) the law grants...
grants both to him; yet when he hath once made his election and fixed upon one way, he shall not make use of the other, for then he should recover one thing twice, which would be a double charge to the grantee.

13. The words of the Statute of Marlbridge, cap. 21, sec. Replevin are, Quod viceminae pot est querimoniam inibis fesam in fine impedimento vel contradictione ejus, qui dicit a verae ceperit, deliberare politi, &c. By which words querimoniam it may seem, that by the Statute the plaintiff ought first to be admitted in the County Court, before the Sheriff can grant a Replevin; but, let the Sheriff may take a plaint upon the said Act out of the County Court, and make Replevin presently; for it would be very inconvenient to the Owner to so bear his Cattle till the County day.

14. If a man by his deed grant a rent with clause of distress, and grant further, that he shall keep the goods distrained against gages and pledges, until the rent be paid, yet shall the Sheriff repel the goods distrained, for it is against the nature of such a distress to be irrepealable, and by such an Invention the current of Replevins would be overthrown, to the hinderance of the Commonwealth; and therefore in 31. 3. Gage deliv. 5. it was disallowed by the whole Court, and awarded, that the defendant should gage deliverrance, or go to prison.

15. If there be Lord and tenant by fealty and certain rent, and the Lord by deed grant the rent in fee, paying the fealty, and grant further by the same deed, that the grantee may distrain for the same rent in the tenancy; here, albeit a distress were incident to the rent in the hands of the Grantor; and although the tenant attained to the grant, yet cannot the grantee distrain, for the distress remaining as an incident inseparable to the obligation, the tenant would then be subject to two several distresses of two several men, which would be oppressive and inconvenient; so it is likewise if the Lord in that case grant the rent in tail, or life, paying the fealty, and further grant, that the grantee shall distrain for it; here also, albeit the reversion of the rent be a rent service, yet the venn or grantee shall have it but as a rent seck, and shall not distrain for it.

16. crokers apponant to freehold, Cozode uncertain, Homage, fealty, plecary uncertain, Common fans number, or the line, shall not be divided between Coperencers for that would be a charge to the tenant of the soil.

17. The Lord Mountjoye seised of the Spano; of Canford in fee, did by deed intented and enrolled bargain and sold the same to Brown in fee, who in the deed covenants, that the Lord Mountjoye and his heirs shall digg or turf and turf in the wales of the said Spano; and in this case these points were resolved, 1. That this did amount to a grant of an Inheritance to the Lord Mountjoye. 2. That notwithstanding this grant; Brown and his heirs might digg also, and like to the case of Common fans number, 3. That the Lord Mountjoye might assign his interest to one, two, or more, but then if it were to two or more, they could make no division of it, but work together with one stock, neither could the Lord Mountjoye, &c. assign his interest in any part of the wales to one or more, for that might work a prejudice and a surcharge to the tenant of the land; and therefore if such an uncertain Inheritance descendeth to two Coperencers, it cannot be divided between them, Causa quae lupa 2.

18. If an Obligation of 500 l. be made with condition to pay payment of 50 l. at a day, and at the day the obligor tender the money, and the obligee refuseth the same, yet in an action of debt upon the obligation,
The Reason of Max. 184

if the defendant plead the tender and refusal, he must also plead, that he is yet ready to pay the money, and tender the same in Court, because the 50 l. are parcel of the obligation, and not provable; but if a man be bound in 200 quarters of wheat for the delivery of 100 quarters, if the Obligee tender at the day the 200 quarters, sc. he shall not plead uncorre prix, because although they are parcel of the obligation, yet they are bona peritura, and it is inconvenient and a charge to the Obligee to keep them.

19 Before a man can bring his action for the recovery of lands, whereinunto he hath title to; right, the Law requires, that he first make his entry, and claim his right; title upon the land, which entry gives him possession and title of the same; and where he may enter, a bare claim from off the land will not serve to give him title thereof; yet if by reason of menacing words, lying in wait in the way with weapons, or the like, he were not enter upon the land; in such case, the Law gives him this liberty, that if he claim his right, as near the Land as he bare so to fear such hostile hurt, as may cascade in virum contumaci, that claim shall give him title, as well as if he had entered upon the land; And if the party be sick, decrepit, or recluse, he may so do it by his servant, sc.

20 The Rule of Law is, that where a defendant dies, it takes away the entry of him that right hath; yet if the defendant at the time of the defendant and servant were not in England or the dominions thereof belonging, such desert that not take away his entry, because being beyond sea (by intention) he could not have notice of the desertion; yet without any folly or laches in him he should lose his right, which were inconvenient; and unjust.

21 In an action upon the case the plaintiff declared for the speaking of infamous words, which is treasonable, and lay the words to be spoken in London, the defendant pleaded a CONCORD for speaking of words in all the Counties of England, living in London, and traversed the speaking of the words in London: The plaintiff in his replication denied the Concord, whereinupon the defendant demurred, and judgment was given for the plaintiff; for the Court said, that if the Concord in that case should not be traversed, it would follow, that by a new and subtle invention of pleading, an antiquus principle in law (viz., that for treasonable cause of action the plaintiff may allege the same in what place; County he will) should be subverted, which ought not to be suffered; and therefore the judges of both Courts allowed a traverse upon a traverse in that case; And the wisdom of the Judges and Sages of the Law hath always suppressed new and subtle inventions, in derogation of the Common Law. Vide infra 193. 1.

22 Regularly, in all actions an Infant shall have his age, and yet if an Infant have lands by purchase or descent, he shall be compelled to attorn in a per quse service, and no mischief to the Infant at all; for when he comes to full age (notwithstanding such attornment) he may will to hold of him, he may say, that he holds by lesser services, but a great mischief would fall upon the Lord, if the Infant would not attorn; or his attornment should not be good, for then the Lord would lose his services in the mean time: So likewise an Infant is compellable to attorn in a quid juris clamant, in case where he is leesse. Vide Cannys case, Co. I. 9. 85, b. 1.

23 A Guardian shall not be punished for waste done by a waster, it is so penal to him, because for waste he shall lose the wardship both of the body and of the land, albeit the waste be but to the value of 20s. and if that taken be not to like hurt to the waste, then shall be an
the Common Law.

184. In case of tenant by the curtille, tenant in Davver, tenant for life, years, &c. for they shall answer for waste done by a tenant, and then shall take their remedy over.

24. Regularly, the writings that concern land belong to the owner of the land, and are to be kept by him, yet if I am intestated to me and my heirs, and I enter another to him and his heirs with warranty, my heir shall have a Dehincte for the debt, by which I was intestated, and shall Count specially, viz. upon the special matter, in respect of the special loss and prejudice, which he may have for want of the debt, in case he should be vouched upon the warranty, which I made to my father, Vide 10 E. 4. 9. b.

25. Tenant in tail, remainder in tail, he in remainder grants a rent charge out of the land, and then Tenant in tail in possession suffers a recovery; in this case, the rent is extant and gone; for it were inconvenient that the land should be subject to the charges both of the tenant in possession, and of him in remainder also, as to be charged with the statutes or recognisances of tenant in tail, and also of him in remainder, and so, whereas tenant in tail in possession having power to work both his own estate, and the estate of him in remainder, by possibly it might never come in possession to him in remainder.

26. Where a man conveys his land to the use of himself for life, and to the use of others of his blood, with future power of revocation, as after such a leaf, or after the death of such a man, and afterwards, and before the power of revocation commenced, he for a valuable consideration bargains and sells the land to another and his heirs, this bargain and sale is within the remedy of the Statute of 27 Eliz. cap. 4. for albeit the Statute itself, the said first conveyance not by him revoked, according to the power by him reserved, which seems by the literal sense to be meant of a present power of revocation, for no revocation can be made of a future power, until it come in use, yet it was held, that the intent of the Act was, that such voluntary conveyance, which was originally subject to the power of revocation, be it in present, or in futuro, shall not stand against the purchase bond made for valuable consideration, if any other consideration should be made, the said Act would serve for little or no purpose; for then it would be no hard matter to observe it: So likewise if A. reserved a power of revocation by the attorn of B. and after A. bargains and sells the land to another, this bargain and sale is good, and within the remedy of the said Act; for otherwise the good possessors of the Act by a small addition and knavish intention might be defeated.

27. In 39 Eliz. in C. B. betwixt Lee and his wife executrix of one Smith plaintiff, and Mary Costhil executrix of Th. Costhil defendant, in debt upon an obligation of 1000 marks, Rot. 1707. The case was this, Costhil the tenant had the office of Cusomner by Letters patents to him and his deputies, and by indenture betwixt him and Smith the tenant of the plaintiff, and for 500 l. paid, and 100 l. per annum to be paid during the life of Costhil, makes deposition of the said office to Smith, and Costhil covenants with Smith, that if Costhil die before him, that then his executors should repay unto him 300 l. and others covenants were in the said Indenture concerning the said office and enjoyment thereof, and Costhil was bound to Smith in the said obligation to perform covenants, and the breach was alleged for the non-payment of the said 300 l. for that Smith survived Costhil. And albeit the said covenant to repay the 300 l. was lawful, yet in so much as the residue of the covenants were against the Statute of 5 Ed. 6, cap. 2.
cap. 16. the obligation was adjudged void, because if the addition of a new covenant should make the bond of force, as to that, the statute would serve for little or no purpose. Vide plus ibid.

28 The Rule of Law is, that exchanges ought to be of equal & states, and yet if A. hath a rebellion in one of an acre of land expedient upon an estate for life, and makes an exchange with B. by deed intented, and gives this acre by name of an acre of land, (and not by the name of the rebellion) in exchange for another acre; In this case, albeit B. expect to have the acre, is given to him, in possession, yet (in as much as nothing passes by the grant of the acre of land but the rebellion) the warranty or condition in Law annexed to the exchange, cannot by the Law extend to more than passed by force of the exchange, so; they are incident and annexed to the estate which is given, and cannot extend to the frankenement which was in the lease; because if the Law should be otherwise, great mischief would ensue; so; if an exchange be made of divers manors, and peradventure divers parcels of them are in lease for life; in this case, if the exchange should be void, because it was not made as of a manor in possession, that would avoid all such exchanges, which would be mischief done, and there can be no mischief on the other part; so; when the tenants for life are in possession of the land, it will be indented the same as fully of the purchase, that he did not discover it by Survey or some other enquiry.

29 Regularly, all writs directed to the Sheriff ought to be returned, so to the Sheriff is by them commanded to do, if a Capias in process be not returned, the arrest is void; so; likewise an Eject, because the extent is to be done by an Inquest, and not by the Sheriff alone; if it be not returned, it is not valid; nevertheless, in all writs of execution, when the Sheriff alone does it, as Capias ad facias principem, habeas facias possis et semem, 02 feinism, fieri facias, Liberate, &c. if the execution be duly made, it is valid, albeit the writ be not returned; so; if the non-return of the writ by the Sheriff should cause new execution to be had against the defendant, and should lead him to his action against the Sheriff, that would tend much to the prejudice of the defendant, whose goods are already sold by the writ and process of Law for the satisfaction of his debt; Again, if the sale of the goods by force of the writ should by the non-return of the writ be too spars, then the Sheriff will never find buyers, to whom he may sell any defendants goods by force of any writ of execution, which would be inconvenient, and great delay of executions, which are the fruit and life of every suit.

30 If a rent be granted out of the Nanos of Dale, and the grantor grant over, that if the rent be behind, the grantee shall distrain for the same in the Nanos of Sale, this is no grant of the rent, but only a penalty in the Nanos of Sale; for if the grantee should bring a writ of Annuity, that would only extend to the Nanos of O., so upon the grant of the distresses in the Nanos of Sale, no writ of Annuity ipeth, because the Nanos of S. is only charged, and not the person of the grantor, as to that; And therefore, the bringing of the writ of Annuity cannot discharge the Nanos of S. of any rent; And to the Land, by construction against the words and intendment of the parties, shall doe an injury to the grantor to charge him twice, which were inconvenient.

31 In a writ of Menses the Paroll shall not demurr for the nonage of the plaintiff, because it is not reason, that the Infant should be distrained for the services of the Mesne during his nonage, and yet he may have no remedy until his full age; but in regard his nonage shall not prejudice him from the payment of the rent during his nonage, the Law will also give him remedy during that time.

32 These
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32 These two Rules in Law are regularly true, 1. That a writ of Error is not upon an award, until the principal judgement be given; 2. That it is not until the whole matter in the original be determined; yet each of these have exceptions: For as to the first, in Tin. 18 H. 7. in B. R. Rot. 3. E. was indicted for the death of M. be- fore a Justice of Peace in the County of Lincoln, whereupon a Capias was awarded; and thereupon also an Exigint, after which E. dies be- fore any Attainder, upon which award of the Exigent his executors bing a writ of Error, and it was adjudged, that the writ of Error did well lie, because by the award of the Exigent his goods and chattels were seized, and of such awards, which tend ad grave damnum of the party, a writ of Error is, & sic de similibus. As to the second, you shall find in 36 H. 6. Fierie fac. 3. That in debt against divers by several precepts, if there be error in the Judgments against one of them, he shall have a writ of Error; so in Originals, where there are se- veral Counts, and Error is against one, he shall have a writ of Error, and the record of his Count, and the pleading. Shall be severed from the original and removed into the Kings Bench, and yet the Original shall still remain in the Common Place; so it would be inconvenient and prejudicial (in that case) to lay until judgment be given upon the whole original: Howbeit, where there is one original and one Count, he cannot have a writ of Error until all be determined, for the record cannot be in the Kings Bench and the Com. Pl. all at one time.

33 It is prov'd by the Statute of Marlbridge cap. 6. that the Lord by Knight's service shall not lose his custody by sequestration made by Collusion, vernamen non liceat eis bujusmodi sequestrum fine Indicio disiectis, sed brevis habeat de bujusmodi custodia siti reddenda, yet if the tenant enters the Writs of the Lord upon collusion, the Lord may enter and expel him, and shall not be put to his action, as it is held in 33 H. 6. 16. for the general words of the Act shall not enable the Writs, who is disabled against his Lord by the Common Law, and if the Lord should bring an action against him according to the letter of the Act, he shall be thereby emancipated, which would be a prejudice to the Lord, and was never intended by the Makers of that Act.

34 In every Law there are some things, which when they happen, a man may break the words of the Law, and yet not break the Law itself, and such things are exempt out of the penalty of the Law, al- though they are done against the letter of the Law; for the breaking of the words of the Law is not the breaking of the Law, so as the intent of the Law is not broken, and when the words of the Law are broken for the avoiding of greater inconveniences. For example, it is against the Law for any man to assault, bind, or beat another, yet in the 22. Book of Assizes, pl. 56. If a man be mad and out of his wits, whereby he both or is likely to do great hurt, other men may assault, bind, and best him to, and without it by Law, to prevent the hurt and mischief which he may do in that condition. So the Statute of Marlbridge cap. 4. prohibits generally, that none shall convey a distress out of one County into another, yet it is adjudged in 1 H. 6. 11. Distress 1. that if one hold land of a Manor in another County, the Lord may de- termine and bring the distress from the land holder of the Manor, into the County where the Manor is, and this is for the avoiding of a mischief's inconvenience; yet it would be great damage to the Lord if he might not bring the distress to his Manor, for the avoidance whereof the Law is not offended, albeit the letter of the Laws is not observed: In like manner, there was a Law amongst the Romans, that whoo-
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after sealed the walls in the night should be condemned to die, yet in the time of war one sealed the walls in the night to discover the approach of the Enemy, and he was by the Senate not only whipped of death, but besides was well rewarded for his service to the Commonwealth; for although he thereby infringed the words of the Law, yet the grave Senators expounded it to be no breach of the intent of the Law; because that Law was made to prevent hurt and danger, and not to inhibit benefit and safety to the City; so likewise in Foggas lies, the uncertainty of the word being caused for the avoiding of a great inconvenience, (viz. the loss of many men's lives) shall excuse the uncertain of the agreement with the Collector.

35 In an appeal of murder against five, if one Venere facias liberae out to summon the Jury, they ought to be tried all together, but if they in subity make several Challenges, so as there cannot be left a full Jury, the Clerk may sever the panel; for otherwise upon height and subity they might escape the trial.

36 Albeit the estate and interest of a Copyholder (upon defect) vested in him by force of the Custom of the Spanoiz, yet in pleading the Law both allows him to allege (before admittance) his ancestors admittance, (after admittance) his own, as a grant, and this is to permitted by the Law to avoid an inconvenience, which otherwise would necessarily follow; for if the Copyholder in pleading should be compelled to shew the first grant, he would be at a loss in doing that, because if the grant were before time of memory, then if it not plausible, or if it were within time of memory, then would the custom fall, for which cause the Law both allowed the Copyholder in pleading to allege any admittance, as a grant, either upon a defect, or a surrender rather than to force him to plead that which may tend to his prejudice, although in rei vertice he is in by the Custom, and not by any grant.

37 The condition of an obligation was, that the obligor upon request should do all acts, which to the Counsel of the obligee would seem reasonable for; the releasing of an obligation, in which the obligee was bound to the obligor; hereupon request was made to seal a release of all demands to the obligee and one M. and another, that there was no other matter betwixt them but makes no mention of M. And this request was adjudged unreasonable, albeit there were no matter betwixt the obligee and M.

38 Regularly, all the personal estate of a Felo de se is forfeited to the King, yet if such a felon had due unto him a debt upon a simple contract without specialty, it shall not be forfeited to the King, because then the party should be rebutted from11 mailing his Law, which he might do against a common person.

39 Vide Hob. 3 Pincombe against Rudge: A warranty may be sued by way of Covenant 133. Allen, and Walker, for summors in Holmer.

40 If an office be found only in one County of all the lands lying Office as well in other Counties as there, which in Law is no office, but only for the proper County, yet this by the Court of Wards was allowed, as an office to all, to ground a charge and process upon; for that it was beneficial to the Subject, who else by others offices should have been put to an intoliterate charge, &c.

185 Nemo
Max. 185.

Nemo bis punitur pro eodem delicto.

1. Wetherol brings an appeal of murder against Darley, the defendant pleads not guilty, and he was found guilty of homicide, and was his clergy; and afterwards he was indicted of murder, and thereupon arraigned at the Queen's seat, and he pleads the former conviction in the appeal at the rate of the party; and it was adjuged a good bar, and thereupon he was discharged; for it was a good bar at the Common Law, and not restrained by any statute; and the reason thereof is, because the life of a man shall not be twice put in jeopardy for one and the same offence.

2. Hudson brings an appeal of mayhem against Lee, the defendant pleads, that the plaintiff had before bought an action of trespass in the Common Bench against him of assault, battery, and wounding, and thereupon had recovered against him 200 Marks damages, and 10s. costs, which were satisfied before the appeal brought; and further averred, that the battery and wounding in the trespass, the mayhem in the appeal were all one, and not divers; whereupon the plaintiff demurred: And it was resolved per totam Curiam, that the bar was good; for albeit it was alleged, that an appeal of mayhem, being an action of an higher nature than an action of trespass, could not be barred by it, yet because in the appeal the plaintiff was but to recover damages, as he had done before in the action of trespass, he shall not be twice satisfied, nor the defendant twice punished for one and the same thing. Vide 41 Alt. pl. 16. & R. 3. 14.

3. Recovery of Barr in an action upon the case for assumpsit is a good bar in an action of debt brought upon the same contract, And vice versa. Recovery of barr in an action of debt is a good bar in an action upon the case for assumpsit; because in such an action upon the case he shall not only recover damages for the special loss which he hath, if any be, but likewise for the whole debt, and reason will not permit, that the defendant should satisfy one debt of duty twice. Vide 12 E. 2. 13.

4. A. covenants with two, andcum quolibet eorum; in this case they cannot sue severally, unless their interests be severable, for their interests and the Covenant must accord: otherwise the covenants may be twice charged for one and the same thing; and therefore these words cum quilibet eorum are (in such case) but modes of amplification and abundance, and cannot sever the joint sense of action; in like manner one cannot be bound to shew joinder and separability, for albeit authority may be so given (as to two, vel cibibus eorum, to give it Iver, &c.) get interest cannot, could such be supra.

5. In an action of Trover and Conversion brought in the Exchequer by bill, the defendant pleads, that the plaintiff had an action of Trover, &c. to the same goods then belonging in the K. S. and demains Judgment of the Bill, whereas the plaintiff demurred; and it was resolved by the Barons, that the Bill should abide; and one of the reasons thereof was this, that the defendant should not be twice hapsed for one and the same thing. Nemo debet his error, & confer Curia, quod fit pro uno et eadem causa.

6. A man shall not have an action upon the case to a man thereby helped in the high way, for it is a common nuisance, and therefore it is not reason, that one particular person should bring the action; for by the law
same reason, that one person may have an action for it, by the like reason every one may likewise have an action for it, and so by that means the party may be punished 100 times for one and the same cause, which were both unjust and unreasonable.

7 In all causes real or personal, when there is but one demandant of plaintiff, and divers tenants or defendants, the demandant or plaintiff may be divers times arrested, but where there is but one tenant or defendant, he shall not be twice arrested.

8 If a man be convicted in the County Court before the Sheriff in a Writ of Recompense, he shall be only arrested, because it is not a Court of Record; but if he be convicted in a Writ of Recompense before the Justices, viz. in a Court of Record, he shall be fined and imprisoned, but then he shall not be arrested, so that there be to punish him twice for one and the same offence.

9 If any trespass be arrested, and after re-enter, I cannot have an action of trespass against the second trespass; because then he would be doubly charged for one and the same offence, viz. by me, and the first trespass; And therefore by a Staton in Law I shall recover all the sixth profits against the first trespass, his servants, and others, who have committed trespass by his Command, and in his right.

F. N. B. 39. d.

10 If a man hath a Quaere Imped against one; and the defendant hath also an Action of Dower in presentment, against the plaintiff, and recovers in the Dower in presentment, and the plaintiff is non-suite in the Quaer imped; In this case, the defendant shall have two judgments against the plaintiff, viz. to have a writ to the Bishop in both Nations, and two writs shall be awarded to enquire of damages; Howbeit he shall not pay damages twice for one and the same disturbance.

F. N. B. 43. g.

11 Where one is sued in the Common Bench and in the Court Prohibita Christian for the same thing, a prohibition writ.

12 Vide Hob. 2. Incerti temporis & nominis. A debt shall not be Deb. twice satisfied.

13 Two Informations exhibited the same day against the same Inhuman man for the same offence, shall be both quashed.

186 Itayaheth and preventeth all occasions of Evil.

Co. Inst, pass.

1. 38. b. 1.

Listl. §. 123.

1 The heir of lands in socage under the age of 14. Shall not be Heir in fee committed to the custody of any person, unto whom the Inheritance is committible by any possibility may or can descend, left by undistressed practice be may again the Inheritance to himself; And therefore if a man hath two sons by servile ventres, and having lands hidden in socage of the nature of Borough English, debeth, the younger brother within the age of 14 years, the elder brother of the half blood shall not have the custody of the land, because by possibility the elder brother may inherit the land; so if the younger be without issue, and the land descend to the uncle, the elder brother of the half blood may be heir unto him; And therefore the Rule in 1th. Rubr. cap. 70. 15, Nullus hereditate suo propinquuo vel extraneo peculios farat custodia committitur: And hereditate also against our ancient Authors, as Bracton l. 2. fol. 87 Brit. fol. 163. Fleta l. 1. cap. 10. Forfeic. cap. 40. Howbeit it is otherwise in the Civil Laws; Vide Fort. ibidem.

Co. ibid. 100.

2 No present suits and troubles, there are no writs in Law that may be maintained, Quia times, before any molestation, disputes, or impedes.

Write of Impeachment.
implaining: As 1. A will of Meine, before he be distained; 2. A Warrantia christe, before he be impleaded; 3. A Monstraverunt, before any disirel or vexation; 4. An Audita querela, before any execution sue; 5. A Curia Claudenda, before any default of inclosure; 6. A Ne injudice vexes, before any distress or molestation; And there are called brevia antecipantia, writs of Prevention.

To prevent false verdicts.

To prevent false verdicts, if the Jury after their evidence given unto them at Barr do at their own charges eat or drink either before or after they be agreed on their verdict, it is insalubile, but it shall not aod the verdic: Howbeit, if before they be agreed on their verdict they eat or drink at the charge of the plaintiff, if the verdic be given for him, it shall avoid the verdic: but if it be given for the defendant, it shall not avoid it, Ex sic e converso: Howbeit, after they are agreed on the verdic, they eat and drink at the charge of him, for whom they do pass, it shall not avoid the verdic.

If the plaintiff after evidence given, and the Jury departed from the barr, or any for him, do deliver any letter from the plaintiff to any of the Jury concerning the matter in issue, or any evidence, or any escrow touching the matter in issue, which was not given in evidence, it shall avoid the verdict; if it be found for the plaintiff, but not if it be found for the defendant, & sic e converso: But if the Jury carry away any writing unseald, which was given in evidence in open Court, this shall not avoid the verdict, albeit they should not have carried it with them.

By the Law of England a Jury after their evidence given upon the issue, ought to be kept together in some convenient place, without meat or drink, nor candied, (which some Books call an imprison-ment) and without Speech with any unless it be the Ballift, and with him only if they be agreed: After they be agreed, they may in courtes between party and party give a verdict, and if the Court be ever given a privy verdict before any of the Judges of the Court, and then they may eat and drink, and the next moring in open Court, they may either aftrum or alter their privy verdict, and that which is given in Court shall stand: But in criminal causes of life and member, the Jury can give no privy verdict, but they must give it openly in Court.

In no case where a contempt, trespass, deceit or injury is suppos- ed in the defendant, he shall wage his Law, because the Law will not trust him with an Dal to discharge himself in ibose cases: Only in some other cases, as debt, detinue, and accotnt, the defendant is allowed by Law to wage his Law, because they are not criminal.

The reason why alienations in fee, in tail, or for life, by tenant in tail, Abbot, Bishop, husband of his wifes land, and the like, doe make a discontinuance, and put the issue in tail, him in the reversion 2 or remainder, succesor, or wife, that right had, to their aadon, and took away their entry, was for that he was pitty in estate, and for the benef et of the purchaser, and to; the safeguard of his warranty, so as every mans right might be preserved, viz. to the demandant for his antient right, and to the seefee for the benefit of his warranty, which was founded upon great reason and equity, because the benefit of the war-ranty would be prevented and avoided, if the entry of him, that right had, were lawfull, and thereby also the danger, that many times hap- pened by taking of possession, was thereby prevented by Law.

By the express purview of the Statutes of Gloucester, cap. 3. (where the baron allins his wifes Inheritance with warranty) it af-fects do after descend from the father, then the tenant shall have reco-
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Punishment of Treason and Treachery.

The punishment which the Law inflicts upon a felon is very severe, for he is not only punished in his own person, but likewise in his relations; The judgement against his person is, that he shall be hanged by the neck until he be dead: he is punished also implicated in his relations; as if. In his wife, he shall lose her power; 2. In his children, they shall become base and ignoble; 3. In his posterity, his blood is stained and corrupted, so that they shall not inherit either to him or any other ancestor; 4. In his estate, he shall forfeit all the lands that he hath in fee simple, fee tail, for life; 5. In his personal estate, he shall forfeit all his goods and chattels both real and personal: Thus heavy was his punishment at the Common Law, and the reason thereof was, that the end of men should seem to commit felony, or poner ad paucos, metus ad omnes perveniat: And it is truly said, Ego meliores sunt quos ducit amor, tamen pluris sunt quos corrigit timor: And so it is a tortion in case of High Treason. Howbeit, after the Statute de donis 13 E. 1. cap. 1. Intestate lands could not be forfeited for felony or treason, but only during the life of tenant in tail; but since by the Statute of 26 H. 8. cap. 13. Intestate lands shall be also forfeited for treason: Also by the Statute of 1 E. 6. c. 12. the wife was to be enobled, albeit her husband were attainted, convicted, or outlawed for treason or felony, but afterwards by the Statute of 5. & 6 E. 6. cap. 11. The wife shall lose her power, where the husband is attainted of treason, so long as the attainer continues in force: There are also divers offences made felony by special Statutes, wherein donor, corruption of blood, and division of the heir are by special provision fased.

11 A meer Layman, which was not capable of tithes in peracries, was yet capable of discharge of tithes at the Common Law in his own land, as well as an Ecclesiastical person, so by the Common Law the Parson, Patron and Ordinary might have discharged a parishioner of tithes in his own land, or the parishioner might have given part of his land to the Parson for the discharge of tithes in the following, as appears in 8 E. 4. 14. and in the Reg. fol. 38. Howbeit, this was always by grant or composition, but he could never be discharged of tithes by prescription; for albeit such prescription might have lawful commencement, yet the Law in favour of holy Church would never suffer such prescription to be put to the trial of lay-men, if they would rather strain their consciences for their private benefit, than render the Church the Duties due unto it. Vide supra 2. 5.
13 The Law to prevent suits and troubles, will not permit, that a
frankentnent shall b lightly detested by bare words in pais, to the
end the tenant to the princi may be the more certainly known; but
soe if there be Lord and tenant, and the tenant by no end unto the
Lord and a Stranger, and make liberty to the Stranger in the name of
both; In this case, if the Lord by parol disagree to the estate, this
is not valid to dedit it, or he enter into the land, and desire for
the services of his feeblefay, this shall amount to a disagement of the
frankentment, and shall not detesb the frankentment out of him, but
if he enter into the land generally and take the profits, this as shall
amount to an agreement to the frankentment, as it is judged per to,
Cor. in 10 E. 4 13, For then it is not left uncertain, who are tenants
to the princi, &c.

