Jones versus
Carwardine
AN EXACT ABRIDGMENT IN ENGLISH.
Of the eleven Books of Reports of the Learned Sir Edward Coke, Knight, late Lord Chiefe Justice of England, and of the Council of Estate to His Majestie, King James II.
Composed by the Judicious, Sir Thomas Ireland, Knight, late of Grayes Inne, and an Ancient Reader of that Honourable Societie.
Wherein is briefly contained the very substance and marrow of all those Reports, together with the Resolutions on every Case.
Also a perfect Table for the finding of the Names of all those Cases, and the principal matters therein contained. Very usefull for all men, especially the Students and Practisers of that Honourable Profession.
Brevitas Memoria Amica.

London, Printed by M. Simmons, for Matthew Walbancke, at Grayes Inne Gate, and H. Twyford in Vine-court in the Middle Temple, 1660.
To the Reader.

Gentle Reader.

THE Abridger of these Reports was not onely a Learned Lawyer, but also was very conversant with the Author of them: For my part, I was onely entreated by many Friends to view and correct the Copy from the Presse: If any faults be,

A 2  you

94208
To the Reader.
you may blame the Printer. If I should commend the Original work, I should disparage the author, who all learned Lawyers know, that never any man wrote like him: and for the excellency of this Abridgement, it hath in it the very pith and substance of the Reports at large, and so I rest.

It is an abuse that the lawes & usages of the Realm with their Causes, are not written, whereby they may be knowne, so that they may be understood of all. Mitteur Justice, fol. 225.
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**THE END**
THE FIRST BOOK.
The Lord Buckhurst's Case, 40. El. fo. 1.

If a man for him and his heirs do warrant Land to one and his heirs; this is a general warranty, because there is not a restraint against any particular person in certain.

Upon a Feoffment without warranty, the Feoffee shall have all the Charters, which comprize warranty, and others, though they be not given to him, because he is to defend the Title at his peril. Upon a Feoffment with warranty, without express grant, the Feoffee shall not have any Charters, which serve for to deraigne the warranty paramount. Also the Feoffee shall have all Charters, which serve for maintenance of the Title, but the Feoffee shall have all which maintaine the possession, as Court Rolls, and which are concomitant and incident to the possession.

If A be seised of a Segniorie, rent, advowson, or other thing that lyeth in grant, and grant the same over unto B. with warranty, and B. grant that to C. with warranty; In this case C. shall have the first deed although B. be bound to warranty, for without that he cannot make any Defence against A. or any claiming by him.


A Tenant for life, the remainder in Taile the remainder in fee, bargains and sells the Land to B.
one, who before the Statute of 14. El. ca. 8. suffers a recovery, in which A. is vouch'd. and voucheth over, and he in remainder enters, and the entry is adjudged lawfull; for the Recovery is a Forfeiture, and the remainder may enter, for it is the common Assurance; As if Tenant for life had levied a Fine, &c. and spung of execution, doth not toll the entry of the remainder, and a Writ of error was sued, and the plaintiff release the errors.

Porters Case, 35. El. fo. 22.

32. H. 8. P. devised a house to his wife and her heires, upon condition, that the by advise, &c. with all convenient speed, after his death should assure it, &c. for maintenance of a Free School, &c. for ever, and dyes, 32. H. 8. the wife enters, and 3. E. 6. leases to A. for yeares, the heire of P. enters, and h. is entry adjudged lawfull; because 23. H. 8. extends not to good ues, nor doth it make the conveyance voyd, or give entry, but makes the ufe voyd; and admit the ufe voyd, yet the condition is not, for Counsell may devise, &c. as to have a Corporation by Patten, and licence to assure, and therefore the wife ought to have performed it.

Any man at this day may give Lands, Tenements, or hereditaments to any person or persons, for the finding of a Preacher, maintenance of a Schoole, maimed Soulders, poore people, reparation of Churches, High-waies, Bridges, marriage of poore maids, or any other charitable ues. But it is good policy in every such Feoffment or estate, to reserve to the Feoffor and his heires any small rent, or to expresse some small summe of money for the consideration of the cause before recited.

Altonwoods
A tenant in Tailie, the remainder to B. in Tailie. B. grants a rent charge, A. suffers a common recovery, and dyes without issue, the grantee distraines, the alienation of A. brings a Replevin; adjudged for the alienation by all the Justices of England that a common recovery against a Tenant in Tailie, shall bind not only the remainder, and all Leafes, charges, &c. granted or made by him in remainder, but also the Reversion, and all Leafes, charges, &c. granted by him in reversion.

Archer's Case, 39. 40. Eliz. fo. 66.

And was devised to the Father for life, the remainder to the next heir male of the Father, and to the heires males of his body, the deviser dyes, the Father infeoffes J. S. with warranty. First it was resolved by Anderson and Walthamowae et tot. Cur. that the Father had but only an estate for life, for that he had an express estate for life demised unto him.
and the remainder is limited to his next heire male in the singular number, and his right heire male may not enter for the forfeiture in his life, for he cannot be heire so long as he liveth. Secondly, It was resolved that the remainder to his right heire is a good remainder, although he cannot have a right heire during his life, but it sufficeth that it vesteth so instante, that the particular estate determineth, Dyer. 14. Eliz. fo. 309. Thirdly, it was resolved which was the principal point in this case, per tot. Curiam, that by the Feoffment of the Tenant for life, the remainder was destroyed, for every contingent remainder ought to vest, either during the particular estate, or at the least so instante that the particular estate determineth; for if the particular estate be ended or determined in Deed or in Law before the contingency fall, the remainder is void. And in this case, by the Feoffment of the Father, his estate for life was determined by condition in Law, which cannot be revived by any possibilitie; for this cause the contingent remainder is void, for by the Feoffment no right of the particular estate remaineth; and the better opinion was, that the warranty bindes the remainder, though in Abeyance.

Bredons Case, 39, 40. Eliz: Fol. 76.

Tenant for life, and the remainder in Taile, joyne in a fine Comte cec, &c. to A. who renders a Rent charge of 40 l. a yeare, to Tenant for life, the remainder dies without issue, the second remainder in taile enters, Tenant for life, disstraines for the Rent; adjudged he may, and that the rent remaines, after the death of Tenant in taile without issue, during the life of Tenant for life; the fine was no discontinuance, for every one gave that which he might law-
lawfully give, and tis no forfeiture by Tenant for life, for the Law construed this. First, to be a grant of him in remainder; and after, the grant of Tenant for life, \textit{Us rez magis vleat}, &c. If Tenant for life, and the first remainder in tail, make a feeoment, tis no discontinuance, though the first remainder in tail dies without issue, nor is it a forfeiture, but the feeomee shall hold it during the life of Tenant for life; but if it be without deed, then tis a surrender of Tenant for life, and the feeoment of the remainder, \textit{Us rez magis vleat}, &c.

\textit{Corbets Case, 42. Eliz: Fol. 84. of Perpetuities.}

C. Covenants to stand seised to the use of himself for life, and after to the use of A. his Eldest Son, and the Heires Males of his body, the remainder to the use of B. his second Son, and the Heires Males of his Body, &c. And if A. or his issue, &c. shall attempt, &c. to alien, &c. by which any estate shall be barred, &c. that after such attempt, and before any act executed, the use and Estate of him for attempting, &c. shall cease only as to him so attempting, in the same degree as if he were naturally dead, and not otherwise, and that then it shall be immediately to such persons, to whom it should come by the intent of the Indenture, &c. C. dies, A. suffers a recovery, B. ehters, &c. adjudged he could not, for this proviso is repugnant, impossible, and against Law; for the death of Tenant in tail, is not a ceaser of the Estate tail, but death without issue Males; and by this reason the issue should have it in the life of the Father, &c. And for every descendent &c. Death, natural or civil, is requisite, and tis not material, though Tenant in tail had no issue at the time of the breach, for twas repugnant at the beginnings; and

B 3
the estate taile doth not commence, by the having of issue, and a gift in taile upon condition, that if the Donee dye, his estate shall cease, is a void condition. Also the proviso is void for the uncertainty, as a gift to two, Et hereditibus, is voide though a Warranty be made to them and their Heirs, &c in Jermine & Arscotts Cafe, the like proviso was adjudg'd voide: for be the proviso a condition or a limitation, the entire estate ought to be defeated by it, and an Estate in Land cannot cease for part, and continue for the residue, nor cease for one person, and continue for another, nor cease for a time and revive after. The like judgement was betwixt Chomly and Humble, but the Parliament, or Law, may make an estate voide, as to one, and good to another, as Tenant in speciall taile, levies a fine, the issue is barred not the wife, so a release by the demandant, to the vouchee is good, not by a stranger, so, if an Executor surrender a t'earme, to one respect tis extinct, to another tis a fluxt, &c. And uses are within the Statute De donis, though it speaks only of Lands and Tenements, and there shall be a Possessio fratis, &c. of them, for they are guided by the Rules of the common Law. Richill in the time of R. 2. and Thirning in the time of H. 4. Justices, intended for to make a perpetuity, but could not.

Shelleyes Cafe, 23. Eliz: Fol. 94.

Edward Shelley leased for yeares, and after Covenanted to suffer a recovery, which should be to the use of himselfe, and after to the use of A. for 24. yeares, and after to the Heires Males of the body of the said E. S. and the Heires Males of the said Heires Males, &c. E. S. dye 9 of Octob. the first day of the Term, in the morning, betwixt five and six a clock, the recovery passes the same day, and an Habere faci-
as feisnam awarded, the recovery was executed the 19 of Octob. 4 Decemb. the Wife of the Eldest Son (before dead) of E. S. was delivered of a Son, named Henry, Richard, the second Son of E. S. entered, and made a Leale, &c. Henry entred upon the Leale, who brought an Eject firm, and Judgement was given for the Defendant, and twas resolved, that if Tenant in talle suffer a common recovery, and dye before execution, that execution may be sued against the issue, for the intended recompence, in favour of the common assurance, resolved that the reversion in judgement of Law is not in the recover or before execution sued, for the judgement is, Quod recuperet feisnam, which cannot be executed till entry, or claim, as 'tis of a Common, &c. granted upon condition; for when a man may enter, or claim, the Law will not put things in him, till entry or claim. The third and great point resolved, was that the Uncle is in, as by discretion, though he shall not have his age, nor be in ward. 1. Because the recovery being the Originall act, had its Essence in the life of E. S. to which the execution hath retrospect. 2. Because the use might have vested in E. S. if he were in life. 3. Neither the recoverors by their entry, nor the Sheriff by making execution may make an Inheritance to whom they please. 4. Because the Uncle claimed the use by the recovery and Indenture, and by words of limitation, not purchase.

Albanies Case, 28. Eliz: Fo. III.

A By Indenture infeoffed B. of two Acres, to the use of A. for life, the remainder in talle to C. the remainder in fee to D. with a proviso, if E. dye without issue, that A. at any time by indenture sealed, &c.

B 4
in the presence of four, &c. may alter, &c. any use, &c. A. of the one acre, infesse F. and for the other Acre, A. by Indenture renounces, surrenders, releafes, &c. to B. C. and D. the said power, condition, authority, &c. E. dies without issue, A. by Indenture in presence of four, revokes the first uses, and limits new, resolved that by the seofement, the power to revoke, as to limit new uses, was extinct, and by Wray chiefe Justice, the future power may be releafed, as a condition subsequent, though the performance or breach cannot be done without an act precedent, but as to this point, the Court did not give their resolution: but the whole Court agreed, that if the power had beene present, (as is usuall) this might be extinct to any one, who hath a free hold in possession, reversion or remainder. 'Twas moved (if the future power could not be releafed) whether it might be defeated by the words of defeasance, both being executory; and 'twas said that in all cases, when any thing executory is created by a deed, that the same thing, by consent of all parties to the creation, by their deed may be nullified, as a warranty, recognizance, rents, charge anniities, covenant, &c. And of the same opinion was Wray chiefe Justice, and the whole Court, and judgement given according.

Chudleighs Case, Or the Case of perpetuities, Fo. 120.

Sir Richard Chudleigh was seised in fee of the Manor of D. and had issue four sonnes, A. B. C. D. and 26th April, the third and fourth of Phillip and Mary, infesse E. F. &c. in fee, to the use of himselfe and his Heires of the body of G. then Wife of H. and after to the use of the performance of his Will,
Will, for ten yeares immediately after his death, and after to the use of the feoffes, and their Heires, during the life of A. the Eldest Sonne, the remainder to the use of the first issue Male of the body of A. and the Heires of the body of the first issue Male, and so to the second issue Male, the remainder to the use of B. the second Sonne, and the Heires of his Body, the remainder to C. &c. the remainder to D. &c. the remainder to the right Heires of himselfe Sir Richard Chudley, died without issue of the body of G. 10 of the Queene the feoffees (C. living) by deed infeoffed, A. in fee, without consideration, he having notice of the first uses. A. hath issue a Sonne, named S. and after I. and after infeoffes Sir I. C. with warranty, S. died without issue, &c. I. enters, &c. agreed, by all the Justices and Barons but two, that the infeoffment made by the feoffees (which had an Estate for life) devests all the estates, and the future contingent uses also; and though A. had notice of the first use, 'tis not materiall, because the ancient uses were devested, and this new estate cannot be subject to the ancient uses, which rose out of the ancient estate, agreed that 27 H. 8. doth not extend to destroy uses, otherwise then by execution, and transferring the possession to them, agreed by the most that 27. H. 8. doth not transferr the possession to any use, but onely to uses In effe, which doth appeare by the Statute, for there ought to be a person In effe, feised, and also a use In effe, for if there be onely a possibility of a use, there cannot be an execution of the possession to the use: the Statute sayes, That the estate shall be out of the feoffees, and that the estate shall be in such person which hath the use. So that no Estate of the feoffees shall be transferred in abeyance; and upon this twas concluded, that contingent uses, or in possibility, may be destroyed or discontinued, before
fore that they come In esse, as they might at common Law; so the remainders limited in use here, shall follow the rule and reason of Estates executed in possession by the common law, and if the estate for life here had beene determined by death, before the birth of the Sonne, the remainder in future should be void, though the Sonne were borne after, for a remainder ought to vest during the particular estate, or Eo instanti, when it ends. And twas holden by all, that if the contingent use here, had come In esse, without alteration of the estate of the Land, it should be executed by the Statute of 27. H. 8. Also it was holden by most, that 27. H. 8. against the expresse Letter of it, shall not be taken by equity, because, by preservation of contingent uses, mischeives intended to be prevented, shall be preserved and greater introduced. Popham chiefe Justice said, that by 27. H. 8. some uses in esse are executed presently, uses in futuro agreeable to Law, are executed if they come In esse, in due time, but uses not agreeable to Law are extirpated, for the intention of the Statute, was, to restore the ancient common Law. Five other points adjudged, besides the principall matter. I. When Tenant for life ( the remainder being in taile to A. ) infeoffs the reversioner, tis a forfeiture, for it devest the estate in remainder; so if there be Tenant in taile, the remainder in taile, &c. and the diversity is, when the privity and estate, is sole and immediate, when not. 2. If A. hath issue B. and C. infants, and a lease is made to A. for life, the remainder to B. in taile, the remainder to C. in taile. A is dissised, and releases to the disseisor with warranty, and dyes, this descends upon B. within age, B. dyes, the warranty descends upon C. within age, C. comes to full age, and three yeares after enters, his entry is lawfull, for he might enter in the life of his Ancestor,
flor, and if he doth not enter, yet the warranty shall not binde him, otherwise it is, when he is put to acti-
on, and Caveat, that after his full age, he doth not suffer a dissent before entry. 3. If a disseisor, &c.
who hath a defeasible title in a Mannor, grant a vo-
luntary estate by Coppye (being forfeited, or ef-
cheated to him) this grant shall not binde him that
hath right, after a recontinuance of the Mannor, but
admittances, which a disseisor, &c. makes to Coppye
holds, are good, for they are in a manner judiciall
acts, and shall binde the disseisee. 4. That an estate
made to one and his Heires, during the life of B.
is but an Estate for life, upon which a remainder may
depend. 5. That an Estate made to A. and his
Heires of the body of Jane S. is an Estate taile against
the opinion of Ascugh 26. H. 6. 36.

Anne Maiowes Case, 35. Eliz. fo. 146.

F'seissor and Feoffice upon condition, by Deed
joyne in a grant of a rent charge to C. the condi-
tion is broken, the Feeissor reenters, the grantee di-
straines, the Feeissor brings a Replevin. Resolved, that
the rent remains; to the objection, that 'tis the
grant of the Feoffice, and the confirmation onely of
the Feeissor, and a confirmation cannot make a con-
ditional estate absolute, nor alter the quality of it,
except it inlarge it:as if a Feeissor confirme the estate
of the Feoffice upon condition, before the condition
broken, it doth not make it absolute. Answered, and
agreed by the Court, that there is a diversity, when
the estate of him, to whom the confirmation is made,
is upon an expresse condition; there the confirmati-
on doth not toll the condition; but if such feoffice in-
feoffice another without condition, there a confirmati-
on to the second feoffice extincits the condition. Fe-
office
office upon condition grants a rent in fee; the seoffor
confirmes it to him and his heires, and after enters
for condition broken, yet the rent remaines, and by
Littleton every fee simple land may be charged one
way or other, Concurrentibus his, &c. and the case H. 7.
is all one with our case, and here 'tis the stronger,
because the grant and confirmation were by the
same Deed, so that the rent was never subject to any
condition.

'The Rector of Chedingtons case, 40. Eliz. fo. 153.'

2. E. 6. the Rector of Ched demised the Rector to
El. Elderker for fourescore yeares, if she should live so
long; and if she dyed, within the said terme, or alie-
ned, that then her estate should cease, and then by the
same Indenture demises the premises to R. E. for so
many yeares, as shall remaine unexpired after the
death, or alienation of El. for the residue of the terme
of fourescore yeares, if he shall live so long, without
alienation, &c. And if he dye, or alien within the said
terme, then his estate shall cease; and then by the
same Indenture he grants the premises to W. for so
many yeares of the said terme of fourescore yeares, as
remaine, if he lives without alienation, and if W. dyes,
or aliens within the said terme, that his estate shall
cease, and then he grants, &c. during so many of the
fourescore yeares, which shall be unexpired to T. his
executors and assignes, which Indenture, and estate,
was confirmed by the Patron and Ordinary; the Re-
ctor dyes, T. dyes, W. dyes, and 17. Eliz. Elderker
dyes, after R. enters, and dyes, 18. Eliz. the executor
of T. enters, and assignes to J. S. the Successor of the
Rector enters, and Leases to B. who upon outher,
brought an Ej. Firma. Resolved for the Plaintiffe; and
that the Lease to T. is veyd. Argued for T. that his
demise
demise was good, and a difference taken betwixt terminum amorum, and tempus amorum, as in this case of the demise to T. during so many yeares of the fourescore yeares, or not of the terme of fourescore yeares, if a Leaue be made for 21. yeares, and after another Leaue to commence from the end and expiration of the said terme of yeares; and after the first Leaue is surrendered, the second terme shall commence presently, not so, if it were from the end of the said 21. yeares. Resolved that the demises to R. and W. are void, because the terme that El. had, was sub modo, if she should so long live, which is determined by her death, ergo, no residue can remaine to R. and W. and so 'twas adjudged between Greene and Edwards, and the Court agreed the diversity betwixt the demises to R. and W. and the demise to T. 'twas argued that the demise to T. was void. 1. Because that the Lessor had not power for to contract for the land during the fourescore yeares, for he had but a possibility to have the land againe during the fourescore yeares, viz. if El. dyed, which possibility cannot be demised, but the Court delivetered no opinion to this point. 2. That the Leaue to T. was void, for the incertainty, how many yeares should be behinde, at the death of El. a termor grants to B. so many yeares as shall be behinde tempore mortis sua, 'tis void. Locroftis case adjudged, a man possessed of a terme of 90. yeares, upon marriage of his Sonne, demised the land to his Sonne for 70. yeares, to commence after his death, the Lessor dyes, the leaue was adjudged good, because here he demised the land for 70. yeares, which is certaine, in which, this differs from 7. E. 6. which diversity was agreed by the whole Court. 3. That 'twas void, because he dyed in the life of El. so that the incertainty, cannot be reduced to a certainty in his life time, and so cannot rest in the executors; a leaue to one for so many
many yeares as his Executors shall name, is voyd. 

Note, a diversity betwixt a covenant and agreement, which is perfect, and certaine, though it takes effect in possession, upon a future matter precedent; and a covenant and agreement incertaine, which is to be reduced to a certainty by matter ex post facto, for in the first case, the estate is bound presently, in the other not, which was agreed by the Court. 4. It was moved, if T. had been in life, the demise could not rest in him; T. dyed before R. or W. and R. survived El. and by the expresse condition precedent, R. could not take, except El. dyed within the terme, and W. could not take, except R. dyed within the terme, and this is as much as to say, that if R. dyes before El. and T. cannot take, except W. dye in the life of El. and R. survived El. So that both precedent contingencies faile, viz. the death of R. and W. in the life of El. and though the demise to R. and W. are voyd, yet the limitation precedent (viz. the death of R. and W. in the life of El.) to the demise to T. is not voyd, for his interest may depend upon both the contingencies, for so was the intention of the parties, and this was affirmed by the whole Court, by Popham Chiefe Justice. The Leafe to T. was voyd for another cause, for it cannot commence upon a contingent, which depends upon another contingent, as here the demise to T. depends upon the contingent annexed to the demise, made to W. and the demise to W. depends upon a contingency annexed to the demise to R.

Digges Case, 42. Eliz. fo. 173.

Digges was seised of the land in question, and other lands in fee, and by Indenture 6. Mai. 10. of the Queene covenanted (in consideration of marriage betwixt him and his wife, and for the advancement
vancement of T. their Sonne, and for two hundred pounds paid to him before marriage) that he and his heires would stand seised to the use of himselfe for life, and after to T. in taile, and after to the use of himselfe in taile; with a provis (for the considerat-
ions aforesaid, &c.) that it should be lawfull for him, at any time during his life, with consent of certaine persons, by Indenture to be Inrolled in any of the Kings Courts, to revoke any of the uses, or estates, and for to limit new uses. 6. Maj. 12. of the Queene C. by consent, &c. by Indenture inrolled in the Chancery, revoked the uses and estates aforesaid, in part of the land, and limited the use of it to him and his heires; after, 20. Sept. 13. of the Queene, by Indenture with consent, &c. inrolled in Banck. M. 13. & 14. of the Queene, declared that for the payment of his debts, that from the time of the inrollment of this Deed in Chancery, all the uses in the first Inden-
ture should be void, and that the land should be to the use of himselfe in fee: after; C. 26. Octob. 14. of the Queene by Indenture covenanted for to levie a Fine of all his land, part of which should be to the use of himselfe and his wife, and his heires; which Fine was levied the same terme, after the Indenture dated 20. Sept. was inrolled in Chancery, after C. enters, and makes his claimé: and whether C. dyed seised in fee of the land mentioned in the Deed of Revocation of 20. Sept. was the question. Adjudged, 1. that C. D. might revoke part at one time, part at another, till he hath revoked all; but he can revoke the same part but once, except that he hath a new power, &c. to uses newly limited; for these words (at any time) amount to (from time to time, &c.) 2. That where the revocation is to be by Deed Indented to be in-
rolled, this is as much as to say, as by Deed Indented and inrolled, and till inrollment no revocation shall be,
be, for otherwise perchance none shall be inrolled.

3. That 'twas no perfect revocation by the Indenture of 20. Sept. till the Deed were inrolled in the Chancery; for though that the præviso of revocation in the first Indenture shall be satisfied with an inrollment, in any of the Kings Courts, yet for that the Indenture of revocation itself limits the revocation to take effect, after the inrollment in Chancery, it ought to be so. 4. That the Fine levied before the inrollment in Chancery (which was before the revocation) hath extinct the power; see Albaines case before adjudged, and Popham Chief Justice said, that without question such a power might be released, for 'tis not merely collateral, but favours and taints of the estate of the land, which all the Court agreed. 5. If the Fine had not been, the auncient uses were determined, without entry or claim, because he himselfe was tenant for life of the land, and the act of revocation is as strong as claim; and this point was agreed in the Earle of Salops case. 6. By the same conveyance that the auncient uses are revoked, others may be raised, without claim, or other act, and the Law adjudges a priority of operation, Whites case adjudged according.

Maildmayes Case, 24. Eliz. fo. 175.

A Use cannot be raised by any covenant, proviso, or bargain, &c. upon a generall consideration, and therefore if a man by Deed indented and inrolled, &c. for divers good causes & considerations, bargain and fell his Land to another, and his heires nihil operatur inde, for no use shall be raised upon such generall considerations, for it doth not appeare to the Court, that the bargainor had quid pro quo. But the bargainee may averre, that money or other valuable consideration was
was paid or given, if in truth it was so, and the bargain and sale is good.

It was resolved that when uses are raised by covenant in the consideration of advancement of any of his blood, and after in the same Indenture a Proviso that the Covenantor may make leaves for yeares, &c. that the Covenantor in this case may not make leaves for yeares to his sonne, daughter, or any of his blood, much lesse to any other person, because that the power to make leaves for yeares was voyd, when the Indenture was sealed and delivered. For the covenant upon this generall consideration will not raise any uses, and no particular averment in this case may be taken; but if the uses be limited upon a recovery, fine, or feoffment, there needeth not any consideration to raise any of the uses. Resolved, that the words (other consideration) cannot comprise any consideration expressed in the Indenture before the proviso, for (other) ought to be in quality, nature, and person, different, and advancement of his daughter is a consideration mentioned before.

Anthonie Mildmay brought an action of the case against Roger Stanifj, for saying that Lands were lawfully assured to John Talbott for 1600 yeares, and that he was lawfully possessed of the same tearme; whereas in truth the said Lands were not lawfully assured for the said tearme, nor the said John Talbott was lawfully possessed of the intereft thereof. And so for flaundering of the title by speaking of the words, Mildmay brought an action. Stanifj justified the words, and shewed the title of Talbott, and it was adjudged that the action was maintaineable and good, although that Talbott had a limitation of the Land by will, which was the
the reason that Standish (being a man not learned in the Lawes) affirmed the words, yet because he tooke upon him the notice of the Law, and medled in a matter that did not concerne him, Judgement was given for Mildmay; _Et ignorantia juris non excusat._
THE SECOND BOOK.

Of Sir Edward Cooke, Lord, &c.

Mansers Case, 26. Eliz, fo. 3.

If a man be unlearned and cannot read, and be bound to doe an act of sealing assurances, writings, &c. upon tender, &c. he is not bound to seale and deliver any such writing, if there be not some ready which may read the Deed if the party so require it, and in the same language and tongue that he understandeth. Ignorantia duplex est falsi & juris, and ignorance in reading, or of the language. Qua sunt ignorantia falsi, may excuse, but ignorantia juris non excusat, and if it be read unto him, he may not have a reasonable time to shew it to his Counsell learned, to see whether it agree with his bond or covenant; for he must seale it at his peril, or if the same be truly expounded to him, it is good enough. But if it be read amiss, or declared contrary to what it is, and thereby the illiterate man is deceived, he may very well plead non est factum; For the Law, it is not his Deed; and so it was adjudged in Throughgood's case, being the third case in this second Booke. Resolved, that if a man be bound that a stranger shall doe an act, in such case he takes upon him, that he shall doe it at his peril; for he which is bound, takes more upon him for a stranger, then for himselfe, in many cases. If a man plead, that he hath kept
kept a man indemnified, &c. he ought to shew how, otherwise, where he pleads in the negative, Non fuit damnificatum.

Goddards Case, 26. El. fo. 4.

An obligation dated the fourth of April Anno 24. El. and delivered as the Deed of the partie 30. July An. 23. El. adjudged the Deed of the partie; for though the plaintiff in pleading, cannot alledge the delivery before the Date, because he is esstopped, yet a Jury which are sworne to speake the truth, shall not be esstopped. The Date of a Deed is not the substance of the Deed. For if it want date, or have an impossible Date, as the 30. February, the Deed is good. For there are three things of the essence or substance of a Deed (viz.) writing in paper or parchement, sealing, and delivery. And if it have these three, although it want, In Cujus rei testimonium Sigillum suum apposuit, &c. yet the Deed is good; and when a Deed is delivered, it takes effect by the delivery, not by the date.


Resolved, that 'tis not materiall, whether the party to whom the Deed is made, or another, by his procurement; or a Stranger of his owne head, reads the writing in other words, then the writing is, so that he that seales it, be a lay man, and (without covin in him) deceived, and the pleading of it is always generall, without shewing by whom 'twas read; and A. shall avoyde an obligation to B. by pleading that he did it by menace of C. Resolved, that such a lay-man is not bound to deliver a Deed, if no body be present that can reade it, in such language as he can understand,
stand, and if it be read in other words, it shall not
bine him, and 'tis at the peril of him to whom 'tis
made, that the very effect and purport of it be decla-
red, if it be required, but if he doe not request it, he
shall be bound by it, though it be made contrary to
his meaning. Resolved, that it shall not binde, if the
effect be declared in other words, then it is, as if the
Deed had been read in other words. Two Justices,
a Feoffement of two acres, is read as of one, it shall
not binde; see Mansers case before.

Wisemans Case, 27. Elix. fo. 15.

Tenant in tyle of certaine Lands, the remainder
to another in Fee, he in remainder by Deed in-
dented and inrolled in consideration of bloud, &c.
as for other good considerations, doth covenant to
stand seized of the said Lands to the use of himselle,
and of the heires males of his body. And for default
thereof to the use of the Queene, her heires and suc-
cessors. After the Tenant in tyle in possession suf-
fereth a common recoverie with voucher. And whe-
ther it was a barre to the issue in tyle was the que-
stion; And it was adjudged that the issue in tyle was
barred, for good considerations are too general to raise
any use, without speciall averment, that valuable or
other good consideration was given. Resolved, that
the Land should continue in his name and bloud, is
not a consideration to raise a use to the Queene,
though the limitation to her, were, for the preserva-
tion of the tyle against discontinuances and barres,
for there wants quid pro quo. Resolved, if he had said
in consideration, that the Queene is the head of the
weale publique, and hath the care and charge, as well
to preserve peace, as for to repell hostility, yet 'tis no
good consideration, for Kings ex officio ought to go-
verne
erne their Subjects in tranquillity, which is implied in the word (King.) And admit the consideration had been sufficient to raise a use to the Queene, yet that would not preserve the estate tayle by force of the Act 34. H. 8. for no estate tayle is preserved by the said Act, except the same estate tayle be of the creation or provision of the King, and not where the estate tayle is given or created of a common person without provision of the King, as may appear by the preamble of the Act. Resolved, that before the Statute of 34. H. 8. a common recovery barred a tayle created by the King.

Lanes Case, 29. Eliz. fo. 16.

The Queene seised of a Mannor in right of her Crowne, by her Steward granted coppie-hold Lands, parcell thereof, to one by coppie, according to the custome in Fee. And after the Queene under the Exchequer Seale made a Leafe of the same Lands to another for 21. yeares, who granted the same Tearme to the coppie-holder, and after the Queene reciting the Leafe for yeares, granted the reversion thereof in Fee, the Tearme of 21. yeares expired. The Patenter of the reversion entrench upon the coppie-holder, and the entrie was adjudged good. Resolved, that the Leafe under the Exchequer Seale was good, by the usage there, for the course of every Court, is as a law, of which the common law takes notice, without alledging of it in pleading; and every Court at Westminster is bound to take notice of the Customes of other Courts, otherwise of Courts in the Countrey: and the order of Exchequer is to make Leafes by (Committimus such land.) Resolved, that the estate of the Coppie-holder was determined by the acceptance of the Leafe for yeares; And so it was adjudged
adjudged against the Coppie-holder, for notwithstanding that the Coppie-holders estate is taken to be but an estate at will, yet the custome hath so established the estate of the Coppieholder, that he is not removeable at the will of the Lord, so long as he performs his customes and services: and by the same reason the Lord cannot determine his interest, by any act that he can doe. And so it hath been adjudged many times. And the acceptance of this Leafe was the proper act of the Coppie-holder. Resolved, that by the severance of the free-hold from the Mannor, the Coppiehold estate is not extinguished.

Baldwyns Case, 31. Eliz. fo. 23.

Things which lye in grant, and take their essence and effect by delivery of a Deed, without other ceremony, as rent or common out of Lands, &c. by the premisses of the Deed to one and his heires, habendum to the grantee for yeares or life, this habendum is repugnant to the premisses, for the Fee paffeth by the premises by the delivery of the Deed, and therefore the habendum is void. And when a man giveth Lands by Deed in Fee by the premisses, habendum to the Lefsee for life, there the habendum is void, and when livery is made, the effect of the Deed shall be taken the most strongly against the Feoffor, and the best for the Feoffee.

When a ceremony is requisite to the perfection of an estate in the premisses limited, and to the estate limited in the habendum, no ceremony is requisite but onely the delivery of the Deed, although the habendum be of meaneer estate then the premisses, the habendum shall stand good and qualifie the generaltie of the premisses, as a Fee granted in the premisses, habendum for yeares, it is for yeares, and no inher-
ritance. Note; There is a diversity betwixt the estate implied in the premises, and expressed; as if A. grant a rent to B. this is an estate for life, but if the habendum be for yeares, this is good, and qualifies the implication of the premises.

Case of Bankrupts, 31. Eliz. fo. 25.

Resolved, that a grant or assignement of goods, by a Bankrupt, after the Commission awarded, which is matter of Record, of which every one ought to take notice, and though to a Creditor, in satisfaction of his debt, is void, and that a sale of such goods, by the Commissioners, is good. Which sale, by the Statute of 13. of the Queene, ought to be equall, to every one rate, and rate like, according to the quantity, &c. And the Court resolved, that the proviso in the said Statute, concerning gifts bona fide, doth not make any gift good, but excludes them out of the penalty, &c. Commissioners may sell by Deed, without Inrollement, and though they have not seene the goods; agreed, that the distribution ought to be severall, not joyned, for the one debt, may be greater than the other, and in this case the Jury found, that the Commissioners sold the goods to three Creditors jointly, but further; that the Bankrupt was indebted to them in 273. pounds, which shall be intended a joint debt, and so good. Resolved, that the act giveth benefit to such as will come, and not to them that refuse; & vigilantebus, & non dormientibus, jura subveniunt; and every Creditor may take notice of the Commission, being matter of Record.

Bettisworths Case, 33. Eliz. in communi Banco. fo. 31.

A Lease for yeares was made of one Messuage, one Close called Raynolds, and of divers other Lands
In Dale, and afterwards (the Lessee being in the house) the Lessee entered into the same Close, and maketh a Feoffment of the Messuage, and of the Lands therewith demised, and maketh livery in the same Close, and afterwards the Lessee reentrencheth into the said Close. And if this was a good Feoffment, and livery of seisin of the said Close, (the Lessee nor any for him being in the said Close) was the question. And it was adjudged that the livery and seisin was void, as well for the Close as for the Messuage; and the other Land therewith demised; For the Possession of the Messuage, which is his Castle, is a good possession of the Lands therewith demised, and it matters not, whether livery be made on the Land within view of the house, or not. When a man maketh a feoffment of a Messuage cum pertinentiis, he departeth with nothing thereby, but that which is parcel of the house, as buildings, curtelage, and gardens.

If a Lessee for yeares makes a Lease for a certaine Tearme of any parcel, and so divides the possession thereof from the residue (if of this parcel so severed) Livery be made, the possession in the residue by the first Lessee, is not any impediment to the livery of this parcel, otherwise if a Lessee make a Lease, at will of any parcel, there his possession of the residue shall hinder the livery made in this parcel, and with this judgement agreed all the other Justices, and Serjeants of Serjeants Inne in Fleece, freete.

Doddingtons Case, 27. Eliz. fo. 32.

King H. 8. Ex certa scientia, &c. granted to A. for 30cl. Omnia illa Messuagia in tenura Johannis Browne, Scituate in Well, super prioratini de W. Spehant. And
And in truth the Lands lie in D. in this Case 'twas resolved that the grant was void by the Common Law, as well in case of a common person, as the King, because the grant is general, and is restrained to one certain Village, and the grantee shall not have any Lands out of that Village, to which the generality of the grant is referred, for this Pronounce illa, hath his necessary reference as well to the Towne, as well as to the Tenure of I. B. for if either the one or the other faile, the grant is void. And so it was adjudged, per tot. cur. de Banco Regis. Resolved also, that this grant was not holpen by the Statute of 34. H. 8. For no grants are holpen by this Statute, nor by any act of confirmation, but such as comprehend convenient certainty. i. quia generale nihil certum implicat. And here no Tenements are mentioned, to be granted, because the general grant being in-tire, was referred to a falsity, and therefore it cannot be said that the Towne was misnamed, and great inconvenience would follow, if, &c. for the King should be deceived, but the Statute helps when there is a convenient certainty, as a Mannor, Farme, Land, known by a certain name, or containing so many Acres, &c. So that it may appeare what things the King intended to passe. Note, tis the most sure way, for the Partee to express as much as he can in certainty, before the general words.

SIR Rowland Heywars Case, Incur Wardor 37.

Eliz. fo. 35.

SIR Rowland Heyward seised of a Mannor in Demeans, and rents, in consideration of money, doth demise, grant, Bargaine, and sell to A. the said Mannours, Lands, Tenements, and the reversions and
and remainders with all Rents reserved upon any demise, to have and to hold to A. and his assignes after the death of the Lessee for seaventeene yeares, rendring a rent, the Indenture was inrolled, and after the Lessee by Indenture doth Covenant with B. to stand seised of the premises, to the use of himselfe and the Heires of his body, and no attornment was made to A. The Question was, What passed to A? and it was resolved by Popham and Anderson chiefe Justices, and the Court, that A. may have his election, eyther to take the same by demise, at the common Law, or by bargaine and Sale, Per Statutum 27. H. 8. without attornment, for it was one entire demise, and bargaine of one Mannor without any fraction or division thereof, and this election remaineth to A. and his Executors and assignes, for here is not Election, to claiame one of two severall things by one Title, but to claiame one thing by one of the two severall Titles, for where the things are severall, nothing passeth before Election, and the Election must precede; but when one thing passeth, the Election of the Title may be subsequent. For if I. have 3 Horses, and doe give to you one of them, the property comenceth by Election, and must be made in the life of the Parties.

The Bi: of Sarum had a great wood of 1000 Acres, called Brerewood, and infeoffed another of one House, and seaventeene Acres, parcell of the Wood, and made Liverie in the Wood House; nothing passeth of the Wood before Election and the Heire of the seoffee may not make Election. Bullock's Café, 10. Eliz. Dyer.

In case where election is given of two several things, he which is the primer Agent, and that ought to doe the first act, shall have always the Election. As if
a man grant a Rent of twenty Shillings or a Robe, the
Grantor shall have the Election for he is the primer
Agent, eyther by paying the one or delivering the
other. If a man make a Lease rendering twenty shill-
ings or a Robe, the Lefsee shall have the Election,
Causa qua supra, but if I give unto you one of my
Horses in my Stable, there you shall have the Elec-
tion, for you are the Primer Agent, by taking or
seizing one of them, and so of twenty trees in my
Wood. Note for Elections these diversities. 1. When
nothing passes to the grante, &c. before Election,
there it ought to be made, in the life of the Parties;
but when the Estate passes presently, &c. the Gran-
tee, &c. his Heire or Executor may elect. 2. When
the same thing passes and the Donee, &c. hath Elec-
tion, in what manner, &c. he will take it, the Donee,
Heire, or Executor may elect. 3. When Election
is given to severall persons, the first shall stand. 4.
When Election is given of two severall things, he
which ought to doe the first Act, shall have Elec-
tion. 5. When the thing granted is annuall, and to
have continuance, there the Election remains to
the Grantor (in case, where the Law gives him Elec-
tion) as well after the day as before, otherwise
it is when the thing is to be performed, Unica vice.
6. The seoffee, &c. by his act may forfeit his Elec-
tion; as if A. in seoffe B. of two Acres, Habendum, the
one for life, the other in Taile, and hee before Elec-
tion makes a seoffement of both; here the seoff-
for shall enter in which he pleases, for the wrong of
the seoffee. 7. Though the Lefees here enter
generally, yet they may elect after; so, if one be
Executor, and Devisee of a term, and enters gene-
 rally, &c. and after the Lefees, in the principall case,
made Election, for to take by bargaine and Sale,
and had the Rents.
The Bishop of Winchesters Case, 38. El. fo. 43. In a prohibition.

Resolved, that at common Law, none had capacity to take Tythes but spirituall persons, or Persona mixta, as the King, and regularly no mere Lay man was capable of them (except in speciall Cases) for he could not sue for them in Court Christian and regularly, a lay man had no remedy for them, till 32. H. 8. A Lay Man may be discharged of Tythes, at the common Law, by grant or by composition, but not by prescription, for it is commonly laid in our Law-Books, that a lay man may prescribe, In modo decimandi, but not In non decimando. And the reason is, because he is not (except in speciall Cases) capable of Tythes at the common Law, before the Statute of 32. H. 8. Cap. 7. And therefore without speciall matter shewing, it shall not be intended he hath any Lawfull discharge, and in favour of the Holy Church (although it may have a lawfull comencement,) the Law will not suffer this prescription In non decimando, to put it to the Tryall of lay men, which sooner will straine their conscience for their private benefit, then render to the Church the duty which belongeth to it.

A spirituall person that was capable of Tythes at the common Law in perrnancy may prescribe to be discharged of Tythes generally, or to have a portion of Tythes in the Land of another.

Before the Counsell of Lateran, every man might give his tythes to any spiritual person that he would; and if the Lands of the Bishop were discharged in his hands absolutely by prescription, the demising it to a lay man cannot make it chargeable, and the Bishop might reserve the greater Rent.
And in discharge of Tythes, the Judges of our Law doe know, that the Ecclesiastical Judges will not allow any such allegation, and therefore a Traverse, Absq: hoc quod judices placitum, &c. recusaretur, is insufficient for the refusal is not material, for the party might have a prohibition, before any plea pleaded by him, but in some Cases, the refusal is traversable, as was adjudged in Morris and Eatons Case, where twas pleaded that the plaintiff did not read the Articles, &c. and that the Ecclesiastical Judge refused this Plea; But the truth is, a man may prescribe that hee and all others whose estate he hath in the manor of D. time; out of remembrance, have paid to the parson of C. for the time being, one certaine pension yearly, for the maintenance of Divine service there, in contention of all Tythes, renewing, or happening within the same Mannor, and prescribe in respect of the pension payd, &c. to have all the Tythes within, &c. and this was adjudged good in Banco Regis, Mich. 39. Et 40. El. Rotulo 199. And that a lay-person may sue for the Tythes, &c. For at the beginning it shall be intended, that the Lord was seised of the whole Mannor, before any tenancy was derived out of the same, and then by composition or other lawfull meanes, the Lord had all the Tythes within the Mannor, for the said Pension paying to the parson, and the Law intends it was for Divine service, Et pro bono Ecclesia, the reason of which intendment is the continuall usage, time out of remembrance. And upon such speciall matter, a man might have Tythes as appurtenant to a Mannor, for he prescribes in a Que estate in the Mannor, and therefore cannot have them in grosse, but twas adjudged Winscombs Case in a prohibition, that a man cannot prescribe generally in him, and all those, &c. to have Tythes appurtenant to a Mannor, without speciall mat-
matter shewne, because Tythes are due fure divino.

The Arch-Bishop of Canterburys Case, 38. Of the Queene, fo. 46.

A Religious house in M. was given to E. 6. by the Statute of 1. E. 6. a Rectory which was imprropriated to it, was granted to the Arch-Bishop of Canterbury, who leased to the Defendant, and Land within M. parcel of the said Colledge, came to the Lord Cobham, and from him to the Plaintiff, who shewes, that the Master of the Colledge was seised of the said Land, and Rectories, simul et sempel, as well at the making of 31. H. 8. as of 1. E. 6. Resolved, that this Colledge came to the King by 1. E. 6. onely, or when 31. H. 8. speakes of dissolution, renouncing, relinquishing, forfeiture, giving up (which are inferior meanes by which, &c.) or by any other meanes, cannot be intended of an act of Parliament, which is the highest manner of conveyance that can be, and the makers would have placed this in the beginning if they had intended it. Bishops are not included within 13 of the Queene, which begins with Colledges, Deanes, and Chapters, &c. Also 1. E. 6. Enacts, that all Colledges by this Parliament shall be in actual possession of the King, which last act being of as high nature, as the first, it cannot come to the King by 31. H. 8. and it was never pleaded, that of Colledges which came by 1. E. 6. the King was seised Vigore of the Statute of 31. H. 8. Resolved, that neither the Act, nor the meaning of 31. H. 8. extends to other Colledges then to those, which came to the King by 31. H. 8. for it, should be absurd, that a Branch of the act of 31. H. 8. should extend to a future Act of which the makers of 31. without a spirit of prophecy could not have foreknowledge: and the Act of
of 31. concludes, in as large manner as the late Ab-
bots, &c. which late, as it hath been agreed, extends
only to those to be dissolved by 31. Resolved, (ad-
mittin that the Colledge had come to the King by
31. H. 8.) that such a general allegation of unity of
possession, of the Rectory, and the Land with it, was
not sufficient, for no unity shall be sufficient, but law-
full and perpetuall unity of possession, time out of
minde, as 'twas adjudged in Knightly and Spencer's case;
and that the general allegation of the plaintiff, that
the Master of the Colledge at the making of 1. E. 6.
held the Land discharged, is not good, without shew-
ing how, either by prescription, composition, or other
lawfull means; as 'tis adjudged in the Bishop of Win-
chesters case; otherwise, if the Land had come by 31.
then by force of the said branch of discharge, such
general allegation had been good. Resolved, that no
Ecclesiasticall house, except religious, was within the
faith, that the King shall have the lands of Colledges
in as ample and large manner as the said Priests, &c. en-
joyed the same: yet these general words do not
discharge the land of any tythes for they do not issue
out of the land; for a Prior had tythes against his
own Feoffment of the Manor; and 'tis no good cause
of prohibition, to allege unity of possession in a Col-
ledge, which came to the King by 1. E. 6. as 'tis upon
hath no such clause of discharge of payment of tythes
as 31. hath, and therefore such perpetuall unity will
not serve upon 1. E. 6. So 'twas likewise resolved be-
twixt Greene and Buffkin.

Sir Hugh
Tenant in tail, the remainder in tail, the remainder bargaines and sells the Land and all his estate to J. S. to have for the life of Tenant in tail, the remainder to the Queene, &c. upon condition that the estate shall be voyd upon tender of 10. ! Tenant in tail suffers a Recovery, to the use of himselfe and his heires, after the remainder tenders the ten pounds, &c. Resolved, the remainder to the Queene was voyd. 1. Because the grante, for life of tenant in tail, tooke nothing, for 'tis a voyd grant, for the grante shall never have any benefit by it, but such a grant of a reversion were good, for he shall have the services; but a lease for life of J. S. the remainder to J. H. for life of J. S. is good, for this may take effect, by forfeiture of tenant for life; and remainder dicuor, quasi terra remanens, which cannot be here, and the remainder must take effect when the particular estate ends, &y vana est ilia potentia, qua nunquam venit in aethum. And the possibility for tenant in tail to enter in Religion, shall not make the remainder good, because 'tis remote, and it ought to be a common, &y propinqua possibilitas, which shall make the remainder good, as death, coverture, dying without issue; remainder to a Corporation, which is not in esse, is voyd, though such be erected during the particular estate. 2. Because the Law will never adjudge a grant good, by reason of such a forraine possibility, for 'tis potentia remotissima &y vana, and by intendment, nunquam venit in aethum. 3. Because the remainder being tenant in tail, granted all his estate for the life of tenant in tail, so that there is no remainder left in the grantor, but in such case, the estate taile is in abeyance. Blithmans case. 35. of the Queene agreed.
tenant in taile covenants to fland seised to the use of himselfe for life, and after to his eldest Sonne in taile, the remainder to the Sonne is void; for when he had limited the use to himselfe for his owne life, 'twas as much as he could limit by Law. Resolved, (admitting the remainder good to the Queene) that the common Recoverie, hath barred the estate of the first grantee, and so the condition during his life; for 'tis out of the Statute of 34. H. 8. being not of the gift of the Queene, &c. as Wifemans case is before adjudged. A reversioner upon an estate taile, grants upon condition, a Recovery barres the reversion, and condition, and as Capels case is before adjudged, if the reversioner, or he in remainder grant a Leafe, &c. and tenant in taile suffer a recovery, the possession shall never be subject to such charges. Resolved, that the payment to the first grantee, cannot devest the remainder out of the Queene. 1. Because the condition during the life of the first grantee, was discharged. 2. Because, he that takes benefit of a condition, ought to have the entire estate, with which he departed, which cannot be here, for the estate of the first grantee, was barred by the recovery. 3. The tender to the first grantee, was to the intent, for to reveust his estate, which cannot be, because, 'twas barred, and therefore the payment cannot devest the remainder out of the Queene.

Buckleys Case, 40. Eliz. in Communi Banc. fo. 55.

Tenant for life, the remainder in Fee, tenant for life maketh a Leafe for foure yeares in March 20. El. the Lessee entreth tenant for life, granteth the tenements foresaid to C. to hold from the feast of Saint John Baptist next ensuing for life, after the said Feast, the
the tenant for yeares attorneys, the yeares expire, C. enters, and maketh a Leafe at will to D. to whom the tenant for life levyeth a Fine, he in remainder in Fee entereth and maketh a Leafe to Buckler the tenant at will, entereth upon him, and Buckler the plaintiffe bringeth an ejecttione firma, and judgement was given for the plaintiffe. In this case divers things were resolved. First, that the grant to C. was vvoyd, for the Law maketh construction upon the whole grant, and an estate of Free-hold may not commence in futuro. The office of the premisses of a Writing (viz.) Feoffment, Leafe, &c. is to express the grantor the grantee, and the thing granted. And the office of the habendum is to limit the estate; so that the general implication of the estate, which should passe by the premisses, is always controlled and qualified by the habendum; as a Leafe to two, habendum to the one for life, the remainder to the other for life, here the general implication of joyn tenancy is altered, and the habendum is not contrary to the premisses, for in the premisses no certaine estate is passed, and the grant being vvoyd at the beginning, the attornment after Midsummer, shall not make the reversion to passe. For quod ab initio non valet, trahit temporis non convalescit.

Resolved, that when the grantee entered, by colour of this vvoyd grant, he was a disleisor; but when the grant is good at commencement, but is to have its perfection, by an act subseuent, as delivery, or attornment, and the grantee enters before the perfection, &c. he is not a disleisor, but a tenant at will. And if the Fine had been levied, to the disleisor, come ceo, &c. He which had the right of the remainder, might enter for a forfeiture, for a right of a particular estate may be forfeited, and entry given to him, who
Beckwithes Case.

hath but a right. Resolved, the Fine being levied to tenant at will, 'tis a forfeiture, and he which hath the right of the remainder, may enter, and the tenant for life, and at will, shall be estopped to say, quod partes Finis nihil habuerunt, and of such estoppells, which are by matter of Record, and trench to the dis-inheritance of those in reversion, &c. they shall take advantage, though strangers to the Record (for they are privies in estate.) A disseisee leveth a Fine to a stranger, the disseisor shall hould the Land in this case for ever, for the disseisee against his owne Fine may not claime the Lands, and the consee may not enter, for the right which the conisor had, may not be transferred to him, but by the Fine the right is extinct, whereof the disseisor may take advantage.

Beckwithes Case, 27. Eliz. fo. 56.

If the husband and the wife levie a fine of Lands, whereof they are seised in right of the wife, and the husband solely declare the use of the fine, this declaration shall binde the wife, if her disascent doe not appeare, although her assent to the limitation of the uses doe not appeare, for it shall be intended (if the contrary doe not appeare) that shee joyned with him, also in the declaration of the uses of the fine. But if the husband declare one use, and the wife another use, they are both void; the declaration of the use, infues the ownership of the land; for the one (viz.) the wife is not sui juris sed sub potestate viri, and hath the estate of the Land, and the husband is sui juris, and hath not the estate; and if a fine be reversed by nonage of the wife, all the estate shall be restored to the wife presently; for all the estate passed from her by the fine, and so it was adjudged Banco regis, in Worseleys case.

Resolved,
Resolved, that though the variance of the limitation be only in one estate, and they agree in all the other, yet all is void. But if two joint tenants, or two having several estates, vary, ’tis good, for every of their parts, and shall be directed by their interests; but if the variance had been in limitation of part of the land, and they had agreed in the use, it should be void for that part, and good for the residue.

Note, That though the husband might dispose of the land during coverture, yet, for the cause aforesaid, his declaration was void.

If A. tenant for life, and B. in reversion or remainder, both levie a fine together, generally the use shall be to A. for life, the reversion or remainder to B. in fee, for either of them grants that which lawfully he may grant, and either of them shall have the use, which the Law vesteth in them, according to the estate, which they would convey over.

Winningtons case. 40. of the Queene. fo. 59.

W. Infeoffed B. upon condition, to regive to the Feoffor for life, the remainder to J. Sonne and heir of the Feoffor, the Feoffor enters, and takes the profits, without agreement, or contradiction of the Feoffee, and leaues to D. for 21 yeares, and yet continueth possession, the Feoffee acknowledges a Statute to J. the Feoffor makes a feoffement, to the use of himselfe for life, the remainder to his second Sonne in taile, &c. and dyes, the Feoffee enters, and infeoffes the Sonne and heir, upon which the second Sonne enters, &c. Resolved, that though the intention was, that the Feoffee should make an estate to him for his life, when he hath entered without agreement of the Feoffee, ’tis a difference, and the rather, because, as owner of the land, he tooke upon him to make a lease.
Lease for yeares. Resolved, that by the Lease by Indenture, he hath dispensed with the condition, during the terme. Resolved, that when the Feoffor disistles the Feoffee upon condition, and the Feoffee acknowledges a Statute, &c. This is no disability, to cause the Feoffor to enter, for the right of the Feoffee, is not subject to the Statute, but when the Feoffee in possession takes a wife, grants a rent, or acknowledges a Statute, the land is presently subject, &c. And though upon entry he may be disabled, yet, till then he is not, because the wife may dye, or the Statute be released, and then he may enter, and performe the condition; and the Feoffor by his feoffement hath extinct the condition, so that the Feoffee may enter, and when he hath feoffed the eldest Sonne, he hath done well.

Westcots Case in Communi Banco. 41. El. fo. 60.

If a man make an estate to three, and to the heires of one of them; one of them in this case hath Fee simple, and yet the joyned estate continues, for it is all one estate, created at one time, and therefore the Fee simple cannot drowne the joyntrure, which taketh effect with creation of the remainder in fee; but when three joyned tenants are for life, and after one of them purchase the Fee, or else the Fee descends to him, there the Fee simple doth drowne the estate for life, for the estate for life was in esse before.

Note, by this resolution, if tenant for life grant his estate to him in the reversion, and a stranger, 'tis a surrender for the moity, and the benefit of survivor not regarded; so the doubt in 7. H. 6. well resolved. Resolved, upon view of three presidents, that judgement should be given for the plaintifje, upon a demise made by husband and wife, without alleging it to be by Deed.
John Arundell seiz'd of Lands in Fee, maketh a Lease thereof to A. and B. for their lives, and after grants the reversion to C. for his life, to which grant A. doth attorne being joyn't tenant with B. and after A. by his Deed doth surrender to C. all his estate, title, and interest, &c. and then dyeth; C. entereth claiming to hold in common with B. and whether his entree was lawfull, or no, was the question, and judgement was given, that it was lawfull; for the attornment of the one tenant for life, shall vest the entire reversion in the grantee, because the estate of the joyn't Lessees is entire, and every joyn't tenant is seiz'd per se, or pro tont, and by consequence the reversion, which is dependent and expectant upon this estate is entire also, and the attornment of the one joyn't tenant is the attornment of both. Attornment is a lawfull act: if one joyn't tenant affigne Dower, 'tis good. Also, the attornment passeth no interest from him that attournes, but perfects the grant of another. And if one joyn't tenant give seizure of rent that shall binde the other, but in a quid juris claman, or quem redditanum reddit, or per qua servitias, one joyn't tenant shall not be permitted to attorne without his companion, for doing of prejudice to his companion. By Fosham one joyn't-tenant, may prejudice another in the personalty, but not in the reality; if one take all the profits, or release a personall action, the other hath no remedy, because of the privy and trust betwene them, and the folly impured to him, to joynne with such a companion.

Note, if a tenant have notice of the grant by a stranger, and doe give his assent thereunto, it is a good attornment, although it be in the absence of the grantee,
grantee, but disagreement, ought to be to the party himselfe, or doe atturme for any part, it is good for the whole, for the intent of an atturnement is but onely an assent to perfect the grant of another, and he which atturnes cannot apportion, divide, or alter the grant.

Lord Cromwell's Case. 40. of the Queene. fo. 70.

Blunt bargained, &c. the Mannor of Alexton, to which the Advowson of A. was appendant, by Indenture, to have, as after in the same Indenture is mentioned, and B. covenanted to suffer a common Recovery, to the use of Andrewes and his heires, rendring 42. pounds per annum to B. and his heires, with a nomine pene. And further, 'twas covenanted, and agreed, as well, for the assurance of the Mannor to A. as of the rent to B. that B. should levie a Fine, &c. to A. and his heires, and A. by the same Fine, should render a rent of 42. pounds per annum, &c. Provided always, that A. by Deed, should give the Advowson, &c. to B. during his life, and if it did not become void, during his life, one turne to his executors, &c. And further, 'twas covenanted, and agreed, that all assurances afterwards to be made, should be to the use of this Indenture, &c. after a recovery was had, and after B. and A. levie a Fine to Perkins, and he renders a rent of 42. pounds to B. and the Mannor with the Advowson to A. A. dyes, without granting the Advowson, and B. did not request it, B. enters for condition broken, and by Indenture inrolled, bargained, &c. to the Lord Cromwell, by which he entered, and upon the reentry of the Sonne and heire of A. brought an Ailife.

In this Case is shew'd when this word ( proviso ) or ( provided ) maketh a condition, and when not, which
which upon long debate was judged by all the Justices of England.

It was adjudged that the Law hath not appointed any place in a deed or instrument, proper or particular to a condition, but in what place it pleaseth the parties, and this word ('proviso or provided') is as apt a word to make an Estate conditionall, as Sub conditione, or any other word of condition, but notwithstanding when this word proviso maketh an Estate or interest conditionall, three things are to be observed. First that the proviso do not depend upon another sentence nor participate thereof, but stand originally of it selfe.

Secondly, that the proviso be the word of the bargainor, Feoffor, Donor, Leffor, &c.

Thirdly, that it be compulsory to enforce the bargainee, Feoffee, Donee, Leefee, &c. to doe an act, and where these concurre, it was resolved, that it was a condition, in what place foever it be placed, for Cujus est dare ejus est disponere. And although words of Covenant be contained in the same clause of the proviso it selfe, yet ('the proviso being in judgement of Law a word of condition') it shall not looke his force, and so it hath beene judged, In Symfon et Titterell, 26. El. Serjeant Bendlowes demyled to Titterell certaine Lands in Essex, for forty yeares, provided alwayes, and it is Covenanted and agreed betweene the said Parties, That the Leefee, &c. should not alien, and this was adjudged a condition, by force of the proviso, and a Covenant also, by force of th'other words. Also it was adjudged in Banco Regis 36. El. betweene the Earle of Pembroke, Plaintiff, and Sir Henry Barkely Defendant. The Earle granted the Office of the Lievtenant-ship of the West part of the Forrest of Fronslewood, in Com. Somerlet, to Sir Maurice Barkely, Father of the said Sir
Lord Cromwell's Case.

Sir Henry in Taille; provided alwayes and the said Sir Maurice Barkley for him, &c. doth Covenant to, and with the said Earle, that neither he the said Earle nor any of his Heires Males, &c. shall cut downe any Wood growing upon any part of the premises. And it was resolved by all the Justices of England, upon argument before them at Serjants Inne, that although the proviso was coupled with the expresse Covenant of the Grantee, and every condition ought to be created by the words of the Grantor, Donor, Feoffor, &c. yet in judgement of Law, this word (proviso) was a condition created by the Grantor, although all the residue of the sentence be the words of the Grantee, for (proviso) being an apt word of a condition, the same sentence containeth the words of the Grantor, purporting a condition, and the words of the Grantee comprehending a Covenant.

This word (proviso) when it dependeth upon another sentence, or hath reference to another part of the deed, doth not make a condition, but a qualification or limitation of the sentence or part of the deed, to which it is referred. As in a Lease without impeachment of waft, provided that he shall not doe voluntary waft, grant of a Rent charge, provided that the Grantee shall not charge the Grantor, &c. Resolved, that B. shall have the Rent, notwithstanding that before the Reddendum, the use in Fee was vested by the recovery in A. and notwithstanding 'twas objected, that the Rent ought to be limited out of the Estate of the Recoverors, for 27 H. 8. hath an expresse clause, Where diverse be seised, to the intent, that one shall have an annuall Rent, the same person be adjudged in possession, and seisin of the same rent, as if a sufficient grant had beene made, and so here the intent, being that B. should have the Rent, construc
Situation shall be made, ut res magis valeat quam pereat. Resolved, that the fine levied by B. and A. to P. hath not extinet the condition (and this was the great doubt of the Case.) 1. Because by the general Covenant &c. is declared, that all assurances afterwards to be made, should be to the uses and intents in the same Indenture, and to no other; and the Indenture intends that the condition should be saved as the Lord releases all his right in the Land, saving his Rent. Putnam's Case, 4. 5. P. and M. Dyer: Feoffment of a Mannor rendering Rent, and a reentry, and a Covenant by any Indenture to Leavy a fine, which should be to the uses and intents of the first Indenture, and to no other use, which was levied according, with the usual words of release of all his right, yet, resolved that neither the Rent, nor the condition was destroyed; and 23. of the Queen, Tussers Case, a rent reserved by a fine before, was not destroyed by a common recovery, and generall entry into warrant, and 34. of the Queen in Clever and Childs Case, adjudged according to Putnams Case; for the same reason twas adjudged in this Case, 14. of the Queen, for the Advonon of Alston, for, Modus et conventio vincunt legem, and Covenant and agreement of the parties hath power. First, to raise a use. Secondly, to declare uses upon fines, recoveries, &c. Thirdly, for to preserve Rents and conditions, and for to direct recoveries, fines, &c. and the saving may be contained in another deed, delivered at the same time. And these common assurances, as fines, and recoveries, are to be construed, according to the intent and common usage, without prying into them with Eagles eyes. Also, here the Bargaine, &c. recovery, &c. fine. &c. though made at severall times, yet, all by mutuall agreement, are but one assurance, and tend for to perfect a bargaine, &c. and there-
therefore the one shall not destroy the other, resolved, that except in special cases a fine, sur grant or render, cannot be averred by word to another use, then is in the fine, feoffment, &c. yet in some cases, it may be ruled in part by averrement, by word, when the original contract is by deed; but a man may by word averre another consideration, which stands with the consideration expressed, but not against it: Reade the booke at large for this purpose.

Resolved, that by the death of A. the condition was broken, for when the Feoffee or Grantee is to doe an act to the Feoffor, &c. upon condition, and no time is limitted, regularly, the Feoffee may doe it at any time during his life. If the Feoffor or Grantor doe not hasten the same by request, and upon request and day or time limitted, the Feoffee or Grantee ought to doe it accordingly: and if no request be made, and the Feoffee or Grantee that ought to perform the condition dye, the condition is broken. Yet, this generall rule admits an exception, for, here in case of an advowson, he hath not time during his life, though no request be made, but upon contingency, to wit, if no avoydance fall in the mean time, for if the Grantee stay till the avoydance fall ipso facto, the condition is broken, for B. cannot have all the presentations during his life, which was the effect of the grant, and the Advowson is come into another plight then twas. But where the day is certaine for the performance, and the party dye before, the condition is discharged, because the performance is become impossible by the Act of God, and therefore when a day certaine is appointed, tis good that the Heire of the feoffee be named in the condition. Another diversitie was also agreed, when tis to be performed to a stranger, he ought to request the stranger in convenient time for
for to limit a time when it shall be done, but if it be to the feoffor himselfe, he ought not to performe it, before request. Another diversity was taken by some, when the feoffor dye, and when the feoffor dye, for in the one case the condition is broken, in the other not.

Bingham's Case, 43. of the Queene, fo. 91.

R. Bingham the Grandfather held the Mannor of B. M. of Sir Jo: Horsey, as of his Mannor of H. and leyed a fine to the use of him, and his Wife for life, and after of R. the Father, his Sonne and Heire, in taile, and after to the right Heires of the Grandfather, R. the Father dyed, the remainder in taile descended to R. his Sonne within age. Sir I. H. suffered a recovery of the Mannor of H. to the use of himselfe and his Wife, in taile, and after to Sir R. H. his Sonne and Heire in taile, after to the Heires of Sir I. Sir I. and his Wife dyed without issue, Sir R. enters, R. B. the Grandfather, dyed, by which the reversion in Fee descended to R. B. the Wife of Robert dyes, R. within age enters and Leave, &c. Resolved, that the use limited to the right Heires of the Grandfather, upon the fine, is a reversion in the Grandfather, expectant upon the taile, not a Remainder, so twas resolved in Fenwick and Misford's Case, and so twas resolved in the Earle of Bedford's Case. Resolved, that Sir R. H. shall not have the ward of the Land, for the reversion in Fee is holden of him, and not the Taile; though both descend from the same Ancestor, for the taile cannot be drowned, and if Tenant in taile grant over the reversion, he shall hold the Taile of his Grantee, and though the Seigniory of the taile be suspend-ed, yet the Donee hath two distinct estates, and the reversion is as a Mesne, betwixt the Donee and the Lord.
Lord, and the Lord is not defeated; for the Law gives no wardship in such cases, and if it were admitted, that by the unity of Tenure, betwixt the Donee and reversion, twas determined, yet nothing shall be holden of the Lord, but the reversion, and in some cases, the Donee in tail is shall hold of no body, as a gift in tail, the remainder to the King. Resolved, if the Grandfather were Tenant for life, the remainder to the Father in tail, the remainder to the Father in fee, the Father dies, his Heire within age, and Sir I. H. grants the Seigniory to Sir R. H. and the Grandfather dies, that Sir R. H. shall not have the ward of the Heire because R. the Father did not hold of him nor any of his Ancestors, the day of his death, nor the Taile was not within the fee and Seignory of Sir Ra. or any of his Ancestors, at the death of R. the Father; and the Writ saith, Praepe, &c. Eo quod terram illam de eo tenuit, die quo obiit. And though that during the life of Tenant for life, the Heire of the remainder shall not be in ward, because Tenant for life, is Tenant to the Lord, yet the death of Tenant for life is not the cause of ward, but the removing of an impediment, as in Page and Cartes Case, Tenant for life commits waft, and after Tenant for life in remainder dyes, he in remainder in fee shall have waft. Twas said, when two accidents are required to the consummation of a thing, and the one happens in the time of one, and the other in the time of another, neither the one nor the other shall have benefit by it; as the Tenant ceases for a yeare, the Lord grants his seigniory, and then the Tenant ceases for another yeare, neither shall have a Cessavit, which was agreed. So Lacies Case. Trin. 24. of the Queene, who gave a mortall wound upon the sea, of which the party dyed upon the Land, yet he was discharged, because the stroake was upon the Sea, the
the death upon the Land, so that neither the Admiral nor a Jury, can inquire of it: and twas said, when diverse accidents are required to the consummation of a thing, the Law more respects the Original cause, then any other. A man presents to a Church in time of Warre, notwithstanding the party be instituted and inducted, Tempore pacis, all is void. So the Law more respects the death of him in the remainder, the Original cause of wardship, then the death of Tenant for life, which is but Causa sine qua non, and rather a removing of an impediment, then a cause, so twas resolved that neither the one, nor the other shall have the ward. Resolved, that Sir Ra. should not have the third part of the Land, by 32. & 34. H. 8. for though R. the Grandfather had limited the use to the Father, which is within the Statute, yet when R. the Father dies, in the life of the Grandfather, the Statute extends no further, for the Heire of the Father, who is in by descent, shall be in ward by the common Law, not by the Statute, and if the Statute should extend to the Son and Heire of him in remainder, by the same reason it should extend to all the Heires of him in remainder, In infinitum.
The Third Book.

The Marques of Winchester's Case.
25. of the Queene. fo. 1.

Ionell Norris and Anne Mills were seised of the Mannor of M. and to the heires of the body of L. a common Recovery is had against L. (without naming Anne.) H. Norris being in remainder in tail, is executed for Treason, and 'tis enacted that he shall forfeit Mannors, &c. uses, possessions, offices, rights, conditions, and all other hereditaments, L. dyed without issue, Anne dyed, the Queene brought error against the Marques of Winchester, heire of the survivor of the recoverors, the error was, that the originall Writt of entry wants, the defendant pleaded, that 14. of the Queene, shee gave and restored to the Lord Norris, Sonne and heire of H. Norris, the Mannor ex speciali gratia, &c. and all her right, estate, title, claine, &c. Resolved, that the Record was well removed by the Writt of Error, which was for to remove the recovery of the Mannor of M. in M. cum pertineniiis, and the Recovery was of the Mannor of M. cum pertineniiis. Resolved, that this Writt of Error, was not given to the King by any of the words of the Statute of 28. H. 8. because the tertenant is in by title, and the entry of the person attainted taken away; and such a right, for which the party hath no remedy, but by action, is a thing consists in privity, which cannot EJcheate, nor be forfeited by the common law; and this
this word (right) in the Act, shall be satisfied with a
right of entry, and 'twas observed by the Court, that
by no Act of attaint, a right of action was ever gi-
gen. Note, a diversitie betwixt inheritances, and char-
tells; for Obligations, Statutes, Recognisances, &c.
are forfeited by attaint or Outlawry. By the Court,
if L. had made a Feoffment without warranty, this
had been a discontinuance of the moity, for the joyn-
ture was severed. Resolved, that H. N. had no right
to a moity of the Mannor, for though the recovery
were erronious (for 'twas agreed, 'twas not void) yet
the recovery being in force, the remainder hath no
right, for the intended recompence, if tenant in taile
suffers an erronious recovery, and disfesse the recove-
ror, and dye, his issue shall not be remitted, for the
taile is barred, as long as the recovery stands in
force; and the Court agreed, that neither an action
without a right, with a dилent, shall make a Remitter,
as in the principall case, nor a right without an ac-
ton, for a man shall never be remitted, but when an
action lyes, if the right and possession were in severall
persons. Resolved, for the one moity, the Recovery
shall be a barre to the taile, and remainder, for, though
that as well L. as the vouchee might have abated the
Writt, because, Amé was joyntly feised, not named,
yet, when the vouchee, without demanding any Line,
enters generally into warranty, and admits the Writt
good, and L. recovers in value, which shall inure ac-
cording to his estate, with the remainder over, 'tis
barred, for by the recovery against L. the joyn
ture was severed, but, for the other moity, the recovery
was not a barre to the taile, or remainder, because,
for that L. was not tenant to the Précipe; but the
recovery is by Estoppell onely. Agreed, that H. N.
at the time of the attaint, was not intitled to have
error, yet, 'twas agreed, that the remainder upon a
taile
taile shall have error, upon a judgement given against tenant in taile, for when W. 2. inables the donor for to limit a remainder over upon the taile, all actions which the common Law gave to privies in estate are by the same Act, as incident, given also; as a reversion, or a remainder, shall have Error upon a judgement given against tenant for life, though not privy by aide voucher, or receiver. But agreed, that by the common Law, Error doth not lye by, &c. during the life of tenant for life, except he were privy to the first Record by aide voucher, or receiver, for remedy whereof 9. R. 2. ca'. 3. was made, which gives an attaint or error, during life, upon which Statute the Court resolved, 1. that though the Statute speakes onely of reversions, yet remainders are within the purview, 2. That a reversion expectant upon a taile, is out, for the Statute enumerates these foure estates; Life, Dowror, Courtesie, and Tenant in taile after possibility, which declares their intentions to exclude reversions upon tailes, and this upon great reason, for the taile by possibility, may continue for ever, and here L. survived H. N. and so his possibility of error destroyed, and no word of the Act, extends to give a possibility. Resolved, admmitting the Writ of Error had been given to the Queene, that by this generall grant of the Queene, it did not passe; for a common person cannot grant it; and therefore it ought to passe by Prerogative, and ought to have precise words: adjudged in Cromers case. 8. of the Queene; the Queene having a right of a difficile attained, grants de speciali gratia, &c. all lands, &c. The right doth not passe, without speciall recitall, and words. Owen and Morgan case, Trin. 27. of the Queene; Baron and Femme refeised, and to the heires of the body of the husband, a recovery is had against the Baron sole, without naming of the wife, and after the wife dyed.