14 The redemption of two tenants for life, or the rent of seigniory
of two Jointenants be granted by fine; here, in a Quid juris clamant
Quem redde adm redde, or that Servita against such Jointenants.
the Law will not permit the one to attenn without his Companion.
because the one making attenn without the other may prejudice
his companion, as in not claiming to be dispasible of waste, a Con-
tdition to have see, a future term, or the like; for upon a general
atttenment in Court of Record, the lessee shall lose all advantages,
which are not claimed of Record.

15 If one exhibit articles to Justices of Peace against another,
containing great abuses and misdemeanors, not only tending the peti-
tioner, but many others also, and all this to procure him to be bound by
the good behaviour; in this case, the party accused for any matter
contained in such articles shall not have an action upon the case, because
therein the party complainant pursues the ordinary course of Justice.
and the Law will not permit actions in such cases, lest such as have
good cause of complaint should be deterred from doing it, for fear of
suits and infinite vexation.

16 In case of Common by reason ofVICEAGE, the one may incline
against the other; so be that hath such a Common cannot but his ca-
set into the land of the other; but the Cattle ought to be put into the
land where they have Common, and then if the Cattle stray into the
other land, they are excused of trespass, by reason of the antient
usage, which the Law permits, to prevent suits, which might arise, if actions
should be brought for every such trespass, when there is no separation
of inclosure between their Commons. Vide Co. 1. 7. 5. b. Sir Miles
Cobers cafe.

17 In all cases, when the procease concerns the King, the Sheriff
of other officer, (upon refusal after demand, to open the day) may
break open the day of the house, or use other means to get in to the
exection; But in case of a common person the Law doth not permit
the Sheriff, or (upon request made, and denial, as aforesaid) to
break into the house of the defendant to execute any procease at the rate
of any Subject, for the great inconvenience that might ensue there-
upon; because it men as well in the night as in the day should have
their houses (which indeed are their Castles) broken open, upon pre-
tence

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tence thereof great mischief and damage might fall out, for by colour thereof upon any sengned suit, the house of any man at any time might be broken open, when the defendant might be suspected elsewhere, and so men should not be in safety and repose in their own houses: And albeit the Sheriff be an officer of great authority and confidence, yet it appears by experience, that the Kings writs are many times executed and served by Bailiffs, so are generally persons of little or no value, and therefore not to be trusted with the breaking open and ransacking of houses upon every slight occasion. See Co. 1. 11. 82, a. 4.

Lewes Bowies case.

18 If a nuisance be pleaded to the prejudice of another's frankenument, the Law both permit the party grieved to abate the nuisance before he suffer any prejudice thereby, and by that means prevent the damage, before he be prejudiced by it. Per Popham cum conta Curia.

19 To prevent any further waste, a writ of Esseprenet Ipet in an action of waste at any time, as after Judgement, as after execution.

20 To prevent Simonie, or any thing that might trouble labour, the Plaintiff in a Quare Impecit before the Statute of Westm. 2. cap. 5. did at the Common Law recover no damages; so the Law both so abhore Simonie, that it giveth to the Patron no remittance either for his presentment or for his disturbance thereof.

21 In Sir Drue Druries case in the 6. Report the Justices said, that it did become them to have good consideration in all cases depending before them, not only of the present calm in question, but likewise of the consequences thereof, viz. what general prejudice might happen thereupon either to the King or to the Subject; So if a ward should be knighted after the grant of the wardship under the Great Seal, if his knighthood might excuse him from the value of his marriage, when he might be knighted not only by the King, but likewise by his Lieutenants in reia id 03 alibi, this would tend very much to the damage both of the King and Subject, for none would then purchase any wardship upon such uncertainties; and therefore in that case his knighthood shall not excuse him from the value of his marriage, which was vested in the Lord upon his ancestors death.

22 The Common Law by inhibiting an Alien born to be capable of Inheritance in England, prevents these great inconveniences: 1. The secrets of the Nation might thereby be discovered, 2. The revenues thereof (being indeed the finnes of war) and the ornament of peace might be taken and enjoyed by Strangers born, 3. It might at last lay the Nation to ruine and destruction, 1. Tempore bellii, for then Strangers might fortifie themselves in the heart of the Realm, not much unlike the Trojan horse in Virgil. 2. Tempore Pacis, for they having gotten into the bands a great part of the Inheritance of the Commonwealth, and not being capable to serve of Justice, there would be a faster of Justice. 6.

23 To prevent mischief and oppression in the Commonwealth, Conspirators are Invitable by the Common Law, albeit they put nothing in execution by any overt act, as if they should be found guilty of conspiring to invade and acquit any, though they put nothing thereof in use.

24 To prevent escapes upon arrest, the Law both not enjoin a Sergeant or Bailiff to go on and commonly known (though not by the party arrested) to the his mace or warrant, nor a special Bailiff to the his warrant without demand, left in the mean time the party arrested may escape; but it shall be warning and warrant enough to say, I arrest you.

25 To
25 To prevent multiplication of controversies and suits, great oppression of the people, (principally of teret-tenants) and the subversion of the one and equal execution of Justice, the wisdom and policy of the Sages and Founders of our Law have provided, that no possibility, right, title, or thing in action shall be granted or assigned to strangers; and as they cannot be granted by the act of the party, so right of action cannot be transferred by act in law, as unto the Lord by escheat, neither that the Lord of a Wiltkin have things in action, as appears in 22 Afl. pl. 37. &c. And in the Parquets of Winchester, case Right of action to land was not given to the King by an Act of Attainder; and all this was for the quiet and repose of teret-tenants: Nowbeit, all rights, titles, and actions may by the like prudence and policy of the Law be restored in the teret-tenant, for the same reason of his repose and quiet, and for the avoidance of contentions and suits, and that every one may live in his vocation in peace and plenty.

26 To preserve Ecclesiastical possessions from attaintment in the justice of the Successor, the prudence of the Sages of the Law did provide, that no sole Corporation should be trusted with the disposition of his possessions, as to bind his Successor, but in such cases they were to have the consent of others, as the Bishop was to have the consent of his Dean and Chapter, the Abbot of his Covent, the Patron of his Patron and Patroner, &c.

27 The Law to prevent any miscarriage in matters of Judicature, hath provided, that no judicial office shall be granted in reversion, and the rule of law in this point is, Officia Judicia non concadorum auctoritatem vacarest; And the reason is, to prevent a great inconvenience which may arise thereupon, for that he, who at the time of the grant in reversion, may be able and sufficient to supply the office of Judicature, and to administer equal justice to the Kings Liege people, may, before the office fall, become unable and insufficient to perform it; And therefore the Kings grant of the office of Auditor of the Court of Wards unto John Churchil and John Tooke in reversion after the death of Walter Tooke, and William Curle, was adjudged void, because it was an office of Judicature in that Court, and therefore could not be granted in reversion.

28 If a man hath judgement given for him in London in the Sheriff's Court, or before the Mayor; and Sheriffs in the Usings of London, and the defendant to delay the execution of the judgement, sues a writ of £20 to remove the Record before the Mayor, &c. in the Usings, or before certain Commissioners, if the judgement be given in the Usings, or afterwards the defendant elopes his goods out of the City, or works them, to the intent that the plaintiff should not have execution of those goods; In this case, the plaintiff may have a special writ directed to the Mayor and Sheriffs to take order that so many of the goods of the defendant as amount to the value of that which is recovered, may be safely kept to satisfy the plaintiff, if he shall have the judgement affirmed for him, so as execution of the former judgement may be made, &c. of the same goods, &c.

29 Before a man can have security of the Peace against another, (left th: cause of his complaint may arise rather from malice than any just ground of fear) the party complainant ought first to make oath, that he requires the Peace against the other for the safeguard of his body, and not out of malice; And this course is still used in the K. B. and before Justices of Peace. And it was also the usual course in the Chancery to make such oath before a Master of that Court, before he could have it granted; but of later times that course hath been left in the Chancery.
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Chancery, which Fitzhurcscurt faith is not well done, because such prosecution for the most part proceeds rather from malice, than any just cause of fear.

30 The King of right ought to safe and defend his Realm as well against the Sea as against Enemies, that it be not surrounded and laid waste, and to provide remedies for the same, and also to take other that his subjects may have their passage throughout the Realm by bridges and late towers, &c. And therefore if the banks of the Sea be broken, or the柔vers and dunes be not repaired, that the fresh waters may be of their direct course, the King for the prevention of such damage as may happen by reason of such defaults, may direct the Common Law before any Commissions of Sewers, &c. grant commissions to inquire, hear, and determine such defaults.

31 The persons mentioned in the second branch of the Statute of 23 H. 6. 10. (viz. such as were in ward by Condemnation, excommunication, of the peace, or committed by command of the Justices, or Flagitious retaining to serve) were not liable by the Common Law before that Statute) for the Inconveniences which might ensue thereupon.

32 As sale of holy goods, but in a Market over, alters the property; and therefore if sold plate be openly sold (in London or elsewhere in any other market over) in a Scribners Shop, that sale alters not the property, because it is no market over for plate; it is otherwise, if it be openly sold in a Goldsmiths Shop; but if the sale be there behind a hanging of Cupboard, or in a ware-house, or other part of the house, and not openly, that passengers may observe it, such sale alters not the property; and this the Law hath ordained to prevent felony, &c. Vide Max. 191. 3. & 134. 14.

33 It was resolved in the C. B. Pac. 10. Iae, that a wife cannot be produced as a witness, either against or for her husband, and one of the reasons of that resolution was, in respect it might be a cause of implacable bickery and division between the husband and wife, and a mean of great inconvenience.

32 Druy bought a Quare Impedimente against Kent the Incumbent and others; and upon formes made to the Court, that Kent did fell timber upon the Glebe, and upon the lands of Copyholders, holding of a Sparrow parcel of the Heiroy, the Court granted a Prohibition to prevent further breach.

33 The priva delivery of desamato355 Letters was criminal and confinable in the Star-chamber (and now, it is seen, inadmissible in the Upper Bench) because such quarrelless Letters tend to the breach of the peace, and to the littering of Challenges and quarrels, and therefore the means of such evils, as well as the end, are to be prevented.

187 It moderateth the rigi degree of the Law it self.
things as are of necessity for the maintenance of the warre, Moratur
be both way, according to the intention of the Protection and Statute
aforesaid.

2 If A. be held of lands, and he and B. grant a rent charge to one
in fee, this prima facie seems to be the grant of A. and the confirma-
tion of B. but yet the grantee may have a right of annuity against
both: Hypothetical if two men grant an annuity of 20l. per annum to
another, although the persons be several, yet he shall have but one
annuity; but if the grant be Obligatory not et uramque vitrum, the
grantee may have a right of annuity against either of them, but he shall
have but one satisfaction.

3 An action of trespass was brought against Tilly and Woody for
the hores with charters taken, &c. Tilly pleads not guilty, and Woody
makes title to him by a gift, and the plaintiff traverseth the gift, and
thereupon they were at issue, and Tilly was found guilty, and the is-
 sue was found for Woody against the plaintiff; In this case, albeit the
issue was found against Tilly, yet the plaintiff had not judgement
against him; for it was found against the plaintiff and Woody that the
plaintiff had not title; and then in as much as it appeared to the Jus-
ges by the Record, that the plaintiff had not title, they ex officio ought to
give judgement against the plaintiff.

4 An action of trespass was brought by lease for years of Cattel
taken, the defendant faith, that the lessee held of him by divers ser-
bices, &c. and for so much near he took the Cattel; the plaintiff faith,
there is nothing near, &c. and thereupon they were at issue, and it
was found for the plaintiff: and yet per nosam Curiam the plaintiff
shall not have judgement, for albeit the defendant admitted the move-
good, yet the Court dis abate it; because it appeared unto them that
the defendant was Loyal, against whom an action of trespass lyeth not,
for the Statute faith, Non idio punitur dominus, &c.

5 In an appeal by a seque. of the death of her father, albeit the de-
fendant affirm the writ, yet the Court ex officio ought to abate it; for
it appears to the Court, that no seque may have an appeal of the death
of any save of her husband, by the Statute of Magna Carta cap. 34,
which was in assurance of the Common Law.

6 In debt upon an obligation, if the defendant conclude his plea
with judgement & action, whereas his plea should have been non est
facsion, yet if the Judges find that it was not his deed, so as the plain-
tiff had no cause of action, they ought ex officio to give judgement a-
gainst the Plaintiff. Vide 11. 9.

7 The Statute of 23 H. 8, 3, of Arrears by as well against exec-
cutors, as the party himself, albeit the party that recovers upon the
false distress is only named in that Statute; so that Statute being made
in mitigation of the rigor of the Common Law shall be taken by
equity, and the words against the party that hath judgement are
superfluous, for it lies against any that enjoyed the thing lost.

188 Verba semper accipienda sunt in mihior sensu.

1 If one say to another, that he is perjurer, or that he hath for-
sworn himself in such a Court, by these words an action may be main-
tained, &c. by these words it appears, that he hath sworn himself in
a judicial proceeding; but to charge another generally, that he hath for-
sworn himself, is not actionable, because he may be sworn in usual
communication, And benignior sententia in verbis generalibus seu du-
bis est preferenda. Vide 178, 11.

2 Yeatsman
2 Yeames charged Hekte (being then a Justice of Peace) in these words. For my ground in Allerton, Hekte seeks my life; these words being taken in mitiori senso were not actionable. 1. because he may seek his life (with J. J. on just cause, and his land may be holden of him; 2. seeking of his life is too General, and for seeking only no punishment can be indicted by the Law.

3 In an action upon the case for these words, an Innunendo cannot make the person certain, which was uncertain before, so neither can an Innunendo alter the matter or sense of the words themselves, as to say, that such an one was full of the Fox (innunendo) the French Fox, this Innunendo doth not perform his proper office, for it strives to extend the general words the Fox to the French Fox by Imagination of an Intent, which is not apparent by any precedent words, unto which the Innunendo may refer, And the words themselves shall be taken in mitiori senso.

4 Barham brings an action upon the case against Netherhall, the words were these, Mr. Barham did burn my barn (innunendo a barn with corn) with his own hands, and none but he: And it was adjudged that they were not actionable, for it is not felony to burn a barn, unless it be parcel of a Staple-house, or full of Corn; And in this and the like cases agitur civiliter, and not criminaliter, and verba accipienda sunt in mitiori senso; Also the Innunendo will not serve, when the words themselves are not slanderous.

5 E. 2. Sir John Molyne, and C. tenant of the Spanoz of D. the tenant is attainted of treason, and office thereof found, E. 3. grants the Spanoz to Sir John Molyne, and his heirs, Tenendum de nobis hereditibus, & succesessoribus nostris, et alius capitalibus dominis seodi illius per servitium indi debita & de leue consuetudine: In this case, the question was, of whom and how this Spanoz was holden: And here albeit it was objected that the Tenendum, being by the services (inde) thence due, at which time nothing was due to the Seine, the Penalty continues still extant, and therefore that it was holden immediately of the King; yet it was adjudged, that by those words the tenant the Penalty was revived; for when these words may be interpreted in two manners of wages, viz. either immediately of the King, or mediately by the Seine, reason requires, that the words should be understood in the minor sense, especially when that appears to be the Kings intention, and terms more to his honour, and it is not reasonable, that the Seine, who offended not, should lose his tenure.

6 H. 8 grants St. John, Tenendum de nobis et hereditibus nostris per Tenure. servitium uninum Robe Annatis ad feum Natitativam, Sanjii Johannis Baptistæ, columnmodo pro omnibus & omnino aliis servitio; And this was adjudged tenure in foroage in Chief, and not tenure in Capite by Knightservice; for albeit it was objected, that the penates could not hold onely by the Rose, because homage, or (at least) fealty was incident to every tenure, and therefore the King was deceaved in his grant, yet it was resolved, that for as much as fealty is incident to every rent service, the Law annexe eth fealty to the rent, and these words, viz. Pro omnibus aliis servitio, are to be understood of other services, which the Law both doth not imply or add to it, so as the tenure shall be by a Rose and fealty; and this is the benign construction of Law, as near the Kings intention as may be, by which construction the said words pro omnibus aliis servitio have some effect, and shall not be rejected as bare, and of no force.

7 When a Spanoz hath once had the reputation of a name, by which it hath been commonly known, albeit the venemose be afterwards fe-

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Co. 1. 4, 19, b.
3. in Yeames case.

Co. 1. 4, 17, b.
4. in Barnes case.

Co. 1. 4 10. a.
1. in Barham's case.

Co. 1. 6, 6, a.
Sir John Molyne's case.

Co. 1. 6, 5, b.
Sir Molyne finishes case.

Co. 1. 6, 6, b.
Sir Molyne finishes case.
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the Common Law.

hereto from it, so as it causeth to be a Mano; yet in grants, fines, or
other conveyances it may pass still by the name of a Mano; (but
not in Adversary suits, etc.) so if I have a Park by the licence
and grant of the King, and by the name of a Park it is commonly
known, and after I surrender my patent to the King, by which (in
Law) it remains no longer a Park; yet it having once obtained the
name of a Park in truth, it is a good ground for the reputation and
continuance of the name of a Park afterwards, and by that name
may pass in conveyances; and all this by a favourable construction
of Law, etc.

8 If land be granted to A. for life, the remainder to B. for life, and
if B. die, living A. that then it shall remain to C, for life; In this case,
this word (then) shall not be intended presently during the life of A.
as these words prima facie do seem to import, but they shall have a
beneficial construction, viz. that then it shall remain, as a remainder
ought to do, that is to say, to best then, and to be executed after the
death of A. So if a gift in tail be made upon condition, that if he doe
such an act, that then the land shall remain to his right heirs, this word
then is not to be understood, as if it should avoid the estate tail, and
to be executed presently upon the act performed, but it is to be inten-
ded, that upon the act performed the remainder shall vest, and after
the estate ended shall be executed, and not before.

189. Construe thy things according to Common possibility or
intendment; And therefore

Judges.
1 Regularly Judges ought to adjudge according to common inten-
dment of Law.

Parson.
2 By intendment of Law every Parson or Rector of a Church is
supposed to be resident on his benefice, unless the contrary be proved.
Vide 2, 3.

Manor.
3 By common intendment one part of a Mano shall not be of an-
other nature than the rest.

A Will.
4 By common intendment a Will shall not be supposed to be made
by collusion.

Bon. vicium, possibilis.
5 In facto, quod se habet ad bonum & malum, magis de bono, quam
de malo lex intendit. Lex intendit vicinum vicini factura sitire. Nulla
impossibilita aut inhonesta sunt praesumenda, vera autem et honesta et
possibilis.

Guardian, Ward.
6 Lex semper intendit quod convenit rationi: As in this case, the
Guardian shall have the custody of the land, until the heir comes to his
full age of one and twenty years, because by intendment of Law the
heir is not able to do Knight Service before that age, which is ground-
upon apparent reason.

Inors.
7 By the Common Law in a plea real, mixt, or personal, there
ought to be a. of the Hundred (where the cause of action ariseth) re-
turned for their better notice of the cause, for vicini vicinorum facta
praesumuntur scientia: Holbein, by the Statute of 27 Eliz. 6. In a plea
personal, if two Hundreds appear, it lasteth; And in an Attaint
albeit the Jury is double, yet the Hundreds are not double.

Fec. simplex.
8 When a man is faild to be filled in fee, without more, it shall be Co. ibid. 157.
intended in fee simple, and it shall not be intended by this word (in fee) a. & 158.
also in fee simple, and it shall be filled by this word (in fee) a. & 158.
Litt. §. 193.

Verd.&
9 If a verdict and, that a man hath duæ partes Maneri, &c. in tres
L. 111
partes b. 3.
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The Lord by chaseth, alit his estate is created by Law, shall not pass a condition to defeat a tenant without his consent, because the devise doth belong unto him, and therefore it is presumed that he held it in his custody. So likewise a Tenant by the Curtesy shall not pass a condition made by his wife, and a re-entry for a condition broken, without his consent, to the former, or to the devisee, (who is presume to know his title) and so enter to his action against the heir, who (by Intendment) may be ignorant thereof.

Defence of the Tenant.

At the Common Law, if Lands were conveyed out of the devisee, the tenant was estopped to his writ of right; for that in regard of such long possession in so many mens hands (which the Law both ever respect and favour) the Law did presume, that the present tenant had right right to the Land: But this is now altered by the Statue of Marlebr. cap. 39. which gives a writ of entry in the Poet in that case.

Writ of right.

At the Common Law, if the devisee be cast when the devisee is out of the Realm, albeit he be not there in the Kings service, that devisee shall not take away the entry of him that right hath, because he that is out of the Realm cannot, by Intendment of Law, have conscience of the devisee, no more than a thing done out of the Realm can be tried within the Realm by a Jury of 12 men; but it is otherwise, if such devisee were within the Realm at the time of the devisee, as the devisee cast.

Defence of the Poet.

In a writ of right, an Appeal, when the tenant 02 appellee, failed of witnesses, evidences, or other proofs, the Law did institute trial by Battell, because the presumption of Law is, that God will give victor to him that hath right.

Battell.

At the Common Law, if the Church were once fall, the Incumbent could not be removed, and plenartly generally was a good plea in a Quare Impedire, 02 Alias of Dare to presentment, and one of the reasons hereof was, for that the Law intended, that the Bishop who had Care of fons within his diocese, would admit and institute an able man for the discharge of his duty and his own, and that the Bishop would do right to every Patron within his diocese; besides, Institution is a Judicial act, and in nature of a Judgement, and therefore intended to be full.

Plenary.

The four Knights Electors of the grand Alisire are not to be challenged, for that in Law they be Judges to that purpose, and Judges and Justices cannot be challenged, because they are indented by Law to do right: And for the same reason it is, that Noblemen, who in case of High Treason are to pass upon a Peer of the Realm, cannot be challenged, because they are Judges of the fact; and therefore (by Intendment of Law) will give a righteous judgement, Res indicata pro veritate acceptitur.

Challeng.

It cannot be behind for 20 years, and the Law make an acquaintance to the latt that is one, all the rest are presumed to be paid, and the Law.
the Common Law.

20 In a settlement by deed, albeit in the clause of warranty it be not mentioned to whom, yet it shall be intended to the lessee.

30 A Layman may prescribe in modo decemandi, but not in non decemando, because a Layman is not in some special cases capable of litigating at the Common Law, and therefore without special matter showed, it will not be intended, that he hath any lawfull discharge:

Vide 24.

31 If baron and tenant levy by a line of land, whereas they are seated in right of the same, and the baron only declare the use of the land, this declaration shall bind the lessee, if her assent appear not; for when the same with the baron in the land, it shall be intended (if the contrary appear not) that the same also with him in agreement to the declaration of the uses of the land: So if baron and tenant tell the land of the same to another for money by parol, and after levy a line to the lessee and his heirs, this shall bind the lessee without any writing proving her assent: Vide ibid. 45. 4. 10.

Attestor n.

If the reversioner own his lease for life, and make testament in fee, and the lessee re-order, this is a good attornment, and yet per- venture he hath not notice of the testament which was made of the land, and without notice the attornment is not valid; Howbeit, in regard it is intended by Law, that the lessee cannot be miscustent of such testament as are made of the land, the Lease (in such case) doth imply notice.

23 By the Statute of 32 H. 8, cap. 2, of Limitations, in an Advo- tory or Consequence for rent, suit or service, the tenant shall be within 40 years before such Adovtory or consequence; Howbeit, that he shall not spread to such rent or service, as by common possibility may not happen or become due within 40 years; as if the leigh soe confides of homage and fealty only, in this case the tenant may live 40 years after they are made: In like manner if the service be to cover the Hall of the Lord, 02 to march with him when there shall be war between the King and any of his enemies, such canall services, as by common possibility cannot happen within 40 years, are not within that act: Where is the same Law also of a Formedon in defensor, for the tenant in tail may live 50 years after the disconvenience; And therefore in Firz williams case in 10 & 11 Eliz. it was adjudged, that Formedons in des- fender were not within the Statute, for the common possibility ato2e said. Vide plus ibid.

24 The Sheriff reciting, that A. has a lease of a Partonage pro- ternino diversorum annorum extenua venter, sold it by force of a Fieri facias to another; and this sale was adjudged good, because by common intermission the Sheriff cannot have precise knowledge of the commencement and end of the term: The Law is otherwise in case of an Inquisition, because a term cannot be extended without knowing the beginning and ending thereof, to the end that the debto may have the residuus of the term, when the debt is satisfied, &c.

25 Albett

Co. ibid. 383. b. 2.

Co. l. 1. 44. a. 4. in the Bp. of wincheffers case. & Co. ibid. 45. 4. 10.

Co. l. 1. 45. b. 4. in Bevis case.

Co. l. 4. 10. b. 4. in Bevis case.

Dyer 179. pl.

Dyer 179. pl.

Palmer sale.

Co. l. 4. 74. a. 3. Palmer sale.
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25 Albeit a Corporation have a commencement by Charter, and (by consequence) within memory, it be expressed in their Charter that the choice of their Bailiff, Bailifs, and other principal Officers shall be by the Commonalty, yet it by a long usage they have chosen them by a select number of the principal of the Commonalty or of the Burgesses, although no such constitution can be showed to warrant such election, yet (to avoid popular confusion) such election is adjudged good in Law, because it is presumed and intended, that such special election (which could not commence without common assent) was formerly made and agreed upon. Vide infra 199. 2.

26 If a man hath land, in part whereof there is a Coke-mine open, and he bevesteth the land to one for life, 2d for years, the lessee may digg in the mine; so in as much as the mine is open at the time of the lease made, and he bevesteth all the land, it shall be intended, that his intent is here general, as his demesne is, viz. that the lessee shall take profit of all the land, and (consequently) of the mine within it: Vide 17 E. 3. 7. Ann to the doubt in F. N. B. 149 c. well explained.

27 A. sold lands in fee by deed invented and enrolled co-""
Max. 189. the Common Law.

 debtor, and not to his prejudice, as (land of the value of £1 per annum be debited to A. and that A. shall pay out of it 50s. per annum, in this case, A. hath but an estate for life, for he may pay it out of the profits of the land, and is free to be at no loss; but if it be debited to B. for life, the remainder to A. paying 50s. per annum out of it. In this case, A. hath fee simple, because after the payment thereof A. may die before he can receive satisfaction for the same out of the profits of the land; and therefore such a devise shall be fee simple, because the law intends that the devise was intended for his benefit, and not for his prejudice.

31 B. brings a plaint in the Court of Ludlow (which is a Court of Record) against C. tam pro Domina Regna quam pro scripo, upon the Statute of 4 & 5. Ph. & M. cap. 5. for exercising the trade of a woolediner without having served seven years as an Apprentice, &c. and had judgement, &c. thereupon B. brings a writ of Error, &c. and for one of the Errors assigns, that albeit Ludlow be a Court of Record, yet it is not such a Court as is intended by the Statute for causes of that nature; for that the ancient usage in all such popular actions or informations hath been, that albeit the Informer tam pro domina Regna quam pro ipso exhibits the Information, yet if the defendant pleads a special plea, the Queen's Attorney shall reply alone, and it was intended by the makers of the said Act, that the same should be in such a Court, where the Queen's Attorney may attend, for the benefit which the King may have by such a suit, and that is in the four Courts at Westminster; And thereupon the Judgement was reversed. Vide Dyer 236. 24.

32 He that comes in by Admission and institution, comes in by a judicial act, and the Law presumes that the Bishop, who hath the cure of the Souls of all within his diocese, for which he shall answer at his hearth and final account (in respect whereof he ought to defend them from all Schismatiques, Herepectives, and other Instruments of the devil) will not do, or at least to any wrong to be done to any Parsonage within his diocese, but if the church be litigious, will inform himself of the truth de iure Patronatus, and do right.

33 The person of a Peer of the Realm, or a Countess, Baroness, &c. by marriage of a Peul, ought not to be arrested for debt or trespass; because the Law presumes, that they have sufficient in lands and tenements, whereby they may be restrained; and therefore in such cases issues only shall go out against their lands: And albeit a Countess, Baroness, &c. in respect of her sex, cannot sit in Parliament, yet she is a Peer of the Realm, and shall be tried by her Peers, as appears by the Statute of 20 H. 6. cap. 9, which is a declaration of the Common Law. Vide plus ibidem.

34 If Cefaly que ule had granted his use by his will, no collation could have been ascended upon such a will to obtain the wardship of his heir; for Nemo proieritur esse immemor suæ aenæe salutis, et maxime in articulo mortis, et omnino testamentum morte consummatum est: And the Statute of 4 H. 7. 10. which gives the wardship of Cefaly que ule, makes exception, when any will is by him declared. Vide 27 H. 8. 14.