E 2
Resolved, that though the wife were not party to the Writ, nor the Coniunce (for the estate of the husband and wife, was by render upon a Fine levied by the husband) and though it does appear within the same Record, that she was a stranger; yet the render to her is voidable only. Resolved, that this recovery against the husband only, shall not bind the remainder, for betwixt husband and wife, there are no moities, and the husband hath no power to sever the joyniture, or dispose any part, and he, during the life of the wife, is not seised by force of the tail: and he can, by no Act, execute any part; so the Præcipe being brought against him only, the recompence cannot ensue to the tail, or remainder, for, to all, it cannot, for the wife hath a joynent estate in possesison, and for a moiety it cannot, for there are no moities, and the remainder depends upon the entire estate, and recompense recovered by the husband only, cannot inure to him, who hath a remainder depending upon the undevided estate of the husband and wife; and the joynent-tenancy cannot be severed by the judgement against the husband only, and though the husband hath all the inheritance, yet, because, by no possiblity, it can be executed, 'tis all one, as if the husband had a remainder depending upon an estate for life, and then a common recovery shall not bind, because, not tenant to the Præcipe, nor seised by force of the tail, but took effect by Estoppell only. The issue may say, his auncestour was not tenant tempore brevis, and though here the husband survived the wife, this is not materiall, for the Law adjudges as 'twas then.
And his wife were seised, and to the heirs males of the body of the husband, the husband levies a Fine to A. B. recovers in a Writ of entry against A. who vouches the husband onely (the wife living) who vouches the common vouchee. Resolved, that this recovery shall binde the remainder, for here was a lawfull tenant to the Pracipe, and though the husband were onely vouched, and not his wife, who had a joynt estate with him, yet the husband coming in as vouchee, he came in, in privity of the estate taile, and not of another estate, and the recovery in value gives recompence to the taile, which the husband had, and to the remainder. A. tenant in taile, the remainder to B. the remainder to C. the remainder to D. A. makes a Feoffement, the feoffee suffers a recovery, B. is vouched, and he vouches the common vouchee; A. is not bound, but B. and all the remainders are, for though the remainders are discontinued, and cannot be remitted, till the taile be recontinued, yet in a common recovery, which is the common assurance, he which comes in as vouchee, shall be in judgement of Law, in privity of the estate, which he ever had, though the precedent estate, upon which the estate of the vouchee depends, be discontinued, so, here the husband shall be said in of the taile, and 'tis the stronger, because the estate of the wife was put to a right, so, that the husband came in as sole tenant in taile, and not joyntly with his wife, because, she is not vouchee, and he cannot be in of another estate, because, once he had a taile, but had they had a joynt estate to them, and the heirs of their two bodies, he being onely vouched, it might be doubted, whether the taile should be barred, be-
cause the wife had a joint inheritance with him. 8. of the Queene. Dyer, Kniveton's case. A Præcipe is brought against tenant for life, and the remainder in taine, they vouch over, it shall not binde the taine, for the remainder is not tenant to the Præcipe, and the land is recovered against the tenant for life onely, and recompence shall not goe to the remainder, and the remainder was never seised by force of the taine, and so twas adjudged in Leach and Coles case. 41. of the Queene.

Heydons case. 26. of the Queene. fo. 7.

The Gardians and Cannons Regular of the late Colledge of O. seised of the Mannor of O. granted a Coppihold to Farther and Sonne for their lives, &c. and after they leased it to H. for fourescore yeares, rendring the ancient Rent, and after surrendred their Colledge. Resolved, that the lease to H. was void (the Coppi-hold for life continuing) by the Statute of 31. H. 8. For Coppihold is an estate for life, and the Statute saith (of which any estate or interest for life, &c.) at the making of such grant had continuance: reade the Booke at large, where you have admirable rules, for true interpretation of all Statutes. Resolved, when a Parliament alters the service, tenure, interest of the land, &c. in prejudice of the Lord, custome, or tenant, the generall words shall not extend to Coppi-holds; as the Statute of W. 2. de donis conditionalisibus, doth not extend to them, for if the Statute should alter the estate, this should also alter the tenure, for the donee ought to hold of the donor, and to doe such services (without speciall reservation) as his donor did to the Lord, and the intent of the act was not to extend to such base estates, which were taken then but tenants at will, and the Statute
Statute faith, *Voluntas donatoris observetur in carta,* &c. So that which shall be intailed, ought to be such an hereditament, which may be given by Charter, and great part of the land within the Realme being granted by Coppy, it would be inconvenient, that Coppiholds should be intailed, yet, neither Fine, nor Recovery should barre them, so that the owner cannot (without making a forfeiture, by assent of the Lord, and a new grant) dispose of it for payment of debts, advancement of his wife, or younger issue, wherefore the Statute doth not extend to them by *Manwood,* Ch. Baron, which the Court agreed. But 'twas objected; that the Custome and the Statute cooperating, might make a taile, as if by a custome, a remainder had been limitted over, and injoyed, and plaintiffs in nature of a Formedon in descender brought, and the land recovered by it; so neither the custome without the Statute, nor the Statute without the custome, can make a taile. And *Littleton* faith, that if a custome hath been, that lands, &c. have been granted, &c. or in taile, &c. *Opt paulo post,* that a Formedon in descender lies of all tenements, which Writ was not at common law. *Manwood* answered, if the Statute doth not extend to them, without question, the custome cannot, for before the Statute, all estates of inheritance were fee simple, and no custome can commence after the Statute, for this being made 13. *E. I.* is made within time of memory, and *Littleton* is to be intended of a fee simple conditionall, for he knew well that no custome could commence after the Statute of *W.* 2. as appears in his booke 2. *ca.* 10. and 34. *H. 6.* and a Formedon in descender, in speciall cases, lay at the common Law. And by the Court, another Act made at the same time, which gives an *Elegit,* extends not to Coppiholds, for the reason aforesaid; but other Statutes made at the same time extend to them, as
Devised land for eight yeares, and after to his executors, to performe his will, till H. his younges, Sonne come to the age of 21. yeares, and when H. comes to 21. yeares, then, that he shall have to him and his heires, H. dyed at the age of 9. yeares. Objected that till H. attaines to 21. yeares, the land descends to the heire, and, for that he never attained to 21. yeares, this remains in the heire, and the intent appears by the words, that he should not have, till he come to 21. yeares, and this ought to precede the commencement of the remainder, and if land were leased till H. comes to 21. yeares (H. then being of 9. yeares) 'tis no absolute lease for 12. yeares, for if H dyes before 21. the lease shall be determined, which the Court agreed. 'Twas also said, that when the particular estate, which should support the remainder, may determine before the remainder can commence, there the remainder doth not vest presently, but depends in contingency.

If one make a Lease to A. for life, and after the death of B. the remainder to another in Fee, this remainder
mainder depends upon contingency, for if A. dye before B. the remainder is void. A Lease is made to A. for life, the remainder to B. for life, and if B. dye before A. the remainder to C. for life; this is a good remainder upon contingency. If A. survive B. which case is all one with the common case, which is many times agreed on in our Books, a lease is made to one for life, the remainder to the right Heires of I. S. this remainder is good upon contingency, (vix.) If the Lessee for life survive I. S. otherwise not, and by the same reason, if a man have issue a Son of 9 yeres of age, maketh a Lease untill the Sonne shall accomplish his full age, the remainder to another in Fee, as in this case, nothing vesteth in him in remainder presently, Quod suit concessum per tot. Cur. vide. Chadleyes Case, Libr. 10.

Answered, that in Wills the intent of the devisor is to be considered; for, when the devisor in his life by apt words, by good advice, might have made his Will sufficient in Law, there, though he makes it in disordered manner, and in barbarous and unapt words, the Law will order those words, which want order, according to his intent, as in Welbick and Hammond's Case, Copyr-holder in Borough, English devises, to his Eldest Son, paying 40. Shillings within, &c. to every of his other Sonnes, &c. surrenders according, and dyes, the Eldest Son did not pay within, &c. the youngest enters, and adjudged lawfull; and resolved,

First, That he had a fee, for the recompence and consideration, though it be not to the value, makes a fee in construction of a will. Secondly, That though paying in a Will, makes a condition, yet, here 'tis a limitation; otherwise it would descend upon the Eldest Son, who is to take advantage of it, and then it should be at his pleasure for to pay, or not, and there-
therefore it shall be, as if he had devised to the Eldest Quousq; he failes in payment. Where the devisor hath computed, what profits of his Land, during the nonage of his Son, will suffice for payment of his Debts, &c. and that he did not intend that the tearme of the Executors should end by death of H. for so his Debts should remaine unsatisfied, and his Will unperformed, and therefore the Law sayth, it shall be construed, that the Executors shall have till H. should have come to 21 yeares of age, and therefore the Executors have a terme for twelve yeares, which the Court agreed. And though (when) and (then) are Adverbes of time, yet, when they referre to a thing which must of necessity happen, they make no contingency, and tis certaine, that H. did accomplishe, or might have accomplished the age of 21 yeares, and here, if the tearme should be ended by death, the remainder should be void; and the Court agreed, that in Wills, and grants, the remainder ought to vest in possession, Eo instante, the particular estate ends; but, here the Terme did not end, &c.

Walkers Case, 29. Eliz. in Banco regis.

Walker Leased certaine Lands to Harries for yeares, the Leeslee assignd all his interest to another, Walker brought an action of Debt against Harries, for Rent arrear after the assignment, and if the action be maintainable or not, was the Question, and upon great deliberation and conference with others, it was adjudged per Wray chiefe Justice, Sir Thomas Gawdy, and Tot. Cur. that the Action did ye, and was maintainable in the argument, whereof many things were resolved.

If a man Lease a stock of Cattle or other goods, rendering a Rent at severall dayes, he shall not have an
an Action of Debt until all the days be expired.

Likewise, if a man make an obligation or other contract to pay several sums of money at several days, he shall not have an action of Debt, until all the days be expired, for these are personal contracts and not real, but in case of a Lease for years, which is a real contract, the Lessor shall have an action of Debt after every day.

By the Court, Debt doth well lie in this case, against the Lessee, there are three privities. 1. In respect of the estate only. 2. Of contract only. 3. Of estate and contract together. The first betwixt the Grantee of the reversion, or Lord by eleheate, and the Lessee, so betwixt the Lessor and the Assignee of the Lessee; the second betwixt the Lessor and the Lessee (as above) for, notwithstanding the assignement, and the privity of estate removed by the act of the Lessee himselfe the privity of contract remains.

First, because the Lessee himselfe cannot prove the Lessor of his remedy; but when the Lessor grants his reversion against his owne grant, he shall not have remedy, because the Rent is incident to the reversion.

Secondly, the Lessee might grant it to a poore man, not able to manure the Land, or for maintenance, will suffer it to lye fresh, so the Lessor shall be without remedy, if Debt should not lye against the first Lessee.

Thirdly, there is privity of contract and estate together, as betwixt the Lessor and the Lessee.

If a Tenant in Dower, or Tenant by courteous assigne over their estate, yet the privity of the action remaineth betwixt the Heire and them, and he shall have an action of waste against them for waste done, after
after the assignement, but if the Heire grant over his reversion, then the privity of the action is destroyed, and the Grantee may not have any Action of Wait, but onely against the assignee, for betweene them is a privity of Estate, and betweene the Grantee and the Tenant in Dover, &c. is no privity at all.

If a lessee enter for condition broken, or if a lessee surrender to the leslor, yet the leslor may have an action of Debt, for arrerages due before the condition broken, or the surrender, and this is in respect of the contract betweene the leslor and the lessee. 36. of the Queene, Ungle and Glovers Case adjudged, the lessee assignes his interest, the leslor bargaines, &c. the reversion, the bargainee shall not have Debt against the lessee, but agreed, that the leslor himselfse might.

37. Eliz. in Banco regis, Int. Overton et Siddall. Two points were resolved. First, if an Executor of a Lessee for yeares, assigne over his interest that an Action of Debtor doth not lye against him for Rent due after the Assignement. If a Lessee for yeares assigne over his interest and dye, the Executor shall not be charg'd for rent due after his death, for by the death of the Lessee, the personall privity of the contract (as to the Action of Debt in both these cases were determined; 40. of the Queene, Brome and Howes Case. A Lessee of three acres rendring Rent, assignes one to B. the Leslor suffereth a recovery to the use of C. in see, who brought Debt against the first Lessee, adjudged it lyes, for the Lessee assignd his interest, but for part, for the privity of Estate remaines because he assigned but part. 41. of the Queene Marrow and Turpins Case, in Debt against two administrators, upon a Lease made to their Testator, the Defendants plead, that before the tnenure were, the one of them had assignd all his interest to I. S. of which the Plaintiffse had
had notice, and accepted the Rent by the hands of the assignee, due after the assignment, and before that this rent now demanded was due, the Plaintiff demurred and adjudged against him, because the privy of the contract was determined by the death of the lessee, and therefore after the assignment made by the administrator, Debt doth not lye for rent due after the assignment. Also it was said, that if a lessee assigne over his terme, the lessor may charge the lessee or his assignee at his election. And if the lessor accept the rent of the assignee, he hath determined his election, and shall not have an action after against the lessee, for rent due after the assignment, no more then a Lord having received the rent of the Feoffee, shall avow upon the Feoffor afterwards.

Butler and Bakers Case, 33. and 34. of the Queene fa. 25.

W. B. and his Wife seised of the manor of H. (by an Estate made to them during coverture for the joyniture of the Wife) in taile, holden in capite, and W. seised of Land in F. both which amount to a third part of all his lands; and also of the manor of T. in capite, which amounts to two parts; W. devises T. to his Wife, upon condition, that she should take no former joyniture, and dyed, the Wife in pays refused H. the question was, whither the will were good for the entire manor of T. or but for part, by the Statutes of 32. and 34. H. 8. Resolved, that at common Law if a gift be to a Husband and Wife in taile, &c. the Husband dyes, the Wife cannot devise the free hold by any verball Waiver, or disagreement in pays; as if she lay before entry, that shee will never agree to it, shee may enter when shee pleases;
pleases; so, if shee faith, (reciting her estate) that shee affents, &c. to the said estate, yet afterwards shee may waive it in a Court of record; but if shee enters into the Land, and takes the profits, though shee faith nothing, tis a good agreement in Law, for the Law more respects acts without words, then words without acts, and a freehold shall not be so easily devested to the intent that the Tenant to the Præcipe, should be the better knowne. But as an act in Pays may amount to an agreement, so it may amount to a disagreement, but, this is always of one and the same thing, if the Tenant by deed infeoffe the Lord, and a stranger and maketh livery to the Lord, if the Lord disfayre by word, tis worth nothing, and if he enters generally, and takes the profits, tis an agreement, but if he disfrains for his Seigniory, tis a disagreement, yet in some cases, a claime by words shall direct the entry to be an agreement to one Estate, and a disagreement to another, &c. See the Booke at large, but a man may devest the property of goods and Chattells, or an obligation sealed to him, by disagreement In pays.

Resolved, that though the estate was created by way of use, which use, before the Statute, might have beene waived in Pays, yet, now the Statute hath so incorporated the use and possession of the Land, that it cannot be waived In pays; more then an Estate created by seoffment, &c. yet twas here resolved, That the refusall In pays to have H. and the entry, and agreement to T. was a good agreement to the one, and disagreement to the other. And this by 27. H. 8. ca'. 10. If any Woman hath Lands, &c. assu- red after Marriage, &c. after the death of the Husband, She may refuse her joynature, and take her Dower, &c. And upon these words the Court agreed, That a Woman might refuse her Joynature In pays, and be in- dowed.
dowed by consent or Writ. The great doubt was, if by this refusall of H. by operation of Law, it doth descend immediately to the Heire after the death of the Devisor; for to satisfie the Statute which faith, The King shall take for his third part such Mannors, &c. as shall descend, &c. immediately after the death of the devisor.

Resolved, First, Upon the reason of the common Law, the refusall shall not have such relation that the devise shall be good, for the intire Mannor of T. for a relation is a fiction of Law, to make a nullity of a thing Ab initio, to one certaine intent, which in truth had being, and that Propert necessitatem, ut res magis valeat, quam pereat. 11. E. 3. The Law will make a nullity Ab initio, that the Wife shall have dower, but not as to a collaterall intent, as if the reversion were granted of the Lands which the Husband and Wife held in taile, and the Wife for to have Dower disagesees, yet the grant is good, for thee may be endowed though the grant stand; and Relatio est fictio juris, et intenta ad unum: And though relations aide acts in Law, as Dower, yet t'will never aide the acts of the party, to avoyd them by relation, as a man infeoffes an Infant, or Feme covert, and after gives, &c. or devises the Land, or any thing out of it, the Infant or Husband disagesees, this shall have relation betwixt the parties, that the Infant or Husband, shall not be charged in damages, but shall not make the voyd devise, &c. good. A Lease for life, the remainder to the King, the King grants his remainder, the deed is inrolled, it shall have relation to make this passe Ab initio, to the King, not to make the voyd pattent good. And as relations extend onely to the same thing, and the same intent, so, also to the same parties, not for to prejudice a Stranger, feoffement of a Mannor, and a long time after livery, the Tenants attourne, this shall
Butler and Bakers Case.

shall have relation, to make the services passe Ab initio or otherwise they could never passe, nor be parcell of the Mannor, but not for to charge the Tenants for the arrerages in the mean time. So here, the refusal all shall relate as to the mannor, of H. onely, not to T. and to the wife onely, but not to prejudice the Heire (upon whom part of the Mannor of T. descended) to make the devise good for the third part, which was void at the time of the death: For, Omne testamentum morte consummatum est, and as it was at the death, so it shall remaine. Resolved, that after the Statute of 27. H. 8. and before the Statute of 32 H. 8. the Mannor of T. was not devisable, and therefore when the devisor hath not pursued the Authority; which the Acts of 32. & 34. H. 8. gives, twas void for part.

The first branch he hath not pursued, which faith, (That all, &c. having a sole estate in fee simple, in any Mannors, &c. shall have full and free liberty, &c. to dispose by his last will in writing, as much of, &c. as shall amount to the cleare yearly value of two parts in three to be divided.) For he had not the Mannor of H. for his Wife had it joyntly with him. See many excellent Cases in the Booke at large, adjudged upon this word (Having) in the Statutes, the Initium of a Will ought to be full and perfect, which is the writing, and therefore, if the devisor command one to write his Will, and he devises white Acre to A. and his Heires, and black Acre to B. and his Heires, and dyes, before the devise to B. is written, yet the devise to A. is good. But if he devises to A. &c. upon condition, and he writes the devise, and the Testator dyes before the Writing of the condition, tis void, for in the one case, the devises are severall, and the one is perfect, in the other Case tis maimed, and imperfect, for the entire devise, was not fully put in writing, so twas res-
solved in the Case at Barre, that neither the commencement nor the end of the Will was full or perfect, for at the time of writing of it, and at the death of the devisor, he had no power in respect of the joint estate in H. to dispose all the Mannor of T. which amounts to the value of two parts of all. Also, upon the first Branch he ought to have a sole estate, and here his Wife is joyantly feided with him, and she cannot disagree during coverture. The Statute gives liberty to him, for to devise two parts by will, but this is to be intended of such Land, which he might convey by act executed, but, here by reason of the undivided estate of the Wife, he cannot dispose it but during coverture. Also, the third part of clear yearly value is saved to the King, and the intent of the Statute was, that the King shall have the equal benefit or least for his third part, as the devisee hath for two parts, but here the devisee had two parts absolutely, and the King but a possibility, Viz. If the Wife would disagree which is at her pleasure, and this Statute hath been construed, that equality should be observed. A man which held three Mannors of three Lords, could not devise two of them, but two parts of every one; upon these words (Clear yearly value) 'twas said that of Inheritances, which are not of any yearly value, some are devisable, some not, as, Bunon or cattala felonum, fugit, or village. Fines, amercements, within such a Mannor or Towne, these cannot be devisable, nor left to descend, but a Leese, Waifs, or Stray, or other hereditament appendant, or appurtenant to a Mannor, passe by devise of the Mannor with th'appurtenances as incidents, and the Statute had no intent for to dismember these things, which by lawfull prescription had beene united. But if a hundred, with goods of Fellons, Outlaws, Fines, A-
merciaments, returne of Writts, and such other casual hereditaments, within the same hundred, have beene accustomably demised for a yearely rent, they may be devised within the purview of the said Act. 'Twas said upon the words of the Statute, which says, that he may devise a rent common, &c. Out of two parts, that a devise of a rent of the full value out of all is void, but out of two parts 'tis good. And 'twas observed, that upon 32. H. 8. a devise of all his land, had beene good for two parts, as adjudged in Upton's Case, for Land is severable, but a rent is a thing in-tire, and 34. H. 8. onely gives authority for to devise it.

The second branch which speaks of division, cannot be satisfied, for, during his life, he himselfe could not (Set it out) and after his death, it survives to the Wife. The third and fourth branch is not satisfied in this word (immediately) for till disagreement, without question the Mannor of H. survived to the Wife, and if an Office had beene found, before disagreement, without doubt, the Queene should have a third part of the Mannor of T. and the devise being voided at the death of the devisor, & the third part lawfully vested in the Heire by descent, it cannot be made good and devested by a subsequent disagreement. Littleton, descent to the Heire of Tenant by the courtey of a deviseesesse: doth not take away entry, for the Heire comes not in immediatly, & 'twas agreed if a man devises two acres holden by Knights service, and a reversion upon a Lease for life descends to the heire, this is no immediate descent within the Statute, but the third part of the two ought to descend; see many excellent Cases of devises adjudged upon the Statute.

Another
Another good Case of relations, Jennings and Braggs Case, a disseife makes an Indenture purporting a Leafe for yeares, and delivers it to a stranger, out of the Land; as an Escroule, and commands him for to enter, and deliver this as his deed, to the Lefsee, who doth it, and adjudged a good Leafe, and this diversity agreed.

First, When the person at the first delivery hath not ability, to make the contract, and before the second delivery hath, 'tis void, as an Infant, and a Feme covert; otherwise, when at first delivery, the person hath ability, but cannot perfect it, till an impediment removed, which is done before the second delivery, there 'tis good, as at Barre:

Resolved, secondly, that to some intent the second delivery shall have relation to the former, by fiction of Law, Ut res magis valeat quam pereat, as if a Feme sole deliver a Leafe as an escroule, and after takes Husband or dyes, yet by the second delivery 'tis a good deed Ab initio; and to some intent Ut res magis valeat, &c. it shall not relate, yet in truth, the second delivery hath all its force by the first, and is but an execution, and consummation of the former, as at Barre, for if it should relate to the first delivery, then it would avoyd the leafe, for it should be made by one, who was out of possession, &c. s. i. l. o. a. ut aliqui damnum vel injuriam.

Thirdly, 'twas resolved, that as to collateral acts, that there shall be no relation Omnino, as if the Obligeer release before the second delivery, such release is void.
Feme sole devises socage land to the sonne of her daughter in tail, the remainder to two sisters of the devisee, and to the heires of their two bodies, by equall portions to be divided, the remainder in fee to the Mother of the daughters, and dyes, the sonne dyes without issue; Martha one of the daughters dwelling in her Mother's house (daughter of the devisor) within the age of 16; and above 14, departed at the seconse hour in the night, with the consent of the husband of her Mother (in whose house she was) 8 miles, and there married E.R. the issue was, whether E.R. the Mother, had the custody of the said M. at the time of the contract, and marriage aforesaid, for if she had, then the land of M. was lost by the Statute of 4. and 5. P. and M. ca. 8.

Resolved, that there were two manners of custodies, or Gardianships, the one by the common law, the other by the Statute; at common Law fonsen manner of Gardians, viz. Gardian in Chivalry, Socage, Nature, by Nurture. The first two are fully described in our Bookes; but great controversy was at barre, for Gardian by Nature; Some held, that the Father onely shall have the custody of his sonne and heire apparent, within age, not the Mother, Grandfather, &c. Also, that the Father shall not have the custody of his daughter and heire, for it ought to be such an heire, as shall continue sole and apparent heire; as the Father shall not have the custody of the youngest sonne, in Borough English, for tenure in Chivalry. Others affirme, that not onely the Father, but every auncestfor male or female, shall have the custody of his heire apparent, male or female. Trespas quare I, consanguinum et heredem of the plaintiffe, cujus mar- tagium
Ratcliffes Case.

agium ad ipsum pertinet, &c. rapuit, &c. lyes. The Mo-
ther (though she had no land) brought ravishment
of ward of J. her Sonne and heire, against the grand-
father, who had land that might descend. By the
Court, both erre; for 'tis true, that every auncelletor
shall have trespass, or ravishment of ward against a
stranger, for his heire male or female, and the Writ
shall lay, Cujus maritagium ad ipsum pertinet, and good
reason, for the establishment of his house consists up-
on providing of a convenient marriage for his heire
apparant, and it matters not, of what age such heire is,
but such action lyes not against gardian in chivalry,
by any of his auncelstors but the Father. So the
Court resolved here, the Mother could not be gard-
dian in Socage, if the land had descended to the
daughter, nor by nurture, because she was above 14,
but the common Law gives remedy against a Stranger,
as aforesaid. Resolved, here the Mother shall
have the custody within the provision of the Act,
which hath ordained two new manners of custodyes.
1. By reason of nature. 2. By assigนation; the first,
the Father, after his death the Mother; the second,
by assigนation of the Father, by his will, or any act in
his life. See the Booke at large for the exposition of
this Statute.

Resolved, that the assent of the husband was not
materiall, for the Statute hath annexed the custody,
to the person of the Mother, jure nature, which is in-
feperable, and by marriage cannot be transferred to
the husband, the Father shall not forfeit the ward-
ship by outlawry, nor shall his Executors have it.

Resolved, though she departed out of the house
five hours before the contract, yet, in judgement
of Law, the Mother had the custody at the time of
the contract; for 'tis inseperably annexed to the
person of the Mother.
Resolved, that by this devise, the two daughters were tenants in common in tail, by these words (equally to be divided) though they never make partition in fact, and so it hath been often adjudged.

Resolved, that the husband and wife damsell, had good title upon this verdict, against the other daughter; for, by these words (to the next of kin, to whom the inheritance should, &c. come after her decease during the life of such person, who shall so contrari, &c.) it seems the daughter shall not have the forfeiture, for though she be of the blood, yet, if M. dye, her issue shall have the land, if without issue, the Mother in the remainder.

To the objection, that the Mother cannot have it, for she is not of the blood of the daughter, but contra. Father, or Mother, are not next, to whom administration shall be granted; and land shall escheate, rather then it shall goe to Father, or Mother.

Resolved often against 5. E. 6. that the Father, or Mother, are next to whom administration may be granted, and Littleton says that the Father is neerer of blood, than the Uncle, and therefore the Father shall have a remainder limitted to the next of blood of the Sonne, but he shall not have an inheritance by descent, from the Sonne, for a Maxime prohibits it. And 'twas said at barre, if he in reversion had been brother of the halfe blood, he might have entered, as Proximus de sanguine, yet none of the halfe blood could inherit. See the Booke at large, where is excellent learning of discents; as also the learning of Possessio fratis, &c. Resolved by the Court, that it doth not come in question, who shall enter for the forfeiture by the Statute, for the issue was joyned upon a collateral point, whether the Mother had the custody at the time of the contract; and the finding of the Jury is not materiall, and therefore, though the Plaintiff
Boytons Case.

Plaintiff (who was leftee of the husband of the dam-fell, as appeared) had good title against the defendant, being leftee of the husband of the other sister, yet, because the issue was found against him, judgement was given quod nihil capiat, &c.

Boytons case, 35. Eliz. in Banco regis. fo. 43.

A Writ of capi ad satisfaciendum is returnable at Westminister die Luna prox post Craphin. Animari, the partie is arrested, the Sheriffe is not bound to bring the prisoner in retta Linea, from the place where he was arrested, or from the Countie. But if he have the prisoner in Court at the day of the returne (being never out of his custody in the meanse reason) it is good; But if a Sheriffe or a Bailiff assent that one who is in execution, and under their custody, to goe out of the Gaole for a time, and then to returne, yet although he returne at the time, it is an escape. And so it is likewise if a Sheriffe suffer him to goe with a Bailiffe or a Keeper, for the Sheriffe ought to have him in ar~ta custodia, & the Statute of Westminister 2. cap. 11. says, quod carceri mancipentur in ferris. So as the Sheriffe may keepe him in yron and fetters, to the intent, that they may sooner satisfie their Creditors. The Sheriffe upon a Habeas corpus for one in execution may bring the partie what way he will, so as he have his bodie at the day, according to the Writ; If one in execution escape out of the Gaole, and fley into another Countie, the Sheriffe upon fresh suit, take him again before any action brought against the Sheriffe, the Judges have adjudged this no escape; and if one in execution escape, de non tort. and be taken againe, he shall never have an audita querela, because a man shall not take advantage of his own wrong.
Sir George Brownes case. 36. of the Queen. fo. 50.

Sir George Brownes case. 36. of the Queen. fo. 50.

I Sui in speciall talle, the remainder to himselfe in
fee, in the life of his Mother, tenant in special
talle, levies a Fine (in truth, with Proclamations,
though they were not found) to Sir G. B. the Mother
(living the Sonne) leased for three lives, which was
not warranted by 32. H. 8. upon which Sir G. B
entered.

Resolved, that the lease for three lives, though
without warranty, was within 11. H. 7. which faith;
(discontinue alien, release, or confirm with warranty)
for, the intent of the Statute, was, to prohibit not
only every barre, but every manner of discontinu-
ance, which puts the heire to his reall action; and be-
causse a release, or confirmation, is no discontinu-
ance without warranty; the warranty refers to them, to
make them equivalent to an estate which paffeth by
livery. Note, the title of the Act (Discontinuance of
right, or estate.) also in the Act this saith, If no such dis-
continuance, warranty, nor recovery had been; so that dis-
continuance stands in equall degree with warranty.

Resolved, that if the issue had granted his remain-
der in fee only, and not barred his talle, he might
have entered by the words of the Act, for the forfei-
ture, which faith, Every person to whom the interest, &c.
title, or inheritance, after the decease of the woman should
apertaine, may enter and enjoy, &c. As if no such discontinu-
ance had been made, and if no such had been, the
land should descend to the issue.

Resolved, that in this case, Sir G. B. shall enter, for
if no discontinuance had been, he should enjoy it ag-
ainst Anthony the issue, and all the heirs of his body,
though the Fine be levied in the life of the auncesstor,
for 32. H. 8. says, In any wise intailed to the person so le-
vying
Sir George Browne's Case.

vying the Fine, or to any of his ancestors; and though it worke, part by conveyance, part by conclusion, yet the case being extinct by the Fine, Sir G. B. in remainder shall enter. The same Law in this case, though the Fine were without Proclamations, for the issue against his Fine cannot enter; but the entry of the comitee is lawful.

Anderson said, where 'twas invented (to make an evasion out of this Act,) that a woman should accept a Fine 'come seo, &c. and render for a thousand yeares, pretending this not within the words (discontinue, alien, release with warranty, &c.) that this was an alienation within the intent of the Act, or otherwise the Statute should serve for nothing, and so it hath been resol

Rigewayes Case. 36. El. in Banco regis. fol. 52.

It was resolved pro toto. Our: although the prisoner in execution escape out of view, yet if fresh suite be made, and he be taken againe in recenti infectione, he shall be in execution, otherwise at he turning of a corner, or by enting into a house, or other manes, the prisoner may be out of view; And although he fly into another Countie, et because the escape was of his own wrong, where he may not take advantage, the Sheriff upon fresh suite may take him there, and he shall be in execution. But if the Plaintif bring his action against the Sheriff upon the escape before that the Sheriff take him, or if the Sheriff doe not make fresh suite, yet in both these cases the Sheriff may take him and keepe him in his custody, untill he make agreement with him, or he may have an action of the case, for his wrongfull escape. And although the defendant be kept upon a cap: adiurare faciendum, and escape, yet if the
the Writ be not returned and filed, the Plaintiff may have a new cap: ad satisfaciendum against him, and take him againe, and he shall not take advantage of his owne wrong. But if the Plaintiff will, he may charge the Sheriffe with the escape, if he did not take him againe in fresh suite before the action brought, and when the prisoner escapes of his owne wrong, and be taken againe, he shall never have an audita querela against the Sheriffe. But it is otherwise if he escape with the consent of the Gaoler, then he may not take him againe, and if he doe, then he may have an audita querela.

Resolved, that the barre was insufficient, for the plaintiff counted of an escape in London, and the defendant justifies the retaking in Devonshire, so that the escape at London was not answered; but the plaintiff not denying the fresh suite, but by Protestation relying upon this, that he was out of view, 'twas adjudged against him, but if he had demurred upon the barre, he should have had judgement.

Resolved, that after Demurrer, there shall not be a Repleader, for the parties by mutual consent, have put themselves upon the judgement of the Court, and therefore without their consent, they cannot repleade, and so several times adjudged.

Lincolne Colledge case. 37. & 38. of the Queene. fo. 59.

Husband feised to him and to his wife for life, and to the heires of the body of the husband, dyed, the issue, in the life of the wife, then tenant of the freehold (for so the pleading was) which shall be intended by disseisin, for no surrender, or forfeiture was alleged. 4. H. 8. Suffered a recovery, with single voucher, by agreement, that the recoverors should infeoffe L, &c. to divers udes, and that the wife should release
release to them with warranty, which was done according, 11. H. 8. The wife dyed, after the issue dyed, after his issue in the third degree entered; the question was, whether the collateral warranty should bind; the recovery did not come in question, for by the pleading it shall be intended, that he was seised by other title, then by the taile, so the single voucher not material.

Resolved, that though the first branch of the Statute of 11. H. 7. says, that the warranty shall be void, yet the clause following (and that it shall be lawful, &c. to enter) being annexed to the first, expounds the generality of it, and though he to whom the interest, &c. after the death of the wife appertaines, may avoyde it by entry, yet, 'tis in force against all others; and so the Judges have expounded other Statutes. 8. H. 6. All Outlawries shall be void, except a Capias be awarded against the party, in the Country, where, &c. yet this ought to be avoyded by error. The Statute of 1. of the Queene ordaines that all grants, &c. by a Bishop, in other manner then, &c. shall be utterly void; but 32. & 33. of the Queene, betwixt Sale and the Bishop of C. and L. a grant of a next avoydance of a Church (not warranted, &c.) was not voydable against the Bishop himselfe, but onely against his Successors. And with this resolution agrees 27. H. 8. upon the same Statute of 11. H. 7.

Resolved, that this warranty was out of the intent of the Act, which onely restraines warranty, which prejudices the heire in taile, or those in remainder, but when the warranty, &c. of the wife, is but for to perfect and corroborate the estate assured by the issue himselfe, &c. 'tis not restrained by the Act, for it shall be intended to the benefit of the heire, which is the reason, that a common recovery is not restrained by
Lincolne Colledge Case.

by W. 2. for the intended recompence; and if the wife and the issue had joyned in a Fine, this had barred the taile; so, if the wife had surrendered, the issue might have suffered a recovery. H. 39. of the Queene, the case was, that the younger Sonne tenant in taile by devise, was vouch'd in a recovery suffered, by a woman tenant for life, by the same devise, and this was to the use of the vouchee and his heires, who dyed; and 'twas adjudged that the Sitter of the vouchee, by the intire bloud shall have it, not the elder brother, but that the recovery was not within 14 of the Queene, though suffered by tenant for life; and the Statute says, that it shall be utterly void; for 'twas not the intent, that the Act should extend to a recovery, in which he in remainder in taile was vouch'd, who had an estate that might continue for ever, and had the power to docke all the remainders; so here, this Statute doth not extend to this warranty, because, &c.

Resolved, when the first issue disables himselfe, for to take advantage of the forfeiture, and dies, his issue shall never take benefit of it, because, he was not in verum natura, nor had the immediate interest at the time; and this was Sir George Brownes case before, where the issue in taile in the life of his Mother, tenant in speciall taile, levied a Fine, without proclamations; and here, if error were in the recovery, the warranty barres him of his action, because he himselfe by his own act hath barred his entry. But here if the wife had released, &c. after the death of the issue, his issue might have avoyded the warranty.

Note, (Reader) it seemes to me, if in such case a woman levies a Fine, or suffers a recovery, though the daughter enters, or not, and though she joynes in the Fine, or is vouch'd in the recovery, or by any other act disables herself, yet the Sonne borne after shall...
shall take advantage of it; for entry upon this Act of 11. H. 7. is not like entry upon the Statute of 6. R. 3. c. 6. For there the daughter by express words, hath it as a perquisite, but upon 11. H. 7. per formam doni.

Resolved, if tenant in tale, in of another estate, suffer a common recovery, and a collateral ancestor releases with warranty to the recoveror, after the recoveror makes a Feoffment to uses, which are executed by the Statute of 27. H. 8. and the ancestor dyes, though the estate be transferred in the post, before the descent of the warranty, yet, it shall binde, and the ten-tenants shall Rebut. See excellent learning upon this point, where an estate transferred in the post, before descent of the warranty, shall binde, where not, and where there shall be Rebutter in such case, where not.

Pennants case. 38. of the Queene. fo. 64.

Case for yeares upon condition, that the lessee shall not assigne, &c. without assent of the lessor, he assignes, &c. the lessor not having notice of the assignement, accepts the rent due after; and enters; it was adjudged for the lessor his entry lawfull; for that the condition being collateral, the breach whereof may be so secretly contrived, that it is not possible for the lessor to have notice thereof; and notice in this case is material and issuuable; for otherwise the lessee might take advantage of his owne fraud. But if a man make a Lease for yeares, rendering rent upon condition, if the rent be not paid to reenter. In this case if the lessor demand the rent, and the fame is not paid, if after he accept the rent (before the reentry made) due at another day, he hath dispensed with the condition, for there the condition
dition is annexed to the rent, and he (having made demand of the rent) well knew the condition was broken; but although in this case, that he accept the rent, due at that day, for which he made the demand, yet he may reenter, for as well before, as after his reentree, he may have an action of debt, for the rent upon the contract between the Lessee and the Lessor.

If the Lessor distraine for the rent, for which the demand was made, he hath affirmed the Lease; for after the determination of the Lease, he may not distraine for rent.

It was also resolved, that as well in case of the condition annexed to the rent, as in case of a condition annexed to any collateral a&; if the conclusion of the condition be, that then the Lease for yeares shall be void, there no acceptance of the rent due at any day after the breach of the condition will make the void Lease good.

Resolved, that as a voidable Lease cannot be affirmed by word, for money, &c. so the acceptance of a rent which is not In esse, nor due to him which accepts it, doth not affirm the Lease as a gift to a Husband and Wife, and to the Heires of the body of the Husband, the Husband dyes, the issue accepts the rent of the Lessee of the Husband, during the life of the Wife, the Wife dyes, yet the issue shall avoid the Lease, for no rent was due.

And there is a diversity between a Lease for life; and for yeares, in case of a lease for life, though the conclusion of the condition be, that it shall be void, yet acceptance of a rent due after the breach, shall affirm it, for the freehold being created by livery, cannot be determined before entry. If the successor accept the rent upon a Lease for yeares of a Parson, Vicar, Prebend, 'tis worth nothing, for 'tis void by death.
death, otherwise of a Lease for life. But if the successor of a Bishop, Abbot, or Prior, accept the rent upon a Lease for years, he shall never avoyd it, for 'twas voydable onely.

Note (Reader) it seems to me, if upon a Lease for life, the Lessor accepts the same rent which was demanded, he hath affirmed the Lease, for he cannot accept it, as due upon any contract, as upon a Lease for years, for when he accepts it, he cannot have an action of Debt for it, but his remedy was by Affisse, if he had seisin or by distresse, but after reentry he may have an action of Debt.

If he that hath a rent service, or rent charge, accepts the rent due at the last day, and therfore makes an acquittance, all the arreages due before, are hereby discharged, and so it hath beene adjudged, in Hopkins for Mortons Case 10. El. Dyer.

A man is not bound to pay an annuity without Acquittance, but a rent service, or rent charge is.

If the Lord accepts the rent or service of the Feoffor, he loses the arreages in the time of the Feoffor, though he makes no acquittance, for, after such acceptance, he shall not avow upon the Feoffor at all, upon the Feoffee, but for the arreages which occurred in his time; otherwise, where the Feoffor es, and there is such an acceptance. But acceptance of rent or service by the hands of the Feoffor, will not barre the Lord of reliefe due after, for that no service, if it were, Debt would not lye for it.

'Twas said, if the Lord accepts services by the hand of the Heire, infeoffed within age by collusive, he loses the wardship. But against this 'twas objected. First, because the Lord upon tender of the arages, and notice is compellable to avow upon. Secondly, he cannot be concluded before title
Westby's Case.

W

estby brought an action of Debt against Shynner and Catcher Sheriffs of London, for an escape. One Boston was in execution, and in their custody, at the Suit of one Dighton, and at the Plaintiff's Suit, and at the end of their year, the Sheriffs deliver'd the body of Boston (amongst others) unto the new Sheriffs by Indenture, wherein the execution at the Suit of Dighton, was mentioned, but the execution at the Suit of Westby was omitted, and Boston still continued in the Gaole, and if the Defendants should be charged in this Case, with the escape, was the Question? And it was adjudged, that they should be charg'd, for although he was within the walls of the Prison, yet that was an escape in Law, as to the Plaintiff. And it was resolved, that Eo instante, that the ancient Sheriffs, delivered their Prisoners to the new Sheriffs, the escape began as to the Plaintiff.

Note hereby, that the Law judgeth one that remaines in the Gaule to have escaped, and it was resolved, that the ancient Sheriffs ought to give notice to the new Sheriffs of all executions that they have against any, that are in their custody, and it was also resolved, until the Prisoners be delivered to the new Sheriffs, they remaine in the custody of the old Sheriffs. Notwithstanding the new Letters Patent, the Writ of discharge, and the Writ of delivery. And it was resolved, that if the old Sheriff die before a new one.
one be made, the new Sheriff at his owne peril ought to take notice of all executions against any of the Prisoners; and this is for necessity, and if one in Execution breake the Gaole beweene the death of the old Sheriff, and the making of the new, this is no escape, but when the Sheriff is dead, all the Prisoners are in the custody of the Law untill the new Sheriff be made; and although no fresh Suite be made after, they may be taken in Execution, in what place ever they come in.

Deane and Chapter of Norwich Case, 40. and 41. of the Queene. fo. 73.

H. 8. Anno. 30. translated the Priory and Covert of the Cathedrall Church of the holy Trinity of Norwich, into the Deane and Chapter, &c. and discharge them by their speciall names, Tam de habitu quam de regula; ipsosq; decanum & capitulum, perpetuis temporibus duraturis corporavit, and granted them all the Mannors, &c. which of late belonged to the Priory, and granted that they should be the Deane and Chapter of the Bishop of Norwich, and his Successors, after 2. E. 6. the Deane and Chapter surrendered to the King their Church and possesssions, and he incorporated them by the name of the Deane and Chapter, Sanctae & individuae, Trinitatis Norw ex fundatione, E.6. And regranted them their Church and Possessions, by the name of the Deane, &c. omitting Ex fundatione Regis. E. 6.

Objected, that Herbert heretofore Bishop of Norwich, was Founder, and being not party to the translation, 'tis voyd.

Answered, the King was Founder, as appeares by many Records, and by the Foundation; but, admit the Bishop Founder, yet the translation was good: for
for the Pope might have discharged a Monke of his profession, and therefore the King may doe it, by the Statute of 25. H. 8. And this translation is no prejudice to the Founder, for he remains Founder, and nothing is altered but the rule and profession; and this Prior was eligible. 11. of the Queene. Dyer. Corbetts case, proves this very translation good, and by judgement of Parliament, 33. H. 8. such translations are good. All Chapters were Monkes, and notwithstanding their translation into Prebends, or Cannons, the Advowson remains as before; but admit the translation voyd, yet, 'tis good by the Statute of 35. of the Queene; see the Booke at large.

Objected, when they surrendered to E. 6. and he regranted to them, by the mis-naming of the Corporation, for (ex fundatione Regis. E. 6.) was omitted, the grant was voyd, and nothing passed, for the name of the Founder is parcell of the Corporation.

Answered, notwithstanding the surrender of their Church, their Corporation continues, and they remain the Chapter of the Bishop; though there cannot be a Gardian of a Chappell, when the Chappell and all the possessions are aliened. In Christian policy 'twas thought necessary (for that the Church could not be without Sects and Heresies) that every Bishop should be assisted with a Counsellor; viz. a Deane and Chapter. 1. To consult with them in deciding of difficult Controversies of Religion, to which purpose every Bishop habet Cathedram. 2. To consent to every grant the Bishop shall make to binde his successors; for the Law did not judge it reasonable to repose such confidence in him alone: at first all the possessions were to the Bishop, after a certaine portion was affixed to the Chapter, therefore the Chapter was, before they had any possessions, and of common right, the Bishop is Patron of all the Prebends, because their possessions

Nab. I. will al within the to I.S. an levyed a and Lands also his in
posessions were derived from him, so that so long as
the Bishopricke continues, the Deane and Chapter
( being his Counsell ) remaines, though they have no
posessions, as at first they were, when the Bishopricke
consisted all of spirituality. The Prior and Friers Carmi-
lites had not any posessions nor place. And 32. H. 8.
Fitz, held if an Abbot or Prior and covent, sell their
posessions, yet their Corporation remains. All Bishop-
ricks were of the Foundation of the Kings of England,
and anciently Donative by them; but, by grants of the
Kings, became after Eligible by their Chapter; where-
fore, if by their surrender, their Corporation should
be dissolved: three inconveniences would follow.
First, to the Bishop, for his assistance in the Episcopall
function. Secondly, to the Bishop and others, touching
the confirmation of Grants. Thirdly, to all the
Church, for how should the Bishop be chosen?

Resolved, First, if there were any imperfection in
the Translaton the Statute of 35. of the Queene hath
made it good.

Secondly, that the Act of 1. E. 6. hath made it
good, though the Corporation were gone by the sur-
render, and the misnamer materiall.

Holden by the Justices and Lord Keeper, that the
ancient corporation remains, notwithstanding the
surrender.

Fermors Case, 44. of the Queene, fo. 77.
Fermor's Case.

For, and after the fines always continues in possession, and payes the several rents to F. The lessee for life, dyes, the yeares expire, S. claimes the inheritance.

Resolved, that the Lord of the Mannor was not barred by the said fine. 1. The makers of the Statute of 4. H. 7. never intended that a fine levied by Tenant at will, yeares or Coppy, which pretend no inheritance nor title to it, but intend the disheison of the Lord, &c. should barre them of their inheritance, and where the Statute sayth (That Fines ought to be of greatest strength to avoyd striffe and debate.) This Feoffement and fine by the Lessee shall be the cause of strife where none was before. 2. The Statute doth not intend, that those who of themselves without such fraud, could not levy a fine to barre those which had the freehold and inheritance, should be inable to levy a fine by making of an estate to another, by practice and fraud. 3. If doubt be conceived upon an act of Parliament, 'tis to be construed by the reason of the common Law, and that to abhorres fraud, and covin, that all acts, as well judiciall, as others, and which of themselves are lawfull and just, yet being mixt with fraud and deceit, are tortions and illegall. If a Woman intituled to have Dower (which is favoured in Law) by covin, causes a stranger to disfeise the terrentant, to the intent to bring Dower against him, and recovers accordingly, 'tis all voyd. So if a Feme covert, or Infant (much favoured in Law) of covin, causes another to disfeise the discontinuée, and inffeise them, they are not remitted. Sale in Market overt shall not binde, if the Vendee had notice that the property was to another, or if the Sale be by covin; the Law hath ordain'd the common Bench as a Market overt, for asfurance of Land by fine; for it sayth, Finis finem lavibus imponit, yet covin shall avoyd them: A Vacat was made in Banco of
a recovery had by covin, 32 & 34. of the Queene ad-
judged, where Tenant for life levied a fine with Pro-
clamations, and five yeares passed, and he dyed, that
the Leffor shall have five yeares after his death, for
though the Statute faves the right which First shall
grow, and the right first accrued to the Leffor, by the
forfeiture, yet because the Leffor by covin of the Le-
fee, might be barred, for he expected not to enter,
till after the death of the Leffee, 'tis no barre, and
namely, when the Leffee hath Land of Inheritance in
the same Towne, ( as in this case ) so, 'twas agreed
in the same case, if the Feoffice of the Leffee for life hath
Lands in the same Towne, and levys a fine, &c. the
Leffor shall have five yeares after the death of the Le-
fee, for he knew not of what land the fine was levy-
ed ( not being party to the Indenture or agreement )
&c. So, the Judges have construed the act against the
Letter, for Salvation of the Inheritance of him in re-
version. And 'twas said, if the Feoffice of a Leffee for
yeares, who made a feoffement by praetise, hath Land
in the same Ville, and levy a fine, and the Leffee payes
the rent to the Leffor, it shall not binde, and in the
principal case, the payment of the rent after the fine,
makes the fraud apparant, for by this the Leffor was
secure, and not caufe of any doubt of fraud.

But 'twas resolved, if the Bargaine or Feoffice of
A. perceiving that C. hath right, levies a fine, or
takes a fine of a Stranger, to the intent, to barre C.
this fine levyed by consent shall binde, for nothing
was done in this, that was not lawfull, and the intent
of the act was to avoyd strife. So, if A. ( pretending
title ) diffeffe B. and to the intent to barre the differ-
fee, levies a fine, for the diffeffor, Venit tranquam in
arena, and 'tis not possible but the diffeffe had know-
ledge of it, and if he doth not enter, 'tis his folly. But
in the case at barre, every one will presume that the
fine
fine is levied of his owne Land, because that he might lawfully doe; and though this containes more acres, then his owne Land, this is usuall almost in all fines; and the covin of the Lessee is the cause of non-claim of the Lessor, and a man shall not take advantage of his owne covin; and here the fraud is the more odious, because of the great trust, viz. Fealty. To the objection, that it should be mischievous to a-voided fines, upon such nude averments; 'twas answered, that it should be a greater mischiefe, principally, if fines levied by such covin, should binde. And an averment of fraud may be taken by the Statute of 27. of the Queene, against a fine levied to secret ules, by fraud, for to deceive Purchasers. So by the Statute of 13. of the Queene, an averment may be taken, against a fine levied upon an usurious con- tract.

Twynes Case, 44. Eliz: in Cam. Stel. fo. 80.

In an Information per Cooke Attorney Generall against Twyne of Hampshire, for contriving and pub- lishing of a fraudulent Deed made of goods. The case upon the Statute 13. Eliz. ca. 5. was thus; Pierce was indebted unto Twyne, in 400. l. and to one C. in 200.l. C. brought an action of Debt against Pierce (and hang- ing the Writ) Pierce being possessed of goods and Chattells to the value of 300. l. in secret made a deed of all his goods and Chattells to Twyne in satisfaction of his Debt, & yet Pierce continued in possession of the same, & some of them he sold, and his Sheepe he marked with his owne marke; &c after, C. had judgement, & a Fier-fac. to the Sheriff, &c by vertue thereof Bayliffs came to make execution of the goods, and divers per- sons by the commandement of Twyne, with force re-fisted them, claiming them to be the goods of Twyne by vertue of the same deed, and whether this deed was fraudu-
fraudulent or no, was the Question? and 'twas resolved by Sir Thomas Egerton Keeper of the Great Seal of England, and by the chiefe Justices, Popham and Anderson, and all the Court of Star-chamber, that this deed was fraudulent and within the Statute of 13. Eliz. And in this Case divers things were resolved.

First, That this Deed had the markes of fraud, it was generall, and without exception of his apparell, or any thing of necessitie, for dolosus versatur in generibus.

Secondly, The Donor continueth in the possession.

Thirdly, It was made in secret, Et dona clandestina semper sunt suspiciosa.

Fourthly, it was made hanging the Writ.

Fifthly, there was trust betweene the parties, for the Donor was in possession and used them, and fraud is always apparelled with trust, and trust is the cover of fraud.

Sixthly, it was contained in the deed that it was honestly, truely and bona fide, Et clausula inconfusa semper judicat suspitionem, and it was resolved although it was a due debt to Twyne, and a good consideration of the deed, yet it was not within the proviso of the said Act of 13. Eliz. By which it is provided that the said Act doth not extend to any estate or interest in Lands, &c. goods and chattells made upon good consideration, and Bona fide, for although it be upon good and true consideration, yet it is not Bona fide, for no deed shall be deemed to be made Bona fide within the said proviso that is accompanied with any trust, for the proviso faith upon good consideration, and Bona fide, as good consideration doth not serve, if it be not also Bona fide.

Therefore (good Reader) if any deed be made to thee in satisfaction of any debt, by one that is indebted unto others also. First, let it be in publick.
manner before Neighbours. Secondly, valued by
good men to a true value. Thirdly, take them out of
the possession of the Donor presentely, for continuance
of possession in the Donor is a mark of trust.

There are two considerations (Viz.) Considera-
tion of blood or nature, and valuable consideration.
And if one that is indebted to five several persons
every one 20 l. in consideration of natural affection,
doth give all his goods unto his Sonne or Cousen.
The intention of the Statute was, that the considera-
tion in this case should be valuable, for equity requires
that this deed that defeates others, shall be made of
as high a consideration, as the things are, that are so
defeated thereby, for it is to be presumed, that the
Father if he had not beene indebted unto others,
would not dispose himselfe of all his goods, and sub-
ject himselfe to his Cradle. And therefore it shall be
intended that it was to defeate his Creditors. And if
a consideration of nature or blood, should be a good
consideration within this provisio, the Statute would
serve for little or nothing, and no creditor should be
sure of his Debt.

A seoffment made solely in consideration of nature
or blood, shall not take away the use rayfed upon va-
luable consideration, but it shall take away a use ra-
ied in consideration of nature, for both considerations
are in Equali jure, and of the same nature.

Many men marvaile the reason that so many acts
and Statutes are dayly made: this verse answereth.

Queritur ut crescant tot magna volumina legis.
In promptu causa crescit in orbe dolus.

And because fraud abounds in these dayes, more
then in former times, it was resolved, that all Statutes
made against fraud, shall be liberally expounded, for to
fup-
Resolutions.

suffresse the fraud, and according to this, see several resolutions in the Booke at large.

It was resolved, that no purchaser may avoid a precedent conveyance made by fraud, but he that is a purchaser for money or other valuable consideration paid, for consideration of blood is a good consideration, but not such a consideration as is intended by the Statute, 27. El. ca: 4. for valuable consideration is only good consideration by the same act. Anderson chief Justice of the common bauck said, That a man who is of small capacity and not able to governe his Lands, that descends unto him, and being disposed to riot and disorder, by the mediation of his friends, by open Act conveys his Lands to them, upon trust, and confidence, that he shall take the profits for his maintainance, and that he shall have no power to wait or consume them. And after, he being seduced by deceitful and covetous persons bargained for small, his Lands of great value, this bargain although it were for money was holden to be out of this Statute, for this act was made against all fraud and deceit, and shall not and any purchaser that commeth not to the Lands for good considerations lawfully without fraud or deceit. And in this case Twyne was convicted of fraud, and he, and all the others of a riot.

Resolutions. P. 44. of the Queene upon the Statutes of Fines. fo. 84.

A Tenant for life, the remainder to B. in taile, the remainder to B. and his heires, B. levies a Fine, hath issue, and dyes, before all the Proclamations passed, the issue then beyond the Sea, the Proclamations are made, the issue retournes, and upon the land claims the remainder.

Resolved, that the estate which passed, was not deter-
terminated by the death of tenant in tail; so, if tenant in tail of a rent, Advowson, Tythes, Common, &c. grants by Deed, and dyes; for if the issue brings a Formedon for the rent, he makes the grant voidable, if he disfraines, or claimes it upon the land, he by this determines his election. And there is no diversity, betwixt tenant in tail of a rent, &c. and tenant in tail of a reversion, or a remainder upon an estate for life, though in the first case, the issue may have a Formedon presently after the death of tenant in tail.

Holden by Popham, and divers other Justices, that the Statute of 32. H. 8. hath inforced the case, that the estate which passes by the Fine of tenant in tail, shall not be determined by his death, for by this 'tis provided that Fines levied of any lands, &c. intailed, immediately after the Fine ingrossed, and Proclamations made, shall be a barre, if the Fine cannot be a barre without continuance, the Statute hath provided, that the estate shall continue, for it provides for all necessary incidents to the perfection, and consummation of it. Every Fine shall be intended with Proclamations, for 'tis most beneficial for the consee, and all Fines being the generall assurance of land are levied according.

Resolved, that though by the death of tenant in tail, a right of the estate tail descends to the issue, for that the tenant in tail dyed before all the Proclamations passed, yet, when they are passed, without claime, this right is barred by the Statute of 32. H. 8.

Resolved, by all the Judges and Barons (but three) that the issue (in this case) being heire and privy, cannot, by any claime, save the right of the tail, which is descended to him, but that after the Proclamations, he shall be barred; for 'tis provided (that every Fine after the ingrossing of it, and Proclamation had and made, shall be a small end, and conclude as well privies as strangers.)
gers.) And if no saving had been, all strangers had been barred also, and all the exceptions extend only to strangers, but the issue is privy.

To the objection; if by the equity of the Statutes, the issue cannot claim, &c. to what purpose are the Proclamations with such solemnities?

Answered, 32. H. 8. being an Act of explanation of 4. H. 7. as to the Fine by tenant in tail, shall not be taken by any strained construction against the letter, for then'tis requisite to have a new Act of explanation, upon the explanation, &c. in infinitum. By 4. H. 7. every one hath liberty to pursue a Fine according to the said Act, vix. with proclamations, &c. or without (as at common Law) and therefore the Act of 32. H. 8. of necessity prescribes that Proclamations shall be made according to 4. H. 7. to distinguish it from a Fine at common Law, and not to enable the issue for to make claim, for this should be against the express intent of the Act, in the preamble, and view. Also it should be very inconvenient, if, when such Fine is levied, for a valuable consideration, advancement of his issues, or payment of his debts, and he dyes before Proclamations, that all should be avoyed by the claim of the heire, when the conuise could not have better assurance, by Recovery, for that he was not tenant to the Precipe. See the Booke at large, in what case the issue in tail may averre seisin in a Stranger, &c. quod partes Finis nihil habuerunt, what not.

Objected, 1. 'tis provided by the Statute de donis, &c. that as to the issue, Finis ipso jure est nullus. 2. That the Statute of 27. E. 1. extends not to the heires in tail, as 8. H. 4. is, for the issue is not bound by any Record, which inures by way of Estoppe. 3. 27. E. 1. speakes De finibus rite levatis, and when there wants seisin (which is the essence of a Fine) 'tis not rite levatus, 46. E. 3. that 'tis a good plea.
Resolved, the Statute of donis, &c. was made 13. E. 1. and the Statute of Fines 27. in which the issue is not excepted, therefore he is bound, and according there is a good opinion, 8. H. 4.

To the second, though the issue was not barred of his right before, 4. H. 7. yet he was estopped to say, quod partes Finis nihil habuerunt.

To the third, Finis igitur levatus, is intended in due forme of Law, which it may be, though it be onely by way of conclusion, for the same Act oust the parties from such averment, and 46. E. 3. is to be intended of a collateral ancestor, from whom the heir doth not claim the Land, and then the averment is good.

In Conisbys case 'twas resolved, upon a Fine levied to tenant in taile in remainder, by tenant for life, and a grant and render of a rent, that this was not within the Statutes of 4. H. 7. or 32. H. 8. for the Fine was not of the land it selfe which was intailed, but of the rent newly created out of the land. And in the Lord Zouches case 'twas resolved, that 4. H. 7. and 32. H. 8. doe extend to Fines levied by conclusion, and shall binde, though partes, &c. nihil habuerunt; as if tenant in taile makes a Feoffment, or be dispossess, and levies a Fine, for the Statute says, (All Fines of any lands, &c. in any wife intailed to the person so levying, or to any of his auncestors) and in 4. H. 7. the exception, quod partes, &c. is saved to all persons not party, nor privy to the said Fine, and the issue in taile is privy, for he claims as heire by descent, and if such Fine shall barre, where the tenant in taile had nothing, though the issue enter after the death of the auncestor, before all the Proclamations passe; a fortiori here, when tenant in taile, at the time was seised of an estate, though 'twere in reversion. See Archers case, where a Fine shall barre the issue, where the Father had onely a possibility at the time of the Fine levied.

Puriflowes
Resolutions.

Punshowe case, 32. of the Queene, tenant in tailie levies a Fine, Term. P. & T. and dyed in August next, his daughter (being heire to the tailie) and her husband brought a Formedon, and, pending the plea, the Proclamations passe, and 'twas agreed by the Court, that the tenant shall plead the Fine, and the Proclamations which passe pending the Writ, & shall barre the demandant, yet, there the issue did all that might be done; for the conveyance is the Fine, and the Proclamations are but a short repetition of the Fine; out of this, foure things are to be observed. 1. Though after the Fine, a right descends to the issue, yet, after Proclamations, the right is barred. 2. Though he pursues a Formedon, yet after Proclamations, he is barred; ergo, in the principall case he is barred, notwithstanding his entry or clame in pry. 3. When tenant in tailie levies a Fine, and dyes, before Proclamations, the issue is not within any of the savings, for then the bringing of a Formedon should avoys the barre. 4. The Proclamations serve for no purpose, but to distinguish the Fine, from a Fine at the common Law. Trin. 4. of the Queene Benidlowes tenant in tailie, disfues the discontinue, and levied a Fine, and tooke an estate by render, the discontinue enters, and claimes, before all the proclamations passe, and avoids the estate, after the proclamations passe, tenant in tailie continues his possession, and dyes within the yeare, after the entry and clame. Resolved, that the issue was not Remitted, but barred by 32. H. 8. Though the estate was avoyded, before all the Proclamations passe.

Resolved, though the issue be beyond the Sea, yet, because he is privy, &c. he is bound, as if he he were within age, covert, or non compar. Which was agreed by all the Justices: Ergo, the clame of the issue is not material, and if Infancy, &c. should avoyde the Fine, no man should be assured of land conveyed.

THE
The Fourth Book.

Vernon Case. 14. & 15. of the Queen. fo. 1.

In dower, the tenant shews that the husband made a feoffement of other land, to the use of himselfe for life, and after to the use of the demandant for life, &c. and averres, that the said estate was for her joynture, &c. and that the demandant hath entered, &c. and agreed to the estate; the demandant shews that the estate was upon condition, for to performe the will of the husband, and that divers things were to be performed in it, judgement if the tenant shall be admitted, &c.

Resolved, that at Common Law, a right or title to a freehold, cannot be barred by acceptance of a collateral satisfaction, or recom pense. As if a disseisor of the manor of P. gives to the disseisor the manor of S. in satisfaction of all his right, &c. And therefore is laid in our Bookes, that an accord with satisfaction is a good plea in a personal action, where damages are to be recovered, not in a reall; and therefore no barre in dower; but dower ad ostium Ecclesiae, or ex ossibus patris, concludes her, if she enters after, &c. for the Law allowes them, &c. to be Dowers in Law. Before 27. most lands were in use; and because wives were not dowable of the use, estates were made by the feoffees, to the husband and his wife, before, or after
after the marriage for life, &c. for a competent provision for the wife; then 27. transferred the possession to the use, and if further provision had not been the wives should have their dowers and jointure also; and therefore those branches were made in the same Statute of 27.

Resolved, that the Feoffement to the use of himself for life, the remainder to his wife for life, for the jointure of the wife, is within 27. for though the five estates onely are expressed. 1. To the husband and wife, and the heires of the husband. 2. &c. to the heires of their two bodies. 3. Of the body of one of them. 4. For their lives. 5. To the husband and wife for life of the wife, yet, many other estates are within the Act, for these are put for example, not to exclude others: But resolved, that no estate is a jointure, except it takes beginning presently after the death of the husband; for so, are all the examples and therefore to himselfe for life, the remainder to himselfe for life, the remainder to his wife, &c. is not within the Statute, &c. And therefore though the wife enter and takes the profits, she shall have Dower. An estate to one and his wife, and the heires male of their two bodies, adjudged a good jointure, yet none of the five estates mentioned; an estate made to a woman for life, before marriage, adjudged a good jointure.

Resolved, though the estate here were upon condition, and though Dower (in place of which the jointure comes) were absolute, yet because an estate for life upon condition, is an estate for life, 'tis within in the words, and the intent of the Act, if the wife accept it, &c.

Resolved, that a wife cannot waive a jointure made before the coverture, as she may a jointure made after; and this by the Proviso (if any woman hath lands, &c.
&c. assured after marriage for her life, &c. after death of the husband she hath liberty to refuse, &c.) and therefore the intent of the Statute was, that she should not refuse a joyniture made before, and land conveyed for part of her joyniture, or in satisfaction of part of her Dower, is no barre of any part, for the incertainty; for the Statute says, for the joyniture of the wives, and not for part of the joyniture.

Resolved, that though the estate of the wife be upon an express condition, for to performe the will, which imports a consideration of making the estate, yet, it may be avverted for joyniture, for the one consideration well stands with the other, and though it be not expressed in the Deed, yet it may be avverted; and the case is the stronger, because the averment is given by the words of the Act. And a Free simple to the wife, in satisfaction of her Dower, is a joyniture within the equity of 27. for the reasons aforesaid, as also because tis within the express words (for terme of life, or otherwise,) for all estates as beneficiall, or more, are within, by this word otherwise in joyniture; after judgement was given against the demandant.

A devise to a wife for life, in taille, &c. for her joyniture, is a good joyniture within 27. as tis resolved in Leake and Randalls case. Otherwise, where a man devises to his wife for life, &c. generally, this cannot be avverted to be for joyniture, and therefore no barre of Dower. 1. Because a devise imports a consideration in it selfe, and shall be taken as a benevolence. 2. All the will for land by 32. & 34. H. 8. ought to be in writing, and no averrement ought to be taken out of the will, which cannot be collected by the words within; an estate before marriage is within the equity of the Statute; so an estate by devise, which takes effect after the marriage dissolved is within 27.
T
enant by Homage, Fealty, and Escuage, and su

to Court twice a yeare; the Lord was seised

the Fealty only by the hands of the tenant. Reso

ved, that seisin of Fealty, was a seisin of all the fa

services; for when the tenant doth fealty, he takes

corporall oath, that he shall be faithfull and true

to the Lord, and shall beare him faith of the tenement

which he claimes to hold of him, and that he will

lawfully doe the customes and services, &c. An

though Homage be more honourable, and the more

humble service, that a Freeholder can doe to his

Lord, yet, Fealty is the more sacred service, for it

is done upon oath, not the other. And the words

( shall be faithfull, and true ) are also parcell of Ho

mage; and Seisin of any part of any service, is a Se

fin of the whole, and the Law, for this reason, so re

pects these services, that no distresse for them, shall

be excessive, and though distresse be so often, that the

tenant cannot manure his land, he shall not have an

Affife, as for rent, or other profits.

Resolved, that seisin of a superior service, is a seisin

of all inferior services incident to it, as a seisin of es

cuage, of homage and fealty, homage of fealty, rent

of fealty, where the Seigniory is by fealty, and rent.

Resolved that doing of homage, is a seisin of all serv

ces inferior and superior, because he takes upon him

his fealty to doe all services. Resolved, that seisin of ren

or suite, or of other annuall service, is seisin of escu

age, homage, fealty, ward, releife, heritor, service

for to cover the hall of the chiefe house of the

Mannor, for to impale the Parke of the Lord of

such casuall services, which perchance will not fall in

sixty yeares, but seisin of one annuall service is not

seisin
seisin of another annuall service, as rent, or suite nor of worke dayes, for 'tis the folly of the Lord, that he attained not seisin, and it should be mischeivos to the tenant, for perhaps in ancient time the worke dayes are discharged, which now cannot be shewne.

Note (Reader) all this is to be intended of a seisin in Law, for seisin of sealty here, is no actual seisin of homage, nor of suite, nor sealty of rent, but seisin of any part of a service, is an actual seisin of all to have an Assise. And as to make a vowry seisin in Law suffices; but for an Assise actual seisin is requisite; so in a Writ of right of Land. See the Booke at large, and there, where ancient seisin to an estate altered, or changed from one person to another, shall be sufficient where not.

Resolved, that seisin in Law was sufficient to make an avowry within the letter, and the intent of the Statute of 32. H. 8. for the intent was to limit a time, within which, seisin ought to be had, not to exclude any seisin, which was a lawfull seisin by the common Law, which appears by the Preamble. Also, the former acts of limitation as W. 1. ca. 38. W. 2. ca. 2. do not exclude a seisin sufficient at common Law. And the Statute faith (Actual possession, or seisin) which (Seisin) is either actual or in Law.

Resolved, that the act doth not extend to such a rent or service, which by common possibility cannot happen within fifty yeares, as homage, sealty; for the tenant may live beyond, or to cover the Hall, or to goe in Warre, so of a Formedon in Descender, for tenant in taile may live fifty yeares, after discontinuance, and though In facto he dyes, and the issue doth not pursue his Formedon, yet, he may have it at any time, and the seisin of the donee was not transferable, so of homage and other casuall services, though the Lord might have had seisin. So, if the Lord release to the
tenant, so long as I. S. hath heires of his body, though sixty yeares passe, yet he may distraine, for Impotentia, excusar legem, and there may be a tenure by homage, &c. and yet never done, as if the Land be conveyed to a Maior, &c. or other Corporation aggregate of many, they hold by fealty, yet they cannot doe it. A Writ of Escheate, Cessavit, Rescous, are not within the Act, for in them the seisin is not traversable, but the tenure, and in the Escheate and Cessavit, they demand the Land and can lay no seisin, and the Act extends only to those Writs where the demandant or his Ancestors might have had seisin. So, Note, Land shall escheate, though there be no seisin of the services, within the time of limitation, for the Seigniory remains, though seisin wants; so if the tenant cesse, and the Land be not overt, and sufficient to his distresse the Lord shall have a Cessavit though he wants seisin of the services. Resolved, if nothing be arrearage and the Lord distraines, the tenant may make rescous, or if he be so often distrained, that he cannot manure his Land, he may have an Affise, De soment distres; but for such tortious distras where nothing is arrearage, the tenant shall not have Trespassae, Vi & armis, against the Lord, for this is prohibited by the Statute of Marleb ca' 3. See the Booke at large in what case an incroachment of more rent by the Lord then he ought to have, shall be avoyded, in what not.

Resolved, that though a man hath beene out of possession of Land by sixty yeares, yet if his entry be not taken away, he may enter, and bring any possessory action of his owne possession, for the first clause doth not barre any right, but prohibits that none shall have a Writ of right, &c. of the possession of his ancestors, &c. but onely of a seisin within sixty yeares; the first and second clause extend onely to seisin ancestrell;
Lord Cromwell's Case.

The third to an action of his owne possession, not to entry, the fourth to avowry, the fifth to a Formedon, &c.

*Note (Reader)* out of this, that when the tenant hath done homage and fealty, which the Lord may enforce him to doe, this shall be a seisin of all other services, as to avowry, though the Lord nor thosse by whom he claims had seisin within sixty yeares.

Actions of Slander.

The Lord Cromwell's Case, 20th of the Queen, fo. 12.

The Lord Cromwell brought an Action *De Scandaliis magnatum*, against D.Viccar, Tam pro domina regina, quam pro seipso, upon the Statute of 2. R. 2. ca' 5. The Defendant said to the Plaintiff: *It is no marvell though you like not of me, for you like of those that maintaine sedition against the Queenes proceedings, the Defendant justifies specially, that he being Viccar of N. the Plaintiff procured I. T. and I. H. for to preach there, whom their Sermons inveyed against the Booke of common prayer, and affirmed it to be superstitious; upon which the Viccar inhibited them, for they had not license nor authority to preach, yet, they proceeded by the encouragement of the Plaintiff; & the Plaintiff said to the Defendant, Thou art a false Varlet I ke not of thee, to whom the Defendant said, It is no arvaile though you like not of me, for you like of those immuendo, the aforesaid I. T. and I. H. that main-taine sedition (Immuendo seditionem illam doctrinam) ains the Queenes proceedings.*

Resolved in this case, that the Statute aforesaid concerning the King, the Judges *ex officio*, ought to re notice of it, as they ought of all Statutes that concern him.
Resolved, that the justification is good, for in case of slander, the sense of the words is to be taken which may appear by the occasion of speech. *Sententiae verborum ex causa dicendi accipiendus est, et sermones sententiam accipiendi sunt secundum subjectam materiam.* And here the sense of the words appears, and his meaning in speaking them, and that he did not intend any publique or violent sedition, as the word of itself imports; and God defend, that the words of one be taken contrary to the manifest intent; as in an Act for calling the Plaintiff murderer, 'tis a good justification that the Plaintiff confessing that he had killed diverse Haires with Engines, the Defendant said, *Thou art a Murderer,* and the Defendant shall not be put to a general issue, when he confesses the words and shews that they are not actionable, as in maintenance the Defendant may justify lawfully, and whereupon the Plaintiff replied, that the Defendant, dixit, &c. Verba pradiet de injuria sua proprii absque tali causa, upon this they were at issue, and after agreed.

*Cutler and Dixons Case, 27. and 28. of the Queen's* 

*fo. 14.*

If one exhibite certaine Articles to a Justice of peace, against one, declaring divers great abuses and misdemeanours, &c. to the intent to bind him to the good behaviour, In this case the party accused shall not have any action upon the same, for it is in pursuite of ordinary justice, and if such actions were permitted, none would complaine for feare of infinite vexation.
Wood exhibited a Bill in the Starrechamber against Sir R. B. and charged him with divers matters examinable there, and with other matters not determinable there, as that he was a maintainer of Pyrates and Murtherers, and a procurer of Pyracies, upon which Sir R. B. brought this action, &c. Resolved that no action lyes for matter examinable there, though 'twas meerely false, because that 'twas in course of justice.