35 Ch. and Eliz. were divorced in the Court of Audience ratione causis minoris et impudicatis Eliz. after they had lived ten years together, and had made a daughter; and afterwards Ch. marrying another woman, by another Sentence in the Ecclesiastical Court the first marriage was declared void, the second good, and liberty given them ad resque conjugalia obsequia; The second wife dies, and Ch. marries
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marries a third wife, and hath there another daughter; the last daughter is found heir by office, the first traverleft the office by bill in the Court of Wards: And in this case it was resolved, that albeit the first was in truth a lawful marriage, yet the sentence of nullity being in force, no adverse could be admitted against it, because the Spiritual Judge having jurisdiction thereof, before the sentence were repeated, it was intended by Lato to be just, and our Law gave credence thereto: For, Res Judicata pro veritate acipitur. See Dyer 23, pl. 62.

If the Oblige confesses himself to be discharged of all bonus before him and the Obligo, this (by intendment of Law) is a release of discharge of all bonus betwixt them; for albeit the words discharge is not properly said of the part of the Oblige, but of the Obligo, (for the Obligo to be discharged,) yet (in judgement of Law) such an acknowledgement amounts to a discharge of the Obligo of all such duties.

37. In debt against an executor he cannot plead quod ipse non habet, &c. aliqua bona, &c. praeter bona, &c. quoniam necessarium satisfacienda debita predicta; but he ought to plead, quod non habet, &c. bona, &c. praeterque bonas & causas ad valorem fidem & non ultra, qua eadem debitis obligatus & onerabili existit; for the act plea is insufficient for the uncertainty (vide Max. 161, pl. 61.) and the other he ought to plead, because he being party and representing the person of the testator, hath (by intendment of Law) notice of the certainty and certain value of the goods, and therefore in such case ought to plead certainly, as aforesaid; The like Law is of an administrator; for the goods of the Intestate.

38. Of Impositions formerly given to Monasteries, not only those which were truly Impositions, but likewise such as had been and were so in reputation, were given to H. 8. by the intendment of the Statutes of Dissolution; for albeit in those Statutes there is a taking of rights, yet the Founders, Donors, &c. are excepted out of that having, so as they are bound by the body of the Act.

39. A Prescription, that every Inhabitant in the parish is to pay 2. in the pound according to the value of their houses yearly, instead of Tithes, is a good prescription; because (by intendment of Law) the commencement thereof might be lawful, for it might be so by composition for the lands before the houses were built.

40. It is a Principle in Law, that a barr is good, if it be certain, to a common intent; as if a Seilnague be demitted to A. for life, the remainder to B. for life, si ipse B. vellet in habitare in seilnagio predicto, &c. Here, in an Action brought by the lessee for the recovery of the Seilnague, on the condition broken, it is a good barr for B. to lay, that after the death of A. he entered, without availing the time of his entry, viz. immediately after the death of A., because (by intendment of Law) it will be presumed he did so: So if one plead in barr, that A. died seised, and that B. entered, as son and heir to A. this is a good barr, and yet it may be that he was not his heir, for it is not expressly said, that he is his son and heir, but that he entered as son and heir, and yet in regard he pleads by way of barr, the barr shall be intended for the defendant. In like manner in 77 Att. pl. 31. Tit. Barr 303. & Br. Aid. 273. In an assize brought by the heir, the tenant, faith, that the father of the plaintiff being tenant by the Curtesy, and yet in life, let his estate to the ancestor of the tenant, who died seised of that estate, after whose death the tenant was in as son and heir, and demands Judgement & Aid, &c. And this was held a good barr. And yet he faith not, that he was the first that entered after the death of his Father,
Chap. pro
fine.

41. If a man be condemned in trespass, or in debt upon an obligation
(where he denies his debt) at the suit of the party, and after he is
taken by Capias pro fine within the year at the King's suit, and com-
mitted to the Gaoler, if the Gaoler suffer him to escape, the party shall
have an action of debt for this condemnation against the Gaoler, and
yet he was not committed to him at his suit, but at the suit of the
King; notwithstanding the King's suit shall serve the party in this case, be-
cause the King was entitled to the fine by the party; but it is other-
wise after the year; for then it will be intended, that the party hath re-
corded with him that was condemned; and therefore after the
year he shall be put to sue a Scire facias upon that Judgement. Vi-
de Max. 63. pl. 4.

42. In debt against an Executo, the plaintiff never count, that he
executo hath assets; for it will be intended prima facie, that he hath
assets; so likewise in debt against the heir, the plaintiff shall never
avert in his Count, that he hath assets; for the Law presumes it pri-
ma facie; because the Law presumes, that the executor or ancestor will
not leave a greater charge upon the executors or heirs, than he leaves
benefit to discharge it.

43. In the Argument against perpetuities in Corbet's case, it was
said by Gannivle Justice, that before the making of the Statute of 13
E. 1. de dominis, and the Statute of 27 H. 8. of Ules, such a proviso an-
tered to an estate tail, that it should cease as if the tenant in tail were
dead, was never seen or heard of, and therefore he conclusively, that it
could not be done by Law: And of likewise concludes Littlecon in the
like case, that if any action might have been brought upon the Statute
of Mercon, cap. 6. De dominis, qui maritaverint illos, &c. it parentas
consequentur, &c. it shall be intended, that at some time or other, it
would have been put in use; and therefore he saith, that no action
could be brought upon that Statute, in so much as it was never seen or
heard, that any action was ever taken thereupon.

44. By Intendment of Law a verdict is true, and therefore the Law
will admit of no new proof to defeat it; for albeit, where the defend-
ants in an attain render new matter in evidence to enforce the first
verdict, as they may, the plaintiff shall be admitted to disprove it; yet
the plaintiff shall never be suffered to produce any new matter in
evidence, not before the first by other matter afterwards intro-
duced.

45. A man intitutes himself as devisee of the whole land by the
Statute of the 32 H. 8. of Wilis, and albeit he showed not the tenure,
it was assigned well enough, for that it ought to come on the other
part, and prima facie it shall be intended Docage, because most part of
the land is so helden.
190 Statit praesumptio donec probetur in Contrarium.

1. If an agreement be made between two, that the one shall enforce the other upon condition in turety of the payment of certain money, and after the liberty is made to him and his heirs generally, the estate is helden by some to be upon condition, so that the intent of the parties did not appear to be changed, but to continue at the time of the liberty.

2. An issue found by verdict shall always be intended true, until it be retracted by Attaint, and so, that reason upon an Attaint no supersedeas is grantable by Law. Plow. 49. b.

3. If a man plead a testament of a Manor, he need not plead an Atolement of the tenants, so it will be intended that the tenants did attest; But (if it be material) it must be pleaded or pleaded of the other side.

4. The issue of tenant in tail may fallible a recovery had against tenant in tail by default, nisi dicit, confession, or demurrer; but if the recovery passed upon an issue tried by verdict, he shall never fallible in the point tried, because an attaint might be had against the Jurors, and albeit all the Jurors be dead, so as the attaint do fail, yet the issue in tail shall not fallible in the point tried, because, until it be lawfully abated, pro veritace accipitur: As if the tenant in tail be impaired in a Forcendom, and be tragedeth the gift, and it is tried against him, and thereupon the demandant recovers; In this case, the issue in tail shall not fallible in the point tried, but he may fallible the recovery by any other matter; as that the tenant in tail might have pleaded a collateral warranty, or a release, as Litt. putted the case, or to confess and avoid the point tried.

5. A tenant of land in fee, demiseth to B. for years, and after by deed intented before Easter Lem in 29 Eliz. bargains and tells the land to C. and the same Lem leves a fine to C. and his heirs, and afterwards in the same Lem also the deed is enrolled, A comitts waste, so which C. brings his action, whereunto A. pleads that C. was in by the fine, and not by the deed enrolled, and that he never attened; upon which plea C. demurs: In this case, although it was objected, that it shall be intended by Law, that the deed was enrolled the first day of that Easter Lem, because the Lem is as to others purposes is but one day in Law, and the rather for that it both not appear by the record, what day of the Lem the deed was enrolled, but generally Lem Partch, and therefore it shall be intended to be enrolled the first day of the Lem, and then C. being in by the deed and not by the fine, there needed no attendment: yet (in this case) it was resolved by the Court, that it was true, that it shall be intended by presumption of Law, that the deed was enrolled the first day of the Lem; but Statit praesumptio donec probetur in contrarium, and so as much as the plaintiff by his demurrer hath confessed the enrollment to be after the fine, the presumption thereby vanished, and becomes of no force, and the mutual consent and confession of both parties shall stand.

6. In the cause against Crawdy, being depisted by the High Commission Court for preaching against the Common Prayer-book, it was objected, that the Commissioners were not nominated and appointed according to the Act of 1 Eliz. 4, because the Jurisdiction and power given by that Act to the Crown, was to name such Commissioners as were natural born Subjects, and not Aliens, and that it did not appear by the special verdict, that the said Commissioners were natural
natural born Subjects; And therefore the Queen having only a power given by statute of that Act, the nomination not pursuing the authority given unto her, was utterly void, &c. But to this it was answered and rebated, that they who were Commissioners, and had places of justice over the King's subjects shall be intended to be Subjects born, and not Aliens; but it (in truth) they were Aliens, yet in respect of the general intention to the contrary, it ought to be alleged and proved by the other party; &c. Stabinur presumption done proctor in contrarium.

7 By Intendment of Law the heir being under the age of 21 years is not able to do Knight service, until his full age of 21 years, and hereby agrees Littell. fol. 23. Yet this presumption of Law gives place to a judgement and proof to the contrary, according to the Maxim, Stabinur presumption done proctor in contrarium: And therefore when the King, who is the Sovereign and Supreme Judge of Chivalry, dubbs an Infant Knight, he thereby adjures him able to do Knight service, &c. all persons are concluded to say the contrary; and therefore such an heir to make Knight shall be out of Ward and empoly: Howbeit, he shall pay the value of his marriage, &c. Vide Ma. ca. cap. 3.

8 The submission to an award between A. and B. was general, viz. of all actions, demands, &c. And the award was, that A. should pay B. twenty pounds. And in this case it was objected, that it did not appear, that the matter of the Arbitration was the matter only that was between them, because the submission was general of all actions, demands, &c. and therefore if the arbitration were not made of all the matters in controversy, the award was void: To which it was answered and resolved, that it appeared by the award, that it was made de pramissis praeclis in condicio specifica, which imposed a condition, that the Arbitrator had made it of all that, which was referred to him, and so it was to be intended, until the contrary were shown and alleged by the other party.

9 Adventures subsequent are insufficient to declare the rules of a Recovery precedent, if nothing appear to the contrary to declare the content of the parties to be otherwise.

10 In a Quo warranto for the claim of chattels of felons, &c. the defendant pleads, that the Abbot of S. lawfully had and enjoyed them, till the Abbey was granted to the King by the Statute of 27 H. 8. &c. and pleads also the Statute of 32 H. 8. which revives the privileges of Abbots, and that the King granted a certain parcel of the Abbey, and to, talis, etc. tanta privilege, &c. unto him; And in this case, it was objected, that it did not appear by the claim of the defendant, what estate the Abbot had in the said franchises, but generally, quod licet habuit & gauvis sui, et pro peradventure he must have them but by a lease to life 21 years, &c. To which it was answered and resolved, that a general having and enjoying of them shall be intended of a having and enjoying in fee simple, and that in such case a particular estate of interest shall not be presumed, unless it be specially shewn, &c. to the 1070 Fee shall be intended fee simple, and not fee tail, unless it be so expelled. Vide supra, Max. 189. p. 8.

11 If the principal in felony be attainted errountly, either by error in process, or because the Principal being out of the Realm, &c. was outlawed, or that he was in prison at the time of the outlawry, &c. yet the accessary shall be attainted; for the attainer against the principal stands in force, until it be reversed, and with this agrees 2 R. 3. f. 12. And in the 18 E. 4, 9 The principal was erroneously out.
outlaided for felony, and the Accessory taken, indicted, arraigned, convicted, attainted, and hanged, and afterwards the principal reverted the outlawry, and was indicted and arraigned of the felony, and found not guilty, and thereupon was acquit: And here it might be demanded, that so much as there cannot be an accessory without a principal, and in this case there being no principal, how shall the heir be restored to the lands which his father had so lost by the false unjust attainer? So this it may be answered, That the heir may enter to have his action; for now upon the matter by act in Law the attainer against the father is without any writ of Error utterly annulled; because by the reversal of the attainer against the principal, the attainer against the accessory, which depended upon the attainer of the principal, is ipso facto utterly defeated and annulled: And this notably appears in an ancient book in the time of E. 1. Tit. Mordacrester 46. The case was this, A. was indicted of felony, and B. of the receipt of A. A. alledged himself and is outlawed, B. was taken, and putting himself upon the Inquest was found guilty, whereupon B. was attainted and hanged, and the Lord entered as in his ejectment, and after A. came and reverted the outlawry, and pleading to the felony was found not guilty, and thereupon was acquit, whereupon the heir brings a Mordacrester against the Lord by ejectment, who comes and the loss of all this matter, and it was determined in Judgment thereupon, whereupon it was averred, that the heir of B. should recover all the land; for if B. had been then alive, he should have gone suit by the acquittal of A. because he could not be a Receiver of a felon, when A. was no felon. Vide plus ubi supra.

F.N.B. 47. d. 10 The writ of Indicavit shall not mention, that the titles and offer- rings, which are in fact, amount to the fourth part of the Church, but decimas provenientes de cenca sacri, or of such a charge, and if these Titles be not of the value of the fourth part of the Abbotship, the other party may demur it, and pray Contumacy; for the Law presumes, that the plaintiff would not bring an Indicavit, if the Titles were not of that value, until the defendant allege something to the contrary.

Plow. 64. a 3. 11 The return of a Sheriff, whether it be right or wrong, is presumed by Law to be good, and shall stand in force, until it be rebeated by Error.

P'or. 77. a 3. 12 Upon suggestion of contanguality in the wife of the Sheriff, and the wife of the plaintiff, an Affidavit was directed to the Constables, and an exception was taken to the suggestion, for that it was not shown that they were of the whole blood; but the Court held, that it should be intended they were of the whole blood, until the contrary were showed on the other part.

Co. Inf. part 1. 295. a 1. 13 Wager of Law lyeth not, when there is a specialty of want to charge the defendant, but when it greweth by wood, so as he may pay of satisfie the party in secre, whereas the defendant, having no testimony of witnesses, may hang his Law, and thereby the plaintiff is perpetually barred, (as Litt. faith 5. 14.) for the Law presumes, that no man will find his himself for any impossible thing.

Co. 1. 5. 58 a. 14 The husband and wife were divorced before the husband, he marries again and hath issue, this issue is legitimate; for the first marriage was dissolved from the Patrimonial bond, and albeit the second marriage be admitted convertible, yet it stands good, till it be avoided.

Burb. cuf. 15 A man arraigned of homicide pleads not guilty, and is found guilty, but for the difficulty of the Clergy in the case, he was repleaded before Judgement, and it was moved to the Justices, whether he was
be were bailable in the mean time; and it was held he was not; because he was more than a vehemently suspected person, being contin-ued of the offence; it had been otherwise if he had not been convicted; for by presumption of Law before conviction he shall not be deemed guilty before he be to found upon his trial, and the meaning of the Law in Bail is, quod nat indifferently, whether he be guilty or not.

16 In a Eliz. a woman sued for her Dowser, and being put to prove her husbands death, she did it by two witnesses (whereof one was his brother) viz. that he was a spinister in 1. Mar. he fled to religion into Germany, and that by Merchants and other Englishmen, who used to travel and trade in those parts, they could never learn any sayings of his life, and therefore they did in their consciences rather think him dead than alive; and this plea was adjudged sufficient for the recovery of her Dowser.

Fine reversed.

17 Cheney lends a fine, and after bringes errore to rebatse it, and assigns non-ages, and hath a Scire facias against the Commissor, and ap-" on two Nibils the Court proceeds, and by mistitties and inspection rebatse the fine; Cheney tells the land to others, upon whom the first Commissor enters, and the Secondes being a writ of entry for disfuisse, and against the former Judgement the tenant gives in evidence an examination of witnesses in Chancery, proving the full age, and albeit it it seems to the Court not available against the Juogement, yet the verdict putt with that testimony, and afterwards was affirmed in attaint.

18 Upon a Commission in nature of a Dean clausit extempum a tenure in Socage is found of the Queen, as of her Borony of S. Alter-" wards a second Commission finds Knight-warden tenure, as of the said Borony; after that a third Commission issues naming, Good comperum et per inquisitionem capit. post mortem A. tempore H. 5, that the said land was helden of the King in Knight-warden in Capite, whereupon Knight-warden in Capite is returned, pro isto inquisitionem tempore H. 5. liquet. And in this case, it was held, that the heir need not traverse the Two last Inquisitions, because they were without warrant, but that the first office (although against the Queen) shall be allowed, until disproved by Scire facias, which shall issue out the Recus tempore H. 5, according to the Statuta de Eichendor-" bus, 29 E. 1.

19 The Dean of Wells was depnited by the Bishop for having two dignities in the same Church, but he was afterwards released by a Commission of Delegates, made divers benites, which were confirmed by the Bishop and Chapter, and after that he was again removed by another Commission of Delegates; yet the benites, which he made while he was Dean, were adjudged good.

20 Letters for years withdrew his term to his secom; the life, the remainder to A, and dies, the executor enters, and makes executor and dies, the executor of executor enters, and takes the profiss for a year, and he in remainder brings except for the profiss, and it was held, it lay not, 1. to want of pistill, 2. the remainder of the term was void, (Boldestt Welton, Welth, and Harper, held it might be good by devise, though void by estate executor) 3. for that the executor had not declared to have the term as devisee, or as executor, and it shall be intened as executors, untill the contrary be shewn.

21 In debt against the executor of the heir, there need no Dyer. 344. 2, averment that alters descended to him, so it is so intended, unless the contrary be shewn.

Debt against the heir.
The Reason of

In debt by Saint-John against Saint-John, Bailiff of Stockbridge, upon the Statute of 32 H. 6. 15. for not returning him Bur- gess of that Town to the then intended Parliament; And where the Statute saith, that the Sheriff shall send his process to the Mayor, and if there be no Mayor, then to the Bailiff, the plaintiff declared, that the Sheriff had made his process to the Bailiff, without alleging that there was no Mayor; And after a verdict for the plaintiff this was moved in arrest of Judgement; But the Court was of opinion clearly, that it shall be presumed there was no Mayor, except it be showed, and if there were, it ought to be shewed on the other part.

191 Ad ea qua frequentius accident, Jura adaptantur.

1 It is said, that Absentio and Intruders are out of the Statute of 32 H. 8. cap. 33. which gives the distress five years to prevent a de- fect, &c. because that statute is penal, and extends only to a distress of, who is only named in it; And the reason why he only was there- in named, and not the Absentio or Intrudor, was, because distress was the most common method; Et ad ea qua frequentius accident, &c.

2 In times past wager of Law was accounted a good trial in an action of debt without speciality, because the Law presumed, that no man would swear himself to any worldly thing; But of later times mens Conferences are grown to large (especially in this case) passing with impunity) that the plaintiff now dare not (many times) adventure the debt upon the defendants oath by bringing an action of debt, but rather chuse to bring an action upon the case upon his pro- mise, wherein he cannot wage his Law.

3 The proper and most usual place for selling plate in London is a Goldsmiths Shop, because such commodities use to be sold there, and not in a Scrapwomens Shop, or the like; And therefore if no Plate be sold in a Scrapwomens Shop (although it be openly, and upon the market day) it shall not alter the property, but the party shall have restitution; It is otherwise if it be sold openly in a Goldsmiths Shop, &c. Vide Max. 186. pl. 32. & 134. 4.

4 Guardian in Bright service shall have the single value of the mar- riage without tender; And yet the words of the 29th de valore mari- tatis are, Quae cum Maritago prem. B. ad ipsum. A. pericant, co quod prd. B. terram sequam de eo tenuit per servitium militare, & idem A. prd. B. dam suum infra exatum, &c. compoten maritagium absque dispartagione, &c. sequus obulator, &c. But the reason thereof is, for that withs are most commonly framed according to that which with most usually fall out, always (in this case) supposing, that a ten- der is made, because for the most part it happens to be; And there- fore whereas the Rules is, Ad ea qua frequentius accident, Jura adaptantur, it may in like manner be said, Ad ea qua frequentius accident, rescripta sive brevia adaptantur; And in other cases a special case shall have an usual wilt, and a special Count.

5 In 17 E. 3. 24. In debt upon an obligation of 20 l. Judgement was obtained before the Mayor of Newcastle, and execution had there- upon, and because the obligation was not cancelled (which after judge- ment was the usual course in those ages) the plaintiff had judg- ment in another action upon the same obligation, and the defen- vant upon pleading the first Judgement could not be relieved, because it was imputed to his folly, that he did not procure the obligation to be cancelled upon the first Judgement which was the ordinary usage of
of the Judges at and about that time, because men in ancient times, after a judgement obtained were apt to be quiet, and to rest contented therewith, without bringing writs of Error, or Attainder, which then were very rare, especially writs of Error: But now of later times men growing more contentions, and not satisfied with any trial of judgement, but being apt upon every such trial of judgement to bring a writ of Error or Attainder, the Judges have thought it dangerous to order the case to be cancelled, either where the plaintiff recovers, or where he is barred by judgement; for in both cases the judgement may be revetted by Error or Attainder: And therefore the reason of every case of the Judgement in 17 E. 3. being now changed, there is now no question, but at this day judgement and execution upon an obligation is a good bar in a new action thereupon, albeit the obligation be not cancelled.

Statute of wills, &c.

6 If there be Grandfather, Father, and others Sons, and the Grandfather in the life of the Father convey his lands to any of the Sons, this is out of the Statute of 32 H. 8. 1. of Wills; for the words of the Statute are, for the advancement of his wife, preference of his children, &c., and therefore because the Fathers children are none of the Grandfathers children, such a conveyance is out of that Statute; But the makers of that Act framed it according to that which was most vulgar and usual, and that was for the father to dispose to his children, and Ad es qua frequensus accident, &c.

Presentment.

7 If a man present to an Abovbolon, and after the Patron resigns, or is depose, and the Patron presents again, and is disturbed, he shall have an shows of Darrein presentement, and the form of the writ shall be, Quis Advocatus tempore pacis presentavit ultimo personam, que mortua est ad ecclesias, &c. Albeit he resigns, and is in full life; Also the form of the writ is to suppose the defendant did before him out of the Abovbolon, and yet by his Count he shall declare, that he or his ancestors presented last to the Abovbolon, by which he imposed, that he is in possession of the Abovbolon, and yet this good; for ad es qua frequensus accident, &c.

Nomination.

8 If a man hath the nomination to an Abovbolon, and another hath the presentation, if he name his Clerk, and be that ought to present, present another Clerk, he that had the nomination shall have a Quare impedit, and the writ shall be, Quod permittis ipsum presentatem, &c. And in his Count he shall declare the special matter, and the writ, notwithstanding such variance from the Count, shall be good: So if a man have a Chantry, which is a donative by his Letters patents, and not presentative, and he gives it to a Clerk, who is disturbed by another, and that other presents to this Chantry, or gives it by his Letters Patent, he that hath right, shall have a Quare Impediment of this donative, and the writ shall be, Quod permittis ipsum presentatem, &c. ad Camariam, &c. And yet it is not presentative but donative: Howbeit in the Count he shall state the special matter.

Donative.

Collation.

9 If a Bishop be disturbed to present, where he ought to make Collation, the writ shall be, Quod permittis ipsum presentatem, &c. So d. e. Likewise if the King be disturbed to make Collation by his Letters Patents to his Frez Chapel, he shall have a Quare Impediment, and the writ shall be, Quod permittis ipsum presentatem, &c. ad præbendam in su liber Capella, &c.

10 Regularly, a man shall not have a Quare Impediment, unless he may allege a presentment in himself, or in his ancestor, or in some other person, by whom he claims the Abovbolon, and that in his Count; And yet at this day if a man by the Kings licence make a Church parochial, which shall be presentable, &c. If he be disturbed to present un-
to it, he shall have no other writ for the recovery thereof, than a Quar
re impedier, and that without alleging any pretention in any person;
for that writ being the most usual writ for the recovery of Abdo
sions, shall not be altered for any such special case: So if a man repre
sent an Abbot to the Bishop by writ of right against another, when the Church is
both, he shall present, and, if he be disturbed, shall have a Quare Impe
dier, and allege pretention in him, against whom he recovers, with
out alleging any other pretention: In like manner if an Abbot hath
been Patron sine principali time out of mind, &c. and afterwards the
Abbot is disturbed, &c. Here, be of whom the Abbot was heir, shall
present, and if he be disturbed, shall have a Quare impedier with
out alleging any pretention in the Count, &c.

12: If an Abbot be presented to this Abboton, as the Bishop should have done,
and if he be disturbed, shall have a Quare impedier, &c. The Bishop likewise
shall have a Quare impedier at the Abboton of York, which time
the Temporalities of the Archbishops are in the Hands
of, and the writ shall be, Quod perimem cum pretensione, &c. And
yet the King may give the Abboton by his Letters Patents.

13: If a man make a Leaste for one year, &c. for half a year, &c. the
Abbot shall have a writ of the same, &c. and the writ shall say
Quod tenet ad terminam annum: because the writ
was made for leases, which were less bargain, and usual, viz. 100
Leases for 20 years: But he, as he shall in his Count show the special
matter: So a writ of waste is maintainable upon a Lease made by a man,
unless he be protested by a benefice, and the writ shall suppose,
quod etex ad terminam vitre: It is to likewise of a Count made to en
sure from such a Leaste to such a Count; and in such case the writ shall
suppose, quod tenet ad terminam annum, &c. and the Count shall de
clare the special matter, as aforesaid.

14: If one man impugne another, the form of the writ of trespass is,
Offend, quae vi et armis in ipsum A. apud N. in ipsius loco, &c.
and it is not mater
ial whether he named him as not, for the form of the writ is so,
comprehending that in all such case may happen, and therefore in the
same in all cases of impugnment, without alteration.

15: If a man with a writ of annexment against a Priory, upon a receipt
made by him by the hands of his Commognace, yet the writ shall sup
pose that he himself received it, and shall not lay, by the hands of the
Commognace: So likewise a receipt made by the hands of the
name of his own receipt, and both the writ and the Count shall
suppose, that he himself received it, without laying by the hands of the
same; The writ also shall be the same, when the money is received
by the hands of a stranger; But in this case the Count shall de
clare the special matter, viz. that be received it by the hands of a stran
ger, &c. but in all these cases and the like, the writ shall be general and
remain the same, viz. de tempore quo fuerit resoritum demerri, without
laying by the hands of any, because a Receiver for the most part resorit the money by himself, &c.
16 Before the Statute of Quia Emptores terrarum in 18 E. 1., a man might grant land to hold of himself, which was then the most usual course, yet then also the lessee, (if he so pleased,) might grant it to hold of the Lord paramount, which did not so often happen; and therefore the quitrent of warrantia charta (used at this day,) seems to be the same that was used before that Statute, which always supposed, that the plaintiff in that quitrent holds of the defendant, because some of the most ancient cases, thus: the tenant, &c. and the tenant of the tenant, &c.; and the tenant of the tenant of the tenant, &c. seemed to be the same that used before that Statute, which always supposed, that the tenant of the tenant holds of the tenant of the tenant, &c.; whereas now, he holds of the Lord paramount, and if the tenant of the tenant holds of the tenant of the tenant, &c.; the tenant of the tenant had this quitrent de warrantia charta against the tenant, and the quitrent shall stay, unde cartam haber, &c. and yet he hath not any Charter to that, but only holds by homonage ancestor, which implies a warranty; nevertheless because for the most part a warranty is contained in a Charter, the quitrent retains the same form, and in such cases the quitrent, unde chartam haber, &c. are not material.

17 If a man be condemned to be hanged for felony, and happen to die after such judgment, and before execution thereof by the officer, yet the quitrent of Eichmat shall stay, pro quo injustus ille, &c. and it is not material whether he be hanged ox no; but the quitrent retains that form, because for the most part after such judgment the felon is hanged.

192 Freqnenctia Albus multum operator.
ter) grants to the Prince, by the name of Edward Duke of Cornwall, to be Lieutenant of the Realm so long as the King should be beyond sea. When in 21 E. 3., the Prince for a sum of 1000 marks demised the Hanoveries to Redman, rendering 3000 marks rent per annum, and divers other Letters Patent were cited in the Prince's case in the 9. Rep. to the like purpose, all which did confirm the same estate of the Prince to be see ample: For frequentia actus malum adjuvat. Vide supra 71, 4. Also another reason to prove the title of the Prince to the Duchy of Cornwall was, that ever since the creation thereof (which was in the 16 of Ed. 3.) in the succession of divers ages it had been enjoyed according to the said Charter by the eldest son of the kings of England, &c. for which see the book at large.