Resolved, that an action lyes for these words, not examinable there, for 'tis not done in course of Justice, and great inconvenience would follow, if matters may be inserted in Bills exhibited in so high and honourable a Court in Slauder of the parties, and they cannot answer there for their purgation, nor have their action for purging themselves of the crimes, and recover damages for the wrong, but that the said Bill shall remaine alwayes of record to their infamy, and here no murther or piracy can be punished upon any Bill exhibited in English, but he ought to have beene indicted, and therefore he hath not onely mistaken the Court, but also the nature of exhibiting the Bill, hath not appearance of any ordinarie course of justice, but no action lyes upon an appeale of murder, returnable in the Common Bench, for though the Writ is not returned before competent Judges, who may doe justice, yet 'tis in nature of a lawfull Suite,namely,by Writ of appeale,wherefore judgement was given for the Plaintiffe. And in a Writ of error in the Chequer Chamber brought by Wood, 'twas resolved that Sir R. B. might have had a good action, but here, because the action was not up-
Stanhop and Bliths Case.

on the Bill exhibited at Westminster, but because he said in the County of S. that his Bill was true, In auditum quam plurimum, without expressing the said matters in particular, so that it was not any Slander, judgement was reversed.

Stanhop and Bliths Case, 27. of the Queene, fo. 15.

After Stanhopp (who was a surveyor of the Duchy and had divers Offices and was a justice of peace) Hath but one Manor, and that he hath gotten by swearing, and forswearing. Resolved, that the action doth not lye, for they are too general and words which charge any one, in an action in which damages shall be recovered, ought to have convenient certainty; and he doth not charge the Plaintiff with swearing, &c. and he may recover a Manor by swearing, &c. yet not procuring or assenting to it. Resolved, if one charge another that he hath forsworne himselfe, no action lyes. First, because he may be forsworne in usuall communication, Quia benignior forfus in verbis generalibus seu dubiis eft praeferenda. Secondly, it is an usuall word of passion, and choller as also to call another a Villaine, a Rogue, or Varlet, these and such like will not mayntaine Action, Boni judicis interest, lites derimere. But if one say to another, that he is perjured, or that he hath forsworne himselfe in such a Court, &c. For these words an Action will lye.

Next Justice of Peace against Yeomans.
27. of the Queene. fo. 15.

For my ground in H. Hext seekes my life, and if I could finde one I. H. I do not doubt, but within two days, to arrest Hext for suspicion of felony. Adjudged, that no action
action lyes for the first words; 1. Because, he may seek his life lawfully upon just cause, and his land may be holden of him. 2. 'Tis too generally, and the Law inflicts no punishment for seeking of his life; but adjudged, that the action lyes for the last words; for, for suspicion of felony, he shall be imprisoned, and his life in question.

Birchleys case. 27. & 28. of the Queene. fo. 16.

The Defendant said to B. (Clerke of the Kings Bench, and sworne to deale dully without corruption,) you are well knowne to be a corrupt man; and to deale corruptly. Adjudged that the action lyes; 1. Because the words Ex causa dicendi, imply, that he hath dealt corruptly in his profession, Ex fermo relatis ad personam intelligi debet de conditione persona. 1. This touches the Plaintiff in his oath; 2. The words Scandalize him in the duty of his profession, by which he gets his living. Skinner of London said, that Manwood was a corrupt Judge; adjudged actionable. Resolved in this case, that if the precedent parlance had beene, that B. was a usurer, or executor of another, and would not performe the will, and upon this the Defendant had spoken the words following, no action would lye.

Weaver and Caridens case. 37. of the Queene. fo. 16.

A Adjudged, that no action lyes, for saying that the Plaintiff was detected for perjury in the Starre-chamber, for an honest man may be detected, but not convicted.
Stuckley and Bulheads Case. 44. and 45. of the Queene. fo. 16.

A Djudged, that an action lyes for saying, Master St. (he was a Justice of peace) covereth and bideth felonies, and is not worthy to be a Justice of peace; for this is against his oath and his office, and a good cause to put him out of Commission, and for that he may be indicted and fined.

Snagg and Gees case. 39. of the Queene. fo. 16.

Thou hast killed my wife, and art a traitor. Adjudged that the action will not lye, for the wife was in life, as appeared in the Declaration, and so the words vaine and no scandal, otherwise if shee had beene dead.

Eaton and Allens case. 40. of the Queene. fo. 16.

He is a brabler and a quarreller, for he gave his Champion counsell to make a Deed of gift of his goods to kill me, and then to fly out of the Country, but God preserved me. Resolved, that the action will not lye, for the purpose without act is not punishable, and though he may be punished for such conspiracy in the Star-chamber, yet, this is by the absolute power of the Court, not by ordinary course of Law. Observe well this case, and the cause and reason of this Judgement.

Anne Davies case. 35. of the Queene. fo. 16.

The Defendant said to B. (a Suitor to the Plaintife, and with whom there was neare an agreement of marriage) I know Davies daughter well, she did dwell in Cheapside.
Jeames Case.

Cheapside, and a Grocer did get her with childe; and the Plaintiff declared, that by reason thereof, the said B. refused to take her to wife.

Resolved, the action lies, for a woman is punishable for a Bastard by 18. of the Queene, ca. 3. And though that fornication, &c. is not examinable by our Law, because done in secret, and uncomely openly to be examined, yet the having a Bastard is apparent, and examinable by the said Act.

Resolved, if the Plaintiff had been charged with nude incontinency only, the action lies, for the ground of the action is temporal, viz. the defeating of her advancement in marriage. By Popham an action lies, for saying that a woman, Inholder, had a great infectious disease, by which shee loses her guests. Banister and Banisters case. 25. of the Queene. Resolved, that an action lies, for saying to the sonne and heire, that he was a Bastard, for this tends to his dis-inherison; but resolved, if the Defendant pretend that the Plaintiff is a Bastard, and he himselfe right heire, no action lies; and this the Defendant may shew by way of barre.

Jeames case. 41. & 42. of the Queene. fol. 17.

The Defendant said to B. Hang him (inmundo pra- dii. &c.) he is full of the pox (inmundo the French pox.) &c. Resolved, two things are requisite to have an action for flander. 1. That the person scandalized be certaine. 2. That the scandall be apparent by the words themselves. And therefore if a man says, that one of the servants of B. is a notorious felon or traytor, an action lies not (if he have more servants) and (inmundo) cannot make it certain. So, I know one neare about B. that is a notorious thifte. But if two speake of B. and the one says, he is a notorious thifte, an action lies,
lyes, and B. may reduce this to a certainty by (innuendo praedicit. B.) for the office of an (innuendo) is for to describe the person that was named in certain before, and in effect, stands in place of (praed.) but (innuendo) cannot make that certaine, which was uncertain before, and subject to a deceivable conjecture. But if one says to B. Thou art a traitor, an action lyes, for constas de persona. So here, when two speake of the Plaintiff, and one says, Hang him, there (innuendo) will denote the person, but (innuendo) cannot extend for to make the intent to be the French pox, by imagination, which is not apparent by the precedent words; and the words themselves shall be taken in miator sensu.

Oxford and his wife against Crosse. 41. of the Queene. fo. 18.

The Plaintiffes brought an action in London, for calling the wife of the plaintiffe whore; the defendant removed this out of London by habeas corpus, a Procedendo was prayed; because the action was maintainable in London, though not at common Law; denied by the Court, for such custome to maintaine an action for brabling words, is against Law.

Sir G. Gerrard Master of the Rolls against Mary Dickinson. 32. & 33. of the Queene. fo. 18.

The Plaintiffe counts that he was in communication with R. E. for to demise to him the Mannor, &c. The Defendant said (Pramissorum non ignara) I have a lease of 90 yeares of the Mannor, and then shewed and published a Demise made by the Lord Audley, grandfather of the Lord A from whom the plaintiffe claimes, where in truth the defendant knew this to be
be counterfeit, by reason of which, &c. R. E. did not proceed, &c. The Defendant pleaded, Quad taliis Indentura (qualis in the count) came to his hands by trover, and traversed, that he knew of the forgery.

Resolved, if the defendant affirme and publish that the plaintiff had not right, but that she her selfe had, no action lyes, though she hath no right, because she pretends title, for if an action should lye, how could any one claim, or sue, or seeke counsel for any land? Batifters case before resolved according, and therefore was here resolved, that no action lyes for saying, I have a Lease, &c. though it be false. And though it appears by the barre, that she had not title, but is a Stranger, yet, because the matter in the count doth not maintaine the action, the barre shall not make it good.

Resolved, that there was other matter in the count sufficient to maintaine the action, viz. that the Defendant knew of the communication, and that the Lease was forged, and yet published it, by which, the Plaintiff lost his bargain.

Resolved, that the barre was insufficient, for the knowing of the Defendant of forgery, is not traversable; as in an action, for that the Dogge of the Defendant had bit the beast of the Plaintiff, Ipsa scientia causam ad mordendas oves confession. (Scientia) is not traversable, but it ought to be proved upon the general issue, for (scientia) is not a direct allegation, nor alleged in any place. And taliis Indentura, qualis, is no direct answer to the Indenture mentioned in the count, for taliis non est eadem, and no simile est idem.

Barbams case. 44. & 45. of the Queene, fo. 20.

M After Barham did burne my barne (inmundo a barne with corn) with his own hands; and none but he. Moved
Moved in arrest of judgement that the words were not actionable, for 'tis not felony to burne a barne, if it be not parcell of a mansion house, or full of corne; and in such case agitur civaliter, not criminaliter, & verba accipienda sunt in mitiori sensu. And the (innuendo) will not serve, when the words are not slanderous.

Britteridges case. 44. & 45. of the Queene. fo. 19.

B. Is a perjured old knave, and that is to be proved by a stake parting the land of A. and B. Resolved, that the action lyes for the first words. And adjective words will maintain an action, when they presume an act committed (as here) or when they scandalize a man in his office, or function, or trade, by which he acquires his living. Philips, Batchelor of Divinity, brought an action against B. for saying; Thou hast made a seditious Sermon, and moved the people to sedition this day; adjudged the action lyes, because, though the first part of the words were meerely adjective, they scandalized him in his function. So, if a man says to a Merchant, that he is a bankruptly knave, or a bankrupt knave, as 'twas adjudged in Mittons case; or that he will be a bankrupt within two dayes; but an action lyes not when these adjective words import not an act done, but an inclination, which doth not scandal him in his function, &c.

Resolved, in the case at barre, that upon all the words together, no action lyes, for the last words explain his intent to be, of no judiciall perjury. And 'tis not possible that a stake can prove a man perjured; as it hath been adjudged; Thou art a theife, for thou hast stolen my apples out of my Orchard; or robbed my hop-ground. Dobbins and Franklins case. 43. & 44. of the Queene. But if the counsell of the Plaintiffte had disclosed the truth of the case in the count, an action would.
would lye, for in truth, there was a controversie betwixt two, whether the sike stood upon the land of the one, or the other, or as an indifferent boundary, and the Plaintiff was deposed in an action for this, as a witness; and by the pretence of the Defendant, had perjured himselfe in his Deposition.

Palmer and Thorpes case. 25. of the Queene. fo. 20. touching defamations in the Ecclesiasticall Court.

Resolved, that such defamation ought to have three incidents. 1. That the matter be meerely spirituall and determinable in the Ecclesiasticall Court, as for calling Heretique, Schismatique, adwovterer, fornicator. 2. It ought to concerne matter meerely spirituall only, for if it concerne any thing determinable at common Law, the Ecclesiasticall Judge shall not have confusance of it. See for this 22. E. 4. 20. the Abbot of St. Albas case. 3. Though the thing be meerely spirituall, yet he which is defamed cannot sue there for amends, or damages, but the suiteth there ought to be onely for punishment of the offender, Pro salute anima. For this, see Articulis cleri, de circumfallis againis, and Fitz. 51. 52. 53. But the Plaintiff shall recover costs there, and there if the Defendant, to redeeme his penance, agree to pay a certaine summe, the party may sue for this there, and no Prohibition liyes.

Copy-hold Cases.

Brownes case. 23. & 24. of the Queene. fo. 21.

Copy-holder in sey, by licence, leases for yeares, and dyes, the eldest Sonne dyes before admittance,
tance, adjudged that the daughter of the intire blood shall have it, not the younger some. Resolved, though a Copy-holder, in judgement of Law, hath but an estate at will, yet, custome hath so established and fixed his estate, that by the custome of the Mannor 'tis descendent to his heirs, and is not meerely ad voluntatem Domini, but, &c. secundum consuetudinem maneriis; so the custome is the soule and life of Copy-holds. See the booke at large, of what antiquity Copy-holds are, and some generall learning concerning them.

Resolved, when custome hath created such inheritances, the Law shall direct the descent according to the Maximes and rules of the common Law, as incident to every estate descendable. When usages have gained a reputation of inheritances, the Law directed the descent, and of them there shall be a possesio fratris. But resolved, that such customary inheritances shall not have any collateral qualities, which do not concerne descent of inheritance, which other inheritances have; and therefore they shall not be afferes to the heire, upon an obligation, nor there shall not be Dower, nor tenancy by the Curtesy, nor a descent shall toll entry, &c. For, as without custome, they cannot descend, so without custome, they cannot have a collateral quality; for Copy-holders have inheritances secundum quid, viz. to descend to the heires, and not to be determined by the will of the Lord, nor simplicitier, to a collateral quality.

Resolved, that the heire, before admittance, may take the profits, and may surrender to the use of another, before admittance; but this shall not prejudice the Lord for his Fine upon the descent, and he is a tenant by Copy of Court-roll, for the roll made to his ancestor belongs to him, and admittance of tenant for life shall serve for the remainder, yet, it shall not prejudice the Lord for his Fine. And though 'twas
'twas objected, that every admittance amounts to a grant, and so may be pleaded, and therefore nothing velts before admittance, yet, 'twas resolved, that, as after admittance, the heire may in pleading alledge this as a grant, and this to avoyde inconveniences (for if he should be compelled to shew the first grant, it was before time of memory, and so not pleadable, or if within memory, then the custome failes) yet, he may alledge the admittance of his auncestor, as a grant, and shew the descent to him, and that he entered, and this without admittance, but he cannot plead, that his Father was seised, &c. by Copy, &c. and dyed seised, and that this descended, &c. For in truth, 'tis but a particular estate at will in judgement of Law, though descendable by custome.

Ryvets Case. 24. of the Queene. fo. 22.

A greed, that a husband shall not be tenant by the curtesie of a Copy-hold, without speciall custome.

Deale and Rigdens case. 36. of the Queene. fo. 23.

A judged, that if a recovery be in plaint, in nature of a real action, against tenant in taile (admitting Copy-hold may be intailed) that this is a discontinuance, for, in as much as plaints are warranted by custome, 'tis incident, that it should make a discontinuance. The like judgement was between Clun and Peafe.

Bullock and Dibleys case. 35. of the Queene. fo. 23.

Resolved, that a surrender by the husband is no discontinuance to the wife, nor her heires. And if a
Gravenor and Teds Case.

Copy-holder for life surrender to the use of another in fee, this is no forfeiture, for it doth not pass by livery. And Copy-holders have not such quality, without speciall custome; so also adjudged in severall cases.

Gravenor and Teds case. 35. of the Queene. fo. 23.

Resolved, that the descent of a Copyhold, doth not toll entry; and that where the custome was, that he may grant in fee simple, that he may, by the same custome, grant to a man and the heires of his body; for be it a fee simple conditionall, or a tailé, 'tis within the custome, so, of a grant for life, or yeares, for fee simple includes them.

Fitch and Huckeys case. 36. of the Queene. fo. 23.

Resolved, that admittance of a Copyholder for life, is an admittance of him in remainder, but not to prejudice the Lord for his Fine. And that upon a surrender, to the use of himselfe for life, and after to the use of his last will, that the fee remains in the Copyholder, not in the Lord.

Clarke and Pennifathers case. 26. of the Queene. fo. 23.

Resolved, that the heire of a Copyholder may enter, and have trespas, before admission, and if the heire (as the principall case was) dye before admission, his heire may take the profits, and have trespass. And Wray said, that 'twas adjudged, that there shal be possessio fratis of it. Resolved, that where H. 8. granted a Mannor to the Queene for life, that the Queene was a sole person exempted by common law, and may make a lease or grant, without the King, and may
Clarke and Pennifathers Case. 115

may plead, and be impleaded: and that 32. H. 8. is but a declaration of the common Law.

Adjudged, that a grant of a Copyhold in fee, escheated to her, by the Queene tenant for life, bindes the King, his heires and successors, for she was domina pro tempore, and the custome of the Mannor bindes the King. And that every one, who hath a lawfull interest in a Mannor, &c. though but at will, may grant Copyholds escheated, &c. rendring the auncient rent, customes, and services, and this shall binde the Lord, for, he is dominus pro tempore. For, a Copyholder derives not his interest out of the estate of the Lord onely, but out of the custome, and the grantee is in by that, without regard to the estate or person of the grantor; and therefore such a grant by the husband shall binde the wife; so, of Infants, non compos mentis, Bishop, Prebend, Parson, shall binde for ever, for the custome is, that the tenements are parcell of the Mannor, and demised, and demisable, &c. But the Lord must have a lawfull estate; for, if a disseisor, or Feoffee of a disseisor, &c. makes such grants, this shall not binde him that hath right, after a recontinuance of the Mannor; but admittances by such upon a surrender, or of the heire shall binde, &c. for they are lawfull, & quodam modo judicall acts, which to doe, he may be compelled in a Court of equity.

P. 26. of the Queene. fo. 24.

A Djudged, if a Lord takes wife, and a Copyholder for life (according to the custome) dies, and the Lord regrants for lives, and dyes, that the wife, in Dower, shall not avoyde these grants, for though the grant were after the title of Dower, yet, the custome was before. If a Feoffee upon condition, makes a voluntary grant, the condition is broken, the Feoffor reenters, the grant shall stand.
A Judged, that if tenant pur auer vie of a Mannor, after the death of cestwy que vie, continues in, and holds Courts, and makes voluntary grants, this shall not binde the lessor (otherwise of admittances upon surrenders, or descendens) for he was tenant at suffrance, who hath no lawfull interest, and a Writ of entry ad terminum qui prateriit lies against him, and so he is a deforceor.

Murrell and Smiths case. 33. and 34. of the Queene. fo. 24.

The Queene grants a Copyhold in fee, and after grants the inheritance of the Copyhold to a stranger; the Copyholder devises to M. and after surrenders to the use of his will. Resolved, that custome hath so established the estate of a Copyholder, that by severance of the inheritance of the Copyhold, from the Mannor, the Copyhold is not destroyed, for, being the Lord himselfe could not ouste the Copyholder, no more can another claiming in by him. Objected that every Copyhold ought to be parcell of the Mannor; and to be demisfe, or demisable, time out of memory. Resolved, that because once this had both the incidents aforesaid, and its perfection, the severance made by the Lord, shall not destroy it.

Resolved, that notwithstanding the surrender, and devise, the Copyhold descended to the heire, for after the severance of the inheritance, from the Mannor, the surrender was utterly void, for, the land was not parcell of the Mannor at the time, and the devise onely cannot transferre such a customary estate, but it ought to be by surrender into the hands of the lord, &c.
Refolved, that after severance, the Copyholder shall pay his rent to the Feoffee, and shall pay, and do other services which are due, without admittance or holding of a Court, as to plough the demeanes of the Lord, Heriot, &c. but suite of Court, and Fine upon alienation or admittance, are gone, for now the land cannot be aliened, for, though the Copyholder hath some benefit by the severance, as appeares before, so he hath great prejudice, for now he cannot surrender, or alien his estate, nor the Feoffee cannot make an admittance, for he is not dominus pro tempore.

Refolved, that such forfeitures remain, as were before the severance, as Feoffement, Leafe, waft, denier of rent; So, if the land were of the nature of Borough English, or Gavelkind, and other customes which run with the land remaine. And 'twas said that such Copyholder hath no other means to alien, but by Decree in Chancery against him and his heires, but, by this the interest of the land is not bound, but the person onely.

Copyholder in fee surrenders out of Court, by the custome, to the hands of certaine Copyhold tenants, to the use of another and his heires, upon certaine condition, at the next Court, the surrender was presented, but the condition omitted, he, to whose use, &c. dies, the Lord admits his heire, he that made the surrender releases to the heire being in possession, and after enters.

Refolved, that the presentment of the surrender was voyde, for that the condition was omitted, for the surrender that the Copyholder made, was not presented, but if the surrender & the condition had been presented, and the Steward in entering of it, omits the condition,
condition, upon sufficient prooe of it, the surrender shall not be avoyded, but the roll amended, for the roll doth not conclude the party for to plead, or give in evidence the truth of the matter.

Resolved, if a Copyholder be ousted by wrong, a releafe by him to the dislesior,doth not transferre his right, because, he hath not any customary estate, upon which the release of the customary right may inure; and this should be prejudiciall to the Lord, for, by this, he shall lose his Fine and services; but a release made to him which is admitted by the Lord, and in possession, is good; and a release of a customary right may inure to him, and the Lord not prejudiced, and the release shall inure by way of extinguishment. And Littleton speaks of an alienation by surrender onely, which ought to be into the hands of the Lord; but a release cannot be done to the Lord, and Littleton says, He which claimes a Copihold by surrender, hath no other evidence, but he which claimes an extinguishment of a right, may have it by release, by Deed; and 'tis no perill to purchasers, for if the Copiholder in possession fells it, he will shew the release, and he which is out of possession cannot sell, till he hath regained the possession, by caveat emptor. By Wray, if he which hath a pretensed title, &c. to a Copihold, bargaines, &c. this is within 32. H. 8. for the Statute says (any right or title) and great part of the land within the Realme is in Copy, and therefore the intention was to include them, to avoyde maintenance and champerty.


Resolved, that the lessee of a copiholder for a yeare, shall maintaine an Ei'. Firmae, for his terme being warranted by Law, by force of the generall custome of
of the Realme, 'tis reason that he should have remedy by Ej. Firma. And this is a speedy course against a Stranger. Resolved, that the Copiholds are not destroyed, by severance of the inheritance of them from the Mannor, but remaine in force. So Murrels case before adjudged.

Resolved, that when the Lord of a Mannor having many ancient Copiholds in a Towne, grants the inheritance of all the Copiholds, the grantee may hold a Court for the customary tenants, and accept surrenders, and make admittances, and grants; for every Mannor which consists of Freeholders, and Copiholders, comprehends in effect two several Courts, the one, the Court Baron, for Freeholders, and in this, the Suitsors, vix. the Freeholders are Judges, and the other Court for the Copiholders, and in this, the Steward, or the Lord himselfe is Judge; and though this is not a Mannor in Law, because it wants Freeholders, yet, the grantee, may hold such Court, as aforesaid, for Copiholders only, as the grantor himselfe might. So, if all the Freeholds escheate, or the Lord releases the tenure, and services, yet, he may hold a customary Court for the Copiholds. Note (Reader) though the Lord, by his own act, cannot make, of one and the same Mannor at common Law, divers several Mannors, consisting of Demeanes and Freeholders, yet, he may make a customary Mannor of Copiholders.

Resolved, that the Lord himselfe may make a grant, or admittance, of a Copiholder, out of the Mannor; at what place he pleases; but, if the Steward, at any Court, holden out of the Mannor shall make grants, or admittances, they are void.

I 4 Neales
Neales Case. 37. of the Queene. fo. 26.

A Djudged, that where the Lord of a Mannor demises all his lands, granted by Copy, for two thousand yeares, that the leesee may hold Courts for Copiholders (as Melwiches case is before) and 'twas said so to be resolved in C. Hatton's case. Note (Reader) a good diversiy, where the number of the Copiholders may support the custome, and a singular case of a Copiholder (as in Murrells case before) in which case, the Lord doth not grant tacitly any customary Court.

Clifston and Molineux case. 27. Or 28. of the Queene. fo. 27.

Resolved, if a Steward hold Court out of the Manner, all grants and admittances there made, are void, for, the Court ought to be holden within the Mannor, not out of the jurisdiction of it (as Melwich case is before) but, resolved that by custome, the Court may be holden out of the Mannor, and grants, &c. shall be good, as Abbots, &c. used for to hold Courts at one Mannor, for divers severall Mannors. Resolved, that if a woman Copiholder for life, takes husband, who commits wast, and dyes, the Copihold is forfeited, otherwise, if a stranger does wast, without the assent of the husband.

Taverner and Cromwells Case, 26 of the Queene, fo. 27.

Resolved, if a copiholder, seised of three severall copiholds, of three severall acres, makes wast in part of one, &c. all that is forfeited, but not the others, for though they are all in one hand, yet every one is severally holden, and a severall condition in Law.
Law annexed, and the several conditions follow the several tenures. So, resolved, if the copyholder surrender them to the use of A. and the Lord admits A. Tenendum per antiqua servitutė inde prīus debita & de jure confueta; and A. makes a forfeiture in one, he shall forfeite that onely, for, the Tenendum (redendo singula singulis) continues the several tenures, so that 'tis not materiall, if the copiholds are in one, or several copies. So if diverse several copiholds escheate to the Lord, & he grants them Tenendum per antiqua servitutė, they shall be severally holden as they were before, though he grants them to one man.

Resolved, that when he to whose use a surrender is made, is admitted, he is in by him that surrendered, and in a plaint in the nature of an entry in the Per, shall be supposed in by him, for the Lord is but an instrument to make the admittance, and his charge shall not bind him that is admitted. So (Reader) where before 'tis said, that by the forfeiture of the Husband, all the estate of the Wife shall be forfeited, 'tis to be intended, all the copihold under the same tenures.

Hubbard and Hamonds Cases, 42. and 43. of the Queene. fo. 27.

Resolved, that if the fines of copiholders upon admittances, be incertaine, the Lord cannot exact excessive and unreasonable fines, if he does, the copiholder may deny to pay it, without forfeiture, and it shall be determined before the Judges, upon a Demurrer, or evidence upon prooffe of the value of the Land what fine was reasonable to be demanded; for if it should be otherwise, great part of the Copy-holds should be destroyed at the will of the Lord, and so was Hodefons Case adjudged.

Resolved, if the Lord assesse a reasonable fine, and
require the Copy-holder to pay it, he is not bound to pay it presently, because he could not know what the Lord would assesse, or nemo tenetur divisare, and he shall have a convenient time to pay it, if the Lord limits no time, otherwise of a fine certaine.

Resolved, if a Copy-holder hath several Copy-holds, by several services, the Lord ought to assesse and demand fines severally for every parcel, and the tenant may refuse to pay his fine for one, and forfeit that only, and every several tenure hath several conditions in law tacitely annexed to it. So, if all the several Copy-holds are surrendered to the use of another, and the Lord admits him, Tenendum per antiqua servitut, &c. the tenures are several and fines several. Taverners cae. before. Resolved, that no fine is due to the Lord till admittance, for admittance is the cause of the fine, and if after the tenant deny to pay it, 'tis a forfeiture. Bacon and Flatmans Case, and Sands Case so resolved.

Westwick and Wyers Case, 43- of the Queene, fo. 28.

A Woman Copy-holder in Fee, surners to the use of W. her Sonne in fee, and at the next Court, the entry was, Ad banc curiam venit, W. and I uxor ejus, &c. W. dyed, I. his Wife survived, and surrendered to the use of I. S. in fee. Resolved when the Lord hath the Copy-hold by surrender, to the use of another, he hath but a customary power, to make admittance, Secundum formam & effectum sursum redditionis; and 'tis not like to the Feco fee at common Law, and though the Lord grant this by Copy to another, 'tis without warrant, and notwithstanding he might make an admittance, according to the surrender, and he which is admitted shall be in by him that surrendered (as Taverners Case
Bunting & Lepingwells Case

Case is before) and the Court agreed, if the Lord grant to Ce\tuy que use, and a stranger, all shall inure to Ce\tuy que use, or if he admits him upon condition, the condition is void. As Executors agree that the legatory and I. S. shall have, &c. or, that the legatory shall have upon condition, the legatory shall have onely and absolutely, for, after the assent of the Executors, he is in by the Devisee. And 'twas said, that 'twas adjudg'd in Bunting's Case, that where the Lord admits one to hold to him and his Heires, (where the surrender was for life onely) that he hath but for life. Resolved that without speciall cu\stome, or other speciall matter, the admittance shall inure onely to the Husband; and judgement was given according.

Bumang and Lepingwells Case, 27. and 28. of the Queene. fo. 29.

Resolved, that though T. who was Husband of the Wife, De facto, was not party to the Libell (for I. S. Libelled against the Wife, without naming her Husband, for a divorcse, upon a precontract betwixt him and the Wife) nor the sentence in the Spirituall Court, which dissolved the Marriage betwixt him and his Wife, yet the sentence against the Wife onely, being but declaratory shall binde the Husband De facto, and for that the conuance of the right of Marriages belongs to the Spirituall Court, and they have given sentence in it, the Judges of the common Law, (though it be against the reason of the Law) shall give faith and credence to their proceedings and sentences, as consonant to the Law of holy Church; for, Quilibet in sua arte perito est credendum. So, 'twas adjudg'd that the Plaintiffe (borne in the second Marriage) was legitimate.

Re-
Resolved, when a Copyholder surrenders to the Lord, to the use of his Wife and his younger Sonne, without limiting any estate, they have for life onely, for, as well estates as tents, shall be directed by the rules of Law, as necessary consequents upon the custom, except there be a speciall custome within the Mannor, that Sibi, & suis, or Sibi, & assignatis, may create an estate of inheritance. And 'twas observ'd, that the Estates limited upon surrenders, are always annexed to the estates of him to whom the surrender is made, and always the surrender to the Lord is generally, without limitation of any estate. Resolved, that when the Lord admits Cestuy que use, for life, the reversion is in him that surrendered, not in the Lord, for he is but an instrument.

Resolved, that a man may surrender to the use of his Wife, though that Cestuy que use, is in by him that surrendered, 'twas because the Husband did not doe this immediately to the Wife, but by a second meanes, Viz. By surrender to the Lord, and by admittance of the Lord.

Resolved, that when B. surrendered out of Court, and before that 'twas presented in Court, he dyed, yet after, being presented according to the custome, 'tis good, otherwise, if it had not beene presented according; so, if the Tenants in whose hands, &c. dyed, yet if it be proved, 'tis good enough; so Quemions Case before, if Cestuy que use, dyed, dyed, before admittance, his Heires shall be admitted.

Downe and Hopkins Case, 36, of the Queene. fo. 29.

Resolved, that where the custome of a Mannor was, to grant Coppies for one, two, or three lives, that a grant to a Woman during her viduity, is within the custome, for 'tis an estate for life, but every grant for life
life is not Durante viduidate, issue was, whether the custome was, that the Wife of a Copy-holder after the death of the Husband, should have for life, and 'twas given in evidence, that she should have during her viduity, and adjudged that the evidence did not maintaine such custome, for 'tis a lesser estate then for life. But in the principall Case, 'tis a greater estate which is warranted by the custome, and therefore a lesser is within it (according to Graveners Case before) 'Twas said, that a Lord may retaine a Steward by word, to hold Courts, &c. as a Baylifes, and this retainer shall serve till he be discharged.

Harris and JAYES CASE, 41. of the Queene. fo. 30.

Resolved, that a Lord may retaine one to be Steward of his Mannor, and to hold Courts by word, as in the Case before. Resolved, that where a Copyholder escheates by attainder of felony of a Copy-holder of the Queene, that the Steward may grant it over, Ex officio, without speciall warrant, for the custome warrants the Steward to grant it, and this shall binde the Queene and her Heires, &c. But yet his duty is before to informe the Lord, Treasurer, Chancellor, or Barons of the Exchequer, or any of them, for his better direction.

Resolved, that the Auditor or Receiver of the Queene hath no power to retaine a Steward to hold courts, &c. But it behoves that the Steward (who makes such voluntary grants upon escheats, or forfeitures to be good) to have Letters Patents of the Stewardship of the same Mannor.

And 'twas said, that 'twas adjudged in the Lady Holcroft's Case, that where one was retained generally by word, to be Steward of a Mannor, and to hold Courts, that he may take surrenders of customary tenants out of Court.
Resolved, that a Woman shall not be indowed of Copy-hold without speciall custome, and that when a Woman is to be indowed by custome, she shall have all incidents to Dower, and shall recover damages by the Statute of Merion, because her Husband dyed seised, and therefore the recovery of damage of 50. l. in the Court of the Mannor, was allowed, though this exceeded 40. s.

Resolved, that no Action of Debt lyes for these damages at common Law, for upon such judgement no error or false judgement lyes, but the remedy is, in the Court of the Mannor, or Chancery. Fenner Justice, said, That he had seene a Record. 36. H. 8. where the Lord by Petition to him, had for certaine errors in the proceeding, reversed such a judgement, and upon this, the Defendant maintained an Audita quarela, to be restored to the damages recovered against him. See 14. H. 4. cited before in Brownes Case. And 7. E. 4. 29.

Hoe and Taylors Case, 37. of the Queene. fo. 30.

Resolved, that Underwood growing upon parcell of the Mannor, may by custome, be granted by Copy of Court roll; and 'tis a thing of perpetuity, to which a custome may extend, for after every cutting the underwood growes, Ex stipitis. So, 'twas resolved that Herbage, or any profit of any parcell of the Mannor may, by custome, be granted by Copy; and 'twas said, that a faire appendant to the Mannor of C. in S. is granted by Copy, and this explains the reason of the first pillar in Murrels Case.
Resolved, if the Lord Lease for yeares, life, or make any other estate, by deed, or without deed, of Copy-hold Land forfeited, escheated, &c. to him, that this Land can never be granted againe by Copy, for the custome is destroyed, for during these estates, the Land was not demised, nor demisable by Coppy. So, if the Lord make a feoffment, and enter for condition broken; but if the Lord keepe it in his hands a long time, or leaves it at will, he, his heires or assignes, may regrant it. So, if the interruption be tortious, as by disseisin, and discretion, false verdict or erroneous judgement: for, Non valet impedimentum, quod de jure non sortitur effeclum. & quod contra legem sit, pro infeclito habetur. But if it be extended upon a statute, or recognizance acknowledged by the Lord, or if the Wife of the Lord hath this Land assigned to her in Dower, though these impediments are by act in Law, yet for that the interruptions are lawfull, the Land cannot be after granted by Copy. If a Copy-holder accept a Lease for yeares of the Lord, of his Copy-hold, 'tis destroyed for ever. If a Copy-holder take a Lease for yeares of the Mannor, his Copy-hold hath not continuance, Hides Case adjudged, 17. of the Queene. But there 'twas resolved, that such Lessee might regrant the Copy to whom he would, for the Land was always demised or demisable. If a Copy-hold be surrendered to the Lessee, his Executors or assignes may regrant it. If a Copy-hold escheate to the Lord, his alienace by fine, feoffment, &c. may regrant it.

Poistor
A Djudged, that where a Copy-holder in pleading alledged, Quod infra Man.prad talis habebur nec non a to to tempore cujus, &c. habebatur consuetudo, Viz. quod qui-libe t'inentes pradiorum tenement. vocat. C. have used to have common, in such a place parcell of the Mannor, and that he is a Copy-holder of the said Tenement, that this custome, as well for the matter as the forme, was good; for the Copy-holder cannot prescribe in his owne name, for the exility and basenes of his estate, and if he had claimed common in the foile of another, he ought to prescribe in the name of the Lord, Viz. That the Lord, and all his ancestors, and all those whose estate, &c. have had common in such a place, for him, and his Tenants at will; but when he claimes this in the foile of the Lord, he cannot prescribe in the name of the Lord, for the Lord cannot prescribe to have common, &c. in his owne foile, and therefore he ought to alledge, that within the Mannor there is such a custome.

Note, a good diversity between a prescription which is personall, and always made in the name of a certaine person, or his auncestors, or those whose estate, &c. and a custome which is locall and alledged in no person, but that within the Mannor, there is such a custome, this shall serve for those who cannot prescribe in their owne name, nor in the name of any person certaine, as the Inhabitants of a Towne. Also, the allegation of a custome, shall serve, when 'tis referred to a thing insensible, Viz. that all such Lands are devisable. And, for that in the principall case, the custome may have a lawfull commencement, that one copy-holder onely shall have common, etto-
vers, or other profit in the land of the Lord and that in many Mannors; some Copiholders have common in one waft of the Mannor, and others, in another severally, so that the custome cannot be applied to all, and because, that all the other Copiholds may be determined and extinct, 'twas adjudged, the custome was well alleged. So, to have common of estovers in the wood of his Lord parcel of the Mannor, &c. was adjudged good, 10 of the Queene, as 'twas said.


Queene Elizabeth by Letters Patents did grant the office of the Clerkship of the County Court of Somerset to Mytton, with all fees, &c. for life. Arthur Hopton Esquire, Sheriffe of the same Shire interrupted him, because it was incident to his office. Mytton complained to the Lords of the Councell, and it was referred to the two chiefe Justices, Wray and Anderson. And after many arguments concerning the validity of the grant, and conference had with all the other Justices. It was resolved by all the Justices, Nullo contradicente aut relutante, that the said Letters Patents were void: And their reasons were, that the office of the Sheriffe was an ancient office before the Conquest, and of great trust and authoritie for the King committeth unto him Custodium Comitatus; And though the King may determine the office ad beneplacitum, yet, he cannot determine this in part, as for one Towne, or Hundred, nor abridge him of any incident to his office; for the office is entire, and ought to continue so without any fraction, or diminution without by Parliament, and the County Court, and the entring of all proceedings therein, are incident to the Sherifles office, &c. And though 'twas granted when the
the office of the Sheriffe was void, yet, the new Sheriffe shall avoyde it; as Scroges case, in the time of vacation of the office of the Chief Justice of the Common Bench, Queene Mary granted the office of the Exigenter of London; resolved, that the next Chief Justice shall avoyd it, for 'twas incident to his office.

Also in all Writs directed to the Sheriffe concerning the County Court, the King says, in comitatuo tuo, and in retourne of exigents made by him, he says, ad comitatum meum tent. &c. and the style of the Court proves it, and by the Statute of 33. H. 8. the Sheriffe of Denbigh shall kepe his Shire Court at, &c. In a false judgement 'tis said, in pleno com' tuo recordari facias, &c. and in a precept of Tols, 'tis said, summoneas, &c. quod sit ad comitatum meum. And it should be very inconvenient, that another should have the custody of the entries, and Rolls of Court, which may be imbesilled, and the Sheriffe responsible for them. And it was resolved that the custody of all the Gaoles within every County belongs to the Sheriffe by right, and are annexed and incident by the Law to the Sherifles office, vid. Stat. An. 14°. E. 3. ca. 10.

Buzouns case. 26. & 27. of the Queene. fo. 34.

A. Portion of tythes in L. appertained to the Rectory of G. which was presentable; and the Queene was seised of the Rectory of L. jure corona, which was appropriated to the Monastery of W. and grants to B. ex gratia speciali, &c. totam illam portionem decimarum, &c. in L. &c. Cum omnibus alijv decimis suis quibuscumque in L. tune, vel nuper in occupatione J. C. and that the parents shall be of force non obstante aliquibus defectibus in non nominando, male recitando, &c. alijus occupatoris. And J. C. never had any tythes in L.

Resolved, that (in the occupation of J. C. refers to
to all the sentence, and not only to \( \text{cum omnibus alijs decimis, } \)\&c.\) 1. Because \( \text{illam } \) demonstrates fully, that there ought to be words subsequent, to explain and reduce in certainty what portion, by the intention of the Queene, should passe, viz. that which was in the occupation of J. C. and it is not satisfied till it be come to the full end of the sentence. 2. This conjunction \( \text{cum omnibus alijs, } \)\&c.\) couples the last words to the former, and makes the words subsequent to referre to all the sentence. 3. If all the tythes in L. of the said Rectorly shoule passe, the addition of the occupation of J. C. should be vaine, \&c. maledicta ex positio, \&c.

Resolved, that by grant of \( \text{portionem decimarum, } \)\&c.\) the tythes parcel of the Rectorly of L. doe not passe, for \( \text{portion } \) properly signifies a part or portion in grosse, divided, and not parcel of the Rectorly, and the Queene had not any portion in grosse, but all were parcel of the Rectorly; And \( \text{ex gratia speciali, } \)\&c.\) shall not extend by any strained construction, to make a thing passe, against the intention of the Queene expressed in her grant, and against the apt, proper, and usual signification of the words of his grant.

Resolved; that because J. C. had not any tythes there, nothing passe, for admit that a portion should be taken for a part, then the effect of the grant is, to-\( \text{tam illam portionem decimarum in occupacione J. C. and in } \)\text{ truth, he never had any part, nothing (without question) passes, in case of a common person, a fortiori, not in the case of the Queene. As to the point, when a clause of \text{Non obstante } shall make the grant of the Queene, good, when not.

Resolved, when the King by the common Law cannot in any manner make a grant, there a \text{Non obstante } of the common Law, will not make the grant good, against the reason of the common Law; as the King grants
Terringtons Case.

grants a protection in an Affmime, or Quare Impedit, notwithstanding any Law to the contrary, 'tis void, for protection lyes not in these cases, for the losse which may come to the parties, by such great delay. But when the King may lawfully make a grant, but the common Law requires, that he be so instructed, that he be not deceived, there a Non obstante supplies it, and makes the grant good. As the King having made a lease for life, or yeares, grants the land, Non obstante, that it be in lease for life, yeares, &c. or if he grants the land, and further grants the reversion of it, depending upon an estate for life, yeares, &c. 'tis good. See the booke at large.

Resolved, when the words are not sufficient, ex vi termini, to passe the thing granted; but the grant is void, there a Non obstante will not serve, as in the principall case; and the Pattents were not holpen by 18. of the Queene.ca'.2. for Pattents of concealment are expressly excepted out of the Act.

Terringtons case. 27. El. in banco regis. fo. 36.

Resolved, that prescription doth not make a thing appendant, except the thing which is appendant agree in quality and nature to the thing unto which it should be appendant, as a thing incorporate, as an advowson to a thing corporate, as a Manor, or as a thing corporate, as Lands, to a thing incorporate as an office; these may be appendant, but every thing incorporate may not be appendant to a thing corporate, as common of turbary may not be appendant to Land, but to a Messuage or house, as it is holden 5. afs 9. for the thing which is appendant ought to accord with the nature and quality of the thing to which it is appendant, and turves ought to be expended in a Messuage.
Terringtons Case.

The commencement of common appendant by the ancient Law, was in this manner, (viz.) When a Lord of a Mannor infeoffed another of arrable Lands, to hold of him in Soccaige, (id est) per servicium socie the Feoffice ad maintenan \' servicium socie had common in the wafts of the Lord for his necessary beasts that did ploue and ayre his Lands, and this common, is of common right, and commenceth by operation of the Law, and in favour of tillage, and therefore it needeth not to prescribe in that, for so it is houlden 4. H. 6. & 22. H. 6. as one ought if it were against common right. But it is onely appendant to the ancient arrable Lands, and onely for oxen, horses, kyne, and sheepe, &c. And because it is against the nature of common appendant to be appendant to meadowe or pasture, and because that there, the prescription was to have common time out of minde to a house, meadow, and pasture, as well as to arrable, by which it appeareth to the Court, that there hath been a house, meadow, and pasture, time out of minde, twas resolved that this common was appurtenant, not appendant. But if of latter times, men have builded upon some part of such arrable Lands, and some part thereof is imploied to meadow and pasture; and this for maintenance of tillage (the originall cause of common) the common remaines appendant, and it shall be intended in respect of the continuall usage of the common for beasts leavant and couchant upon such lands, that at the beginning all was arrable. But in pleading he ought to prescribe that the same is appendant to Land, for though terra dicitur a terrendo, via vomere territur, yet (terra) includes all, and is arrable, though converted to meadow, &c. For it may be plowed.

A man may prescribe to have common appendant to his Mannor, for all the deemeses shall be intended arrable;
Terringtons Case.

darrable; at least, in construction of Law (redd'. singula singulis) it shall be appendant to such demesnes which are ancient arrable, &c. And when a man claimes common appendant to his Mannor, no incongruity appeares of his own shewing, as here. So common may be appendant to a Carve of land, which may containe pasture, meadow, and wood, but it shall be applied to that, which agrees with the nature of the common.

Resolved, that common appendant may be apportioned, because 'tis of common right; for if a commoner purchase part of the Lands, in which he hath common, yet the common shall be apportioned, as well as if the Lord purchase parcel of the tenancy the rent shall be apportioned. And if A. a commoner enfeoffe B. of parcel of his ancient Lands, the common shall be apportioned, and B. shall have common pro rata. And 'twas agreed, that such common which is admeasurable, remains after severance of part of the land, to which, &c. But here, for that the common was appurtenant, 'twas adjudged, that by the purchase, all was extinct, for 'twas against common right; for, by the act of the parties, it cannot be in esse for part, and extinct for part.

'Twas said that pertinens is the Latine word, as well for appurtenant as appendant, and therefore subjecta materia, and the circumstances ought to direct the Court to adjudge the common, appurtenant, or appendant.

Resolved; that unity of possession of the intire land, to which, &c and of the intire land in which, &c. extinguishes the common appendant. By Wray, chiefe Justice, common for vicinage, is not appendant, but, for that it ought to be by prescription, 'tis resembled to common appendant, but common appurtenant, or in grosse, may commence at this day, by grant, or
Brookes Case.

prescription; and by him, the one may inclose common for vicinage, against the other: as hath been adjudged in Smith and Redmans case. Resolved, that a man may chafe out beasts that doe him trespass, with a small dog, and shall not be compelled to distraine them damage seafant.

Cases of Appeals and Indictments.

Brookes case. 28. of the Queene. fo. 39.

Resolved, that in an appeale of Burglary, 'twas an insufficient count that the defendant domum, &c. felonice & burgaliter fregit, for it ought to be burglarier, or burgulariter, which is vox aris, as murdravit, raquit, which cannot be otherwise expressed.

Resolved, if the count had been sufficient, he being convicted once should not be againe impeached; but here he was discharged upon the insufficient count. By Wray, Chiefse Justice, if, upon accident, a man and all his family are out of the house, and one, in the interim, breaks the house, and commits felony; 'tis burglary, for the indictment is, domum mansionem fregit; and so 'twas resolved, 38. of the Queene, where a man hath two mansion houses, &c servants in both, and in the night when the servants are out, &c. the house is broken, 'tis burglary.

Wetherell and Darly's case. 35. of the Queene. fo. 40.

In an appeale of murder, the Defendant was found guilty of homicide, and had his Clergy, after indicted and arraigned for murther, pleaded this conviction; Resolved, that 'tis a good barre at common Law, and restrained by no Statute; the reason is, be cause
cause the life of a man, shall not be brought twice in
question for the same offence.

Youngs case. 38. of the Queene. fo. 40.

AN Indictment that dedit unam plagam mortalem cir-
citer pejus, is insufficient, for 'tis incertaine whe-
ther it be in the necke, arme, or belly; and Indict-
ments ought to be certaine, and shew in what part
the wound is, and the profundity and latitude, that it
may appeare to the Court to be mortall, and one of
the wounds incertainly alledged, makes the whole
Indictment insufficient. 'Twas said, that the indici-
ment ought to have been, that if the party had not
dyed of the first stroke, that he dyed of the other,
and this is the common course.

Upon a suddeine affray, if the Constable or any of
his assistants in suppressing it, be killed, 'tis murder in
Law, though the murderer knew not the party killed,
for the Law adjudges it murder, and that he had ma-
lice prepense, for that he opposed him against justice.
So, in case of a Sheriffe, or any of his Bayliffs or Offi-
cers in execution of process; so, of a Watchman.

Walkers case. 41. of the Queene. fo. 41.

Resolved, that an indictment of murder (uppon which
the party was outlawed) that he stroke the dead
in sinistra parte ventris circa umbilicum, was good, for si-
nistra parte, was sufficient, and the other superfluous,
but in Youngs before, there was no certainty before the
circiter.

Heydens case. 28. of the Queene. fo. 41.

Exceptions to the indictment, 1. Because 'twas ta-
ken before B. Coronatore in Com', and doth no
not say, de com'. pred. Resolved, it shall be so taken by reasonable intendment, and the Writ de coronatore eligendo, is, quia A. B. nuper unus Coronator'. in Com'. tuo diem clausit, &c. and so 'tis taken in Willoughbyes case in Plodon. 2 because he doth not say, that E. S. (dead). fuit in pace Dei & reginae dominae: Resolved, that they are only words of forme, to amplifie the hainousnesse of the offence, not of substance, and perchance he was not in peace. 3. Because he doth not say, felonice nor ex malitia sua praecipitavit, &c. Resolved, that the word (et) couples the sentences together, so that these words (felonice & ex malitia, &c.) first spoken referres to all the subsequent words, &c. and tunc & ibidem makes it cleare. 4. The profundity of the wound is not shewne; Resolved, it cannot be here; for all the panne of the knee was cut off. 5. 'Tis said, tempore felonie præd'. & murdredi, where it should be murdri, Resolved, the first words were sufficient, and then murdredum being a word insensible is superfluous, and shal not hurt. 6. The wound was the fourth of August, the death the nineteenth of December, and the indictment is that T M &c. tempore felonie & murdredi præd'. viz. 4. Augusti felonice fuer'. presentes &c. auxiliantes, &c. 'Twas objected, that the death hath relation to the stroke; Resolved, that indicments have been often adjudged insufficent, when the stroke is one day, the death another, and the Jury conclude the death to be done the first day; But, here it ought to have been, that they were presentes &c. auxiliantes, &c. ad feloniam & murd'. præd'. and relation, which is a fiction, shall make no man a felon. And Wray said, that without question, the yeare of bringing the appeale, shall be accounted from the death, not from the stroke.
Hume against Ogle 32. & 33. of the Queen. fo. 42.

Adjudged, that the count (that the defendant gave the stroke the 27. of September at D. in the County of N. and that her husband of the same stroke at D. &c. dyed, and so the said defendant murdered him at D. aforesaid ) 'twas repugnant and insufficient, for, as it cannot be said, that he murdered him the first day (as Heydon case is before ) so neither at the place where the stroke was, but where he dyed.

Hudson and Lees case. 31. of the Queen. fo. 43.

In an appeale, H. counted that the defendant, &c. felonice maimed him in his left hand, the defendant pleaded, that before, &c. the plaintiff recovered in Trespas for the same battery and wounding 200 l. and satisfaction acknowledged. Resolved, that the barre is good, for where the plaintiff is to recover damage onely (as in this case of the appeale ) he shall not be twice satisfied, for the same thing, nemo debet bis puniri pro uno delito. And here the wounding in the first action includes the mayhem, & more, and the defendant hath averred that the wounding in the first action, and the mayhem here is one.

Syers case. 32. of the Queen. fo. 43.

Resolved, if the principall be pardoned, or hath his Clergy, the accessroy cannot be arraigned, for 'tis & Maxime, Ubi faciunt nullum, ibi foritia nulla, & ubi non est principalis, non potest esse accessorius, and none can be principall before it be so adjudged by Law, viz. by judgement upon verdict, or confession, or by Outlawry; and it suffices not, that in truth, he be principall;
pall; and the acceptance of pardon, or prayer of Clergy, is an argument, but no judgement in Law, that he is guilty. But, if the principall, after attainer, be pardoned, or hath his Clergy, the accessory shall be arraigned, for it appeares judicially that there was a principall.

Bibithec case. 39. of the Queene. fo. 43.

Resolved, that where the principall was found guilty of man-slaughter, and not guilty of murder, and had his Clergy, the accessory shall be discharged, for till judgement, it doth not appeare judicially, that there was a principall. So, if the principall, upon his arraignment, confesses the felony, & before judgement obtaines pardon, or hath Clergy. Resolved, that there cannot be an accessory before the fact, in man-slaughter, for 'tis upon a suddaine affray; and if pre-meditated, 'tis murder.

Vauxes case. 33. of the Queene. fo. 44.

Resolved, that where a man was indicted for poysoning another, persuading him that the potion mixt with Cantharides would cause him to have issue by his wife, the indictment ('necicius prae', potum cum veneno fore mixtum, sed idem adhibens prae', persuasiones dixit'. W. V. recept, et bibit') was insufficient, for 'tis not expressed that he received the poyson, for ('venenum prae') warns, and the words after ('immediata post receptionem veneni prae') are not sufficient to maintain an indictment, which ought to be certaine, and not by implication.

Resolved, that Vaux, who persuadeth, was a principall murderer, though he was not present at the receit of the poyson, and here he cannot be accessory, for
for there is no principall; and if any one had procured V. to doe it, he had been accessory before, which note, a speciall case, where principall and accessory both are absent at the time of the felony.

Resolved, that (auter foits acquite) here is no plea, for, he was discharged upon an arraignment upon this insufficient indictment, and the former acquittall, or conviction, ought to be lawfull, and the Maxime is, That the life of a man shall not be twice in jeopardy for one offence, but here his life was not in jeopardy. So, if a man be convicted by verdict, or confession, upon an insufficient indictment, and no judgement given, he may be againe indicted and arraigned, for the law wants its end; but, if upon such insufficient indictment, the felon hath judgement quod suspendatur per collum, and so attainted (which is the end of the Law) he cannot be indicted againe, &c. till this judgement be reversed; and upon such acquittall no conspiracy lyes.

Wrote and Wiggs case. 33. & 34. of the Queene. fo.45.

The defendant in an appeale of murder pleads that auter foits, by inquisition taken before the Coroner of the Queens household, and B. one of the Coronors of M. he was indicted of Man slaughter, which inquisition was certified to N. at the Goale delivery, and the defendant upon this was arraigned, confessed the felony, and had his Clergy, and it appeares the arraignment, &c. was after the purchase of the Writ of appeale, and before the retourne.

Resolved, that auter foits convict of man-slaughter, and Clergy, is a good barre in an appeale of murder, as 'twas adjudged in Holcrofts case. In which it was likewise resolved, that an inquisition taken before B. Coronor of the household, &c. and one of the Coronors
nors of M. is well taken, and within the Statute of articuli super chartas; though the Statute requires two persons; for the intent of the Act was performed, and the mischief recited avoyded, for though the Court removes, yet, he may proceed as Coronor of the County.

Resolved also upon the Statute of 3. H 7. ca'. 1. that this case was out of the Statute; for if the defendant had his Clergy, the appeale lyes not, a foriori, when he is convicted onely, and prays his Clergy; and the Act of the Court to be advised as to the allowance of Clergy, (so the case was) shall not prejudice the party in case of life: And 'twas resolved, that attaint of murder in the Act, extends to a person convicted by confession, or verdict, as to a person attainted, for he which is attainted, is convicted and more. And Agnes Gainsfords case adjudged, that where 3. H. 7. is, That the wife, or heire of him so slaine shall have appeale, that the heire of a woman, &c. shall have it against him, who was acquitted of the same murder. So resolved here, an indictment and conviction, or acquittance of manslaughter, is a barre to an indictment of the same death, for all is the same felony, though the circumstance alter it.

Resolved, that at common law, the Coronor of the household had an exempt jurisdiction within the Verge, and the Coronor of the County could not meddle, as appears by Articuli super Chartas; and Swifts case adjudged where a Coronor of the County tooke an inquisition within the Verge, 'twas avoyded by plea, the one cannot meddle within the power of the other. But Justices of the Kings Bench, of over and terminer, &c. may inquire, heare, and determine all murders, &c. within the Verge, for their authority is generall, through all the County: so resolved in Holcroftis case.
Resolved, that the indictment was insufficient, for it doth not appeare that D. (where the stroke and death was) was within the Verge, and though in truth, it were within, yet, it ought to be found by the oath of the indictors, and cannot be supplied by nude averrement, and it shall not be voyd coram non juro, as to the Coronor of the houshold, and good before the Coronor of the County, for the Record is intire, and taken intirely before them, &c. And the defendant in his plea hath averred, that D. was within the Verge, so the Coronor of the County could not take the indictment onely.

Resolved, for that the indictment (upon which he was convicted) was insufficient, that he may be newly indicted, &c. for his life never was in jeopardy. Resolved, that where the stroke was one day, the death another, the conclusion ought to be, that he was murdered the day of his death, otherwise 'tis nought, for 'twas not murder before: and 'twas resolved, that the finding of the stroke, and the death, were not sufficient of it selfe, without conclusion; and so T. W. murdered the said R. W. Resolved, that though the conviction were pending the appeale, yet, if it had been lawfull, and before that the defendant was compelled to plead, it had been a good barre.

Waits case. 45. of the Queene. fo. 47.

Resolved, that where a woman brought seaven severall appeales against severall personas, as principalls, all ought to abate, but the first, for all the principalls and the accessories before the murder and after, and before the Writ purchased, against whom the plaintiffe will bring an appeale, ought to be named in the Writ: for if all make default, except one, yet, the
the plaintiff ought to count against all, therefore he ought to bring the appelate against all. And the defendant shall not have damages by the Statute of W. 2. for it is out of it, because the Writ abated. And the Statute of Magna Charta says (appellum) in the singular number.

Hill’s Case. 143

An indictment upon 8. H. 6. was quashed, Quia fuit inquisitio capta ad sessionem pacis in Com'. S. tent'. die Martis, & die Mercurij; though the sessions may endure two or three dayes, yet, the Record ought to mention, that they were helden at a day certaine; as also for that the Statute was misrecited in a point materiall. Note, because misrecitall is fatall, the sure way is, to draw the indictment with conclusion contra formam statuti, and with no recitall of the Act.

Ognels Case. 29. of the Queene. fo. 48.

An Executor possessed of a grange, consisting of divers parcels, demises all the grange (except H.) to A. for 23 yeares, and H. to F. for 23 yeares, and grants all the residu of his terme in the intire grange to A. & F. B. the reversion or grants a rent charge in fee, out of all his lands, &c. called. C. grange quondam in tenura B. (the testator) and now in tenura et occupatone de A. The rent is aereare, the intire terme expires, the reversion or makes a Feoffement, the grante dyes, the Feoffee leaves at will, the Executors diftraine for arrearages.

Resolved, that at common law, in some case debt lyes for arrearages of an Annuity in fee, though it continues; as if a Parson, or Prebend resigne or dyes, because the Parson is chargeable; otherwise of a rent
service, charge, or secke, when the Freehold continues; and for a rent there is a diversity, when a rent in fee is extinct by the act of the party, and when of the Law, and when particular estates expire: see the booke at large. But 'twas resolved in the case at barre, that the arrerages due in the life of the grantee, were lost at common Law. Resolved, that H. was not charged with the rent, for though it be parcel of the grange, and A. and F. have the reversion of the terme, and so it may be said in their tenure, yet, for that A. then had not H. in his occupation, 'tis not charged.

Resolved, that the leassee at will is chargeable by 32. H. 8. ca. 37. for where things are due in right, and become remediless by the act of God, the Parliament which gives remedy for this, shall be favourably construed, and extend to advance the remedy proportionably to the defect of the Law, according to the mind of the makers, and therefore the Feoffee of the Feoffee in infinitum shall be charged, for, otherwise the Statute shall be in vaine, &c.

Resolved, if the grantee in fee, or for life of a rent service, or charge, (after 'tis arrear) grants over, the tenant attournes, the grantor dyes, his Executors are not within the Statute, for by the grant the arrerages are lost, and were not due to the testator tempore mortis, as the Statute speaks; and after the grant the testator could not distraine for the arrerages; and the act gives remedy onely, where the arrerages are due, and become remediless by the act of God.

Sharpe and Pookes case, 17. of the Queene; a rent was granted to a woman for life, 'tis arrear, she takes husband, 'tis arrear, the wife dyes, the husband brings debt against the heir being rent tenant, for all arrerages: Resolved, that for the arrerages before the marriage he had no remedy at common Law, but for the other he had debt.
Rawlins Case.

Objected, that the husband shall not have the arreages due before by this Statute; 1. Because at common Law the Executors of the wife may have an action for them, and the Statute gives remedy, when Executors cannot have an action, and doth not intend to toll the remedy from the common Law. 2. The branch says (due in the wives life) to the arreages ought to incurre, when she is his wife. Resolved to the contrary, for the Statute says (due and unpaid in the wives life) and the common Law gives remedy for the arreages of an estate for life incurred in the life of the wife, and therefore the Statute did not intend to extend to these arreages, but to the arreages due before, for, *Verba accipiend a sunt cum effectu.*

Resolved, that a Feme covert cannot make an Executor without assent of her husband, and the administration of her goods of right belong to the husband. And the Statute in naming the woman (wife) intends noely to describe and designde the condition of the woman, nor to imply that the arreages ought to incurre during coverture.

Rawlins case 29. & 30. of the Queene. fo. 52.

A. Possessed of a house for thirty yeares (except a Stable of which, B. was possessed for two yeares) granted all his interest to C. and demised the Stable to B. for five yeares by Indenure after the end of the two yeares; C. redeemis all to A. for twenty one yeares, rendring twenty pounds per annum, and to pay a Fine of twenty five pounds, upon condition for to reenter for non payment of the rent, or Fine; before the day of payment, A. redeemis the Stable to C. for ten yeares, the rent was behinde, the Fine was not paid, C. enters not into the Stable, nor B. attournes.
Resolved, that where the verdict was entered three terms past, and in the Roll the demise to B. for six yeares was not entered to be by Indenture, that the Roll shall be mended, because the note of the special verdict, which the Jury exhibited to the Court, remaining with the Secondary, purports that the Jury found the demise prout; by which it doth appeare to the Court, that the demise was shewne in evidence, and reference made by the note to it; and so 'twas in Gomerfalls case.

Resolved, though the condition is of two parts in the dis-junctive, for non-payment of rent, or of the summe in grosse, yet, if A. had redemised any part of the house to C. and C. enters, by which the rent is suspended, that all the condition as well for the collateral summe, as for the rent is also suspended, because the condition is intire, and cannot be divided by the act of the parties. Resolved, that if A. had redemised any part to C. though C. never enters, the rent is suspended, and though a stranger occupy it.

Resolved, that the lease by A. to B. for six yeares, though he had nothing at the time, was good by conclusion by the Indenture, and when C. redemised all to A. then was the interest bound with this conclusion, then when A. redemises to C. the Stable, C. is also concluded, for all parties and privies in estate or interest are bound by the Estoppell; then the case is no other, but that A. demises for six yeares the Stable to B and after demises to C. for twenty yeares (which is a good Lease in reversion for fourteene yeares) this is no suspension of the rent, or condition, for 'tis no grant of the reversion, but a future interest in reversion, no terme, but an interest of a terme, as the pleading is, and notwithstanding such grant, the reversion is in the grantor, without attournement, and he shall have the rent upon the first lease,
Rawlins Case.

lease, but if there be an attournement, the reversion passes, and suspension will follow. And therefore it was agreed, if a man leases for twenty one yeares rendering rent, and a reentry, the leesee leases to the lessor for six yeares, to commence two yeares after, the rent is arrear, and by this he shall defeate the future interest vested in him.

Resolved, that this Estoppell being found by verdict, the Court ought to judge upon all the speciall matter, according to Law, and because they are sworn ad veritatem dicendum, they did well to finde the truth of the case, and leave it to the Court; by Wray chiefe Justice in Pledals case the Jury was attainted, for not finding such a lease by conclusion, intending that they (being sworn ad veritatem dicendum) were not bound to finde it; for the Court held that the interest of the land as to parties and privies was bound, and no conclusion shall be by such indenture, after the terme ended, by Wray.

Resolved, if leesee for twenty yeares, leases for two yeares rendering rent, and grants all his terme and interest, if the leesee attournes, the reversion passes, and if no attournement be, yet the interest in reversion passes, for the grant of a man shall not be adjudged void, if, to any intent, it may take effect.

Resolved, if leesee for twenty yeares of a house, leases part for two yeares, and after leases to another all for ten yeares, rendering rent, so that it inures as a lease in reversion for part, that the rent shall issue out of all, and of the interest of the terme, though it be not any estate that may be surrendred, and though it be conjoined with land in possession.

Error was brought upon this judgement, and this error assigned; for that R. the plaintif was an Infant, and was admitted by his Gardian, and no Record made of it, as 'tis used in Banco, but onely recited.

L. 2
Warden's Case.

In the Court, J. R. per A. B. gardianum suum (ad hoc per curiam specialiter admissum) queritur. Which was disallowed by all the Justices, upon search and view of many presidents, which make a Law in this Court, yet some presidents were as in Banco.

Note (Reader) according to the opinion of Wray 'twas resolved in London's Case, that if a man takes a lease by Indenture, of his own land, this is an Estoppell but during the terme, and then both parts of the Indenture belong to the lessee.

Warden's and Commonalty of Sadlers Case. 30. of the Queene. fo. 54.

By Mandamus 'twas found before B. Mayor of London, Escheator of the City, and the Inquisition was returned in Chancery, that T. C. held of the King, &c. and dyed seised without heire, the Warden, &c. shewed their right that R. M. was seised in fee, and devised to them in fee, and that they were seised till by C. disfeised, and shew the custome of London, that a Citizen and Freeman may devise in Mortmaine, and averred that R. M. was, &c. Tempore mortis; and upon this, great question was, whither a Monstrans de droit lyes, or it ought to be by Petition. See the Case at large for this Learning, Bereblock and Redes Case was cited to be adjudg'd, if A. be bound in a recognizance, Statute, &c. and after a recovery in Debt is had against him, and he dyes, his executors ought first to pay the Debt upon the Recovery, though it be puny to the Statute, &c. for though both be Records, yet the judgement in the Court upon judiciall and ordinary proceeding is more notorious and conspicuous, and of more high and eminent degree then a Statute, &c. taken in private, by the content of Parties.

Forse
Alice Allen seised of certaine Messuages in Feemaketh her will in Writing, and thereby demiseth that if James Amynd doth survive her, that then she doth demise and bequeatheth the same messuage to him and his Heires. And afterwards the said Alice did Intermarry with the said James, and during her coverture, she said often the said James should never have the said Messuage by her said Will; Alice dyed without issue, and James survived, and the Question was, whither the Will was countermanded by the said Marriage, or not, and if not, whither by the words of revocation after the Marriage, was a Countermand and it was adjudged upon great deliberation, that the taking of a Husband; and the coverture at the time of her death, was a countermand of the Will. For the making of a Will is but an inception thereof, and it doth not take any effect untill the death of the Devisor. For, Omne testamentum morte consummatum est, &c voluntas est ambulatoria usq; extremum vitae extium. And it should be against the nature of a Will, to be so absolute, that he that made the same, being of saine memory, may not countermand the same. And therefore the taking of her Husband, being her owne proper act, doth amount to a countermand in Law: Also 'twas said, that after Marriage all the will of the Wife in judgement of Law, is subject to the will of her Husband, and a Feme Covert hath no Will, and therefore the Countermand after Marriage was of no force, Quod fuit concessum per tot. Cur.
The Earle of Oxford leased to A. B. and C. (except the Trees) for 21. yeares, C. assigned to D. the Earle sells the Trees to A. B. and D. they leased to E. and after sell the Trees, the Vendee cuts them, the Lessee brings Trespass. When a man maketh a Lease for life or yeares, the Lessee hath but onely a speciall interest or property in the Trees being Timber, as things annexed to the Land, but if the Lessee or another severs them, the property and interest of the Lessee is determined and the Lessor may take them, as things which were parcel of his Inheritance.

It was also resolved that this clause (without impeachment of waste) doth not give to the Tenant for life, any greater interest in the Trees, then he had by the demise of the Land, but onely that it will serve, that he shall not be impeached in any action of Waste, or to recover damages or the place wasted.

"This is adjudged otherwise by all the Judges of England, in Lewes Bowles Case, in the 11. Report.

* It was also resolved that if an House fall by tempest or other act of God, the Lessee for life or yeares hath a speciall interest to take Timber to reedifie the same, if he will. But if the Lessee suffer the House to fall, or take it downe, the Lessor may take his Timber as parcel of his Inheritance, and the interest of the Lessee is determined, and he may have waste, and treble damages.

Resolved, that the Lessee by the grant had an absolute property in the Trees, so that by the Lease of the Land, they did not passe, and he hath not equal ownership in both, and it should be a prejudice to him.
him if they should bejoynd to the Land, for then he could not cut, during the terme, without waft, and after he shall not have them, and the Lessor shall not have them against his owne act. And here A. B. and D. were Tenants in common of the Land, and joyntenants of the Trees, and so their interest of severall qualities, and therefore cannot be a union betwixt them, but upon a feoffement, if the Feoffor accept the Trees, they are in property divided, though, In facto, they remaine annexed to the Land, for it is not felony to cut them, &c. and if the Feoffor grants them to the Feoffee, they are reunited in property, as well as De facto, and the Heire shall have them, not the Executors, for the Feoffee hath an absolute ownership in both, and it is more benefit to him that they are reunited.

It was resolved, That if Tymber Trees be blowne downe with the winde, the Lessor shall have them, for they are parcell of his inheritance, and not the Tenants for life, or yeares, but if they be Dotards without any Timber in them, the Tenant shall have them.

It was adjudged that waft may be committed in glasse in the Windowes, for it is parcell of the house, and descends as parcell of the inheritance to the Heire, and the Executors shall not have them although the Lessor put the glasse in the Windowes at his owne cost, and if he take them away, he shall be punished in waft. And 42. Eliz. in com. Banco. It was resolved that Wainscote, whither it be annexed to the house by the Lessor or the Lessor, is parcell of the House, and there is no difference in Law, whither it be fixed with great Nailes or little Nailes, or Screws or Irons put through the Walls, for if it be fixed by any wayes or meanes to the house or Posts, or Walls thereof, the Lessor may not remove it, but he
he is punishable in an action of wau. For it is par-
cell of the house, and by Lease or grant of the house
in the same Mannor (as Sealing or Plaistering) it
shall passe as parcell thereof.

Fullwoods Case, 33. of the Queene. fo. 64.

C. Acknowledged a recognizance of 250: li. to the
Chamberlaine of London, and his Successors,
after acknowledges a Statute of 206. li. before the
Recorder of London, and Major of the Staple to A.
after A. sues Execution by Liberare, but it doth not
appeare that it was ever returned, after the Success-
Fours of the Chamberlaine, sue Execution, by pre-
cept to the Serjeant of the Male in nature of an Ele-
git, and hath a moyry, C. dyes his Wife recovers
Dower, and had this house assigned for her third
part, she dyes, the Chamberlaine assigns to Fullwood,
after A. assigns also to F. after the Heire of C. de-
misses to B. &c.

Resolved, that the Successors of the Chamberlaine
shall have this recognizance, though a body sole; for
that the Corporation was by custome to diverse
purposes, for Orphanage, for the recognizance was
acknowledged for Orphanage money, and the same
custome inables the Successors to take such an Obli-
gation, &c. otherwise of a Bishop, Parson, &c. and
that the Execution by the Serjeant of the Male, was
good, notwithstanding the Statute of W. 2. ca'. 18.
which saith, Vic'. liberet ei medietatem, &c. By rea-
sonable extent, to wit, by inquisition of honest men,
and the Sheriff is sworne, and the Serjeant is not
sworne to take the Jury, &c. For the Statute ex-
tends to every other immediate officer, to any Court
of the King of record, &c. Resolved, that execu-
tion of the E legit was good enough, without suing a

SciF
Scire facias against A. being in by matter of Record; but was said, if the Sheriff had returned the former execution, he ought to have a Scire facias; by the Court, if the Sheriff makes execution, 'tis good.

Resolved, that the Verdict was good, which finds, that C. acknowledged a recognizance before the Mayor, though not ad secundum formam Statuti, nor per scriptum suum obligatorium, for being the trover of lay People, it shall be intended according to the Statute. Resolved, that the Conufee cannot have aide of the Statute of 32. H. 8. ca'. 5. for which, lee the Booke at large.

Resolved, that if a man be bound in two Statutes, and the latter Statute be first extended, and delivered in execution for a longer time, and a greater sum then the first was, yet when the first Statute is satisfied, and his interest lawfully determined, the second Conufee shall have the Land again, by force of the first extent. It was resolved Per tot. Cur. that the execution of a liberate is good, although the Writ be not returned, and so of a Capias ad satisfacendum, and an Habere fac. sec. seisnam, and other writs of execution. And that the Conufee shall hold the Land, not onely untill he be satisfied for damages for detayning of the Debt, and costs of Suite, but also for his reasonable Labours and expences, looke the words of the execution; and being in by matter of record, the conufor must bring his Scir. fac. but in Case of an elegit, the Conufor after satisfaci- on may enter, for there is no costs and damages, but the meere Debt.

Hyndes Case, in com. Banco. 33. Eliz. fo. 70.

William Have seised of certaine Lands by deed, indented d idid the fame to Robert Gerard
Hyndes Case.

For 16. yeares, who assigned over to Elizabeth Hynd. William Hawe afterwards by bargain and sale in consideration of money due, soould the reversion to one Libb, and before the same was inrolled, the said William Hawe, leavyed a fine to Libb, and his Heires, &c. and after the leavying of the fine the said Indenture of bargain and sale was inrolled within six Moneths, according to the forme of the Statute, and Elizabeth Hynd the Tenant, did not atturne. The question was, Whither the Conusee of the fine after the said Indenture inrolled, Shall be in by the fine and by the bargain, and sale? for if he shall be adjudged to be in by the fine, no action of waftlyeth, for default of atturnement, and if he shall be in by the Indenture inrolled, then there needeth no atturnement. And it was resolved, Per tot. Cur. that when Hawe by deed indented did bargain, and fell the reversion to Libb, and his Heires, and before the inrollment leavyed a fine to Libb, and his Heires, and after the Deed is inrolled, (within six moneths) that the Conusee shall be in by the Fine, and not by the Deed inrolled, for the Fee simple passeth by the fine to the Conusee and his heires, and after the inrollment of the deed may not divest and turne the estate out of himselfe, which was absolutely established in him by the fine, for when the common Law and the Statute Law concurre, the common Law shall be preferred. And it is true, that the inrollment shall have relation to the delivery of the Deed. But thatis onely to avoyd estates, or charges made of the same thing by the bargainor, to strangers after the delivery of the Deed, and before the inrollment, but not to divest any estate lawfully setled in the interim, in the bargainee.