193 It always construe things to the best; And therefore

Co. Inst., part 1 87, b. 3.
1 If a man be seized of a rent charge, rent lock, common of pasture, or such like Inheritances, which do not lie in tenure, and died, his heir within the age of 14 years; In this case, the heir may choose his Guardian; but if he be of such tender years, as he can make no choice, then (if the father hath made no disposition of the custody of the child) the Law adjuges it must fit, that the next of kin, to whom the Inheritance cannot devest, should have the same under the rent; and otherwise take the rent, &c. the heir shall charge him in an account.

Co. ibid. 98, a. 3.
2 Where an Abbot (holding in Frankalamoigne) together with his Covent, aliens the land to a secular man, he cannot hold as they hold, viz. in Frankalamoigne; yet because (of necessity) he must hold the land of some person, and by some service, the Law (in this case) creates and appoints him the lowest and easiest tenure that is, viz. to hold the land of the Lord in socage by scatly only, which is incident to every tenure; so likewise if the Seignior be transferred to another by act in Law, and thereby the privilege is altered; in such case also the tenure in Frankalamoigne is changed to tenure in socage by scatly: And therefore if there be Lord, Seignir, and Tenant, and the Tenant is an Abbot, who holds of the Seignir in Frankalamoigne; here if the Seignir die without heir, so as the Seignior descends to the Lord Paramount, the Abbot shall hold immediately of the Lord Paramount by scatly only, because he cannot hold of him in Frankalamoigne.

Co. ibid. 146, b. 3.
3 If a Wilem descends to two Coarparencers, this is an entire inheritance, & albeit the Wilem himself cannot be divided, the Law hath ordained, that the profit of him shall be divided; for one Coarparencer may have the service one day, one week, &c. and the other another day or week, &c. And to the same reason it is, that in a woman shall be endowed of a Wilem, viz. to have him every third day, week, &c. Likewise, if an Abbounding descend to Coarparencers, the Law hath so ordered it, that he shall present by terms. Ex officio similis: In all which cases the Law hath contrived and established the best way and other that may be, for the parting of Intire inheritances, which are otherwise in their nature indivisible.

Co. ibid. 154, a. 2.
4 If two joynentans, the one for life, and the other in fee, join in a Lease for life, or a gift in tail, reserving a rent; in this case the rent shall inure to them both; for if the particular estate determine, they shall be joynenants again in possession: But it tenant for life and he in the reversion join in a Lease for life, or a gift in tail by deed, reserving a rent, this shall enure to the tenant for life only, during his life.
life, and after to him in the reversion; for each of them grants that 
which he may lawfully grant, and if (at the Common Law) they had 
made a feoffment in fee generally, the seflee should have holden of 
the tenant for life during his life, and after of him in reversion: And 
so if it was holden Mich. 36 & 37 Eliz. in B. R.

Release.

5 If a man make a lease to A. for term of the life of B. and after 
release to A. all his right in the land; by this A. hath an estate for 
the term of his own life; for a lease for term of his own life to higher 
and better in judgement of Law, than an estate for the term of an-
other mans life: So if a release be made to tenant by Statute Mer-
chant or Staple, or tenant by Elizet, to Guardian in Chivalry, who 
holdeth in fee, for the value of the marriage, by him in reversion of all 
his right in the land, by it is a freehold paffeth; the life of him, to whom 
the release is made; for that is the best and greatest estate, that can 
pass without apt words of Inheritance, viz. heirs.

Accrue.

6 Queen Eliz. being seized of a Reversion in fee upon an estate 
tail in the Lord Stafford, grants it to Tindal in tail, upon condition to 
have practicam reversionem in fee; Here, these words practicam re-
versionem shall not be construed to extend to the estate tail granted 
before to Tindal, but to the reversion in fee.

Feoffment.

7 The heir of the dissipates being in by descent, the dissipatee and he 
jointly entosk another in fee by deed, and liberty of laitein is had there 
on: In this case as to the heir, the land passed, and the deed enures 
by way of feoffment, and as to the dissipatee, by way of Confirmation; 
for (by construction of Law) the land shall ever pass from him, that 
hath the estate of the land in him; as if Celey que use and his fes-
sees after the Statute of the, and before the Statute of 27 H. 8. 10, had 
joined in a feoffment, it had been the feoffment of the feoffate, because 
the estate of the land was in them: So it is likewise, if the tenant for 
life, and he in the remainder or reversion in fee join in a feoffment by 
deed, the liberty of the freehold shall move from the lessee, the inher-
ance from him in the reversion or remainder, from each of them accoun-
ting to his estate; for it cannot be adjudged by Law, that the feoffment 
of tenant for life both doth the reversion or remainder out of the lessee, 
or him in remainder, or both work a wrong, because they joined toge-
ther: So if there be tenant for life, the remainder in tail, the remain-
der in tail, &c. and tenant for life and he in the first remainder in tail 
leaves a line, this is no discontinuance or defeating of any estate in re-
mainder, but each of them pass that which they have power and 
Authority to pass.

8 If the dissipates and dissipatee join in a charter of feoffment, and 
enter into the land and make liberry, it shall be accounted the feoffment 
of the dissipatee, and the confirmation of the dissipatee, because the entry 
of the dissipatee was then lawful: It is otherwise, when the heir of 
the dissipatee and the dissipatee join (as in Littleton's case, supra 7.) for 
in such case the dissipatee entry is not consegue: But if he in the re-
version in fee and tenant for life join in a feoffment by parol, this 
shall be (as some holde) first a surrender of the estate of tenant for life, 
and then the feoffment of him in the reversion; for otherwise if the 
whole should pass from the lessee, then he in the reversion might enter 
for the feoffure, and every mans act (ut res magis valeat, &c.) shall be 
concluded more strongly against himself.

9 Words are always taken best for the Speaker, so there is one 
Rule for deeds or pleading, and another for words.

Hob. 77. A-
dian Case.
Every Act to be lawfull, when it standeth indifferent, whether it should be lawfull, or not.

1 A tenant in fee simple makes a lease of lands to B, to have and to hold to B, for term of life, without mentioning for whose life it shall be; This shall be deemed for term of the life of the lessee, because (in this case) it shall be taken most strongly against the lessor, an estate for a mans own life being (as to him) better and higher, than for the life of another; But if tenant in tail make such a lease without expressing for whose life, this shall be taken but for the life of the lessee, for two reasons; First, when the construction of any act is left to the Law, the Law, which abhors injury and wrong, will never to concur in it, that it may work a wrong: And in this case, it by construction it should be for the life of the lessee, then should the estate tail be discontinued, and a new reversion gained by wrong; but if it continues for the life of the tenant in tail, then no wrong is done; And it is a general Rule, that whenever the words of a deed, or of the parties without deed may have a double intendment, and the one standeth with Law and right, and the other is wrongfull, and against Law, the intendment that standeth with Law, shall be taken. The Law repealed more; a lessor estate by right, than a larger estate by wrong; as if tenant for life in remainder willed the tenant for life in possession, in this case the devisees hath a fee simple; but if tenant for life in possession die, now is the devisees wrongfull estate in fee (by Judgment of Law) changed to a rightfull estate for life: So if tenant in tail make a lease to another for term of life generally, and after released to the lessee and his heirs; Here, albeit between the tenant in tail, and the releasaee a fee-simple passed, yet after the death of the lessee, the entry of the estate in tail is lawful, which could not be, if it were a lease for the life of the lessee, for then by the release it had been a discontinuance executed: In like manner, if I retain a tenant generally without expressing any time, the Law shall continue it to be for one year, because that retainer is according to Law. Vide Stat. 3 Eliz, cap. 4.

2 If lessee at will without the consent of the lessor enter into the land and cut down a tree (where the trees are not exempted) this is an implied determination of the will, for, that it would otherwise be a wrong in the lessee to do it: So if a man lease a house at will, interwoven a Common is appendent, and the lessee puts in his beams to use the Common, this is also a determination of the will, for otherwise he should be a trespassor.

3 By common intendment a will shall not be supposed to be made by collision; for in facto, quod se habet ad bonum & malum, magis de bono quam de malo lex incidit.

4 If there be tenant for life of land, the reversion in fee, a Will in purchase the reversion, and the tenant for life attains. In this case, the Lord may justify to enter upon the Land and claim the reversion, and yet shall be no trespassor to the tenant for life; for the Law will make construction that he entered to make his claim, and not to commit trespass: The like Law is also of a reversion after an estate in tail, Statute Merchant 3 Staple, Elegir, and for years, and of the reversion of a Heiquest, rent, common, and any other freehold or inheritance, making out of any lands or tenements of another.

5 If Partition be made by the two Barons in the lifetime of their tenants coparceners, albeit such partition be unequal, yet it is not void, but
but voluntary, so it shall be deemed good and lawful, until it be defeated by the entry of either of the fjews, if the happen to further his husband: Where is the like Law of an Infant coepercitor, so it remaine good, if he defeat it at his full age.

If a seament be made by deed poll upon condition, and the offee buys the deed poll, and afterwards the condition is broken, whereupon the decease, etc., in this case, having the deed en poigne, albeit he doth not properly assent to him, but to the testator, yet he may make use of the deed, and thereby plead the condition in justification of his entry and title; so it will be rather intended, that he came to the deed by lawful, than by tortious means: So if there be two joint trespasses, and the party trespassed releaseth to one of them; In this case also, if the other trespasser be alive, and have the releas en poigne, he may plead it in discharge of the trespass, causa qua pra.

Joist trespals.

If the husband be within the 4. case, viz. within the Jurisdiction of the King of England, if the wife hath issue, no proof is to be admitted to prove the Child a Bastard; so the question being, whether he is legitimate or no, the Law will rather deem him legitimate, than Proles spurius, a bastard: And in this case Filiation non potest probari.

The like.

If a man hath issue two daughters, the eldest being a Bastard, and they enter and enjoy the land peaceably together; here the Law, in favour of legitimation, will not adjudge the whole possession in the Mulier, (who indeed hath the only right) but in both, so as if the Bastard hath issue and dieth, her issue shall inherit: And in the same case, if both daughters enter and make partition, this partition shall bind the Mulier for ever.

The like.

If the Bastard invite the Mulier to feed his house, and to see pictures, etc. to dine with him, to hawk, hunt, or sport with him, etc. such like, upon the land described, and the Mulier cometh upon the land accordingly, this is no interruption, because he came in by the consent of the Bastard, and therefore the Law will not adjudge the coming upon the land in such case to be any trespass; but if the Mulier cometh upon the ground upon his own head, and setteth down a tree, or diggeth the soil, or take any profit, these shall be interruptions; For rather than the Bastard shall punish him in an action of trespass, the act shall amount in Law to an entry, because he hath a right of Entry: so it is if the Mulier put any of his Cartell into the ground, or command another to do it, there do amount to an entry; so albeit in these cases the Mulier doth not use any express words of Entry, yet these, and such like acts do (without any words) amount in Law to an Entry, so acts without words may make an Entry, but words without an act, (viz. Entry into the land, etc.) cannot make an Entry. Vide infra 28.

If one process be awarded instead of another, or a day is given which is not legal, this is a misconcurrence of the date, and if the tenant doth defendant make default, it is good cause of Error, but if he appear, then is the Misconcurrence falsed; so albeit (in truth) his appearance is not legal, yet when he appears, the Law shall continue it to be lawful, because there is a fate depending against him in Court.

If there be tenant for life, the remainder in tail, and he in the remainder grants it to another in fee by deed, and the tenant for life appears, this is no misconcurrence of the remainder in tail; So it is likewise of a rent charge, Aversion in gross, Common in gross, etc. the like; so the Rule is, that a grant by deed of such things as do lie in
in grant, and not in liberty of seisin, do work no discontinuance; and the reason is, because the Law makes construction, that of such things the grant of tenant in tail works no wrong, either to the issue in tail, or to him in reversion or remainder; for (in such case) the Law adjudges nothing to pass from the tenant in tail, but that which he may lawfully grant, viz., an estate for his own life.

12. If tenant for life make a lease for his own life to the lessor, the remainder to the lessor and a Stranger in fee. In this case, as much as the limitation should work a wrong, by construction of Law it rather incurs to the lessor as a surrender for the one moiety, and a foist-future as to the remainder of the stranger; for he cannot give it to the lessor that which he had before, and as to the remainder to the stranger, it is a fosfuture for his moiety, and when the lessor enthrall, he shall take benefit thereof.

13. The words of an Act of Parliament must be always taken in a lawful and rightfull sense, as in the Statue of Glouceter cap. 3. The words in the end of that Act (whereof no line is levied in the King's Court) are to be understood, whereas no line is lawfully levied in the Kings Court: And therefore a line levied by the husband alone of theWives land, is not within the meaning of that statute, so that line would work a wrong to the wife; but a line levied by the husband and wife is intended by the statute, so such a line is lawfull and worketh no wrong; So the Statue of Westm. 2. cap. 5. (vita quod Episcopus Ecclesiæ conferit) is construed, i.e. quod Episcopus Ecclesiæ legitime conferat, and the like in a number of other cases in our books: And the general rule is, Non præstar impedimentum, quod de luce non fortior esse videtur.

14. If tenant for life infeoff him in the remainder for life, this the Law construes to be a surrender, which is a lawful act, and not a fosfuture, which implies a wrong.

15. If tenant for life maketh a lease by deed or without deed, to him in the remainder for reversion, in tail or in fee, for the term of the life of him in remainder or reversion, and after be in remainder taketh wife and dieth; In this case, his wife shall not be endowed; so the Law will adjudge the estate made to him in remainder or reversion, a good and lawfull estate, and tenant for life shall enjoy the land again: And here, in regard this can be no surrender, because tenant for life did not part with his whole estate, the Law (rather than to admit of a fosfuture, which implies a wrong) preserveth the first estate for life from being surrendered, borowed or fosettled: And (indeed) fosettled it cannot be in another respect, so that he in remainder was party thereunto.

16. If there be tenant for life, remainder in tail, remainder in tail, and tenant for life, and the first remainder levy a fine to one, who grants and renders a rent charge to the tenant for life, and then the first remainder dies without issue, and the second remainder enters, and tenant for life divides for the rent: In this case, there is neither discontinuance nor fosfuture; no discontinuance, because each of them grants but his own estate, which he may lawfully do: no fosfuture, because it shall be first construed to be the fine of him in remainder, and afterwards of the tenant for life.

17. Power assigned by one Jointenant only, or by an Abatement of the first Tenant or of the drible, as it is agreed in 12 Ass. pl. 20, because there are lawful Acts: So it is said, if the drible; attorn give seisin to the grantee of a seigniory, this shall bind the drible for the same reason, albeit the grantee of a seigniory cannot compel the drible; attorn to give seisin to him, or to give him seisin.
the Common Law.

On, if he had not feised before within the time of limitation. Vide 8 H. 6. 17. 8 Att. pl. 16. 8 E. 3. 52. 11 H. 4. 29. 39 H. 6. 2. It is like
wife said, that if he he, mistis his two letters for life, and severs another, and one of the letters re-enter, this act of the one is an attain-
ment in Law for both; much more shall an express attaintment bind
both, because these are (by construction of Law) lawful acts. Vide
de 23.

18. T. possessed of divers parcels of land within the Span of S. 40
years, at will, and by Copy, and of others in fee there, demises the
whole to C. for life, then leaves a fine to him and his heirs of so many
acres as amount to the whole land, continues possession, and pays the
rents to it the Lord: Here, albeit 5 years pass, yet is not the Lord
barred: for as much as the lessor had lands in fee simple in the same
Town; by construction of Law it will be presumed, that the fine was
leved of the land, whereof a fine might be lawfully levied; and al-
beit the fine contained more acres than his own land, yet that alters
not the case, for it is usual (almost) in all fines to put in more acres,
than the just content of the land.

19. If a man befe of Copphold land in right of his wife surrender
it to the use of another in fee, who is admitted accordingly, the baren
vies, this is no discontinuance of the term 02 her heirs, but that the
term may well enter, neither shall she be put to her Cui in vita, 02 her
hate to his for Cui in vita; because the Law will construe it to be such
an alienation as he may lawfully make, viz. of his estate in right of his
wife during the Coverture; So if a Coppholder for life surrender to
the use of another in fee, this is no forfeiture for; the like reason; and
because it passed by surrender to the Lord, and not by livery.

20. If the King being tenant pur aucter vie, make a lease for 40
years; albeit he (having but an estate pur aucter vie) cannot absolutely
contract for a lease of 40 years, yet without any recital 02 mention of
the estate for life, the lease is good; because the lease for 00 years is
in judgement of Law) less than the estate pur aucter vie, and the King
both not thereby any wrong or prejudice to any, neither yet he be de-
scribed in his grant; 02 by construction of Law it is a lease for 40
years, if Cesuy que vie so long life.

21. If by Jury 03 a rent for an amercement, this sufficeth without
any amercement, 02 the amercement may as well be per torun Homagi-
num, as by special Amertorr, because the amercement is the act of the
Court, and the Amertorr the act of the Jury. Vide 10 Edw. 3. 9. & 10. 8 Hen. 7. 4. 7 Edw. 3. 9. 15. Attics cafe. 25 Edw. 3. 26. & 27.

22. The King grants the herbage and pannage of a Park to Mark-
ham for life, and reciting that estate, grants to the C. of Rutland for
life: In this case, albeit the King grants to the Carl in possession, yet
he is not deceived in his grant; 02 reciting and granting, as here, it
ences (as it may by Law) to a grant of the reversion, &c.

23. Albeit an Infant be not compellable to attorn, unless the grant
be by fine in a per qua servicia, yet upon the grant of a feignofo without
fine, if he attorn, that shall bind him, and he shall not raise his age;
so likewise attornment by him upon the grant of a reversion in good,
although he cannot be forced thereunto. Vide supra 17.

24. Cobin shall never be intended or presumed in Law,except it be
especially abberred, quis odiosa & in honesta non tant in lege praesumenda,
& in facto, quod se haber ad bonum & malum, magis de bono quam de
maio praesumendum est. And so it was adjudged in the case of Meriel
Littleton, Trin. 10 lec. in B. R. Quod vide ubi supra.
25 When two Constructions may be made of the Kings grant, and by force of the one the grant may according to the Rule of Law be unjustly good, and by the other it may be also taken by the Law to be void; in such case, for the honor of the King, and the benefit of the Subject, such construction shall be made, that the Kings Charter may take effect: as it was resolved in the case of the Churchwardens of Saint Saviours in Southwark, Co. l. 10. 67. b. 3. and in Sir John Molins case, Co. l. 6. s. See also Pridle and Nappers case, Co. l. 11. 4. The C. of Rutland case supra 22. The L. Saffords case, Co. l. 8. 77. The Lord Chandos case, Co. l. 6. 55. The E. of Cumberlands case, Co. l. 8. 166. &c. 12 E. 4. 44. The Reason of

F. N. B. 148.

26 If the heir within age endow the same of more land than the
ought to have assigned in Dower, or if the Guardian endow the same
of more than a third part of the land, the heir at his full age shall
have a will of Admeasurement of Dower against the same; Howbeit in
such case he shall retain so much of the land as assigned to him in
Dower, because it was a lawful act, only the surplusage shall be ta-
ken from her, what she abides that third part assigned unto her.

27 In an Assise, if the tenant pleads in bar defect to the plaint-
te and two others, and that he had the estate of one of them; In this
case, the plea is good, and yet it may be, that he had his estate by dis-
fill, in which case he is also a defiller to the plaintiff, for he cannot be
a defiller to one, and not the other, or he may gain his estate law-
fully, and to a doubt ariseth, whether the tenant is in lawfully, or by
wrong: Howbeit in this case it shall be taken, that he had his estate
lawfully, and not to subject to wrong, and therefore such plea in
bar is good. Vid 189. 40.

28 In the Assise of Fresh force by Pannell against Moore and the
Corporation of Merchers in London, Moores invitation of the plaintiff
to dine with him and to see the Cellar, s. was adjudged no entry by
the plaintiff after the last continuance, because it was rather to be
Seemt a lawful than a notoriously act, being by the consent of Moore
one of the defendants. Vid supra 9.

29 Cellar que use for term of life the remainder over in tail, after
the Statute of 1 R. 3. x. makes a lease for the term of the life of the
lessee, and dies, and the lessee continues his estate; In this case the
lessee is but tenant by sufferance; for the lease makes no discontin-
ance of the Remainder, because he had authority by the late Statute
to make a lease, grant, or leasement, and that ought to be understood,
of such an estate as he may lawfully make.

30 By the Statute of 3 H. 8. 1. that gives power to devise two
parts of a mans land holden in Knight service, a devise of the whole
had been good for two parts, ab. if the Statute of explanations (34 &
35 H. 8. 5.) had not been made.

31 In an Ejection s. the plaintiff declares a lease made unto
him the 8. day of May, to have and hold for 31 years exprime proxime
sequent. Virtue cujus postea, bis. codex 9 day of May he entered: This
i. eans to be good, and that he entered not as a defiller before the lease
commenced; for exprime is immediately after the delivery, and shall
not be intended the morrow after the date, and the word postea de-
clarates, that he entered not before the lease was made: Tamen Curiae,
for the practice is other-wise at this day, making the term to commence
at some feast or day before the day of delivery, to prevent the said ex-
ception.

34 A. Tenant of Prince Arthur as Earl of Chester, in Knight ser-
vise in Capite dies, and B. his eldest son is in ward, B. dies without li-
sue, and upon a Deveneuren C. was found brother and heir to B. and
within
within age, C. at full age pursues liberty by suit to the Citeator, per nom in B. filius & hares A. And now the question was whether o) no the possession still continued in Mr. Eliz. 7. And it was adjudged, that it did not, but that it was a good liberty; so if he had not been named heir to any, it had been good, because conflict de personas.

35 If a tenant in Common enter into the land generally, without expelling whether it be for himself alone, or both for himself and his companion; yet it shall be taken according to right, as under construction of Law, and therefore continued lawfully, and not that he intended to out his companion of his part by turce.

195 Non praestat impedimentum, quod de jure non sorsur effectum Vide 195, 13.

I. If the Eallard eigne after the decease of the father enter, and the King siteth the land for some contempt supposed to be committed by the Eallard, fo] which no forebode of inheritance is left, but only the profits of the land by way of failure, and the Eallard die, and his issue is upon his petition restored to the possession; In this case, fo] that the failure was without just cause, the Muller is barred for ever; fo) the possession of the King, when he hath no just cause of failure, shall be adjudged the possession of him, fo) whole cause he fells; But if after the death of the Father the Muller be found heir, and within age, and the King sitheth, in such case the possession of the King is in right of the Muller, and vesteth the actual possession in the Muller, and consequently the Eallard eigne is restored to any right for ever: so it is likewise when the King sitheth for a contempt, or other offence of the father, or of any other ancestor. In that case, if the issue of the Eallard eigne upon a Petition be restored, fo] that the failure was without just cause, the Muller is not barred; because the Eallard could never enter, and consequently could gain no estate in the land, but the possession of the King in that case shall be adjudged in the right of the Muller. Vide 2 All. pl. 9.

2. If a Cophholo estate fall into the Lords hands by escheat, fo] failure, o) the like, and the Lord make a lease thereof for years, life, or other estate by deed or without deed, fo] the Lord make a feoffment thereof in sec upon condition, and enter fo] the condition broken, fo] if the Cophholo fo] feathers or escheated, before any new grant thereof made, he extenuated upon a Statute or Recognition acknowledged by the Lord, fo] if the same of the Lord in a writ of Dover hath that land assigned to her; In all these cases, and albeit these last unpediments are by act in Law, yet fo] as much as all these interruptions are lawful, the land can never after be granted by Copy; because after such disposition thereof it was not demised or demissible; But if the interruption be twofold, as if the Lord be disseised, and the escheat be faded, fo] if the land be recovered against the Lord by a false verdict, or erroneous judgment; In these cases, until the land be recovered, or the judgment nullified or reversed by the Lord of the Manor, the land was not demised or demissible, and yet after the land is reconquered, it is again grantable by Copy, because the interruption was twofold; fo] Non valer impeditimentum, quod de jure non sorsur effectum, & quod contra legem sit pro in meo habeatur.

3. If a man make a gift in tail, upon condition that the donee shall not alien; yet in such case if the donee suffer a Common recovery, that is no breach of the Condition, because it is a Contingency allowed by Law in respect of the intended recompence; but if he make a feoffment
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s ooffem in see 0; any other estate, whereby the rebellion is to be only discontinued, the done may enter for the Condition broken, for every act, which is prohibited by Law, may be prohibited by condition, vide 10 H. 7. 7. So is a feoffment to be made to Baron and femme, upon condition that they shall not alien, yet that both not restrain their joint alienation by a fine, because it is lawful and incident to their estate: But their feoffment, 02 alienation by deed is restrained by such a condition, for that is toftions, and against Law: Also if a man enfoft an Infant in see, upon condition that he shall not alien, this cannot restrain him to alien at his full age; but during his minority it both, because that is toftions, and prohibited by Law.

Co. 17. 6 a. 3.

One of the reasons, why the robbing of a house either in the day or night is not within the Statute of Winchester for the hundred to satisfy the damages, is, for that it is not lawful for any man to enter into the house of another for the safeguard thereof.

Co. 11. 74. a. 3. Magd. Coll. 3. Gant.

Albert the Friers Carmelites were of a Profession of Religion, and had not any habitation, so as it seemed to be a work of piety and charity to produce an habitation for them, yet not facias malum, ut in defiat bonum.

F.N.B. 56. d.

5 If a man be dispossessed of an house, to which an Abbotton is appent, and the bishop suffers an usurpation by a stranger to the abbotson, and after the dispossessor enters into the house, he shall present to the abbotson, when it happens to be void, notwithstanding such usurpation.

Dyer 168. 19

7 Brooker Sheriff of Wilts, to prevent perjury in his office, did neglect to be sworn in incerto officio, which he sought to be done by the antient Common Law of the Realm, so that he committed an felony and imprisoned by becket in the star chamber.

Dyer 119. 1c.

8 A man is bound to deliver the key of a house, and quiet possession, to the Bishop of London to the use of the obliger; no person being in the house he locks the door, and delivers the key to the Bishop out of view; A stranger pretending title, enters into the house; This seems to be no delivery of possession, yet peripet was given for it, which was afterwards affirmed in Attain; And the reason seems to be, for that the impediment was unlawful.

196. Praeceptu licii non debet admissi illicito.

Co. 11. 88. b.

The Charter of making and impoiting Cards (being an adjudge
in the 14 Rep. a Monopoly) had a glorious preamble and pretex; yet was repealed as derogatory to the King's honor, and very pernicious to the Commonwealth; And indeed it is true, Quod privilegia, qua revera sunt in praecedentia Reipublica, magis speciosa habet frontispicio, et boni publici praecessum, quam bone et legales concessiones; but Praeceptu lici non debet admissi illicito.

Dyer 35. 6. 33.

2 If a lease hath liberty to sell trees to repaire the house, and he sells 4. Oaks for that purpose, and sells them, and buys 4. other Oaks as good, and impumes them towards the repair of the house, yet that is not lawful; for the cutting of them down and selling them was a tress: so if a man sell the distress, which he hath taken and impounded, and afterwards (finding his error) buys them again and impounds, yet their sale is a tress, and the impounding of the Cattle afterwards shall not excuse it.

Dyer 36. b. 38.

3 If the lessor be bound to a man in 100 l., and the lessee cuts down 20. Oaks, sells them, and pays the obliger for the lessor; yet an act

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on of make lyeth against the lease for; telling the trees, albeit the money arising upon the iale was converted to the use and profit of the lease; for albeit a thing may sometimes fouud for the profit of a man and not for his damage, yet it is not lawful for a man to do a wrong; As if a man see his neighbours beasts in another man's field Damage feasant, it is not lawful for him to chase them, and if he do so, the owner shall have an action of trespass against him, yet in so doing he both a good work, and saves the owner from the damages for depasturing his cattel.

4 In 21 H. 7. A Parton brings an action of trespasses for his Gain carried away, the defendant saith, that the Gain was severed from the 9. parts, and in danger to be spoiled with Cattel, whereupon the defendant carried them to the plaintiffs own barn, and there lodged them; And yet this was adjudged no good plea, because the carrying of them away was a tort: So if a Commoner make a trench in the soil, where he hath Common, where by the soil is made better, yet he is a trespasser, and subject to an action for it.

5 Hob. 13. Holder against Taylor, and 230. Wrenham's case, who was confinced in the Star chamber 1000 l. for publishing a scan damous book against a decree of the Lo. Ch. Bacons.

197 The Law favoureth things for the Com-
mon-wealth.

Incaspable Officers.