The Records are so high and sacred that they import in themselves inviolable verity, which if any man
man dare to gainfay, the Law doth attribute so great honor, to them, that they shall be tried only by themselves, and not by the Countrey, and if averrement against a Record should be permitted, then the effect and validity of the record should be tried by the Country, which is against the rule of the Law, *Nulium iniquum est in jure presumendum.* Yet, resolved in this Case, that the Lessee shall be admitted to averre that the Deed was inrolled, after the Fine, and not before, because it stands with the Record, and doth not impugne any thing within the Record, and great inconvenience would follow, if such averrement should not be admitted.

*Boroughes Case, 38. Eliz. In Banco Regis. fo. 72.*

Resolved, that the rent reserved upon a demise ought to be demanded, if the Lessee will take advantage of a condition for non payment of the same, and the demand to be made at the place limited for the payment of the rent, although there be no words of demand in the demise, and although it be out of the Land demised, but in the Kings Case it is otherwise. *Prerogativa Regis,* for there the rent upon a reentry reserved ought to be tendered; and in such Case, the Pattentee of the King, shall demand the rent upon the Land.

Resolved, if the Queene leases rendering rent, without limiting any place, or to whose hands, the Lessee may pay it at the Exchequer, or to the Baylisses or Receivers of the Queene, and when shee so appoints it by express words, 'tis no more then the Law appointed, and though the words be ("Ad receptum ficace. apud Westm.) it needs not that the receipt be holden at Westminster, the Law would have implied that. And when a common person appo
points no place, the Law appoynts the payment up
on the Land.

Palmers Case, 39. Eliz. in Banco regis, fo. 74.

The Sheriff by vertue of a Fier. Faci. may sell a
Lease of the Defendant, and in his Writing the
true commencement and terme of the Lease must
be expressed, or else, if he selleth all the interest
that the defendant hath in the Lands, he needeth
not to make any mention in the returne, but gene-
 rally Quod fieri fecit de bonis & catallis, &c. But an
inquision found that the Debtor of the King was
possesse. Pro termino quorumdam amorum, &c. 'twas
void, for a terme cannot be extended without shew-
ing the certainty of the commencement, for after
the Debtor satisfied, he is to have the remainder.

Resolved, for that the case at Barre was an exe-
cution by Elegit, which ought to be made by in-
quision; the sale here was vovyd, for the terme
was mistaken in the inquisition, and so mistaken was
apprised by the inquisition, and the Sheriffe cannot
sell any terme, but that onely which was apprised by
the Jurors.

Hollands Case, 39. of the Queene. fo. 75.

Resolved, that before 21. H. 8. ca'. 13. if he
which had a beneficce with cure, accept another
with cure, the first is void, but this was no avoyd-
ance by the common Law, but by constitution of
the Pope, of which the Patron might take notice if
he would, and present, without deprivation, but be-
cause the avoydance accrued by the Ecclesiastical
Law, no Lapse incurred without notice, as upon a
deprivation, or resignation; so, that the Church was
vovyd
Case of Corporations. 157

voyd for the benefit of the Patron, not for his d/advantage; But now, if the first benefice be of the value of 8. l. per annum, the Patron at his perill ought to present, for to an avoydance by Parliament, everyone is party, but if not of 8. l. 'tis voyd by the ecclesiasticall Law, of which he needs not take notice. Resolved, that 21. H. 8. is such a generall Acts of which the Judges Ex officio (though it be not pleaded) ought to take notice. See the Booke at large upon this Learning, what act shall be said a generall act? Of which the Judges are bound to take notice, what not?

The Case of Corporations, 40. and 41. of the Queene. fo. 77.

Resolved, that where diverse Citties, &c. are incorporated by the name of Mayor and communalty, Mayor and Burgessees, &c. and in the Charters 'tis prescribed that the Mayors, Bayliffs, &c. should be chosen by communalty and Burgessees, &c. which is as much as to say, as by all the Burgessees, or all the communalty; that yet the ancient and usuall Election, by a certaine selected number of the principall, of the communalty, &c. (Commonly call’d the Common-Councell) and not by all of the communalty or so many of them as will come to the Election, was good in Law, and warranted by their Charter; for, in every Charter they have power given to them, to make Lawes, Ordinances, and constitutions, for the better government and ordering of their Citties and Boroughes: by force of which, and to avoyd popular confusion, they, by their common assent have instituted, &c. that the election shall be by such a select number. And though this ordinance cannot be now shewne, yet, it shall be
be presumed that such ordinance and constitution was made at first.

_Digbyes Case_, 41. _Eliz_._ fo._ 78.

It was adjudged, that when a man hath a benefice with cure, above 8. l. and afterwards taketh another with cure, and is presented and instituted, and before induction procure the Letters of dispensation, that this dispensation commeth too late, for by the institution, _Ecclia plena & consulta existit_, against all persons but the King, for every rectory consisteth upon spirituality and temporality. And as to the spirituality, _Viz._ _Cura animarum_, hee is compleat Parson by the institution, for when the Bishop upon examination had, admitteith him able; then he doth institute him, and faith, _Instino te ad tale beneficium & habere curam animarum_; of such a Parish, _&c._ _accipe curam tuam._ _&c._ Vide 33. _H. 6. 13_. But touching the temporalities as the Glebe Lands, &c. hee hath no freehold in them, untill induction, for by the general councell of _Lateran._ _Anno Dom._ 1215. it appeareth that by the acceptance of two benefices the first is void. _Aperto jure_, for upon this Councell are our Bookes in this case founded. And 'twas resolved, that this was an acceptance of a benefice. _Cum cura_, within the Statute of 21. _H. 8_. Institution is an acceptance by our Law; and 'twas lately adjudged that if before induction, the _Clerke_ be inducted to another, the first is void by 21. _H. 8._ which faith, ('Accept and take another') and for that now the avoidance is declared by 21. _H. 8_ he is bound to take notice, but till after induction, &c.

Nokes
A man maketh a lease by these words. (Viz.) De mise, &c. Grant, &c. and covenants that the lessee shall enjoy without eviction, by the lessor or any claiming under him, and was bound to performe all covenants, &c. the lessee assigns his terme, a stranger enters upon the assignee, and recovers in an EJ Firma, after ouster, the first lessee brings debt. This is a covenant in Law, and the assignee shall have a writ of covenant 9. Eliz. 257. Dyer. And if a man be bound by obligation to performe all covenants, grants, &c. This doth extend as well to covenants in law, as to covenants in fact.

Resolved, though the recovery were by verdict, yet he ought to shew that the plaintiff in this recovery had an elder title, for otherwise the covenant in law is not broken. It was holden that an express covenant doth qualify the generality of the covenant in law, and restraineth that by the mutual consent of both parties, but a warranty in law, and an express warranty, the party may choose whether he will have, for this word Dedi importeth a warranty.

Sir Andrew Corbet's Case, 41. and 42 of the Queen's fo. 81.

A devises land to B. &c. to have, &c. till 800. l. shall be paid by them of the profits to marry his daughters, and dies, the heir conceals the will, takes all the profits, and dies, the will is found by office, the devisee enters, and hath levied 640. l. and employs it accordingly; whither the profits taken
ken by the Heire shall be parcell of the 800. l. was the Question.

Resolved, that the words ( shall be leavyed) shall be construed ( shall or might be leavyed ) and so was holden of a Lease or limittation of a use, otherwise, he which is to leavy the Summe, by deferring to doe it, may exclude the reversioner for ever: see the Booke at large. Resolved, when the heire or reversioner, &c. enters, and expulses him, to whom the Land is limitted, he hath election to recover the Mesne profits, in an action, or reentry, and retainer, till he leavys the inteir Summe, and the other shall not have advantage of his owne wrong, and if a stranger had entered, and occupied, the Devisee ought to have taken notice at his perill, for Vigilantibus &c. and none is bound to give notice, but here the Heire himselfe concealed the will, and the Devisee had no remedy, for the Mesne profits after the death of the heire. Resolved that a Gardian shall not ouste Tenant for life, nor yeares of the Tenement.

Resolved, that admitting the Gardian shall ouste Tenant for yeares, yet he shall not hold over, because his terme is certaine in the commencement, continuance, and end; otherwise of Tenant by Elegit, Statute, &c. they shall hold over, because the terme is uncertaine.

Southcots Case, 43. Eliz. in banco regis. fo. 83.

If A. doe deliver goods to B. for to keepe, the goods be purloyned away, yet B. shall be charged in a Writ of detinue. For, to keepe, and to keepe safely is all one, but if B. doe take them to keepe as his owne goods, he shall not be charged with them. And if A. doe pledge or Guage goods unto B. in this
this Case B. shall not answer for them, if they be purloyned, for he had some property in them, and not a custody onely, but a ferryman a common In-keeper, or a Carrier, which taketh hyre, they ought to keepe the goods safely, and they shall not be dis-charged, if they be stolen or purloyned. But a Fa-
tor or a Servant (although he have wages) doing his indeavour, shall not be charged.

Luttreles Case, 43. Eliz. in banco regis. fo. 86.

IF a man have estovers evther by grant or prescrip-
tion to his house, although he alter the Rooms, and Chambers in his House, it seemeth that the al-
teration of the qualities, so as it be not of the house it selfe, and without making new Chimnyes, by which, no prejudice accrewe to the owners of the Wood, is not any destruction of the prescription, and though he make new Chimnyes, or make a new addition to his old house, he shall not loose his pre-
scription thereby, but he may imploy or spend any of his new estovers in the Chimnyes, or in that part newly added. It was also resolved, that if a House or Milne doe fal, or be taken downe, by the act of the owner, or by wrong of another, yet for that the per-
durable part, which includes all, doth remaine, which is the Land, whereupon the Fabrick is built, he may reedifie the same againe without any Losse of his appendant or apurtenant, but it ought to be upon the same place, which was the Foundation of the old House, for as it did support, and in judg-
ment of Law included the ancient house when it was standing, so it supports and includes the new house, so as it is in a manner a continuance of the an-
cient house.

Diverse Tenants doe hold of another, as of his
Mannor by sealty and suite to the Lords Milne, the Lord doth alien his Milne with the suite of his Tenants, and after, the vendor dyeth, and his Sonne entereth and buildeth a new Milne upon the other part of his demeane, he shall have the suite to his owne Milne, which the Vendee had before, for the suite belongeth to him that hath the Mannor, for no man may have suite to his milne, by reason of a Tenure. If it be not of Corne growing upon the Lands, within the Seigniory or Mannor, and the Lord may erect a new Milne within any part of the Mannor, and the Tenure is due to the same, and not to any particular Milne.

Druies Case, 43. Eliz. Error in Banco Regis. fo. 84.

A Countesse being a Widdow retaineth three Chaplaines, he who is last retained, is not capable of a dispensation, for the Statue of 21. H. 8. c. 13. is executed by retaining of two, and the retaining of the third, shall not devest the capacity, which was in the first two, but if the retainer had beene at one time, he who is first promoted, shall be first preferred, because in æquali jure, &c. 2. Resolved, if the two first die, the third is not capable of dispensation without a new retainer, because he was retaine at the common Law, and not according to the Statute, Quod ab initio non valet, &c. As if the Sonne and Heire of a Baron retaineth a Chaplaine and giveth him Letters under his Seale, and after the Father dyeth. And it was said, that the said Act shall be taken stricly; as if a Baron be made Gardian of the 5. parts, he shall retaine no more Chaplains then before, and if a Baron retaine two Chaplains who are promoted, he cannot discharge them, and retaine others, during their lives.
IT was resolved that every contract executory imports in itself an assumpsit. For when one doth agree to pay money, or to deliver any thing, by that he doth assume and promise to pay or to deliver the things, and therefore when he selleth any goods to another, and agreeeth to deliver them at a day to come, and the other in consideration thereof agreeeth to pay so much money, at such a day; in this case both parties may have an Action of Debt, or Action upon the case, upon the assumpsit, for the mutuall executory agreement of both parties, import in themselves as well a reciprocally Action upon the Case, as an action of debt and a recovery or bar in an action of debt, is a good Barre in an action upon the Case, brought upon the same contract, and so likewise in an Action upon the Case, a recovery or Barre, in the same, is a good plea in an Action of Debt, upon the same contract.

The Defendant in an Action of the Case upon the assumpsit may not wage his Law, as he may doe in an action of Debt.

If a Summe of money be promised in Marriage, to be paid at severall dayes, an Action upon the assumpsit lyeth for non payment of the first, although no Action of Debt lyeth, untill all the dayes be past, Multitude errantium non parit errori patrocinium, and if the Debtor of the King sueth by Quo minus, in the Exchequer, the defendant shall not have his Law for the benefit of the King.
Upon consideration of the Statute of 1 E. 6. cap. 14. it was resolved.

1. That if one demise to any of his Kindred, to superstitious uses, although he limit them to pay certaine Summes of money to the said uses, yet these Lands are given to the King, for it shall not be intended to be upon other consideration, but that which they at that time conceived to be the service of God, which is the most worthy consideration, and the reason wherefore the demise was made to his Friends was, because he imposed more trust in them then others, therefore the persons shall not be regarded.

2. A demise of an estate for life, or in taile is within this Statute by equity, although that the Statute saith, To have continuance for ever, for the intent of the Statute was, to tolle such uses, and regardeth not the time of their continuance.

3. An estate taile may continue for ever, and so was the intent of the devisor in this case, that the uses should continue for ever, for he limits his heire to doe it. 3. Without this construction the Statute should be defrauded.

4. The Statute giveth to the King, Lands given for the finding of a Priest, and giving of Lands upon condition to find a Priest, is within the Statute, for this is more compulsory then the other.

4. All the Land is given to the King, but not by the first Branch, for that extends onely to lawfull Chanteries, or those who have countenance of lawfull comencement, but not to such who are without any colour of lawfull comencement: as if they were
were founded by license of the Pope, this chantry is
without colour of lawfull comencement or foundation: also if Lands be given to the finding of a chan-
tery without Corporation, this is out of the said Branch. Neither by the second Branch, for that
giveth the Lands belonging to such Colledges to the
King, without which, he shall have onely the Scites;
but by the third Branch; for this extends to finding of
a Priest without Corporation. But twas objected,
that the Land was not given to the finding of a
Priest, for he had but a pension out of it, and the
Statute is, that the King shall have in as large,
&c. as the Priest had it. 2. Here is a good use lim-
mittet, six pence by the Weeke to six poore men,
and although it be Ad orandum, &c. this is not
within, for it is out of the Statute, except that Qui-
sions be to be performed in publique. For answer
to these, these differences were taken. 1. If one
give 20. li. per annum, for the finding of a Priest, and
limit to the Priest 10. li. per annum all is given to the
King, for the residue shall be intended for the find-
ing of necessaries: otherwise it is, if a condition be
annexed to the gift, to give a c. l. per annum to a
Priest, there the King shall have but 10. li.
2. Land of 20. l. per annum is given to find a Priest,
with 10. l. thereof, and that the other ten pound
shall be to the Poore, the King shall have but ten
pound, but if it be for finding of a Priest, and main-
tenance of Poore Men, without limiting how much
the Priest shal have, the King shall have the Land for
otherwise he shall have nothing. 3. If Land of 20. l.
is given for finding Sallary for a Priest with 10. l. of
it, and also a good use is limitted, there the King
shall have but ten pound, although that other neces-
faries are to be found for the Priest, because a good
use in certaine shall be preferred before a superstiti-
ous
ous incertaine use; but if nothing in certaine be limitted to the Priest, the King shall have the Land. 4. If Land be given to find a Priest the King shall have it, but if a Priest have but a stipend, the King shall have but the stipend. 5. When a certaine summe is limitted to a Priest, and other good uses are also limitted, which depend upon the superstitious use, all is given to the King. 6. If all the uses be superstitious, of what certainty soever they are, the land is given to the King, otherwise it is, if there be any good use, and as to that which was objected, that the King shall have no more then the Priest. It was answered; that that extends to the 1, 2, and 4. Branches, and not to the third, for otherwise the King should never have the land it selfe, for this was never used to be limitted to the Priest himselfe.

And although that these Ordsons are to be made out of any Church, yet it is within the Statute, for the words Church or Chappell, extend to Lamps and lights, and not to prayers. 2. The Statute speaks of an anniversary, &c. or other like thing, and this is a like thing, but in the Case at Barre, if he had said that his Friends should have the residue of the profits of the Land, this had saved the Land.

A Noble Woman retineth a Chaplaine who purchaseth a dispensation; she taketh a Husband, the Chaplaine is promoted to another benefice then that which he had before the reteiner, his first benefice is not void.

It was Objected that the Statute speaks of du-ches, &c. being Widdowes or Married under the degree of a Baron, and for that, when the Marrieth a-
above the degree she is out of the Statute, and 'tis not sufficient that she be within the Statute at the time of the retainer, but she ought to be so also at the time of the promotion.

It was answered, that all which the Statute requires at the time of the retainer, is, that she be a Noble Woman, Married under the degree of a Baron, or a Widdow, and to be noble at the time of the promotion; therefore a noble Woman Married above that degree cannot retaine, or if at the time of the promotion she be not noble, as if her Earle be attainted, and although that Baron and Feme have but one body, yet they have two souls, wherefore it is not inconvenient that they should have several Chaplaines, and the reason for which the said provision was made for a noble Woman who married an ignoble Husband was not to exclude those who married Nobles, but because such Femes are in Law ignoble (except they be noble by descent) and without such provision shall be out of the Statute: Baron retaine a Chaplain and dyeth, the Chaplain may retaine both the benefices, but he shall be punished for non residency, without suing a nos obstante.

*D umpors Case.* 45. *Eliz. banco regis in Trespas.*

*fo. 119.*

A Man maketh a Leafe, provided that the Lessee or his assigns shall not alien the premises without speciall license of the Lessor, &c. The Lessor giveth license to the Lessee to alien the same, or any part thereof, &c. in this Case the Lessee may alien and his assigns, *Ad infinitum* without any more license, and the proviso is determined.
The Lord Stafford made a Lease to three persons, upon condition that they, nor any of them should alien, without the consent of the Lessor, and after one of them did alien with his consent, and after the other two did alien without license, and it was adjudged 28. Eliz. that in this case, the condition being determined, as to one person, by the license of the Lessor, it was determined in all, for when the Lessee alieneth any part of the residue, the Lessor may not enter into any part aliened with license, and therefore the condition being determined in part, is determined in all, for the condition being entire, may not be apportioned, and 16. Eliz. Dyer. 334. suit deny per Popham Chiefe Justice, Vide ski. 80. b. & 4. and 5. Ph. and M Dyer. 152.

Bustards Case, 1. Jac. fo. 121.

In every lawfull exchange of Land, this word Ex-cambium imports in it selfe Tacite, a condition and a warranty, and the other a voucher, and recom-pence, and all in respect of reciprocall consideration, the one Land being given in exchange for the other, but that is a speciall warranty, for upon the voucher he shall not recover other Lands in value, but those onely which were given in Exchange, and this warranty followes onely in privity, for none may vouch by force thereof, but the parties to the Exchange, and their heires and no assignes.

If A. give in Exchange three acres of Land to B. for other three acres, and after one Acre is ejected from B. in this Case all the exchange is defeated, and B. may enter into all his Lands.

Beverleys
Every act that a man De non compos mentis doth, whether concerning his lands, life or goods, either done in Court of record or out of Court of record, all acts that he doth in any Court of record whether concerning his lands or goods shall bind himself and all others for ever, and those acts which he doth out of Court of record, shall binde himselfe during life, and in some Cases shall binde all others for ever, so as the party himselfe shall not be admitted to suitisfe himselfe-ordifieable himselfe, but an ideot a nativitate may not make Feoffment, Gift, Leafe, or Release, but it may be avoyded, during his Life, by office at the Kings suitre, which shall have relation, a tempore Nativitatis, to avoyd all acts done by him, and after his death, the King shall deliver his Lands Rectis Hæredibus. foure manner of men, de non compos mentis. 1. An ideot or foole naturally. 2. One which was of good and perfect memory, and by the visitation of God hath loft the same. 3. Lunaticus, qui gaudet lucidis intervallis, who sometimes is of good and perfect memory, and some other times Non compos mentis. 4. He that is so by his owne act as a Drunkard.

All acts, which a Lunatick during the time of his Lunacy doth, and all acts which a mad man doth, who once was of perfect memory, and by the act of God, hath loft his understanding, are equivalent to the act done by an Ideot, but the act which a man doth, Qui Gaudet lucidis intervallis, at such time as he is of good and perfect memory, shall binde him and are good. And a Drunkard who for the time of his Drunkenesse is Non compos mentis, yet his drunkenesse
neffe shall not extenuate his act or offence, but doth aggravate his offence, and doth not derogate from the act, which he doth, during the time of his drunkenesse, and that as well touching his Life, Lands, and goods, as any other thing that concerns him. The King shall have the custody of the Land, goods, Chattells, &c. of one non componens, to the use of him, his Wife, Children, and Family, a man non componens, shall not loose his life for felony or murder, for no felony or murder can be committed, without a felonious intent and purpose, and he is deprived of reason, understanding, and intentions. 

Dicta est felonia quia fieri debet felleo animo, & furiosus non intelligit quid agit, & animo & ratione caret & non mulum distat a brutis, as Bracton saith, and fiatius dicitur a stupore.

The End of the Fourth Booke.
The Fifth Book.


An Indenture of demise dated 26. May, 25. Eliz. to hold for three yeares from henceforth, it was delivered at foure a clock in the afternoone, of the twentieth of June after. The Question was, when the Leafe should begin, from henceforth shall be taken the day of the delivery inclusive idest, from the making or delivery.

Traditio loqui facit cartam, this Leafe must end the nineteenth of June, in the third yeare after. The day of the delivery is parcell of the tearme, but a Die consecctionis, or a Die datus, the terme beginneth the day after the date, from the date, and from the day of the date is all one, because that in judgement of Law, the date includes all the day of the date, &c.


1. Resolved, that the Statute of 1. El. is a private act, whereof the Court shall not take notice without pleading of it. 2. Whereas the Bishop ousted his Leesee, for yeares, and made a Leafe for three lives, this is voidable by the successor; for, first, the Statute giveth him 'power to make a Leafe for
Jewells Case.

for twenty one yeares, or three lives, and therefore cannot make both. 2. Leafee for lives shall have the rent reserved upon the Leafe for yeares, and shall not pay rent to the Bishop, until the terme determined, and so hospitality will decay in the mean time, and where 31. H. 8. ca. 8. provided that the old Leafe be surrendered before the making of a new, illusory surrender upon condition is not within the act, but judgement given against the Plaintiff for not pleading of the said act of 1. Eliz.

Jewells Case, 30. Eliz. banco regis. fo. 3.

Leafe of a faire reserving rent, is not within the Statute of 1. Eliz. for although the rent be due by reason of the contract, yet it is not incident to the reversion, and 'tis also without remedy by aslife or distress.

Lord Mountjoyes Case. 31. & 32. El. banco regis. fol. 3.

T'enant in tayle according to the Statute, with power to make Leases, &c. reserving the ancient rent, make th a Leafe of two disting farmes, reserving the ancient rents in one summe, out of both the farmes, this is a new rent, and not the accustomed rent, and if he reserve a lesser rent (during his life, and after his death) then the ancient rent, the Lease is not good.

If T'enant in tayle be seised of three acres of land, every one of them of equall annuall value, and all have beene demised for 3. shil. per annum, in this case he may not demise one of them for 12. d. per annum, or two of them for 2. shil. per annum, and so pro rata.
A man lealeth S. for 10. years, and C. for 20. years, and both to another for 40. years, after the end of the said several demises, ten years expire, the last lessee enters into S. and upon ouster brings trespass and recovereth, for the joint words of the parties shall be taken, respective, and the leases shall commence severally, upon the several determination of the said leases. Joint words shall be taken severally. 1. In respect of the several interest of the grantors, as if two tenants in common grant a rent charge. 2. In respect of the several interest of the grantees, as a joint warranty to two several tenants. 3. In respect that the grant cannot commence at one time, as a remainder limited to the right heirs of I. S. and I. N. 4. In respect of the incapacity of the grantees, to take jointly. 5. Ratione subjectae materia, as rent granted to two copartners for equality of partition. 6. Neres desiratūr, pro ut evitetur absurdum, as in cessavit, the tenure is allaged by homage, fealty, and rent, and quod in faciendo servitia pradicta cessavit, it shall be construed to such services onely, as of which a man may cease.


If a lease be made to A. during the life of B. and C. without saying, during the life of the survivor of them, if one of them die, yet the estate is not determined. But A. shall have the land, during the life of the survivor; for if a man make a lease of land to two persons, during their lives, they assigne over
over their estate, now the assignee hath estate for life of them too; and if one dye, he shall have the land, during the life of the Survivor. Note, two diversities thone a limitation in this Case aforesaid, th'other a condition, for if a man demyse Land for 100 yeares if A. and B. live so long, in this case, if th'one of them dye the Lease is determined, for the Lease is conditionall, and not Determinable by limmitation of estate, and the life of a man is collaterall to the Lease, which is but onely a Charte. If an administrator have judgement and dye, his Executors cannot sue execution of that judgement, but he that shall be subject to the payment of the Debts of the first intestate, and that are not the Executors of the administrator. vide 26. H. 8. fo. 7.


A Feme leffor or lessee at will taketh Husband, the will is not determined, for it may be prejudicial to the Husband to have it determined: So, if one of the Leesees, or Leffors at will dye, but in case, where one of the joynt lessees at will dyeth, nothing surviveth but the others shall pay all the rent.


I. Leaseth a Mannor to S. for thirty yeares, excepting Woode and underwood growing upon it, and after Leased to him the Woode for 62 yeares, without impeachment of waft, and leaseth to him the Mannor for thirty yeares, after expiration of the first thirty yeares, thirty yeares expire, S. maketh waft, I bringeth an action of waft. 1. Resolved, by the exception of Wood, and Underwood, the foile is excepted, and the woods growing, &c. are of abundance.
dance. 2. The Wood remains parcell of the Manor, because the Lessor had the entire freehold, otherwise if he had leased for life with such an exception, so if one lease a Manor excepting the advowson for life, the advowson is in gross for life, but if he grant the advowson for life, it remains appendant. 3. By the acceptance of the third lease, the said Leafe of the Wood for 62. yeares, was present-ly surrendered, because the Lessee hath affirmed the Lessor to be able to Leafe.


If a man have Land, in part whereof there is a Co- le-myne appearing, and he demise the Land to another for life or yeares, the Lessee may dig for cole, &c. And the reason is, for that the Myne is open at the time of the demyse, &c. and when he demyseth all his Lands, it shall be intended, that his meaning was, that all the profit of the Land should passe, &c. but if the Myne be not open, but within the Bowels of the Earth, at the time of the demise, 'tis otherwise.

Also if a man have in his Lands, hidden or unknowne Mynes, and Leafe the same Lands and all Mynes therein, the Lessee may dig for them.

Rosses case, 41. & 42. Eliz.

A Leafe is made to A. and his Assignes, for his life, and the life of B. and C. this is a Leafe for three lives, and the Survivor of them.

Countesse
He brought an action of the Case against Crompton, and declared, that succeeding to him a House at will, Et quod ille tam negligenter & improvide custodivit ignesfium quod domus illa combusta fuit, the defendant pleaded Non culpa, and it was found not guilty. And 'twas adjudged, that for the permissive waft, no Action lyeth against the opinion of Brooke, in Title waft, § 2. And the reason of this judgement was, for that the common Law no remedy lyeth, for waft, either voluntary or permissive, against the Leesee for life or yeares, because the Leesee hath interest in the Land by the act of the Leslor, and it was his folly to make such a Lease, and not to restraine him by Covenant, condition, &c. And by the same reason Tenant at will shall not be punished for permissive waft: But if Tenant at will commit voluntary waft, as pulling downe of houses, cutting of Trees, a generall action of trespass lyeth against him, for that these doe amount to the determination of the will, without the entry of the Leslor; but it was agreed, that in some Cases where there is confidence put in the party, an action of the Case lyeth for negligence, although the Defendant commeth to the possession by the act of the Plaintife, as, 12. E. 4. 13. If one doe commit his Horse to one to keepe safely, the Defendant Equum illum tam negligenter custodivit quod ob defelliun bona custodia interijs, an action upon the Case, lyeth for this Breach of trust, also 2. H. 7. 11. If my Shepheard which I trust with my Sheepe, and by his negligence they be drowned or otherwise perish, an action upon the case lyeth against him; but in this case at the Barre, there
there was a demise at will made to the Defendant, and no confidence repos'd in him, wherefore it was ordered, that the Plaintiff should not recover by her Bill.

Case of Ecclesiastical Persons.

At a Parliament holden in this Michaelmasterme, it was resolved by the two chief Justices, Popham and Anderson, and diverse other Justices Assistants, to the Lord of the Parliament, in the upper House, that Leases made to the Queene, by Colledges Deans, and Chapters, or any other, having spiritual or Ecclesiastical Livings, against the provision of the Act, 13. Eliz. ca. 10. are restrained by the same Act, as well as Leases made to common persons, for they are disabled by Parliament to make estates, the King being the head of the Commonwealth may not be an Instrument to defeate the provision of an Act of Parliament made, Pro bono publico. For though the Queene by the common Law, had ability to take it, yet insomuch the Parliament had disabled them to make estates, estates made to the Queene against the Act, are void.

Covenants, &c. Concerning Leases, Assurances, &c.


A Lessee doth Covenant for himselfe, his Executors, and Administrators, with the Lessee, that
that he, his Executors or Assignes shall build a Brick Wall upon parcell of the Land demised, &c. afterwards the Lessee assigns over his tearme to B. in this Case B. is not bound to build the Wall.

When the Covenant extends to a thing in esse, parcell of the demise, then the thing to be done by force of the Covenant, is, _quodammodo_, annexed and appurtenant to the thing demised, and shall run with the Land, and binde the Assignee, although he be not bound by expresse Covenant. But when the Covenant extends to a thing which had not essence, at the time of the demise made, that cannot be appurtenant, or annexed to a thing which had not essence. As if a Lessee Covenant to repaire the houses to him, demised during the tearme, this is! parcel of the contract, &c. and shall bind the Assignee, although he be not bound expressly by the Covenant. But in this Case, the Covenant concerns a thing which had not essence at the time of the demise, but to be made after, and therefore it shall binde the Covenantor, his Executors and administrators, and not the assignee, for the Law will not annexe the Covenant to a thing which had not essence. It was resolved in this Case, if the Lessee had Covenanted for him and his assignes, &c. that in as much as it was to be builded upon the thing demised, it should binde the assignee, by expresse words. Also, if a warranty be to one, his Heires and assignes by expresse words, the assignee shall take benefite thereof, and have a _Warrantia carta._

But although the Covenant be for him and his Assignes, yet if the thing to be done be meerly collateral to the Land demised, and doe not concern the same, the Assignee shall not be charged as if the Lessee Covenant for him and his Assignes to build a house upon the Land of the Leslor, which is not parcell
cell of the demise, or to pay any collateral sum of money to thelesfor, or to a stranger, this shall not binde the Asflignee. Also in a case of goods, as Sheepe, Chattell, &c. there is not any privity or reversion in the Asflignee, but meerefly a thing in a-
ction in the personalty, which cannot binde any but
the Covenantor, his Executors or administrators;
which doe represent him. The same Law is, if a
man demise lands for yeares with a stock of Cattle,
or Summe of money rendring rent, and the Leesee
Covenants for him, his Executors, Administrators,
and Asflignes to deliver the Stock of Cattle, or the
Summe of money, at the end of the Termes, yet the
Asflignee shall not be charged with the Covenant.
This word (Concessi) or (Demisi) imports a
Covenant, and if an Asflignee of a Leesee be evicted,
he may have a Writ of Covenant, so shall Tenant
by Statute, or Elegit of a Termes, or he to whom the
Lease is fould by force of any Execution, &c.

If a man grant to a Leesee for yeares, that he shall
have so many stovers, as shall serve to repaire his
House, or that he shall burne within his House, or
such like during the Tearme, that is appurtenant
to the Land, and shall run with the same as a thing
appurtenant, in whose hands foever the same com-
meth.

Asflignee of an Asflignee, Executors of an Asflignee,
A S S I G N E S of Executors, or Administrators
of every Asflignee, may have Action of Coven-
A nant, for all are comprized within this word ( As-
flignees) for the same right that was in the Testa-
ator, or intestate shall goe to the Executors or admin-
istrators. It was resolved, That the Act of 32. H.
8. c. 24. extendeth onely to Covenants which touch
the thing demised, and not to collateral Covenants

Slingbyes
If any party Covenantor in a Tripartite Indenture breake Covenant, all the rest of the parties, Covenanters, are to maintain the Action, notwithstanding the words of the Covenant, are Er ad eam quilibet eo um. But if a man demise to A. black Acre, to B. white acre, to C. green Acre, and Covenant with them, and every of them; in this Case, in respect of the severall interest by these words, And every of them, the Covenant is made severall, but if the demise be made to them joyntly, then these words in the Covenant (And every of them) are made void.

A man cannot binde himselfe to three, and to every of them, to make that joynt or severall at the Election of severall persons, for one selfe same cause, for the Court will be in doubt for which of them to give judgement.

It was resolved, that an interest cannot be grant ed joyntly and severally, as if a man grant, Proximam aduationem, or make a Leafe for Terme of yeares of Land to two joyntly and severally, these words severally are void, and they are joyntenants; but a power and authority may be joyntly and severally, as to make livery, or to fell, for they have no interest or Action, but are as servants to others. And judgement was reversed.

Rosewells Case, 35. Eliz. fo. 19.

B Argainor of Land covenanteth to make to the Bargaineel such assurance as his Counsell shall advise, the Bargaineel himselfe cannot devise it, although
Higginbottom's Case. 181

though he be Learned in the Law, for then it would be no good plea to say, Quod consilium non dedit achusa-mamentum.


A Parson assumeth to I. S. to make him such an estate in a Rectory, as the Counsell of the said I. S. shall devise, the Counsell shall be given to I. S. and he shall notify it to the Parson.


A Charter with the words Hac Indentura, without a manuall Act of indenting of the paper or parchment, is not an Indenture.


Sir A. M. Leaseth to S. for twenty one yeares, and bindeth himselfe to make a new Leafe unto him, upon surrender of the old; and Leaseth to another for 80. yeares by fine. Scott the first Leesee bringeth debt, and had judgement. If you be bound to enfeoffe one in the Mannor of D. before such a Feast, if you make a Feoffement to another of this Mannor, before the same Feast, you have forfeited the obligation, although that you purchase the Land againe, before the said Feast, because that you were once disabled to make the feoffement.

If a man Lease a Mannor for yeares, and the Leesee covenanteth to uphold the Houses, and to leave the same Mannor in as good an estate as he found it, and during the terme, the Leesee maketh waft in Houses, and cutting of Tymber, &c. the Leesor may have
have a Writ of Covenant before the end of the Tearme, for cutting the Timber, for it was impossible that the Covenant should be performed after, for the Timber, but otherwise of the Houses, Fitz Na. br. fo. 145 K. It was also resolved, that if a man seised of Lands in Fee covenant to infeoffee I. S. upon request, and after he maketh a feoestment of the same to a Stranger, in this Case I. S. may have an Action of Covenant without request.


Where a condition of an obligation consisteth upon two parts in the disjunctive, and both possible at the time of the obligation made, and after one of them becomes impossible, by the Act of God, the obligor is not bound to performe the other part, for the condition is made for the benefite of the obligor, and shall be taken most beneficiall for him, and he had an Election eyther to performe the one, or the other, for the saving of his Obligation, but now, Impotensia excusat legem.


One Covenanteth to make an estate in Fee at the costs of the Covenantee, the Covenantor is to doe the first Act, Ideft to Notifie what assurance he will make, that the Covenantee may know what summe to tender.

Mathewson Case, 39 Eliz. fo. 23. Com. banco.

Everall persons make several Covenants in one Indenture, or Writing, the Seale of one of them is broken away, that shall not avoyd the Covenant of
Lambes Case.

of the rest, but onely the Covenant of him, whose Seale is so debruised, or defaced. Vide, Piggots Case, in the 11th Report, because severall Covenants, otherwise if joyned.


A. Is bound unto B. to give unto B. such a release, &c. before the 22. day of October next, as by the Judge of the Prerogative Court is thought fit. In this Case A. must procure the Judge to doe it, or devise it, for the Judge is a stranger to the condition, and the condition is for the benefite of the Obligor, and he hath taken upon him to performe the same at his peril, but it is otherwise if the Obligee or his Councell should devise it.


IN an Action of Debt by Broughton Plaintiffe against Preity, upon an Obligation, with condition, where the Plaintiffe was bound in an obligation of 200 l. for the Defendant, for the payment of 100 l. to C. if therefore the Defendant should save and keepe harmlesse the said Broughton, from all Suites, quarrels, and Demands, touching the said Obligation, &c. that then the Obligation to be void, &c. at the day of payment of the 100 l. the Plaintiffe cometh to the place where the 100 l. ought to be paid, and perceiving there not any person present to pay the 100 l. for the Defendant, Broughton to save the penalty of the Obligation, paid the money to C. and brought his Action upon the Counterbond, and it was adjudged that the Plaintiffe should recover; for the payment of the 100 l. is damage and harme. And it is not necessary, whither the Plain-
Plaintiff was arrested or sued, &c. Terror of suite, (so as he dare not go about his business) is Damnification, although he be not arrested.


A man leased a house by Indenture for yeares; the Lessee Covenants and grants for him and his Executors with the Lessor, to repair the house at all times necessary, the Lessee Assignes over, and the Assignee suffereth the house to decay; the Lessor brought an Action of Covenant against the Assignee, and it was adjudged per Papham, and all the Court, that the Action lyeth although the Lessor had not Covenanted for his Assignes, because in respect thereof the rent is the lesse, which is, for the benefit of the Assignee, Qui sentit commodum sentire debet onus. If a man grant one Estovers to repair his house, this is appurtenant to the house, Fitz H. mat. r. 181. 28. H. 8. 28.

Sir Thomas Paltmers Case, 43. El. fo. 24. banco regis.

Sir Thomas Palmer feised in Fee of a great Wood. Did bargain and sell to one Cornford, and his Assignes 600. cords of Wood, to be taken by Assignment of Sir Thomas, Cornford assignes his interest to one Basset, and afterward Sir Thomas sells to one Maynard such quantity of Wood as will make 4000. cords at Election of the Vendee; and afterwards Sir Thomas assignes to Basset 600. cords of Wood, to be taken by him, who doth fall the same, and Maynard did take them away, and converted them, &c. an Action upon the case was brought by Basset, and judgement was given for him; for Cornford had an
interest which he might assigne over, and not a thing in action or a possibility, for it was resolved, if Sir Thomas did not assigne them to Cornford upon request, Cornford might take them without assignment, for the Grantor cannot by his owne act or default, eyther subvert or derogate from his owne grant. Therefore it ensueth, that Cornford had an interest that he might assigne over. If A. have a house and land, and reasonable estovers in the woods of another, by view and livery of the Bayliffe, &c. if A. take estovers without view or livery, &c. he is a trespassor, although he take lesse then he ought to have by livery. But if A. demand his estovers and the owner or his Bayliffe will not deliver to him, he may have an Affiz. 2. If the assignement were void, yet the defendant cannot take trees cut by another, but out of the residue of the wood.


Edward Earle of Rutland seised of the Mannor of Eykering, by Indenure dated 10. March. Anno. 21. El. for augmentation of the joyniture of Isabella his Countesse, did Covenant with Sir Gilb. Gerrard, and Thomas Howcroft his Brother, that before the end of Trinity terme, then next following, he would assure by fine, or other conveyance, the said Mannor to the said Sir Gilb. Gerrard, and Thomas in Fee, which syne or other conveyance, should be to the use of the said Earle, and Isabella his Wife, and the Heires of the said Earle, which Indenture was acknowledged and enrolled in the Chancery, the 28. of the same Moneth of March, by another Indenture betwene the said Earle on the one part, and the Lord Bunleigh on the other part, and Sir Gilb. Ger. and others on the same part, for the advancement of the Heires.
Heires Males, of the said Earle, the Earle did cove-
nant, &c. to convey the said Mannor amongst others,  
with divers remainders over, and in the same Indenture, the said Earle Edward, did Co-
venant, &c. to stand seised to the uses contained in 
the second Indenture. No fine or other assurance 
was levied or made by the said Earle Edward, be-
fore the end of Trinity Tearme.

Afterwards, (Viz. ) 17. Septemb. next follow-
ing, the said Earle Edward, acknowledged a note of 
a fine of the said Mannor of Eikering, onely to Sir 
Gilb. Gerrard, and Thomas Ho; and the Heires of Sir 
Gilb. And the 18. day of the said Moneth acknow-
ledged another note of a fine of the said Mannor of 
Eckering, amongst many other Mannors mentioned in 
the later Indenture to the Lord Burghley, Sir Gil. 
Gerrard, and other parties to the later Indenture, 
and both fines were entered in Offablis Mich. next 
after. And it was proved by divers testimonies, 
that the said Earle Edward, as well before the In-
dentures as after the fine levied, said, that the said 
Countesse should have the Mannor of Eckering. And 
it was resolved, by Popham chiefe Justice, and all the 
Court.

First, although the Indenture being made for 
declaring of uses of a subsequent fine, recovery or o-
ther conveyance, to certaine persons, and within a 
certaine time, and to certaine uses, yet they are but 
onely directory, and doe not binde the estate or in-
ere of the Land, yet if the fine, recovery, or other af-
assurance be persued according to the Indenture, there cannot be any averrment made against the Indentures taken in this Case; that after the making of the Indentures, and before the assurance by mutual agreement of the parties, was concluded and agreed, that the assurance should be to other uses, but if other agreement or limitation of uses, be made by writing or by other matter of as high, or higher nature, then the later agreement should stand, for every contract or agreement, ought to be dissolved by matter of as high nature as the first was. Nil tamconveniens est naturali aequitati quam unum quodque dissolvit es ligamine quo ligatum est.

Also, it was very inconvenient, that matters in writing should be controverted by averrment of parties, to be proved by incertaine testimony of slippery memory, and should be perillous to purchasers, Farmers, &c.

2. It was resolved, that if the forme of the Indentures be not pursued (as for quantity of Land, the time within which the fine should be leavyed, &c.) Averrment without writing may be taken, that the fine, &c., was to other use, then was contained in the Indenture, by reason of a new agreement subsequent which in this case, may be as well by word as writing.

3. It was resolved, that although the indentures be not pursued, in circumstance of time, quantity, person, &c., yet if no other meanes new agreement be proved the fine, &c., in judgement of Law shall be to the use named in the Indenture. The fines cannot be directed by both the Indentures although perhaps it was the meaning of the parties, because the directions and declarations of the first Indentures were controverted and frustrated by the said second Indentures.

Cases
Cases of Executors.

Russells Case, 26. Eliz. fo. 27. banco regis.

A Release by an Infant Executor, under the Age of 21 years, is no bar, but upon payment of satisfaction to an Infant Executor, he may acquite and discharge the Debt, for so much as he receiveth: All things that he doth according to the Office and duty of an Executor, shall bind him, an Executor may release before probate of Testament, for although he may not have an Action, yet the Interest of the Action is in Law in him at the time of the release.

Middleton's Case, 1. Ja. in com. banco. fo. 28.

It was adjudged betweene Middleton and Ryno, that an Executor before probate may release action, although that before the probate, he may not have action for the right of the Action is in him: but if a release, and after take administration that shall not bar him, for the right of the Action, was not in him at the time of the release. Two Executors prove the Testament; the third refuseth, yet he may release Letter 117. if one be bound to pay a summe of money at a day to come, a release of actions before the day is a Bar, and yet before the day he could have no action.


It was adjudged, that a judgement upon Debt due by obligation, shall be paid before a Statute made
made for performance of Covenants, which are things in contingency, and in future, or other Statutes or recoguizances, for Debt vide Sadlers Case in the Fourth Booke, although the judgement be after the acknowledgment of the Statute.

Piggots Case, 40. Eliz. cmm. banco. fo. 29.

One bringeth Debt as administrator, Dominus minorem etam, of one whom he averrit to be within age, and he doth not say, that he was within the age of 17. years, and the Plaintiff was barred, because at that age the Administration ceaseth.

Princes Case, 41. & 42. Eliz. cmm. banco. fo. 29.

An Infant is made Executor, Administration durant ete minori etate, may be committed to the Mother or other Friend of the Infant, which shall cease, and be void, when the Infant is at the age of 17. years, and this administrator may not sell any goods of the Deceased, unless it be for necessity of payment of Debts; for he hath his Office of administrator, Pro bono et commodo Infantis, and not for his prejudice, also he cannot assent to pay legacies unless there be assents to pay Debts, &c. and if it be a Woman under the age of 17. years and take a Husband of full age, the Administration ceaseth.

Where one hath goods solely, in an inferior Dioces, yet the Metropolitan of that Province, pretending that he had Bona notabilia, in divers Dioceses committed the Administration, &c. this Administration is not void, but voidable by sentence, because the Metropolitan hath jurisdiction in all places within his Province, but if the ordinary of one Diocese commit the administration of goods, when the party
party hath Bona notabilia, in diverse Dioceffe: this ad-
ministration is meerly voyd, as well for his goods
within the Dioceffe as without. vide, Vere by Jeffrag
Case, 22. Eliz. in barck le roy, there cited and so ad-
judged.

Coulters Case, fo. 30. 40. & 41. Eliz. banco regis.

A N Executor in his owne wrong ought not to
retaine goods in his owne hands to satisfie his
owne just Debte, for every Creditor by such means
when the goods be not sufficient, would strive to
make himselfe Executor, De son tort, to satisfie
himselfe, and barr others, &c. And it is not reason-
able that one should take advantage of his owne
wrong, Non facies malum, ut inde fiat bonum, & melius
est omnia mala pati quod male conseitire. It is also cleere,
that all lawfull acts, that such an Executor doth, or
disseisor or an abator, &c. are good.

Hargaives Case, 41. and 42. Eliz. banco regis. fo. 31.

L Effor bringeth Debt against the Administrator
of the Lesse for yeares, for rent due after the
Administration committed in the Debte, and so it
ought to be, because he himselfe tooke the profits,
and nothing is assets in his hands, but the profits,
besides the rent, but in all Actions brought by Exe-
cutors (as Executors) the Writ shall be alwaies
in the Detinet tamum, although the duty accrue in
their owne time.

Pettifers Case, 45. Eliz. banco regis. fo. 32.

U Pon a fieri facias de bonis, testatoris the She-
rifle returneth Nulla bona, a Writ indueth to
the
the Sheriffe to inquire by inquest, if the Executors have wasted, and how much, who returneth that they have, and judgement given against them, De bonis propriis, they bring error in redditione Executionis, and the Execution was reversed, for the cause is, upon Nulla bona, to have a special Fieri Facias to make Execution De bonis propriis, if they have wasted, and if the Sheriffe so doth, where they have not wasted, they have remedy against him: but if he taketh an inquest, and returneth it, although it be false, there is no remedy against the Sheriffe, or any other.


Executor brings Debt as Administrator, and is barred by Plea, that he is Executor, he may bring Debt as Executor, for he was barred, as to the Action of the Writ, to have Debt as Administrator, but not to the Action.

Reades Case, fo. 33. 2. Jac. com. banco.

When a man dyeth intestate, and a strange person taketh the goods of the intestate, and useth them, or sells them; this maketh him an Executor of his owne wrong, for when none assumeth to be Executor, nor takes Letters of administration, there the using of the goods is sufficient to charge one as Executor, De son torte, for those to whom the Death was indebted unto, have not any other in this case, against whom they may bring their actions, for recovery of their Debts. When an Executor is made, and he proveth the Testament, or assumeth upon him the charge, and doth administer, in this case, if a stranger take any of the goods, and claim them for his owne, this doth not make him an Executor.
executor of his owne wrong, because there is another lawfull Executor.

A lawfull Executor shall not be charged, but with the goods that come to his hands, after that he assumes upon him the charge of the Will, &c. but if another man first take the goods, &c. before the lawfull Executor hath assumed the Execution, or proved the Testament, in this case, he may be charged, as an Executor of his owne wrong.


The Defendant was found guilty in trespass. Quare clausum fregit &c. pisces suos cepit, and damages assessed entirely; it was moved in arrest of judgement, because in the Count, neither the nature nor the number of Fishes was shewed. It was answered by the Plaintiff, That the Defendant is found guilty to damages, and so Non refert, of what nature or number they are. 2. That the Fishes themselves are not to be recovered but damages for them, therefore no need to shew the certainty. 3. All the damages shall be intended to be given for the close broken, which is laid in the Declaration. 4. It is matter of forme, ayed by the Statute of 18. Eliz. cap. 14. But judgement was stayed, for the Office of the Declaration is to reduce the Writ to certainty, for otherwise upon such a generall Issue, if the Jury give a false Verdict, they cannot be attainted, and damages shall be intended to be given for all, because
Walcots Case.

cause they are intire, but if they had beene severed, the Plaintiffe shall recover for so much as is well pleaded, and this is matter of substance, and not of forme, because there is no default of the Clerke, but of the Plaintiffe, and therefore no aided by the Statute.

Walcots Case, 30. Eliz. banco regis. fo. 36.

Debt was brought against Baron and Feme, in the Deinet tantium, upon an Obligation by the Feme before Marriage; it ought so be in the Debt, and Deinet because the Baron had the goods of the wife in his owne right, and for that reason debt is brought against the Heire in the Debt, and this is matter of substance, and point of the Action, not remedied by the Statute of 18. Eliz. c. 14.

Baynhams Case, 30. Eliz. in Scaccar, fo. 36.

An Ejection firmae of Lands in A. B. and C. tryed for the Plaintiffe by a Visne out of A. onely, this is insufficient, and not remedied by any Statute.


Bishops Case, 34. Eliz. banco regis; fo. 37.

Variance is betweene the Writ and count in name, the Plaintiffe recovers, the Defendant bringeth Error, the Writ was remov'd into the Kings Bench, and the judgement was reversed, because the Statute re-
remedied where there is no Original, but not where the Original is vicious, and although it were removed after pleading, &c. yet because the fault appeared to the Court, the judgement was reversed.


Baron and Feme levy a fine to one, who grants and renders to them two, and to the Heires of the Baron, and after renders part to the Feme in tail, the remainder over, the Heire of the Husband brings a Writ of Error, and assigns for error the said Variance. 1. Resolved, that there needeth not a precise forme in render upon a fine, but it shall be in this case construed, as a grant by Charter, for it is but a grant of record.

2. There are five parts of a fine.

1. The Original.

2. The License to accord, for which the Kings Silver is due, and ought to be entered upon the Writ of Covenant, and the summe, and he who payeth it, that is, he in whom the see reposeth, the Plea, and betwixt whom, &c. and the Land ought to be mentioned.

3. The concord, which is the substance of the fine, for if upon that, the Kings silver be paid, although the party dye, the fine is good.

4. The Note, which is many times taken for the Concord.

And lastly, the Foote of the fine, after delivery of the Indentures of the fine, the fine is said to be ingrossed.

3. The Comonor shall not assigne error in the render, because it is to his advantage, and none shall assigne Error, except it be to his disadvantage.
Dormers Case, 35. Eliz. Banco regis. fo. 40

A Common recovery is had in a Writ of Entry, in the Post de uno annalii redditu sive pensione quatuor marcamum, and of an advowson, whereupon a Writ of Error is brought. 1. Because every Præcipue ought to be certaine, but here it is in the Disjunctive. 2. A Writ of entry in the Post lyeth, not of an advowson; but judgement was affirmed, and thereby 'twas resolved. 1. That a common recovery is not like to other recoveries, for it may be averred to an use. 2. It is by mutuall consent, et consensus tollit errorem. 3. A Writ of entry in the Post lyeth of an advowson common, e. c. to suffer a common recovery and not otherwise, for no other assurance can be had to barre the remainders.

2. The demand of the rent is good, for one of two things is not demanded, but one thing by two names, for rent and pension are Synomina, and the rather here, because it is said to issue out of Land, which a Pension properly cannot. 3. Common recoveries are so usual, that the Court shall take notice that they are common recoveries.

Rowlands Case, 35. Eliz. Banco regis. fo. 41

A Pannell of a Jury is annexed to the Venire facias without returne, this is vicious and not remedied by 18. Eliz. cap. 14. for that remedielth insufficiënt returns, but not where no returne.
Robert Moore is returned upon the Venire facias, but in the panell before the Justices of Nisi prius, and in the Poitea he was named Robert Manre; if it appeare that Moore is his right name, and that it is he who was sworne, it is good, for by the common Law this was a discontinuance against all the Jurors, and discontinuances are ayded by the Statute, otherwise if he were misnamed in the Venire facias, and had his right name in the Panell and Poitea.


A Juror who gave verdict was misnam'd in the Venire facias, and had his right name in the Distringas, and Poitea, and for that the judgement was arrested.


C. Brings Debt upon a single Bill against N. who pleaded Payment without Acquittance, which was found for the Plaintiff, although issue was joyned upon a point not material, yet after Verdict this is aided by 32. H. 8. and 18. Eliz.

Bobens Case, 39. Eliz. fo. 43.

A Fine was levied of a Mannor, and other Lands, to the value of twenty Marks per annum, so that the Kings siluer is 40. s. which was paid, but in entering of it upon the Writ of Covenant, the Mannor was omitted, and thereupon, error was brought; but after that, the transcript of the fine was remov'd into the Kings Bench, the Judges of the common place
place amended the Record, because it appears to them that the Kings silver was payd for the Mannor, and where the Writ of Covenant was, Dede meipso, for, Teste meipso, they amended that also, and certifi-
ed it into the Kings Bench upon diminution, and al-
lowed.

Freemans Case, fo. 45. 41. Eliz. Banco regis.

IN an original Writ. &c. Quod nullus faciat vastum ven-
ditionem et desfrictionem, where it should be destruc-
tionem, the fault was onely in one Letter, the Court resol
ved upon good Consideration, that it was mat-
ter of substance: for Desfriction is a Latine word, and altereth the sense of the Statute; and matter of Substance in an Originall Writ is not remedied, but matter of forme onely, Vide Statute 32. H. 8. ca. 30. & 18. Eliz. ca. 14.

If an Originall at this day want forme, or containe false Latine, or vary from the Register in matter of forme, after Verdict no judgement shall be stayed or reversed. But if it want substance, although it be the misprision of the Clerke, this is not remedied by any Statute.


A Writ of Covenant to levy a fine, boare Date after the returne, this is amendable because a common assurance, but in other actions no amend-
ment, &c.

Cookes Case, 41. Eliz. com. banco. fo. 46.

A Common recovery of the Mannor of Isfeild, by the name of Issfield, is amendable, because it ap-
peared
Francklyns Case.

peared to the Court, by collaterall things, shewed unto them that Isfield was intended to passe.

Cases of Pardons.

Francklyns Case, 36. Eliz. fo. 46. In the Starre-Chamber.

A Bill was exhibited for a Ryot in the Starre-Chamber, five yeares before the generall Pardon 35. Eliz. and it was resolved, that the Kings fine was excepted, but not the corporall Punishment, but if it were exhibited within foure yeares, all shall be accepted. In this Case, the Kings attourney may proceede for the fine.

Guilbert Littletons Case, 39. Eliz. fo. 47. Starre-Chamber.

A Bill exhibited in the Starre-Chamber before the Parliament 35. Eliz. and returned after, this is excepted out of the generall pardon, for it was depending before the returne, but if an Originall Writ issueth out of the Chancery, returnable in the common place, this is not depending before the returne, because out of another Court, but after the returne, it shall be laid depending by relation, from the day of the Teste: and if the Tenant alien before the returne, and after the Teste, this shall be laid an alienation, pending the Writ.

Drywoods Case, 42. Eliz. Starre-Chamber. fo. 48.

A Bill in the Starre-Chamber more then foure yeares, and within 8. yeares, before the Parliament
Vaughans Case.

A Writ of entry in the Quibus, depends in Wales, before the generall Pardon, and after the Demandant had judgement, but the Tenant was not amerced. 1. Resolved, the Amercement is pardoned, because the Tort was pardoned, which together with the delay was the ground thereof. 2. The Statutes of Jeofailes extend to Wales, because it is made parcell of England, by the Act of 27. H. 8.

Wyrrells Case, 41. Eliz. In the Exchequer, fo. 49.

The Queene brings debt upon an Obligation made by the Defendant, to one who was Outlawed, the Defendant pleads the generall Pardon; and although that Debts due to the Queene are excepted, yet Debts Originally due to the Subject, and after came to the Queene, are not excepted, also the generall pardon is to be taken beneficially, for the subject, and most strong against the King.


The King may pardon burning in the hand, where the Defendant is found guilty of Man-slaughter, and hath his Clergy in an appeale. 1. Because it is but to notifie to the Judges, that he hath once had his Clergy, and that he shall not have it againe, by the Statute of 4. H. 7. e. 13. 2. Because it is
no part of the judgement, and the party shall goe at
large, although he be not burned by good construc-
tion of the Statute of 18. Eliz. c. 7. which provi-
deth, that after Clergy allowed and Burning, he
shall goe at large, for otherwise: when he is par-
donned, he shall be imprisoned for ever. In the Star-
Chamber, the King may Pardon corporall punish-
ment for forgery, &c. but not if attainted at the
common Law in an Action of forgery of false deeds.


A. C. Libelled, for defamation in the Court Chris-
tian against H. and had sentence and costs taxa-
ed at a day to be paid, H. sueth an appeale, and ob-
taines a Pardon from the King, and brings a prohi-
bition. 1. Resolved, all Suits in the Court Christian,
Pro salute anime, or reformatione morum, are for the King
as suits in the Starr-chamber, & he may pardon them
before or after the Suite comenced, but he cannot
Pardon, where the party sueth for a thing in which
he had interest, as Tythes. 2. All proceedings in
the Court Christian Ex officio, are for the King, and
hema y pardon them. 3. Although the suite may
be pardoned, yet he cannot pardon the costs which
are taxed. 4. Although the sentence by the ap-
peale is suspended to many purposes, yet untill re-
versfall, the party had interest in the costs, not par-
donable, and after a consultlation was granted for
the costs.

Pages case. 30. Eliz. in the Exchequer. fol. 52.

I. Demiseth to his wife who is an Alien, and before
the death of the Testator indenized, the date of
the Letter's Patents is corrupted, so that they bore
date
date after his death, shee obtains an exemplification, by Commission under the Exchequer Seale, it is found that she was an alien, and an Information is brought against her, and she pleads the exemplification. 1. Resol. This office is voyde, for every office of Intitling, as this is, ought to be by Commission under the Great Seale; but an office of Instruction may be under the Exchequer Seale: 2. It appeared not, what authority the Commissioneres had, but Inquisitio capta virtute Cujsdam Commissionis, &c. 2. That the Exemplification was pleadable by the Statute of 13. Eliz. c. 6. which extends to all Patents whatsoever without any restraint: An Exemplification, and an Inspectimus, as an Innotescimus and a Vidimus are all one: A Constat cannot be had without Affidavit, and it is when Letters are casually lost: An Innotescimus, or a Vidimus, are always of a Charter of Feeoment, or other Instrument, not of Record.

Knights case. 31. Eliz. Communi Banco. fol. 54.

The Prior of St. John of Je: 29. H. 8. Lease d divers houses, reserving 5.li. io.s. 11.d. per annum at the foure usuall feasts in L. viz. for one house 3. li. 11.d. and so severally of the others, with condition of re-entry for non payment, and after surrenders to H. 8. who in Anno 36. grants one house to the lessee, and another in fee, the lessee dyeth; It is found by Inquisition in the Com. of Mid'. by Commission under the Exchequer Seale, that 37. s. 5. d. parcel of the said rent was arrear at M. for a quarter of a yeare, before the returne of the office or seizure, the King grants the residue of the houses to one who leaseth to the Plaintiff, who upon entry of the Executors of the first lessee brings Trepsas, and the Court being divided, it was argued in the Exchequer Chamber by all the Judges.
Specots Case.

1. Resol. This is an intire Leale, and the vix. is but a declaration of the severall values of the houses, and no severance of the reservation, but by apt words divers parcels may be severally leased by one demise, and severall rents referred. 2. Admitting them severall rents, yet the condition is intire, and in case of a common person by severance of any part of the reversion, will be extinct. 3. This being in case of the King, his patentee of part shall not take advantage of the condition, but the King himselfe may, and the Patentee to whom he grants the residue, although the Leale originally made by a Subject.

4. Although it be found that more was arrearage then was reserved quarterly, yet it sufficeth that the office had matter of substance, and the Jury in M. may finde which are the usual feasts in L. 5. The grant after office and before the returne of it is good, and by entry without other seisure the Leale is voyde.

6. This office under the Exchequer Seale is sufficient to intitle the King to a Chattell.


S. do sa feme bring a Qu: impedit against the Bishop of E. and declare that J. A. was seised of a Mannor, to which an advowson was appendant, and demised it to the feme for life, and they presented D. W. who dyed, and so it belongs to them to present; the defendant pleads that the plaintiffe presented one who is schismaticus inuerterimus, who eor he gave notice to the plaintiffe: It was adjudged for the plaintiffe, in the Common place, and Error brought thereupon.

1. Error. Because no presentment alledged in J. A. but overruled for the presentment of the plaintiffes is sufficient for themselves. 2. The Bishop ought
ought not to shew any particular schistme, for the
Court of the King cannot judge of it, but the Bishop
is Judge: also it is cause to remove a Coroner; quia
minus Idoneus: It was answered, that he ought to shew
the heresie in certaine, and although the Bishop is
Judge, yet because his Act is not of Record, it is tra-
versable, and although it belongs not to the Kings
Court to judge of Heresies, yet the general cause of
suie being in their conuinance, they shall determine
of it by advise of Divines, and the cause of removing
a Coroner is not traversable. 3. The Bishop is twice
amerced, and a man can be amerced but once to-
wards one man, &c. It was answered, that he was
but once amerced; for the Judgement in the Kings
Bench was but a rehearse of the former, yet admit-
ting the second Judgement thereby voyde; never-
theless the first Judgement is good by the Common
Law without damages, Quod fuit concessum per totam
Curiam.

Fostar. 32. El. in Banco le roy. fol. 59.

It was resolved that the Constable having a war-
rant to bring one coram aliquo Justiciar, &c. it is
at the election of the Officer to bring the party so
attached to what Justice he will; For it is greater
reason to give the election to the Officer, who (in
presumption of Law) is a person indifferent, and
sworne to execute his Office duly then to the Delin-
quent. Wray chiese Justice said, that a Justice of
Peace may make his warrant to bring the party be-
fore himselfe, and it is good and sufficient in Law;
for it is most like, that he hath the best knowledge
of the matter, and therefore most fit to doe Justice
in that matter: upon refusall to finde surety the Con-
stable may commit him without a new warrant.
Ray chiefe Justice said, that if A. make a fraudulent conveyance of his Lands to deceive a purchaser against the Statute of 27. El. and continueth in possession, and is reputed as owner; B. entereth in communication with A. for the purchase, and by accident B. hath notice of this fraudulent conveyance; Notwithstanding he concludes with A. and takes his assurance. In this case B. shall avoide the said fraudulent conveyance by the said Act, notwithstanding the notice, for the Act by express words hath made the fraudulent conveyance voyde, as to the purchaser. And for as much as that is within the express provision of the Statute, it ought to be taken and expounded in suppression of fraud. Resolved, that fraud may be given in Evidence, because the estate is voyde by the Act of 13. Eliz. and fraud is hatched in secret, in arboré cava et opaca.

And according to this opinion, it was resolved Per tot' Cur' in communi banco Pasche 3o Jac.where one Bullock had made a fraudulent estate of his Lands within the Statute of 27. El. to A. B. and C. and after offered to sell the same to one Standen, and before the assurance by Bullock, Standen had notice thereof, and notwithstanding proceeded, and tooke the assurance from Bullock, Standen avoyded the former assurance of fraud by the said Act, for the notice of the purchaser cannot make that good, which an Act of Parliament hath made voyde as to him. And it is true, Quod non decipitur qui se decepto. But in this case the purchaser is not deceived; for the fraudulent conveyance whereof he had notice is made voyde, (as to him) by the Statute, and therefore he knew it could not hurt him.
Sparries Case.

Sparries case. 33. Eliz. in Scaccar. fol. 61.

In action of Trover and conversion, the defendant pleads that there is another action depending in the Kings Bench for the same Trover, and good; for in actions which comprehend no certeinty, as affize or trespass, this is no plea before a Count, because thereby it is made certeine, and then it is a good plea, and not before: but in this action and debt and detinue, it is a good plea at the first, because they are certeine: that an action is depending in an inferior Court is no plea.

Cases of By-Lawes.

Chamberlaine de Londons case. 32. El. in Banco le roy. fol. 66.

The Inhabitants of a village without any custome, may make Ordinances or By-Lawes for reparation of the Church, or of high-ways, or any such thing, which is for the publicke weale generally; and in this case the consent of the greater part shall binde all without any custome, vide 44. E. 3. 19. But if it be for their owne private profit for that Towne, as for their well ordering of their common of pasture, or such like, then without custome they cannot make by-Lawes. And if it be a custome, yet the greater part shall not binde all, if it be not warranted by the custome; for as custome hath created them, so they ought to be warranted by the custome, 8. E. 2. tit. aff. As pontage, murage, Tolle, and such like, as appeareth in 13. H. 4. 14. In which cases the summes for reparations of the Bridge walls, &c. ought to be so reasonable, that the Subject may have more benefit thereby then charge.
King Edward 6. did incorporate the Towne of St. Albones, and granted them to make Lawes and Ordinances, &c. The Tearme was kept there, and the Major, &c. by assent of the plaintiff, assailed every Inhabitant for the charges in erecting of the Courts there, and if any did refuse to pay, &c. to be imprisoned, &c. the plaintiff being Burgess refused to pay, &c. and the Major justified, &c. and it was adjudged no plea, &c. For this Ordinance is against Magna Charta, ca. 29: Nultus liber homo imprisonetur, which act hath been confirmed divers times (viz.) thirty times, and the assent of the plaintiff cannot alter the Law in this case. But it was resolved that the Major, &c. might inflict reasonable penaltie, but not imprisonment, which penaltie ought to be Levied by Distresse; for which offence an action of Debt lyeth, and the plaintiff in this case had judgement.

Jeffraye case Michaelis 31, 32. en Bank le Roy. fol. 66.

William Jeffraye Gent. brought a prohibition against Abraham K chessley and Thomas Forster, Churchwardens of Haylesham in Com’ Sussex, for that they sued him in Court Christian before Doctor Drum for certaine money imposed upon him without his assent, for repaire of the Church; That the Churchwardens with the assent of the greatest part of the Parishioners, juxta quantitatem et qualitatem possessionum et redditus infra dielli parochiæ existent. Determined and agreed to make a taxation for repaire of the said Church, and that notice of such assembly was given in the Church, at which day the Churchwardens and greater part of the Parish, which were there
thence assembled, made a taxation (viz.) every occupier of land for every acre 4. d. &c. Geffray dwelt in another parish, and declared that the parishioners of every parish ought to repair their Church, and not the Church of another parish. Cooke of counsel with the defendant demurred in law, and after many arguments a Writ of consultation was granted. And it was resolved, that the Court Christian hath consilium de reparatione corporis suae navis Ecclesiae: Britton who writ in 5. E. 1.

And in the Statute of Circumspelle agatis, but in Rebus manifestis errat qui authoritates legum allegat quia perspicue vera non sunt probanda. It was also resolved, that although Geffray did dwell in another parish, yet for that he had lands in the said parish, in his proper possession, he is in the law Parochianus de Haylesham.

But it was resolved, that where there was a farmer of the same lands, the lessor that receiveth the rent shall not be charged, but the Inhabitant is the parishioner, and the receipt of the rent doth not make the lessor a parishioner.

Diverse of the civil lawyers certified the Court, that the Church Wardens and a greater part of the parishioners (upon a generall warning) assembled, may make a Taxation by their Law, and the same shall not charge the Land, but the Person in respect of the Land, for equality and indifferency, and this was the first leading case that was adjudged & reported in Our Books touching these matters, and many causes after were adjudged thus, and now it is generally received for Law.
Cheneys Case.

The Lord Cheneys Case. 33. Eliz. In cur. wardo. fol. 68.

In a devise of Lands by writing, an averment out of the will, shall not be received for a Will concerning Lands, &c. ought to be in Writing, and not by any averment out of the same; otherwise it were great inconvenience that not any might know by the written words of the will, what construction to make, if it might be controled by collateral averment out of the will.

Cases of Usury.

Burtons Case, 34. Eliz. banco regis. fo. 69.

A. Lends to T. W. 100. l. 7. July 21. Eliz. in consideration of which, T. W. grants to him a rent charge of 20. l. per annum, the first payment to be at the Nativity, 1580. upon condition of payment of the said 100. l. this is out of the Statute of Usury, for he had a 100. l. for a yeare and a quarter, without consideration, and if he pay it within this Time, A. shall not have the rent, so that he was not assured of any consideration: But if it were agreed betweene them that the 100. l. shall not be payd, this is within the meaning of the Statute. A Demurrer is a confession of all such matters in fact only as are well and sufficiently pleaded.


Thirty pound was lent for halfe a yeare to have for it thirty-three pound, if the sonne of the obligee
Hoes Cause.

oblige be then in life, if not 27. pounds. this is within the intent of the Statute of Usury: *Usura dicitur* ab usu, *et erat, quae usura, ( 1. ) usus eris; Et *usura* est commodum certum, quod propter usum rei mutata recipiatur: Glanville. lib. 7. cap. 16.

Hoes Cause, 34. Eliz. fto. 70.

A Duty certaine upon a condition subsequent may be released, before the day of the performance of the conditions, but a duty uncertain at the first, and upon condition precedent to be made certain after, this in the meaner time is but only a mere possibility, and therefore cannot be released. And it was adjudged 4. El. in communi Banco, that by a release of all actions, suits, and quarrels, a covenant before breach of it is not released thereby. But by a release of covenants, the covenantor is discharged before the breach, vide Litt. 170.

A release in the time of vacation to the Patron dischargeth an annuitie, wherewith the Parson is charged in respect of the parsonage, and a warranty may be released before suit, because he may have a warrantia charta.

St. John's case. 34. El. Banco Regis. fol. 71.

D Aggs, Pistolls, &c. are within the Statute of 33. H. 8. ca. 6. the same Statute doth prohibit Crossle-bowes, and under the same name Stone-bowes are forbidden; for if a small alteration or addition should defeat the penaltie of the act, the Statute should be of small effect. And it was resolved, that the Sheriffe, or any of his Officers, for the better execution of Justice, may carry handguns or other weapons invasive or defensive, and not restrained by the gene-
generall prohibition of the said act, vide 30. H. 7. fo. 1.


One man shall not have an action of the case for common Nuans made in the high way, because it is a common Nuans, and it is not reason, that any particular person should have an action, for then every particular person might have an action for the same, and so thereby one might be punished an hundred times for one cause. But if any particular person have more particular damage then another, he may have a particular action upon the case for this particular injury, & for common Nuances, which are equall to all the Kings people; the common Law hath appointed other Courts (viz.) Leets, &c. A prescription to doe divine service in a Chappell for the Lord and his tenants is remediable onely in the Court Christian; but for the Lord and his private family, an action of the case lyeth for the Lord onely.

Case of Orphanes of London: 35. El. Banco Regis. fol. 73.

If any Orphane of London sue for goods, &c. in the Court Christian, or of Requests, a prohibition lyeth, because their government by their custome belongs to the Major of L. So if a Will be proved in the Court Christian, the probate whereof belongeth to the Lord of a Mannor.


Plaintife in an Ejection firme, counts of a Leafe of R. S. the defendant pleads in barre an Indenture of bargaine and sale (and sheweth it) by the said R. S. to E. W. who was seised untill disseised by R. S.
Clifton's Case.

S. who leased to the plaintiff, and he as servant to E. W. enters; Three Terms after the plaintiff replies, that the bargaine and sale was upon condition, which was broken, and the bargainor entered and leased to him, and did not shew forth the deed of bargaine and sale: Judgement given for the defendant.

1. Resol. When a Deed is shewed to the Court, it remaineth in the Court all the Terme in Judgement of Law, because the Terme is but one day in Law, and this as well to strangers as parties, to take advantage thereof without shewing, but at the end of the Terme it shall be delivered to the party, if it be not denied, for then it shall remaine in Court to be damned, if it be found not his Deed.

2. The Course in the Kings Bench is, that Imparllances to plead in barre are entred, but not Imparllances to Reply or rejoynye, so that the Replication here, although it be three Terms after the Barre, yet it shall be intended here the same Terme, and so he shall not need to shew the Deed.

Clifton's case. 35. Eliz. fol. 75.

If a woman tenant for life take an husband which committed wast, and after the wife dyeth the husband is dispunishable of and for such wast; for the Writ is Quare cum de communi consilio, &c. provisum sit quod non liceat aliquid exstantum venditionem seu destructionem facere de terris, &c. sibi demissis ad terminum vitae vel amorem, &c. And in this case the husband hath not any estate for life in this Land; but the wife hath estate for life, and the husband but onely an estate in her right, and so he is not within the Act.
Pilkingtons Case.