1 If an Office either of the grant of the King or Subject, which concerns the administration, proceeding, or execution of Justice, or the Kings revenue, or the Commonwealth, or the interest, benefit or safety of the Subject, or the like; If these or any of them be granted to a man that is unexpert, and hath no skill or science to execute or execute the same, the grant is merely void, and the party disabiled by Law, and incapable to take the same, pro commodo Regis & populi; for only men of skill, knowledge, and ability to exercise the same are capable thereof to serve the King and his people: So an Infant or Minor is not capable of an office of Stewardship of the Court of a Manor, either in possession or reversion: Neither yet is a man, though never so skilful and expert, capable of a judicial office in reversion, but must expect until it fall in possession: Likewise bargaining, or giving of money, or any manner of reward, &c.; for offices, shall make such a purchase incapable thereof; because it is to be performed by will by bysbeery, execution, and other undue means make his stake good again, to the prejudice of the Commonwealth; which learning is worthy to be known, but more worthy to be put in due execution.

2 Of a Castle, that is only maintained for the private use and habitation of the owner, a woman shall be ennobled; But of a Castle, that is maintained for the necessary defence of the Realm, a woman shall not be ennobled: And so it was adjudged in the Court of Common Pleas, where in a suit of Dower the demand was, De tercia parte Castris de Hildesker in Comitatu Northumb. And the Statute of Magna Charta, cap. 7. whereby it is provided, Nisi domus illa sit Castrum, is to be understood of a Castle for the necessary and publick defence of the Realm: And this agreeeth also with ancient Records, the act whereof is, Non debent mulieribus assignari in domum Castrum, que fuerunt virorum iuorum, et quae in Guerra existant, vel etiam homagia & servitia aliquorum in Guerra existentia: And so are the old books to be intended, as it was resolved Trin. 17 Eliz. in the Court of Common Pleas. Vide infra 35.
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If a man sells of 40 acres of land, (20 held by Knight service, and the other 20 in socage) die thereof sold (his heir being under the age of 14 years) his same shall be attached in the place out of the socage land, and not out of the Knight service land; for the Common Law gives this privilege to the land held by Knight service, that it shall not be diminished, but in such case the whole power shall be taken out of the Land held in socage; And the reason is, that for that Knight service land is for the defence of the Realm, which is pro bono publico, and therefore to be favoured.

4 Things shall not be detained for rent, which are for the benefit and maintenance of trades, and (by consequent) of the Common wealth, and are there by authority of Law, as a horse in a Smiths Shop shall not be detained for rent being out of the Shop, no the horse 

in the Hotel, no the materials in a Weavers Shop for making of cloth, no cloth garments in a Caprons Shop, no sacks of Corn for meat in a Still or Market, no any thing detained before for damage seance, for it is in the custody of the Law, and the like.

5 If Tenant at will sow the ground with grain, hemp, flax, or the like, 21 let roots, 22 let any other thing which will yield an annual profit, and after the same is so planted, the lessor will out him, 23 of the lessor, yet be it his executors shall have that year's crop; And the reason is, for that the estate of the lessor is uncertain, and therefore the ground should be unmannered, which would be hurtful to the Common wealth, he shall reap the Crop which he hath sown in peace, albeit the lessor both determine his will before it be ripe: There is the same reason also for every other particular estate, that is uncertain; And therefore if tenant for life sows the ground, and dieth, his executors shall have the Corn for that his estate was uncertain, and determined by the act of God; And there is the same Law of a tenant for years of the tenant for life: So likewise if a man be tenant of land in right of his wife, and sows the ground and dieth, his executors shall have the Corn, and if his wife die before him, he himself shall have it. If tenant for term dower, vic, 24 let the land, and Civilly que vie dieth, the lessor shall have the corn. All tenant by Statute merchant soweth the ground, and then a sudden and casual profit followeth, by which he is satisfied, he shall have the emblements. If a man sows in his hath shine a daughter and dieth, his wife being enfeoff with a son, and the daughter followeth the land, and then the son is born, yet the daughter shall have the Corn, because her estate was lawful, and defective by the act of God, and it is good for the Common wealth that the ground be sown: But if husband and wife be joint tenants of the land, and the husband followeth the ground, and the land fortiseth to the wife, It is laid that the shall have the Corn and not the executors, and the Law seems to be so, because they were as one person in Law, and held by intestacies.

6 The tenure by Knight service being at first ordained for the defence of the Common wealth both against domesque invasions and for in invasions (a Militia being indeed the chief pillar that support a Commonwealth) the use observance thereof was strictly enjoined by the Laws of Edward the Confessor, where you shall find it thus prescribed. Debet enim universi liberis hominum, & secundum feudorum suorum, & secundum tenementorum suorum, arma habere, & illa semper prompta coniurare ad tuitionem regni, & servitium dominorum suorum, juxta præceptum Domini Regis sempiternum et peragendum. And William the Conqueror confirmed that Law in the 6th of his reign, Trauimus et firmiter præcipimus, quod omnes Comites, & Barones, & Militae, & Servientes, & universi liberis hominis totius regni nostri prædicti habeant & tenent se
The tenure by knight service (because it was instituted for the
court and defence of the Commonwealth) was so much favoured in
Law, that between the making of the Statutes of 4 H. 7. 17. and 27
H. 8. 10. of Ule, there might lie two warships for one and the same
land, as if Cellany que uie before the statute of 27 H. 8. had died, his
holding within age, the Lord should have had the warship of his heir
by force of the statute of 4 H. 7. and if the feoffee had died, his heir
within age, the Lord should have had the warship of his heir also, viz.
by the course of the Common Law; and at the Common Law before
the making of those Statutes there might be two warships in re-
spect of the same land, as if tenant by knight service had made a gift
in tail, the remainder in fee, and tenant in tail had made a settlement
in fee, and died, his heir within age, the Lord should have had the
warship of him, and if the feoffee had died, his heir within age, the
Lord should have also had the warship of his heir, and of the land; so
likewise if tenant by knight service make a gift in tail, and the donor
makes a settlement in fee, and the donor died, his heir within age, the
donor shall have the warship of him, because he is his tenant in right;
but if the feoffee died, his heir within age, the Lord paramount shall
have the warship of his heir, because on fair he is tenant to him, &c.
And the Common Law did not remedy this inconvenience, because
that tenure was deemed servileable to the Commonwealth.

Tillage.

2 Agriculture or Village is much favoured, and of great effect,
because it is very profitable to the Commonwealth, concerning
which the goodness of the habit is best known by the production: For by
laying of lands, used in tillage, to pasture, its main inconveniences are
daily increased: 1. Indulsies, which is the beginning and ground of all
injuries: 2. Depopulation and decay of Towns: 3. Husbandry,
which is one of the greatest Commodities of the Realm, to decrease:
4. Churches are destroyed, and the service of God neglected by abdi-
cation of Church-tithes, (as by decay of Littles, &c.) 5. Injury and
wrong is done to Patrons and Sinks Planks: And 6. The defence of
the land against foes: Enemies is enfeebled and impaied, the bod-
ies of Husbandmen being more strong and able, and patient of cold,
heat, and hunger, than of any other: from which Inconveniences ne-
necessarily follow these consequences; 1. The displeasure of Almighty
God: 2. The subversion of the Policy, and good government of the
Realm; And all this appears by our books: And therefore the
Common Law gifteth arable land (antiently called Hyde or Gaine)
the precedence beforesnapines, Pastures, Woods, Mines, &c. any oth-
er ground whatsoever; And averia curare (the backs of the Plough)
have in some cases more privileges than other cattel, &c. This impor-
tment was also of high estimation amongst the antient Romans, in so
much that the grate Senators themselves would put their hand to
the plough, &c. If the Lord will withdraw averia curare, where there is a
sufficient villors before, the tenant may make refusals,

O Fortunatos nium, lus si bona non,ri
Agricolae, quiub is, procul discedidus aram;
Fundit homo facilem victum justissima Tellus,

Virg. in Georg.
9 An Abbot or Prior, &c. who holdeth lands by Knight service, albeit he ought not, in respect of his profession, to serve in war in proper person, yet must he find a sufficient man, conveniently arrayed for the war, to supply his place; and if he can find none, then must he pay Etewage, &c. for his possession, and not privilege him, but that the Kings service in his wars must be done, which belonged to his tenure, and consequently both the honor and safety of the Commonwealth.

10 The life and members of every subject are under the safeguard and protection of the King; for (as Bacon in faith) Vita et membra sunt in potestate Regis; and hence it appears to be a notable Record, Parch. 19. E. 1. coram Rege, Rot. 36. Nothwithstanding, Vita et membra sunt in manu Regis, to the end that they may serve the King and the Commonwealth, when occasion shall be offered: And therefore if the Lord mayhem his Will, the King shall punish him for mayhem his subject, by fine, random, and imprisonment, until the fine and random be paid, because he hath thereby disabled him to do the King and Commonwealth service.

11 The Protections Quia Pro securus (which concerns services of war, as the Kings souldier, &c.) and Quia Moratus (which concerns warr and counsel, as the Kings Ambassadors, or Messenger pro negotis regni) being for; the publique good of the Realm, present means actions and rates must be then suspended for a convenient time; for Jura publica antecessenda privatis, and again, Jura publica ex privatis promiscue decidii non debent: And the cause of granting such protections must be therein expressed, to the end it may appear to the Court, that they are granted pro negotis regni, et pro bono publico: And these protections are not allowable only for men of full age, but for men within age, and for women, as necessary attendants upon the Camp, and that in these cases, Quia Lotrix, seu Nutrix, seu Obséris.

12 Treasure is one of the chiefest supports of a Commonwealth; and therefore the King (who is the Head of the Commonwealth) is regularly (by his prerogative) to be preferred in payment of his duty, of debt by his debt before any subject, albeit the Kings debt or duty be the later; upon which ground it is, that the King may grant his debt a protection cum clausula voluminis, to protea him from the rates and actions of other Creditors: And the reason hereof is, for that Thebanus Regis est fundamentum belli & firmamentum pacis: But this Laws is somewhat altered by the Statute of 25. E. 3. cap. 19. quod vide. If a Monach be a farmer of the King, yielding a rent, he shall have an action concerning that farm, because the Kings revenue is also the revenue of the Commonwealth.

13 By the Common Law the wife of the King of England is an exempt person from the King, and is capable of lands or tenements of the gift of the King, as no other semo covert is, and is of ability and capacity (without the King) to grant and to take, to use and be used, as a femme sole at the Common Law; for the wellbeing of the Law would not have the King (whose continual care and study is for the publique, &c. ardua regni) to be troubled and disquieted with such private and petty causes.

14 If the tenant holdeth by fealty and a bushel of wheat, or a pound of Cumin, or pepper, or the like, and the Lord purchased part of the land, there shall be an appositionment, as well as if the rent were in money; yet if the rent were by one grain of wheat, one fowl of Cumin, one pepper Corn, a horse, or any other issue service, by purchase of part, the whole should be extinct; Holdeth if such an entire service be
be pro bono publico, as Knight service, Castle-guard, Coynage, &c.,
for the defence of the Realm, or to repair a hedge or way, to keep a
Beacon, or to keep the King's Records, or for advancement of Justice
and peace; as to aid the Sheriff, or to be Constable of England, albeit
the Lord purchaseeth part, yet the issue service remains. See Bever-
tons case, Co. i. d. 1. b. 4 & Jo. Thtub., b. 8. 104. b. 4.

15 If a man make a Letter of Attorney to two, to do any act, if Co. ibid. 161
one of them die, the survivor shall not do it; but if a Venice facias be
awarded to four. Cozoner, to impanel and return a Jury, and one
of them die, yet the other shall execute and return the same, because it
is for the execution of Justice, and (by consequent) pro bono publico;
so if a charter of settlement be made, and a Letter of Attorney to four
or three jointly and severally to deliver seisin, two of them cannot
make liberty, because it is neither by them four or three jointly, nor
by any of them severally: But if the Sheriff upon a Capias directed
to him, make a warrant to four or three jointly, or severally to arrest
the defendant, two of them may arrest him for the reason aforesaid,
and for the same reason such an act shall be more favourably expand-
abled, than a private one; for: lura publica ex privato promiscus decidi
non debetur.

16 If there be two tenants in Common of a house, to which walls
and drey both belong, a drey happens, they are tenants in Common
thereof; And yet if one of them take the drey, the other hath no reme-
dy by action, but to take it again; unless they have a provision to
take dreyes by turns: Howbeit if there be two tenants in Common
of a Dowe-house, and the one wholly destroys the right, or of a folding,
and one disturbeth the other to erect hurdles; In these cases an
action of trespass lieth against the other, because they are offences
committed in prejudice of the Commonwealth. If two federal owners
of houses have a River in common between them, and the one everts
the River, the other shall have an action upon his case against his com-
panion; So if there be two tenants in Common; Joint tenants of an
house, if it, and it fall into decay, and the one is willing to repair it,
and the other will not, he that is willing shall have a right de reparatio-
ne facienda, and the wife faith, Ad reparacionem et fullemationem
jugidem domus tenentur, whereby it appears, that owners are in such
case bound pro bono publico to maintain houses and mills, which are
for the habitation and use of men.

17 Non use of it fell without some special damage is no forfeiture
of Private offices, as the Bishopship of Paris or the like: But Non-
use of Public offices, which concern the administration of Justice,
or the Commonwealth, is of it itself a cause of forfeiture.

18 In many cases a tenant for life or years may fell down timber
to make reparations, albeit he be not compellable thereunto, and shall
not be punished for the same in any action of waste: As if an house be
runnous at the time of the lease made, if the lessee suffer the house to
down, he is not punishable, for he is not bound by Law to repair
the house in that case; and yet if he cut down timber upon the ground
to letten, and repair it, he may well instruct it; And the reason is, for
that the Law both about the supplementation and maintenance of houses
which were obtained for the habitation of HamTem, and are (by con-
sequent) beneficial to the Commonwealth: And therefore if the lessee,
by his Covenant undertake to repair the house, yet the lessee (if the
lessee so doth it not) may with the timber growing upon the ground re-
S 11111

Office.

Repair by the
lessee.
The Reason of

pair the house, though he may utterly waste it if he will; and so it is in many other cases for the reason above alleged.

18 If a man exhibit articles to Justices of Peace against another, containing divers great abuses and misdeemings, to the intent to have him bound to the good behaviour; in this case, the party accused shall not have for any matter contained in such Articles any action upon the case; because he hath purified the ordinary causes of Justice in such case prohibited: And if actions shall be permitted in such cases, they who have such cause to complain would not beae to make such complaint, for fear of infinite correction. So if a man had exhibited a Bill in the Star-chamber against another, containing divers scandalous accusations, albeit they were false, yet no action upon the case would lie; if they were examinable in that Court; because the proceeding was in a Court of Justice, wherein the Law giveth favour, because it tends to the good of the Commonwealth. See Dyer 1 Edw. 18, pl. 37.

20 An ancient time when a Lord enclosed another of arable land, Tillage to half of him in socage, viz. per servitium socie, the tenant ad manum,<br>sewier servitium socie had Common in the lands of the Lord for his necessary Cattle, that gained and composed the land; not only because that liberty was tacit implied in the servitium, (for he could not plowe and compose the land without cattle, and they could not live without cattle to sustain them) but such Common appenent was principally given for the maintenance of advancement of tillage, which is much regarded and laboured in Law, because it is one of the chiefest supports of the Commonwealth; so as such Common appenent is of Common right, and began by operation of Law, and in favour of tillage, and therefore needs not prescription (as it was held in 4 H. 6. & 22 H. 6.) which it ought to have, if it were against common right: But where it is only appenent to the ancient arable Hyde and Quine, and only for horses and open to plough the land, and for Cows and sheep to support it; And all this for the mediation and advancement of tillage, as aforesaid: And with this agrees 37 H. 6. 34 perrot. Car. and 29 H. 8. 4.

21 So felony of murder can be committed without a felonious intent and purpose; Nam idem dicit eff feloniam, qui fieri debet felicem animam; And therefore a Man cannot commit felony, because he cannot have a felonious intent: to wit if a free Non compos mensis, kill his husband, it cannot be petty treason; But if it be in some one Non compos mensis cause high treason, as if he kill his father to kill his King, that is high treason; For the King is Caput et fædus Reipvblicæ, & a capite bona valeutur trans in omnes, and for that cause these persons are so sacred, that no man ought to offend them, violence, and if he do, he is Reus criminis Lexi Majestatis.

22 The Inhabitants of a Town (without any custom) may make Ordinances or By-laws, for the repair of the Church, or of an Highway, or any other such thing, which is generally for the good of the Commonwealth, and in such case the greater part shall bind all without any custom. Vide 44 E. 3. 19. Also Corporations may make Ordinances or Constitutions (without custom) for things which concern the Commonwealth; as separations of the Church, common High-ways or the like. Vide 8 E. 2. Aisle 433, 11 E. 3. 54. 11 H. 7. 13. 21 H. 7. 20. & 40.

23 The Act of the Common Council of London for bringing of Cloth to Blackwell-Hall to be searched, and the imposition of a penny for tallage upon every Cloth, were adjudged lawful constitutions, because
the Common Law.

cause they were beneficial to the Commonwealth, and not for any
profit.

24 In 37 Eliz. 1695. The Town being appointed to be kept at
St. Albans, a Constitution was made there (for the settling of a sum
of money for the preparing of Courts and other necessaries for the
Town, and every Inhabitant was enjoined to pay his respective assis-
tement on pain of imprisonment; Clerk an Alderman (who also con-
tenied to the assessment) related to pay his proportion, and therefore be-
ing imprisoned by the Jovis, did bring an Action of False Imposi-
tment against the Jovis, and had judgement to recover, because the
Constitution was against Magna Charta, cap. 20. Nullus liber homo
imprisonetur, &c. Pointed if the Constitution had been upon a pain of
a reasonable sum of money, and distress of action of debt for the recov-
ery thereof, the Jovis might have justified the distress of action; be-
cause it was pro bono publico, that the Town should make provision
for the Town, and the rather, for that E. 6. who did incorporate them,
has granted them power to make Distances: albeit Corporations
within time, se. cannot have that privilege, but by Parliament, when
it is pro commodo privato. See Co. 1. 8. 127, b.

25 When a Statute is made by Parliament for the public good
of the Realm, the King cannot give the penalty or benefit thereof
to any subject, or give him power to dispense with it, or to make a var-
ant to the Great Seal; for licenses in such case to be made; for when
a Statute is made pro bono publico, and the King (as the head of the
Commonwealth, and the Fountain of Justice and Mercy) is by all
the Realm trusted with it, this confidence and trust is so indispensa-
ably annexed to the Royal person of the King in so high a point of So-
vereignty, that he cannot transfer it to the disposition of power or power of
any private person, or to any privaterule; because it is committed to the
King by all his Subjects for the Common good, and if he might grant
the penalty of one Act, he may also grant the penalty of two, and so
in infinitum.

26 The Custom in London, that's Exchequer shall not fall by retail,
was an unjust law, because it was beneficial not only for the City
there, but likewise for the whole Commonwealth; for that it would
prevent the people of all parts of the realm from London, which conveinence might produce; great inconveniences: 1. Impo-
sishment of all the good Towns in England; 2. Depopulation of Towns
in every Country; 3. Destruction in the end of all trades and trades-
men in every part of the Realm; Besides, it might be a means to in-
crease the Pettiness by reason of the multitude of people, and preserv-
ing the air, whereby it might prove dangerous not only to the Sub-
ject, but likewise to the King himself and the Great Lords who at-
tend upon his royal person: Again, if London should be so populous,
it would become ungovernable by the Magnificence of the City, and
that City (which is an quam Epicome to vis regem) should not be well
governed, all the parts of the Realm would find the inconvenience
thereof, whereas when that City shall be well governed, all parts of
the Commonwealth will be preferred in better order: Lastly, that
City becoming to populous, it will not be subject to search, se. not only
in prejudice of the City itself, but likewise of the King and the
whole Commonwealth, because then fraud and deceit will encrease in
all Merchandise and things venal.

27 Accords with satisfaction is a good plea in an Exchequer fines: Co. 1. 9. 78, a.
for that is joint with trespass; and (indeed) in all actions, which sup-
pose a tort to be done (where Capias and Exigent do lie) there an Ac-
cord is a good plea, because it cures the body from imprisonment, to
as men (being at liberty) may go about their business, which is good for the Commonwealth.

28 If there be Lord and Tenant by Knight service, and the tenant gives the tenancy to two men, and to the heirs of their bodies, and they die having issue, their issue shall hold sejenterly by Knight service, because it is for the defence of the Lord, and of the Realm. Vide supra 14.

29 An Ordinance of a Corporation, that none shall exercise any trade there, unless he hath served 7 years as an apprentice in the same, and shall also be approved by them to be skillful therein, is not good, because against the Common Law, which restrained no man from exercising any trade, and also prejudicial to the Commonwealth, so that it puts a greater restraint upon Travailmen, than the Statute of Eliz, both void, in as much as he ought also to be approved by them, which the Statute both does not enjoin, for if he be ignorant of his trade, an action upon the case lies not for his misdoing; as it did also at the Common Law before the Statute; neither both the Statute restrain a Lapsos or other Artificers retained to exercise his trade in a private house. And the Statute of the 19 H. 7. Strengtheneth not any Ordinance against the Law or the Commonwealth, though allowed, as that Statute ovains; the allowance only discharges the penalty of 40 l. for making Ordinances against the Kings prerogative and the Commonwealth.

30 The King is bound by the Statute De donis, though not named, because it is an Act, which concerns the Commonwealth, and was ordained for the preservation of the possessions of the Nobility, Gentry, and others; so the Statute of 13 Eliz, 10. made for the prevention of long leases, and blaspheemations of Colleges, Cathedrals, Hospitals, etc., bind the King, albeit not named, because those Corporations were trusted with their possessions pro bono publico, for the use of the Commonwealth, for the same reason that Act hath in all cases had a benefical and favourable construction to the prevention of all inventions and evasions, against the true Intention of the same Act.

31 One of the chiefest reasons, why the Monopoly of the sole making and impositing of Cards, and all other Monopolies are prohibited by Law, is, for that there are three inseparable incidents to every Monopoly against the Commonwealth: 1. The price of the Commodity will be raised, so the trade the sole vendition of any commodity, and will make the price as he pleases: And this void Monopolium is compounded of these Greek words, id est, cum unus folius aliquod genus mercaturae universum emit, pretium ad, unum liberum statuten; And the Poet saith,

Omnia Causor emit, sic fit ut omnia vendat.

Also it appears by the twelfth of ad quod damnum (F, N, B. 222) that every gift or grant of the King hath this condition, either expressly or tacitly annexed unto it, Ita quod Patria per donationem illum magis licet non oneretur leu gravetur: And therefore every grant made in grievance or prejudice of the Subject is void. (Vide 13 H. 4. 14.) The second Incident to a Monopoly is, that after the Monopoly granted, the Commodity is not made so good and merchantable, as it was before; for the Patentee having the sole trade, regards his private benefit only, and not the Commonwealth. 3. This tends to the impoverishment of other artificers and others, who before by the labour of their hands in their art or trade did sustain themselves and their families in good condition, and having also by that means increased their substance,
substance, were fit and ready to serve the King, when he should require; but by the grant of such a monopoly they are reduced to such necessity, that ever after they are constrained to live in idleness and beggary.

32. Pardon (though unfulfillable) cannot be claimed as fees belonging to the Master of the Ordnance, because they were provided for; the defence and safeguard of the King and Commonwealth; and therefore albeit the King grant them to him, and then he dies, yet his executors shall not have them, but shall be accountable to the King for them: And for the same reason it is, that no officer of the King, or all of them together, can ex officio, issue or dispose of the King's treasure, although it be for the honor and profit of the King himself; for although it be true, that it is for the honor and benefit of the King, that good service done unto him should be rewarded, yet it ought to be rewarded by the King himself, or by his warrant, or by another; because the treasure of the King (being the ligament of Peace, the preserver of the honor and Safety of the Realm, and the Funds of War, all which do much concern the Commonwealth) is of so high an estimation in Law, in respect of the necessity thereof, that the impsiling of treasure trove, although it were not in the King's Chests, was treason; And tissue and other valuable chattels are so necessary and incident to the Crown for the reasons aforesaid, that in the King's case they shall go with the Crown to the successor, and not to the executors, as in case of a common person, as appears in 7 H. 4. 43. & 44.

33. Albiet the Statute of 1 R. 2. 13. be penal, and gives an action of debt only against the Warden of the Fleet, yet is extended by equity against all others, who have the custody of prisoners in execution, because it is good for the Commonwealth; for although it is penal against the Warden, yet being also extended against all others so chargeable with prisoners, it is beneficial to the Commonwealth; And (indeed) every Statute is penal against some man; but in as much as the taking of it by equity is more beneficial than prejudicial to the greater number of men, and to (by consequent) to the Commonwealth, it is good reason, that it should be by the Rules of Law extended by equity: So likewise the Statute of Circumspetente against in 13 E. 1. 1s, viz. Circumspetente agatis de negotiis tangenibus Episcopum Norwicensem & ejus Clerum, and yet it is extended to all other Bishops; Likewise the Statute of 9 E. 3. cap. 5. which obtains, that the executor, who comes in first by distress, shall answer, is extended by equity to Administrators: Also the Statute of Westm. 2. cap. 3. 13 E. 1. which gives a Cui in vita upon a recovery by demurrer, is extended by equity to a Cui ante Divorium, and the Statute of Marlbridge, cap. 6. which makes mention only de his qui primogenitores suos infra statum existentes feoffare solent, and yet if his first son die, and he entitle his second son, who is his heir; this is within the equity of that Statute, or if he be a line to him, which is a matter of Record, that is also within the equity of the same Statute, and yet the Statute speaks only of a sequestration: But regularly all Statutes, which are for the advancement of Justice, or beneficial to the Commonwealth, are extendible by equity.

34. In some cases a man may justify to be a wrong, which tends to the good of the Commonwealth, as in time of war a man may justify to make Bulwarks in another man's spoil without license; so may be justified to pull down an house that is on fire, for the safeguard of the neighbouring houses: also if the Sheriff peruse a felon to an house, he may justify to break open the house's door to take him; for all these are the like founds to the good of the Commonwealth.

35. If
If a Castle that is used for the necessary defence of the Realm, belonget to two or more Coparceners, this Castle might be divided by Chambers and Rooms, as other houses be, but yet for that it is pro bono publico, & pro defensione Regni, it shall not be divided, Proper jus gladii dividi non potest ( Fleta l. 5, cap. 9.) And another Right, (Bruton 186, 187.) Pur le droit del eisre, que ne laissesse division, en avensure que la force del Realme ne defaisse pas tant: But Castles of habitation for private use, that are not for the necessary defence of the Realme, may be parted amongst Coparceners as well as other houses, and these may be thereof also endowed, as before hath been said, supra 2.

In King Alfreds time Knights fees extended to the eldest sons: for that by division of them between Sakes the defence of the Realm might be weakened; but in those days Squires fees were divided between the heirs male, and there with agreed Glanville, ( lib. 7, cap. 1. & 3. Cum quis hereditatem habens moritur, si placet reliquere filios, none distinguuntur, utrum ille fuerit Miles, &c. &c. pro bono publico, &e cetera.)

If an Alien take a lease for years of Lands, &c. (being no Squire) take a lease for years of an house for habitation, upon office terms, the King shall have them; for albeit he be capable to take such a lease, or lands, tenements, or hereditaments to him and his heirs, yet upon office terms, the King shall have them by his prerogative: Sowvett he being a Squire, may take a Lease for years of an house for habitation, as incident to Commerce, for without habitation he cannot merchandize 03 trade; But if he be no Squire, 03 being a Squire depart the Realme, the King shall have the Lease; 03 if he is possessed thereof, neither his executors 03 administrators shall have it, but the King; for he had it only for habitation, as necessary to his trade of traffique, unto which the Common Lawe giveth much favour.

An alien corys shall not maintain any action real, personal, 03 mist, donee terrae fuerint communes; Sowvett (in favour of trade) an alien in league may maintain personal actions; because such an Alien may trade and traffique, buy and sell; And therefore he must of necessity be of ability to have personal actions. 03 being condemned in an information, he may have a writ of Error to relieve himself: but he cannot have either real 03 mist actions.

Regularity, a Receiver (upon his account) shall not be allowed his expenses and charges, yet in some case in an action of account against one as Receiver dearius, he shall have allowance of his expenses and charges, and also shall account for the profit he received, or might reasonably receive: And this was proved by Law in favour of Merchants, and for advancement of trade and traffique; As if two Joint Merchants occupy their goods, and merchandize in common to their common profit, one of them naming himself a Merchant, shall have an account against the other. naming him also a Merchant, and shall charge him as Receiver dearius is B. ex quasunque causas & contractus ad communem utilem et iborum A. & B. provenientium, sicut per legem Mercatoriam rationabiliter monstrare potest. 4 Sur-
Trade.

5 One of the chiefest reasons why a Condition not to alien, annexed to a feodment, devise, or gift of lands or goods, is void, is, for that it is stily against trade and traffique, bargaining and contracting, between man and man. Vide infra 9.

Monopolies.

6 Trin. 44 Eliz. The grant of the sole making of Playing Cards was adjudged void, because it restrained trade and traffique, which are the very life of every Commonwealth, and principally of an Island: There is the same reason of all other Monopolies. Vide Co. l. 11. 87.