Pilkingtons case. 43. Eliz. in banco le Roy. fo. 76.

It was resolved, *Per tot Cur*, that when a distress is taken for damage sefante, that the party may tender amends until the beasts be impounded; but after they be in the pound, they are in the custody of the Law, and then the tender cometh too late. It was also resolved, that tender of amends to the Bayliff or servant that taketh them, will not serve; for he cannot deliver the distress once taken, no more then change the avoury of his Master, or demand rent upon a condition of reentry.

The Earl of Pembroke case, 36. El. Banco Regis. fol. 76.

Where the defendant sheweth a Deed to the Court, the plaintiff may pray it to be entered in hae verba, the same Termes, but not after.

Pagetts case. 35. El. in communi banco. fol. 76.

It was resolved, that if tenant for life, the remainder for life, the remainder in fee, if tenant for life makes waste in trees, and after he in remainder for life dye, an action of waste is maintainable, for the waste done in the life of him in remainder for life, because it was to the disinheritance of him in remainder in fee. And now the impediment (which was the mean estate for life) is taken away. *Ex remoto impedimento emergit actio*; it was resolved, that when the trees are cut downe, the property thereof belongeth to him in remainder in fee. And where it is said in some Bookes, That he in remainder or reversion in fee, shall not have an action of waste, it is to be intended, during the continuance of the meaner remainder.
Booth's Case.

Booth's Case. 36. Eliz. in communi Banco. fol. 77.

George Booth brought an action of waste against Skevington, and declared that Sir William Booth demised for yeares to Enfor, who assigned to Skevington. The defendant pleaded an asignement to Elizabeth Cave, before which asignement no waste was made; the plaintiffe replied, and shewed the Statute 11. H. 6. ca. 5. and that the grant to Elizabeth Cave was made to the intent he should not know against whom to bring his action, and averred, that Skevington did take the profits; the defendant rejoyned that Elizabeth Cave granted her estate to A. who demised to the defendant at will, and traversed the fraud, &c. the plaintiffe demurred, it was resolved, that every assignee of every Lessee mediatly or immediatly is within the said act; for the Statute was made to suppress fraud, and deceit, and therefore it should be taken most beneficially. Secondly, that he in remainder is within the said act, as well as he in reversion. Thirdly, the intent of fraud aforesaid, is not traversable, but the taking of the profits, which is a thing notorious, whereof the Country may have knowledge. In a formedon the tenant pleaded, Non tenure, the demandant said, that he made a Feoffment to persons unknowne, to defraud him of his tenancy, and to keepe the profits, the pernancy of the profits, and not the Feoffment is traversable.
The plaintiff and defendant referred all controversies to the Arbitrement of J. S. who did arbitrate that the defendant shall enter into an obligation to the plaintiff, that the plaintiff and his wife shall enjoy certaine lands which he had not done; this is voyde for the incertainty of what summe the obligation shall be, for the award ought to be certaine, like a Judgement: Also the award was voyde as to the feme, for she was a stranger to the submission.


The plaintiff intitiles himselfe in barre to the avowry to Common, &c. which was traversed, the Jury found that every, &c. time of minde have used to pay for the Common a henne and five egges; the plaintiff had Judgement, for he needs not shew more then makes for him, for this is not Modus Communis, paying so much, nor parcel of the issue, but a collateral recconpence to be paid for the Common, for which the Terretenant had remedy, but if the Terretenant had no remedy, then the Commoner shall have the Common sub modo, and may be disturbed by the Terretenant.


The father tenant for life, the remainder to the sonne in taille, leaseth for yeares to A. to the intent to barre the sonne, A. infeoffeth J. S. to whom the father releaseth with warranty, and dyeth, this doth not barre the sonne, for although that the devise in which is made by the seoffment, precedes the warranty,
warranty, yet because it was to that intent, the Law will adjudge upon the intire act, and so a warranty by disseisin. 2. Although the disseisin was made to the father, yet because he consented unto it, the warranty commenceth by disseisin; but if the father had made a feoffment in fee and dyed, this shall binde the sonne, if it be with warranty.


A Prebend leaseth for 70. an. Patron Deane and Chapter confirme dimissionem pradictam in forma pradicta fact', for 51. yeares & non ultra; this is a confirmation for all the Terme; for when they confirme dimissionem, &c. for 51. yeares, it is repugnant, but if they had recited the Lease, and confirmed the land for 51. yeares, this had been good, for they have an authority, coupled with an interest, otherwise if one- ly a bare authority: but by what words soever they confirme a lease for life, or a gift in taile for part, this is a confirmation of all, because they are intire; so if the estate of the disseisor, or his leesee for life be confirmed for an houre, yet all is confirmed.

Cases of Customes.

Snellings case. 37. Eliz. Com'. Banco. fol. 82.

S: Brings Debt upon an Obligation against an Administrator, who pleads there is a custome in L. that an Administrator shall pay debts upon contract to a Citizen, as well as upon Obligation, and that J. S. upon a Contract had recovered; and good. 1. Re- fol. Although that debt is given against an Admini- strator by the Statute of 31. E. 3. yet because they were
The Case of Market-overt.

were charged as Executors before, so that onely the name is changed, the custome generally alledged is good. 2. The ordinary by taking the goods was chargeable at the Common Law. 3. This custome bindeth strangers.

The case of Market overt. 38. Eliz. fo. 83.

Shopps in L. are Marketts overt for things to be sold there by the trade of the owner, therefore if plate be sold there in a Scriveners shop, the property is not altered, otherwise if in a Goldsmiths shop, if he who passeth in the street may see it. Note, the reason of this case extends to all Marketts overt in England.


It is a good Custoome of a mannor that all sales of lands within that mannor be presented at the Court of the Mannor. Obj. What remedy if the Steward will not accept the presentment. Resp. What remedy if the Clerke will not Inrolle a deede of bargain and sale, and therefore Caveat Emptor. 2. Obj. That Interesse is by the seoffment vested in the seoffee, which shall not be devested by the Custome. Resp. That livery was ordained to give notice, and a Custome which addeth more solemnity and notice is good.


Tenant for life, the remainder in fee, leaseth for yeares, the Termor is oustede, the disseizer leaseth for yeares, his leesee sowes the land, tenant for life dye, he in the remainder enters, J. S. takes the Corne,
Corne, he in remainder brings Trespas. The right of the Corne is not in the plaintiff or defendant, but in the lessee for yeares of life, or for life, but the lessee of the difficulty had right against the plaintiff by reason of the possession: and for that if he had pleaded that he had entered to take the Corne, this had been good, but because he pleaded Non culp the plaintiff had judgement for the Entry, and was barred for the residue.


W. P. Brings a Quod ci desforcat in nature of a Writ of Right in Wales, and after the misjoyned is nonsuit, Judgement finall is given; he brings the like Writt, and the first Judgement is pleaded in barre, the demandant demurres, and adjudged against him, and he brings Error. 1. Although by the Statute of 12. E. 1. Triall of right in Wales shall be by Common Jury, yet Judgement finall shall be given. 2. Erroneous Judgement finall in right shall binde untill it be reversed. 3. Judgement finall shall not be given upon default of the Tenant in a Writ of right, but a Petit Cape shall issue, for peradventure he may save his default.

Cases of Executions.

Blumfeilds Case, in banco le roy. 39. Eliz. fo.86.

Two men were bound joyntly and severally in an Obligation, the one was sued condemned, and taken in Execution, and after, the other was sued, condemned, and taken in Execution, and after, the first escaped, and the other brought an Audita quare?
Garnons Case.

la; and although the Plaintiff might have his Action against the Sheriff upon the escape, yet until he be satisfied indeed, the other cannot have his Audita quærela, for if the Defendant be sued by one Writ of several Process, although the entry be, Quod unica fiat executio. This is to be understood, of one Execution with satisfaction, for he may have three bodies in Execution. In communi banco inter Lynacre et Rods Case, Hill. 32. Eliz. It was adjudged, that notwithstanding the Conunfor in a Statute Staple was taken and escaped, yet his goods and Lands upon the same Statute, may be extended, for the Escape, and the Action which the Plaintiff might have against the Sheriff, is not a satisfaction of the Debt. And if so, the Conunfor be taken and dye in Execution, the Conunsee shall have Execution of his goods and Lands. And it was adjudged, 24. Eliz. int. Joanes & Williams, that where two men were condemned in a Debt, and the one taken and dyed in Execution, yet the taking of the other was lawfull, and then it was resolved, Per. tot. Cur. that if a Defendant dye in Execution, yet the Plaintiff may have a new Execution by Eigit, or Fieri facias, &c.

The Execution of the body is an Execution, but not a satisfaction, as appeareth in 4. H. 7. 8. and 33. H. 6. 47. in Hillaries Case adjudged, but a gage for the Debt, for the words of the Writ are, Capias I. S. Ita quod habeas corpus ejus coram Jus sic nostris, &c. ad satisfaciendum G. L. de debito & damnis, &c. and so his body is taken to the intent he should satisfy, and when the Defendant hath paid the money, he shall be discharged out of Prison.

Garnons Case, 40. Eliz. fo. 88.

Ayton recovered against Walleyn, in an Action of Debt, and Outlawed the Defendant after judgement,
Frost's Case. 219

ment, and sued a Cap. Usulag. and delivered the same to Garnon the Sheriffe, who did take the Party, and before the returne of the Writ, the Defendant escaped: and thus it was resolved, that if one at the common Law have judgement in an Action of Debt, and after judgement Outlaw the Defendant, then the Plaintiff is at the end of the Suite, for any process to be sued in his name. Yet if the Defendant be taken by Usary, at the Suite of the King, no Laches being in the Plaintiff, in continuance of his Process, he shall be in Execution for the Plaintiff, if he will, for reason requireth, that if the King shall have benefite by the Suite of the party. So the Plaintiff shall have benefite by the Suite of the King, if judgement in error be affirmed within the yeare, a Capias or Fieri facias, lyeth without any Scire facias, although in another Court.

Frost's Case, In communi banco. 41. Eliz. fo. 89.

Frost recovered Debt and damages against B. who was Outlawed after judgement, and a Cap. Usulagatwn, delivered to the Sheriffe of London, Laborne a Serjeant arrested the said B. in Fleete-streete, Ad respondendum, A. Laborne kept B. in his House, and then Frost came to Laborne with the Sherifles Warrant, to Arrest B. upon the said Cap. Usulagat. the which to doe, Laborne refused, and afterwards the Sheriffe suffered the said B. to goe at large, and upon this matter, Frost brought his Action upon the case against the Sheriffe, and supposed that the Sheriffe did arrest the said B. by vertue of the said Cap. Usulagat. and that he suffered him to goe at large, and the Defendant pleaded, Non permisit eum ire ad largum. The Jury found all the said speciall matter, and judgement was given for the Plaintiff. For, first
first it was resolved, That when a man is in custody of the Sheriffe by Process of the Law, and after another Writ is delivered unto him to apprehend the body of him who is in his custody, immediately he is in his custody by force of the second writ; by judgement of Law although he make no actual arrest of him, for to what purpose should he arrest the party that is already in his custody, Et lex non precipit inutilia quia inutilis labor sultanus, & the words of the writ are, not only Capias, &c. but also Salvo custodia, &c. Sua quod habes corpus coram, &c. and so he ought safely to keep him, Vide 7. H. 4. 30. And the Defendant ought not to be discharged, untill he had found surety to satisfy the Plaintiffe by 5. E. 3. cap. 12.

Hoes Case, 42. Eliz. fo. 89. In the Exchequer.

Execution of a writ of Execution, as well at the Suite of a common person, as at the Kings suite, is good without returne of the writ, for if a man be arrested upon a Cap. ad satisfaciendum, the Execution is good, although the Sheriffe doe not returne the writ, and so in all writs of Execution, where the Sheriffe doth onely execute the same as Cap ad satisfaciendum, habere fac seismam vel poseessionem Fieri Facias Liberat. If the Execution be duly made, it is good, but if Cap. in Process be not returned, the Arrest is not lawful, for there the intent of the writ is, to bring the party to answer the Plaintiffe, and in case of an E legit, for there the extent is to be made by Inquest, and not by the Sheriffe onely; and the writ ought to be returned, otherwise it is of none effect. In this case it was resolved, that when one hath a power of revocation, yet if he suffer any thing to be lawfully executed, as touching that, he cannot make
make any revocation: as if a man make a Letter of Attournay to another, to doe any thing, before Execution he may revoke it, but after Execution lawfully done it cannot be revoked; if one to whom another is indebted, be Outlawed, and he that oweth the money, payeth it to the King, and the Outlary is after reversed, yet the Creditor shall recover his Debt against the party, if the goods of an Outlawed person be sold by the Sheriffe upon a caputlagi & after the Outlary is reversed by Error, the Defendant shall have restitution of his goods, for the Sheriffe or Escheator, is not compellable to sell the goods, but he may keepe them, to the use of the King, agreeing to the Booke, 20. Eliz. Dyer. 363. but if a Sheriffe by vertue of a Fierifacis, sell the goods, and after the judgement be reversed by error, the Defendant shall not have restitution of the goods, but the value of them, for which they were fould. And the reason is, the Sheriffe is compellable to Levy the Debt of the goods of the Defendant, and therefore great reason that the Sale should stand.

Semaynes case, 2. Jas. fo. 91. Banco regis.

That the House of every man is to him as his Castle, and Fortresse, as well for his defence against injuries and violence, as for his repose; that if a man kill another in his defence or permissfortune, without any intent, yet it is felony, and he should loose his goods and Chartells, for the great regard that the Law hath to the life of a man. But if Theeves come to the House of a man to rob or murder, and the owner or his servant kill any of the Theeves, in defence of him or his House, this is not felony, neyther shall he loose any thing; any man may
may assemble his Neighbours or friends to Guard his House against violence, but he may not assemble them to goe with him to the Market or abroad, to safe-gaurd him against violence, and the reason of all this, is, Domus sua cuiq; eft tutissimum refugium. It is resolved, that when any House is recovered by any real Action, or by Ejectiome firme, the Sheriffe may breake the House, and deliver seisin or possession. It was also resolved, that in all cases where the King is party, the Sheriffe may breake the House (if the Doores be shut) and make Execution of his Writ, but before he breake the House, he ought to signifie the cause of his comming, and make request to have the Doores opened. West. 1. ca. 17. which Act is but an affirmance of the common Law, but if the Officer breake the House when he might have the Doores opened, he is a Trespassor, 41. Ass. pl. 35. For felony, or suspicion of felony, the Officer may breake open the Doore; in all Cases where the Door is open, the Sheriffe may enter, and make Execution of his Writ either for body or goods, at the suite of a subject, or the Lord may distraine for his rent. But it was resolved, that the Sheriffe at the Suite of a common person (upon request made to open the Doors and denyall thereof) ought not to breake open the Doore or the House, to Execute any processe at the Suite of any Subject, or to execute a Fieri facias, being a Writ of Execution, but he is a Trespassor, yet if he doe Execution in the House, it is good in the Law, being done, it was also resolved, that the house of a man is not a Castle or defence for any other person but for the owner, his Family and goods, and not to protect another, that flyeth into the same, or the goods of another, for then the Sheriffe upon request and denyall, may breake the House, and doe Execution. And this is proved by the Statute o
whereby is declared, that the Sheriffe may breake the House or the Castle to make replevin, when the goods of another that he hath destroyed, are conveyed away, to prevent the owner, but in this case the Sheriffe must demand the goods first.

\[\text{Barwicks Case, 39. Eliz. in Exchequer. fo. 93.}\]

The Queene 28. Die Julij, Anno. 26. demised the Mannor of Sutton, to Humphrey Barwick tenend. \(sibi \ adie confectionis\). It was resolved that the same 28. day of July, is excluded, and the demise began the 29. of July. It was also resolved, that an estate of freehold cannot commence in futuro, but ought to take effect presently in possession, Reversion, or Remainder. A Leafe for yeares may commence in future, but not a Leafe for life, and the reason is, for that a Leafe for yeares may be made without livery and feisin, but an estate of freehold may not be made without livery, either in deed or in Law, and therefore when a man maketh a Leafe for Life, to commence at a day to come, he cannot make a present Livery to a future estate, and therefore in this case nothing pasteth, and it is all one whither it commenceth at a day to come, or yeares to come, for the distance of the times doth not make alteration in this Case, but in the case of two joint Leesees, the Livery made to one is good in the name of both, for they have an interest in the Land, before their entry, and livery to one in the name of both, maketh an actual possession in both, which is sufficient to support the remainder to a third person in Fee, Vide, Clayton's Case, in the Fifth Booke, Lycense to occupy Land for one yeare, is a Leafe for one yeare. 5. H. 7. 1. in consideration of a former demise to be
be surrendered, which was false and void, is a void consideration, as to the Queene.

Goodall's case. 40. El. Banco Regis. fol. 95.

Conditions for payment of money touching inheritance, ought to be truly performed, and not covetous, if they concern a third person. The Law doth not finde an assignee in Law where there is an assignee in fact. Expressum factum esse tali non ; affirmed in the Exchequer chamber upon Error there brought.


Fliton and the Countess of Northumberland his wife, Sir Thomas Cecill, Knight, and Dorothee his wife, William Cornwalleyes, and Lucy his wife, and the Lady Davers, Daughters and heires of the Lord Latimer, brought a Quare impedit against Hall, who pleaded a release of William Cornwalleyes, pendente breve, and it was adjudged that this should but goe in barre onely against William Cornwalleyes and his wife, and the Writ should stand for others, and all shall vest in the others, because intire, and in the reality, presentment of the lessor and lessee is not double, for the lessors onely traversable.

Buries case. 40. El. in communi banco. fol. 98.

Between Webster and Burie in Ejentione firma, a speciall verdict was given upon divorce between Burie and his wife, causa frigidinatis, and that his wife for three yeares after the mariage, Remains virgo intatta propter perpetuam impotentiam generationis. in vi-
Flowers Case.

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Duo & quod vir fuit inaptus ad generandum; and in this speciall verdict, all the examinations of the Witnesses, upon which the Judge in the Spirituall Court was moved to give his sentence, by which the perpetuall disabilitie of Bury ad generandum was manifest, were reade; and by which it was pretended, that the issue which he had by a second wife was illegitimate, and this was the doubt of the Jury. And it was adjudged, that the issue of the second wife was lawfull, for it is cleare that by the Divorce (causa frigiditatis) the marriage is dissolved a vincula matrimonii, and by consequence, either of them might marry after, and admitting that the second marriage was avoydable, yet it remained a marriage untill it was dissolved, and by consequence, the issue that is borne during the coverture, (if no divorce be in the life of the parties) is lawfull; et homopote esse habiles & inabitils diversis temporibus, and Judgement affirmed in Error.


AN indictment of perjury upon 59. El. for giving false evidence to the great Inquest, is not within the Statute, for it must be in matter depending in suite by Bill. Writt, action, or information, vide le Statute. Plus peccat author quam auctor.


That the Commissioners in the Comission of Sewers ought to tax all which are in danger of damage, for non-repair of the Bancks, and not only him, which hath the Land next adjoyning to the River. The Commission is grounded upon the Statute 6. H. 6. cap. 5. for if the Law were otherwise, great inconvenience might follow, for it might be,
be, that the rage and force of the water might be
such, that the value of the Land adjoyning would not
serve to amend the Bancks and therefore the Statute
would have all in perill, and which take commoditie
by the making of the Bancks to be contributory;
for qui semit commodum sentire debet & onus & ipsae leges
cupiunt, ut jure regantur.

And notwithstanding by the words of the Commissi-
Fion authoritie is given to the Commissioners, to doe
according to their discretions; yet their proceedings
ought to be limited and bounded with the rule of
the Law, and reason. For discretion is a knowledge
or understanding to discerne betweene right and
fallhood, truth and wrong, shadowes and substantes,
equity and colourable glosses and pretences, and not
to doe according to their wills and private affection;
For a learned Man faith; Talis discreetio discretionem
confundit.

Penruddocks case. 40. Eliz. fol. 100.

IN a quod permissat betweene Clarke assignee of Tho-
mas Chichley, plaintiffe, and Ed. Penruddock and
Mary his wife defendants, assignee of one John Cock,
for that Cock 20. 8bris 10. Marie erected upon his free-
hold a house in St. Johns streete 30 neere the Curte-
lage of an house of Thomas Chichley, that Domus illa
super pendet, Anglice, doth overhang magnam partem vi-
delicet 3. pedes curtilagii; the plaintiffe, sic quod aque pluvia-
les de eadem domo decedentes folum ejusdem curtilagii con-
terunt & magnopere ac indies magis magis; consumunt &
Devastant; ac ea ratione curtilag' prad. quolibet pluviale
tempore humetatis & imundas existit, quod praedictus Hen-
ricus Clarke inhabitans in eodem Messuagio nullum pros-
cuem seu usuum de eodem curtilagio percipere possit, ad
necessitionum liberi tenenti prad'. &c. And it was re-
solved,
solved, that the distilling of the waters in the time of the Feoffee or assignee is a new wrong; and this Writ lyeth after request of amendment, but not before, but it lyeth against him that did the wrong without request, and the action good, &c.

Windsor's case. 41. Eliz. fol. 102.

IN a quare impedit by Windsor against the Archbishop of Canterbury for the Church of Bussott in the County of Bark: It was adjudged that if two have title to present by turne, and the one present, who is admitted, instituted, and inducted, and afterwards is deprived for Crime, Heresie, &c. yet that Patron should not present againe, but that shall serve for his turne. So likewise if he present a meere Laicus, which was admitted, instituted, and inducted, although it be declared by sentence, that he was incapable, and therefore void ab initio; yet because the Church was full untill the sentence declaratory be pronounced, yet that shall serve for his Turne. But when the admission and institution are meerely void, then that shall not serve for one Turne, as if a presentee be once admitted, instituted, and inducted, but hath not subscribed to the Articles, &c. according to the Statute of 13 El. by which in this case the admission, institution, and induction are voided, 23 El. Dier pl. ult. acc.


Hungary brought an action of debt upon an Obligation against Meje and Smith, the condition was to perform an award between the plaintiff on the one partie, and the defendants on the other; ut quod arbitrium praed. fiat &c. deliberetur utique partium praed.
228. Bakers Case.

Prior, before such a day, the arbitrament before the day was delivered to the plaintiff, and to Mese, but not to Smith; judgement was given against the plaintiff. It was resolved, that if two be of one partie, and two of another, and the words are; *Ina quod delibeber. utriq; partium,* That the delivery of the arbitrament to one of the one part, and another of the other partie is not sufficient; For the partie is to be intended of the whole partie, for one is as well within the penaltie and danger of the Obligation as the other; and utriq; is taken sometime Discretion, sometimes Collectwise, *Secundum subjexiat materiam;* but here it is taken Collectwise.

Bakers case. 42. Eliz. fol. 104.

If a plaintiff in evidence shew any matter in writing or record, or any sentence in the Ecclesiasticall Court, whereupon Law doth arise, and the defendant offer to demurre in Law upon the same, the plaintiff cannot refuse to joyne, or wave his evidence, and so on the other partie, and the reason is for that matter in Law, shall not be put in the mouth of Lay-men; but the King in this case is at libertie.

Boulston's case. 40. El. in communi Banco. fol. 104.

It was adjudged that if a man make Coney-borrowes in his owne Land, and the Conies encrease to so great a number, that they destroy his Neighbours ground adjoyning; The Neighbours may not have an action of the case; for presently when the Coney's come into his Neighbours ground hee may kill them, because they are *fera natura.* And in this case it was resolved, that none may newly erict a Dove-house, but the Lord of a Manor, and if any doe,
doe, he may be punished in the Leete; But no action of the case lyeth for any particular man, for the infiniteness of actions that might be brought. And of this opinion touching the new erecting of a Dovecote, was Sir Roger Manwood, chief Baron, and the Barons of the Exchequer in the Exchequer chamber.


Ancient demise is a good plea in an Ejection; although it is not in trespass, because by intendment the freehold may come in debate, and the interest of the Land is bound; ancient demise is extendable upon a Statute by E legit, but in an affrile by tenant by E legit, ancient demise is a good plea. 22. Ass. Pl. 45.

Sir Henry Constables case. 43. El. in banco le roy. fo. 106.

Nothing shall be said Wrecsum maris, but such goods only, which are cast or left upon the Land by the Sea: Flosum maris, is when a Ship is drowned, or otherwise perish, and the goods flote upon the Sea; Jesam maris, is when a Ship is in perill of drowning, and for disburthening thereof, the goods are cast into the Sea, and after notwithstanding the Ship perish. Lagan vel positus Ligan, is when the goods go cast out of the Ship, and the Ship perish, and such goods are so ponderous that they sinke to the bottome, and the mariners to the intent to finde them, binde thereunto a Boy or a Corke, or other such thing to finde them againe; Et dicitur Ligan a Ligando, and none of these words which are called Flosum, Jesam, or Ligan, are called wreck, so long as they remaine in or upon the Sea; But if any
of them be cast upon the Land by the Sea, then it is said to be wreck, and by the Statute 15. R. 2. ca. 3. the Lord Admirall shall not have conuenance or jurisdic- tion of wreck of Sea; but of the other three hee hath; for wreck is when the goods are cast upon the Land, and so within some County, whereof the Common Law may take conuenance; But the other three are upon the Sea, Magis proprie dici poterit wreccum, si havis frangatur or ex qua nullo virtus evisit, or maxime si dominus rerum subversus fuerit, or quicquid inde ad terram venit erit domini regis; wreck may by pre- scription belong to the Lord of a Mannor. It was re- solved also, that the soyle upon which the Sea doth flow and reflow, sic. Between the high water marke, and the low water marke may be parcell of the Mannor of a Subject. 16. El. Dier. And it was resolved, that when the Sea doth flow, ad plenitudinem maris, the high Admirall shall have jurisdicution of every thing done upon the water, between the high water marke, and the low water marke, as felony, &c. No prooфе is allowable by the Law, but the verdict of twelve men; part of the goods were wreck, and part not, & damage assed intirely, ergo Judgement given for the defendant. The King shall have foßam upon the Sea, because within the ligeance of the King.


It was resolved, if a Felon steale any goods, and leave them in a Mannor, or Towne, or in his house, or in the house of another, or hide them in the earth, or any other secret place, and afterwards fly, these goods are not forfeited, nor waifte goods in the Law, for waifte is where a felon in pursuite, waveth or lea- veth the goods, or for seare to be taken, thinking that pursuite was or is made, having the goods with him in his
his possession flyeth away, and leaveth the goods. In these cases the goods shall be said waved in Law; but if he had not the goods with him, when he did fly being pursued, or for fear of being apprehended, the goods are not waved, nor forfeited, but the owner may take them again when he will, without any fresh suit. But if the Felon in his flying wave them, the goods are forfeited by the Common Law; if the Felon upon fresh suit be not attainted, at the suit of the owner of the goods. And the reason that wave is given to the King, is for default of the owner, that he doth not make fresh suit after, for to apprehend the felon. Wherefore the Law doth impose the penalty on the owner.

Bona fugitivorum are the proper goods of him that flyeth away for felony; but it is to be observed, that if a man fly for felony, his goods are not forfeited, until they be found by indictment or otherwise lawfully found of record upon his acquittal, that he fled for the felony, they cannot be claimed by prescription, because that things forfeited by matter of record, cannot be claimed by prescription.

But waifs, strays, treasure trove, wreck of the Sea, &c. which things may be gained by usage without matter of record, there a man may prescribe to have bona &c. catalla felonum: in some cases bona &c. catalla felonum shall be forfeited by conviction, and sometimes without conviction, but always when any forfeiture is of any goods of felons, it ought to appeare of record, and that is the cause that such goods cannot be claimed by prescription.

Deodanda, are goods which cause the death of a man by misadventure, and are not forfeited, until they be found of record, & therefore cannot be claimed by prescription, & the Jury that presents or finds the death, ought to finde and apprize the Deodandum also.
Mallaryes Case.

Also, omnia quae movenst ad mortem sunt deodanda; Bona de certalina in exigendo positorum, are when any be appea-led or indicted of felony, and he withdraw or absente himselfe, for so long time as an exigent is awarded against him for his absenteing (which is a flying away in Law) he shall forfeite all his goods and chattells which he bad at the time of the exigent, and after he found not guiltie. 22. Lib. Ass. Looke the Statute 21. H. 8. ca. 11. concerning goods waved, and for restitu-tion, &c.

Mallaryes case. 43. Eliz. fol. 111.

R Endring rent to one and his heires, and to one or his heires, are all one; But a Feoffment tenendum to one or his heires is but during the life of the Feoffee; Nemo potest plus juris in alium transferre quam ipse haberet: this case confisteth much upon atturre-ments. vide le case.

Wades case. 43. Eliz. in Communi Banco. fo. 114.

A Man was bound to pay 250. li. Legal. monet. Anglia, on a day certaine, the last time of the day, that so much money can be numbred is the best time, so that it be before the setting of the Sunne, and the most convenient time; by Law, that both parties may meete: five shillings in Spanish money, and two pistoles in gold were tendered. It was resolved that the Spanish silver was lawfull money of England by Proclamation in tempore Philippi dy Mariæ, and so French Crownes; for the King by his Prerogative and Proclamation may make any foraigne coyne lawfull money of England: That if a man tender more then he is bound to pay, it is good, Omne magus con-tinet in se minus, That the tending of 250. li. in bags without
Foliombe Case. 233

without shewing or numbering the same, is good tender, if the truth be that there was so much, vide Winters case, if there be any counterfeit money in the same, yet, if the partie then accept the same, he cannot compell the partie to change it, or if it be a rent, or for non-payment a seentree, yet the once acceptance is good, and the lessor may not reenter.

Foliombe Case, 43. Elyx. fo. xii. 5.

In a writ of Essement, the Sheriffe may resist them, that will make wast, or cut downe Trees, and if he cannot otherwise, he may Imprison them, and may make warrants to others, and he may take Possession for his aide. A writ of Essement by eth in an Action of wast, as well before judgement as after.


A Feme Copy holder Durante aiduitate, owes the Land, and taketh Husband, the Lord shall have the Corne, for although her estate was inermine, yet it was determined by her owne act, so if Lessee at will owe the Land, and determine the will, but if Baron and Feme are Lessees during the coverture, and the Baron owe the Land, and they are after Divosred, Causa pracontractus, the Baron shall have the Emblems, because this is the Act of the Court.

Pymells Case, 44. Elyx. fo. 117. com. banco.

Pymell brought an Action of Debt upon an Obligation against Cole, of 16. l. for payment of 84. 10. s. on the 11. of Nov. 1600. The Defendant plead-
pleaded, that at the instance of the Plaintiff before the said day he paid him 5 l. ro. 5. and it was resolved by all the Court, that the payment of a lesser summe in satisfaction of a greater summe, cannot be satisfaction for all, so that by no possibility a manner summe may satisfie the Plaintiff of a greater; but the gift of a horse, cowe, robe, &c. in satisfaction is good.

But in this case it was resolved, that the payment of a parcel, and acceptance thereof before the day, in satisfaction of all, is a good satisfaction, in respect of the circumstance of time; for paradventure, parcel of that before the day, may be more beneficial unto him then the whole summe of money at the day, and the value of satisfaction is not material, for if I be bound to pay you ro. 1. at Westminster, and you request me to pay 5 l. at Yorke, and you will accept the same in full satisfaction of the ro. 1. this is a good satisfaction in respect of the place, but in this case, the Plaintiff had judgement for the insufficient pleading, for he did not pleade that he had paid 5 l. ro. 5. in full satisfaction, (as by Law he ought) but pleaded the payment of part generally, and the Plaintiff accepted the same in full satisfaction, and always the manner of the tender, and of the payment shall be directed by him that maketh the tender and payment, and not by him that accepteth it.


Rent charge is granted to B. for the life of C. the Grantor leaseeth for life to D. the remainder in Fee to E. C. and D. dyes, B. distraines E. for all arreares, this is good by the Statute of 32. H. 8. cap. 37.

Whepdales
In Debt brought against one joint Obligor the Defendant pleads Non est factum, adjudged for the Plaintiff.

1. Resolved, he may pleade in abatement of the Writ, but not Non est factum, for every one is obliged in the intirety, therefore if Debt be brought against both, and one is outlawed, the other who appeares shall be charged with all.

2. If a Deede be avoidable by plea he shall not pleade, Non est factum.

3. If a Deede be made voyd by Statute he shall not pleade Non est factum, but shall avoide it by plea, but if a deede by matter Ex post facto, become not his deede, he may pleade Non est factum, as if one deliver a deede to deliver over to I. S. who refuseth, &c.

Longs Case, 2. Jacobi banco regis. fo. 120.

Exception to the Inditement of Murder, the Inditement was taken, Intra libertatem villa de C. and C. where the Tort is done, is not said to be within the Liberty. Response, that to Inditements certainty to a certaine intent in generall sufficeth, and not to every particular intent, for that is, Nimia subtilitas, and it shall be intended, that the Ville of C. is within the liberty of C. the Indictment is, Quad dedi vulnus super anteriorum partem corporis subter mamillam, where it should be Mammillam. Resolved, that false Latine shall not quaff an Indictment, if the word be sensible, and these two words are good Lateine, allo this is superfluous, for Super anteriorum partem corporis, is sufficient, and shall be intended the Trunke betwixt the Neck and Thighs. 3. Vulnus, where
Saffins Case.

where it should be Plaga, overruled because Synonomy. 4. Let the be is not shewed, it was said, that it did penetrate all his body, whereby it appeareth that it was mortall. 5. It is said, that the wound did penetrate his body, and not the Bullet, this is significant enough. 6. Percussit wanteth, and for this cause the Indictment was quashed, for in all cases of death this ought to be except in case of poisoning, and for this last error the Outlary was reversed, and H. D. was discharged.


A man maketh a Lease for yeares to commence after the end or determination of a former Lease. In esse. The first Lease endeth, the second Lessee doth not enter, but he in reversion entereth, and maketh a Renteement, and levyeth a fine with Proclamations, and five yeares passe without entry, or clame of the second Lessee. If this fine be a Bar, was the Question, and it was resolved to be a Bar, for the Statute of 4. H. 7. c. 24. speakes of interest, and a Lease for yeares is an interest within the Statute, so of tenant by Elegit, &c.


A Libell may be made as well against a private man as against a Magistrate, Non recte, whither the Libell be true, or whither the party be of good fame, or ill fame, for it inciteth all the fame Family, Kindred, or Society to revenge, and so tendeth by consequence to the effusion of blood. It was resolved in the Starre-Chamber, 44. Eliz. Hallywoods Case, that if any finde a Libell, and would preserve himselfe out of danger, if it be against a private man, the
the finder may, either burne it, or presently deliver it to a Magistrate, but if it concern a Magistrate or publick person, then she ought to give it to a Magistrate. A Libell may beas well by words, Verbis aus cantilenis, as Writings, and by Pictures or Ignominious Signes, as Gallowes, &c. The Punishment is by Indictment, as in the Starre Chamber.


The Gardian in Chivalry shall have the single value of the Marriage of the Heire without tender, otherwise the Heire may defeate the Lord by Marriage, or goe beyond the Sea, and so prevent the Lord of any tender, if it were requisite.

Caudreys Case, 33. Eliz. in Trespasse.

The Jury found the Statute of 1. Eliz. cap. 1. and cap. 2. and that the Plaintiff was deprived for Preaching against the Booke of Common Prayer; by the Bishop of London, una cum affensu, &c.

Resolv. 1. The deprivation was good for the first offence, because the Act of 1. Eliz. for uniformity of Common Prayer doth not abrogate 1. Eliz. for Ecclesiasticall Jurisdiction without negative words, and by an expresse proviso the Jurisdiction of the Bishop is saved.

Resolv. 2. That sentence given by the Bishop by assent of his Collegues, ought to be allowed by our Law.

Resolv. 3. The Commissioners shall be intended Subjects borne, &c. Stabilit, presumption, &c. Also it is found that the King authorized them, Secundum formam Statui.

Resolv. 4. The Act of 1. Eliz. for Ecclesiasticall Jurif-
Caudreyes Case.

Jurisdiction was onely declaratory, for the King being an absolute Monarch, and head of the body politic, had plenary power to minister justice to his Subjects in Causes Ecclesiasticall and temporall. See Circumpselli agatis. 13. E. 1. and Articuli Cleri. 9. E. 2. Reges sacro oléo unæ sunt spiritualis jurisdictionis capacities. See there diverse judgements, Lawes, and Acts of Parliament, cited to prove the Kings supremacy in Causes Ecclesiasticall.

The End of the Fifth Booke.

THE
THE SIXTH BOOK.

Where Services intire shall be Apportioned.


ORD and Tenant of three Acres, by Homage, Fealty, a hawke and Suite of Court, the Tenant makes a Feoffment of one Acre, the Feoffee by the common Law shall hold by all intire services, annuall and casuall, and the Statute of Quia emptores Terrarum, doth not extend to intire services but by the Statute of Marlebr. c. 9. the Feoffees shall make but one Suite, and he who doth it shall have Contribution against the others, if they are severally intfeofed, otherwise if jointly.

a. Intire services shall be multiplied by the Act of the Tenant, and extinct by the Act of the Lord, as if he purchase part.

3. By Act of the Lord intire service for his private benefit is extinct, otherwise if it be for the publick good, for works of Charity, Devotion, or administration of Justice.

4. If part comes to the Lord by act in Law, yet the
Markals Case.

the intire service remaines, except in Case where Contribution is to be made, for the Lord shall not contribute.

5. If part comes to the Lord by Act in Law, and of himselfe as by recovery in a Cessavit, all the intire services are gone.

Where the Paroll shall demurre for the nonage of the Demendant, and where the Tenant shall have his Age.

Markals case; 31st Eliz. com. banc. fo. 3.

In a Formedon in the remainder by an Infant of a remainder limited to his Father, and his heirs, the tenant cannot pray that the paroll may demurre, but in a Formedon in the reverter he may: In actions auncestrell, the Tenant may pray that the paroll may demurre, because a right onely descends to the Infant, and the Law will not suffer him to sue, for feare that he may loose for want of understanding; but in possessory Actions he cannot, because then everyone will put Infants out of possession, and it would be mischievous if they should not regaine their possession untill full age: So it is in all Writs, where the cause of action happens in the time of the Infant. And as to Actions auncestrell, they are of two sorts: Droit in Soil and possession, the first is, where a right onely descends from the Auncestor, and the Infant ought to lay the explees in the Auncestor, and there the Tenant (without plea pleaded) may pray that the paroll may demurre, but if the Auncestor were never in possession (as in this case he was not) and the Infant himselfe is the first in whom
whom it rests there (without plea pleaded) hee shall not pray that the Parol may demure: but if a right descendent from an ancestor who was in possession, although the Action doth not descend, the Tenant may pray that the parol may demure, as if Non emptormentis alien and dye. In actions auncestroll possession, the parol shall not demure without plea: but if at the common Law the Tenant had pleaded a rescission of the ancestor, then he may pray, &c. but the Statute of Gloucester, cap. 2. aideth that, in writs of Coninage, Besaiell, and aiell, but this extends not to other actions, in a Formedon in the descendent, where an infant recovers, but a limited estate the parol shall not demure without plea, in an Affiz, or afiz of Mortdaucestor, the parol shall not demurr because the Jury is to appeare the first day, and try all things.

The Statute of Westm. 1. cap. 46. Age is taken away in entry upon dissisedin, where fresh suite is made, but an Infant shall have his age in all real Actions, where he is in by descent, and the Action is not founded upon his owne wrong, except in Super obijt, and Partitione ficientia, where both are in possession or attainz, for the mischief of the death of the Petty Jury. The Statute of West. 2. cap. 40. Ousteth the age of the Vouchee in cuij. in vita, and Sur cuij. in vita, although that the Tenant will answer, if the parol ought to demure, yet the Court ought to award that the parol shall demurr.

Sir John Molyns Case, 40. Eliz. in Scaccar. fo. 5.

King Edward the third, Lord, Abbot of Westminister, Mesne, and C. Tenant. C. is attainted of Treason, the King grants to Sir Jo. Mo. Tenendum de nobis & alijs, capitalibus dominis feodi illius per servitiae, &c.
Wheelers Case.

&c. the Mefnalty is revived. Obj. 1. That the tenure shall be Per servitutia inde debita, at which time no service was due to the Melne. 2. An expresse tenure of the King is limitted, and it cannot be immediatly holden but of one. To the first it was answered, that there are sufficient words to renew the Mefnalty, because the intention of the King, appeares to be so, and it is reasonable, that the Melne who offended not, should not suffer losse. 2. It shall be holden immediatly of the Abbot, and mediatly of the King.

Wheelers Case, 43. Eliz. in Scaccario, fo. 6.

The King grants Land Tenendum by a Rofe, Pro omnibus servitij, this is Socage in chief, and the tenure shall be by fealty and a Rofe, and (Pro omnibus) is to be intended of other services which the Law doth not implie.

Resolutions and Diversities when a barre in one action shall be a barre in another.


If one be barred by plea to the Writte, hee may have the same Writte againe; if by plea to the action of the Writte he may have his right action: If the plea be to the action, and he be barred by Judgement upon demurrer, confession, or verdict; in personall actions it is a barre for ever, and in reall actions he is put to a Writte of higher nature, as barre in aflize barreth one in Entry in nature of an aflize, but he may have an aflize of Mortdaumeister, &c. But barre is not perpetuall if those who are barred have
Spencers Case.

have not the meete right, therefore the heire in tailie
who is barred shall have the same action, so of the
successor of a Parson, if he doth not pray in ayde of
the Patron and Ordinary: He who lost by default be-
fore the Statute of Westminster 2. cap. 4. was put to a
Writte of right, and if he could not have this Writte,
he was without remedy: In case where a Writte of
Entry in the post lyeth now, nor remedy was before
the Statute of Marlbridge, cap. 29. but a Writte of
right. See there divers inconveniences which influe
upon the breach or alteration of the auncient and
fundamentall rules of the Common Law: Inter
Reipublica at fid finis litium.

Where a Writte shall be brought by Journeys accounts.


If a formedon abate for undue summons, the de-
mendant may have another by Journeys accompts.
1. Resol. If a Writte abate by default of the deman-
dant himselfe, he shall not have another Writte by
Journeys accompts, otherwise it is if by default of
the Clerke or Sheriffe as in this case: If a Writte a-
bate for non-tenure of all, he shall not have, &c. but
if a Præcipe abate for non-tenure of parcell, he shall
have another; so if it abate for joyn_tenancy of part of
the demandant he shall not have a new Writte, be-
cause he had notice, otherwise it is of the part of the
tenant. And this Writte shall be alwayses betwixt
the parties to the first Writte, and of the same quan-
tity of acres: A Judiciall Writte shall never be abate
by Journeys accompts, because it shall never abate
for forme. 2. The second Writte is quasi, a continu-
ance
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Gentlemans Case.

ance of the first Writte, therefore all pleas which relate to the purchase of the Writte shall be pleaded from the purchase of the first Writte; and costs of the first Writte shall be recovered. 32. E. 3. Journey's accompts. 16. 15. days were allowed.

Gentlemans case. 25. Eliz. concerning Judges of Courts. fol. 11.

In the Hundred Courts the Sutors are Judges, in the Court of Pypowders, the Steward is Judge; in a Leet, the Steward is Judge; in a Court Baron, the Sutors which are by the common Law are Judges. Rex seltoribus Curia, duc. Vobis mandamus, duc. ad judicium reddendum, duc. procedatis: but in Redisselion the Sheriff is Judge, by the Statute of Merton. cap. 3. and in the Tourne.


It was adjudged, that after the act of 28. H. 8. cap. although jointennants be compellable to make partition by Writte, as well as Copartners, yet they may not make partition by words, as Copartners may doe by the common Law. If two jointennants make partition by Writte, the warranty remaineth, otherwise it is if it be by deed by Consent.

Cases of pardon. 29. Eliz. fol. 13.

Burton Parson of Isbock in Leics was deprived. Anno 12. El. for committing Adulterie, and after by the generall pardon 2. Apr. 13. El. the offence of adulterie (int. alia) was pardoned; before the 14. of February then last past. And it was said, that before the pardon, that crimen adulterij pred. transivit in sem judicatam,
Arundell's Case.

judicatam, and therefore the sentence should remaine in force; and therefore untill the sentence were reversed the deprivation was in force. But it was resolved, that Burton, by virtue of the said pardon is become Parson againe, without any sentence declaring the said deprivation to be voyde; For by the pardon the adultery which was the cause of the sentence is discharged; and by consequence, all that which did stand or depend upon the same foundation is also discharged, vide 20, El. Dier.

A was bound in a Statute of 20, li. to B. B, sued Execution, and the Lands of A. were delivered in Execution, and after B. maketh Defeasance to A. by Indenture, that if A. doe pay to B. 8. li. at a certaine day, then the Statute to be voyde; And it was adjudged that although the Statute was executed, yet the Defeasance of the Statute was sufficient in Law to defeate as well the Statute, as the Execution thereof; For the Statute is the foundation of all, and if that be defeate, all that is builded on the same, shall be defeate also. 20. eff. pl. 7. Burglary was excepted out of the generall pardon of 28. Eliz. by that the attainder of burglary is excepted, for the offence remains after judgement, and is the foundation of it.


An Indicement of murder in King-streete in W. and the wifem from W. and it was vittous, for it ought to be from the most certaine place, that is the Parish, for W. being a Citie it shall be intende that it is greater then the Parish, and therefore a new Venire facias was awarded.
A Tenant for life, remainder in fee to B. both by
Deed indented, joyne in a Leafe to Treport, the
question was, whether the same shall be adjudged in
Law, the Leafe of both of them or not. And it was
resolved, that it was the Leafe of A. during his life,
and the confirmation of B. And after the death of A.
it was the Leafe of B. and the confirmation of A.
because the plaintiff had declared of a joint
demise of A. and B. it was adjudged against the plain-
tiff in an Ejezidine time. If tenant for life, and he in
remainder joyne in a Leafe, rendring rent, tenant for
life shall have the rent during his life.


Riens palla by Letters patents shall be tried where
the Land is, & not where the patent beares date,
for the Patent is not traversed, but the effect of the
rule is, whether the Queene had the said Land to
grant or not.


One demifeseth to his daughter for life, and after
to his brother, paying 20. s. to J. S. the bro-
ther had fee for the summe to be paid by him, for
otherwise he may pay the 20. s. and die without sa-
tisfaction; but if the payment be to be made out of
the profits of the Land, he shall have but for life,
for there he can be at no prejudice.

Wyldes
A Man deviseth Lands to the husband and the wife, and to the children of their bodies; The question was, whether they have an estate for life, or an inheritance in tail. And it was resolved, that if they had children at the time of the Demise made, then they had but an estate for life; But if they had no children, then they had an estate of inheritance in tail.

Sir Edward Cleeres case. 42. Eliz. fol. 17.

A Man is seized of three acres of Land houlde in Capite, and maketh a Feoffment in Fee of two of them, to the use of his wife for her life; and after maketh a feoffment by Deed of the third acre, to the use of such persons, and of such estate and estates as he should limitt and appoint by his last Will in writing; And afterwards by his last Will in writing, hee Devised the said third acre to one in fee; and if this Devise was good for all the third acre, or not, or for two parts thereof, or void for all, was the question; And it was adjudged, that the Devise was good; For the Feoffor by his last Will limitted the estates according to his power, referred to him upon the Feoffment, the estates should take effect by force of the Feoffment, and the use is directed by the Will; So as in this case the Will is onely directory; But if he declared his Will by writing without any reference to his authoritie or power, as owner of the Land, and to limitt no use according to his power. In this case the Land being houlde in capite, the Devise is good for two parts, and void for the third part. If a man make a Feoffment in Fee of Lands in capite, to
the use of his last Will, although he Devise the Land with reference to the Feoffment, yet the Will is void for a third part; for a Feoffment to the use of his last Will, and to the use of him, and his heires is all one.

In this case when the partie had conveyed two parts to the use of his wife; by his act executed hee cannot as owner of the Land Devise any part of the residue by his Will, and therefore because he hath not an election, as in the case put before, whether to limit according to his power, or Devise the same as owner of the Land, (for in the case at Barre as owner of the Land, (having conveyed two parts to the use of his wife,) he cannot make any Devise.) The Devise of necessitie must inure to a limitation of the use; otherwise the Devise should be altogether void.


Wilson brought an action upon the case upon a trover against Packman. The case was thus; A man dyed intestate, and the Ordinary committed the administration to a stranger, and after the next of kindred of the Decedent sued out a Citation in the Court Christian, to have it repealed; and pendente litem the administrator to defeate the plaintifft seelleth the goods of the decedent to the defendant; and after the Letters of administration were revoked by sentence, and the first sentence annulled and made void, and the administration granted to the plaintiff. And it was resolved, that the action did not lie; and in this case the diversitie was houlden, betweene a suite by Citation, for to countermand or revoke the former administration, and an appeale which is alwayes a reverting of a former sentence; for an appeale doth suspend the former sentence, otherwise of a Citation. And
And in this case because the first administrator had the absolute property of the goods in him, without question he may sell them to whom he will, and although the administration be revoked afterwards, yet that cannot defeat the Sale. But if the sale or gift be by covine, it is void against Creditors by the Statute of 15. El. but it is good against a second administrator. And if an administrator wait the goods, and afterwards the administration is granted to another, yet every debtor shall charge him in debt. An administration may be granted upon condition, and whatsoever the administrator doth before the condition broken, is good.

Gregories case. 38. El. Banco Regis. fol. 20r.

Verba ambigua etsi in dubio posta intelliguntur in digniori & potentiori sensu, secundum excellentiam, as if the speech be or writing of J. S. generally it shall be intended of the father, where the father and sonne are both of a name; and if it be of two brothers both of a name, it shall be intended of the eldest: for these are more worthy; so where the Statute of 4. & 5. Phil. & Ma. speaketh in any Court of Record, it shall be intended of the foure Courts at Westminster, because the Kings Attorney is attendant there.

Michelbornes case. 38. Elix. Banca Regis. fol. 21r.

The Court of Marshalsea, doth onely hould plea of actions of trespass, within the verge, if the one of the parties be of the Kings household, and in contracts and Covenants, where both parties are of the Kings household, and of none other actions, nor persons, by the Act of Articuli super Charta, 28. E. 1.
It was resolved upon the Statute of 21. H. 8. that a Parson of a Church ought to stay and be Commorant upon his Rectorie (viz.) upon the Parsonage-house, and not in any other house, although it be within the Parish, but lawfull imprisonment without covine, is a good excuse of non-residence: also if there be no Parsonage-house, for impotentia excusat Legem; also sickness without fraud, if the patient remove by advice of his Council in Physicke bona fide, for better aire, and recovery of his health.


It was resolved, that the Father shall have the Wardship of his Daughter and heire apparent, so long as shee continueth his heire apparent; but when the Father hath issue a sonne, then shee shall be in ward to the Queene; for then he is heire apparent, and not the Daughter. Ambrosia was daughter of Sir Arthur Gorge by Douglas, Daughter and heire of Viscount Bindon, and was married to Francis Gorge, which Francis dyed, when Ambrosia was of ten yeares of age. It was resolved also that the Queene notwithstanding the said marriage, should have the Wardship of the said Ambrosia; for it was not a compleat marriage, because to every marriage there ought to be a consent; For consensus non concubitus factis matrimonium, & consentire non possunt ante annos nubile:; And upon conference had with the Civilians, it was agreed after such a marriage, if the husband and the wife marry again, it shall not be counted Bigamie.

And 30. E. r. tit. Gard. 156. if the ancestor marry his heire infra annos nubiles, and dye, the Lord shall recover.
Marquess of Winchester's Case. 251

recover the body of the Infant, because the heire may disagree; it was agreed that the grandfather shall not have the wardship of the sonne within age, the father being dead in his life time.

Marquess of Winchester's case. 41 Eliz. fol. 23, in Banco Regis, being the

B y the Law it is not sufficient, that the testator be of memory (when he makes his Will) to answer to ordinary and usual questions, but he ought to have a disposing memory, so as he is able to make disposition of his lands with understanding and reason. And this is such a memory, which is called safe and perfect memory, otherwise a Prohibition lyeth at the common Law generally, to stay all the proceedings in the spiritual Court, as the probate of the Will &c. untill this Suggestion be tryed at the common Law. And if the party or parties in controversy shall acquiesce or acquit themselves.


In trespasse the Defendant makes title, for that A. W. was seised in fee, and leased to him, the Plaintiff maketh title by descent, and traverseth the Lease and good, for it may be true, that A. W. was seised, and yet that a descent was cast to the Plaintiff, therefore the Lease is most materiall to be traversed.


In a Replevin the Defendant avoweth by grant of a terme by I. A. to S. from whom he claimeth, the Plaintiff pleads in barre, that I. A. married T. who by a former deed granted the terme to the plaintiff, and
and traverseth the grant made to S. and vitious, for he who claimeth by the first assignement shall not traverse the second, but he who claimeth by the second shall traverse the first. But the first feoffee shall traverse the last feoffee, and the last feoffee shall not traverse the first feoffee, because fee may be gained by dislike after the first feoffee, but a Lease for yeares cannot.

Ruddocks case, 41. Eliz. banco regis, fn. 25.

I n replywne against fix the Plaintiff recovers, the Defendants being errour, the Plaintiff pleads the release of one of them not good: Where divers are to recover a personal thing, the release or default of one barreth all, but not where they are to discharge themselves of a personality, if they are compelld to joyne, as in error and attaint, otherwise in Qualitie, because not compellable to joyne, for where they are to discharge themselves, they have no joynt interest, and although they shall have their damages againe, it shall be intended that they paid them of their several goods, otherwise it may be doubted, if Execution had beene made of goods, which they have joyntly.


If a man make a feoffee in Fee, or a Lease for life, and say to the Feoffee (being eyther on the Lands or within the view) Enter into this Land and enjoy the same, according to this deed, &c. this is a good livery, but the delivery of the deede upon the Lands without any further ceremony or saying, doth not amount to a livery. Throughgoods Case: 9. Jacob, in the nineth Booke. The actual delivery of
a writing, sealed to the party without any words, is a good livery, but not a livery of seisin, although the party be upon the ground.

If I deliver a deed, unto the seisin or lease of the messuage, mentioned in the deed in the name of seisin of the said messuage, and of all the lands, tenements, &c. in the same contained, or other such like words, without any ceremony, or act done, this is a good seisin.

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The Case of Souldiers. 43. Eliz. fol. 27.

The Statutes of 8. H. 7, cap. 1. and 3. H. 8. cap. 3. against souldiers who run away, are acts perpetuall, for the word king includes all his succession, and a gift to the king inureth to his successors.

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Vicount Mountagu's Case. 43. Eliz. in Scaccar. fol. 27.

Vicount M. with licence of the K. suffer a recovery to B. and D. notuses, with power of revocation and limiting of new, and revokes and limits new uses, the King shall have no fine for alienation.

1. Resolved, if the King doth licence to alien to one, and alienation is made to the use of another, the King shall not have a fine, for although that the King was not informed of his Tenant, yet the use is executed by the statute of 27. H. 8, which can do no wrong, and the proviso in the statute, that a fine shall be paid for executing usages, is to be intended of usages raised by covenants, or declared upon a fine, feoffment, &c. when no licence of alienation is obtained.

2. Ali-
2. Although that by revocation, and new limitation of uses, the tenant of the King be altered, yet no fine is due, because all ariseth out of the estate of B. and D. which was made with License.

Greene's Case, 44. Eliz. banco regis. fol. 29.

Tenant for life, of a Manor to which an advowson is appandant, the remainder in Fee to I. S. presenteth one, who at the suite of the Tenant for life is deprived for not reading the Articles; but no notice is given to the Patron, the Queen by lapse presents the Defendant, Tenant for life, and his succumbence die, he in the remainder presents the Plaintiff Greene, who recovereth.

1. Resolv. Although the Patron were party to the Suite, and so had notice, yet lapse shall not incure without notice given by the ordinary, as the Statute speakes, and the notice ought to be speciall, that he did not reade the Articles, and therefore was deprived, and generall notice is not sufficient.

2. The Church is voyd, ipso facto, by the Statute of 13. Eliz. without deprivation.

3. If the Queen present Ratione Lapstis, where shee is Patron, this is voyd, A fortiori, when shee had no title at all.

4. The Patron is not put to a Quare impellit, by presenting him who read not the Articles, nor by Collation, but by Collation of him who had right to Collate, the Patron is put out of possession.

5. The Queen may be put out of possession of an advowson, because it is transitory, but shee cannot be put to a Writ of right of advowson, for none can gaine the Inheritance from her by wrong.

Booth es
The condition of an Obligation, is, to deliver an Obligation to the Obligee, and to acknowledge satisfaction, it must be done in convenient time, for acts transitory to be done to the Obligee, although a place be appointed, shall be done in convenient time, and acts of their nature local, ought to be performed in convenient time, if concurrence of the Obligor and Obligee be not requisite: Also here the delivery of the bond being transitory, and the acknowledging satisfaction such an act as may be performed in the absence of the Obligee, they ought to be done in convenient time, without request: but if the Act be local, and their concurrence necessary, the Obligor had time, during his Life, if not hastened by request: If the concurrence of the Obligor and a stranger be necessary, it ought to be done in convenient time, if concurrence of the Obligee and a stranger, it ought to be hastened by request: And always, if the Act to be done is not for the benefit of the Obligee, but a labour to the Obligor, or a stranger, there he had time during his Life.

Fitz-Williams Case, 2. Jacobi. banco regis. fol. 32.

Baron and Feme Tenants for life, and to the heires of the body of the Baron, the Baron sole is vouched, in a common recovery, the taile is barred. Copledicks Case, 3. Report. 2. Re'ol. If Tenant in taile suffer a recovery to his owne use, the remainder to his wife with diverse remainders over, with power of revocation and limittation of new uxes by any such writing, he revoketh all the remainders except that to his Wife, and by the same deede limits new uxes; this
256. The Bishop of Bath's Case.

this is good, for by any such writing shal be intend-ed the same or any such, and it may be by the same deed, for, first it takes effect as a revocation. 2. By limination of new ules, and there are not more in-fluences then one in it. See there Leaper & Wroths Case, cited 30. B. to prove, that powers whereby the in-terest of Strangers shall be changed, shall be taken strikly, as a power to make leaves for twenty one yeares, he cannot make a Lease for 21 yeares, to commence in any.

The Bishop of Bath's Case. 3. Jacobi. com. banc. sb. 34.

The B. 38. H. 3. Leaseeth to E. and R. for sixty yeares, proviso, if they dy within the terme, that the B. and his Successors shall reenter. E. dyes, the B. dyes, the Successor Leases to C. Campost five per-mortem dy. pradit. R. accidit vacare, for sixty yeares with continuation. R. dyeth: Resolv. every Lease ought to have a certaine beginning, and the continuance ought also to be certaine, either by expresslie number of yeares, or by reference to an ex-presslie certainty, or where a Lease may be reduced to a certainty by matter, Ex post facto. Agreed, the second Lease reks presently in point of interest, to take effect in possession at the end of the first Terme, if by none of the accidents the first Lease become void in the mean time, and then the Lease shall commence at the first accident which doth happen, and the Lessee hath no Election.
The D. and Ch. seised of a Mannor in Fee, in which were Copy-holds grantable for three lives, for 8 s. 8 d. payable quarterly, and herriotable, grant a copy-hold for the Life of three, reserving the old rent halfe yearely, this is not voyd by 13. Eliz. cap. 1. Resolved, the grant of a copyhold for the life of 3. is good, for although there may be an occupancy, yet it is not inconvenient, for an occupant shall be punished in waft. 2. Grant of a Copy-hold is a demife by the intent of the Statute, for in Law it is a Lease at will. 3. The omission of Herriot doth not make it voyd, because the annuall rent is reserved. 4. It is sufficient that the yearely rent be reserved twice in the yeare, for the Statute faith, yearly, which maketh a difference between this Case, and the Lord Mountjoyes Case, in the fift Report.


A Lease upon condition, that the Lessee shall not alien without License, Assignee of the Lessee pleads that the Assignement was with License, and shewed not forth the Deede of License. 1. Because he did not claime by it. 2. Because the License was, Ex provisione hominis, and not Ex institutione legis. 3. Because it was executed and good.


A Grant of a rent charge out of diverse Mannors, &c. in the Parishes of E. and W. Aut alibi diffis

S
Sir Anthony Mildmayes Case.

marestis spectantur, and out of Lands, which is not parcel of any of the Mannors, these are not charged with the distress, for, Alibi doth not charge more Land then is parcel of those Mannors, but all parcels of the said Mannors out of the said Parishes.

Sir Anthony Mildmayes Case, 3. Jacob. banco regis.
fol. 40.

1. Resolved, a perpetuity is against the rules and pollicy of the common Law. 2. It is impossible that an estate tayle shall cease, before that Tenant in tayle dyes without issue, and an estate cannot be made to continue as to one, and determine as to another except by Statute. 3. A gift in tayle upon condition that he shall not suffer a common recovery, is void, because he had power by the Law. 4. It is a void saying, that his estate shall cease, if he go about, &c. for, Non officit conatus nisi sequatur effectus. Also, many ambiguities will arise thereupon, because the Law doth not define it, and it is so uncertain, that is not traversable.


An accord with satisfaction is a good barre in a Writ of Covenant, because the duty accrueth not meeryly by the deeds, but by a torte subsequent, together with the deed, and it is a good barre in an attaint, because this is not founded upon the record onely, but upon the false Oath also: In all cases where an arbitrament is a good Plea, an accord with satisfaction is also, and so generally in all Actions where damages onely are to be recovered.

Higgins
Higgins Case. 259

Higgins Case, 3. Jacob. com. banco. fo. 44.

If a man have judgement upon an Obligation, so long as this judgement is in force, he may not have a new action upon the same Obligation. For, Interest republ. est finis litium et infinitum in jure responsur. A Statute Staple is but an Obligation recorded, and one Obligation cannot drowne another, although they be both for one Debt, and the Obligee may choose upon whither he will bring his Action. 11. H. 4. and 2. Jac. Sir William Cornwales Case, and Branthwaytes Case, and in every judgement, the Defendant is amerced, and so he shall be amerced in infinitum.


In Debt against an Executor, the Defendant pleads, fully administered, the Plaintiffe faith, that he hath asssets at E. the Jury found asssets in Ireland.

1. Resol. when the place is materiall the poynct in issue cannot be found in another place. 2. Where the place is named but for conformity asssets may be found in another County. 3. In a generall issue, the Jury shall finde all materiall locall things in another County. 4. The Jury by a meane shall trie locall things in another County, as a release in a forreigne County, the Jurors shall assesse damages for the profits of the Land in the other County. Muta conceduntur per obliquum qui non, &c. but in case of felony, the Tryall shall be where the offence was done. 5. The finding of asssets is the substance, and that it is in Ireland is surplufage: A thing done beyond the Sea shall 2
shall be tried here, if the foundation of the Action be here.

Boswells Case. 3. Jac. banco regis, fol. 48.

In a *Quare impedit*, judgement was given, to remove the incumbent of the Queen, not party to the Writ who was presented, pending the Writ. Resolv. That by the common Law, by admission and institution, the Usurper gains the inheritance of the advowson, without regard of the nonage of the Patron, because he is in by judicial act, and the Bishop shall be supposed not to do wrong to the Patron, and the incumbent shall not be disturbed to exercise his function, but the King shall have a *Quare impedit* at the common Law. Collation doth not put him who hath right to present, out of possession, but if one have right to Collate it doth, an infant by the Act of W. 2. c. 5. shall have a *Quare impedit*, if a man usurp upon an infant who had a Manor, to which, &c. by dissent, who at full age infeoffeth B. the Church voideth, &c. by the usurpation the infant was out of possession, and his right passed not, and seems the Infant is without remedy: If a Clerke commeth in by course of Law, this gaineth not the inheritance against the right Patron who was not party to the writ. The King shall not recover damages by this Statute, for he is not within the first branch, *Si tempus semestre transferit*, nor within the second Branch, for that depends upon the first, yet he shall count to damages. An incumbent shall not be moved if he be not named in the writ, and if he be not admitted, &c. pending the writ, and lapse shall not incure if the Bishop be named in the Writ, otherwise if he be not: If he who is presented pending the Writ be in by rightfull Patron or not, yet he who recovereth in
a Quere impedit, shall have a generall Writ to the Bishop, which he must execute of necessity, and after that, the parties may try their titles as the Law shall determine.

Countesse of Rutlands Case. in the Starre-Chamber, 
3. Jacobi. fo. 52.

That the person of a Countesse or a Baronne may not be arrested for Debt or trespass, for although in respect of their Sex they may not sit in the Parliament; yet they are Peers of the Realme, and shall be tryed by their Peers, Stat. 20. H. 6. Peers of the Realme may not be sworn in any inquest; a Countesse in Marrying with a Husband, doth loose her Name of a Countesse.

If a Baroness, &c. by Marriage, marry againe under the Nobility, shee loseth her dignity, but if she be Noble by Birth, or descent, yet whomsoever she Marryeth, she remaineth Noble; for Birth-right is Character intellebilis, and that which is gained by Marriage, may also be lost by Marriage.

A Sherifie ought not to dispute the Authority of Courts, but he ought to Execute the Writs to him directed, for thereunto be they Sworne. Serjeant at Mace upon a cap. ad satisfaciendum, came to the the said Countesse in Cheapside, being in her Coach, and touched her body with the Mace, and said, I arrest you Madame at the Suite of S. and those were all the words that were us’d, & therupon compell’d the Coach-man to carry her unto the Counter-gate in Woodstreet, and the Sherifie tooke her into his house. In this Case it was resolved, that the Sheriffe, Bayliffe, &c. upon the Arrest ought to shew at whole suite, out of what Court, for what cause it is, and when the processe is returnable, and that this generall Arrest of
Lord Chandos Case.

of the Countesse cannot be said, that it was by force of the said Writ of Execution, and that this Arrest was of the Serjeants owne head, without warrant, and against Law, and that the said Countesse was falsely imprisoned, but she remained in the Sheriffs custody 7. or 8. dayes, untill she paid the Debt, but because the Arrest was by a fained Action, entered in the Counter, the Serjeants were sentenced.

The Lord Chandos case. 4. Jacobi. fol. 55.

The King grants to B. in taile, and in consideration of the surrender of the Letters Patents by force, whereof the King is seised in fee, granteth to him and his wife, and to the heires of B. the reversion passeth, for the recital that the King was seised in fee, was but the Collection of the King, and no part of the consideration or suggestion of the party; And when the King grants land in possession, if he had but a reversion this shall passe, for he is not deceived because lesse passes then he intended.


A Man deviseth a rent for life out of a Mannor, and he deviseth the Mannor for yeares, the termor enters, and pays the rent, after the Term, the devisee brings an affize against the Terretenant. Refol. Payment by lessee for yeares of the rent given no seisin to have an affize. 1. In respect of the imbecillity of his estate. 2. He cannot give seisin because he had not seisin, and therefore a Pracipe lyeth not against him because he cannot render seisin; but he may take seisin to the use of him in the freehold: A disseisor may give seisin of a rent secke, because he hath a freehold, and it is lawful.
rent secke is cæcus & siclus, therefore it behoveth the first payment (which giveth life unto it) shall be made by a Tenant of the freehold, and in this case being created by devise an Annuity lyeth not thereupon, otherwise if it be by grant: and Tenant of the freehold ought to attorne to a grant of such a rent over, therefore he shall give seisin: But seisin by a Bailiff is good, if seisin were had before within sixty years, and seisin given by Tenant at will is good, but it ought to be pleaded as payment by the lessor himselfe. If the King hath rent out of a ville to be paid by all the Inhabitants, seisin alledged in general without naming any is good.


To claime common ratione Comorantia & residen. in villa de B. is not good; for no man may have interest in common in respect of a Messuage, wherein he hath no interest; For custome should always extend to that which hath certenity and continuance, and without question tenant in fee simple ought to prescrib in his owne name, and tenant for life or yeares, by elegit at will, &c. in the name of him that hath the Fee, and he that hath no interest cannot have any common, and none that hath any interest, although it be but at will, and ought to have common, but by good pleading he may enjoy the same.

No improvement might be made in any wafts, if this custome (viz. in respect of habitation and Comorance) should be allowed, for tenants for life or yeares at will, by elegit, by Statute, &c. of the houses of the Lord, should have common in the wafts of the Lord, if this prescription were allowed, which were inconvenient: A custome that every Inhabitant in B. shall have a way over such grounds, either to the
the Church, or Markett, &c. is a good custome, for that is onely easement, and no profit, and a way or passage may well sequi personam; The Lord cannot claime common in his owne loyle. 

A diversitie was taken and agreed upon between a prescription and a custome, a prescription is alwayes alledged in the person, and a custome ought alwayes to be alledged in the Land, for every prescription ought to have by common intendment a lawful commencement; but otherwise of a custome, for that ought to be reasonable, and ex certa causa rationabili usitata, as Littleton faith; But it needeth not to have intendment of a lawfull commencement, as custome to have Land Devisable, or of the nature of Gavelkine, or Borough English. These and such like customs are reasonable, but by common intendment, these cannot have lawfull commencement, by grant, or act, or agreement, but onely by Parliament; and the custome in the case at barre was repugnant for it was alledged that the Custome of the Towne was, that every Inhabitant had used to have common within a place in the Towne of H. which was another Towne.

Catesbyes Case. 4o. Jac. fol. 6r.

Six moneths being halfe a yeare (semestre) is given to the Patron of an advowson to present, and according to the Kalander and not after 28, dayes to a Moneth; and the Statute faith, Si tempus semestre non transferit adjudicentur damna ad valorem, &c. per dimidium anni; and being ambiguous, it shall be construed for the benefit of the Patron.
The Lady M. tenant for life of the Mannor of B, the remainder in fee to the Lady Finch, shee and S. her husband and D. levyed a fine to one of the demesnes, who grants and renders to D. for 50. yeares, the reversion to S. and his wife and her heires, with proviso in the Deedes which directed the fine that the reversioner shall enter and hould Courts; And it was averred that this was knowne by the name of the Mannor of B. D. maketh his sonne of three yeares of age executor, and administration was committed to R. T. S. and his wife levy a fine of all the lands of the wife in K. except the Mannor of B. to the use of the same for life, the remainder to Sir M. F. R. T. demiseth to P. L. for ten yeares, Dame M. dyeth, P. L. entreth, by vertue of a power of revocation and limitation of new uses, S. with the assent of the Lady F. his wife limitteth the uses to one who entrencheth P. L. and maketh a seoffment to the use of the Lambs for life, the remainder to H. F. in tailie, P. L., reenters, Dame F. dyeth, H. F. for rent arrear disfaineth.

1. Resol By the grant and render of the demesnes the Mannor is destroyed, because in an instant the services and demesnes are fettered by act of the party; but otherwise it is, if by act in Law, as upon partition; so it is of an advowson appendant, &c. and upon partition many Mannors may be made of one, but not by the act of the party. 2. B. is excepted by the name of a Mannor. 1. Because the intent of the parties is so. 2. Exception of misnomer shall not be favoured in Law. 3. It is sufficient in Law in many cases, that a thing be reputed as it is named, as if a remainder be limitted to a Bastard by the name
name of sonne of J. S. and as to that was objected, that this reputation is not time out of minde, this needs not, if it be of convenient time as this was, for it was a Mannor revera before to levy a fine, and continue the name after, so that this reputation is stronger having such a ground, and reputation serveth in Writts amicable, although not in adversarie.

3. The lease made by the administrator durante minoris aetate, is good, because the administration is generall, and not speciall to the benefit of the Infant, but howsoever this is good during the administration.

4. P. L. in the life of the Lady M. had but interesse Terminis, so that attornment cannot be in his life, but after the death of the La. Mo. by entry of the lessee the reversion is in S. and his wife without attornment, because attornment needs not, because the reversion is settled, and he hath no meanes to compell, &c. otherwise it is where an attornment may be had: and although that P. L. lessee of a lessee of part cannot make an expresse attornment, yet his reentry shall be an attornment in Law, so he who hath interesse terminis, may make a surrender in Law, but no expresse surrender, and a man of non-fane memory may make an attornment in Law, but not an expresse attornment.

The Lord Darcies Case. 4. Jacobi Com. Banco. fol. 70.

Tender is not necessary to have the single value of the heire male or female; but the heire female shall not forfeit the double value, because the Statute of Merton is sese mavitaverit at the age of 14. yeares, &c. at which time the heire female is out of Ward: and where by the Statute of Westm. 1. cap. 22. it is provided that the Lord shall have two yeares to make
Burrell's Case. 267

a Tender, it giveth not the double value, but if he waive the two yeares, he shall have the value without Tender; quia de mero Jure, &c.


If the father make a lease by fraud and dyes, the sonne sells the land knowing or not knowing of it, the vendee shall avoyd it. 2. If the father makes a lease to the sonne, who assigns it over by fraud, the father dyes, the sonne sells the land, the vendee shall avoyd it.


E. 1. granted to the Towne of Y. Quod omnes de villa oriundi licet terras, &c, extra libertatem villa, &c. tenerint in Capite, se maritare possint juxta libertates villa praedita: R. D. dyed seised of a house parcell of a Monasterie, dissolved in the time of H. 8. houlden in Capite; the King grants the wardship of his sonne to the plaintiffe, and makes the Ward Knight, the plaintiffe brings a valore Maritagi.