Guidile.

7 In favour of trade and traffique, the Law giveth the King power by his prerogative to erect Guidile Mercatoria, viz. a Fraternity, Society, or Incorporation of Merchants, to the end that you order and government may be by them observed, for the increase and advancement of merchandising and trade, and not for the bindnace and diminution thereof.

Trade.

8 At the Common Law none could be prohibited to work in any lawful trade, for the Law adover Ioannes the brother of all merchants, Omne omnium viriorum mater, and principally in young people, who ought in their youth (which is their first time) to learn lawfull sciences and trades, which are for the advancement of traffique, and profitable to the Commonwealth, and therof they ought to reap the frute in their old age. For Jeanes Oliven, Vievilles differenc: And therfore the Law detests Monopolies, which prohibit the exercise of lawful trades: And this appears in 2 H. 5, 6. where a Mayor was bound, that he should not use the Mayors trade by the space of two years, and there Hall hold, that the obligation was against the Common Law; and added further, Per diem si le princede saliuent, il irait al prison, canque il feront sine al Roy.

Tilt.

9 Before the Statute of 31 H. 8. 36. It seems to be the better opinion, that tenant in tail by a fine might have barred his heir, albeit the reversion is in the King; because the Law always obstrues restraint of alienation in prejuduce of trade and traffique. Vide supra. 5.

199 Honor and Order.

Tenant by Warranty.

1 A man shall be tenant by the Curtelle of an house, that is Captive Baron, or Comites, because so it may be still preserved entire; but it appeared in a H. 3, that a woman shall not be endowed thereof, because in such case it should be severed, by the Law will not permit, for that the Law requites Honor and Order. Vide Title Dower 180.

Vilein.

2 Amongst the cases where the Villein shall be privileged from the fesillage of the Lord, albeit he be not absolutely enfranchised, this is one, viz. Ruthone dignitatis, as if the Villein be made a Knight, the Lord cannot sell him. Vide Britton 79.

Challenge.

3 A Peer of the Realm, a Lord of Parliament (as a Baron, or count, Earl, Marqueses, or Duke) in respect of Honor and Nobility are
are not to be sworn on Juries, and if neither party will challenge him, he may challenge himself; for by Magna Carta it is provided, Quod nec super eum ibimus, nec super eum mittimus, nisi per legale judicium parium iniquum, aut per legem terra: How in reference to Honors and Titles, the Common Law hath divided all the Subjecte into Lords of Parliament, and into the Commons of the Realm: The Peers of the Realm are divided into Lords, Barons, Earls, Marquesses, and Dukes; And the Commons are divided into Knights, Esquires, Gentlemen, Citizens, Yeomen, and Burgesses; and in judgement of Law, any of the said degrees of Nobility are Peers to another: As if an Earl, Marquess, 03 Duke be to be tried for Loston or Felony, a Baron, or any other degree of Nobility is his Peer: In like manner a Knight, Esquire, 02 shall be tried per partes, and that is by any of the Commons, as Gentlemen, Citizens, Yeomen, 02 Burgesses, so as when any of the Commons is to have a trial, either at the Kings sole, 02 between party and party, in such a Peer of the Realm shall not be impaneled.

Concerning Inheritance of Honors and Dignity there is an ancientBulk-case in 23 H. 3. Tit. Partition 18. in these words: Note, if the Carbol'd of Chester descend to Coptermens, it shall be divided between them, as well as other lands, and the eldest shall not have this Dignity, and Carbol'd intire to her self; Quod Nona, adjudged per totem Curiam. By this it appeareth, that the Carbol'd (viz. the possessions of the Carbol'd) shall be divided, and that where there be more daughters than one, the eldest shall not have the dignity and power of the Carbol'd, that is, to be a Countess; but in such case the King, who is the Sovereign of Honors and Dignity, may for the uncertainty confer on the Dignity upon which of the daughters he please: And this hath been the usage since the Conquest, as is said (vide 3 H. 3. civ. Prescription.) Potterit if an Earl, that hath his dignity to him and his heirs,vert, having one daughter, the dignityshall descend to the daughter and her posterity; for there is no uncertainty: And this appeareth by many precedents, and by a late Judgement given in Sampson Leonards case, who marri'd with Margaret, the only sister and heir of Gregory Fines Lord Dacre of the South, and in the case of William Lord Ros. Potterit, there is a difference between a dignity of name of Nobility, and an office of Honors; for if a man hold a Span of the King to be Constable of England, and be, having one daughter, and the eldest daughter take'8 husband, he shall execute the office solely, and before Marriage it shall be exercised by some sufficient Deputy, and all this was resolved by all the Judges of England in the Duke of Buckingham's case, 11 Eliz. Dyer 285. But the Dignity of the Crown of England was (without all question) descemible to the Eldest daughter alone, and to her posterity; and to it hath been (23 H. 8. cap. 22.) declared by Act of Parliament: for Regnum non est divisibile, and it like wise was the descent of Troy, as appears by Virg. Eneid. 1.

Præterea Scepum Ilione, quod geisserat olim
Maxima natarum Priami

Judges in their resolutions ought to have a special care, that the Good of the Law be not prejudiced any way blemished: And therefore in Porters case in the 1. Rep. one of the reasons why good a charitable uses ought not to be expounded to be within the Statutes of 23 H. 8. cap. 10. was, because it would be dishonourable to the Law of the Land to make such good uses bold, and to restrain well-minded peo-
ple to give lands to good and charitable use; And if that to any other Statute should be made directly against the Law of God, as if it should be ordained, that none should give Alms to any, in what necessity to be; they were, or the like, the Judges (in point of Honor to the Law) ought to adjudge such a Statute void.

6. In a settled state of Government, if an injury be offered, the party given ought not to revenge himself by the obvious course of libeling, or other wise; but ought to make complaint thereof to the Judge, in an ordinary course of Law.

7. It hath been always the usage of the ancient Sages of the Law to construe the Kings grants beneficially for his Honor, and the relief of the subject, and not to make any strict literal construction in subversion thereof: And therefore, 3. being Lord, an Abbot Mene, and the Tenant attainted of Treason, the King grants to L. to be held of us, and other chief Lords of the fee, by the services, &c. In this case the Penalty was adjudged to be revised; for that the words were sufficient to create a tenure in the Mene, as it was before the Treason; because that seemed to be the Kings intention, and was also consonant to equity, viz. that the Mene who offended not, should not lose his services; and therefore in such case the grant shall be taken beneficially for the Honor of the King, and for the relief of the Mene; neither yet can the words Tenendum, &c. have any other reasonable construction.

8. The person of one, who is in Law a Countess by marriage, or by descent, is not to be arrested for debt; or for other; for all (in respect of her sex) she cannot sit in Parliament, yet is she a Peer of the realm, and shall be tried by her Peers, as appears by the Statute of 3 H. 6. 9. which was but a declaration of the Common Law: And there are two reasons why the person shall not be arrested in such cases: the one, in respect of her dignity; and the other in respect that the Law presumes, that the that sufficient lands and tenements, in which she may be restrained: There is the same reason for a Lord, that is a Peer of Parliament.

9. To preserve the Kings Honor and Safety, and good order in the Government of the Commonwealth, the Oath of Allegiance was invented and enjoined (as it is said in Lamb, 136. 137.) by King Arthur to be taken in Folkmore, now called Turn and Lees: Hujus legiis authority expedit Arthurum Rex Saracenos et inimicos a Regno, &c. Et hujus legiis authority Ecbeldredus Rex uno et codem die per universum regnum Danos occidit.

10. Homage and Fealty, were at first ordained for the preservation of order in the Common wealth, and being services of fealty do require multiplication; And therefore if a man failed of two acres, the one, at the Common Law, and the other in Borrowed English, and make a girt in tall of both, and the dones having suel two sons dies, both the sons shall make fealty; There is the same Law also of Homage, in better it be required by the party: or created by the Law: so likewise if the dones die having two sons, both the sons shall have homage and fealty.

11. In a writ de Cautione admittenda these words, De gratia nostra sociali; are not words of necessity, but of form only, for the Honors of the King; nor be ought of right to make restitution of the goods of the Clerk, before seized by the Sheriff.

12. For the better preserving of order in the Commonwealth, if any contempt of Insubrance be committed in any Court of record, the Law gives the Judge or Judges thereof power to impose upon the offenders a reasonable fine; And this holds not only for the Super-
our Courts at Westminster, but likewise to all inferior Courts, which are of Record; And therefore in a Suit (being a Court of Record, and the Steward Judge there) if any contempt or disturbance to the Court be committed before the Steward there, he may impose a reasonable fine upon the offender; as if the Bailiff there refuse to execute his office, the Steward may also impose a reasonable fine upon him, as it was held in H. 6, fo. 7. Also if one of the Jury in a Suit depart without giving up his verdict, he shall be fined by the Steward, as appears in the Book of Evidence, fol. 149. Et sic de similibus.

33 When a Peer of the Realm is party to a Suit, there ought to be one Knight at least unimpeached at the Jury, otherwise it is a good Challenge for the Peer.

200 Publique quiet.

Co. Inst. pars
1. 5 a. 3.

1 So Subject can build a Castle at house of Strength amabilitate, pro rata, 92 other fortresses defensible, without the Kings license, to the danger which might arise in disturbance of the peace and quiet of the Realm, if every one at his pleasure might do the like.

Co. ibid. 72.
2. 4.

2 Although strange uncertain was done by tenure, yet because the attention concerned so many and to great a number of the Subjects of the Realm, lest it might disturb the publique quiet thereof, it could not be assisted by the King, or any other, but by the Parliament only.

Co. ibid. 153.
3. 3.

3 Briton treating of an Event beyond the Grecian Sea (amongst other things) thus, Noli grand Seignior ne Chivalier de notre Realm ne doit prendre chemin fons notre conge, car illis poer le realm remains disparay de fort gene, because if many others should do the like, and by that means the Realm be left unfortified of able and powerful men to serve the king, that might tend much to the disturbance of the publique quiet thereof. Vide supra 196, 35. & infra 16, 36, & Max, 78, 27. & Dyer 138, pl. 67.

Co. ibid. 346.
4. 1.

4 Regularly, no laches shall be adjudged in an Infant within the age of 21 years; yet the Publique Repose of the Realm, concerning mens freeholds and inheritances, shall be preferred before the college of Infancy, in case of a fine, when the five years begin in the time of the Ancestor; Vide Fl. Co. 372.

Co. ibid. 312.
5. 3.

5 The dilletete, or any other that hath a right only by his release or confirmation, cannot make any disclaimer, because nothing can pass thereby, but that which may lawfully pass: But otherwise it is of a tenement, in respect of the liberty of seisin, that it is the most solemn and common assurance in the Country, and to be maintained for the Common quiet and repos of the Commonwealth.

Co. ibid. 361.
6. 3, Co. 1. 166. 2. 4. 18.

6 If a judgement be given against a tenant in tail upon a faint false action, and tenant in tail his before execution, no execution can be put against the fine in tail; But if in a Common Recovery judgement he had against tenant in tail, where he boucheth a suit judgment to recover over in value, albeit the tenant in tail deth before execution, yet the Recoverer shall execute the judgement against the fine in tail, not only in respect of the intended recompence, but likewise for that it being the Common assurance of the Realm, is much favoured in Law for the publique quiet and repos of the Commonwealth.

Co. ibid. 161.
7. 3.

7 Inclosure is adjudged in Law a desolation of the rent, because the Lord cannot justice to break open the gates, or break down the Inclosures to take a distress, nor that would be in disturbance of
of the public peace and quiet of the Commonwealth.

The Judges in general cases have great respect and considerati-
on, that their judgment may not impair or prejudice a multitude of
people against ancient and common application; and therefore in
Lanes case in the 3 Rep. a lease under the Exchequer seal was adjudg-
ed good,虽经由 the Common law no grant of any land by the King
is available in pleasable, but under the Great Seal, yet the ancient
usage of that Court makes such leases to be good and available in
law; for if such leases should not be good, great mischief would
happen thereon, because an infinite number of leases and grants un-
der the Exchequer Seal would be false to be both, and as great a num-
ber of grants of reversion, expectant upon such leases would be both
also, for if the King grant a reversion, where he hath a possession,
his grant is void; and therefore, lest their judgment in that case
might hinder the public peace of the Commonwealth, leases un-
der the Exchequer Seal were adjudged good and available in Law,

Common af-
surances.

9 In Common Asher, and other common assurances it
would be a thing too powerful to make any construction against the
general assurance thereof; for the common would arise infinite contents-
ions, quarrels and ratings, which would be incumbrant, and stir up
trouble and disquiet in the Commonwealth, whereas the end of the
Law is to settle and establish peace and tranquillity between man and
man concerning their possessions.

10 The body of the defendant was not liable to the execution for
false at the Common Law, Vide 23 H. 2. 1. But the Common
Law, which is the properer of the Common peace of the land,
holds all false as the Capital enemy thereof; And therefore against
such an commit any force, the Common Law subjects their bodies to
Imprisonment, which is the highest execution, and whereby he loseth
his liberty, until he hath agreed with the party, and made an to the
King.

False News.

11 The Statutes of Wettin. 1. cap. 32. and of a R. 2. cap. 9. which
prohibit false and scandalous news, whereby debate might arise be-
tween the Lords and Commons in disturbance of the peace and quiet
of the Commonwealth, seem to be but declarations of the Common
Law; for (as doubts) that offence was punishable at the Common
Law before the making of those Statutes, because they were prejudic-
ial to the peace and reposes of the Commonwealth, and might be a
cause to raise sedition in the Realm; As the Poets describes it,

Ac veluti magno in populo cum ferpe coorta est
sedition, sevior animis ignobilis vulgus,
Jamque factex & facta volant, furor arma ministrat,

In which tumilts another Great faith,

Non novit medium rustica progenies.

Muderer.

Constable.

12 If upon an Affray made, the Constable and others in his as-
malice prenent, because he opposed himself against the justice and publique repose of the Commonwealth: So if a Sheriff or any of his Bailies or other Officers be slain in the execution of a process of Law, or in doing their office, it is Murder: There is the same Law also of a Watchman, that is slain in doing his office: Upon the same reason it is, that the generality of the Statute of the 33 H. 8. 6. prohibits not Sheriffs and their officers to carry about them (in execution of Justice, and in order to the peace and quiet of the Realm) the weapons therein forbidden.

13 In order to the general peace and quiet of the Commonwealth, every man's house is to him as his Castle and Fortres, as well for defence against injury and violence, as for his repos. And albeit the life of a man is a precious thing, and much favoured in the eye of the Law, so as albeit one man kill another in his own defence, or per infortunium, without any intent, yet the Law adjudgeth that felony, and thereby he shall forfeit all his goods and chattels, so the great regard that the Law hath to the life of a man: Howbeit, if thieves assault a man's house to rob or murder him, and the owner or his servants kill any of the thieves in defence of himself and his house, this is not felony, neither shall he lose any thing thereby: And with this agrees 3 E. 3. Tit. Corone 303. & 305. & 26 Ass. pl. 23. So likewise it is held in 21 H. 7. 39. that a man may justly to assemble his friends and neighbours to defend his house against violence, but not to go with him to the Market or elsewhere to guard himself from violence: And all this to establish quiet and tranquillity in the Commonwealth.

14 Every Libell (which is called famous Libellus, seu inamatoria scriptura) is made either against a pivate man, or against a Magistrate, or public person: If it be made against a pivate person, it deserves a severe punishment; so albeit the Libel be only made against one, yet it involves all of the same family, kinsmen, or society to revenge, and to tempore (by consequence) to quarrels and disturbance of the peace and quiet of the Commonwealth, and may be the cause of effusion of blood, and of great incontinence: If it be against a Magistrate or other public person, that is yet a greater offence, for this concerns not only the breach of the peace, but the scandal of Government; because what greater scandal can there be to Government, than to have corrupt and wicked Magistrates to be substituted by the King to govern his Subjects by it? Neither can there be greater imputation to the State, than to permit such corrupt men to sit in the sacred seat of Justice, and to have any medling in 02 concerning the administration of Justice, which conceit being first in the mind of the people, may be a cause of tumults and sedition, to the great disturbance of the quiet and repose of the Commonwealth.

15 albeit Justices of Peace have not express authority given them by their Commission to take recognizance for the keeping of the peace, yet the Law gives them there by that power ex congruo, in order to the publique quiet of the Commonwealth, as that they are thereby constituted to be Conservatores Pacis, and impotizy to cause men to keep the peace, and to hear and determine offences committed against the peace and quiet of the Realm: The Common Law gave also power to the Sheriff (either upon a writ of Suppluvicis, or without such a writ) to take a Recognizance for the keeping of the peace, because he also is Conservator Pacis, and to that end and purpose hath the guard and custody of the County committed to him for the time that he continues Sheriff, as appears by the words of his Commission and Patent; Rex &c. Commissarius vobis Custodian, &c. And what the Justices 02 he do in that behalf, is matter of Record, and so ought to
A man may go beyond sea to be demásd, soz that it concerns the Publique peace and tranquility of the Commonwealth.

16 By the Common Law any man may go out of the Realm to employ himself as a Merchant, to undertake a pilgrimage, to go for any other cause at his pleasure, without demanding license of the King, neither shall he incur any punishment for so doing: Howbeit, because every man in right is bound to defend the King and his realm, and to preserve the publique peace and tranquility of the Commonwealth from foreign invasions from abroad, and intestine rebellions and insurrections at home, the King may at his pleasure command by his writ De securitate invenienda, quod si non dierit ad partes exter-"np fines licenciam Regiam, under the Great Seal, province, that he shall not go beyond sea without the Kings license; And if he do, he shall be fined for disobeying the Kings command. Vide 3.

17 In case of a Testament or other conveyance, whereby the se office or grants, &c. is in the Commonwealth, a Proviso for a power of Revocation is meerly repugnant and void; but in a voluntary conveyance, which passes by raising of Uses, being executed by the Statute of 27 H. 8. 10, and now become very frequent, by such a Provi- so it is lawful to the Covenantor, at any time during his life, to re-voke any of the said Uses, &c. And these revocations are always fa-"npbably interpreted, because cause now to interrupt that Course would disturb the Publique quiet of the Realm, many men Inheritance rights depending thereupon.

18 In 50 E. 3. (Rob. Parl. 77.) It was attempted in Parliament to have a Statute made, that no man should be barred by a warranty collateral, but where Uses descend from the same Ancestor; but it could never take effect, because it would weaken common assurances, and (by consequence) disturb the peace and quiet of the Commonwealth.

19 For as much as in covenances, limitations of Remainders are usual and common assurances, it is dangerous by concepts and neat distinctions to bring them in question (as hath of late time been at-"npmpted) lest thereby the quiet repose of the Commonwealth may be interrupted.

20 The Statute of the 21 Hen. 8. 33. (concerning descents to toll entries) shall be understood of a descent upon any filiain, albeit the words are of entries with strength: And this large intepretation of the words is given for the better preservation of the peace and quiet of the Country: By the Opinion of all the Justices.

21 In the Starre-Chamber the Countesse of Shrewsbury was fined 1000l, and committed to the Tower; for that being called to the Council Table, and Interrogated what she knew, or had heard, or thought of a suppesed child, which was rumord that the Lady Ar-"npbella should have had, she refused obstinately to make any answer: because it was judged, that this was a question of State, and proper for the Council Table to take cognizance of; for there is not one thing that both more concern the peace and quiet of a kingdom, than the certainty of the Royal line, &c.
The Reason of

201 Conventio seu beneficium privatuum non potest publico juri
derogare. Vide supra 198, 29.

1 No partition contract or agreement, which varies from the ordinary course of law, and founds in prejudice of the Commonwealth or Common right, will be deemed good in law; as if a Castle that is used for the necessary defence of the Realm descends to two or more Co-partners, and they by agreement chance certain of their friends to make partition between them, who make partition of the Rooms and Chambers of the Castle, assigning some to one, and some to another, etc. This partition is void, because a Castle, which is to be kept entire for public use, and for the safeguard of the Commonwealth, will not admit of any such division; albeit such a partition of other lands that are portable, has been good in law, and binding to the Co-partners after election of their several parts: Neither shall such a Castle be assigned for a Dowry, albeit the parties content thereunto, because the publick shall be preferred before the partition.

2 A tenant of black acce in fee, and also possession of white acce for years, grants a rent charge out of both to B, for his life, with Clause of Diskreol, etc. In this case, the estate of the rent, being a Frankentenent (according to the purpose of the deed,) cannot issue out of the term for years, but out of the land only, which the grantor had in fee simple, because the Frankentenent of the rent cannot issue out of a Chartist, and the whole rent cannot be Frankentenent out of black acce, and a chattel out of white acce, and to make two rents, where one only is granted, would be injurious. Neither yet can the contract and mutual agreement of the parties charge such a thing with a rent, which is not chargeable by law, as out of an Hundred, 09. Abolition, 30. Art. 7. 12. out of a Fair. 14 B. 3. See 2. 128. The Earl of Kenes case: Neither can a rent be granted out of any estate of Frankentenent out of any public Frankentenent, which is not manenonizable, either in possession, reversion, or by possibility, but is only hereditementum incorporeum, etc. A private non derogare jurij communis; And in an Alisfe they cannot be put in tiew, neither can any success be taken in them; And in the case above, albeit white acce by hereditementum corporeum and manenonizable, yet in respect of the utility and incapacity of the interest which the grantor hath in it, that rent of Frankentenent cannot issue out of it, but out of the land in fee simple: And in that case also, in an Alisfe brought for the rent, the land in fee shall be only put in tiew; And if the Grantor should accept a lease of a grant of white acce, that will not suspend his rent.

3 Term. Hill. 2. Inc. It was resolved by the two Chief Justices, the Chief Baron, and the Court of Wards, that no condition or limitation, be it by act executed, or limitation and use, or by demise in a last will, can bar tenant in tail or alien by a Common recovery, for the cases and reasons reported at large in Sir Anthony Mildmayes cafe in the 6. Report.

4 If there be Lord and tenant of a Carme of land, and the tenant Conform hath issue, and is attainted of felony, and the King pardons him, and after the Lord confirms the estate of the tenant, and the tenant dies; In this case the Lord shall have the land against his own confirmation, for the confirmation cannot add to the estate of the tenant a dependable quality to him, who was enimens to take the land by descents; So Paça privatia juri publico derogare non possit.

5 Baron
5 Baron and femme being tenants in special tail, the remainder to the heirs of the Baron, the Baron leaves a line to E. G. who grants to the Earl of Hanc. In this case, the Baron dies, and the Feme enters, and the E. of H. confirms her estate, Habendum to her and the heirs of the body of the Baron, then the Feme dies having issue a son; in this case, the confirmation is void, for it cannot add a descenstible quality to the issue in tail, who was disabled by the line to take by descent; again, if that confirmation should add to the estate of the Feme a descenstible quality, it would in effect (as to that point) repeal no less than two Acts of Parliament, viz. 4 H. 7. 34. and 32 H. 8. 36. by which the estate in tail is barred as to the issues, and the issues are disabled to claim the land by force of the said estate tail. See Pacta privata, &c.

6 Tenant in tail cannot be prohibited by any condition or limitation to bar the issues in tail, as also the restrictions or remainders, by suffering a Common Recovery, much less can be prohibited to prevent by any such condition or limitation a going about, conclusion, or agreement to suffer such a recovery; to suffer such a recovery to the purposes aforesaid, is an instant to inseparably annexed to an estate tail, that it cannot possibly be prohibited by any such condition, limitation, or other agreement whatsoever between the Parties, Convenio privato, non potest, &c. So likewise Power or tenancy by the Courtelle cannot be restrained by condition, because they are annexed to the estate tail by Law, no more than a tenant by the Courtelle or tenant in tail after possibility can be by condition made passible for instance: All things obtained by Statute, cannot be restrained by condition, &c. as that the tenant in tail shall make no leases, according to the Statute of 3 H. 8. 28. to levy a fine, according to the Statutes of 4 H. 7. 34. & 32 H. 8. 36. to bar the issues; for none of these, which are incident to his estate by Act of Parliament, can be restrained by condition or limitation.

7 The King himself cannot do any thing against an Act of Parliament, when the subject hath also an interest in it: And therefore adds to it the words of the grant to the two persons obtained by the Statute of 32 H. 8. 46. to be Auditors of the Court of Wards, by composition & division or alterni circa dividit vivum, yet that being an office of trust, there shall be no survivor thereof; for that it being annexed by that Statute, that there should be two persons, &c. which should have a judicial voice, the King cannot constitute one only; to the Subject by the Act hath interest therein: Et scis exseoque negatio comisiam plurias; Howbeit, the King may constitute one at one time by one patent, and another at another time by another patent; and although he may so do, yet he who is first constitutes, hath not any judicial voice, until the other be constituted also, for it is provided by the Statute, that two persons, &c. shall be one office; and therefore these words, Composition et division, et alterni circa dividit vivum, ferre only to this purpose, that the survivor shall be one of the persons, unto whom the other shall be added.

8 The Speaker and fellowes of Magdalen College in Oxford having an intent to grant a頏yngage in London to Benedic Spinola and his heirs (because they were prohibited by the Statute of 13 Eliz. 10. to grant it immediately to him) made a grant thereof first to the Queen and her successors, upon condition (contained in the same grant) that the Queen within 3 months should grant the said peppery to Spinola and his heirs; whereupon it was unavailing, that the Queen, who was the fountain of Justice, should be an instrument of injury and tort, and of the violation of a pension and excellent Laws, which she had
The Reason of

The maintenance of Religion, the advancement of Liberal Arts and Sciences, the sufficiency of poor people, and other publick uses hath made: and whereas the said Speaker and Fellows were satisfied of the said Pleading in them and their successors for ever in the said College pro bono publico, and to pious and charitable uses, thereby it should be converted to the private use of Spinola and his heirs for ever: And to (as the Statute of Carlile hath it in 5 E. 1. Quod olim in utas pios ad divini cultus augmentum, & cetera opera pietais charitable sunt erogatum, nunc in senium reprobum eft convertum; which also the Post well reprehends,

"fuit her apiecatia quondam; Publica privatis securernae, sacra profanis.)"

9 The monopoly of the sole making and importing playing Cards was banned, because albeit it was pretended by the preamble of the Statute of the Patent to be for the good of the Commonwealth (which was indeed the Queen's intent when she granted it) yet it was apparent to be very prejudicial thereunto, and merely intended to be imposed to the profit of the Patentee, and the Commonwealth more abused than before.

10 A Member of Parliament is free from arrears of his person, because the King and all his Realm having an interest in his person to the preservation of the publique affairs of the Commonwealth, it is reason that the said commodity of any particular man should not in such case be regarded, and the rather, for that such arrears is no discharge of an execution, that after the Parliament he may be taken again thereupon.

Co. 1. 6. 63. 5. 7. 8. 10. (as appears by the preamble) to refute the ancient Common Law, and to extinguish all false intentions, imaginations, and practices of laws, which had introduced many mischiefs and inconveniences mentioned in the same preamble: And this was very good and necessary for the Commonwealth; for the Common Law hath Rules to direct the estates
the Common Law.

states and inheritances of lands, which are certain and incontestible; And therefore it is (without comparison) better and much more safe to have estates and inheritances directed by those certain Rules of the Common Law; which hath been an antient, true, and faithful servant to this Commonwealth than by the uncertain imagination and conjecture of any of these new inventions of Wits, without any approv'd ground of Law or Reason.

4 Tenant in Chief, having made a son, covenants to land settled to the use of his niece; the son dies; In this case, the King shall not have prisme in, And two of the chief reasons which induces that resolution was, because the experience of the Court of Wards had been always so; and for that a great number of the subiects, which were in peace, would be vexed and molested, if the Common received opinion should be changed.

5 Interroga Pristinan generationem, & invesliga patrum memoriam. (Job 8. 8.) Hesterni enim fumus, & vita nostra scat umbra supra terram. We are but of yesterday, and therefore had need of the wisdom of those that were before us, and had been ignorant, if we had not received light and knowledge from our fore-fathers; Our ways also upon earth are but as a shadow, in respect of the old and antient ways past, wherein the Laws have been by the wisdom of the most excellent men (in many successions of ages) by long and continual experience (the trial of right and truth) tried and refined, which no one man (being of so short a time) albeit he should have in his head the wisdom of all the men in the world, in any one age, could such have attained unto: And therefore it is optimus regulus, qua nullis est verior et firmior in iure, Neminem optorem esse sapientiorem legibus. No man ought to take upon him to be wiser than the Laws, which men have received and approved by men of the greatest wisdom in all former ages.

6 Albeit an Act of Parliament be thus expressed, Dominus Rex &c. (as there are many to possess, Vide 7 & 7. 14. & 39 E. 3. 13.) yet if they be entered in the Parliament Roll, and alwais allowed for Acts of Parliament, it shall be intended, that they were by authority of Parliament, although no mention be therein made of Lords or Commons.