The Charter doth not discharge the defendant; 1. Because it is juxta libertates villa pradita, and the liberties are not shewed. 2. This Charter cannot extend to a Tenure created in the time of H. 8. 3. It is not shewed, that the defendant was borne within the Towne.

1. Resol. If the heire in Ward be made a Knight he is out of Ward for his body, because by intend-ment he is able to doe Knights service, otherwise if made a Nobleman.

2. By the death of the tenant the value of the marriage is vested in the Lord, and cannot be deves-

3. If
3. If he be Knighted in the life of his auncelor, he shall not be in Ward at all.

4. If making of the heire in ward Knight shall de-
veft the value, it will be prejudicall to the Subject, and to the King, for none will buy their Wardships.

5. After Tender and refusall if the heire be made Knight, and marry, he shall not forfeite the double value, because he is out of Ward, but immediatly the Lord shall have a Writte de valore maritagiij.

This was the last Case that Sir John Popham chiefe Justice of England, &c. ever Argued.


Sir W. L. feisid of a reversion expectant upon taile (made to his sonne) of land in Capite, Covenants to stand feisid to the use of his neece, the sonne dy-
eth, the King shall not have primier feisin.

1. Resol. It was Collusion apparent within the Statute of Marlebr. cap. 6. to infeoffe the heire appa-
rent; and if he infeoffe others upon Collusion aver-
rable; but no averrement shall be where the re-
mainder or reversion is left in a stranger, or upon a Devise.

2. Or otherwise to dispose in the Statute of 32. 
H. 8. have relation to wills onely, for before the Statute every man might dispose of his lands by act 
executed.

3. The Clause in the said Statute which saveth pri-
mier feisin to the King, hath relation onely to acts 
executed, for the King shall have without that pri-
mier feisin of the third part not devisid, but without 
that he shall not have it of any part conveyed by act 
executed.

4. If the grandfather convey land to the sonne 
living the father, this is out of the Statute, otherwise if
if the father be dead: and so a gift to a Collaterall Kinman, who is not heire apparent, is out of the Statute, for none will (by intendment) disinheir his heire to defeate the King of the Wardship, or primer feisin, and so is the experience of the Court of Wards.


The Lord may have a certeine summe pro certo le-te, for it shall be intended it was granted at the first by purchace of the Leete for the ease of the Tenants, and in consideration of the Lords claiming of it at his owne costs every Eyre: The issue was if the plaintiffe was a chiefe pledge, and by speciall verdict he was found a Restiant, and certificed by the chiefe pledges to be a chiefe pledge, and was amerced for his default. It seemeth he was not, Sed materia predita conspita fuit in arbitrio. See 30.E. 3.23. of franke pledges.


A Judgement in an action of Debt is had against a joyntenant for life, who afterwards releafeth to his companion all the right, &c. yet that moystie is liable to the Judgement, and so it is of a rent charge during the life of the Releasor.


Executors may take benefit of the Kings generall pardon, by which is enacted that all Subjects of the King, their heires, Successors, Executors and Administrators, shall be acquitted and discharged of all offences, contempts, &c. and that shall be expound-
ed most beneficially for the Subject. And further doth give and grant all goods, Chattells, Debts, &c., forfeited; And prohibiteth any Clerke to make out any Writte, &c. Provided that every Clerke may make forth cap. ut. at the suite of the plaintiff against persons outlawed, to the intent to compell them to answer; and that the partie shall sue forth a scir. fac. before the pardon in that behalfe shall be allowed; which is as much to say, having regard onely to the plaintiff; But in regard of the King, it is an absolute pardon, and grant of his goods, and he is a person enabled against the King, but not against the partie plaintiff. And every person by himselfe, or his Attorney, may plead this act for discharge: Executors shall have restitution upon the Statute 21. H. 8. Also Administrators shall have a Writ of error upon the Statute 27. El. as was adjudged in the Lord Mordants case, 36. El. And yet these Statutes speake onely of the partie, and not of the Executors or Administrators, &c because no Writ can be against Executors, they may plead it without Processe.

The End of the Sixth Booke.
THE SEVENTH BOOK.

Postnati.

Calvins case. 6. Jacobi Banco Regis. fol. 1.

C. By his gardian bringeth an affize, the defendants say, the plaintiff ought not to be answered Quia est alienigena natus 5°. Novembris Anno Domini Regis Anglia, &c. tertio apud. E. infra regnum Scotia ac infra ligeanciam Domini Regis Regni sui S. ac extra ligeanciam Regni sui Angl. &c. the plaintiff de-murreth.

The Case was Adjorned into the Exchequer Chamber, and was argued by two Justices every day, and by the Chancellor, and resolved by the Chancellor, and all the Justices (except Walmsley and Foster) that the plaintiff ought to be answered.

For these six demonstrative Conclusions drawne from the Law of Nature, the Law of the Land. Reasons of State, and Authorities of Records and Booke Cases.

1. Every one that is an Alien by birth, may be, or might have been an Enemy by accident; but C. could never be an Enemy by any accident whatsoever; ergo, no Alien by birth.

2. Whosoever are borne under one naturall lige-

ance, due by the Law - nature to one Sovereigne,
Calvines Case.

are naturall borne Subjects; But C. was borne under one, &c. ergo, a naturall borne Subject.

3. Whosoever is borne within the Kings protection, is no Alien; But C. was borne under, &c. ergo, he is no Alien.

4. Every stranger borne, must at his birth be either amicus or inimicus; but C. at his birth could neither be amicus, nor inimicus, because he was subdinus, ergo, no stranger borne.

5. Whosoever is due by the Law of man, may be altered, but naturall legeance of the Subject to the Soveraigne cannot be altered; ergo, not due by mans Law.

Lastly, whosoever at his birth cannot be an alien to the King of E. cannot be an alien to any of his Subjects of E. but C. at his birth could be no alien to the King of E. Ergo, he cannot be an alien to any of the Subjects of E. the Maior and Minor both being Propositiones perspicue vera, and although Alienigena dicetur ab aliena gente: yet that is all one, as Alienae ligentia, and arguments drawne from Etymologie are seeble, for Sepenemero ubi proprietas verborum attendimur, sensus veritatis amittitur, yet when they agree with Law, Judges may use them for Ornameut, and divers inconveniences would follow, if the Plea against the Plaintiffe should be allowed: For first, it maketh legeance local, wereupon should follow, first that legeance which is univercall, should be confined with local limits; 2. That the Subject should not be bound to serve the King in Peace or in Warre out of those bounds; 3. It should illegitimate many which were borne in Gasclayne, Guyan, Normandy, & divers others of his Majesties Dominions, which the same were in actual obedience. And lastly, the strange and new devised Plea inclineth too much countenance that dangerous and desperate error.
the Spencers. (viz.) That Homage and Oath of allegiance, was more by reason of the Kings Crown, (that is, of his politique capacity) then by reason of the person of the King, which was condemned by two Parliaments, one in the Reigne of E. 2. called, Exilium Hugonis le Spencer, and the other in 1. E. 3, cap. 1. No one Opinion in all our Bookes is against this judgement: The Lord Chancellour and 12. of the Judges, concurred in one opinion herein, and not in any remembrance so Honourable, and Intelligent an Auditory as was at this Case.

Bulwers Case, 27. Eliz. fol. 1.

H. recovered against the Plaintiffe in the common place, and dyeth, the Defendant in the name of H. Outlawed the Plaintiffe, who brings an Action of the Case in N. where the first Action was brought, and recovered, for there was the visible torte; when matter in one County dependeth upon matter in another County, the Plaintiffe may choose in which County to bring his Action (except that the Defendant upon generall issue pleaded, may be prejudiced of his Triall,) as if two conspirie in one County, to Ende one in another County and doe it, an Action may be brought in either, but if he be indited, but not by them, there it shall be brought where the conspiracy was. If Manasse be made in E. whereby my Tenants recede into L. an Action shall be brought in E. if an action be founded upon two things, materiall and traversable in two severall Counties an action may be brought in any of them. An Annuity granted in one County to be paid in another, the Action shall be brought where the grant was, he who is robbed may have an appeale of felony, in every County where the goods came, but of
robbery where the fact was done only: A lease for years in one County of Land, in another, Debts shall be brought, where the Lease was made, and was where the Land lyeth, every Action which concerneth the life of a man shall be brought where the offence is committed: Every issue which ariseth upon an Action in which Land shall be recovered, shall be brought where the Land lyeth, as in right of ward of Land or body, or intrusion of wards, and forfeiture of Marriage, & Valore maritagi: and Quare impedit: but ravishment of ward, where the ravishment was, and a Quare non admittis where the refusall was, before the Statute of 7. R. 2. c. 10. an Action for Land in diverse Counties, or for common in one County appendant to Land in another County, shall be brought by severall Writs in both Counties, but now, In confino comitatum: a per qua servitut shall be brought where the note of the fine is levied.

Sir Miles Corbet's case. 27. Eliz. in Scaccario. fol. 5.

Resol: That the speciall manner of Common in Norf: called Shacke, to be taken in arable land after harvest untill sowing begin is good. Resol also in D. there are fifty acres, and in S. 100. who ought to intercommon for vicinage, D. cannot put in more in their Common then it will depasture, and so escape reciprocally, for the originall cause of the Common was onely to prevent suits in Champian Countries.
Cases upon the Statute of 13. E. 1.
of Winchester upon hue and cry.

Sendills case. 27. Eliz. in Com. Banco. fol. 6.

A Robbery for which the Hundred must answer
by force of the said Statute, is to be done o-
penly, so as the Country may take notice thereof
themselves; but a Robbery done secretly in the
house, the Country cannot take notice thereof, for
every one may kekke his house as strong as he will at
his perill; For it was adjudged in Ashpoles case, that
the partie robbed, needed not to give notice thereof
to the Country; For it may be that the partie rob-
bed was bound or maimed, &c. so as he could not
make hue and cry to give notice. A robbery was
done in January presently after the Sunne setting
during day-light; and it was adjudged, that the
Hundred should answer for the same; for it was a con-
venient time for men to travell, or to be about their
businesse. One was killed in the Evening and esca-
ped, and by the common Law the Towne was amer-
ced, for that was accounted in Law parcell of the
day, and not of the night. But by the Statute 27. El.
c. 13. none shall have action upon the said Statute,
except the partie robbed so soone as he may give no-
tice of the same to any of the Inhabitants of any
Village, Towne, or Hamlet, next to the place where
the robbery was done, and if they in pursuite appre-
hend any of the offenders, that will excute the
Towne.

A Robbery was done in the morning ante lucem, the Hundred shall not be charged, Cum quis feloniæ occidit fuit per diem, nisi felocapitus fuit tota villata illa amerciatur.

The Earle of Bedfords Case. 29. Eiz. fol. 7.

1. Resol. If tenant in taille make a voydable lease for yeares, and dyeth, his heire in ward to the King, or other Lord, the Lord shall avoyde this lease; but if an infant make a feoffment, the Lord by Escheate shall not avoyde it, but a gardian shall, because he doth it in right of the infant.

2. This avoidance is but during the interest of the Lord, for afterwards the heire may make it good: But if he who hath a particular estate avoideth an act in all, after his Interest determined it shall not be made good: as if a feme be indowened of an appropriation, and her clerke inducted, the appropriation is defeated for ever; so if a feme Covert (as a feme sole) levy a fine, and the Baron enters, and dyeth, the Conussee shall not have the land, for the estate is wholly defeated.

Ughtreds Case. 33. Eiz. fol. 9.

The M. of W. granted the Captainship of a Fort to the plaintiff, and for exercising of the said office, and for finding a Master Gunner, and six Souldiers, granted to him an Annuity of 32. li. per annum, the plaintiff brings an Annuity.

1. Except. It doth not appeare by the Count that the M. had power to grant this office, Non allocatur.

2. The
2. The plaintiff doth not averre the exercising of the said office; *Non allocatur*; for if he had not used it, that shall come in on the other part, because this is a condition subsequent, and not precedent; but if one be to have a thing in consideration of an act to be done by him, there he must shew the performance, because that amounts to a condition precedent, as in debt for salary, but if each party had equal remedy, one for the money, and the other for the act to be done, there the Count shall be without shewing the performance, as if one Covenant to serve, &c. and the other Covenants to give money, &c. But although that an interest vested is to be deverted by non-see-sance, if it appeare to the Court that an action is not maintainable without the doing of it, there the doing of it must be averred; as if an Abbot sole grants an annuity to J. S. *Pro Consilio*, &c. in action brought against the sueseffer, he must averre that he had given Counsell, &c. to the use of the House, otherwise if against the grantor.

*Englefelds case. 34. Elix. in Scaccario. fol. 11.*

Sir F. E. covenanted to stand seised to the use of himselfe for life, the remainder to his Nephew, Provise that it shall be voyde upon tender of a Ring by him, after he was attainted of Treason, and all his inheritances forfeited by Statute; the Queene leaseth to the defendant for forty yeares, by Statute it was inacted that every one who had a patent of land of a person attainted, shall exhibit it into the Exchequer within two yeares to be Inrolled, one authorized by Letters patents in the name of the Queene tenders the Ring in the life of Sir Fr. the Queene bringeth Intrusion.

1. Resol. When the Q. tenant *put ater vie leaseth* for
Englefilds Case.

for yeares, this is good without recitall of her estate, for it is lesse then her estate, as if she grant Totum statum suum, for there is no trote, and she is not deceived.

2. That this condition is given to the Q., but object. 1. That it was inseparable from Sir Fr. for his intent was the substance of it, and his intent cannot be transferred over. 2. Natural affection is made the Judge whether the Nephew deserve that the use shall be revoked, and in so much that natural affection cannot be transferred, no more can this condition which was created by natural affection, and natural affection determineth the estate. 3. Although the benefit of this collateral condition be given to the Q., the performance is not: As to the first and second: It was answered, that the condition is onely the substance, and all the residue is but a flourish, and that is not an inseparable condition, for any one may tender a Ring as well as he.

As to the third; The performance is given to the Q. as incident to the Condition.

4. It was objected, that the estate of Sir Fr. was not subject to the condition, because he was not possessed by limitation of use, and by 27. H. 8. but he was seised of his auncient inheritance, ergo, the lease shall not be avoyded in the life of Sir Fr. It was answered, that Sir Fr. was seised by limitation of use, and that the lease shall be avoyded.

5. It was objected, that the Q. having made this lease, being seised pur ater vie, by her owne act the shall not defeate it after: It was answered, that the Q. shall avoyde it, for her grant shall not inure to two intents; 1. to make the lease, &c. 2. to suspend the condition, and when the Q. had two rights, she shall not loose both without speciall words.

6. It was objected, that this tender ought to be found
The Case of Swannes.

found by office, because matter in pais, and if it be false the party hath no remedy, because the certificat is not traversable: It was answered that Certificates which informe the Q. of her title are traversable, but Certificates which are in nature of Trialls are not: also by the Tender the uses are determined, and by the attainer, and the act of 33. H. 8. the land is vested in the Q.

7. It was objected that the conveyance was void; because it was not inrolled within two yeares, as the Statute requires, and so Sir Fr. was seised in fee, and the lease unavoidable. It was answered that it was tendered in the Exchequer to be inrolled within two yeares, which is all the Statute requireth; the forfeiture was established by a speciall act, 35. Eliz.

The Case of Swannes, 34. Eliz. fol. 15.

A Game of Swannes in a common River are seised into the Queenes hands upon office found, I. Y. pleads that Abbas, &c. gavis sui releasing to opificium omnium cignorum in estuaria predict. insigniun, and makes her seive title to them, & prayeth an ouster Le manie: All White Swannes in a common River who have gained their naturall liberty, may be seised for the King, because they are Volatilia regalia, but a Subject may have them in his owne River, and if they escape into a common River, he may take them againe, upon fresh persuit, Cigners shall be divided betweene the owners of the Swannes equally, but upon the Thames the owner of the Land shall have the third by the custome: whosoever hath a Swan marke must have it by grant of the King, or prescription, and he may grant it over, and he ought to have freehold of five Marks per annum, by the Statute of 22. E. 4. c. 6. A man may prescribe to have Wyld Swannes, but not
Sir Thomas Cecils Case.

as here, but that the Abbot, &c. have used to take of
them to their owne use, and therefore adjudged a-
gainst I. Y. A Swanne may be an estray, and so can-
not any other fowle.

Sir Thomas Cecils Case, 40. Eliz. in Scaccario.
fol. 18.

Sir T. C. entered into an obligation to the Queene
to performe Covenants, and shewed in the Ex-
ehcker-Chamber matter of equity to discharge him
of the said Debt, according to the Statute of 33. H.
8. c. 39.

1. Kesol. that Branch of the Statute which giveth
liberty to the Subject to plead matter in equity in
barre of Debt due unto the King, extendethro Debts
due at the common Law, as well as by this Statute,
because this Statute gives more speedy remedy for
them, and so within the purview thereof, and so the
other proviso of equal charging of Lands Subject to
Debts of the King is general.

2. The Court of Exchequer-Chamber in this case
may decree upon English bill, although that Process
e be in the Exchequer at the common Law, because
to that purpose they are as one Court.

3. An obligation to performe Covenants after
Breach of them is within the Statute.

The Lord Andersons Case, 41. Eliz. in Scaccar. fo. 21.

T
Enant in taille is bound by recognizance to I. S.
who is attained, Tenant in taille dyes, his issue
aliens Bona fide, the King shall not extend these
Lands by the Statute. 33. H. 8. c. 39.

1. Before that Statute the King could not extend
Lands in the hands of the issue in taille for the Debt of
of his auncestor, because he was bound by W. 2. De
Donis.

2. By that Statute Lands are extendable in the
hands of the issue in tail, for Debt due to the King
by judgement, recognizance, obligation, or other
specialty, and other cases are out of the Statute.

3. The Alienee Bona fide, is not within the Statute,
because favoured as a purchaser, and he is a stranger
to the Debt, and comes in upon good consideration,
and benefit is given against the issue in tail, which
was not before.

4. Debts due to a Subject, and forfeited to the
King, are not within the Statute, for they are not due
originally to the King by any of the said foure wayes
mentioned in the Act.

Butts Case, 42. Eliz. in com. banco. fo. 23.

A. Seised of black acre in fee, and of white acre for
yeares, grants a rent charge to B. for life with
distresse in both, B. distresses, and avowes in white a-
cre, and good.

1. Relof. white acre is charged during the terme
and life of B.

2. All the rent issueth out of black acre, for as an
estate of freehold it cannot issueth out of white acre,
nor as freehold out of black acre, and a chattell out
of white acre, because intire, it cannot be construed
to be two rents contrary to the intent of the parties,
and therefore an acceptance of a Leafe of white acre
doeth not suspend it, and in an affize, black acre one-
ly shall be put in view.

3. Although the rent issueth onely out of black
acre, yet white acre is charged with a distresse. If
a rent be granted out of three acres with claue of
distresse in one, this is a rent seck for all, yet the gran-
tee
Halls Case.

The avowry was insufficient. 1. Because he said the rent issued out of white acre, where it issued out of black acre, and although the Plaintiff had disclosed the truth in his plea in barre, this doth not salve the matter in substance virtuous in the avowry. 2. He deriveth the rent out of white acre, *virnum ejus*, he was feiled for life, which is repugnant to have a freehold out of a Chattell, and so judgement given against him for insufficient pleading.

Cases of Quare Impedit.


A *Quare impedit* against the Bishop, and incumbent, without naming the Patron, the writ shall abate. 1. It is not reason the Patron shall loose his Patronage, without being named, in case where he may be named, as here. 2. The incumbent at the common Law could not pleade to the Patronage, and therefore it is no reason that he, who cannot pleade be named, and he who can, omitted, but now the incumbent may pleade to the patronage by the Statute of 25. E. 3. cap. 7. which inableth the possessor to counterpleade the title of the King, and by equity against a common person, in the one case after induction, in the other after institution: But in case where the Patronage shall not be recovered, or that the Patron can-
Sir Hugh Portmans Case. 283

cannot be named, as in the Kings Case, a Quare impedit shall be against the incumbent sole, or against him and the ordinary, so if a Bishop disturbe and die, it shall be against the incumbent sole, if a Patron be named and die, if the writ shall not abate he shall be out of possession, and if it shall abate, the torte shall not be punished, but if the Patron be put out of possession, he hath remedy by writ of right, and if it shall abate, the Plaintiff is without remedy, therefore the writ shall stand.

Sir Hugh Portmans Case, 40. Eliz. fol. 27.

If the Plaintiff in a Quare impedit, after appearance be non suite, or discontinue or be made a Knight, pending the writ, this is peremptory, because it is his owne act, otherwise if the writ abate for default of forme, or by misnomer, for this may be the default of the Clerke.

Baskervills Case, 27. Eliz. fo. 28.

Title devolveth to the King to present by lapse, the Patron presents one who dyeth, the King hath lost the presentation, for he having the first presentation, he shall not have the second; otherwise the King may suffer Strangers to present one after another, and take his turne when he pleaseth, and by that meanes the Patron shall be in a manner disinherited; and the Statute of Prerogativa Regis, nullum tempus occurit Regi, is to be intended when the King hath a permanent Title, and not transitory, when time is the substance of his Title.
Maunds Case.

Maunds Case, 43. Eliz. fo. 28.

In case of a reentry for non-payment of rent, or when any summe, Nomine penae, is to be forfeited, in both the cases demand ought to be made precisely on the day, a convenient time before the setting of the Sunne, in the one case in respect of a condition, and in the other in respect of the penalty; but in case of a distresse, he that hath the rent may demand the same at what time pleaseth him, for no loosse or penalty infleth thereupon, but onely a remedy to come by his rent, and if demand be made any time after the day, and before the distresse, it sufficeth.

Discontinuance of Processe, &c. by the Death of the Queene. Trin. 1. Jacobi. fol. 29.

Upon a generall resummons the originall, and the issue are revived, and not the meane processe, nor Voucher, nor Garnishment, but all the Processe is revived upon a speciall resummons, but not in ayde prayer, or if a Verdict be given, and the King dieth before the day in bauch, because there summons lyeth not, therefore he shall not have resummons, but in case of Verdict, he for whom it is given may have his judgement upon Scire facias. But now, by the Statute of 1. E. 6. an action, suite, bill, or plaint, shall not be discontinued, if they are returned, otherwise if not, because the Statute saith, Depending. If one deliver an appeale to the Sheriffe within the yeare, and the King dyeth, for necessity the Plaintiffe shall have a Certiorari, and reattachment: so if a for-
medon be brought within a yeare against the perrnor of the profits; offices of Sheriffs, not being of inheritance or by Charter, are determined by the death of the King. Suites depending in inferior Courts are out of the Statute; if the King dye after information preferred by him, all the proceeding is lost, but the information shall stand. 1. Because this is a record for the King, which shall not abate. 2. Because informations upon certaine Statutes are to be preferred within certaine time, but if the King bring an original and dye, this is lost; if one plead to an Indictment, and the King dye, he shall plead De novo, but if he be convicted, judgement may be given in the time of another King, by the said Statute, and not before.

Case of a Fine levyed by the King, tenant in tailie, fo. 32. Michaelmas. 2. Iacobii.

A Fine levyed by the King, tenant in tailie by gift of his aunccestor who was a subject, barteth the tailie. 1. It is reason, that as the King is bound by the Statute of W. 2. De donis, that he should have benefit of the Acts of 4. H. 7. & 32. H. 8. 2. A generall Statute bindeth the King of Lands descend from an aunccestor a Subject, but not where it descend from an aunccestor who was King, except in speciall cases. 3. The issues of the King at the time of the levyng of the fine are subjects therefore within the Statute, and it seemd to them that there ought to be Letters Patent to give power to the Conise to enter into the Land.
The dignity of an Earle Intailed is forfeitable for treason. 1. Resolved, this is within the Statute of W. 2: De donis, and experience is to give dignities in tail, with remainders over, also, this was an office ancietly, and offices may be intailed. 2. A dignity may be forfeited at the common Law, by a condition in Law, for the Office of Earle was, Ad confulendum Regem tempore pacis, dy defendendum Regem tempore belli; therefore he forfeits it when he takes Counsell, and Armes against him. 3. If it were not forfeited by the common Law, yet it is by 26. H. 8. cap. 13. by this word Hereditament, and the words use of possession which are added, are to shew, that every Hereditament shall be forfeited: at the common Law, Donee in tail had Potestatem alienandi post prolem suscitatum, but if hee reteine the Land himselfe, he hath no absolute fee, for none shall inherit but the heire, Per fornam doni, so it is now in case of annuity, and other things out of the Statute.

Penall Statutes, 2. Ja. fo. 36.

When a Statute is made by Parliament, the King cannot give the penalty, benefit or dispensation of the same to any Subject, but the King may make a Non obstante, to dispense with any particular person, that he shall not incurr the penalty of a Statute, and the King, after a forfeiture or penalty of a Statute by judgement and recovery may grant the same to any of his Subjects, by way of reward; and all the Judges of England subscribed to this, the 8. Day of November. 1604.

Lilling-
Lillingstons Case, 5. Jacobi. fo. 38.

Tenant in fee grants a rent charge, proviso, that the person of the grantor shall not be charged, the grantee acknowledging a recognizance according to 23. H. 8. and after release to the grantor, the conisec sueth an extent, and brings debt against the grantor. Tenement. 1. Resolved, the rent is extendable, for notwithstanding the release it is in esse as to the Conisec, and cannot be discharged by the act of the Conisec, also, the extent relatheth to the judgement, at which time it was extendable. See the Lord Aburghavenous Case, in the sixth Report.

2. Debt lyeth not so long as the extent indureth, for so long the rent hath continuance, although that by the release the freehold be determined: if a rent charge be granted for life with proviso, as above-said, if the rent be determined, debt lyeth against the grantor, because he had no other remedy.


B. Covenants in consideration of paternall love, &c. to stand seised to the use of himselfe for life, the remainder to his Wife for life, the remainder over. 1. Resolv. although the consideration in the deed runneth not to the Wife, yet another consideration may be averred, which stands with the Deed. The limitation of an use to the Wife importeth a consideration in itselfe, so if it be to any of his blood, but if he Covenant in consideration of a 100 l. to stand seised to the use of his Sonne, nothing paffeth untill enrollment, Quia expressum factis cessare tacitum.
A N use is limited to A. B. and of the heirs Males of the said A. lawfully begotten, this is see taile, not-withstand the words (of the Body) be wanting, and that lawfully begotten, are implied, for no heir shall inherit who is not lawfully begotten. Resolved, that to create an inheritance, the word Heires is necessary, but the words De corpore are not necessary to make an estate taile, if there be words which Tanta-mount, and here the fence according to the intent of the Donor, is of or by the said A. lawfully begotten. A gift to a man C. hereditibus de se exequimibus, or Hereditibus suis de prima uxore sua, are estates taile.

Kenys Case, 4. Jacobi fo. 42.

C. K. had issue by E. S. M. K. and they are divorced, and the Marriage sentenced void, C. K. marrieth F. they have issue E. K. C. dyeth, E. K. is found by office to be Heire, M. and W. her Baron preferre a bill, in the Court of wards to traverse the Office to which the Committees of the wardship answer, one of the Committees dyeth, M. and W. fue a Bill of Reviver, and M. having issue E. dyeth. E. her issue, and R. her Baron, bring a new Bill of Reviver.

1. Resolved, so long as the sentence stands in force, the issue of the first feme is a Bastard, because the spiritual Judge hath jurisdiction thereof, and our Law giveth faith unto it: Sentence of divorce may be repealed after the death of the parties, but no divorce can be after their dearch, for that will Bastardise the issue, and the Court of the King hath tri-
Kennis Case.

all of it originally, not being hindered by any sentence.

2. The Plaintiff shall not have a traverse without an office found for her, for the King being sure of wardship shall not be ousted by one, before that he be sure to have benefit by him, and 2. E. 6. cap. 8. doth not extend to give a traverse without office, but if by two offices two are found Heires, whereof one is within age, by that Statute the other may traverse immediately.

3. A bill of reviver upon a bill of reviver shall not be suffered, for the infiniteness, no more then a Writ by Journeys accompts. By all, the last bill was absurd, which prayeth, that the first bill be revived, because M. was dead, but it ought to be, that her Heire may traverse.

The End of the Seaventh Booke.
THE EIGHTH BOOK.

The Princes Case, 3. Jacobi. in Chancery. fo. 1.

H E Queene, 37. Eliz. grants three Man- nors parcel of the Duchee of C. to H. L. and G. M. the King (at the supplication of the Prince) brings a Scire facias against the said H. L. and S. H. to make Livery to the Prince by force of the Statute of 11. E. 3. H. L. pleads, Nulliuelum recorde, S. H. pleads the Parentes with a Non obstante: 32. H. 8. whereby these Mannors were made parcel, of, &c. and the Act of Confirmation, 43. Eliz. As to the plea of H. L. the Attorney sheweth an Inspeiximus, and demurreth upon the plea of the other two who joynne, and as Amici curiae repeate part of the Statute of 1. H. 7. touching the Duchie, H. L. demurreth.

1. Resolv. the Charter of creation of the Prince, Duke of C. 11. E. 3. is an Act of Parliament, for such a limitation to the first-begotten Son is void without Statute, for if Grandfather King, the Father Duke, and Sonne be, if the King dyes, the Father is King, and the Son Duke, by the said Statute, against the rules of Law.

2. The Lands cannot be so annexed to the Duchie that they cannot be severed without Statute.

3. The estate is limited to cease when the King hath no first begotten Son, and to revive when he hath, which
which cannot be without Statute. 4. It should be absurd, that six being then created Earles, that their creation should be forme, and the Creation of the Prince void.

5. In the Charter there is De communi consilio Pra- latorum, &c. and in the end, Per ipsum Regem & totum concilium in Parliamento; such an Act as beginneth Rex Statuit, and alwayses reputed for a Statute shall not be drawne in question, but if it be Rex ex assentiu, the Commons by Lords omitting the other part, it is voide. 2. The said Charter having the force of a Statute, is good, without aid of any other Statute, and although the King in his Scire facias, recite another Act for this surplus, the writ shall not abate. 3. The Prince had the Dukedom in Fee, for it is an inheritance, because, 21. E. 3. 41. the Princesse was indowed, and it is no estate taile because it is not limited of what body it shall come, but only that they shall be Heires to the black Prince.

4. Against a general Statute Nul iste recorde shall not be pleaded, for although it be lost, yet the Judges thought to take notice of it, and this is such an one which concernes the Prince, and the Statute of confirmations doth not extend unto it. 7. Because this hath a speciall relation to certaine defects, as Misnomer, &c. 8. Parents are made good onely against the King, saving the right of others; therefore the Prince's right is saved: In a Scire facias, the King or Prince may reply, but the most formal way is, for the Attorney to replie, as here he did; No Some of the King; but his first begotten, shall be Duke of G., although he be Heire apparent to the Crownes.
Resolved, that to maintain an action against an Inkeeper for goods lost, &c. it ought to be a common cure. 2. He ought to be a Passenger, therefore a Neighbour shall not. 3. An inholder shall not answer for any thing, but that which is infra hujorum, therefore if a Passenger require that his Horse be put to grass, the inholder shall not answer if he be stolen, otherwise if he require it, not. 4. There ought to be a default in the Inholder or his Servants, therefore if a Guest bring one with him who steals the goods, the Inholder shall not be charged; otherwise, if the Hostler appoint one with him in his Chamber who doth it. But an inholder shall not be charged, if he require the Guest to put his goods in a Chamber, and he leaves them in the Court, but it is no excuse to the Inholder that he delivered the key of the Chamber to the Guest, or that no goods were delivered to him. 5. The Hostler shall answer for Charters if they be stolen, but not if a Guest be beaten, and all this appears by the Writ, and the words of it.

Paynes Case, 29. Eliz. Com. banco. fo. 34.

A Feme, Tenant in taille, taketh Baron, and hath issue who is heard to cry, and dyeth, the Feme dyeth without issue, the Husband shall be Tenant by the courtise, for although the stare of the Feme be determined, yet it is tacite, implied in the gift, that every Husband of a Feme inheritable to the said e-stare, shall have the Land for his life, after the death of the Feme, if he be intitled to be Tenant by the courtise. If a Feme be delivered of a Monlter, this doth
doth not intitle the Husband to be Tenant by the curtesie, otherwise it is, if the issue had humane shape, but is blemished: if a Feme be ripped, and the issue taken out of her Wombe, the Baron shall not be Tenant by the curtesie, otherwise it is, if the issue which they had dyes, and Lands descends after. A man shall not be Tenant by the curtesie, but where his issue may inherit as heire to the Feme, therefore he shall not be of a possession in Law, because there he makes title from the ancestor of the Feme, and not from the Feme.

Barretrys Case, 30. Eliz. fol. 36.

A common Barretror is a common maintainer of Suites or quarrells, in Courts or in the Countrie: As first, in disturbance of the peace. Secondly, in taking and keeping of possession, with force or deceit. Thirdly, by sylle calumniation and sowing of Quarrells, but to indite him of it, it ought not to be, that he hath done so twice or thrice, but that he is a common doer of them.


By the custome, one is chosen in a Leete to be Constable, who refuseth, and departeth out of the Court, the Steward imposeth a Fine of 5. I. upon him, for which the Bailifes of the Lord distreine, and he brings a replevin.

1. Resolved, every Judge of record may affesse a reasonable fine upon any man who makes contempt or disturbance to the Court, but a Judge who is not of record, cannot.

2. This fine needs not to be affirmed, because the Statute of Mag. Ch. speakes of Amerciaiments, and
nor of Fines, for a fine is imposed by the Court, and an Amerciament by the Jury: therefore the Judgement in an Amerciament is generall, Quod sit in misericordia, and after upon estreits directed to the Coroners they are asserred, and the Statute is, that a Noble man shall be Amerced by his Peers, which is not used at this day, because it is reduced to a certainty, (Viz.) A Duke to 10 l. and others to 5 l. but an Amerciament of an Officer of the Court, or he who hath execution of Writs shall be asserred by the Court, so of any who is Judge as Suitors: If a Juror appeare, and is adjourned to a day, of which he makes default, this shall be inquired by his Companions, for he shall be fined to the value of his Land, per annum, which the Court cannot know.

3. A liftreffe may be taken for a fine without custody, or for an Amerciament which is leffe.

Whittinghams Case, 45. Eliz. fo. 42.

It was resolved, that if there be Lord and Tenant an Infant, and the Infant make a seoftement in fee, and execute the same by livery of seisin by his owne hands, and after dye without heirs, in this case the Lord shall not have the benefit of the escheate, and the Seoffement is unavoidable.

There be three manner of privities, (Viz.) privity in blood. 2. Privity in estate. 3. Privity in Law. Privities in blood, as heirs in blood, privity in estate as joyntenants. Baron and Feme, Donor, and Donee, Leffer and Leesee, &c. privities in Law as Lord by escheate, Lord of a Villaine, &c.

If a Leesee for life make a Lease for yeares, and after enter into the Land, and make waft, and the Leesee recover in an Action of waft against the Leesee for life, he shall avoid the Lease for yeares, made before
the waft committted. But if a Lessor for life make a Lease for yeares, and after enim, and make a secoff-
ment in fee, the Lessor shall not avoid the Leafe for
yeares; and so, if a Tenant make a Lease for yeares,
and after is arraigned of soloby, or dyeth without
heirs, the Lord by escheate shall not avoid the
rearme. But because the secoffiment in the case
at barre was executed by Letter of Attorney, it was
resolved to be void, and the Land escheated to the
Queene.

John Webb's Case; G. Jacobi, om. banc, fo. 49.

The King grants the office of the Kings Tennis,
plaies at W. to one; who being diffential brings
an affize.

The Patent shall have a reasonable construction,
not onely when the King himselfe playes, but when
any of his Moutshold. As if a Commission be made
to take Singing-Boys in a Cathedrall-Church for the
Kings Chappell, those that Sing there for their plea-
sure, cannot be taken, but such as get their living by
it. There were but two manner of affizes at the
common Law, affizes De Liberty venentia, and, De
communia-pastura, but for no other commision, but for
this onely, there is a Writ in the Regler. But the
Statute of W. 2. c. 25. giveth it, De profuma in certo
loco capiendo in lieu of a Quad permittat, and although
that there offices amongst other things are named,
yet an affize lay of an office at the common Law, and
although that no Tenant for life may have a Quad
permittat, yet an affize did lye for him, but that is to
be understood of an office of profit, for it lyeth not
of an office of charge: Original Writs made by Sta-
tute cannot be altered without Statute: In an affize
of a new office, it ought to be shewed, what prosi
be-
Tenants in tail are held a fine with warranty, and
by the warranty descends upon the issue of
him in the remainder, inheritable to the tale, and
another, the issue in tale brings a formedon, and is
barred for all, for the warranty is innate, and underneath
every one upon whom it descends, of all his right:
as if one fee of three, a man makes a sentiment
of one with warranty, and dyes, having issue two
Daughters who make partition, the Mother purcah-
seth the part of one; as things follow against the seof-
see who vouches the Daughters, she shall recover all
the other acre of the other Daughter, if Tenant by the
cutte he make a sentiment with warranty, and dyes,
and his somne heret of the Feoffee recovers, and affets
descend after, the seofsee shall have a Scin facias to
have the Land first recovered, by the Statute of
Glouc. c. 3. but if affets descend to the Heire in tale,
bound with a bynall warranty, after recovery in formedon, the Feoffee shall have a Scin facias, to have
the affets, for otherwise if the recovers alien the affets,
the issue of him will recover the Land in tale a-
gaine; but in these cases the discontinuous ought to
confesse the title of the Demasquant, and pray, that
if affets descend after, they may descend unto him,
for if he plead a warranty and affets, this is peremp-
tory unto him, if it be found that affets did not dis-
cend; for the Statute is, that a Scin facias shall issue
out of the rolls of the Justices, and in this case there
is no ground for the Scin facias in the Record, but in
this case if the issue in tale pleads no affets, and affets
are found, but not to the value, the tenant shall
have
have a Scire facias to recover the assets descended after, for that false plea of the vouchee. Warranty: and estoppell descend upon the heire generall, and warranty barreth although that he upon whom it descends, claimeth not by him that made it, but so doth not an estoppell, but estoppells with recompence binde the right of one who claimeth not by him that made it.

Roger, Earle of Rutlands Cafe, 6. Jacobi fo. 55.

The King grants the pannage and herbage of a Park to M. for life, and reciting this, grants it to the Earle of Rutland for his life.

1. Resolved, the King hath three manner of inheritances. 1. Some which he cannot excercice himselfe, and cannot grant them in reversion or remainder, as Corodies and Churches of which he is Patron. 2. Others which he cannot excercise himselfe, but may grant them in reversion or remainder, as offices. 3. Others which he may excercise himselfe, and may grant as Lands, Houses, &c.

2. The King here is not deceived, for when he reciteth here that M. had for life, and grants for life, this inureth, as by Law it may, that is as a grant in reversion.

3. In this case the grant to the Earle shall commence after the determination of the estate of M. and if the King grants Land to one and his Heires, Habendum to him and his Assignes, it is good, and the Habendum shall be rejected for the honour of the King. See the Lord Chandos case in the sixth Booke, and when a Charter of the King may be taken to two intents good, in many cases it shall be taken to such intent as is most beneficial for the King, but if it may be taken to one intent good, and to another void,
void, then for the honour of the King, and benefit of the Subject, then it shall be taken so that it may take effect.

Beeches Case.  6.  Jacobi.  fo.  58.

B. Plaintiff in Debt. _Se retraxit_ by attourney, and by the judgement is not amerced, he brings error. 1. Resolved, a _Retract_ ought to be in proper person, for at the common Law every one who appeared ought to come in proper person and make his attorney after, by licence of the Court, but if it be without writ, he cannot without a writ of _Attornato faciendo_. In cases where one may make an attourney, but for contempt is bound to appeare in person, if he appeare by attourney, this is not error, because the court may dispense with the contempt, otherwise where he cannot appeare by Law by attourney, as here, for if he appeare by attourney, this is error. 2. B. ought to be amerced if upon a Nonsumite, a _Fortiori_ upon a _Retract_, and although it is for his advantage, yet he may assigne it for error, because the judgement is not perfect, and because it is for the advantage of the King, and it shall not be amended because the act of the Court. 3. Where one disclaims he shall not have a Writ of error, because he hath confessed that he had no right, otherwise it is upon a _Retract_, for this is but a barre of the action, a _Fortiori_ here, where it was void, done by an attourney, a _Retract_ ought to be when the party is supposed to be present, therefore it shall not be when he imparleth.
Resolved, the King grants a Manor for life except Timber Trees, the Lessees grant copyhold, the Grantees may throwde Timber Trees because they come in by custome, Paramount the exception. 2. If Copyholders prescribe to take profit in any part of the Manor, if the Lord aliens it, a Copyholder admitted after shall have it, because he is in paramount the severance, but he shall prescribe and plead specially, that is, untill such a time, (Viz.) Before the severance Talis habeatur, &c. confuendo, &c. and then shew the severance.

Sir William Fosters Case, 6. Jac. fo. 64.

C. F. made a seoffement 4. E. 6, reserving a rent charge, which rent descends to T. F. who dyes intestate, his administrators avow for it, and alleadge no feisin within 40 years yet good, for the Statute of 32. H. 8. c. 3, that none shall avow for rent if he had not feisin within 40 years, is to be intended when it was necessary to alleedge as upon rent between very Lord and Tenant, for this may be had by incroachment, and perhaps the commencement of the Seigniory was before time of memory, but where rent is by deed or reservation, as here, or upon an estate tail, the feisin is not material, for the deed or reservation is the Title and incroachment that not hurt, and they shall not have a Ne injuste vexex but shall avoide it in an avowry, and Magna Charta 6 to. Quod nullus distingatur ad faciendum majus servitium, &c. doth not extend to donee in tail, Lessee for life, &c. but is intended between very Lord and very Tenant.

Loveday.
Lovedayes Case.

Lovedayes Case, 6. Jac. fo. 65.

If a Jury, who appeareth to try a certaine Issue, give a verdict which is accepted, beit perfect or imperfect, they are discharged, and shall not trie the same issue, upon a new Non prosp., but a Venire facias de novo, shall issue, otherwise it is of the Recognitors of an assize, they shall trie all the issue, because they are not to trie any certaine issue, and because they come in upon an Originall, the Court will not award a new Originall, but the Plaintiff shall have a Certificate of assize to trie the imperfections, the Plaintiff eth a Venire facias against divers, the Sheriffeth no Writ, the Plaintiff shall not have seve- ral Venire facias after, for he cannot vary from the first.

Cragates Case, 6. Jacob. fo. 66.

The Defendant pleads in barre to trespass, that the B. of N., leased by Copy to W. M. to which Copy they holp and share is common in B. and justifieth as Servant to the said W. the Plaintiff replies, De injuria sua propria, &c., this is an insufficient replication, for, De injuria, &c. hath reference to all the plea in barre, and not to the Commandement, Ergo, if the Defendant in false imprisonment justifieth, for that a Capias was awarded to the Sheriff, who made a warrant to him to take the Plaintiff; De injuria, &c. is no plea, because it referreth to all, and to Record shall be tried by Jury, but he shall traverse the Warrant, which is matter in fact, but this had been a good plea, if the proceeding be in a Court, which is not of Record. 2. De injuria, &c. is to be pleaded, where the plea is matter of excuse, and not where he claims an
an interest in his owne right, or in the right of his Master, for there he shall traverse the Commandement.

3. Where authority is derived from the Plaintiffe himselfe, or is given by Law, as to see if waft, the Plaintiffe ought to answer to it, although no interest be claimed, and he shall not plead De injuria, &c. 4. If this plea be admitted here, all parts of the plea in barre shall be tried, and the issue will be full of multiplicity.

Trollops Case, 6. Jacobi. fo. 68.

The Defendant in error pleads excommunication, &c. and sheweth the Certificat of the Vicar general, de D. the words of which were, Universis clericis & literatis per totam diocesin D. the Plaintiffe pleads the generall pardon 3. Jac.

1. Resolved, the official cannot certify excommunication, for none shall doe that, but he to whom the Court may Write to affole the party, as the Bishop and Chancellour of C. or O. and for that, if a Bishop certifye and dye Before the returne of the Writ, it shall not be received, but the Successor shad doe it, and one Bishop shall not certify an Excommunication made by a Bishop in another Court, but a Bishop after Election before Consecration may and so may the Vicar general, if it appeare that the Bishop is in Remoris agendis. 2. The Certificat is insufficient because by the particular direction to the Clerks of D. the Kings Court and all others are excluded, and so a protection in one Court serveth in another, and Excommunication is such a thing, the Court of the King hath confiance, and therefore the Suite and the Cause are to be expressed in t Certificat, that the Kings Court may judge of the sufficiency, and if it be insufficient (as if a Bishop
certifie an excommunication made by himselfe in his owne Cause; the Court may write to absolve him. If the Certificat had beene good, the point was, whither the generall pardon dischargeth an excommunication or not.

Whitlock's Case, 6. Jacobi. fo. 69.

A Reversioner upon an estate for life levys a fine to the use of himselfe, untill Marriage of his Sonne, and then, to the use of himselfe for life, with power to make Leaves; so that they exceede not 21. yeares, or three lives remeying the ancient rent, the remainder to his Sonne in fee, the Sonne is Marryed, the Father maketh a Leafe for 99. yeares, if two shall to long live, remeying rent to him, his heires, and the reversioners, this is a good Leafe.

1. Resolved, he had pursu'd his authority, for if he had a particular power to make Leaves for 21. yeares, or three lives, he cannot make leaves determinable upon lives, but having a generall power to make Leaves, so that they doe not exceede 21. years, or three lives, he may.

2. The rent remayned goeth to the Sonne, although that he who reserved it had but for life, because the Lease for yeares hath no being out of the Lease for Life, but out of the Fee, and in judgement of Law preeeedeth both in construction upon the limitation of uses, but the most safe way here had beene to reserve the rent generally, and left it to the distribution of the Law.


Baron and Feme, Tenants in speciall taiile, the Baron infeoffeth P. G. and dieth, the Feme dyes, the
the Sonne enters, and Leaves to the Plaintiff.

1. Resolved, if Baron joyns tenant, in special, traitor, with his wife, had made a feoffment, or had beene dispossessed, at the common ley, and dyed, and the femme before entry dyed, this is a discontinuance to the Sonne, because he cannot enter as Heire to both, but if the femme enter, the discontinuance is purged.

2. The estate which she femme had jointly with her Baron is within the purview of the Statute of £2. H. 8. c. 28. That no fine levied by the Baron for the lands of the femme shall hurt her, and within the Statute of W. 2. c. 3.

3. The entry of the Sonne is lawful, although he claims not as heir to the femme, as the Statute speaks, but as heir to both, because he is within these words, or to such as have right by the death of such wife, and this is to be intended of discontinuances made by the Baron, and not of a rightful hire of the issue, for they cannot avoid it, and the Statute is that they may enter, which they cannot doe where they are barred: and if the femme enter within 5. years, as she may after a fine levied by the Baron, this doth not take away the future hire of the issue, and if she enter not within 5. years, she also is barred. Baron tenant in tail, the remainder to the femme in tail, makes a feoffment, the femme may enter after his death, by this Statute, but if the Baron sustains a recovery, she shall not enter; if the Cae to a barre, the son may have a command of the common Law, and where before this Statute, a Cae in vita, or Sur caj in vita did lye, entry is given by this Statute, and not otherwise.
The Queen reverted the estate tail to T. T. in tail upon condition, is to have Praditam reversionem in fee, the condition is performed, the Lord Stafford Tenant in tail levyeth a fine, his issue is barred. 1. Resolved, that a condition of accuer may be annexed to a thing which lyeth in grant, and to an estate tail, as if Lessee for life be the remainder for life, with condition of accuer to the first, this is good, and yet no Merger of estate. 4. things are requisit to an accuer. 1. A particular estate as the Foundation; Ergo, a Lease at will shall not be. 2. The estate ought to continue in the Grantee untill accuer, therefore if the Grantee alien and repurchase the condition is Tossed, but Quare if the Tenant alien upon condition which is broken, if the fee shall accrew, but Grantee may grant part of his estate, as if Lessee for life make a Lease for yeares, he may performe the condition after, so may Tenant in speciall tail, after he is become tenant in tail after possibility, &c. so may the surviving jointenant, and the heire of Tenant in tail. An instant is sufficient to support an accuer, as if the condition be, if the Lessee be oust, Eo instantie, that the ouster is the fee accrueth, but if Lessee for yeares accept a confirmation for life, the condition is gone: but it is not necessary, that the estate of the grantor or Lesfor continue, because by his owne act he shall not defeate his grant. 3. It ought to vest at the time of the condition performed or never; and for that, rather that it shall not vest at this time by performance of the condition, the fee without office or other ceremony shall be deceased out of the King. 4. It is necessary that the particular estate and the condition be in one deed,
Wat Wields Case.

Deede, or two deeds delivered at the same time, for in Law they are but one grant; and by the condition performed, he had fee from the delivery.

Resolved, Predict. reversionem signifies the rever-
sion which the Queene had. Viz. That which de-
pends upon both the estates taile, and so was the in-
tent, also shee granted, Omnia præmissa, which maketh it cleere. Resolved also, that these words Will and Declare, doe amount to a grant, and are so used in Patents of Liberties, and things to take effect in Futuro. Tenant in taile, the remainder in taile, the re-
mainder to the King, Tenant in taile suffers a re-
covery, this doth not barre the remainder in taile, be-
cause the issue in taile is not barred, and therefore the revertions and remainders in taile are preserved by the Statute of 34. H. 8. c. 20.

Lastly, Resolved, if the reversion in fee had re-
mained in the Crowne, that the fine levied by Ed: Lord Stafford the Father, had not barred the Lord that now is. Notleyes Case, 31. Eliz. com. banco.

Wat Wields Case, 7. Jacobi. 78.

W. W. seised of Land, to which he had com-
mon appurtenant, aliens 5. acres to one
who in replevin counts that he and those, whose e-
state he had in the said 5. acres, have had common there, &c. and good. 1. Resolved, although by purchase of part of the Land in which, &c. the com-
mon appurtenant is destroyed in all, yet it is not so
by alienation of part of the Land to which, but all re-
maines without damage to the Tenant of the Land.
2. That the pleading of it was sufficient.
Vinyors Case, 7. Jacobi. fo. 80.

One was bound to stand to the award of W. R. and revokes the submission, the Obligee brings Debt. 1. Resolved, the Countermand is good, for an authority Countermandable by the Law, cannot by any way be made irrevocable. 2. Although that the Plaine is doth not show, that the Defendant had given notice to the arbitrator, yet it is good because this is implied, for without notice the revocation is void. 3. The Obligation by the Countermand is forfeited, because he doth not stand to, &c. when he Countermands it. 2. By his owne act he had made the condition impossible, Ergo, the Obligation is single, if one bindes himselfe to give Licence to carry Wood, &c. for a certaine time, if he give it, and disturbe him the Obligation is forfeited.


Sir R. P. seised of Lands, part whereof is houlden in Capite, deviseth 100. Sheepe, 10. Bullocks, and 10 l. quarterly, to one with clause of diffresse, and that the Grantee shall hold his Courts for his life, for rent arrear for 2. yeares, the grante avoweth. 1. Resolved, a devise of rent out of all is good, and taketh effect out of two parts, and as to the third is void. 2. The grante shall have an estate for life in the rent, and so he shall if it be granted by Deede, also by the Intent of the Devisor it appeares, that the Grantee shall hold Courts, and have 10. l. per annum, for his wages, and quarterly here had relation to rent only, because the word Er, disjoyneth it from Sheep and Bullocks, and judgement given for the Avowant.
T. B. gave a House in Gavellkinde to M. his Eldest Daughter in taile, the remainder of one Moity to J. a second Daughter in taile, the remainder of the other Moity to K. a third Daughter in taile, with croffe remainders to J. and K. M. discontinueth and dyeth without issue, J. dyeth without issue, K. dyeth, and her issue brings a Formedon in the remainder, and good, although severall remainders, for they depend upon one estate, and commence by gift at one time: In actions real, in which title is expressed, a man shall not have one Writ for Lands, to which he had severall Titles, as in escheate, cestavit, Writ of Mesne, &c. but he may have a Writ of ward of Land onely, although it be by severall Tenures, nor one formedon upon two distinct gifts, where the foundation is severall, but he shall have it if there be one gift, although it take effect at severall times, because the foundation was joyned and single, as upon a gift in taile, to Brother and Sister, who dye without issue, or if the Brother dye without issue, and the Siter dye having issue, who dyes without issue, he to whom the remainder limited shall have one formedon although it vest at severall times, so in an estate taile to Father and Sonne, and so here: In actions real, founded upon Torte, a man shall have one Writ to recover Lands, to which he had severall Titles, as in an affize, a Writ of entry, &c. but in a Writ of entry upon disseisin made to my Mother, and her Sister Coperceners, because there title is in the Writ, it appeareth he ought to have severall actions; but in personall actions, one may comprehend severall torts, and causes of actions, as trespass for trespass made at severall dayes and places, wart upon
on several Leaves, and so of Debt. *Nota,* if a remainder be executed, issue in remainder shall not have a formedon in remainder; but in the descender, and Count of an immediate gift, but if there be a Lease for life to one, the remainder in tail to A. the remainder in tail to B. A. dies without issue, if B. be chais to his formedon, he shall not count of an immediate remainder but shall shew the first remainder to A. and that he is dead without issue. 2. In formedon in the remainder or reverter, omission of issue inheritable in the pedigree of the demandant, abates the Writ, but not upon the part of the particular Tenant. 3. The Demandant must make mention of the Sonne who survived the Father; to which Son the Land descended, but was not seised by force of the taile, but he shall name him Sonne, but not heire. 4. The Demandant in a formedon in the Descender must make himself heire to him that was last seised, and he to the Donee. *Note here, because K. was never seised, the Writ shall say Remanere, not descendere, and the Writ was, Remanit just, because a discontinuance, otherwise it should be Tenementa remanent.

**Fraunces Case, 7. Jac. fo. 89.**

The Plaintiff pleads in barre of avowry, that R. F. devised to I. his Sonne, who leased to him, the avowant replyeth, that after the devise, R. F. made a Feoffement to the use of the said I. upon condition, that he shall suffer his Executors to take away his goods, and the estate limited to him was for sixty yeares, if he should so long live, with diverse remainders over, and that after the death of F. I. hindered the Executors, to carry away the goods, whereupon T. in remainder entered, and judgement given for the Plaintiff.
Edward Foxes Case.

1. Resolv. Although the condition be taken strictly, the uses to I. onely, and to his Heires, are onely avoided by it. 2. A disturbance by paroll is no Breach of the condition, and because the avowant did not shew a speciall disturbance, his replication was void. 3. I. ought to have notice of the condition being a Stranger to it, or otherwise, he cannot breake it, as a Copy-holder shall not forfeite for denyall of rent, to him to whose use a Mannon is transferred before notice, but he who bindes himselfe to doe any thing must take notice at his peril, because he hath taken it upon him. 4. Although that the Title which the Plaintisfe had made in barre to the avowry, be destroyed, yet he shall have judgement, because his count is good; and another Title (that is to have the Land for sixty yeares, by force of the uses declared upon the feoffment) is given unto him by the Replication; although that the title which he made for himselfe be destroyed, yet the Court must adjudge upon all the record, and judgement was entered for him accordingly.

Edward Foxes Case, 7. Jacobi. fo. 93.

A Reversioner upon a Leafe for life, the remainder for life in consideration of 50. l. demileth, granteth, &c. his reversion for 99. yeares rendering rent; this is a bargaine and sale, and there needs no attornment, for the words of bargaine and sale are not necessary if there are words which tantamount, as if at the common Law one had should his Land, an use had beene raised to the Vendee, because their intent so appeared, so here, but if it appeare that their intent was to passe it at the common Law, as if a Letter of Attorney be made to make livery, the use had notrisen, and here appeareth their intent to passe it as
as a bargaine and sale, because rent is reserved presently, therefore it is reason that he shall have the rents of the particular Tenants presently, which cannot be if it passe not by bargaine and sale, and inrollment is not necessary, because a term for yeares onely pasieth in this case, and no freehold. See Sir Rowland Heyward's Case, 2. Report. fo. 35.

Matthew Mannings Case, 7. Jacobi. fo. 94.

Effect for yeares is bound in 200. Markes to W. C. and devieth to his Wife for life, and after her death to M. M. and makes his Wife Executrix, who agrees and dyeth intestate. M. M. enters, and takes administration of the goods, not administered. W. C. brings Debt against him. Resolved, that M. M. takes by Executory devise, and not as a remainder, and the estate committed to him in construction, preceded the limitation to the Wife, as if he had devised, that if the Wife die within the term, that then M. M. shall have the residue, and also devised it to his Wife for life. 2. This case is most strong, because a Chattell which may vest and revest at pleasure of the Devisor, without mischief to the Præcipe. 3. A devise of the Term, and Occupation thereof, all one. (Viz.) So many yeares as the Feme shall live, the remainder to M. M. 4. After the Executrix had agreed, the first devisee cannot barre the Executory devise. 5. A man may devise an estate, which he cannot convey by act executed as to his Executors, until his Debts shall be paid, the remainder over, they have a Chattell determinable, upon payment of the Debts, which cannot be at the common Law. If a Sheriffe sell a Term upon a Fieri facias, and judgement is reversed, the sale shall stand, otherwise none will buy any thing upon Execution,
A
cution, and judgment was given for the Plaintiff, and affirmed in Error.

Baspoles Case, 7. Jac. fo. 97.

And B. put themselves in Arbitrament for all demands, Suites, so as the aforesaid award be delivered in Writing, &c. at the Feast of Saint James, the Arbitrator awards that B. shall pay 22. l. to F. B. refuseth to pay, F. brings Debt upon the bond to stand to the award, and good: 1. Resolved, that the award was of both parts, for the one was to pay money, and the other to discharge the Debt. 2. Resolved, that whereas the Plaintiff's faith, that the award was made De premiissis, which untill the contrary be shewed shall be intended of all; when the submission is generall, an award of part is good, for otherwise the parties may conceive one thing, and make the award void; but if it be of diverse things in speciall, Ita quod arbitrium fiat de premiissis, an award of part is void, but good without such conclusion, so if two of one part, and one of the other part, submit themselves, arbitrament betwene one of the one part, and another of the other part is good.

Sir Richard Leighfords Case, fo. 99.

Tenent by copy in fee, (where there is a custome that the heire after the death of his ancestore, within three Courts and Proclamations made, shall be barred if he claimed not) dyes, his heire beyond the Seas untill three Courts and Proclamations passe, and returnes and claimeth to be admitted, he is not barred no more then by Non-claime upon a fine, Ergo, this custome shall be construed, if he be within the realm of full age, &c., but if he goe over the seas af-
after the death of his auncestor, he shall be barred, as in case of a fine. 2. Resolved, although he was not in the Kings service, this is not to the purpose, because by intendment he cannot have notice; But a Mulier puisne, over the Seas shall be barred, by the dying, seised of the Bastard Eigne, for the right of the Mulier is barred, and the Bastard is made Mulier, although that a dargent of the dissifor of a rent or thing which lyeth in grant barreth not the dissifee, yet if a Bastard eigne, dye seised of it, this barres the Mulier. If two Daughters, whereof one is a Bastard, eigne, enters and dyes, before or after partition, the Mulier is barred: Otherwise, if two Daughters, and one of them had no collour of partition, if Bastard eigne dye in the life of his Father, having issue, who enters after the death of the Father, and dyeth seised, having issue. Quere, if the Mulier be barred, mulier is barred by descenct, before entry of the Sonne of the Bastard, eigne, as if issue be in Ventre sa mere, or the Wife of the Bastard indowed.

John Talbots Case, 7. Fac. in Second deliverance fo. 102.

L Ord and Tenant by Homage, Fealty, and Herriot service of 50. acres, the Tenant infeoffs the Lord of three acres, and after infeoffs the Plaintiffs father of three other acres, parcell, &c. who dieth, the Lord disfereineth for Herriot, the Plaintiffe brings replevin, and good. 1. All intire services to render an intire Chattell of profit, or pleasure, by alienation of part shall be multiplied, and by purchase of part by the Lord, extinct. 2. Personall services for the publique good, which are intire, as Chivalry, Homage, and Fealty, shall be multiplyed, and not extinct. 3. Other personall services, as Butler, Sew-
Doctor Bonham's Case.

er, &c. shall not be multiplied, but shall be extinct. So of a personall office, and manuall labour. 2. There is no diversity between an entire Chattell be it annual or not, as if it be to render a Horse every five yeares by purchase of part, it shall be extinct. 3. If the Father of the Plaintiff had been first infeoffed, and then the Lord, the Herriot had remained, because there the Father of the Plaintiff, held by a severall Herriot before the Lord was infeoffed. 4. But Herriot custome, by purchase of part is not extinct.


The President and Censors of the Colledge of Physitians in L. by colour of Letters Patents of H. 8. and the Statutes of 14. H. 8. and 1. Mar. fined and Imprisoned Doctor Bonham, for practising of Physicke in L. without their allowance, ( the fine to be paid to them,) and also for contempt made to the Colledge, whereupon he brings false imprisonment, and adjudged for the Plaintiff.

1. Whither a Doctor of one University or other, be within the act.

2. Admitting that he is, whither he be within the exception in 14. H. 8. Justice Daniell held, that such a Doctor was not within the body of the Act, and if he were, yet he is within the Exception, but Warburton econtra; for both points: Cooke spake not to them, but they all agreed that the Action was maintainable for two other points.

1. Whither the Censors have power to fine and imprison.

2. Admitting that if they have pursued it. The Censors have no power in this case to imprison the Defendant, for they have no power to punish by fine imprisonment, those who practise without their li-
license, but those practisers who misadminister physic.

1. Because the clause that none shall practise without their license, and the clause which giveth to them the said power, are distinct clauses.

2. The first clause imposes another penalty; and 5. I. every moneth that he practiseth, but leaveth the evill administration of Physick to be punished, by the Colledge, because this is uncertaine.

3. To make one punishable by the first Branch, he ought to practise by a moneth, otherwise it is by the second.

4. By this way they shall be both Judges and parties in one cause.

5. If Doctor B. shall be punished by 3. I. by the moneth, and also at their pleasure, he will be often punished for one offence. 2. Admitting that they had power, yet they have not pursued it. 1. Because the President, who hath no power, joyned with them. 2. The fine was imposed for not appearing before the President and Censors, and the President had no power. 3. Half of the fine belongs to the King, and here all is to be paid to them. 4. The Imprisonment ought to be presently, as upon the Statute of W. 2. cap. 12. 5. their authority being by Patent and Statute, their proceedings ought not to be by Paroll, and the rather, because they claim authority to fine and imprison.

6. It shall be taken strict, because against the liberty of the Subject, therefore before I. Mar. the Gaoler was not bound to receive them, and this doth not inlarge their power, but that the Gaoler shall forfeite double the Amerciament, if he refuse. Admitting the replication void, although that the Colledge demurre upon it, yet the Plaintiff shall have judgement, because in the barre, the Defendants have shewed that they have imprisoned him with-
The Case of the City of London.

without cause, for upon all the pleading, it appeareth, that he had cause of action; but if a barre be insufficient, and by the replication it appeares, that the Plaintiff had no cause of Action, he shall not have judgement: a Count may be made good by barre, and a barre by replication in matters of circumstance but not of substance. See there seaven things observed by *Cooke*, for the better direction of the President and Commonalty of the said Colledge hereafter.

*The Case of the City of London, 7. Jac. fol. 121.*

It is a good custome within a City that a Forreinor within the said City shall not sell things by retaile, and it is good also upon paine of 5. l. but it is not good by Charter, therefore Citties which are incorporate within time of memory cannot have such privilegeds without Parliament: so of a custome, that goods forreigne bought and forreigne sould, shall be forfeited: So one may prescrib to have a Bake-house in a Towne, and that no other shall have one there, and the Statutes which provide that every one may sell in retaile, or in grosse, extend onely to Merchands, aliens and demifens, who export and import things vendible. Three inconveniences by confluence of people to *London*, &c.

*The Case of Thetford Schoole, fol. 130. 8. Jac.*

Ands of the yearely value of 35. l. in a° 9. El. was devis'd by the will of *Thomas Fulmerston*, to certeine persons and their Heires for maintainance of a Preacher, four days in the yeare, of the Master and Usher of a free Grammar-Schoole, and four poore People, *Viz.* Two, men and two women, and
a speciall distribution was made by the Testator, amongst them of the said Revenues, (Viz.) To the Preacher one certaine Summe, to the School-Master, and Usher other certaine Summes, and to the Poore, &c. amounting in Toto to 35. l. per annum, which was the annuall profits of the Land at that time, and after, the Lands became of a greater value, (Viz.) 100. l. per annum. Question, whither the Preacher, School-master, Usher, and Poore, should have onely the Summes appointed to them by the Founder, or that the Revennew and profits of the Land shall be imploied to the increase of the Stipends of the Preacher, School-master, &c. or in what manner the surplusage should be imploied. And it was resolved, that the revennew and profit of the said Land should be imploied to the increase of the Stypend of the Preacher, School-master, Usher, and Poore, and if any surplusage remaine, the same to be expended to the maintainance of a greater number of Poor &c. and nothing thereof to be converted to the Devisees, or their owne use, and this resolution is grounded upon apparent reason, for if the Lands should decrease in value, the Preacher, School-master, &c. should loose, so when the Lands doe increase in value, (Pari ratione) they should gaine, Vide Statutum, Templariorum ita semper quod pia et celeberrima voluntas donatorum in omnibus teneatur, & perpetuo sanctissime perseveret.


IN Debt against an Administrator he pleads recoveries had against him in the Court of C. which amounts to all which he had in his hands, the Plaintiff replyeth, that one is by Covin, and that the other recoveror had accepted a composition, and that the
the Defendant delayed to accept a Release to defraud the Plaintiff: adjudged for the Plaintiff.
1. Although that two recoveries are without covin, yet the composition so operates, that nothing shall be accounted administered, but only so much as he hath paid by composition, and the converting of any part to his owne use, and the deferring to accept a Release, is against the office of an Executor, and shall not aide him. 2. The barre is insufficient because he hath not shewed that the Court of C. had power to hold plea of debt. 2. Because he hath not shewed that the Testator was bound in an Obligation, and if it were only upon contract, the administrators were not chargeable in Debt. 3. Be the replication evil, yet because the Barre is insufficient, the Plaintiff shall have judgement, because he had not shewed anything against himselfe, but if it appear by the replication that he had no cause of Action he shall be barred.

Mary Shipleys Case, 8. Jac. fol. 134.

A[n] action of Debt against an Executor of 200. l. the Defendant pleaded, Plene administravit, the Plaintiff replies, that the Executor had assets, the Jury found assets to the value of 172. l. judgement was given to recover the whole Debt of 200. l. and damages, and costs of the goods of the Testator. S. &c. Et si non, then the damages of the proper goods of the Defendant.


In debt as administratrix upon administration committed by the Bishop of R. the Defendant pleads ad-
administration committed unto him by the Deane and Chapter of C. sede vacante, because the Intestate had bona notabilia, &c. the Plaintifft replies that that administration was repealed: adi. for the Plaintiff.

1. Resol. Because it is not shewed that the Intestate had bona notabilia, &c. it shall be intended that he had not, and yet the administration is not voyde, but voydable.

2. Before the repeale of administration committed by the Metropolitan, the inferior Ordinary may commit administration; because this is by the repeale declared voyd, ab initio, and an administration is but an authority which may well commence in futuro.

3. The committing of administration to the obligor hath not extinguished the debt, because it is in anothers right, otherwise it is, if the obligee himself make the Obligor his executor, because this is his owne act, De bonis defuncti trina dispo sitio. 1. Necessitatis, ut funeralia. 2. Utilitatis, that every one shall be payd in due order. 3. Voluntatis, as Legacies.

Sir Francis Barringtons Case, 8. Jacobi, Communi Banco, fol. 136.

The Lord R. granted wood within a Forrest. in which the Plaintifft had common, which grant is confirmed by Statute, the grantee cuts wood, and inclose it, the commoner shall loose his common for seven yeares.

1. Resol. The grantee had an inheritance to take in another soyle, and the soyle is to the Lord R. 2. Although the grantee had not the inheritance, yet the Statute extends to him, and he may inclose, for the Statute is, or any other person to whom wood is sould, 3. 22. E. 4. cap. 7. extends to wood which one
one had in severalty, and not where another had common there; for at the common Law, one who had wood in a Forrest cannot inclose against a commoner, but if it be his severall wood, he might inclose, parvo fossato, &c. for three yeares.

4. The sayd Statute is as a conveyance betweene the King and his Subjects, which taketh not away the right of third persons, as the commoner here is.

5. In the sayd Statute there is a clause that hee may inclose without suing to the King, or other owner, so that power is given against them, and not against a commoner. Beasts of Forrest are Hart, Hinde, Hare, wilde Boare, and Wolfe: of chafe, Buck, Doe, Fox, Martin, and Roe.

6. By the Statute of 35. H. 8. cap. 17. he is barred of his common, which provideth that no Beasts shall be suffered to come there for seven yeares.

7. The Statutes which concerne Forrests are general, because they concerne the King, and the Court shall take notice of them.

Doctor Druryes Case, 8. Jacob. fol. 141.

Doctor Drury recovers against B. who is outlawed, and taken by Capias ut-legalum, and escapeth, the Uttary is reverfed. Doctor Drury saith execution, B. brings an Audita quærela, adjudged that it lyeth not. It was resolved that if A. be in execution at the suit of B. upon an erroneous judgement, and after escape, and after the judgement is reverfed by a Writ of error, the action against the Sheriffe is extinct, for hee may plead Nul tiet record: But untill it be reverfed, it remains in force, be it never so erroneous; and if the partie have judgement and execution upon the escape against the Sheriffe or Goaler, and after the first judgement is reverfed, yet for as much
much as judgement upon this collateral thing is executed, it shall remain in force, notwithstanding the reverfall of the first; [7] H. 6. 4. Yet if seemeth to me, he may have remedy by *Audita querela*, for that the ground and cause of the collateral action is disproved by the reverfall of the first judgement, a difference between mean acts, compulsory, and voluntary, and between a recovery by eigne title, and reverfall of a recovery.

Davenports Case, 8. Jacobi, fol. 144.

Tenant for yeares of an advowment granteth proximam advocacionem de donationem, &c. eadem Ecclesia contingerit vacua fore durante termino, &c. And afterward surrenders his terme, yet if the prochein avoidance be within the terme, the grant is good, for yeares cannot determine, but the effluxion of time, and the Law implies this limitation, if the Church doe come void, during the terme: For expressio est quia tacite infinit nihil operatur: Likewise if a leissee for yeares grant a rent charge, and after surrender, yet for the benefit of the grantee the terme hath continuance, although in rei veritate, it is determined, and the grantor himselfe shall not derogate from his owne grant to make it void at his pleasure.

The six Carpenters Case, 8. Jacobi, fol. 148:

It was resolved when entry, authority, or license, is given to any by the Law, and he abuse the same, in this case he shall be a trespassor *ad initium*: But where entry, authority, or license, is given by the party, and he abuse the same, there he shall be punished for this abuse, but he shall not be said to be a trespassor *ab initio*; and the diversity is this, because
The six Carpenters Case.

the Law doth judge by the act subsequent, quo animo or to what intent hee enters, etiam exteriors indicans interiora secreta: But when the partie giveth authority, &c. to doe a thing, he cannot for any subsequent cause punish the same.

1. The Law doth give authority of entry into a common Inn, Taverne, &c.

2. To a Lord to enter, and distress.

3. To an owner of the soyle to enter and distress dammage feasant.

4. To him in reversion to view if waste be committed.

5. To a commoner to enter into his Land to view his Cattell, &c.

But if hee that enters into an Inn, &c. doe trespass, or take any thing away, or if the Lord that distresses for rent, or owner for dammage feasant, labour, or kill the distresser, or he that enters to view waft, brule the house, or stay there all night, or if a commoner fell Tymber; in these cases and such like, the Law judgeth that hee entred for the same purpose; and therefore the act that doth demonstrate this, is, to be a trespass, and he shall be a trespassor ab initio: It was resolved, that the non-seasons, or not doing of a thing is not any trespass, where the Law giveth license or authority to enter, (viz.) to deny to pay for Wine in a Taverne, is not a trespass, but the Taverner may have an action of debt; 12 E. 4. 8. If a Taylor overvalue the making of a Garment, and the necessaries thereof unto, he shall not have an action of debt for his owne values, unless it be specially agreed upon before, but he may detain the Garment, until he be paid or satisfied; and if the party sue for the same: the Jury shall set downe the value, and the Taylor shall have no more, but be barred for the rest: Likewise
Edward Althams Case.

an Offer may deteine an Horse, &c.; tender of sufficient amends for damages remant befor the distrefse taken, is good, and the taking of a distresse afterwards is wrong; tender after the taking of a distresse, and before the impounding, maketh the detaining wrong, but not the taking; but tender after the impounding commeth too late, for then the cause is put to the tryall of the Law.

Edward Althams Case, B. Jacobi, fol. 159. In dower and pleaded,

Ne Seised in fee of Lands in W. and G. deviseth the Lands in G. to his younger Son for life; it was agreed between the eldest Son and the Widow of T. N. that she should release her dower in W. shee releaseth unto him, omnes actiones demand. &c. necnon omnem domen & titulum domis, &c. de aliquibus terris in W., both the Sons dye, shee brings dower of the Lands in G. and judgement given for the demandant.

Res. A release of all actions to him in the reversion barrenth not dower, because shee had no cause of action against him, but against the tenant of the free hold, but a release of all her right to him in the reversion extinguisheth dower, for a release of right barrenth actions, but a release of actions barrenth not a right, if there be other meane to come to it; otherwise not, as if the distresse release all actions to the heire of the dislfeior, the right is extinct, otherwise it is if the release be to the dislfeior, and a dissent after, or if the release be to the lcssie for life of the heire; a release of all actions reall and personall is no barr in a Writ of errour, but a release of a Writ of errour is; a release of actions is no barr to have execution; if he be not put to a Scire facias, a release
324. Arthur Blackamores Case.

A release of a thing due before the time of payment thereof, is good: Quare in more than an action, for by that the cause of action is released; by release of suites, executions are barred, for none shall have execution without suit for it, so it is of all duties; but a release de quare in infestit in that case barreth not downe: by release of ricles downe is barred; and by release of demands, which is the most ample release of all.

2. The collateral agreement is not of any force or effect, but generall words ought to be qualified by apt words contained in the same Deed as in this case, nisi contingent per mortem dicti T. viri mei de aliquibus terris in W., &c. and so extends not to any Lands in G. but restrainerth the generall words to the Lands in W. onely: Quanto carta continet generalem clausulas, posteaque descendit ad verba specialia, qua clausula generali sunt comprehensa, interpretanda est carta secundum verba specialia; As if a man grants a rent in manerio de D. precedentum, in 100. Acres parcel thereto with clause of distress in the 100 Acres, the rent shall issue out of the 100 Acres onely.

Arthur Blackamores Case. 8. Jacobi, fol. 156.

The Defendant is named Gent, in the originall Writ, but by negligence of the Curitor hee is outlawed by the name of Knight; this is amendable at the common Law, but in case of the King, default of the Court was amendable at the Common Law, as erroneous entrance of the continuance, essoyn, &c. and any part of the Record the same Terme; and therefore diverse Statutes of amendments were made, one of the last whereof was 8 H. 6. cap. 12, which was more large, and extends to procede, and to seven other things, to Records, Pleas, Parols,
Parolls, Warrants of Attorney, no Writs original and judicial, Pannels, and Returns; that is, where it was the misprision of the Clerke, and onely, the default of the Clerke by negligence is amendable, but not by his negligence; as if an action be brought against executors in the debet and detiner, or if it be false Latine, but if a word which is not Latine be written for a Latine word, this is amendable, as imaginavit, for imaginatus est: In a Writ of trespass against diverse, if it abate for default against one, it shall abate against all, but if it be for matter in fact onely, as for misnaming one Defendant, it shall abate onely against him; omission or addition which doth not alter the forme is amendable, as if Dei gratia be omitted: Voluntary or negligent keeping of Records by the Clerke is amendable by other parts of the Record, or by exemplification: Count or plea in bar, &c. which wanteth substance, shall not be amended in another Terme, but default in the colour (because this is the default of the Clerke) shall be; a Record shall be amended in another Terme by the paper Booke, and a thing apparent to be the fault of the Clerke, shall be amended in another Terme, as rien hydoit: de hoc, &c. de predictus defend. pro quarent. Nisi prius shall be amended by this Statute, if power be given to the Justices to proceed, otherwise not, as if issue joined in the Record be mistaken in the Nisi prius, it shall not be amended, but misprision of dammages shall be, because this is not material to the issue, and it is the default of the Clerke: Warrant of attorney, and returns are amendable by this Statute, but if there be none at all, it is out of the Statute; and because this Statute leaveth many cases without remedy, the Statutes of 32 H. 8, cap. 30. and 18 Eliz. cap. 14. were made: Ten misprisions as ye shall remedied.
Myghts Case.

1. Variance materiall betweene the originall and the Count.
2. Want of substance in the originall, or Count.
3. Insufficient tryalls.
4. If a Coroner returns the Jury where the Sheriff ought.
5. Lack of name of the Sheriff to the returne.
6. Where no returne is indorsed upon the Venire facias.
7. When one who is not returned, giveth a Verdict.
9. If it appeare to the Court that he who hath a Verdict had no cause of action.
10. Error in Law.

Cases in the Court of Wardes.

Myghts Case. 7. Jacobi. fol. 163.

1. Resolved, if J. M. purchase Lands to him, and an Infant in fee, it cannot be averred that this was to take away the wardship, because he never was sole Tenant to the King.
2. No feoffment that I. M. can make of his moiety can be aver'd to be by collusion, &c. because without feoffment no wardship shall be, and also the Statute speakes of sole feoffin.
3. A feoffment to the wife or younger Child cannot be averred to be by covin, &c. upon construction of the Statute of 32. & 34. H. 8. where collusion cannot be averred by the Statute of Marlebridge, it cannot be now to seize all the Land, but it may be for the third part which belongs to the King: If a third part be left to the King, no avermanent of covin
covin may be for the other two parts, the Father
makes a feoffement to diverse uses, the remainder
to his second Sonne and dyeth, his Eldest Sonne
dyes, the second Sonne shall not be in ward by aver-
ment of covin.

Digbies Case, 7. Jacobi. fo. 165.

TEnant of the King conveys his Lands to the use
of himselfe for life, the remainder to his Soone
and Heire in tailie, and after is attainted of Treason,
the King shall have no wardship of any part of the
Land by 32. & 34. H. 8. because there is no Heire,
and livery must be sued in the name of the Heire,
but the King shall have wardship in such a case before
26. H. 8. because there was an Heire.

The Earle of Cumberlands Case, 7. Jacobi. fo. 166.

E. 2. granted the Castle and Mannor of S. in taile
to R. C. H. 6. granted the reversion to T. C.
if the tailie be good, if not, he grants it in possession,
this is good one way or other, and so are many Pa-
tenors from time to time.


BY Mandamus it was found that P. S. dyed seised
40. El. and held of the Queen in common socage,
7. Jacobi. a Melius inquirendum was awarded, whither
he held of the King by common socage, or in chival-
ry, and it is found that he held of the Queene by
chivalry. This Writ of Melius, &c. is repugnant,
and giveth no authority to find this office, because a
Tenure cannot be of the King, in the time of Queene
Elizabeth, and therefore a new Writ shall be award-
ed
Toursons Case, 8. Jacobi. fol. 170.

Iff Tenant of the King commit Felony A° 1. Jaco. and after is attained. A° 3. for the same, and after in A° 4. all is found by office. Now this office shall have relation to the time of the Felony, to avoid all meane alienations and incumbrances, but for the meane profits it shall have relation to the time of the Attendee: for then the Kings Title appeared of Record, and the like Law is of an Ideot. But in case of a ward within age, the King shall have the meane profits from the death of the Auencer, because he hath it by reason of his Seigniory, and he lootheth the rent and services in the meane time; the difference is, when the King seith jure protectionis regis, or Namine destructionis, and when Ratione Prioris seili seu tituli.

Sir Gerrard Fleetwood's Case, 8. Jacobi. fol. 171.

Sir William Fleetwood receiver of the Revenues of the Court of Wards, in Anno 35. Eliz. was poltished of a Mensage and certaine Lands in Harrow in Com. Mid: for a termne of yeares, in Anno 36. Eliz. he
he became Receiver generall, and was bound in 20.
Obligations of 200, L. a piece to make true account
&c. And after upon several accounts he became in-
debted in great Sums of money to the Queen,
and being so indebted in consideration of 1100. L.
did bagaine and sell the said Leafe to James Penber-
ton, which by meane conveyance came to Sir Gerard
Fleetwood. Question, Whither this Leafe, &c. was
extendable and lyable to the Kings Debt, &c. and
it was resolved, that the said sale of the searame was
good against the King; because the searame was but
a Chattell, and the sale of Chattells after judgement,
Bona fide, is good, but not after Execution awarded.

And Cooke Chief Justice, said, that a Receiver or
other accompanist which is indebted, shall not be in
worse case then a Fellow or a Traytor, that may after
Fellony or Treason, and before conviction, sell, Bona
fide, for his sustenance, &c. his Chattells, eyther reall
or personal.


The Heire Ward comes to full age, and tenders his
livery, and bagaines and sells, and dyes, the
interest of the King is determined, and the Bag-
ganine shall not answer for the meane profits, for the
Heire had done all that he could doe, and no default
in him, otherwise if he had not tendered it.


The Sonne of the Tenant of the King is made a
Knight in the life of his Father, the Father dyes,
the Sonne within age tenders his livery, by that, the
meane profits are saved, and the King shall not have
the rates within age.

Virgill
Virgill Parker seised of the Mannor of Fusbell in fee, houlden of the King in Chivalry of his Dutchie of Lancaster, maketh a feoffement of the one halfe to the use of himsefle for life, and after to the use of Mary Cony (whom he intended to Marry) for her life for her joynture, and after he Married her; and then Leased the other halfe to I. G. for yeares, for payment of his Debts and Legacies, and dyed, his Heire within age. Question, whither the King should have the third part out of the Mannor so Leased onely, or out of the whole; and it was resolved, that it shall be out of the whole Mannor, although the estate of the Wife was precedent, that is, equally out of both parts.

The End of the Eighth Booke.
The Ninth Book.

Downmans Case. 28. Eliz. Communi
Banco. fol. 7. An Assize pleaded.

The Defendant in an Assize makes Title by a recovery, suffered by P. V. to certaine uies, the Plaintiffe confesseth the recovery, and saith, That it was to the use of the said P. in fee, and traverseth that it was to the uies mentioned by the Defendant, the Jury found that it was suffered as the Defendant had allledged, and that by Indenture subsequent, the intent of the parties was declared by them to be as the Defendant had allledged, adjudg'd for the Defendants.

1.Resolved, that this subsequent Indenture directs the uies of the precedent recovery by estoppel against the Recoveree, and his Heires, and although that it be granted, that a deed is requisit to the priviledge without impeachment of waft, yet the estate without deed is good; No averment can be taken that the recovery was to other uies then are mentioned in a precedent indenture, otherwise in an Indenture subsequent, because, if uies were declared by a precedent indenture, no Declaration after, shall devest them: So if P. V. had charged the Land, and then
Anna Bedingeields Case.
then had made such a Declaration, this shall not de-
vest estates of grantees, &c. but no declaration, being
the uses by Declaration subsequent, be de vested.
2. In all actions between all persons, and in all
issues the Jury may give a Verdict at large, and the
Statute of W. 2. cap. 30. which giveth it. in Affiz, is
but an affirmation of the Common Law, but a Jury
cannot find a thing impertinent to the issue.
The death of Sir James Dyer Chief Justice of the
Common Pleas, with an ample and memorable En-
comium of him by Sir Edward Cooke, &c. Vivit post
funera virtus.

Anna Bedingeields Case, 28. Eliz. fol. 15. In dower.

A

Common effoyne is allowable in dower, and the
Statute of 12. E. 2. is to be intended of an ef-
soyne in the Kings service, for the Statute faith in
prorogation of the right which is properly this ef-
soyne which is for a yeare and a day.
2. If tenant of the King dyeth feized of diverse
Mannors, and it is found by office that he dyed feized
of one, in dower brought against the Heire of full
age he sueth a Circumspecte agains, this extends not to
more then is in the Office, for this Writ is in the na-
ture of an ayde praire, and the King hath no right to
seize more then is in the Office; and as to this Mannor
it was objected, that it shall be allowed as well as if
the Heire be within age; for in this Case, by the Sta-
tute of Prerogat. Regis cap. 4. that the Feme may be
indowed in Chancery: It was answered, that by the
Statute of Bigamis. cap. 4. ayde shall not be granted
of the King in that Case, and therefore before the
Statute of Prerogat. the King nor other Lord could
not indow the Feme, if the Heire were of full age,
because he is not then Gardian, and the Statute of

Pra-
Case of Avowry.

Prima, giveth power to the King to indow the wife in such case, if she will, and not otherwise: Where the Heire pleads to Dower, detinue of Charters, they ought to concerne the same Land, and this Plea is to be allowed, because the Feme who detiene Charters is not worthy to have Dower, and also for the privyty which is betwene the Heire and her.

2. The Heire ought to shew the certeinty of the Charters, or that they were in a Chelt.

3. None but the Heire himselfe shall have this plea, nor the Heire himselfe, if he commeth in by purchase, or if the Feme had them by his delivery, nor if he comes in as Vouchee having no Lands in the same County, or as Tenant by reseitite, because in these Cases he cannot pleade as he ought, that he is ready to render Dower.

4. A Gardian shall not pleade it, because the Charters doe not belong unto him, but he may pleade, detinue of the Ward, and if he be not restored unto him unmarried, the Feme shall loose her Dower, and after, the Tenant waived this plea, and pleaded, Vouchee accoupled, in loyall Matrimony, and the Bishop of N. certified, that they were lawfully married where upon the Demandant had judgement.

Case of Avowry, fol. 20.

If there be Lord and Tenant by fealty, and rent, and the Tenant make a Lease for yeares, and the Lessees hath done his fealty and paid his rent continually, and yet the Lord detiene the Beasts of the Lesse for the rent, and avowes upon a mere stranger, as upon his very Tenant.

Question, whither the Lesse be without remedy, for it is a position in Law, that a stranger to the Avowry
Abbot of Strata Mercella’s Case.

vowry shall not plead, but Hors de son fee, &c.
But it was resolved, that the Leffece shall be relieveed, and he must alledge that the Lessor is seised of the Tenancy, &c. and the Lord shall be compelled to avow upon the Tenant, and the false avory of the Lord upon a stranger, which is not very Tenant, shall not hurt the Leffece against the verity of the Case, Quid veritas nihil veretur nisi abscondi

If one come to distreine for damage Felant, and seeth the Beasts, and the owner chase them out, the party may not distreine them, damage feallant but is put to his Action of Trespaß, for the beasts must be damage feallant, at the time of the distreine taken, he who distreines for services upon fresh suite may avow upon the Land by the equity of 21. H. 8. c. 19. if the Lord distreine when no rent is arrear, the Tenant or Leffece may make rescons, and so relieve himself.

The Abbot of Strata Mercella his Case, 34. Eliz.
fol. 23.

IN a Quo warranto for claiming Waifes, &c. and Fellons goods, &c. the Defendant pleaded as to the Fellons goods, that the Abbot of S. M. Licet habuit & gavisus suit them untill the Abbey was granted to the King by 27. H. 8. and pleads also, 32. H. 8. c. 20. of reviving of priviledges, of Abbies, and that the K. granted a Manner parcell of the Abbey, &c tot talia &c tanta privilegia, as the late A. had to one by whom he claimed by feolement, and pleaded not the feolement by deede: Judgement against the Defendant, for the Queene it was said, that the Charter of the Defendant was void.

1. Because it appeares not what estate the Abbot had.

2. Be-
Abbot of Strata Merceil's Case

2. Because the Defendant claimeth Catalla felorum appendant to a Mannor, because he pleaded a seifin of the Mannor, and had not pleaded it by deed, without which, the priviledges doe not pase.

To the first the Court anwered, that it shall be intended a seifin in fee untill the contrary be shewed.

To the second no resolution, but it was resolved, that if the K. grant a Mannor, et bona et catalla felorum dito Manerio spectant, these passe, although they cannot be appendant.

But for the third exception, judgement was given against the Defendant. In this Case fowre things worthy of consideration.

1. What ancient franchises ought to have allowance, as to that, some may be claimed by prescriptiion without record, and some by record onely, and a Charter of the latter shall not be allowed, if it be before time of memory, if it be not allowed within time of memory, as allowance in Eyre, or confirmation by the K. But usage will not serve, and no more shall be allowed then are confirmed: Obscurè words in these ancient Charters shall be confirmed according to ancient usage, and not according to usage at this day.

2. A man may prescribe in franchises lying in point of Charter, with aide of allowance in Eyre without shewing the Original Charter.

3. If a Patent of priviledges whereby they are granted in fee referre to a grant made before to one for life onely, this is good, for the relation is to the quality, and not to the quantity of the estate. See there what trialls shall be allowed by Law, such priviledges as are ancient flowers of the Crowne, as, Bona et catalla felorum fugitivorum, &c. if these come againe to the K. they are merged in the Crowne, but not those which were erected and created by the K. as
If the Lord, avow for other services than the Tenure is traversable, if for more services of the same nature, the seisin is traversable, for he may incoack, and it cannot be avoided in an avowry, if it be not for an outrageous divestiture, but seisin binds not in *injuscum discret.* Cessavit, Aßize, Reisons, or Treipasse, but in them he shall traverse the Tenure, but illue in taile, successor of a Bishop, &c. shall avoid seisin in an avowry, and every one may, that can shew a deed of the tenure, but none shall have a Contra forment testament, but the seoffice or his Heires, and incoackment hurteth not, where there is no Tenure, and if an incoackment be of payment at more dayes if they agree in the sum, it doth not prejudice. Seisin in an avowry is not traversable generally, as never left of the services; because, by that means he leaveth no remedy to the Lord by avowry; but in such a Case he shall disclaim his plea done out of his fee, and so traverse the Tenure. He who denyeth seisin after the limitation, must first acknowledge a Tenure, that the Lord may have his Writ of Customs, and Services, as if the Avowry be for rent, seality, and quitte.

*Henslowe Case, 42. Eliz. fol. 36.*

An Action of Debt was brought against Gage and others as Executors, one of the Executors refused before the ordinary the probate, and the rest of the Executors proved the Testament, it was adjudged, that notwithstanding that refusal, he may administer the will afterwards at his pleasure; for when
when many are named Executors, and some of them refuse, and other some prove the Testament, those which refused may afterwards administer notwithstanding the refusal before the Ordinary, but if all refuse before the Ordinary, and the Ordinary commit the administration to another, then they cannot prove at any time, and the Executor shall prove the will ought to name every other of the Executors that refused, in every action for recovery of Debts of the Testator, and they may release the debts, duties, &c. and they which refused may have an Action by survivor, and after that Executors have administered, and have once taken upon them the charge of the Executorship, they cannot refuse at any time after.

It is held in 2. R. 3. tit. testament. 4. that it is but of late times that the Church had the probate of Testaments in this Land, for 'twas given by an act, &c. and in all other Nations it is not so, but in England, and in many places of England, the Stewards in their Courts Baron, have probate of Testaments in their temporal Courts at this day.

Lynnwood who was Deane of the Arches and writ in Anno Dom. 1422. did confess the probate of Testaments to belong to the Ordinaries. De consuetudine Anglia et non de communi jure, and that in other Realms the Ordinaries have not so, and in another place he affirmeth that the power of the Bishop in probate of Testaments, is, Per consensus regni & suorum procerum ab antiquo. And I have seen a Booke in Latine, published, 1573. by the Reverend Father Matthew Parker, Arch Bishop of Canterbury, who was very Learned in matters of Antiquity, in these words, Rex Angliae olim erat consilio præsidentium Ecclesiasticorum præfets, vindex temeritatis romana, propagator Religionis, nec ulteram habebant Episcopi authoritatem pretam eam quam dé rege.
acceptam referant, jus testamenti probandi non habeant administrationis posteaem culpa; delegera non potestant.

It was resolved by Linsley, Newton, and Dunby, in 7. E 4. 14. that if all the Executors refuse before the Ordinary, they may prove the Testament, afterwards, but I think this is before the Ordinary hath committed the administration, for afterwards they cannot. The Executors have their Title by their Testament, which is temporal. But to the thing of Actions in the Kings Courts, the Judges will not admit the Executors for to sue, except that they shew the Testament proved, under the seal of the Ordinary duly, but always the Kings Courts have used to allow the probate of any of the Executors to enable them all to sue actions, but the probate of the Testament doth not give to them any interest or Title, e'ther to the things in action or possession, for they have all their title and interest by the Testament, and not by the Probae.

Power to grant administrations was granted to the Ordinary, by the act of 31. Ed. 3. ca. 11. for before that time, when a man died intestate, the King who is, Pater patriae, was accustomed by his Ministers to seize his goods, to the intent they might be preserved, and bestowed for the Burial of the dead, for payment of his debts, for advancement of his Wife and Children (if he had any) otherwise to his Kindred as appeareth in Rot. Clas. de 7. H. 3. in ib. bona intestatae capi solebant in manus regis, &c. And after this care and trust was committed to the Ordinaries, and it was resolved, Pet rotoan Cat. M. 8. and 9. Eliz. Dyer, that the Ordinary himself hath not any authority to sell any goods of the intestate, although they be in danger of perishing, neither can he release any debt due unto the intestate, by a statute, in A° 31. Ed. 3. ca. 11. the Ordinary shall depute the next
next and most lawfull friends of the dead person intestate to administer his goods. And the Statute in A^o 21. M. 8. c. 5. is, that the Ordinary shall grant the administration to the widow of the same person to decease, or to the next of his kin, or to both, as by the discretion of the Ordinary shall be thought good, &c.

Read this latter Statute, to whom administrations shall be granted.

The Earle of Shrewsbures Case. B. Jacobi, fol. 46.

1. Resolved, that the grant of the Stewardship of the Manors of M. and B. without naming the County, in which &c. is good, as if the K. grants all the Lands of priors, aliens, without naming the County, but the party in pleading must name the County, and upon Non consensisse pleaded, it will appear by the evidence, and by circumstances, what Manor was granted; but if he had demanded oyer, and demurred, it will be adjudged against him, for it is matter in fact, and the acts of confirmations extend not where the County is omitted, but where the County is misplaced.

2. The grant from a day past is good, and the intent was, that the Earle shall have the fees from that day, but if that cannot be, it shall be good for the time to come.

3. The Earle had no power to make Deputies, for three offices pass by these Letters Patents severally, whereas this is the middle, and to the first power is annexed to make Deputies, but not to the second; the words are Habendum offic. prad. (with such a contradiction) To that the Court answered, that this Habendum shall have relation to this office, for it is intended, that the Earle shall exercise this
In Debt upon an Obligation, the Defendant pleads a release, which is in these words, The Obligee confeffeth himselfe to be discharged of all bonds, &c. and that he will deliver all but one bond, whereupon the action is brought, which was made by the Plaintiff and another.

1. Resol. These words that the Obligee confefeth
feth himselfe to be discharg'd of all bonds, is a release and amounteth to that that the bonds are dischar-
ged.

2. The exception extends to all the premises, and not onely to the delivery.

3. The Plaintiff by confessing that the Obligati-
on was made by another, and the Defendant against whom onely he brought the Action, had abared his owne Writ, and after the Plaintiff was Non-suited.

Batens Case, 8. Jacobi, fol. 53.

A Quod permittat to abate a House levyed, Ad no-
umentum liberi tenementi, I. P. and now of the Plaintiff, and Counts, that the House of the Defen-
dant doth jurtie over the House of the Plaintiff, and judgement given for the Plaintiff.

1. Resolved, the Plaintiff needs not shew how he had the estate of I. P.

2. The Writ is, Ad no cementum liberi tenementi. I.P, and now of the Plaintiff, and counts to the Nufans of the Plaintiff onely, it is good for the levy ing in the time of I. P. implo yeth a Nufans to him, and he must shew a Nufans to himselfe to maintaine the a-
ction.

3. If it appeare to the Court, that the Nufans is to the damage of the Plaintiff, he needs not shew it specially, as if the House of the Defendant hangeth over the House of the Plaintiff, as here, for it ap-
peareth that the light was ftopped, and that the raine discended: Quod constat clare, non debet Verifi-
care, and the Plaintiff may abate the Nufans if he will: the Statute of Westm. 2. c. 24. which giveth the Quod permittat against the alience of him who leyved the Nufans extends not to the alience of the alience.
If one were taken for the death of a man, he was not bailable at the Common Law, without a Writ De Odis adversa, which seveth not if he be appealed or indicted. 2. If he be found not guilty upon the said Writ, he was not bailable without a Writ, De ponendo in balivrum. 3. A Writ of conspiracy lyeth not before acquittal, but the conspirators may be indicted or censured in the Starre-Chamber. Conspiracies punishable by Law before Execution, ought to have 4. incidents.

1. They must be declared by some manner of prosecution, as was in this Case.
2. They ought to be malicious and for revenge.
3. They ought to be done against an innocent.
4. They ought to be out of Court voluntarily.

Addres Case, 8. Jacob. fol. 55.

When a man hath lawful profit by prescription of time, whereof the memory of man is not to the contrary, other custome of the like time also, cannot take the former away, for the one custome is as ancient as the other. As if a man have a way over the Lands of B. to his freehold Land by prescription of time, B. cannot allege prescription or custome to stop the said way, for it may be, that before the time of memory the owner of the said Lands had granted such away, without any stopping, and so the prescription might have a lawfull beginning.


Thomas Brand prescribed time out of memory to have the light of 7. Windowes towards a piece of Land of Thomas Moseby, in the City of York, but
Mosey erected a new building upon the said piece of Land, so near, &c. as the light of the Windowes were stopped. Brand brought his action on the Cafe, and judgement was given for the Plaintiff; for it might be that, before the time of memory, the owner of that piece of Land did grant Licence to the owner of the Passage, to have the said 7 Windowes without stopping them, and so the prescription might have a lawfull beginning.

If a man have a wassow court to his House for necessary uses, if a Glover make a Lime-pit for Calke skins so neere the said Court, that the corruption thereof corrupt the same, an Action of the Cafe lyeth: 13. H. 7. 26. 6. Likewise a man shall not make or erect a Swyne-fly so neere his Neighbours House, as to annoy him with the contagion thereof.


It was resolved, that every one that shall be convicted in case of Libelling, ought to be either a contriver of the Libell, or a procurer of the contriver, or a malicious publisher thereof, knowing it to be a Libell: For if one read a Libell or hear the same, read, it is no publication, for before he hear or read the same, he cannot know the same so to be a Libell, or if he read or hear the same, and laugh thereat, this is no publication; but if after he hath read or heard the same read, he repeat the same or any part thereof in the hearing of others, or if he write a Copy thereof, and doe not publish the same to others, this is no publication of the Libell, but it is good for him after he hath so written the same, to deliver it to a Magistrate, for then the act subsequent doth declare his intention precedent.
Five exceptions to the Indictment.

1. The Arrest was in the night, between five and six of the Clock, in November, at the suite of a Subject, which being tortious, the killing of the Sergeant is, but Man-slaughter: Non alloc. 1. Because the Arrest may be at the suite of a Subject in the night; 2. Although that between five and six in November, be in the night, yet the Court is not bound to take notice of it, without the shewing of the party, as in case of Burglary: &c. &c.

2. The Sunday is not: Dies juridicus, therefore the arrest that was made upon it was Tortious, &c. &c. Reform, that judicial acts shall not be done this day, but ministerial may for necessity.

3. The Indictment is in Computat: in parochia S. M. in W. omitting the Ward, yet good, as if one name the Towne, he is not bound to say in what Hundred it is, and the precept was to arrest him, Intra libertates L. and the arrest was in L. yet good, because the Liberties of L. includes the City of L. it selfe.
Exception to the verdict, that the Indictment and the Verdict vary, for the Indictment is, that the arrest was by precept, and by Verdict, it is found that it was by custom without precept. Answered, that the precept is but circumstance, and variance in it is not material, having found the substance, as if the Indictment be, that he killed him with a Dagger, and it is found that it was with a Sword, so if he be indicted of murder, and it is found manslaughter, this is good; for ex malitia is but circumstance. 2. The Indictment may be general, ex malitia, &c., because the Law employeth malice, and so the precept not material. 2. The custom is not good, to arrest one without summons: it is good, and if the process be erroneous, yet killing of him who did execute it, is murder, because he is not to dispute whether it be good or not, and if any officer, in doing his office be blamed, this is murder, and in such a case an officer is not bound to flee to the Wall, as another is.

3. The Arrest cannot be before the plaint entered by record before the Sheriff. Resp. It may by the custom after entry of it in the Porters Book.

4. The Serjeant ought to shew at whose Suit the Arrest is, and in what Court, and for what cause, true it is; if the party submit himselfe, but here he was killed before he could speake, and if they kill him before the Arrest, knowing that he came for that purpose, this is murder.

5. It is not found that the killing was felony. Resp. It is sufficient for the Jurors, to find the killing, which is the substance, and leave it to the Judgment of the Court if it be felony.

6. The Serjeant did not shew his Mace: He ought not.

1. Because he was commonly knowne.

2. The party arrested is to obey at his peril, and if
if shewing of the Mace be requisite, it will be a warning to the party to file.

7. The arrest ought to be upon request after the plaintiff entered: the request may be before or after.

8. The verdict is repugnant, for they found that the plaintiff was entered of record, 17. Nov. and after they found that it was 19. Nov. this is mercy among against the Prisoners, because the entry was before the arrest. 18. Nov.

9. The Plaintiff is without forme, this is not to the purpose, for it is but a remembrance to draw the count by at large after. And Mackalley and the other prisoners were Executed at Tyborne.

Peacocks Case, 9 Jacobi in Camera Stellaris. fol. 70.

Sir George Reynell Plaintiff, Richard Peacock and others. Defendants, J.H. J. B. Commissioners to examine Peacock upon Interlocutory Peacock being examined would have declared all the truth, but J.H. a Commissioner for the Plaintiff, held him strictly to the Interlocutory as the truth could not appear and this was holden by the Lord Chanceller and the two Chief Justices, the Chief Baron and all the Court of Star Chamber, a great Misdemeanour, &c. as the Statute of Exeter faith. Per quod instinxit ut veritas suffocantur, and Commissioners too examine ought to be indifferent, and by all means to express the Truth. And they are not bound strictly to the Letter of the Interlocutory but to every thing else, that arriveth necessarly for manifestation of the truth. Also the said J.H. when he was in Examination of Peacock went forth of the place to the Plaintiff being in another Room, and had secret conference with him: And it was holden by all the Court, that a Commissioner before publication of the depositions, ought
ought not to discover to any of the parties the matter thereof, nor after that he beginneth to examine Inter. to conferre with the parties, to take new instructions to examine further then he knew before: and if he did, they were great misdemeanours, and punishable by Fine and imprisonment, for if such things should be suffered, perjury would abound. I. H. was put forth of the Commission of the Peace, and the Attorney generall was required to prefer an Information against him, for the said misdemeanours.

Doctor Husseys Case, 2. Jacobi. fol. 71.

IN Ravishment of Ward against a Feme Covert, and others, they were found guilty, and the Baron, Non culp: and the Age of the Infant above sixteene, and Married: Foster and Warbton, a Feme Covert is within the Statute, because the Action lay at the common Law, and the Statute gives but greater punishment, and so shee is within the Statute of Merton, cap. 6. De Malefactoribus in parcis, of forcible entry, and redefeilin, Cooke and Wadekey, to the contrary: the Statute of Westm. 2. c. 35. hath made these alterations, this extends to Heires Females, which the Statute of Merton did not. 2. It extends to Heires Ravished after yeares of content, to doth not the Statute of Merton. 3. It extends to the Clergy, the Statute of M. doth not. 4. M. giveth a sight of Ward, this giveth ravishment of Ward. 5. This giveth more speedy processe, and the death of the Plaintiff or Defendant abateth not the Writ. 6. It giveth greater punishment. 2. A Feme Covert is not within this Statute, for it is Si hæc edem matrimonii, et satisfacere non poterit abjures regnum, or be perpetually imprisoned, and because the Law disableth the Feme to satisfy, shee shall not therefore be exiled.
led, nor perpetually imprisoned, and the Baron being innocent shall not be punished, for the punishment is personal, and he shall not have judgment at the Common Law, the Action being brought upon the Statute, nor judgement upon the Statute where the Action is brought at the Common Law.

3. The Verdict is insufficient, because no Case, is within the Statute, except the Ranshorne marry the Infant, so that if the Infant Marry himselfe, or be Married by another, it is out of the Statute, and the Verdict found that he was Married, and did not say by whom.

4. Damages shall be recovered upon this Statute, and where the Statute faith, that he shall be banished, or perpetually imprisoned, the Election is in the Court.


A Copy-holder in fee (where there is no custome to that purpose) maketh two his Attorneys, to surrender to the use of I. N. in fee, they in Court shew the Letter of Attorney, and by the said Letter of Attorney surrender.

1. Resolved, surrender by Letter of Attorney is good, for a surrender may be by the common Law without custome, and may be by Attorney as incident to it: If one have a bare authority, coupled with a confidence, he cannot doe it by Attorney, as Executors cannot sell by Attorney; but if he had authority to dispose, as owner of the Land, he may, as C'estue que voul, by the Statute of r. R. 3. but if one had particular personal power to dispose, as owner of the Land, he cannot doe it by Attorney as if Leesee for life had power to make Leaves for 21 yeares: There are personal things which cannot be done by Attorney, as homage, Fealty, beating his
Villaine: admittance of him to whose use the surrender is made, may be by Attorney if the Lord will, and yet he may upon the admittance compell the Tenant to doe fealty, _A fortiori_ here: and otherwise it would be a mischiefe, for it may be he is beyond the Sea, or sick, and cannot be present, to surrender for payment of his debts or preferment of his Children, but if a custome be, that an Infant may make a feestiment at 15. years, he cannot doe it by attorney.

2. The Attorneys have pursued their authority, although they have not done it in the name of the Authorizer, for they did shew the Letter of Attorney, and surrendered by authority thereof, which is all one, but if it be to make a Lease by Indenture, this shall be in the name of him who gave the authority, but Executors must sell Land in their own name, for necessity, and yet the Vendee is in by the Devilor.

_Henry Peytoes Case, 9. Jacobi. Com. banc_.

It was resolved, _Per tot. curiam_, that accord in all Actions, wherein is supposed the Tort to be made (_Vit & armis_ where _cap._ and the exigent lyeth at the Common Law, is a good plea, as in Trespasse, and _Ejectione firma_, detinues of Charters, house, or other goods, for where the certainty is to be recovered an Action is a good plea, when the condition in a Deede by the Original contracts of the parties, is to pay money, yet by accord and agreement betweene the parties, any other thing may be given in satisfaction of the money, _Res per pecuniam estimatur & non pecunie per rem_. And in this sense the saying is true, _Quod pecunie obedium omnia._

_Every_
Every Accord ought to be plaine, perfect, and compleat, for if diverse things are to be observed and performed by the accord, the performance of part is not sufficient. 17. E. 4. 2. & 6. H. 7. 10. Pl. comm.

5.

If a man be bound in an Obligation, in one hundred Quarters of Wheare, upon condition to pay 58. Quarters, he cannot give money or other thing in satisfaction thereof, because the contract originally was not for money, but for a collateral thing.

Also, if the things to be performed be at a day to come, tender and refusal is not sufficient without actual satisfaction and acceptance.

If a man be bound in a Statute, Recognizance, or Obligation, and after a defeasance is made to pay a lesse Summe, now this Summe in the defeasance is collateral, and therefore if the Obligor tender the same at the day, and it be refused, the Obligee shall loose the same for ever, as is holden in 33. H. 6. fol.

2. and yet in this Case, the Obligor by accord betweene the parties may give any Horse or other thing in satisfaction of the money in the defeasance, for the Contract originally was for money. But if a man by Contract or assumpsit without Deede be to deliver an Horse, or to build an House, or to doe any collateral thing, money may be paid by accord, in satisfaction of such contract, for as a contract in consideration may commence by word, so by accord, by words for any valuable consideration, the same may be dissolved.

Agnes
Wherein was resolved, that if A. put poison into a Pot, to the intent to poison B. and let the same in a place where he supposed B. will come, and drinks thereof, and by accident one C. unto whom A. had no malice, cometh, and of his own will, taketh the Pot and drinks thereof, of which poison he dyeth, this is murder in A. for the Law costeth the event with the intention, and the end with the cause. But if one prepare Rat-Bane to kill Rats or Mice, and lay the same in certaine hidden places so this purpose, and with no ill intent, and another person finding the same doth eat thereof and dyeth, this is no Felony. But when one prepareth poison with any felonious intent to kill any reasonable Creature, whatsoever reasonable Creature is killed thereby, he that had the felonious intent shall be punished. Resolved by all the Justices of England.

Coney's Case, 9. Jacobi, fol. 84. in banco.

The Lord of a Manor, and Tenant within the age of 21. yeares by Fealty and rent, the Lord infeoffeth a Stranger to which seoffement the Tenant attendeth. Question, whether the accournement of an Infant will bind him to the payment of the services or not, and by Cooke, Waltham, Warberon, and Foster, it shall bind, for he is compellable in a Per quæ servitū, and shall not have his age, but he may avoide any prejudice thereby at his full age: and if a fine here had beene levyed, he had beene compellable; and the rather because it is but a bare assent.
IT was adjudged, that an Action of the Case, will lye against Executors, for a Debt due by the Testator upon a simple contract. An Action upon assumpsit, made by the Testator, was maintainable, against the Executors, upon a contract for hire. Norwood & Reade. Case, plow. com. 18 kl, 11.

Debts upon simple contracts ought to be paid before Legacies, and reasonable part of the goods of the Wife or Infant, which proveth that they still remaine; the Spirituall Court doth give remedy for payment of Legacies; and the reason of all this is, for that the Testator in his life time, upon his action of the case upon the assumpsit, might not wage his Law, as he might have done upon his action of debt; for no action is maintainable against Executors, where the Testator might have waged his Law in his life time: If a Prisoner do eate and drinke with his Goaler, and dye, the Goaler shall have an action of debt against his Executors, for the meate and drinke of the Testator; and the reason is, for that in this case the Testator might not wage his Law, as is adjudged, 27. H. 6. fol. 46. in Thomas Bodelgates Case; and the reason that no wager of Law in this Case is, because that every Goaler ought to keep his Prisoner in salua & arista custodia, and thereby the Goaler is in a manner compelled to finde victuals for his prisoners, and therefore the Prisoner may not wage his Law; but if A. contract with B. for his common for a moneth, &c. there, in an action of debt brough against A. he may wage Law.

If a Victualler, or common Innkeeper bring an action of debt for victuals delivered to his Guest, the Guest may wage his Law; for the Victualler, or Hof
is not compellable to deliver vidshalls unless he be paid for them in hand, 10. H. 7; 8, in Anno. 4. H. 6.
R. G. brought an Action of Debt for 10. Markes against Thomas Timberbull, and others, Executors of
William Webb, and declared that the Testator had des-
tein'd the Plaintiff to be with him for a yeare in the
Art of Limming of Books, paying per annum £10 Markes: And Martin did hold opinion that the Ac-
tion was not maintainable against Executors, and he
tooke diversity between this Case of a Limmer, and of
a common Labourer, for the Labourer may be com-
pelled in sight of his head to serve, and his wage is
put in certainty by the Statute, and it is no reason
the Servant should loose his wages by the death of
their Master, whom he was bound by the Law to
serve, but in case of a Limmer he is not bound by the
Law to serve, &c. so when he makes a Covenant it is his
owne Act and folly, and not the Act of the Law,
for he might have taken a specialty, and the opinion
of Martin in this Case, is good Law: But the true
reason of this diversity, is, because that in this Case
of the common Labourer, the Testator might not
wage his Law as he might against the Lymmer, and
this appeareth in 11. H. 6. fol. 48: where the Gardi-
an of Freres Minors in Coventry, brought an Action
of Debt against John Burton of Coventry, Executor of
John Goate, and declared that the said John Goate re-
tain'd at Coventry, Frere John Bredon, a Brother of the
said House by License of the said Gardian, to Sing
for him Masses for one whole yeare, and to say Saint
Gregories Treswalls in the next yeare after; and covenanted in certainty upon what services Saint Gregories Tres-
walls did consist, taking for this, £1. 1s. per annum, and
within four days John Goate dyed, and the Defer-
dant his Executor, and the said John Burton, granted
to the said Frere to pay him the said Summe; for

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doing the said services according to the Deed of the Testator, which Divine service the Freer did performe, according to the receiver, and all his wages were Alexander. And in this Case the diversity was taken, that a labourer may have an Action of Debt against Executors, without specialty, because that he may be compelled to serve by the Statute, and the Testator shall not wage his Law in this Case. But the Priest or Freer is not bound to Sing Masses, by the Law, against his will. And in every Case where the Testator might have waged his Law, the Action is not maintainable against his Executors without specialty, for Executors may not wage the Law, upon the contract of another. In 2. H. 4. fol. 16. Law.

Saint Martin retained one for Tearme of his life, in the time of peace and Wares, for 100 s. per annum, which service he (as his Servant) did doe for two years, for which he brought his Action of Debt against John Belton, and others, Executors of the said Law. And judgement was given against the Plaintiff, for the reason, and upon the same diversity, as is aforesaid; an Assumpsit without specialty is no more personal then a Covenant by specialty, and therefore dyeth not with the person.


Upon an Action of Assumpsit against Executors, the Plaintiff needeth not to aver, that the Executors have assets in their hands, of the goods of the Testator, to the value of the said Debt, for it shall be presumed Prima facie, that they have Assets, for the Law doth presume, that the Testator will not leave a greater charge upon his Executors, then he will leave benefit to discharge.

If a Stranger doe say unto a man to whom a Debt is owing, I pray you forbear your Debt, and doe not sue the
Sir George Reynolds Cafe,

The Partie unto with Michaelmas, &c. and then I will pay you the Debt. This is a good consideration, although it be no benefit to him that made the promise for it; it is a damage to the Creditor to forbear his Suit or debt, he may have his Action of assumpsit against such a Stranger after the day.


It was found by Office, by Commission under the great Seal, that the Marshall of the Kings Bench had committed diverse Forfeitures of his Office, by suffering voluntary escapes of Prisoners: That Office, and such like may now be granted for yeares, because it is an Office of trust, and personal, and he must continually attend, and be Sworne in Court.

Two matters of record amount to an Office, as in the Cafe of Sir John Savage, who was Sheriff of the County of Worcesters for life, by Letters Patent under the Great Seal, and was Indicted of two voluntary escapes of Felons: and the King may seize his Office into his own hands, without suing forth any Scire facias, 5. Mar. Dyer. The Abbout of Saint Albans, had a Gaole, and detained Prisoners therein, and because he would not be at charges to sue forth a Commission for the Gaole delivery, the King caused his Franchise and Liberty thereof to be seised into his owne hands.

The Abbey of Crowland had a Gaole and Prisoners; and for that hee once detained men that were quit of Felony, the King reseised the Gaole for ever.

If a man grant an Office to another for life, or for years, and he will not doe his Office, or otherweise misuse his Office, the Grantor may reseize the said Office. 39. H. 6. fol. 34.
Margaret Podgers Case.

If a Gaoler commit voluntary escapes, or permit them, this is a forfeiture of his Office, Cooke, Lib. 9, in the Countee of Salops Case.

The King may grant the custody of the Gaole to one in fee, and also to the Sheriffe of a County, to one, and his Heires, which estate in fee simple, includes all other estates, and it is true, that these grants may be made by Law, for in these Cases, there is not any intermission, for presently after the death of the Ancestor the Office descends to the Heire.

2. This Office cannot be forfeited by Outlary, as if it were granted for yeares, it might; grants of these Offices in fee, or for life, have beene allowed, and approved, but such grants for yeares were never allowed or approved, Et periculofum existimo quod bonorum virorum non comprobatur exemplo: He that hath the custody of the Gaole, whither by right or wrong, shall be charged with escapes of Prisoners untill he be actually removed.

Margaret Podgers Case, 10. Jacobi. fol. 104.

I. P. Copy-holder for life, the remainder for life, the Lord bargained and soulst, and levied a fine to I. P. this descended to M. P. who levied a fine, five yeares passe without claime of them, in remainder, adjudged no barre.

1. Resolved, that Copy-hold estates are within 4.

H. 7. by the word Interest, but if the Fine be by coin, this barreteth not the issue, if Leesee for yeares, or Copy-holder be ousted, the Lord shall not have five yeares after a fine levied by the disseisor, after their estate determined, because he may presently have an aslize, otherwise where Leesor for life is ousted: A meer Stranger cannot enter to avoide a fine without Commandement, or assent of the party who hath right,
right, but a Gardian in socage, or Lessor for life, or Lord of a Copyholder, may, for the privity betwixt them, and the Infant or Leesees.

2. A Fine barreth not any by Non-claime who is not put to a right, therefore here they in remainder are not barred, because the bargaine and sale, and Fine to the Tenant in possession putteth them not to a right.

1. Because it is a lawfull act.

2. Tenant in possession devesteth not the remainder by accept ance, as if Leesee for life accept a Fine, Come cec, although it be a forfeiture.

3. Because he is in by 27. H. 8. of uses which doth no wrong.

3. After the bargaine and sale he in the next remainder shall not enter, for by the custome his estate was to commence after the death of the Tenant in possession, so if Tenant in possession forfeite, the Lord and not he in remainder shall enter, but thereby without a speciall custome the remainder is not destroyed: If a Copy-holder in fee surrenders to the use of one for life, no more pasilth then serveth the estate limited, and he shall pay no fine for admittance after the death of Tenant for life: It seemed to the Chief Justice, that if the Lord here had charged the Land, I. P. shall not hold it charged, for the estates in remainder preserve him from incumbrances of the Lord.

Meriel Treshams Case, 10 Jacobi. Communi Banc. fol. 108.

AN Administratrix, Defendant in Debt pleads that the Telsator and his Sonne acknowledged a recognizance to the King, of a hundred pound, and another of 800l. to B. and another of 1000l. to M. and
Mary's Case.

M. and divers others, over and about which she had mortages, and after said she had not sufficient offers, the Plaintiff replies, that the recognizance to B. was for payment of 400 l. which is paid, and the other to M. is to perform covenants, whereof none is broken, and the recognizance remaineth in force by Covin of the Defendant.

1. Resolved, that the barre is insufficient, for she first confesseth that she had sufficient offers to pay the said recognizances, and after denyeth it.

2. She saith she had offers, but not sufficient, this is too general, but she must confess how much she had, because she had knowledge thereof.

3. The pleading by the Plaintiff, that the obligation was made to perform covenants, is good, without more certainty, because he is a Stranger.

4. The general allegation of Covin is good, without shewing of refusall to release, &c., and fraud may be in one only, also the barre is insufficient, because the interest was bound in the recognizances, with another, and the Defendant had not averred, that the other had not satisfied them.

Robert Mary's Case, 10. Jacobi. fol. 111.

A Commoner being copy-holder brings an Action of the Case, for putting Beasts into the Common, whereby he lost his Common; the Jury found, that the Defendant did not put in the Beasts, but they of themselves depastured there.

1. The Jury have found the substance of the issue for the Plaintiff, the depasturing there, and it is not material if he put them not there.

2. This Action lyeth for the Commoner, for he may disseine damage, easant, and it may be, that with strong hand he is hindered to disseine, and so
if he shall not have this Action he is remediless.

2. A Commoner, who had freehold in the common shall have an Affize, Ergo, a Copy-holder shall have this Action.

3. The wrong ought to be so great, that the Commoner lose his Commomy as a Master shall not have an Action for beating his Servant without loss of his Service; and it appeared not to the Court that there are more Commomers then he, and if there be, yet an Action lyeth, because each had private damage, and it is not like to a common Nuisance, which shall be punished only in a Leete, if there be not special damage, but be the Trespasse never so little, the Lord may have an Action of Trespasse.

The Lord Sanctuari Case. 10. Jacobi, fol. 117. For procuring the Murder of John Turner, Mr. of Defence.

1. R. Esolv. That a Baron of Scotland shall be tried by Commons of England.

2. The Indictment of the accessory in one County to a Felony in another County, by the Statute of 2. E. 6. c. 24. shall recite, that the felony was done in the other County, for an Indictment is no direct affirmation of the fact.

3. The Justices of the Kings Bench are within these words of the Statute, Justices of Gaole delivery, or Oyer and Terminer, for they are the supreme Judges of Gaole-delivery.

4. The Lord Sansbar cannot be in the Term-time Arraigned in Midd. before Justices of Oyer and Terminer, because Justices of Oyer and Terminer shall not sit in the same County where the Kings Bench is, but the principalls were Arraigned in L. in the Term-time.
Antony Lowes Case.

time, because this is another County.

5. There needs not be 15. dayes for the returne
of the Venire facias, upon an Indictment in the same
County where the Kings Bench is, otherwise in an-
other County.

6. Because there is no direct proosfe that the Lord
S. commanded one of the principalls, but that he at-
tracted himselfe to one who was commanded, the
best way is to arraigne him as accessorie to him whom
he commanded, but if he be Indicted as accessoiry to
two, and sound accessoiry to one of them, this is
good.

The word Appeale in the Statute of W. 1. c. 14. is
to be intended generally. (Viz.) By Indictment,
by Writ or Bill, &c. and attainders is to be intended
upon any such accusation. Ergo, if upon any such ac-
cusation the principall be attainted erroneously, the
accessoiry may be arraigned, because the attinder is
good, untill it be reversed, but if the Accessoiry be
Hanged, and after the Attinder against the principall
is reversed, the Heire of the Accessoiry shall be resto-
red to all which his Father lost, either by entry or
Action: By 5. H. 4. cap. 10. none shall be impriso-
ned by Justices of Peace, but in the Common Gaole;
whereby it appears that Justices of Peace offend,
who commit Fellons to the Counters in L. and other
Prisons, which are not Common Gaoles.

Cases in the Court of Wards.


A  L. Tenant of 59. Acres, parcell of the Mannor
of A. by chivalry, and Suit of Court to B.
Whereof A. was parcell, and both A. and B. were
parcell of the Duchie of L. out of the County Palatine holden formerly of the King in Chivalry, in Captive, and of another House there, holden of A. by fealty; and rent, H. 8. grants the rent by release to him and confirmeth his estate in the said Lands by fealty onely, and grants to him the Mannor of A. Tenendum by fealty and rent: It was Objected, that when the King grants the Seigniory to his Tenant, the ancient Seigniory is extinct, and a new one that is best for the King created, (Viz.) Chivalry. 2. When he extinguisheth services parcell of the Mannor of A. this shall be holden as the Mannor of A. is, that is by Chivalry.

But resolved, that the 59. acres and house, shall be holden by fealty onely, and as to the said Objection the release of the King doth not extinguish service, which is inseparable to a Tenure that is fealty, but all others are gone, and true it is, when the K. grants, and expreseth no tenure it shall be by Chivalry, but when the Land moveth from a Subject, and the Tenure is changed, the new Tenure shall be as neere the ancient as may be, as Feoffee of Tenant in Franksalmoigne, shall hold by fealty onely, and here, although they grant the services, yet he limits the grantee to doe fealty. A Knights fee is not to be taken according to the quantity, but the value of the Land, as 20. l. per annum, and a Hide of Land, is as much as a Plough can Plough in a yeare; Relief is the fourth part of the annuall value that is of a Knight; five pound, of a Baron, a 100. Markes, of an Earle, 100. l. of a Marques, 200. Markes, of a Duke 200. l. The Eldest Sonne of E. 3. called the black Prince, was the first Duke in England, and Robert, Earle of Oxford, in the Raigne of R. 2. was the first Marques, and the Lord Beaumont was the first Viscount created by K. H. 6.
Baron and Feme seized of Lands holden in Chivalry in right of the Feme in Fee, levy a Fine to one who grants and renders to them and the heires of the Baron, and levy another Fine to their use for life, the remainder to their three Sons in taile, one after another, the remainder in fee to the heires of the Baron; the K. shall have neither wardship of body nor Land.

1. Resol. That is out of the Statute of 32 H. 8. cap. 2. if he who had the fee dye, &c. in respect the estate by the first Fine did not continue, and this although both the Conveyances are voluntary.

2. The King shall not have wardship of the third part, because it is not for advancement of the Wife, for in the first Fine the Land moved, from her, and shee had no more by the second Fine then by the first.

3. In regard the particular estate is out of the Statute, no wardship acceth to the King, by advancement of him in the remainder; but if a reversioner upon an estate for life, convey it to the use of his Wife, this will give wardship of the body of the heire, for he in reversion is tenant; if a Lease for life be the remainder to two, and to the heires of one, he who hath the fee dyeth, his heire shall not be in ward; if the heire of one joyntenant, who had the fee dye of full age (living the tenant for life) his heire shall not be in ward, although he be with in age by that Statute, because he is not immediate heire.
M. S. devileth to his Wife for life, the remainder into W. S. and if he shall have issue, that then his issue shall have it, the remainder to S. the remainder to T. etc. Codicil verius, upon condition that if any of them, or the heirs of their bodies, go about to alien, that he in the next remainder to return after the death of M. W. and S. T. suffereth a common recovery to his owne use in fee, he in the next remainder enters.

1. Resol. Every one of the Sonnes hath an estate raile. 1. These words if he dye without issue Male, are sufficient to create an estate raile. 2. The general clause, if any of his Sons, or heirs of his body doe it, maketh it manifest. 3. The condition proveth it, for they cannot alien if they have but for life, for this would be a forfeiture.

2. The restraint of tenant in raile, to suffer a common recovery is void: See Mildmayes Case in the sixth Book.

Quicks Case, 9. Jacobi, fol. 112.

The King Lord, I. N. and Tho. Q. messes of a Mannor which they hold in common in Capite, and tenant of three Acres holden in Chivalry, T. Q. maketh a feoffment of his moiety to the use of himselfe for life, the remainder to I. Q. his Son in raile, the tenant infeoffeth I. Q. who infeoffeth T. Q. to defraud I. N. of the wardship of his Sonne within age, and dyes, I. N. seileth the Son, T. Q. dyeth, the King shall not have wardship of the body, and moiety of the three Acres.

1. Resol. By the death of I. Q. it was a Chattell vested
vested in I. N. and the King had but a possibility to have it, if T. Q. dye during the minority of the ward, which possibility shall not devest the wardship out of I. N.

2. When the tenant infeoffeth a stranger to destrand the Lord of wardship, the Lord shall not have ravishment of ward, before recovery of the Land in a right of ward, and although the title of I. N. be but in action, yet it shall not be devested by a descent after: See the Statute of 34. H. 8. in Case of collusion.

Bewleys Case, 9. Jacobi, fol. 130.

The King Lord, mesne by Socage, and tenant, the tenant is attainted of Treason, the King grants to one tenement by Chivalry and Rent, and to doe his services to other Lords, the tenant shall hold by Socage of the mesne, and he by Socage of the King, because the intent of the King was to revive the mefnalty, which cannot be by any other way, and the reviving of the ancient tenure shall be in construction preferred before the reservation of a new; and the honour of the King shall be preferred before his profit, and there was no default in the mefne.

Thomas Holts Case, 9. Jacobi, fol. 131.

Grandfather tenant in Chivalry in Capite, Father and Son, the Grandfather conveyeth part of his Lands to the use of the Father and his Wife, the remainder to the Son in taile, &c. the remainder to the right heires of the Grandfather, and conveys other Lands to his younger Children for life, with diverse
verse remainders over, and dyeth, the Father tenders livery, and before he sueth it, dyeth.

1. Resol. By the death of the Father before livery sues, and after tender, the King loseth the primer seisin, but not meaner rates, if any be due.

2. The Son shall not pay primer seisin, nor sue livery, because the Father and not he, was within the Statute of 32. H. 8. 3. If the King had had one primer seisin, he shall not have another of the Lands conveyed to the younger Children, but that ought to be an effectual seisin; Ergo, here because the King had not the effect of the primer seisin of the Father, he shall have primer seisin of the Lands conveyed to the younger Children, as if hee had the grant of a prochein avoidance and presents, and his Clerk dyeth before Induction, he shall present again, and before the Statute of Donis: If tenant in taile the reversion to the King had aliened post praeem faschiation, with warranty which descends upon the King it is no barr without allers, the effect of the warranty.

4. The King shall not have primer seisin in regard of a fekke reversion which descends to the Son, otherwise if a rent be reserved, the King may have that for a yeare: So note, for a fruitlese reversion there shall be wardship, but no primer seisin.

Matthew Menes Cae. 9. Jacbi, fol. 133.
heire to whom the Land, holden did descent

1. Resolved, if no Will had beene made; the King shall not have the Lands, holden of others in socage, but when by the Will, (to which he is enabled by the Statute) he deviseth his 8th of his Estates, where the saving in 32. H. 8. giveth to the King ward and primord seisin; so if Lands in chivalry, devisable by custom, are devised to the Feme, although the devise be good, for all without side of the Statute, yet the King shall have a wardship of a third part.

2. The King shall have his third part out of all their Estates equally.


The King. Lord, Meene, In Chashe, and Tenant in socage, the Meene grants to the use of himselfe for life, the remainder to the Tenant in tailor. If the remainder suspends the Meñalty during the life of the Meene.

Resolved, that during his life the Meñalty is not suspended. 1. Not as to the Meene, because he remaineth Tenant to the Lord; nor by reason of the remainder for the avoind of Fractions, otherwise if the remainder be limited in fee, for then he hath as high an estate in the Meñalty, as in the Tenancy, and this can never be revived, and otherwise a Seignior in fee shall issue out of a Meñalty for life, and there will be Lord and Tenant in fee, and Meene for life; but if the Lord Grant his Seignior for yeares, the remainder for life to the Tenant, the Meñalty is suspended; 'A Meñalty or Seignior cannot be suspended in parte, and in esse, for parte by the Act of the party, but they may by act of Law, or of a third party: As if the Lord take a Leafe of part of the Tenancy, all the Seignior is suspended; but if
Thoroughgood's Case.

if a Gardian indow the Femae the Seigniory is in esse, for that part, and suspends for the residue: if two Coparceners are of a Seigniory, and one commeth to the Tenancy by defeasible Title, the other shall di-

straine for the moity of the Seigniory, and the Act of the Coparcener shall not prejudice her.

There are foure manner of Avowries.

1. Upon his very Tenant, 2. Upon his very Tenant, by the manner, where the Tenant had but a particular estate.

3. Upon his Tenant by the manner when the Lord had but a particular estate.

4. Upon the matter in the Land, as within his fee, but the Lord hath liberty to Avow according to the Common Law.


Tenant in fee in seoffith, one by Deed indented, and delivereth it upon the Land, in the name of seisin, this is good, and hath a double operation at one instant, Viz. to deliver the Writing as a Deed, and to deliver seisin of the Land according to the Deede.

1. Resolved, this is his Deed although he doth not say so, but delivers it in the name of seisin, for delivery is good without any words: if one deliver a Deed to one as an egrow, to be his Deed upon performance of conditions, this is his Deed presently, otherwise if he deliver it to a stranger: so words are good without actual delivery, as if he faith, take it like to a livery within view. If the Obligee deliver the Obligation to the Obligor, to redeliver, the Obligor may retaine it, for the words to redeliver are void.

2. Delivery of the deede upon the Land, amount

eth
Beaumont's Case.

eth not to livery and seisin, but it doth, if delivered in the name of seisin, so of any other thing, or if he faith, I deliver you seisin, without delivering any thing, this is good also.


1. B. and E. his Wife, Tenants in speciall Taille, the remainder to the Heires of the Baron, I. B. levies a Fine to K. E. 6. who grants to the Earle of H. in fee, I. B. dyeth, E. enters, the Earle of H. confirmes her estate, to have to her, and the Heires of the body of I. B. E. dyeth seised, having issue F. B. who accepts a fine, Sur consans de droit tantum, with Proclamations, and dyes, having issue Sir H. and I. Sir H. in Ward to the K. after full age, and before livery, Covenanteth to stand seised to the use of himselfe, and his heires Males of his body, and dyes, having issue onely a Daughter in Ward, whether shee or I. B. shall have the Land, &c.

1. Resolved, that E. had an estate taile, and the Statute of 4. H. 7. c. 24. which inableth the Baron to barre the issue, savel the right of the Feme if shee enter, or, &c. and one may have an estate taile which cannot descend, as if the Sonne in the life of the Father levyeth a fine, the Father remaineth Tenant in taile still, although it cannot descend, and E. here hath an estate taile so long as shee liveth, or the Heires in taile remaine.

2. The Confirmation is void, for he who did confirm had but a possiblility, which passeth not by the confirmation, and if he had a reverstion in fee, yet it should be void.

1. Because the taile which the Feme had was confirmed, which cannot descend.

2. The confirmation doth not add a descendible quality.
equality, where he who should have it is disabled to receive by descent.


4. & 5. If Tenant in Dower grants her estate, there is a discernible quality in the Heire, to bring wafst against Tenant in Dower, and although the Heire confirmes her estate for life, and after shee affigneth it to I. S. who committeth wafst, yet the action of wafst is maintainable against her, *Pari ratione*, in the Case at Barre, in regard the confirmation doth not inlarge the estate of E. it cannot add unto it a discernible quality.

6. There are but three manner of Confirmations, *Viz.* *Persiciens, Crescens, aut diminuens*, and the Confirmation in this Case, is none of them: and if E. had no power to levy a fine or suffer recovery, the reason is, because she cannot barre that which was barred before by her Husband, but this point was not now in Question.

The End of the Ninth Booke.
The Tenth Book.

The Case of Sutton's Hospital, Baxter Plaintiff, Sutton and Law Defendants, in Trespass, in the King's Bench, and adjourned into the Exchequer Chamber, and judgement given against the Plaintiff.

1. Obj.

By the Parliament 7. Jacobi, the Hospital was founded at H. in Essex. Ergo, the incorporation made after by the King's Letters Patent, is void, and the Charterhouse is not given by the said Statute because S. purchased it after.

2. Sutton who had Licence to found an Hospital before the Foundation, dyed.

3. The R. cannot name the House and Lands of S. to be an Hospital, because in Alieno solo.

4. Every Corporation ought to have a place certaine, but here the Licence is to found an Hospital at, or in the Charterhouse, Ergo, before that S. had made it certaine, there was no incorporation, also the place of Corporation ought to be certaine by Meares
The Case of Sutton's Hospital.

Meates and Bounds, and a place knowne will not serve.

3. The King intended to make an incorporation presently, which cannot be before that S. name. Master.

6. Governors cannot be, untill there be poore in the Hospitall, Expo S. called in in his Will his intended Hospitall.

7. The Foundation cannot be without the words, Fundo, erige, etc., and before such Foundation, a Stranger cannot give Lands unto it.

8. The Master was named at will, where he ought to be for life, and have seathold in the Lands, also the Hospitall must be Founded before a Master be named.

9. The bargaine and sale made by S. is said.

10. Because the Money paid by the Governors in their private capacity, shall not inure to them in their politick capacity.

2. The Habendum is to them upon trust, which cannot be in a Corporation.

3. Because as before, no Hospitall was Founded.

To the first it was answered, that, the Letters Patents recite the preambule of the Act whereby, and in many parts of the Act it appeareth that the incorporation was to be in future, when it shall be erected, and the Statute doth not give any Lands unto it, but power to give without License of alienation and mortmaine, and it appeareth by the Letters Patents that the erection precedes the License.

2. The License is to him, his Heires, Executors, etc. at any time hereafter, and the words of incorporation are in the present, and so the incorporation precedeth the execution of this License.
3. Although the King gave the name, yet & devised it, and assent to it, and the K. did it at his Stire.

4. The K. makes an Hospitall of all the premises, so that it is certaine, and as to that which was said, that a place uncertaine cannot be an Hospitall; It was answered, that a Manor may be, which is more uncertaine then the Charterhouse. To the essence of a Corporation five things are requisite. 1. Lawfull authority to incorporate, and that may be some wayes by the common Law, as the King himselfe by authority of Parliament, by the K. Charter; and by prescription. 2. The persons either naturall or politcall. 3. A name by which, &c. 4. A place. 5. Words sufficient, but not restrained to a strict forme.

5. A Corporation may be without head, as if the K. incorporate a Towne, and give to them power to choose a Mayor, they are a Corporation before Election.

6. It is a sufficient incorporation that there be an Hospitall potestate, for the Temple was a Corporation in the time of H. 1. and yet was not built till H. 2. time. But here the House was built before.

7. The first Donor is in Law the Founder, and when the K. giveth a nattie, and designes the place and the persons, the Founder hath nothing to doe but the Doation; but if the K. leaveth the nomination to the party, there many times, although not of necessity he uteth the words Fundo erigo, &c. But in truth the incorporation is made by the K. Charter, and the Founder is but an instrument.

8. The Master may be at will, for by the Letters Patents S. had power to name one at his will and pleasure.

9. The money paid by some of the Governours in their
Mary Portington's Case.

their privateCapacity is good, but the payment was as Governours, and so they are acquitted. 2. A rent was reserved, which is a good consideration. 3. A bargain and sale may be upon confidence and trust.

10. They may plead that they are tested. In jure incorporationis, although then it be not In esse. In Answer to the presidents, some are Explanatory, some Nigatory, Ex consuetudine clericorum.

Sir Thomas Fleming, Chiefe Justice of England, became sick, whereof he after died, so that he never argued the Case: See there his severall advancements and commendations.

Mary Portington's Case, 11. Jacobi. fol. 35.

After many things said concerning Perpetuities, in this Case it was said, that a recovery in value, barreth an estate taise, although no recompense be had, because it is by judgement, as if the title be barret in a formedon, by warranty and affects, but if the issue before judgement given, alien the affects, his issue shall recover the Land in taise, if Tenant in taise suffer a recovery, and die before Execution the issue is barred: It is absurd that one may barre one of going about to suffer a recovery, when he cannot bare the recovery in issue, but if such a condition had beene good, a Feme Covert by that shall not loose her Land, for he shall not loose her Land by any conclusion without examination upon Writ in Court, and if she acknowledge a recognizance, this is void, although it be with her Husband, because there is no Writ to examine her, if an Infant levy a fine, this is voidable, and shall be barret by inspection, but a fine decayed by a Feme Covert is void, if the Husband enters, otherwise not.
Tenant for life suffers a common recovery, in which he in remainder in tain is vouch'd, who dyeth, the reversion in fee is barred.

1. Resolved, that at the common Law a recovery against Tenant for life, upon a true warranty, and recovery in value binds him in the remainder.

2. No Statute was made to provide for him, who had a reversion or remainder upon an estate in tail, and the Statute of W. 2. c. 3. which giveth recitée to a reversioner upon default of him who holds Per domum, is to be intended of Tenant after possibility of issue extinct, and 32. H. 8. c. 31. provides only for a reversion or remainder upon a Lease for life.

3. There have been diverse evasions out of the Statute of 32. H. 8. as if Lessee for life Lease for yeares to one who infeoffeth one who in recovery vouches Lessee for life, this was out of the Statute, because the Lessee and Lessee were put to a right, whereupon 14. Eliz. c. 8. was made.

4. Eliz. extends not where Lessee for life vouches him in remainder in tail, because it is in the power of him in remainder to dock the reversion, &c. and the course is, that Tenant in tail bargains and sells to one who suffers a recovery, in which, Tenant in tail is vouched, and yet the bargainee had but for life; judgement affirmed in Error.

Lampet's Case, 10 Jacobi. fol. 46.

Lessee for 5000 yeares devineth for life to one whom he makes Executor, the remainder to his Sister, and the Heires of her body, and dyeth, the Sister taketh Husband, they release to the Executor, who
Lampets Case.

who demiseth for ten yeares to the Defendant, the Baron dyeth, the Executor dyeth, the Tenant takes another Baron who demiseth to the Plaintiff, judgement against the Plaintiff.

1. Resolved, a devise of the use of a Tenant to one for life, the remainder to another for life is good, as an Executory devise.

2. A devise of the reversion it selfe in such manner is good.

3. The first Devisee cannot barre him who had the Executory devisee.

4. Assent of the Executor to the first devisee is an assent for all.

5. If such a devise be made to the Executor, and he enter, generally he shall have it as Executor.

6. Such an Executory devise cannot be granted over.

7. Such an Executory devise may be extinguished by release to the first devisee.

Objection. That the first devisee had all the interest in him, and the other but a possibility, which cannot be released, as if Coissee of a Statute release his right in the Land, ye: he may sue Expedite.

It was answered, that a thing in Action cannot be granted to a Stranger, neither by the Act of the party nor of Law, but it may be released to the Tenant, and here to him who had the present interest.

1. Because as it may be easily created, being a Chattell, so it may be easily determined.

2. Every right as well present as future, by joyning all who have interest one way or other may be extinguished; so if the Executor and the Sibter here, had joined in an assignment, this had beene good.

3. When many things are requisite to the perfection of any thing, the Law respects the Original Act, and here the Fundamental Acts were the devise, death of the deviser; the
the assent of the Executor, and death of the first devisee; and since then a right that may be released, and the death of the Executor is but a means to bring it into possession; as a Feme Covert barreth her life of Dower by joyning in a Wife with her Husband, but if the Baron dyeth first a year, and a day, and five years parte, the Feme is not bound; so if Tenant in ancient demesne levy a fine, he had possibility to have the Land again, if the Lord being a Writ of descent, but he may release that possibility, but such a possibility as may be released ought to be Propinquia, and not Reminiscit, and it is more then a common possibility that an Executor will dye before 5000 yeares, and the person who releashed it ought to have it in certenie, therefore if a remainder be limited to the right Heires of I. S. his Eldest Sonne cannot releash it, because he is not certenie, whether he shall be Heire at the death of his Father, so if a Lease be made to Baron and Feme, the remainder to the survivor of them for 20 yeares, the Baron cannot grant this Tearmine. 4. This by her death goeth to her Executors, therefore it may be extinguished by her, if the difference releash all actions to the diffirent who dye, the difference shall have a Writ of entry against his Heire, or if Bailor releash all Actions to the Bailee, he shall have a detriment against his Executors. 5. It is a present Legacy, although the interest be in futurom, and therefore the Legacy may be discharged, and consequently the interest is false; For Qui desfruit medium desfruit finem, and this may be before assent of the Executor. 6. Otherwise there would be a perpetuity of Charteels.
2. By this releash the Executor had a perfect estate for 5000 yeares absolutely.
3. The request and acceptance of the releash by the Executors amounteth to an agreement.
The Case of the Chancellour, Masters, and Schollers of the University of Oxford; 11. Jacobi, fol. 53.

The Statute of 2. Jacobi, giveth presentments of Churches, which belong to Recusants, convicted to the Chancellour and Schollers of O. and makes grants of such Recusants void. One indicted of recusancy grants a proper in avoidance, and is after convicted, the Church becommeth void, the Chancellour, Masters, and Schollers, bring a Quare impedit, and avert that he remained a Recusant.

1. Refol. The grant of the next avoidance between the Indictment and conviction, is void, for the Statute is, that a Recusant convicted shall be disabled, etc, from the time of the Session of the Parliament, to a grant of the next avoidance by an Abbot before surrender, and after the Statute of 31 H. 8. cap. 13. of Monasteries is void; so if an Officer of the King purchase Land, and alien it, and become indebted to the King, this Land is liable to the debt.

2. Covine shall not be presumed if it be not averred, and if the Jury finde that Covine was to one intent, that shall not be taken to another intent, therefore because it is not sayd that this grant was by Covine, it shall not be intended.

3. Although the Statute giveth the avoydances to the Chancellour, and Schollers of O. yet they may bring a Quare impedit, in the name of their Corporation, and the misnaming of the Corporation, doth not avoyd the act when it appeareth what Corporation is intended.

2. It was pleaded that the Statute giveth it to the Chancellour, Master, and Schollers, and the Defendant had demurred upon it.

3. This being a private act, it shall be taken as it is pleaded.

4. The
4. The University must shew that the Grantor was a Reculant, convicted at the time of the avoydance, but not that he continued so, because it is a Chattell vested in them, which shall not be devested by his conformity after. Judgement for the Plaintiffs.

The Defendant in a second deliverance, pleads a grant of the Bishop of S. to E. G. and himselfe of the office of Surveyorship of his Mannors, with a rent charge of twenty Nobles per annum, with confirmation of the Deane and Chapter, and that it is Antiquum officium, used to be granted in such manner to such person and persoun as the Bishop and his Predecessors shall please: The Plaintiff pleads the Statute of 1. Eliz. and that the said Office hath not beene used to be granted, but for the life of one, whereby the grant is void, Et hoc parati est verificaret. It was excepted to the Barr, that the avowant had pleaded that the Bishop and his Predecessors have used to grant the said Office to such person or persouns, etc. And the Plaintiff pleads in barr, that it had not been used to be granted but for one life, and concludest, Et hoc parati est, etc. where it ought to have been, quod inquiratur per, etc. yet it is good, because the avowry is in the disjunctive.

2. It is not averred that the Bishop is dead, and if he be not, the grant is good during his life; it is good, for it appeareth by the words, super Episcopum, that he was dead, or removed: exceptions to the avowry, that to say this is an ancient Office is too generall, because hee made title to the Office it selfe, but it had been good if he had claimed another thing, by reason of the Office, and the exception holden good: It was objected that this grant was out of the Statute of
The Bishop of Salisbury's Case.

of 1. Eliz. because no partell of the possessions of the Bishoprick, as the Statute speakeith,

2. Such things are restrained by the Statute whereof a rent may be reserved.

3. If it had been an Office, partell of the Bishoprick which the Bishop might exercise, this had been within the Statute; but this is not so.

4. If it be restrained for two lives, then also for one life: But it was resolved, that the saide grant for two lives was void against the successor by the Statute of 1. Eliz.

1. Rish. This grant had been good at the Common Law, by confirmation of the Deane and Chapter.

2. The Act of 39. 349. 39. 28. inabliteth the Bishop to make a Lease for 24. yeares, or three lives, observing the limitations of the Statute without the Deane and Chapter.

3. The Statute of 1. Eliz. restraineth the Bishop to grant any partell of his possessions, or any thing belonging to his Bishoprick, but for 21. yeares, or three lives, &c. but against the Bishop himselfe it is good, and this Office may be saied belonging to his Bishoprick, because he had an inheritance in the disposition of it; and the intent of the Statute was to aventure diminutions and dissipations, therefore a grant of such an ancient Office of service and necessity for one life, as was accustomed, is out of the Statute, but more then that he cannot doe, because it is not of necessity; and the death of one of them in the life of the Bishop is not to the purpose, for the grant was void against the successor, and it shall not be made good by accident after.