7 Writs not to be changed. Writs to men and of course, viz. Originals, were at first authorized by Parliament, and without Parliament they cannot be altered or changed, but shall still remain the same; albeit they may in some cases seem incongruous; as the original writ De Affinis alimae presentacionis was thus in these words, Quis Advocatus tempore pacis presentavit ulimam personam, qua mora est: This form shall hold, and cannot be changed, albeit the Incumbent resigns, as appears in 8 E. 3. Tit. 11. de dar. pref. 20. & F. N. B. 31. h. So likewise the form of Warrantia Carta is for men thus: Quod iure, &c. warrantier B. unum Meffligium in D. &c. unde carcerm habet, &c. And yet if he be held to warrant by force of an exchange, &c. by Homage ancestral, the form of the writ shall not be altered. Vide 9 E. 4. 49. at H. 6. & F. N. B. 134. and many other cases may be put upon this ground.

8 A. being bound to land to the award of B. countermands the authority of the arbitrator; In this case, the bond is forfeit; because the Condition is, that A. the obligor would stand to and abide, &c. the rule, order, &c. which form was invented by prudent antiquity, to the end he should not revoke the submission; and it is good alwais to pursue (in such cases) the antient forms and preseuents, which are full of knowledge and wisdom.

Pepe 9 9 The
The defendant in an Assize makes title by a recovery suffered by A. to certain messuages, the plaintiff confessing the recovery, but judicially fais it to the use of A. and his heirs in fee, and thereafter, that it was to the uses mentioned by the defendant: The Jury find that the recovery was suffered, as the defendant had alleged, and that in Assent subsequent, the intent of the parties to the recovery was declared to be, as the defendant had alleged: In this case, such subsequent declaration was adjudged good; for that no mischief or inconvenience could arise upon that construction, and if it should be otherwise construed, great inconvenience might follow thereupon; because the inheritances of many substantial in England depend upon such declarations subsequent, 07 (at least) upon Assents, which (in truth) were soldered after the recoveries suffered, 02 the fines listed; and this conclusion concurs with the common opinion of men learned in the Law, and Common experience, and alterations of such opinions, as concern assurances of inheritances, would prove dangerous, and be of ill consequence in the Commonwealth.

In Alexander Powlters case in the 14 Rep. It being doubted (upon the coming of the General Statutes of 23 H. 8. 1. 25 H. 8. 3. 6 E. 6. 12. 5. & 6 E. 6. 10. & 4. 5. B. & M. 4.) whether 02 no one guilty of House-burning should be allowed his Clergy; The Judges have conference with those Clerks of Assize, and other ancient Clerks, to the end they might be satisfied of the usual course therein: And for this, that upon view of many Records it appears, that the Principals and Accessories (before) had always been out of their Clergy in case of House-burning (except one in Essex before Sir John Puckering and his Companion, Judges there) the said Powlters had judgement to be hanged for setting an house in Newmarket on fire, whereby most of the town was burnt, and therefore was ordered to be hanged in Chains, et.

Waft. 12 A covenant to hand settled of the Span 02 of D. to the sale of himself and his wife for life without imprisonment of waft, the remainder to this 1. 2. and 3. sons successively in tail; the remainder to the heirs of the bodies of B. and his wife, with other remainders after; they have left a son; then B. dies, the wife enters, the son dies, a piece of a Barn parcel of the premises is blown down by wind, the wife can only 30 loads of timber blown down to be carried from off the Span 02 which he in the remainder beings an action of Waft and Converting: And upon the argument of this case, two questions were

Declaratory subsequent.
were moved, 1. Whether o; no the wife shall be tenant in tail after possibility, viz. to make waste; 2. Admitting she shall not have the privilege; 3. Whether the clause, without imprisonment of waste, gives to her property in the timber so thrown down by the wind; whereupon it was resolved, that she had a property in the timber, and might convert it to her own use; for that (as was said) it was the continual and constant opinion of former times, that these woods, without imprisonment of waste, do give power to the lessee to make waste to his own use, and it would be dangerous now to recede therefrom; and as it was laid by the Judges in 3 & 4 Eliz. 5. So the present Judges did say in this case. We will not change the Law, which hath always been used; Also it is well said in 2 H. 4. 10. It is better that there should be a default of the devise, than that the Law should be changed.

13. Albeit the King hath a prærogative above others, that he may be in what Court he pleaseth, so to bring a Quare Impedit, as a writ of Chancery of Lands in London, returnable in the Kings Bench, yet he cannot change the nature of the writ, otherwise than the Latin gives power to him and others, or hath been formerly used.

14. In an Alife of Frech force in London before the Scales and Aldermen, against Foxley and Agnes his wife, and 11 others, 10 of them appear by Bailiff, and plead, So such woman as Agnes the wife of Foxley, in aum natura, and demand judgement of the Plaintiff, and that it should be impeded by the Alife, &c. and the others plead the same plea by Attorney. And it was adjudged, that the Plaintiff should not stand, but should have good against all the rest, save only Agnes: And this resolution was given upon the advice of Justice Hales to Sumner (then Judge of the Hilkings, where the late was brought) because (as Hales said) all the books went that way, and not one the other way; And therefore he added Sumner do follow to the judgments formerly given.

15. An accedency shall not be arraigned as accedency before all the principals be arraigned, because it had been always the usual course in such cases to do so; and therefore it seems the best way to the Court to pursue the same order, that the Sages had formerly used; and the rather, so that he may not be accedency to one, and yet may be found accedency to another.

16. In the case of a Common Recovery, he that enters into the warranty must (if he please) save his rent falling out of the land; yet if he enter into the warranty generally, it may be saved by covenant and agreement in the Indenture made before the recovery, as may be agreed between them, and this in favour of Common Recoveries, which are the Common assurance of land, the usual form, whereof shall not be altered by any special matter of Entry, saving his rent or condition, but they ought to be saved by the Indenture dition: For Convolances, which are used for Common assurances of land shall be expounded and construed according to common allowance, without piping into them with English rules; And therefore, Pink. 35 Eliz. in Dormers case it was adjudged in the Kings bench, that a Common Recovery may be had of an abandonment: So was it also adjudged in the Exchequer in Sir Will. Pethams case, that if a Common Recovery be suffered by tenant for life, it is a forfeiture of his estate, and the reason of both these Indentures was, because a Common Recovery is by usage a Common course, as a fine, feu-feman, &c. And it is laid in Trevisa's case 514, that in Common Recoveries the common usage and the intent of the parties are to be respected, for a Common Recovery had against Baron and Femme shall bar the same of her
her voluer, and yet the same shall not have any recompence in value, and therefore in strictness of reason it is strongly to be maintained, that Common usage and the intent of the parties make this bar, according to these rules, Non recedendum est a Communi observantia, & Minime mutanda iure, quæ certam habuerunt interpretationem. And these Rules hold not only in a Common Recovery, but much stronger in a fine, which is also a Common assurance of land; for in case of a Recovery the Couche may enter into the warranty, laying his action, rent, condition, &c. and yet (because Common usage hath allowed it heretofore) they may be better saved by covenant and agreement, as aforesaid; for, in a fine no saving can be contained therein, and therefore by necessity (and according to common usage always allowed) they ought to be saved by the direction and Rules of a precedent covenant and grant: Upon which ground it was adjudged in 6 E. 2. cit. Eitoppel, 2. that if a man and his wife ensale two by deed, to have and to hold to them and their heirs, and after the death of his wife by a fine for conunion de droit to them and the heirs of one of them, yet this is no conclusion, but that both of them may have the fee-simple, as they had it before.

203 A Communi observantia non est recedendum.

1 The making of an Inventute in the third person is the most false way, because it is most commonly used, whereby it appears, that the form which is most commonly used in controversies is the safest. Magister Kerum usus. It is provided by the Statute of 38 E. 3. 4. that all Penal bonds in the third person be void and holden for none, whereas some Books (viz. 40 E. 3. 1. 2 H. 4. 10. 5 E. 4. 5.) seem to differ, but they being rightly understood, there is no difference at all; so the Statute is to be intended of Bonds taken in other Courts out of the Realm, and so it appears by the preamble of that Act, being (indeed) principally intended of the Courts at Rome, and so it appeared by Justice Hankford in 2 H. 4. In which Courts bonds were taken in the third person: to such bonds made out of the Realm are void, but other bonds in the third person are relates to be good, as well as Inventures in the third person, by the opinion of the whole Court in 8 E. 4.

2 The antient forms of Courts are to be only observed, as Cum diu Pleading, misis, 02 Cum dedic. and not to say that he was felled and metam. and yet if he say, it makes not the Count vitioso; But in a barr, replication, or other kind of pleading, the party must allege a felsen in the Leflo; 02 Donor, and antient forms of pleading are also to be observed.

3 The Statute of 33 H. 8. 10. 02 defines, that if any grant of land, &c. shall be made in trust, to the use of any Churches, Chapels, Churches, monasteries, Colleges, Fraternities, Commonalties, Companies, 02 Brothers, &c. all such uses shall be void, the being no corporations, but creates either of devotion, else by common content of the people; yet this Statute both not make good and charitable uses (not laboured of any superstition) to be void, as to find a Grammar-school, to sustain poor people, 02 any other such good use, but only superstitious uses; because that Statute hath been allowed by the Common opinion to be taken to be; 02 almost all the lands belonging to Towns and Boroughs (not incorporat) to destroy the Common Lases of the Town, 02 to repair the Highways, 02 the Church, 02 for sufferance of the part of the parish, 02 to support other common charges of the parish,
parish, are conveyed to others Inhabitants of the parish their heirs, in trust to impel the profits thereof to such good uses; such good uses (albeit primâ facie they seem to be within the letter of that Act) were never made void by that Statute; and it is a thing dishonorable to the Law of the Land to make good uses void: And it appears by a case reported by Serjeant Benlowes, that it was held in the Common pleas in 5 & 6 Eliz. 6, that a feoffment to the use of poor people was not within that Act of 23 H. 8. 10.

4 In Alton Woods case in the 1st Rep. Exception was taken to an office virtue officil returned into the Chancery, for it was laid, that it ought to have been returned into the Exchequer, but upon the view of infinite presidants of offices found before the Exchequer virtue officil, and returned into the Chancery, it was disallowed per toam Curiam.

Perpetuities.

5 In the argument of Corbet's case in the 1st Rep. Justice Glanville said, that both the making of the Statute of 13 E. 1. de dominis, &c. & 27 H. 8. such a proviso annexed to the estate tail, viz. that it shall cease, as if the tenant in tail were dead, was never seen or heard of, and therefore he concluded, that it could not be done by Law; And so likewise concludes lind. fol. 23, in like manner, that if any action might have been brought upon the Statute of Merion, cap. 6. De dominis, qui maritavertis, &c. it would be intended, that sometimes it would have been put in use; and therefore he concludes, that no action can be taken upon that Statute, as much as it was never seen or heard, that any action was ever brought thereupon.

5 Where in the Charters of Corporations it is laid, that the choice of the Patron, Bailiffs, Proctors, or the electors or officers, shall be chosen by all the Commonalty or Burgesses, if they have been chosen (time out of mind) by a certain select number of the principal of the Commonalty or Burgesses, commonly called the Common Council, or by such like name, and not in general by all the Commonalty or Burgesses, not to so many of them as will come to the election, such antient and usual elections are good and well warranted by their Charters, and by the Law also; for in every of their Charters they have power given them to make Laws, Ordinances, and Constitutions, for the better government of their Cities, Boroughs, &c. by force whereof, and to avoid popular confusion, if they by their common assent do constitute and ordain, that the Patron, Bailiffs or other principal officers shall be chosen by a certain select number of the principal of the Commonalty or Burgesses, as aforesaid, and prescribe also how such electors shall be chosen, such Ordinance and Constitution was resolved (in 40 & 41 Eliz.) to be good and allowable, and to agree with the Law and their Charters, or abolishing of Popular discourses and confusion; And albeit such an Ordinance or constitution cannot be now produced, yet it shall be presumed in respect of such a special manner of antient and continual election (which cannot begin without common consent) that at first such an Ordinance or Constitution was made; Such reverend respect the Law attributes to antient and continual allowance and usage, although it begin within time of memory: Mot res incedia est sidellimae veritas; Quæ præter constitutudinem et morem Maiorum sunt, neque placent, neque restituatur; Et frequentia actus multum operatur. And according to this Resolution the antient and continual usages have been in London, Norwich, and other antient Cities and Corporations, and God be thanked, that they should beinnovated or altered; for many and great inconveniences may arise thereupon, all which the Law hath well prevented, as appears by this Resolution.
The Reason of

7. Although an action of debt is not upon a Contract, yet there may be an action upon his he, 0 or an action of debt for the same at his election, and one of the chiefest reasons of that resolution was, for that George Kempe (Secretary of the Exchequer and the Exchequer) procured an infinite number of pens, as well as in the Common Pleas as in the Exchequer, in the reigns of Edward 6.

8. Upon other actions of the Goods of the Exchequer, the Sheriff returns nulla bona, &c. hereupon a writ issues to order the Sheriff to inquire by Inquest, whether the executors have wasted, &c. He returns they have, and thereupon Judgment was given of their own goods, but the executors filed a writ of error de reductione executionis, the execution was stayed; because this course of proceeding in such cases had been taken up of later times, whereas the ancient course was upon the return of Nulla bona, to sue a seire facias to the Sheriff to levy, &c. out of the Exchequer goods, and if it should appear to him, that the executors had wasted, then out of their own goods; &c. albeit it was said, that the late new course was usual in the Exchequer, and more favourable than the ancient course was, because thereby the Devastations shall not be returned by the Sheriff only, but shall be inquired likewise by an Inquest returned, and thereupon a seire facias ought to be granted; yet judgment was given, that the late proceeding was acceptable, because invented of later times; and the rather, for that by the ancient course, if the Sheriff make a false return, the party may have his remedy by action upon the case, which is a good means to induce the Sheriff to make true and just returns in such cases; but by the late new course, if the Sheriff take an inquest and return it, although it be false, yet the party hath no remedy either against the Sheriff, or any other, which would be inconvenient: by which resolution it may be observed (by the way) how dangerous a thing it is to alter or change the ancient forms and courses of Law, for albeit a new way make (prima facie) seem specious and convenient, yet afterwards it will prove inconvenient by introducing many mistakes, which cannot be discovered otherwise than by future experience, as in the case above recited: which point (it were to be wished) our late Reformers would well study and consider, before they presume to innovate anything in the Law.

9. In a writ of Dover an aitio was cast, as a challenge, for that by the Statute of Eliz. 1: 2. it is provided, Quod non iacet Elizius in breve de Dort; Hitherto, because the Common Exchequer hath been almighty allowed in a writ of Dover, therefore the Justices did concede that Statute to extend to an aitio of the Exchequer return, and not to the Common Exchequer; and the rather, for that the Statute abved a Reason of that purview, viz. Quia videatur decepto & prorogat.
the Common Law.

... to a writ to the Cozoner, or the Sheriff himself to be executed, he makes return, Quod mandavit Balivo Hundredi de B. &c. Quum eodem Balvo sic flet respondit, et so sets down the Inquisition taken before the Bailiffs, and 401 damages: Howbeit, upon a writ of Error it was agreed by all, the Judges, that the return was insufficient; because it was apparently untrue and against Law: for the warrant was directed to the Sheriff himself to be executed in any part of the County, and no Verme contained in that Inquest of office, as there is in other writs, which intitule the Bailiffs of Liberties: Howbeit, the Court would not reverse the judgement, because there were divers of the like kind, both in the King's Bench and Common Pleas, especially in Suffolk and Norfolk in later times. Vide Hob. 84. Skene and Oxonbridge such an allowance in a writ of use.

In a suit in the Star-chamber witnesses were examined to prove what was deposed concerning a will in the Ecclesiastical Court; but because depositions were not allowed in the Star-chamber taken in other Courts, they were rejected, as a crafty device to induce depositions against the rule of the same Court.

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Max. 203

10 Alb. 16 E. 3. Damages 80. and some other books are, that Damages shall not be recovered in a writ of Ravishment of Ward, yet for that it is said in 17 E. 3. 57. and many other books (quod vide supra) and agree with common experience, that Damages should be recovered in that writ, it was so resolved accordingly.

... 11 It appears by the Statute of Merion, that all the Bishops instanced the Lords, that they would consent, that all such as were born before Matrimony (marriage following after) should be legitimate, as well as they that were born within Matrimony, as to the succession of Inheritance, for that the Church accepted such to be legitimate; but all the Carlis and Barons with one voice answered, Nullius Leges Angliae mutata, quae hucque ultimæ sunt et approbat.

... 12 If a writ be directed to Coroner, Coronatoribus de Comitatu, or in Comitatu, have the same construction, de and in (in this case) signifying the same thing; yet because in (in such case) hath been most frequently used, upon such a direction to the Coroner, de ought to be rejected, and in return to the Sheriff for the Register is, that all writs directed to the Sheriff shall be Vicomiti de Comitatu, but those directed to the Coroner, Coronatoribus in Comitatu; as an Attachment against the Sheriff for not returning a Replevin, is directed Coronatoribus in Comitatu, &c. So is likewise the writ of Certifying an Omissions, as appears in the book of Entries, and to all other writs, as a Deem vacant extremum is, Executori in Comitatu, and the like: And so that above faults with this direction, argueth against the Register, and also against the common usage of the Late heretofore practices.

... 13 If I give you a pint of wine, you shall not have the pint pot, but if I give you an Hoghead of wine, you shall have the Hoghead, for the phrase of the language commonly used expressed the intent, be a Communi obserbantia, &c.

... 14 A writ of Inquest being directed to the Sheriff himself to be executed, he makes return, Quod mandavit Balivo Hundredi de B. &c. Qui eodem Balvo sic flet respondit, and so sets down the Inquisition taken before the Bailiffs, and 401 damages: Howbeit, upon a writ of Error it was agreed by all the Judges, that the return was insufficient; because it was apparently untrue and against Law: for the warrant was directed to the Sheriff himself to be executed in any part of the County, and no Verme contained in that Inquest of office, as there is in other writs, which intitule the Bailiffs of Liberties: Howbeit, the Court would not reverse the judgement, because there were divers of the like kind, both in the King's Bench and Common Pleas, especially in Suffolk and Norfolk in later times, Vide Hob. 84. Skene and Oxonbridge such an allowance in a writ of use.

... 15 In a suit in the Star-chamber witnesses were examined to prove what was deposed concerning a will in the Ecclesiastical Court; but because depositions were not allowed in the Star-chamber taken in other Courts, they were rejected, as a crafty device to induce depositions against the rule of the same Court.
Sir Edward Coke speaking of Justice Richel his Perpetuity, observes, that new inventions (though of a learned Judge in his own profession) are full of Inconvenience: Percibulism off new novas ex inosilisates induere. And that Author saith further, that Littleton in the u bafe of that case (§ 5. 721, 722, & 723.) hath taught us an excellent point of learning, that when any innovation of new invention starts up, the best way is try it by the Rules of the Common Law, for they are the true touchstones to sever the pure gold from the dross, and sophistications of novelties and new inventions: And by this example (be faith you may perceive, that the Rules of the Common Law (which are indeed the Maxims of Reason) being commonly applied to such novelties, it both utterly crush them and bring them to nothing; to commonly a new invention both offend against many Rules and reasons of the Common Law: And therefore the ancient Judges and Sages of the Law have ever suppressed innovations and novelties, as soon as they have offered to crop up, left the Rule of the Common Law might be disturbed, and to bate Acts of Parliament also many times done the like: And the Judges say in § 8. N. 3. We will not change the Law, which always hath been used And another faith in § 4. 18. It is better that it be turned to a default, than that the Law should be changed, or any innovation made. And therefore new and subtle inventions ought not to alter any principle of the Common Law. Vide supra§ 184, 18, § 159, 2.

The Invention devised by Justice Richel (an Irishman born) in the time of R. 1. § the like by Thining Chief Justice in the time of H. 4. were both fall of imperfections, so nihil simul inventum est & perfectum, and fape viatorem novi non vetus ordinis fallit: And therefore new inventions in assurances are dangerous.

If a man make a testament in the land to the use of A. and his heirs every Saturday, and to the use of C. and his heirs every Tuesday, and to the use of B. and his heirs every Wednesday; these limitations are both, because it is a new invention; there being no such fractions of estates found in the Law: And therefore not to be permitted for the Inconvenience that may ensue thereupon.

By the Statute of 27 H. 8. of Wm. some debts were executed presently, others by matter ex post facto, and others again were extinguished by that Act: Wills in esse, and what by the possession presently by force of the Act; Wills limited in futuro, and agreeable to the Rule of the Common Law, are also, if they become in due time in esse, within the provision of that Statute; but debts invented and limited in a new manner, and not agreeable to the ancient Common Laws of the land are utterly extinguished and extinct by that Act; for it appears by the express letter of the Act, that it was the intent of the Parliament to extinguish and root them out, and to reduce the ancient Common Law of the Land. Vide plus ibidem.

Upon a fieri facias of the goods of the tertio, the sherif returns nulla bona, &c. And thereupon another writ or process to him to inquire by Enquest, whether he or no the executores have taken, &c. he returns they hate, and thereupon execution is awarded of their own goods; but this award of execution was rejected by writ of Error; because that practice had been taken up of late days, whereas the ancient course was (and since the judgement in this case is taken up again,) to use a
6 All perpetuities (being new inventions) are against the reason and policy of the Common Law; for the Common Law, all Inheritances were so simple, to the end that neither Lords, should be vested of their estates, wards, c. no; purchase 3d. farmers should lose their estates; leases, c. he void by the heirs of their grantees; leases, no; such infinite occasions of troubles, contentions, o; unless 3d. should arise; and therefore it may be truly averred, that the policy and Rule of the Common Law in this point was in effect inverted by the Statute de donis made in 33 3d. which obtained a general perpetuity by Act of Parliament; for such as had then made it, it would afterwards put it in use; by force whereof all the possessions of England in effect were intailed accordingly, which was the cause of the said and divers other mischief's; howbeit divers attempts were made for remedy thereof in divers Parliaments, and many bills exhibited accordingly, but they were always upon one pretence or other rejected: Indeed the truth was, that the Lords and Commons knowing that their estates tail were not forfeitable for felony or treason, as their estates of Inheritances were before the law. Act and principally in the Barons war in the time of H. 3d. and finding also, that they were not chargeable with the debts or incumbrances of their ancestors, and that the sales, alienations, leases of their ancestors did not bind them; yet the lands which were so entailed to their ancestors, did always reject such bills; and this continued all the remain of the Reign of E. 1, and the Reigns of E. 3d. R. 2. H. 4d. H. 5. H. 6, and until about the 2d of E. 4, when the Judges upon consultation had among them do resolve, that an estate tail might be tasked and barred by a Common recovery, and that by reason of the intended recom pense the Common recovery was not within the restraint of the said perpetuity made by the said Act of 13 3d. whereby it appears, that many mischief's did arise upon the change of a Maxim and Rule of the Common Law, which they who altered it could not discern, when they made the said change; for Revers progressus offendatur mulae, quae in intimo praevatur u praevideri non pollunt. Vide 8.

7 In Sir Geo. Reynels case in the 8th Report, one of the reasons why the office of Marshalie could not be granted 50 years, more, because it was an ancient office, and had been always granted for life, or at will, to the end the person to whom it was granted might be certainly known; and therefore to grant it for years, when it was never known to be so granted before, being an Innovation, might prove dangerous and of ill consequence to the Commonwealth.

8 The docking of an Intail by a Common recovery in 12 E. 4, was no new invention, but connotant to the opinion of the Judges of the Law, even from the making of the Statute De donis, as appears by divers authorities in our books, viz. in 42 E. 3. 53. in 44 E. 3. 21. 22. Othman Lambert's case, in 48 E. 3. 11. b. Jeffray Benchers case, in 12 H. 4. 3d. b. in 1 b. 4. 5. in 5 E. 4. 2. b. which resolutions and opinions in Law, together with divers others of the like kind, did (as it seems) produce the judgement in 12 E. 4. And therefore such barring of an estate tail was not then to be esteemed an Innovation of a new invention, but the Judges and Judges of the Law then perceiving what contentions and mischief's had crept into the quiet of the Law, by such lettered Inheritances, upon consideration of the said Act, and

An Intail diced.
of the former exposition thereof by the Sages of the Law since the
making of the same Act, did in the said 12 year of E. 4, give judgment,
that in such case an estate tail should be barred. And in Scholar scas
case in 12 Eliz. it was not thought fit to stand with the honour and gra-
that the question concerning the restraint of a Com-
mon recovery (which had been so often debated and resolved) should
be once more settled.

9 The Queen grants to one of the King's Chamber the only ma-
king, and impounding of Cards; This was assigned a monopoly and
therefore void; and one of the reasons was, because the grant was
prime ipsejusmos, so no such was ever seen to pass by Letters Pa-
ented under the Great seal to that very day; And therefore because it
was a dangerous innovation without precedent by authority of
Law of Realm, and the Queen received in their grant, it was un-
judged void.

10 A Decimus Potestatem was granted to Justice Saunders to re-
ceive an Attorney for the defendant in a Quod juris claim; but be-
cause there could be found no former precedent for it, it was with
much difficulty and after long debate allowed by the Judges, and that
upon great necessity, and weakness of the party.

205 Communis Error factus Jus.

1 In a case of trestament beginning with Omnibus Christi Scaeculum
etc. as Tertius omnis per pretexius, etc. at the Isle, a Letter of Atro-
ney may be continued; for one continent may contain divers acts to
several perform: But if it be by inventure between the executor on the
one part, and the testate on the other part, there a Letter of Attorney
in such a case is not good, unless the Attorney be made a party in
the said inventure; however, because it had been commonly used to
insert it in the Inventire, without making the Attorney party there-
unto, it hath been permitted to pass, but the other way is ancest, and
more legal. Communis Error factus Jus.

2 Where it is required by the Statutes of 1 H. 8. 4. that the very
first original, to which Evidence shall be adduced, Testators should
be given to the testators of their estate, degree, objects, etc. It is
fallen out, that one, who was by birth a Yeoman, was commonly
called Gentleman; And at that rate, in such a will brought against
him he may have the Audition of Gentleman, albeit in truth he is no
Gentleman, but only by vague reputation: On as much as the in-
tention of the Act is, that he should have such a name by which he
may be known, it is sufficient to sustain the Act of Parliament; for;
Communis Error, etc.

206 So doth a Custom, which is reasonable:
unreasonable, canre.

1 Of fines due to the Lord by the Coppholder, some be by the
Change of alteration of the Lord, and some by the Change of alter-
atation of the tenant, the change of the Lords ought to be by the act
of God, otherwise no fine can be due, but by the change of the tenant,
either by the act of God, or the act of the party, a fine may be due: for
if the Lord do challenge a Custom within his Manor to have a fine of
every of his Coppholders of the Inheritance at the alteration or
change of the Lords of the Manors, be it by alteration, descent, birth,
the Common Law.

He that dealeth against the Law and Reason, as to the alteration or change of the Lord by the Act of the party, for by that means the Coptholdere may be oppressed by multitudes of fines, by the Act of the Lord: But when the change wrought by the Act of God, there the custom is good, as by the death of the Lord: And this was resolved upon a Case in Chancery by all the Judges and Serjeants of Serjeants law in Fletstree (Tint. 92 Bk.), and is certifi-"ated into that Court: But upon the change of alteration of the Em-"rant, a fine is due unto the Lord, because that custom is reasonable.

2. If fine and taken of Coptholdere be certain by custom, and some be uncertain, but that fine although it be uncertain, yet ought it to be rational, and that reasonableness shall be discussed by the Justices upon the true circumstances of the case appearing unto them; And if the Court, where the cause depended, should judge the fine explan-ed unreasonable, then is not the Coptholder compellable to pay it:

And so it was adjudged P. 1 Ac. C. B. rot. 1815. 163, all circumstances is abated in law.

3. In former times it hath been doubted, whether or no, if a Coun-"tholdere had been taken by his Lord, he might have any other re-"may therein, than only to sue to his Lord by petition; for it seems, if it the Coptholder might have any other remedy, he could not be properly said to be tenant at will of the Lord according to the "custom of the manor: But Magistrates remonstrances have made this clear and without question, had the Lord cannot at his pleasure put up the lawful Coptholder, without some cause of forfeiture, and of he do, the Coptholder may have an Action of Trespass against him;

So albeit he be venuable as voluntarum Domini, yet it is se-"cundam consecutionem maneri in Britton affidavit, speaking of these kind of Leases: He cannot there be, who with a few marks of land, and tenement ter-re de noni in villegage, and so possesseth not comes, and et cetera privileges en tiens maniere, que sunt de les devez sen de terres, sous comme ils sont les lieux, que a four tenements appendant, et nul ne poit four services secrefrre ne change, a faire autres services en plus; accidit que ils ne solatent. And hereunto agreeeth Sir Robert Danby Cl. Inst. of the C. Pl. M. 7 E 4 19. and Sir Thomas Brown his Successors M. 2 E 4 89, What the Coptholder do-"ing his customs and liberties, it he be put out by his Lord, shall have an Action of trespass against him.


5. All customs and prescrip.ions, that are against reason are both, as if a Lord of a manor, will prescribe, that every Tenant, who mar-"ried his daughter to any man without the Lords licence, shall make fine: This prescription is both, being against reason: because none shall make such fines, but only vellieges, for a freeman may freely marry his daughter to whom he pleaseth: And albeit that it hath been objected by some, that such a custom may have a lawful beginning, because Lieut. in the beginning of the chapter of velleinge 5, 174, al-"loweth, that a freeman may take lands of the Lord to be holder of him, viz. to pay a fine to the marriage of his son or daughter, and therefore some have thought, that such a custom generally with in the manor might be good, but the answer is, that although it may be found in a particular Case upon such a special reservation of such a fine upon gift of land, yet to claim such a fine by a general custom within the manor, is against the freedom of a freeman, that is not bound thereto by par-
particular tenures: howbeit a custom may be alleged within a manor, that every tenant (albeit his person be free) that howbeit by bondage or native tenure (the freehold being in the Lord) shall pay to the Lord for the marriage of his daughter without licence, a fine; and this is termed Marcher, of two French words, Mariage and achecker to bug.

6 The customs of Gavelkind in Kent, where all the sons inherit equally, hath been always allowed a good custom, because every son is as well a gentleman, as the eldest, and having means may attain to as great honor, and a testament as the eldest, which by want and pittance may be obstructed, according to that of Horace,

"Hand facile emergunt, quorum virtutibus oblat
Res angulta domi."

7 The like custom is used and allowed as reasonable in other parts of England within other manors and cultivations, although it be not called Gavelkind in any Country but Kent: And as it is said of sons, so likewise (by custom) when one brother be without line, all the other brethren may inherit; there is also another custom allowed within other manors, called Borough-English, where the youngest son, or youngest brother inherits; and in the manors of B. in Berkshire, where the eldest shall not be Perceiver, but the eldest after shall have the inheritance, all which be held good, because consonant to reason.

8 Malus aequus abolendus est, and every usage is still, that is against reason; Quia in Contumine cumbus non dieminiti temporis, sed solidas rationes est consideranda: And by this rule, at the Parliament held at Kilkenny in Ireland, Lionell Duke of Clarence being the Lieutenant of that Realm, the Irish custom (called there the Brehon law) was wholly abolished, for that (as the Parliament said) it was no law, but a lewd custom, or malus aequus abolendus est, as is said before.

9 Severance of the frank-tenement and inheritance of land held by copy of Court-Roll, both not straitly of determine the Copyhold estate; for albeit his estate is taken to be but an estate at Wills, yet the custom hath so determined the estate of the Copyholder, that he is not removable at the Will of the Lord, so long as he performeth the customs and services; and by the same reason the Lord cannot determine his interest by any Act that he can do, and so it hath been at times enjoined in the Kings Bench.

10 Albeit a Copyholder hath (in judgement of law) but an estate at Wills, yet custom hath so determined and fixed his estate, that it is (by the custom of the manor) descendent, and his heirs shall inherit it, and therefore his estate is not mortuable ad voluntatem domini, but ad voluntatem domini sequatur customum; and customum sequatur manum: For as the custom of the manor is the very soul and life of Copyhold estates, for without custom, or if they break their custom, they are subject to the Will of the Lord; And by custom a Copyholder is as well inheritable to have his land according to the custom, as he who hath
hath a frankenement at the Common Law, for; Consequent (in this case) est alera lex, and being an usage time out of mind may create and consolidate Inheritances.

11 A Custom within a Panoe, that every alienation of lands hol-

ven of the same Panoe (whether it be by writing or seoffment there-

of made; o; by will) shall be presented at the next Court held there; the

said Panoe, in pain that (upon failure of such presentation) such ali-

nination shall be void, is a good and reasonable Custom: But a Custom,

that none shall use his Common in such a place, until the Lord enter

with his beast, is void so; the unreasonableless: to; if the Lord will

not enter, it is no reason that the Commoners should lose their Com-

mon. Vide 2 H. 4. 34.

Co. l. 5. 84 2 3. in Pennant's cafe.

12 Common called Shack (which at the beginning was but in na-

ture of a looking together by reason of Wicinage or avoiding of streets)

is in some places (by Custom) altered to the nature of Common ap-

pennant 0; appurtenant, and in some places it retains the original na-

ture, and the Rule to know it, that the Custom and usage of every se-

veral Colon, 0; place, for; Consequent loci est observanda; And there-

fore it in the Town of Dale one hath gotten before parcels of land to-

gether (in which the Inhabitants have used to have Shack) and long

since did enclose it, and nevertheless always after harvd the In-

habitants have had Shack there for; their Cattle. This shall be taken for

Common appennant 0; appurtenant, and the Doner cannot exclude

them from Commoning there, albeit he will not Common with them,

but hold his own lands so enclosed in separality; And this is

well proved by the usage, for; notwithstanding the antient enclo-
The Reason of

762

'207 Licet Consecutudo sit magne Auctoritatis, Nunquam tamen Prejudicat manifeste Veritatis.

1. The plaintiffs bring an action in London, to try that the defendant, Slander.
called the wife of the plaintiff, the defendant removes it by her her corpus into the Kings Bench, and it was moved to have a Proceed
dendo to remand it, because the action was maintainable in London
for the said words, but not at the Common Law: Howbeit the Pro
cedendo was vouched per tautum Curiam; for such a Custom to maintain
actions for such blabbing words is against Law: Licet Consecutudo,
&c.

2. Ed. 3d. Loyd, an Abbot Meene, the tenant is attainted of Treu
son, the King grants to Sir John Molins, to be holden of him and other
chief Lords of the fee by the services, &c. In this case the Personality is
revised: and albeit divers Offices, licences, and other Records were
produced to prove the Kings immediate tenure, yet the Barons ( be
fore whom that cause depended) said, inasmuch as by construction of
Law upon the Letters Patents it appeared, that there was no immediate
tenure in the King, albeit it had been otherwise found in offices,
o2 admitted in licenses, or other Records, yet that could not alter the
true tenure, which originally appeared (to them as Judges) upon Re
cord: And it was then also said, Licet consecutudo, &c.

3. In Magdalen College case, in the 11 Rep. (where the Master and
Fellows of that College had granted to Queen Eliz her heirs and
successors an house in London, with proviso, that if she did not regrant
it within some what time to Bened. Spinola and his heirs, then the
grant to her should be void, with intent thereby to defend the Statute
of 13 Eliz. 10. ) it was objected, that since that Statute there had
been a great number of such grants made by Masters and Fellows of
 Colleges, Deans and Chapters, Masters of Hospitals, &c. Howbeit to
this it was answered, that such grants had been made rather ex consec
tudine Clericorum, who imitated prelates of such grants made be
fore that Statute, than by the false advice of men learned in the Law;
and Multiando errantium non parit errori Patrocinium.

4. It appears by the Register, that if a man be found in arreages
upon his account, and the plaintiff arrests him in London for those ar
reages, then the plaintiff may sue for; a writ in Chancery directed
to the Sheriff, rehearsing this matter, and commanding the Sher
iff to detain the Accountant lave in prison, untill he hath paid the ar
reages: And it seems also upon the same reason, that if a man sue
for; a writ of debt upon arreages of account before Auditors, and
then the party attached, that he may have a writ out of the
Chancery directed to the Sheriff to keep him in prison, untill he hath
satisfied the arreages: but it seems to Fitzherbert, that such a
writ cannot stand with Law, which shall command a man to be kept
in prison before he shall have answered to the suit commenced against
him.

5. Hob. 17. Dr. James his case, concerning holding the Court of Au
dience in the Borough of Southwark, which is within the Jurisdiction
of the Bishop of Winchester.

208 Husband
208 Husband and wife are one Person, And therefore

Rebutter. 1 If a femme sole of a disseisne ensongh me with warranty, and then marry with the disseisne, if after the disseisne being a praeco against me, I shall rebuss me in respect the warranty of his wife, and yet he bemoneth the land in another right: So likewise if the husband and wife be a woman of the wife, a warranty of the collateral ancestry; of the husband shall bar them, because the husband and wife are one person in Law: And for the same reason it is, that a protestation for the husband shall be also for the wife. Co. 1st. pars. 1. 365. b. 3.

Protection. 2 A wit of Conspiracy must be brought against two at least, for if there be such occasion of action only against one, an action upon the cause by the, the falsity and deceit, because one cannot conspire with himself: and therefore a wit of Conspiracy for inducing the plaintiff of felony lyeth not against Baron and feme only, because they are but one person, but it may lie against Baron and feme and a third person. Co. ibid. 130. a. b. 1. F. N. B. 116. 1.

Conspiracy. 3 In an action of accompt, receiv made by the Baron by the hands of the feme is the Barons own receiv, and both the rose and Count shall suppose that he received it himself, without saying, by the hands of the feme. F. N. B. 118. f.

Accomp. 4 If a man take a wife who is indebted to other persons, the Baron and feme shall be sued for this debt, living the feme, but if the feme die, the Baron shall not be charged therewith after the death of the feme; Howbeit if the Creditors of the Baron and feme recover the debt during the Coverture, which was due by the feme before the Coverture, then albeit the feme die, yet the Baron shall be charged to pay that debt after the death of the feme, by reason of that Recovery. And all this because during the coverture they are but one person in Law. F. N. B. 130. f.

Debt. 5 If tenant in tail ensongh a feme in fee, and die, and his issue within age takes the feme to wife, this is a remitter to the infant within age, and the feme hath nothing left in her, because they are one person in Law: So likewise if the husband discontinue his wife's land, and take back an estate to him and his wife, during the life of the husband, this is a remitter to the wife presently, albeit the estate is not by the limitation to have continuance after the decease of the husband, because the husband and wife are one person, as said before. Lit. 5. 665. Co. 1st. pars. 1. 359. b. 3.

Feme covert. 6 If a joint estate of land be made to Baron and feme and a third person, in this case the Baron and feme shall have but a moiety, and the third person the other moiety; so likewise if land be given to Baron and feme, and two others, the Baron and feme have but a third part; because they are but one person in Law. Lit. 5. 79. Co. ibid. 187. a.

Joint purchase. 7 If the Baron discontinue the land of the feme, and after take an estate to him and his wife, and a third person, for life or in fee; This is only a remitter to the feme for the moiety, and for the other moiety, after the death of her husband, the shall have a Cui in vita. Lit. 5. 876. Co. ibid. 356. b. 1.

Cui in vita. 8 It was resolved in the Common Bench, in P. 10 Jac. that a wife cannot be produced as a witness either against or for her husband, quis tantae animae in carne una, and it might be a cause of implacable discord and dissention between the husband and wife, and a mean of great inconvenience. Co. ibid. 6. b.

Witness. 9 Sir Robert Caryll Chief Justice purchased lands bolden of the Crown in Capite, to him and his wife, and the heirs of the said Sir Robert, Dyer 196. 40. 3. Eliz.

Pardon for alienation.
Robert, and the Queen pardons him amnes transgressiones et offen\server\, pro quaqueque alienationes ubi facta, without speaking of his wife; yet
this was a sufficient discharge of the fine for the alienation to him and
his wife; because (as it seems) they were one person in Law.

10 An action of debt was brought against the husband and wife for
the Recusancy of the wife, and the husband would have appeared a-
alone by Supercedas; but the Court resolved, that either both must ap-
pear, or both be outlawed; being one person in Law.

209 The Wife is of the same Condition with her
Husband.

1 Nobility may be granted for term of life, by act in Law, with-
out any actual creation; As if a Duke take a wife, by the intermar-
lage she is a Dutchess in Law, and so of a Marques, an Earl, and
the rest, and in some other case; loz that (in such case) she is of
the same condition with her husband: Howbeit, there is a diversi-
ity between a woman that is noble by descent, and a woman that is
Nobility,

2 If a man marry the niece of the King by licence, and hath issue by
her, and after lands descend to the niece, and the husband enter, the
Village,

3 If a niece marry a freeman, by the Common Law of England
the issue is free, because in such case during the Coverture she is en-
franchised, and (by consequence) free; And therefore they being both
free, the issue ought to have the same privilege: So likewise if a
Village

4 In case where a freeman married a niece, some have held
that by this marriage the wife shall be free for ever, but the better op-
Villeneu

5 If a niece be regardant to a Panoe, and the taking a freeman to
husband by licence of the Lord, and the Lord makes a settlement in
see of the Panoe, the husbandviewport, the freeman shall not have the
Villeneu

6 If there be two Coperceners of a Millet, and one of them taketh
him to husband, the and her husband shall not have a Nuper obicis ag-
Villeneu
7 By the Statute of 23 E. 3. it is declared, that if a servant kill his master, it shall be adjudged treason, viz. petty treason, and in 19 H. 6. 47. (cit. Corone 7. & Br. Treason 8.) upon an indictment one was arraigned for killing the wife of his master, which he confessed, and thereupon it came into question, whether or no he should be drawn and hanged, 03 hanged only, and it was adjudged by the advice of all the Judges of both the Benches, that he should be drawn and hanged, so that it was treason; and there it is not taken within the equity of that Statute, which speaks only of killing the master, but rather within the words thereof, because master and mistress import the same, being one person in law.

8 If a mere covert be outrageously amerced, and thereupon the husband be disstrainer fo'st, he shall have the writ of Help of De Modera, mericordia, to relieve himself from such outrageous amercement.

9 If a freeman marry a skif, he shall be free for ever, albeit the Baron die, and the surviva, and this the Law gives her, as Britton faith, in favor of libertate; and it seems reasonable that the Law should be so, because she and her husband are but one person in law, and the ought to be of the same nature and condition in law to all intents with her husband; and therefore her husband being free to all intents without any condition in law, or otherwise, and the being of the same nature and condition with her husband, if she be once clearly discharged of a miscarriage to all intents, she cannot be skif after without some special act done by her self, as divorce, or Confinement in a Court of Record; and this is in labour of Liberty. Vide Exod. cap. 21. & supra 4.

10 A writ of partition was brought against the Duke of Suffolk and his wife, and others, per Radolpham Howard Armig. & Dominam Annam Powes uxor ejus (fo 3 to the was named in the writ) and exception was taken upon the Miniomer, because the ought to have been named only by the name of her husband, and not otherwise. And by the opinion of Montague Ch. Justice, and Hale Justice, the exception was good, because by the Law of God she is sub poesate virci, and therefore her name of dignity ought to be changed according to the degree of her husband, notwithstanding the courtesy of the Ladies of Honor and the Court; whereupon the plaintiffs brought a new writ, as correspondentum Radulpho H. & Anna uxor & uxori Dominii Powes defuncti.

210 They cannot sue one another, nor make any grant one to the other, or the like.

A Lady of Honor.

Baron cannot grant to the wife.

1 A man may at this day by his deed covenant with others to stand fealted to the use of his wife, 03 make a feestment 03 other conveyance to the use of his wife; 03 now such an estate may be executed to such uses by the Statute of 27 H. 8. 10. because an use is but a trust and confidence, which by such a mean may be limited by the husband to the wife; so likewise in places where lands were debitable, the husbands (before that Statute) might by his testament devise his tenements to his wife in fee, 03 life, 03 years, because such devise took not effect, until after the death of the devisee: Howbeit at the Common Law a man could not by any conveyance, either in possession, erection, or remainder, limit an estate to his wife; neither yet since the said Statute covenant with his wife to stand fealted to her wife, because (he and his wife being one person in law) he can grant nothing to her, nor covenant with her.
The Reason of

2 If a man be bound with a Condition to enfeoff his wife, the condition is void and against Law, because it is against a Maxim of Law, viz., that a man cannot make any grant to his wife; and yet the bond is good, but if he be bound to pay his wife money, that is good, Et sic de similibus.

3 Albeit he that is admitted to a Copyhold estate is in by him, that made the surrender, yet a man may surrender to the use of his wife, because the Baron both it not immediately to the wife, but by two means, viz., by surrender of the Baron to the Lord to the use of the wife, and by the admission of the Lord according to the surrender; but if the estate be immediately pass from the husband to the wife, it could not be good.

4 It was adjudged M. 30 & 32 Eliz. that, where is debt against a same executrix, the pleas be duly administered, and it was found, that the defendant had taken the Obligo to husband, and that the husband was dead, this was no release in Law, neither yet the debt thereby exting, but only suspended during the Coverture; for the could not (against a Maxim of Law) by taking him to husband make a release to him of the debt.

5 Hob. 10 Fryer against Gildridge.

21.1 Upon a joint Purchase during the Coverture, either of them taketh the whole.

1 If a man be lesse of land in right of his wife, and in with the ground and delight, his executors shall have the Crown, and if his wife die before him, he himself shall have it: But it husband and wife be jointtenants of the land, and the husband over the ground, and then the land furtheth to the wife; in this case, it is said, that the shall have the Crown. Vide & Ass. 21. 3. 54. & Dyer 316.

2 If a joint estate of land be made to a man and a woman and their heirs before marriage, and after they intermarry; in this case, the husband and wife have mosties between them: but if it be during the Coverture, they hold by intrests: For example, William Ocle and Joan his wife purchased lands to them two and their heirs, afterwards William Ocle was attainted of high treason for the murder of E. 2, and was executed. Joan his wife surviving him; E. 3 granted the lands to Stephen de Bitterly and his heirs, John Hawkins the heir of Joan in a petition to the King did cloath this whole matter, and upon a Scire facias against the Patentes hath judgement to recover the lands, for that William and Joan were one person in Law.

3 If a tenement were made before the Statute of Wills (27 H. 8. The like.) to the use of a man and a woman and their heirs, and they intermarry, and then the Statute is made; In this case they hold by mosties, for if the husband alien it is good for a moiety, because the Statute executes the poxception according to such quality, manner, form, and condition, as they had in the use, so as though it be during the coverture, yet the Act of Parliament executes several mosties in them, seeing they had several mosties in the use: But it hath been said, if a reversion be granted to a man and a woman, and their heirs, and before attornment they intermarry, and then attornment is made, What in this case the husband and wife shall have no mosties, no more then a charter of gessoftment be made to a man and a woman, with a letter of Attorney to make liberet, then intermarry, and then liberet is made in the immediat formam curis, in which case it is also said, that they have no mosties.

4 Before
4. Before the Statute of 32 H. 8. 28. It husband and wife were jointly settled to them and their heirs, of an estate made during the Coveture, and the husband alone (or together with his wife) had made a feoffment in fee, and died, the wife by the Common Law might have had a Cui in via to recover the whole land, and after her death, her heir might also have had for Cui in via. And since that Statute both the and her heir may enter after such discontinuance of the husband, without being put to their action.

5. If the Baron discontinues the land of the same, and after take an estate to him and his wife, and a third person (or life or in fee; this is only a Remitter to the same for a moly, and after the death of her husband she is put to her Cui in via for the moly: But if such an estate be taken back to him and his wife only, the shall be remitted to all.

6. Husband and wife are Jointtenants for life, the remainder to the husband in tail, the Remainder to another in fee, the husband success a recovery; this is no bar to the issue for any part, because there are no molities between Baron and same, and therefore no lawful tenant to the precipice of the whole: And the estate in remainder depends upon the entire estate made to Baron and same, &c.

7. If and any persons acknowledge a recognition, it suffices not, but the lands of them all shall be put in execution equally; so likewise if two be bound to warranty, the fourth and the heir of the other shall be touched together. But if husband and wife, and the heirs of the wife be bound to warranty, and the wife die, the land of the Baron may be only put in execution; because there are no molities between Baron and same, &c.

8. If a feoffment be made to a man and a woman sole with warranty, they intermarry, and then they are touched, and recover in value; In this case, molities shall not be between them, for, although they were sole, when the warranty was made, yet when they recover and have execution, they are Baron and same, and cannot take by molities.

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212 The Husband is the Woman's head; And therefore

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1. The husband and wife doing homage for the whole land, the husband shall speak the words for them both, viz. We do you homage, &c. And the homage, which the husband and wife do, is the very homage, which the wife should do alone for her own land; and in that case when he hath issue by his wife, he shall do the homage alone, being his whole life, because by holding of issue he is intituled to an estate for term of his own life, in his own right, and yet is settled in fee also in the right of his wife; so as in such case he is but a bare tenant for life: Yet, if at his wife's ease, then he hath only the estate for life, and (by consequence) cannot do homage; And what is laid of doing homage, is also true of taking homage, in case where the husband is settled of a Heiarchy in right of his wife, &c. in such case also (before issue) the husband and wife shall take it together by holding the tenants hands in the hands of them both. But after issue he shall receive it alone, and after the whole death he shall not receive it: for (regularly) it is true, that he who cannot receive homage in respect of the waste and his estate in the Heiarchy, shall not do homage, when he hath a like estate in the tenancy. In like manner, Protection for the husband shall serve also for the wife.

2. If a recovery be had against a woman in an Alice of Novelt disfain, and the plaintiff recovereth and hath execution, the woman is hath
6 Chattels real en ander droit, 02 consisting mostly in action of use, the husband shall not have by the intermarriage; but Chattels real being of a mist name, viz. partly in possession, and partly in action, which happen during the Coverture, the husband shall have by the intermarriage, if he forbe his wife, albeit he could not them not into possession in his life-time; but if the wife forbe him, the shall have them: As if the husband be leased of a rent service, charge, 01 eck, in the right of his wife, and the rent becomes due during the coverture, the wife birth, the husband shall have the arrearsages, but if the wife forbe him the shall have them, and not the executor of the husband:

So it is of an Adwont, if the Church become void during the Coverture, he may have a Quare Impedie in his own name, as some hold, Vide 50 E. 3. 47. 28 H. 6. 8. 9. 7 H. 7. 2. But the wife shall have it, if the forbe him, and the husband, if he forbe her: Er dic de Simili bus: But if the arrearsages had become due, 03 the Church had fallen void before the marriage; in such case they were mere in action before the marriage; And therefore the husband should not have them by the Common Law, although he forbe her: And so it is of the wife of Reliefs, marries matrimonally: But now by the Statute of 3 H. 8. 37. if the husband forbe the wife, he shall have the arrearsages as well incurred before the marriage, as after.

7 Things in Action, as debts by obligation, contract, 02 otherwise, the husband shall not have, unless he and his wife recover them; But the marriage is an absolute gift of all Chattels personal in possession in her own right, whether the husband forbe the wife or no: so if an Event happen within the Marriage of the wife, and the husband die before the marriage, the wife shall have it; But after the death of the husband, the property vesteth immediately in him, and if he die, his executor shall have it: Hymibeat, as to personal goods there is a div. etp, between a property in personal goods (as to debt, etc.) and a bare possession; so if personal goods be bailed to a feme, or if the goods, or if goods come to her hand as Executrix to a Bailliff, and then she take a husband, this bare possession is not given to the husband; yet in such case the Action of derelict must be brought, against husband and wife, as (regularly) in all other actions against the wife it ought to be.

8 If a man let land to two men, to hold the one moiety of the one for life, and the other moiety of the other for his life, and the latter confirm the estate to them both in the land, to hold to them and to their heirs, they are tenants in common of the Inheritance; so regularly the confirmation shall secure according to the quality and nature of the estate, which it both enlarge and increase: But if such a lease for life be made to husband and wife by several moities, and the latter confirm their estate in the land, to hold to them and to their heirs, this confirmation as to the moiety of the husband enureth only to the husband and his heirs, for the wife had nothing in that moiety; but as to the moiety of the wife, they are Jointtenants, for the husband hath such an estate in his wife's moiety, in her right, as is capable of a Confirmation.

9 A feme covert cannot make an executor without the assent of her husband, and the administration of her goods of right appertains to her husband.

10 If the sheets of a feme sole be taken, and after the takes a Baron, the Baron alone may sue a Replevin, Trin. 33 E. 3.

11 If a feme sole be bound in an obligation, and take Baron, and
The Reason of

The like.

1. If a man be bound by obligation to a term of time, and the rent be in arrear, and the tenant not pay the rent, the rent shall be recoverable at a term of three months; but if the tenant pay the rent, then the landlord shall recover the rent.

F. N. B., ibid.

2. If a lease be made to a tenant for term of years, and the rent be in arrear, the landlord may recover the rent at a term of three months; but if the tenant pay the rent, then the landlord shall recover the rent.

C. Inf. pars. 146, b. 3.

3. If a lease be made to a tenant for a term of years, and the rent be in arrear, the landlord may recover the rent at a term of three months; but if the tenant pay the rent, then the landlord shall recover the rent.

C. Ibid. 132, b. 1.

4. If a lease be made to a tenant for term of years, and the rent be in arrear, the landlord may recover the rent at a term of three months; but if the tenant pay the rent, then the landlord shall recover the rent.

C. Ibid. 310, b. 1.

5. If a lease be made to a tenant for term of years, and the rent be in arrear, the landlord may recover the rent at a term of three months; but if the tenant pay the rent, then the landlord shall recover the rent.

C. L. 2, 57, a. 4, in Sect. rights. with cave.

214. Her will ought to become his will, and to be subject unto it.
in right of the same, and the baron only declare the use of the fine, this declaration of the use shall bind the same, if her silent appear not, albeit her assent to the limitation of the uses cannot appear; for when the terms with the baron in the fine, it shall be intended (if the contrary appear not) that the somber also with him in agreement in the declaration of the uses of the fine.

5. If Baron and feme sell the land of the feme to another for money by parol, and after levy a fine to the tenement and his heirs; this is good, and shall bind the feme without any writing proved her assent; A forsor when the use is declared by the deed of the baron, and no other declared by the same, it shall bind, vide 12 Bliz. 290. Dyer. Baron and feme were settled of a tenement in London to them and the heirs of the Barons, the Baron co-tenant by Indenture in consideration of 20 l. that he and his wife should suffer a recovery by writ of right according to the custom of London (which binds as a fine at the Common-law) and that the recovery should be to the use of the recoverors, until they should make a lease by Indenture for 40 years, and after the making of the lease, then to the use of the baron and feme and the heirs of the baron, and the recovery was had accordingly, and the opinion of all the Judges was, that the lease was good, and not divisible by the use, who perfected the baron; and yet in this case the baron was only party to the deed that declared the use, nevertheless it bound the feme, because the feme is sub potestate viri. And therefore albeit the feme be owner of the land, and the declaration of the disposition of the use infuses the ownership of the land, sicur umbra sequitur corpus; yet in regard the feme is sub potestate viri, she cannot in respect of her coverture without the barons consent, no more than she can make an executor without such consent.

6. A feme sole deviseth land to a man, and then takes him to husband, and dies, this intermarriage is a revocation of the devise, and the heirs of the feme shall take the land, and not the husband; because after marriage the will of the feme in judgement of law is subject to the will of her husband, and (as it is commonly said) a feme covert hath not any will; for the making of the will is but the inception thereof, and takes not effect until the death of the devisee; Omne Testamentum morte coniunctum est, et voluntas eis ambulatoria aliquae ad extremum visus extitit.

7. If a feme sole be lessor; as in a will, and take husband, this determines not the will; because after the marriage, the feme herself cannot countermand it, determine the lease at will, no more than where she and her husband, make a lease at will remaining rent during the coverture, or if a lease be made to them at will, the baron submitted herself and all her will to her husband; and, if a feme covert may have a tenant at will, or be a tenant at will, and yet the baron cannot countermand it, because the by her intermarriage both put her countermanding power in this case (which concerns not franktenement or Inheritance) into the mouth of her husband; so if baron and feme demise land at will, and the baron dies, this is no countermand of the will, but the lease continues still.

8. The will of the wife ought (by the law of England) to be subject to the will of her husband; that to make her obedient therunto, the Common Law doth seem to allow him to give her lawful and reasonable chattels, so if the husband threaten to beat or kill his wife, the may have a writ de securitate pacis against him, but such writ shall have this clause in it, Quod ipse praev. A. bene & honeste tractabit & gubernabit, ac damnum & malum aliquod ejusdem B. de corpore suo alter quem ad virum sam ex causa regimini & cattligationis.
nis uxoris sue licite & rationabiliter pertinet, non faciet nec fiet procurrebit quovismodo, Compellatis, &c.

9. If the office of the warden of the Fleet (which is an office in the) descend to a feme sole, and the maries one imprisoned there upon an execution, this shall be adjudge an escape in the feme, who is warden, and the Prisoner (albeit he be within the walls of the prison) is thereby enlarged; for he cannot be lawfully imprisoned, but under a warden, and he cannot be under the guard of his wife; and therefore the law will adjudge him at large.

Co. Inst. pars. 1. 3. 2.

10. A feme covert cannot take any thing of the gift of her husband, but is of capacity to purchase of others without the content of her husband: Posswte the husband may disallow thereof, and defeat the whole estate; but if he neither agree nor disagree, the purchase is good; Posswte, after his death, albeit her husband agreed thereto, yet the same without any cause to be alleged waive the same, and so may her heirs also, if after the decease of her husband the parties agreed not thereunto.

Dyer 171. 27

21. The baron is outlawed, and his feme in feoff, the feme comes in in ward by process, and hath a charter of pardon. In this case, the shall be discharged of the imprisonment, but the charter could not be allowed, because she could not have a Scire facias against the Plaintiff without her husband, for that her will is subject unto his.
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