4. Such a grant for one life, without confirmation of the Deane and Chapter is void, because it is out of the Statute of 1. Eliz. and resolved also, that although
though the Bishoprick be now, yet a grant of a necessary office, with a reasonable Fee (of which the Court shall judge) bindeth the successor.

Note. Where there was a clause in 2 Jac. that Bishops may grant to the Queen, &c. 3 Jac. by Parliament restrained them, and after Judgement was given for the Plaintiff.

Before the Statute of Prerogativa Regis, cap. 15, by the grant of the King of a Mannor, all appendants (without naming them) passe, and the Statute excepteth Knights Fees, Advowsons, and Indemnities, but all other appendants now passe without naming them, and so doe Advowsons passe in case of restitution, for the Statute speaketh of Names, and in Grants also, without express mention, by the words Ado ples de tineis, &c. See other good matters touching this Subject.

The Church Wardens Case of Saint Sawners in Southwark, fol. 56a. Leveson.

Queen Elizabeth leased the rectory to the Church Wardens of St. S., for 84 years, and after leased to them for 89 years, in consideration of the payment of 20s. and surrender of the Letters Patent by the Church Wardens, Modo habentes, &c. and possession, and the special Verdict found, that they paid the 20s. and that they delivered the Charter in Court to be cancelled, and that they paid the Fees, but that no vacant was made, yet the grant is good, for it appeareth that the intent was not to make a surrender indeed, because he saith, Modo possidentes, but
The Case of the Marshalsea. a surrender in Law by acceptance of the second Letters Patents; and although a Corporation cannot make a surrender in deed, yet they may make a surrender in Law.

2. Although an actual surrender is requisite, they have done all, which belongs to them by delivery of the Charter, and payment of the fees, and the cancelling belongs to the Court.

3. Although it was recited that 20l. was paid, yet it needs not to be found, for it is but in the personalty, and is affirmed by the King to be paid, and is also executed. See Barwick's Case, 5. Reports, 93.

The Case of the Marshalsea. 10. Jacobii. fol. 68. in false Imprisonment.

A N Action upon the Case, upon an attempt is brought in the Marshalsea, whereas no party was of the Kings House, the Plaintiff recovered, the Defendants arrested the Plaintiff by a precept, in the nature of a Capias ad satisfaciendum, and he brings false Imprisonment, and judgement given against the Defendants.

1. Resolved, the Steward and Marshall at the Common Law hath two Authorities: One generall, as Vicégeréns of the Chief Justice, in his absence, within the Verge: Another, as Judges of the Marshalsea. This last was limited to Debt and Covenant, where both are of the House, and to trespass, Vi et armis, where one is, but not if it concerne Land, and because they have the general authority at will, and the other for life, they draw many cases to the Marshalsea which ought to be in other Courts: Their Jurisdiction by Flota, Lib. 2. cap. 2. Infra metas hospitiij continentes. 12. Leucas in circuitui. And the Statute of 13. R. 2. & 3. limits the 12. miles to be accounted about the Kings Tonnell.
2. The reasons whereby this special authority was given them, were,

1. Because the suite there, is by Bill; by reason of their privilege, which cannot be elsewhere;

2. In respect of the necessity of attendance of the King's servants.

3. If strangers shall be suffered to sue there, one Carman would sue another Carman there, In aula Regis, which were undecent; but the general authority vanished by the Act of 28. E. 1. c. 5. which ordained, that the Chancellor and Justices of the King should follow him, therefore in Presentia Majoris caesari, &c. and about 4. E. 3. the Court of K. Bench became Resident.

3. The Statute of Articuli super chartas, is as much as an explanation of the great Charter, and the Charter of the Forrest, and not introductory of a new Law, and the third Chapter of that Act explains the jurisdiction of the Marshalsea, as before, and if he hold plea, otherwise a prohibition lyeth, and the party shall have an Action upon the Case, as a consequent upon the Statute.

4. That part of the Statute which gives them jurisdiction in trespasses, shall be intended trespass, Vi et armis.

5. This action lyeth against the Defendants, because the Court had not jurisdiction, and so have not done it by command of the Judge, otherwise if the Court had jurisdiction, but proceeded Inverso ordine, or erroneously, as if a Capias be awarded against an Earle, &c. one who is indicted before Justices of the Peace, cannot approve.

1. Because he cannot assign a Coroner. 2. Because it is out of their commission, if a Court Leicester be holden at another day then it ought to be, the proceeding is Coram non judice, otherwise it is of a Court Baron, 6 R. 2. Action upon
Leonard Loeve's Case. 

Upon the statute of usage, in the point, that judgement in the Marshallea, when none of the parties is of the E. House, may be avoided by plea without any writ of Error, which proveth that it is void.

Leonard Loeve's Case. II. Jacob., fol. 78. In ejectio-

L. L. settled of diverse manner in socage and in

chivalry. In Capito, makes it fooffenent in di-
gress to the judge or precedent, whereby he

limits to himself for life, without impeachment of

wall, and to the use of his leftees and devisees, the

remainder to his second sonne in tate, &c. There-

version to himselfe with power of revocation, after

the purchaseth 8. acres in socage, and revoketh, as to

certaine manors holden in socage, and devisest them

and the 8. acres to his eldest sonne, and his heires.

Males of his body for 400. yeares, provided that if

he alien otherwise then for years determinable, un-

on the death of three persons or Lease number, ren-

dering the old rent, or die without issue. Male, then to

his second sonne in tate, with proviso to make Lea-

tes according to 32. H. 8. and, L. L. dyeth, the eldest

sonne enters into the 8. acres, and dyeth, leaving

one daughter who marrieth R. D, who enters into the

8. acres, &c. Second sonne dyeth, having L. L. who

enters upon R. D, and leaves to the plaintiff, who

enters, upon whom the defendant enters, and eje-

ceth, &c. and if the entry of L. L. the lesser was

conceivable or not, was the question, and it was ad-

judged that his entry was not lawful, and judgment

was given against the plaintiff, in this case digere

points resolved, some at the common law, and some

upon 32. and 34. H. 3. of Wills.

J. Resol.
1. Resolv. if a man seised of three acres of equall value, one holden in Capite, and giveth that and one of the other to his younger Sonne in taile, he cannot devise any part of the third Acre, because he had executed his power, and if he purchase other Land in socage, he can devise but two parts of that by reason of his reversion in Capite, expectant upon the estate taile.

Obje&. That the K. was once satisfied of the wardship by the Statute, in respect of the Acre holden and the reversion thereupon, shall not hinder the devise of Land, purchased after.

2. The Statute doth not regard this feeke reversion, but inheritances of annuall value. Resp. To the first, that this reversion shall hinder the devise, by the words of the Statute, for he had a reversion of Lands holden, but although the Statute faith, that he may alien two parts, by act executed or will, if he alien to one of the three uses by act executed, he may devise the reversion, for the Statute is to be intended of an entire Alienation, and where the Statute faith in reversion or remainder, it is to be intended, that the devisor be seised of such a remainder, which draws wardship.

To the second it was answered, that things which of their nature are feeke are out of the Statute, but not things which of their nature are of annuall value, but are not of value in respect of some Leafe or gift, Abseq, abiligo inde reddendo, and therefore feeke reversions are devisable by the said Statutes; but if they be not, yet they shall hinder the devises of other Lands. To make one able to devise by those Statutes, the time of Having, Holding, and disposing, must concurre, and therefore if a grant to the second Sonne here, had beene in fee, although with power of revocation, the devise had been good, because he
had no Lands In Capite, at the time of the devise, if the Father conveyeth his Land to the use of his younger Sonne, the eldest being within age, after the death of his Father, he shall be in ward although nothing descend. A true Child, and not in reputation is within the Statute, and if the Sonne purchase Land Bona fide of his Father, this is out of the Statute; because it is not for his advancement. If Tenant in socage devise, and after purchase Land in Chivalry, the devise is void for a third part; but if Tenant in Chivalry and socage devise all, and after aliens the Land holden, this is good. To make division, that the King shall have a third part holden, the Lands shall be taken according to their value at the time of the death of the Devise. The time of provision that a third part must descend, needs not concur with the time of alienation, but it is sufficient that he had it at the time of his death. The estate to any of the three purposes ought to continue to the time of death, and the Tenure must till after death, to make it within the Statute, and the estate also of Lands holden, ought to continue after death, therefore if Tenant in taile, in Capite devise socage Land, and dye without issue, this is good, so privy must continue after death, therefore if he who made the conveyance be attained, this is out of the Statute: The uses to the second Sonne are in contingency, and not executed by 27. H. 8, by the power to make Lease, and devise referred to the seffor, and therefore the see is in the seffor in the mean time, so that having disposed of it, and being seffed of it, he cannot devise the Land purchased after.

It was Objected, that the Statute faith, lawfully executed in his life, but here no use was to be executed in the second Sonne untill after his death.

It was Answered, that after his death the uses were
were derived out of the seoflement, and so are as it were executed in his life.

It was holden by the Chiefe Justice, that the remainder to the second Sonne is contingent, in regard no alienation is found to be made by the Eldest, and if there had been, then it would be repugnant, that after alienation the Land should remaine to the second Sonne, and so quasicum, vis data, the remainder (as this Case is) cannot vest in him, but this point was not resolved by the Court. 2. The revocation is good, although the Indenture precedeth the seoflement, and that the uses are in contingency, and that the revocation is but in part, and the Chiefe Justice held, that the Eldest Sonne had but a terme determinable, and the second an estate saile; But in this, the Kings Bench and Common pleas differ in Opinion, and that if lands be devised to one and the Heires of his body for 500. yeares, the Executors shall have it, and not the Heire, and the devisee may alien it, for it cannot be intailed, and so in Peacocke Case, 28. Eliz. Banco Regis, was it resolved.

Doctor Leyfields Case, 8. Jacob. fol. 88. in Trespasse.

IN Trespasse for Corne taken at O. C. the Defendant pleads that Q. Eliz. granted the Rectory of O. C. to G. P. (without shewing the Letters Patents) who demised to G. P. for 8. yeares, if the said G. P. so long-live, and that he, as servant of G. P. tooke the Corne, and avers the life of C. the Plaintifftis demurrreth, because the plea amounteth to the generall issue, and it was adjudged in the K. Bench that the barre was insufficient, because the Defendant shewed not the Letters Patents, and Error was brought in the Exchequer-Chamber, because the plea amounteth to the generall issue, because the Def-
Defendant gave no colour, wherein judgement ought not to be given against the Defendant, but only to answer over.

2. Because he is not bound to shew the Letters Patents.

It was answered, that colour shall not be given, for colour shall not be given where the plea goeth to the barre of the right, for it would be in vain to give colour of right, and to barre him if he had right, as if a collateral warrant, fine, Statute be pleaded, or if he claims by a waife, otherwise where he pleads a dissent, for this doth not barre the right, but the possession; he who claims by sale in a Market overt, shall not give colour if he pleads generally, but if he pleads that I. S. was possessed, as of his owne goods, and sold them in a Market overt, or waived them, there he shall give colour, because he confesseth no interest in the Plaintiff.

2. If the Defendant claims by the Plaintiff, he shall not give colour.

3. If the plea be to the Writ, or action of the Writ, no colour shall be given.

4. Colour shall not be given in case of Tithes, for to whomsoever the Lands belong, the Tithes belong to the Parson.

1. Colour ought to be a doubt to the Laygents.

2. It must have continuance.

3. It must be such a colour that if it be effectuall, will maintaine the Action.

4. It ought to be given by the first conveyance.

2. Resolved, Lessee for yeares of Lessee for life of the K. must shew the Letters Patents, for he who is privy in estate or interest, or who justifieth in right of a Party or privy, although he claimeth but part, must shew the first deed, and the reason that deeds are shewed to the Court, is, that the Judges and Jury
Edward Seymors Case.

ry (that which respectively to them belongs) shall judge of the sufficiency thereof, therefore a deed shall not be suffered to be given in evidence, by Witnesses, or Copy, except it be burned or some such inconvenience, but a Copy of a record is good evidence: if a release be made to Tenant for life, this inureth to the reversioner, yet he cannot plead it without shewing, a Fortiori, here because the Lessee may contract with the Lessor to suffer him to have the deed to shew, but Strangers who claime not the thing granted, nor interest out of it, need not to shew the deed, otherwise if he claimes the thing granted, or interest out of it: Ergo, the second grantee of a rent charge must shew the first grant, but he who claimes as Gardian, or meerly by the Law, without privity or power of providing the deed need not to shew it: But Tenant by the courtesie must shew it, because the deed was in his power living the Wife, otherwise of Tenant by Statute, &c.

3. The not shewing of the deed is matter of substance, therefore judgement shall be given against the Plaintiff in the Writ of Error, although it was not shewed as Cause of Demurrer. And judgement was affirmed.

Nota, when a plea amounts to a generall issue, if the Plaintiff demurre specially, upon 27. Eliz. and the Defendant joyne, judgement shall be given for the Plaintiff.

Edward Seymors Case, 10. Jacobi. fol. 95.

The Lord Cheyn Tenant in tail, the remainder in tail to I. C. the reversion to the Lord C. bargained and sells, and levyes a fine to the bargainee, with warranty to him and his Heires, the bargainee infeoffeth the Lord S. who infeoffeth E. S. I. C. 

C c 3
Edward Seymors Case.

dyes, having issue T. the Lord C. dyeth without issue, Edward, Lord S. leases to the Plaintiff, the Defendant by the command of T. ejected him; and judgement was given for the Defendant, and affirmed in Error.

1. Resolved, the bargain had an estate descendible, during the life of the bargainer (whereof his Wife shall have Dowry) and also the reversion in fee expectant upon the remainder in tail.

2. The fine after bargain and sale, is no discontinuance of the remainder, for this operates upon the estate passed by bargain and sale, and corroborates that: and maketh it determinable only, upon the death of the bargainer without issue, otherwise if the fine had preceded the bargain and sale.

3. It was Objected that the feoffment of the bargain displaced the remainder, so that the warranty which descends upon him, barreth him: But resolved that the warranty doth not bind him.

1. Because it was annexed to an estate determinable by the death of Tenant in tail, without issue, and to the reversion in fee, granted by bargain and sale, and fine, and not to the remainder in tail, and the Comitee by his owne Act cannot make it to extend any further, therefore the estate tail, being determined, the warranty ceaseth.

2. A warranty barreth not an estate, which is not displaced at the time of the warranty annexed, as if the Father maketh a feoffment of Land (out of which his Sonne hath a rent) with warranty, this binds not the Sonne as to the rent.

3. The feoffment was lawfull because he had fee, therefore he cannot make discontinuance.

4. A warranty cannot enlarge an estate, the remainder in tail to I. C. was not discontinued, for the seoffor was not then seized by force of the tail.

5. A
5. A collateral warranty may be given in evidence, if it be not pleaded, for although it gives not a right, yet it barreth another's right, and the rather in an *Ejectment* firmæ, and other personal actions, because in them it cannot be pleaded by way of barre.

Note, there are some Titles to which a warranty extendeth not, as in case of Mortgage, Mortgage, consent to a Ravisher, for in these cases no Action lyeth, in which Voucher or Rebutter, can be, neither shall a dissent take away an entry.


The Sheriff upon a Fieri facias executed, did take an Obligation of the Defendant to pay the money in Court, at the return of the Writ, and this was adjudged good, notwithstanding the Statute of 23 H. 6. Before this Statute the Sheriff could not legally any person to baile which was taken. *Ad respondendum* as may appear, *Fitiz. Na. br.* 25. *a. 39*. b. and in 34 Eliz. in Debt by Dawson Sheriff of B. against Burnam upon an Obligation, the Defendant pleaded the Statutes 23 H. 6. and shewed, that one K. recovered Debt and damages against him, and pursued one Writ of Fieri facias against him, directed to the Sheriff of B, and that he made the Obligation to the Plaintiff, for the Execution, and that the Obligation was void by the Statute, whereupon the Plaintiff demurred, and it was resolved.

First that the Obligation was not within the Statute, because that the Statute extended only to such Obligations which any who is in their ward did make unto him.

Secondly, that the same Obligation was not void at the Common Law, whereupon the Plaintiff had judgment, and another judgment, 28 El. Inter Burnam.
Bemfage's Case.

By Keit, upon an Obligation, taken by the Sheriffe,
Pro solutione pecuniae debita domine regina, upon exception of the Exchequer.

Now it is laid in the later clause of the Act, that if any of the Sheriffs or other Officers or Ministers aforesaid, take any Obligation in other forme, by colour of their Offices, that it should be void, &c. There are two manner of formes, (Viz.) Forma verbalis & forma legalis, for Verbalis stands upon the Letters and Sillables of the Act, Forma legalis, is Forma essentialis, and stands upon the substance of the thing to be done, and upon the fente of the Statute, Quiam noster ramorum hujus Statutii, non in sermonum folios sed in rationes radices posita est, and according to this distinction this Branch of this Statute is to be expounded, and therefore in 37. H. 6. 1. If the Sheriffe take a single Obligation of one in his ward that was bailable, this was void, for this Obligation wants essentialis forme, prescribed by the Statute; for the condition prescribes the fault, which is part of the substance. And there Moyle said, that if the Sheriffe let one to Baile or Mainprize, that is excepted in the Statute, and not mainpernable, and take a simple Obligation, that the same is void, Quod alij Justiciariij conceiserunt, for by the exception it appeareth, that it was not the intention of the Statute, that such should be let to Baile, and therefore the Obligation is taken in another fence then the Statute intends. And it seemeth to me, that as well in the same Case of 37. H. 6. as in the principal Case of Drye and Mannonah, plow. 67. the Obligation which hath the condition to save the Sheriffe hameleffe (when the Sheriffe against the Law leteth one to Baile who is not Baileable) is against the Law, and void by the Common Law. And with this accordeth William Wifhams Case, 15. Eliz. Dyer. 324. &c; in 7, E. 4. One was in custody of the Sheriffe by
by force of a Capias; upon an Indictment of the Trespass, and the party maketh the Obligation to another, by the direction of the Sheriffe, upon this condition, as the Statute prescribes for the surety of the Sheriffe, &c. and there it is holden that the Obligation is void, because the Statute prescribes, that the Obligation shall be made to the Sheriffe, and that is part of the essentiall forme; and so, if the Sheriffe add to the condition, that he shall be keep harmless against the King, and the Plaintiff, &c. this is void, so if a Gaoler or a Sheriffe take an Obligation of the person, with condition to be true Prisoner or to pay for his meat and drinke. So if the Sheriffe add any other thing to the matter prescribed by the Statute, as to pay such a Sum of money for a Horse, &c. This condition maketh all the Obligation void, for it is, taken in another forme (touching the substance of the matter,) then is prescribed by the Statute, but in Pasthe 27. Eliz. in the Kings Bench, in an Action of Debt brought by Sir William Drury, late Sheriffe of Suffolk, upon an Obligation of 20 l. against A. B. it appeared that the Defendant was solely bound in the same, and with condition, that one Moore who the Sheriffe had arrested upon a Latitat, should appear in person, at the day contained in the Writ, the Defendant pleaded the Statute, 23 H. 6. and that the obligation was made in other forme then is mentioned in the Statute, whereupon the Plaintiff demurred in Law, and it was Objected that there were 3 variances from the Statute. (Viz.) one in the Obligation, and two in the condition. First, in the Obligation, for that there was but one surety, and the Statute prescribes reasonable surety of sufficient persons in the Plurall number, having sufficient within the said County, &c. in which case there ought to be two
two Sureties at the least, and the Plural number cannot be satisfied with the Singular number, and so contrary to the words of the Statute, And so was the Opinion of Moumegue Chiefse Justice of the common Place in the Case of Dive and Manningham.

Also, in the condition that the Prisoner should appeare in person, where the words of the Statute are, that he should appeare (generally) without these words (in person.)

2. That he should appeare at the day, &c. Ad respondendum, where these words Ad respondendum are more then the Statute prescribes, and therefore the Obligation is void, &c. but it was resolved by Sir Christopher Wray, Sir Thomas Gaudy, and all the Court, that the Obligation was not void, by the said Ad.

For to the first; The words reasonable surety of sufficient persons are added for the surety of the Sheriffe, and therefore if he will but take one surety, be it at his perill, for he shall be amerced if the Defendants appeare not; and therefore the Statute doth not make void the Obligation in this Case, for the same Branch that requires the forme, requires also that the Obligation shall be made to the Sheriffe himselfe, by the name of his Office, and that the Prisoners should appeare, in which clause no mention is made of the sureties, so as the intent of the Act was, that in so much as it was at the perill of the Sheriffe to leave to his discretion, to take one or more for his indemnity, and although the sureties have not sufficient within the same County as the Statute mentioneth, yet the Obligation is good: For these words of the Act, (as to this point) are more for counsell or direction of the Sheriffe, then for precept or constraint to him, and that for the safety of the Sheriffe, for if the Defendant cannot find two sufficient persons, having sufficient within the same County, the Sheriffe
Sheriff is not bound to let him to Baile, and this resolution agreeth with the ancient rule, *Quilibet potest renunziare iuri per se introducito*. And as concerning the second Additions to the condition of the said Obligation, more then is in the Statute.

It was resolved, that true it is there is a Verball difference of the forme prescribed by the Statute, but not in the substance and effect, for he that is to letten to Baile, ought to appeare in person, for so much is implied in the words of the Act, (shall appeare) and by the common Law, every Tenant of Defendant ought to appeare in proper person; and with this accordeth *Piz. Na. br. 25.* and he that ought to appeare, ought to appeare. *Ad respondend. G. parum different quae concordant de eis inforum legislatorum tanquam vivae rebus dicentur legem imponere.*

vide *Dier. 21. Eliz. 364.* where the condition was in the conjunctive (appeare and answer) and yet the obligation good. 27. *Eliz.* in *Davy & Herbon,* if a Gaoler or Sheriff for ease or enlargment of any Prisoner, take promise to save him harmless, that although the Statute speaketh only of Obligations with condition, yet it is an equall mischief. And Wray Chiese Justice said, that the Statute should serve for small or nothing, if the premises should not be taken to be within the Statute, and the latter clause is generall. (*Viz.*) If the Sheriff take any Obligation in the other forme, that it shall be void, and within the equity of these words, (any Obligation, an assumption is comprehended; for the ancient Verses are,

*Verba ligant bonines, taurorum cornua bones, Cornu bos capitur, voce ligatur homo.*

*Quando verba Statuti sunt specialia, ratio autem generalis.*
Alfridus Denbawds Case.

Itis, generaliter Statuum est intelligendum: It was said, that the Assumpsit did not bind the Prisoner at the common Law, because the consideration was against the Law, vide Dyer. 19. Eliz. Oneleys Case.

Alfridus Denbawds Case, 10. Jacob. fol. 102. In Error.

One Jury onely appeared at the Assizes to try an Issue in Trespaft, a Tales de circumstantibus is awarded at the Prayer of the Plaintiff; the title of which was, Nomina decem Talium, and verdict and judgement was given against the Defendant, who brings Error.

It was Objected, 1. That the judgement was erroneous, for the Title being Nomina 10. Talium, the Sheriffe cannot returne 11.

2. Because the Statute speaketh with those persons that were before impannelled, which cannot be satisfied, where one onely appeareth, as the Statute of Westm. 2. c. 11. is not satisfied with one Auditor, so of the Statute of Merton. c. 3. of Redisseisin: It was resolved, that the Tales was well awarded, for the Statute shal be taken beneficially in favour of speedy Trialls, and the title is the misprision of the Sheriffe, which shall be amended.

The time of granting the Tales is when so many of the Jurors make default, that the inquest cannot be taken; if two of the principall pannell appeare, and at the Prayer of the Plaintiff 12. de Circumstant. are returned, and then the two principalls are withdrawne, now the triall shall be all by the 12. de circumstant. but the Lord Dyer made a Quære of that, if one of the Jurors die before Verdict be given, a Tales shall be granted, he who is meerly a Defendant cannot pray a Tales untill default be made by the
the Plaintiffe, the number ought to be under the number in the principall pannell, except in anappeale, because there the Defendant may challenge peremptorily: the number shall be diminished in every new Tales, and they ought to be of the same quality with the former, as if the principall pannell were Per medietatem lingua, so shall the Tales be: Justices of Affize shall not award a Tales, de circumstantibus in an Affize for the Statute of 35. H. 8. c. 6. speakest where the Triall is Habeas corpora, distringas, or Nisi prius, for an Affize cannot be taken by Nisi prius, but must be taken in the proper Country; and after, by advice of all the Justices of the common place, and Barons of the Exchequer, the judgement was affirmed.

Humphrey Losfields Case, 10. Jacobi, fol. 106. In debt upon Bond.

D. Leased for a yeare to H. L. and if the parties shall please to renew the terme at the end of that yeare, that he shall have for three yeares, rendring 40 l. per annum, H. L. bindeth himselfe to performe Covenants, and faileth of payment of 20 l. at Christmas Quarter, D. bringeth debt: It was resolved for the Plaintiffe. It was objected against the action.

1. That the reservation was upon a contingency, if the terme shall survive.

2. Because the reservation is durante termino praedito. (Viz.) the last terme.

3. The reservation shall be taken strictly, because the words of the Lessor.

But it was resolved that the reservation extended to the first yeare, for the proper place of a reservation is after the limitation of the estate; as if a Leafe
Lease be made with diverse remainderers over, reserving Rent, this goeth to all; and although the second term be in contingency, yet the first is certain, and: Termino praebito, signifieth both the terms for it is in mens collocation, and the reservation shall be taken reasonably, according to the intent of the parties. Tenant in tail of an Acre in borough English, and of another by the Common Law, by an Ox, dyeth. Having issue two Sons, the service shall not be increased: And intereste is onely betweene very Lord, and very Tenant; for there may be an increaser, but not where there is a reservation; or if the Seigniory be by Deed, and services are reserved within time of memory, for he shall have no more then he himselfe reserved: In the Case at Barre in respect the obligation was forfeited, the Court moved the Plaintiſte to take his arreages, costs, and damages, with which he was contented, and so no judgement was given.


The King, ex certa scientia, dyc. grants fifteen Acres as concealed, which were parcel of a Manor of the profits, whereof the King was answered: Nothing passeth.

1. Rel. If the King were answered: of the old Rent of the Manor, and the Fermors, &c. suffer one to intrude in part, this is not concealed. 2. The grant is void; for qua quidem, &c. is the suggestion of the party.

2. This is a clause of restraint, and nothing passeth which is not concealed.

3. The King did not intend to diminish his Revenue,
nue, which will be if the grant be good.

4. The clause, 

que quidem hath a double conjun-

ctive, cancelata de detenta, and Land cannot be de-
tained from the King.

3. Ex mero motu, &c. aydeth it not.

4. If the Officers of the King may by matter of

Record, have notice of putting the Land in charge
in Court of Records, and doe it not, yet this is not
concealed, and if the clause quod quidem be added for
more certainty, the grant shall not be vicious by it:
if it be false, as if a Mannor be granted, quod quidem
was in the tenure of I. S, where it was not, this is
good: If one substract, or take the Kings Rents, this
is not concealed, for the King may charge him as
Daily, and the Law will make a privy: See the
Statute of 4. H. 4. cap. 4. called in the Rolle Brang-
wyn, in English, White Crown. And it was said that
Perpetuities, Monopolies, and Patents of conceale-
ment, were borne under one unfortunate constella-
tion, for as soone as they came in question, judg-
ment was ever given against them, and none ever for
them, and they have all two inepeerable qualities
(Viz.) to be troublesome and fruitless.


The Plaintiffe in trespass, counts to damages of
40 l. and at the Nisi prius, the Jury assized for
damages 49 l. and 20 s; costs, at the day in bonds,
hee releazed 9 l. parcell of the damages, and had
judgement of 40 l. and 10 l. for costs de increment;
the defendant brings error, because the damages and
costs surmount the summ in the Count; but judg-
ment was affirmed; for in reall actions before the
Statute of Gloucester, 6: E. 1. cap. 1. no damages were
recoverable, but in personall actions and mixt they
were,
were, and by that Statute a man shall have costs in all cases where he recovers damages (Viz.) before, or by the same Statute; therefore if after this damages are given where they were not at the Common Law, costs shall not be recovered, as in a Quare impedit, but if a Statute after this give double or treble damages, where damages and costs were by the common Law; there the Plaintiff shall recover the damages increased, and costs also; but in waste against tenant for life, costs shall not be recovered, for although that this Statute was at the same Parliament, yet it was an act of Creation, and therefore no costs: And true it is, that damages include costs, in a generall sense, but in the count it is taken for damages, before the action brought in a relative significaition; therefore expensae litis may be added to it; although he count not of them, as a man shall doe in real actions without counting of them, because he shall recover them pending the Writ, In entrie sur disseisin, the Plaintiff shall recover damages from the disseisin to the Writ of Inquiry, &c. and if the issue be tryable by verdict, &c. to the verdict, but in a Pracipe of Rent of his owne possesion hee shall recover all arreares to the judgement: Judgement affirmed by all.

Cheyneyes Case, 10. Jacobi, fol. 118.

In a Valore maritagit, issue is joyned upon the tenure, and found for the Plaintiff, but the Jury did not inquire of the value: Adjudged the verdict is insufficient, and shall not be supplyed by a Writ of Inquiry.

1. In this Writ three things are to be recovered, the value, damages, and costs, and although the issue be joyned upon the tenure; yet as a consequent upon
The Case of the Maior of Lynn.

upon the one, and their charge they ought to inquire of the value, if they finde for the Plaintiffe, as in an Assize, if issue be joyned upon a release, and found for the Plaintiffe, yet the recognitores must inquire of the feisin and disseisin, and this defect shall not be supplyed with a Writ of inquiry, because then the Defendant would be prevented of his Writ of attain: But if the Court ought to inquire of things whereof no attain lyeth, this being but of Office, it may be supplyed by a Writ of inquiry, as the four points in a Quare impedit (Viz. De plenitudine, ex cujus presentatione, si tempus semestre transferri, and the value of the Church per annum: and in the case at Barr by the rule of the Court, a new Venire facias was awarded.


H. 8. in the 29. yeare of his Reigne, did incorporate that Towne by the name of Majoris & Burgessium burgi domini Regis de Lynn Regis, and one made an Obligation to them by the name of Maior and Burgesses of Lynn Regis, omitting these words, Burgi Regis; this is good, because it is the same name in substance, and doth not vary in materiall words, and though it be not Idem nomen nullius, yet it is Re & senfu; for Burgesses that implies it is a Burrough, for Burroughs and Burgesses are conjugata, and by Lynn Regis, it appears that it is Burgus suis (i.e.) Regis, a fortiori, because there is no other Corporation of the same name. Apices juris, non sunt jura; there may be a difference betweene ancient Corporations, and new; for ancient Corporations may by usage have severall names; and the Maior and Burgesses (notwithstanding...
Lease for yeares, if the Lesfor should so long live, rendring Rent at the foure Feasts, or within thirteen weeks after, after one of the Feasts the Lesfor dyeth, and before the thirteenth weekes be past, the Executor brings debt against the Lefsee, and the Defendant demurreth upon the Count, and it was adjudged a good demurrer, and that the action did not lye.

1. Because the disjunctive is added for the benefit of the Lefsee; and the first day was but for voluntary payment, but the legall time of payment was the end of the thirteene weeks, before which when the Lesfor dyeth, the Lefsee is discharged by act of God for that Quarter; if Lefsee before the day, pay the Rent, this is voluntary and not satisfactory, but it is good to give seizin; if payment be in the morning, and the Lesfor dyeth at noon, this is voluntary and satisfactory against the heire, but not against the King: Payment the last instant of the day is satisfactory, and after the day it is coercive and satisfactory.

2. When the first day is past, it is as if the Rent had been onely reserved the second day, for the election is good.

3. The rent is to be payd out of the profits of the Land; Ergo, in regard of time it shall not be apportioned; and if the Lesfor dye betwixt the first day and the last day, his heire, and not the Executor shall have the rent, because it was not then due; if a man lease for yeares, rendring Rent at M. or within a moneth after, with a condition of re-entry, and
and the Lessee renders it at the last instant of M. the
Leisor shall not re-enter upon demand the last day
of the month, because the Lessee had liberty to
pay it then; and the difference was taken between
the said disjunctive Reservation, and when the re-
servation is at a certaine Feast, and a condition is
added, that if it be arrere by the space of a month
after the Feast, that then the Lesior, &c. there, the
Lessee for salvation of his Lease, cannot render it at
the last instant of the Feast, because he had no such
liberty as in the other Case: A Lease for yeeres rend-
ring Rent at M. or within twelve dayes after, upon
condition to re-enter if it be arrere by the space of
twelve dayes after any of the said Feasts, or dayes,
the Lessee shall have twenty four dayes in safeguard
of his Lease after the Feast of M. and in the Case
at Barr judgement given, Quod querens nil captat per
billam.

Regis.

In an action upon the Case, for that the Plaintiffe
had bought of the Defendant diverse goods, which
he refused to deliver, whereof one was *unum fulcrum
leffii, Anglice, a Field Bedstead with a Teterne; and
Curtaines of Saye, the Plaintiffe recovers, and da-
mages assed on inteirely, where none ought to be given
for the Teterne, &c. for *Fulcrum signifieth a Bed-
stead onely; upon errour brought therefore, judg-
ment was affiirm'd, for one thing onely is here put in
issue, for the other things are not alledged Positivae,
*sed expositivae, and are nugation, but when two things
are put in issue, or Oblique, inquired of by the Jury,
there it is not good; and it shall not be intended
that damages were given for that onely for which the
action
Read and Redmans Case.

Action was brought, but in an action upon the Case for words spoken at one time, whereof some are actionable, and some not, there damages may be assessed entirely, and shall be intended to be given for the words actionable only.

1. Because the Plaintiff must declare as the words were.

2. Because the words not actionable aggravate the damages; otherwise if spoken at several times; but here damages shall be intended to be for that which is actionable only, and the rest, as if never alledged: and in Writs or Pleas English words are not admitted by 36. E. 3. c. 15. except they be parcel of a name, as fo. in the Hall. 2. words which passe under the name of Latine, are,

1. Good Grammaticall Latine.

2. Words significant in Law, and not in Grammar.

3. Incongruous Latine, which doth not vitiate a Plea, or Grant, nor judiciall Writ.

4. Words insensible having no countenance of Latine, and are rejected; but fain'd words as Velamentum, Stapedia, &c. are good.

Read, and Redmans Case, 10. Jacobi, fol. 134.

The Defendant in debt brought by two Executors, pleads the death of him who was summoned and severed.

Resolved, The Writ shall not abate; if two purchase an original real action, and one dyeth pending the Writ, this shall abate in all, as in case of joynntenants, or parcersers, where one dyeth having issue, or no issue, because that shee may have a Writ for the whole, and shall not recover a moity, and one shall not recover upon a false real writ, or unapt for Case, in respect shee may have an apt Writ, although
though it happen after by act of God; but if two purchase a judicial Writ, and one issummoned, and severed, and dyes without issue, the Writ shall not abate; the same law where jointenants, but if the Coparcener had issue, then it shall abate. If one of the Plaintiffs after summons and severance marryeth, this shall not abate the Writ. In personal and mixt actions, although an intire Chattell be demanded, the death of one after summons and severance doth not abate the Writ; as in a Writ of ward of the body: In a Quare impedit without severance, &c. If one dye the Writ shall not abate, because thereby the other should be dis-inherited, as upon plenarty and sise moneths passed; but without question, if one of the Plaintiffs in a quare impedit be severed and dye, the Writ shall not abate; where the Plaintiffs are one-ly to discharge themselves, the Writ shall not abate by the death of one of the Plaintiffs or Defendants, and therefore there the Non-suite of one, is not the Non-suite of the other; but otherwise it is in a Writ of Error: Note, summons and severance is before apparence, and Non-suite after apparence, where the severance is without Proces.


R. S. brings a Quare impedit præsentare ad medietatem Ecclesiam, and adjudged the Writ was good. 1. None shall have such a Quare impedit, but when there are two severall Patrons: And 2. Incumbents of the Church; therefore if two present by turne the Quare impedit must be præsentare ad Ecclesiam: when the Register giveth a Writ for the whole, this is a good warrant to bring it of any part, if the case will warrant it; but it seemed to the Chiefe Justice that in the Case at Barre, the Writ might have been good.
The Case of Chester Mill.

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Cases upon the Commissions of Sewers,

7. Jacobi.

The Case of Chester Mill upon the River of Dee, fol. 137.

A Djudged that the Statute of Magna Charta omnes Kidelli deponantur, extends only to open Weares for taking of Fish; and that Commissioners of Sewers cannot subvert a Causey, &c. erected before the time of E. 1., but by the Statutes of 25. E. 3. cap. 4. and 1. H. 4. cap. 12. if they be inhaunced, they ought to be amended by abatement of the inhauncement; and the Causey in question was erected before the time of E. 1. and never since inhaunced, and therefore out of all the sayd Statutes.

Keighleys Case, 7. Jacobi, Communi Banco, fol. 139.

I T was Resolved, that if one be bound by prescription to keep a Wall contra fluxum maris, and the wall is subverted by a suddaine inundation of waters, salt or sweet, by the Statute of 23. H. 8. cap. 5. the Commissioners have power to taxe all equally who have damage by such surrouding, for no default was in the party; so if the wall be in inevitable danger, but if it be through his neglect, each one may have his action upon the Case against him, and if the danger be not inevitable, hee onely shall be charged.

2. Resol. By the sayd Statute, the Commissioners are not bound to observe the customes of Romney Marsh.
The Case of the Isle of Elie.

Marsh, but where such customes are in any places within their Commission.

3. According to your wisedomes and discretions in the sayd Act are to be interpreted according to Law and Justice, for every Judge or Commissioner ought to have duas saes, salem sapientiae sit insipidus, et salem conscientiae sit diabolus: and discretion is scire per legem quid sit iustum: and every of their Ordinances ought to consist upon foure causes.

1. The materiall cause, and that is the substance.
2. The formal cause, and that is the manner.
3. The efficient cause, that is their authority.
4. The final cause, and that is for the publique good.

The Case of the Isle of Elie, 7. Jacobi. fol. 141.

The Commissioners of Sewers decreed that a new River shall be cut out of Owle, seven miles within the maine soyle of the Isle, and for the doing thereof, and for the effecting thereof, taxed divers Townes in the County of C. out of the Isle generally; that is, so much upon every Towne. 2. questions.

1. If the Commissioners have power to make such a new River?

2. If such a generall taxe be lawfull?

By the Common Law the King ought to defend the Realme, as well against the Sea, as Enemies, and to provide that the Subjects may have safe passage over Bridges, and high wayes, and therefore if the Walls of the Sea, or Gutters be not scoured, he ought to award a Commission, to inquire of such defaults as by the Register amongst the Commissions of Oyer and Terminer. See there a president, 44. E. 3. for reparation of ancient Sewers, &c. or making them new, but the Statute of 6. H. 6. cap. 5. and divers others,
for making new Walls, &c. were onely temporary, and that power is omitted in the Act of 23. H. 8. c. 5. which is made perpetual by 3. E. 6. cap. 8. and so the Commission in this point influence the Commission which was at the Common Law: Therefore it was resolved, that the Commissioners in this Case could not make the sayd new River, because their Commission extends onely to the reparation and new making of ancient Walls, Gutters, &c. And it would be hard to give power to Commissioners to try new inventions to charge the Countrey, which may never take effect: And it appeareth by the Register, 252. that a new River ought not to be made, and the old stopped, without an _Ad quod damnum_, and the Kings license; yet when a new Sewer is to be made, any small alteration for the publique good of such a place may be made; so of an ancient Wall against the rage of the water, in case of inevitable necessity; but if by timely reparation that peril may be avoided, no other ought to be made: _Si aestas in mederi posse nova non sunt tentanda_: but if new inventions appear profitable, contribution must be voluntary, and not by compulsion; and in 3. _Jocobi Popham. Ch._ Justice preferred a Bill in Parliament to make a new River in that Isle, but it was rejected.

2. Resolved: None ought to be taxed, but he who may have damage by the default, or profit by the reformation; also the assessment must be according to the quantity of their Lands, and number of Acres, and according to the rate of every mans profit and portion, and the taxation in general was not warranted, but it ought to have been in particular upon every owner or possessor; observing the sayd qualities. Some Statutes of Sewers are in _defendendo & reparando Wallias, &c._ Some in _desruendo & amovendo monumenta_, and some touching both.
In the Court of Wards.

Scroops Case, 10. Jacobi, fol. 143.

N. S. made a Feoffment to diverse uses, with power of revocation by Indenture, and after by another Indenture (observing all incident circumstances prescribed) the Feoffor covenanteth to stand seized to severall other uses.

1. Resol. This inureth to a revocation.

2. To raise new uses: And so it was resolved in the Kings Bench, betweene Frampton and Frampton, Tr 2. Jacobi. Quia non referat an quis intentionem suam declarat verbis, an rebus ipsius vel falsis, and when he limits new uses, he signifieth his purpose to determine the uses before.

The End of the Tenth Booke.
The Eleventh Book.


Thomas la Warre, great Grandfather of the now Lord in 3. H. 8. was summoned to the Parliament by Writ, and by 3. E. 6. it was enacted, that William the Father of the now Lord Thomas, shall be disabled to claim any dignity, during his life, notwithstanding W. was called to Parliament by Q. Elizabeth, and sat as Puisne Lord, and dyed, and Thomas now Lord, sied in Parliament to the Q. to be restored to the place of his Great-Grandfather, that is, betwixt the Lord Barkly, and the Lord Willoughby of Eresby; and resolved, that he should be restored, for his Father's disability was not absolute but attainder, but only temporary and personall, during his life, and the acceptance of the new Dignity shall not hurt the Petitioner, the Father being then disabled, and an Esquire onely, so that when the old and new Dignity descend together, the old shall be preferred, which resolutions by the Judges, was well approved of by the Lords Committees, and after confirmed by the Queene.
Queen Elizabeth grants Officium unius Auditorum Curiae Wardorum, to W. T. and W. C. for life; & eorum dinius viventi, the K. grants it in reversion to I. C. & I. T. I. C. dyeth, the K. grants it in reversion to R. P. W. T. dyeth.

1. Resolved, the grant of the Office Unius auditorum, &c. is good to two, and the survivor of them, for, 32. H. 8. c. 46. maketh the two Auditors one Officer, and the word Unius is not numerative, but denoteth the unity of the Office.

2. In such a grant the words & eorum dinius viventi, are not void, for otherwise by the death of one of them, the interest of both would be ended; but now the survivor remains auditor, and another shall be added to him, and till another is added to him, his voice in Court is suspended, because by the Statute there must be two, so if the K. grant by a Patent to one, and by another to another, this is good, and until the second is added the first hath no voice in Court.

3. The Nomination of Auditors ought to be under the Great Seal.

4. This Office cannot be granted in reversion.

1. Because it is judiciall, and one cannot be Judge in futuro, and perhaps he was sufficient at the time of the grant, but not when it takes effect.

2. Although it be in part judiciall, and in part ministeriall, yet it is intire, and although ministeriall Offices may be granted in futuro, yet this cannot, because it is inseparably judiciall also, for the K. cannot grant the judiciall part to one or two, and the ministeriall to others.

3. If the grant be good, as to the ministeriall part, yet,
yet it shall not take effect now, because one of the ancient Officers is living, and if he should exercise the ministerial part, with the survivor, there would be three Offices.

5. He who surviveth remains Auditor, yet had no voice in Court, until the King add another to him.

6. The grant to P. is void.

1. Because in reversions,  
2. Because it reciteth a void grant to I. C. and I. T. as good, and so to the K. is deceived in his grant.


Sir J. H. brings trespass against F. C., T. C. & I. C.  
F. C. appeareth, against whom the Plaintiff declareth, with Simul cum dy. who pleads Non est.  
so doth T. C. which issues were tried severally, and the issue between the Plaintiff and F. C. was first tried, and damages assessed to 200 l. and the other against T. C. 50 l. I. C. appeareth, and confesseth the Action, a Writ of inquiry of damages is awarded, but none issued, judgment for the Plaintiff, and affirmed in Error.

1. Resolved, in trespass against diverse who plead Non est. or several Pleas which are found in all for the Plaintiff, damages shall not be assessed severally, although one did more wrong than another, because the trespass is intire, and the Act of one, is the Act of all, but if they be found guilty at several times, they may, and if the Plaintiff confess the trespass to be at several times, the Writ shall abide.

2. If two trespassors pleade severally, both shall be bound with the damages taxed by the first Jury, and the other shall have an attainde although he be a Stranger to the issue, because he is privy to the charge.
Priddle and Nappers Case.

If one of them, after appearance make default, a Writ of inquiry shall be awarded to save a discontinuance, but none shall issue; because he shall be contributory to the damages taxed by the Jury, who tried the other issue, and the other shall not be charged in damages assessed, upon a Writ whereupon he can have no attaint, but if the other issue be found against the Plaintiff, then it shall issue.

3. Although there was a discontinuance against I. G. because in the common place, where the Action was brought, there is no continuance after a Writ of inquiry, (otherwise it is in the King's Bench) yet it is aided by the Statute of 32. H. 8. c. 30.

4. If two Juries give a Verdict at one time the Plaintiff shall have judgment. De melioribus damnis, if he will; but si nifi unica execution, in trespass against diverse who plead several pleas triable by the same Jury, if the Jury sever the damages, all is vicious.

Priddle and Nappers Case, to. Jacobi. fol. 8.

The Plaintiff in a prohibition declareth, that the Prior of M. was seised of 22. acres, and of a rectory time out of mind, &c. until the dissolution, &c. and so, for all that time held them discharged of Tithes, and conveys the said 22. acres from the King, to himselfe, and that the Defendant Proprietarius rectoria prae dict. seised the Plaintiff for Tithes, the Defendant traverseth the prescription of discharge; the Jury found that the Prior, time out of, &c. was seised of the said 22. acres, and of the advowson of the Rectory, and did appropriate it by License, 20. H. 8. the Incumbent then being living, who dyeth, and that the Prior held it united to the dissolution: judgement for the Plaintiff.
Priddle and Napier Case.

1. Resolved, although that every Church parochiall is supposed to be presentative, yet the PlaintifFFE may plead, that the Prior, &c. time out of, &c. were Rectors of it, for this amounts to so much, that it was improperly, but he needs not shew how, because before time of memory, but the conclusion of the prescription of unity. *Viz.* Ratius cujus, he was discharged of tithes, was not good, for Land is not discharged of Tithes by unity, but of payment of them, notwithstanding the mistaking of the conclusion doth not vitiate the Count when the cause to have a prohibition, is good.

2. The plea of the Defendant to have a prohibition, is not good, because he traverseth the conclusion, *Viz.* The prescription of discharge, where he ought to traverse the prescription of unity, for the conclusion is not traversable, and because it is matter in Law.

3. The issue is not well joyned.

1. The matter of discharge, is by reason of discharge by the Statute, and the issue is by discharge at the common Law.

2. In every issue there must be an affirmative and a negative, but here is no affirmative, for the conclusion is no affirmative, but an inference.

4. The improperation is sufficient, although the License were general, and the incumbent living, for it shall be construed in such a speciall fence, that it may take effect, and the License is alwayes general, for the incumbent may dye or resigne, before the improperation.

5. Admitting the improperation void it had not beene made good by 35. Eliz. c. 3. for this settles in the K. all possesions of Abbeys with qualification, notwithstanding any defect in any surrender, &c. which intitleth the K. and this defect is not within the
Doctor Grants Case.

6. If the Jury found the matter to bare the Plain-tiff, this is not to be regarded; because an act of aeternal law not, nor the Witnesses, punished for perjury, that matter not being material to the issue.

7. Resolved, that perpetuall unity untill the dissolution is by the Seate of the Prime farte, a discharge of payment of Tithes, except that the Fermor have paid them, and such an unity ought to be just, equal; that is, see in one, and other, Perpetua libera, but if the Abbey were founded within time of memory, he cannot at all, and here it appeareth that the appropriation was made in 20. H. 8. so that it appeareth to the Court, that before that the 20. acres were charged with Tythes, for of common right all Lands ought to pay Tithes; therefore the Chiefe Justice concluded, that the said 20. acres (as this Case is.) were chargeable with Tythes, but in regard the information is good, and the plea Pro consultatione habenda, altogether insufficient, and the verdict is pertinent to the issue, they would not grant a consultation.

Doctor Grants Case; ii. Jacobi. Communi Banco.

fol. 15. In a prohibition.

1. Resolved, it is a good prescription that every Inhabitant in a Parish, have paid 2.s. in the pound, of the value of their houses, per annum, in Lieu of Tithes, because it may have a lawfull commenceement, for it may be, that this was so time out of mind for the Lands, whereupon the Houses were built, as a Modus decimandi.

2. That

IT was resolved, that a customary Manor may be holden of another Manor, and there may be Lord, Mesne, and Tenant of it, and such a customary Lord may hold Courts, and grant Coppies, and such a Manor shall passe by surrender and admittance, and fines shall be paid upon alienation or descent, and if it be forfeited, the Lord shall have the services as annexed to the Manor, so if Tenant at will, &c. admit Copy-holders reserving rent, this shall goe with the Manor, after the will determined, and so note, a difference between reservations at the common Law, and by the custom of the Manor. And it was said, that the Manor of Aylesham in Norfolk, is holden by Copy, and others in diverse other places: And judgement was affirmed in Error.


14. E 3. the R. Lycensed R. de E. to Found in Oxford a Hall, sub nomine auta Scholarium Regine de Oxoni, in the exemplification 8. Jac. it was, Sub nomine auta Reginae de Oxonio, they present to the Church by the name of preposit. Coll. Regina in Universitar, Oxonio de societ Schollar. ejusdem, the incumbent devileth the Rectory, and they by the name of preposit.
Henry Harpurs Case.

posit. Socior &by Scholar Aula vel Collegij regine in Universitate Oxonii, confirme the demise; and notwithstanding these variances it was adjudged, that as well the confirmation as the presentment was good; and the sole doubtfull variance is, that it was Aula Regine, where it ought to be Aula Scholarum Regine, but good, for the true name of the Colledge is so, for the word Scholarum is not necessary, but once, and if it be taken in construction to come after Aula, the provost will be the sole Corporation, by the name of praeftr. Aula Scholar. regina, Ergo, it doth precede in good construction. Alfo, the Founder named it so, and so it hath beene always taken, and if there be a small variance, this is not to the purpose, if it be so described that another cannot be meant, as a gift Omnibus filiis I.S.or filia I.S. when there is but one, or if Richerus Abbot of W.grant by the name of Richardus; Nil facit error nominis cum de corpore constat, and this was the ancient and constant Opinion in Case of Corporations. See the Case of the Major and Burgesses of Lin, in the tenth Booke.

Henry Harpurs Case, 12. Jacobi, fol. 23.

IN ejectione firme upon a Lease to J. W. in unam capellam, and Land in W. in the Parish of B. and Tithes, without shewing the certainty of them, the Visne was from B. the Case was. Sir H. B. seized of G. of the value of 30 l. per annum, and of N. of the annuall value of 18 l. in capite, covenanted to stand seized to the use of him and his Wife in taile, with remainders in taile, the reversion to himselfe, and after purchaseth Lands in Socage, and deviseth them to be sould by his Executors, the matter in Law resolved, but no judgement given, because diverse exceptions taken, &c.

1. Refol. That if tenant of the King in capite conveys
veys his Land to one of the uses, &c. and after pur-
chase Socage, he may devise all the Socage.

2. A seck reversion upon an estate taile shall hin-
der the devise of Socage Land for a third part.

3. Although the reversion in fee continue in him,
yet he may devise two parts of the Socage, and all
if he had granted the reversion over.

4. Although he had exercised his power in ma-
kina Joynure of more then two parts, yet if the
reversion in fee had not hindred, he might have de-
vised all the Socage purchased after, howsoever the
devise is good for two parts; for the reasons repor-
ted in Loveyes Case.

5. Although the consideration of advancing his
Wife and their issues, extends not to the Brothers,
yet the use is well raised to them, because the Law
implyeth a consideration, and it is not to the pur-
pole that they are found Brothers, because it appear-
esth in the Deed.

6. For the Manna of G, the estate payable vanish-
eth by the death of Sir H. without issue male, and
therefore that estate is no cause to restraine the de-
vise for any part, but the reversion in fee is for a
third part: So resolved that the Plaintiff shall have
judgement for two parts. Exceptions to the count
and Vine.

1. The Ejection firm a is of Tithes, without shew-
ing the kinds of them; Ergo, not good, for a cer-
taine judgement and execution cannot be made. 2. It
may be it is in a modus decimandi, for which an Eje-
thone firme lyeth not.

2. Capella is demanded, which ought to be deman-
ded by the name of a house.

3. The Venire facias is not well awarded, for it
appeares that there are two B, one a Ville, the other
a Parish, and W. a Ville in the Parish of B. and the
Tithes
Tithes are allowed to be in W. in parochia de B. so the Vicine must be out of B. and W. because there is the most certainty; so that by reason of these exceptions, no judgement was entered, but it was said that the Court of Wards, where a Bill depends for this matter, will take order for the possession accordingly.


1. When a Deed is rasied, the Obligor may plead Non est factum.

2. If a Deed be rasied by the Obligee himselfe in a place not materiall, it is void, but not if done by a stranger except in a place materiall, and here it was in a place not materiall, because it appeareth not to the Court that he was Sheriffe. If a Deed consist of diverse parts, whereof one doth not depend upon the other, and some of them are against Law, the Deed is good in part, but if any of them be rasied it is void in all, so if the Seale of one be debraied, all is void: See Matthewsons Case in the Fifth Booke.


A. P. selleo animo, burnd a House in New-market whereby the greatest part of that Towne was burnd.

Resol. He shall not have his Clergy, for this was felony
felony by the Common Law, and so baynoys, that
he was not replevishable, no more then for Treason,
as appeares by Westminyin, cap. 15. but he shall have
his Clergy at the Common Law: for impediments
to have Clergy, were first disability to be a member
of holy Church, as a blind man, or woman.

2. Heresie.

3. Infidelltie, as a Saracen or Jew, but a man ex
communicated, or outlawed, shall have it.

5. Confession before the Statute of Articuli Cleris,
cap. 15. because he cannot make his purgation.

6. High Treason, or petty Treason before 25. E.
3. cap. 4. So of Sacriledge, and of infidelliores viarum
by depopulares agrorum: See the Statute of 4. H. 4:
cap. 2. but the Statute of 23. H. 8. cap. 1. taketh
away Clergy where one is found guilty of burning of
Houses, but that is to be intended by verdict or con-
feccion; for if hee stand maste, or challenge more
then he ought, or be outlawed, these are out of the
Statute, or if he comitt Burglary, and not Robbery,
he shall have his Clergy; by 25. H. 8. cap. 3; hee
who is found guilty of any of the sayd offences shall
loose his Clergy; and if he stand maste, or challenge
above his number, but that extends to the prin-
cipall onely in case of indiciement, and not to the ac-
cessor before the fact, nor to appeals or approve-
ments, nor to outlary; but these two Statutes were
taken away by 1. E. 6. cap. 12. but 25. H. 8. was

Obj. That the sayd Statute was not revived in all,
but as to stealing of Goods in one County, and fly-
ing into another, for so is the stifte of the Act.

2. If it be revived, this takes not away Clergy,
where one is found guilty by Verdict; but the Sta-
tute of 23. H. 8. which is not revived. But it was
Revived that the entire Act is revived.

E 3
Alexander Poulter's Case.

1. Although the Statute of 5. E. 6. reciteth these offences solely, and reviveth the Act as to Clergy, touching such offences, that shall be intended such in malefactors; so Westminster, 2. cap. 5. is expounded touching Infants' having advowsons, whether they be in ward or not; and the title is not to the purpose, for many Statutes are of greater extent than the title, as 127. H. 8. of uses concerning Joynitures; yet the preamble is of transferring uses into possession, also otherwise these words and every clause, &c. shall be surplusage, if it extend not to all the Act, for there is but one clause in it which concerneth the offences in 5. & 6. E. 6. also it is that every Article concerning Clergy as to such offences shall be reviewed, and there is but one which concerneth these offences; and many times penall Statutes are taken by Equity, as 8. H. 6. cap. 12. ordaineth that the imbezelling, or withdrawing a Record, whereby a Judgement may be reversed, shall be Felony, and by Equity, making of a bad Judgement good, is Felony; so 25. E. 3. for killing of a Master, extends to the Mistris.

2. 25. H. 8. takes away Clergy, where one is found guilty by verdict; because it takes away if he stand mute, or challenge, &c. in like manner as if he were guilty after the Laws of the Land, which are affirmative words: And 4. & 5. Phil. & Mary, cap. 4. takes away Clergy from the accessory before, which they would not have done if they had not thought that it was taken away from the principal by the other Act. By 18. Eliz. cap. 7. Clergy is taken away in case of Burglary, where hee is found guilty by verdict, confession, or Outlary; but if he be indicted at the Common Law, and stand mute, or challenge over, &c. he shall have it, and not if hee be indicted by 23. H. 8. or 5. E. 6. of Burglary, and
Metcalf's Case.

put them who were in the House in feare with Robbery, or upon 1. E. 6. without Robbery: 4. & 5. Phil. & Mary, takes away Clergy where one is accessory before to a Robbery in a dwelling House; Ergo, before that such an accessory shall have it: Breaking of a House in the night without Robbery, is no Burglarie, and if he doth robb he shall have his Clergy, if none were put in feare, or that any of the Family (and not a Stranger) be not in another part of the House; but this was before 39. Eliz. cap. 15. whereby clergy is taken away without putting any feare, if he rob any man of above the value of five shillings.

Accessory before in robbing a House in the day is ousted of Clergy by 4. & 5. Phil. & Mary. Accessory in robbing a Booth in the night or day, or out House upon 39. Eliz. shall have his Clergy: No, Although a Statute takes away Clergy from the principal, yet the accessory before or after, shall have it; and where by statute for any offence a man is ousted of his Clergy, the indictment must containe the offence, with the circumstances in the Statute: Dyer, 99. and 183. And A. P. was ordered to be hanged in Chaine, &c.


Judgement is given against M. Quod computet & ideo in misericordia quia prius non computavit; and before finall Judgement, Error is brought.

1. Resol. It lyeth not: 1. Because the Writ of Error faith, Si judicium inde redditum sit, which shall be intended of the principall Judgement, as the Feast of S. M. shall be intended the principall Feast, and the Feme shall be received upon default of her Bar.
Metcalf's Case.

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ron after judgement of admeasurement before the principall judgement.

2. It shall be intended an intire judgement, therefore in an action against two, if one plead to the issue, and the other confesseth, and judgement given against him, he shall not have error before the Plea determined against the other, for otherwise there would be a failure of right: for the Kings Bench cannot proceed upon the Record, nor the Common place, because it is removed.

3. The first judgement is not ad graue damnum, for by that he lootheth nothing, but judgement of the arrearages and damages is the end of the original.

4. This is not properly a Judgement, but an Award of the Court, as ouster of ayde, in partitione facienda, an awarde quod partitionio fiat, &c. which are but interlocutery, and not definitive.

5. They have day by the Roll untill the last judgment; but if a Felon dye after the exigent awarded, and before attainer, a Writ of Error lyeth for necessity, for otherwise his goods are forfeited by awarding of the exigent without remedy; if diverse are tued by severall Pracipes, and Judgement given against one, he shall have error before judgement given against the other, and if error be in the original, the tenor onely shall be certified, for otherwise the Court cannot procee against the others.

2. It was Resolved, That the Record is not removed, because untill finall Judgement be given, the Chiefe Justice of the Common place hath no authority to send it, and they may proceed, notwithstanding the Roll be marked Muttir.

Richard
Twelve chief pledges, according to the custom of the Manor, to present at the Leets, that every one of themselves ought to pay for themselves 10s. pro certo leta, the Stewart imposes a Fine of 6l. upon them, the Lord disreineth for the Fine, and certainty of Leet, one of the pledges brings Replevin, and judgment was given for the Plaintiff.

1. Resol. The Fine is not well asseised, for it ought to be severall, and not jointly as it is, because the offence is severall, and although that the offence be jointly, yet the Fine shall be severall as in-differences and trespass; but for the uncertainty of the persons and infiniteness of the number many may be fined together, as a Towne for the escape of a Felon; and the reasonableness and excessiveness of the Fine shall be determined by the Judges: Excessus in re qualibet jure reprobatur communis, as excessive distress, excessive ayde, and excessive amentment, are against the Common Law.

2. If the Fine be imposed erroneously, it may be avoyd by Plea, for he had no other remedy.

3. The Lord cannot distress, pro certo Leita, without prescription, because it is against common right; but he may for a Fine or amercement; but for an amercement in a Court Baron the Lord must prescribe; a Fine because it is assised by the Court, needs not to be assered, but an amercement must be assered by the Countrey.

4. Admitting that he may distress, pro certo Leita, he shall have a returne, although hee had not cause to distress, for the Fine, for where one brings an Action for two things, and it will not lie for one of them,
Richard Lifords Case.

them, it shall abate only for that if he cannot have a better action for it, but if he may it shall abate for the whole; as in a Formedon of Land, and of an advowson, the Writ shall stand for the Land; so if a man avow for diverse Rents arrear, and it appeareth that parcell is not yet due, yet the avowry is good for the residue; but if a man bring a Writ of Entry in nature of an Affize of two Acres, where it appeareth that for one Acre he ought to have a Writ of Entry in the per, there all shall abate, for this extends not to the action, but to the Writ only.

Richard Lifords Case, 12. Jacobi, fol. 46.

IN trespass the Defendant pleads that J. L. was seized in fee, and demised to T. S. and M. P. excepting Trees above twenty one yeares growth) if not decayed for their lives, and covenanted to stand seized de tenementis predictis cum pertinentiis superius dimissis, to the use of R. L. in raile, &c. and the Defendant as Servant to the sayd R. L. entered and sold Trees; and Judgement was given against the Plaintiff.

1. Resol. That the Trees notwithstanding the exception, remaine parcell of the inheritance, and are not Chattels, but shall descend to the Heire, for the Law doth not favour severance of the Trees from the Land, therefore if one bargaine and fell Land, upon which there are Trees, they shall not passe without inrolement.

2. If there had not been such an exception, the generall interest of them is in the Lesfor; and the Lessee had but a particular interest in them, and the Lesfor may sell them without license of the Lessee, to take effect after the Lease determined, and tithes shall not be payd for them because they are parcell of
of the inheritance: 2. By the exception of them, the soil is not excepted, but only so much as sustains the tree, and if he by licence of the lessee root them up, the lessee shall have the soil, but by exception of Wood, the Land itself is excepted; if an Acre, or an advowson be severed from the Manor by exception upon a Lease for life, it shall not be parcel of the Manor againe; otherwise of trees for they were not severed in fact, because they grow out of the Land.

3. A thing in possession cannot be parcel of a reversion upon an estate for life, but Trees, which grow out of the Land, and Fish or Deer in the Land may, and shall passe with it.

4. In this Case by grant of the reversion generally, or of the Tenements the Trees passe, for the inheritance of all the Land passeth, and thereby the Trees annexed to it; the disseisee by his entry shall have the Corne upon the ground, as well as the Grass; by relation of continuance of possession, but this relation is not of effect to have a trespass against any, but the first disseisor; for in fictione juris semper aequitas existit, and the emblements shall be recovered in damages.

5. In the Case at Barr by exception of the Trees power is referred to the lessor, or his servants, to enter and show the Trees to the Vendee: Cuiusque aliquis quid concedit, concedere videtur et id, etc.

6. The plea in Barr is insufficient, for he showeth that there was another joynentant for life not named in the Writ, and demands Judgement if action which is an unapt conclusion.

2. The Plea is double, one to the Writ, another to the Action.

3. He pleads the entry of the lessees for life, which is surplusage.

4. He
428 The Case of the Taylors of Ipswich.

4. Hee averreth not that the Trees which were fold were not Dortards which are excluded out of the exception, but that they, de jure pertinebant to R. L; which is not formall: but upon all the matter there appeared sufficient cause to give Judgement against the Plaintiff, and therefore by the rule of the Court, Quaerens nil capiat per billam.

The Case of the Taylors of Claushe, &c. of Ipswich, 13. Jacobi, fol. 53.

The Taylors of I. make an Ordinance that none shall exercise the Trade in I. if he have not been an Apprentice for seven yeares, and if hee doe not appeare before them to be approved, upon forfeiture of five Marks, and for breach of it, bring debt; the Defendant pleads that he was retaine by A. P. to be a domestick Servant, and that he made Garments by his command.

1. Resol. At the Common Law none may be prohibited to exercise any Trade, although he hath never been an Apprentice, and be ignorant; but if he misdoe any thing, an action of the Case lyeth.

2. This Ordinance for so much as is not prohibited by the Statute of 5. Eliz. is against Law, for after seven yeares Apprentiship he may exercise his Trade without allowance of any.

3. The Statute of 5. Eliz. doth not prohibite the private exercise of any Trade in a Family, therefore this is out of the said Ordinance.

4. The Statute of 19. H. 7. cap. 7. doth not corroborate any Ordinance against Law, if it be allowed, but the allowance dischargeth the penalty of 40 l. for putting in use anyordinances which are against the Prerogative of the King, or the common profit of the people; and Judgement was given, Quod querentes nil caperent per billam.
Edward Savell's Case.

An Ejection from ye chest of a Close, but it must be of a certain number of Acres, and the nature of them must be shewed. A Writ shall not abate for want of order. Viri of a House before Land, &c. and judgment was stayed.

Bentham's Case, 12. Jacobis fol. 136, with ye

If damages or costs are omitted, or not well assested by the Jury, if the Plaintifie release them, he may have his judgment, and it shall not for that be reversed. Insufficients assestement of damages, and no assesting is all one, in his cause but good to the poor.

Doctor Foster's Case, concerning Recusants. 12. Jacobis fol. 56.

An Information was preferred against a Recusant, by an Informer, Tam pro domino rege quam pro se infra, before the recusant was convicted for 2 20.l. that is, 20.l. a Moneth for a 11. Moneths absence from the Church &c. And judgment given against the Defendant.

1. Resolved, that he may be convicted (to satisfy the Statute of 23. Eliz. In this same suite, and convicted shall be taken for attainted, for he shall forfeit nothing before judgment.

2. The Branch of distribution in the Act of 23. Eliz. extends as well to the clause of penalty for recusancy, as to that of hearing or laying Maties, for it is all one to say, shall forfeite, and shall forfeite to the King.

2. Diverse acts of Parliament give the penalty to the
the King, and yet after make a distribution thereof to another who will sue, as 3. H. 6. cap. 2. & 3. H. 7. 3.

3. He against whom judgement is given, upon demurrer or default, or otherwise, is convicted within the Statute, for he is attainted, which implieth it, for it is so found by the Judges: so by the Statute of 8. H. 6. treble damages are given where a defendant is found to be with force, this extends to a judgement by Nihil dicit, or default.

4. The Statute of 28. Eliz. doth not take away the Statute of 23. which giveth liberty to the informer, &c. for

1. It is made for more speedy execution of it.

2. It doth not alter the suit of the party, but of the King, and leaveth the Informer as he was before.

3. The Act of 28. giveth not the penalty to any new person, for it was given to the K. by 23. Eliz.


5. The Defendant is not within 28. Eliz. if he be not convicted at the suit of the K. Ergo, this is left as before.

6. Because the Statute is in the affirmative, and they may stand together, but the Statute of 28. alters the Statute of 23. in this, that it confineth Suits against Recusants in the K. Bench, or Assizes, &c. which clause extends as well to the suit of the informer, as of the Queene, and the Statute of 35. Eliz. and 2. Jacobi, inlarge the Jurisdiction, as to Suits of the K., and touch not the suit of the party.

5. The Statute of 35. taketh not away the Action popular, given by 23. for it was made to give more speedy remedy, and not to take it away, a feme Covert is within the Statute of 23. and 1. Eliz. but before
fore the Statute 35. Eliz. if a Feme Covert had been indicted of reculsacy, the forfeiture should not have been levyed of the goods of the Husband, because he was not party therunto; otherwise in an Information or Debt brought by the informer; and in that that the Statute of 35. is, that the K. shall recover all the paines, &c. in such sort, &c. this alters the remedy onely, as to the Queene, for now shee may proceede by action, as for recovery of any other Debt by the Common Law, in such manner as 1. H. 7. c. 1. giveth a Formedon against Parnor of the profits, &c. also 35. Eliz. is in the affirmative, and although it giveth the penalty of 20l. by the Moneth, yet it taketh not away 1. Eliz. which giveth 12d. for every Sunday and Holy day, and where this Statute faith, that the conviction shall be in the K. B. or at the Aflizes, yet the Justices of Peace and others authorized by 23. may take Indictments: The Statute of 3. Jacobi. inflicteth Imprisonment upon a Feme Covert, yet it taketh not away the forfeiture before where a new person is designed by a new Statute, this taketh away the ancient Statute if they cannot stand together, and although there are exclusive words concerning Courts, yet the Court of K. Bench is not excluded, because it is Coram Rege.

6. A Recusant may pleade Auterfois convict. or other collaterall barre, as pardon, submission, &c. out of the Indictment, for 3. Jacobi. c. 4. extends onely to defects, within the Indictment or other proceedings; and the informer cannot charge any who is convicted before at the suite of the Queene, upon 23. or 35. Eliz. or 3. Jacobi, and upon 23. the Informer must sue within a yeare and a day.

Nota if after a popular action comence the K. Attorney will not prosecute, the Informer may for his part, and condemnation or acquittall at his suite, is a barre
Doctor K. Master of M. Collidge, and the Fellows
17. Eliz. grant to the Queene, reserving rent,
on condition to grant over which is done accord-
ingly; the Jury und 13. Eliz. of Deanes and Chap-
ters, and 18. Eliz. of Confirmations, a fine with Pro-
clamations is levied, and five yeares passe. Doctor
K. dyeth, the successor accepts the rent, and within
five yeares after his Election enters, and he and the
Fellowes demur to the Defendant. And judg-
ment given for the Defendant.

1. Resolved, the Master and Fellowes are restrai-
ned by the Statute of 13. Eliz. to grant to the Queen
for the Q. is a Parson within the letter of the Statute,
and if he should be exempted, this should be by con-
struction of Law, which cannot be.

1. Because a generall Statute for maintenance of
Religion and good literature and releife of the poore,
binds the K. although he be not named: and it ap-
peareth by the Statute of 1. Eliz. that the K. is in-
cluded within the words Person or Persons, for there
he is exempted.

2. Because the Statute is made to suppress a tort,
therefore the Statute of Donk binds him.

3. A Statute made to performe the intent of the
Donor binds the K. without being named, as the Sta-
tute of Donk.

4. The Master and Fellowes are disabled to grant,
therefore the K. cannot purchase of them.

5. The
3. The intent is to be observed, which was to convey by the Queen to a Subject, and so to make her an instrument of wrong, as one who holdest of the Bishop grants to the Queen to regrant to a Corporation by Govin, to take away the Seigniory of the Bishop by extinguishment, and to make an evasion out of the Statute of Mortmaine, this Patent shall be repealed Jure regio, so here: and this Act extends to a Corporation not incorporated by such names as are in the Statute.

2. The Statute of 18. Eliz. c.2. doth not confirme this grant, for it is out of the words of the Statutes, because it is not made upon consideration, and here the reversion of the rent is not considered, because the Queen was to grant it before the rent be due; 2. grants to the K. may be void or voidable.

1. In respect of the Grantor, as if an Infant grant unto him.

2. In respect of the thing granted, as if a Foundership be granted.

3. In respect of the estate, as taile.

4. In respect of the grant, if it agree not with the rules of Law.

5. In respect of omission of any circumstance, as Inrollment, this Statute aideth not grants of the first sort, for it doth not enable persons disabled by the Law to grant, as here, nor of the second sort, but confirmeth grants of Tenant in taile, because he was able to grant, but aideth not grants of the fourth sort:

For, Quod malo sunt inchato principal vix est, idque. But id aideth grants of the fifth sort.

3. At the time of the said Statute this grant needed no confirmation, because Doctor K. the Master was living.

3. The fine and Non-claime doth not barre them;

1. Because although it was not a conveyance made by
Lewis Bowles Case.

by them, yet it was suffered by them within the words of the Statute.

2. Doctor K. nor any in his time cannot make his clame, and clame was made within 5. yeares after his death.

4. Acceptance of the rent doth not barre them, because it is a body agregate of many, and accep-
tance by the Master sole, doth not barre all, and the rather being without deed: And judgement given,
Quod querens nil caperet per billam.


T. B. Covenants to stand seised to the use of him-
selue and his Wife for life, without impeach-
ment of waft, the remainder to their first, second, and third Sonne, successively in taile, the remainder to the heires of their two bodies; the remainder over, they have issue 1. T. B. dyes, the issue dyes, the Windé bloweth downe a Barne, parcell of &c. and the Tim-
ber in the Count mentioned, was parcell of that Barne, the Feme carryeth the Timber out of the Mannor, he in remainder assignes by fine to the Plain-
tiff, the Feme dyeth, the Plaintiff brings an Action of trover and conversion against the Executors of the Feme; and judgement given against the Plain-
tiff.

1. Resolved, untill the birth of the issue, T. B. and his Wife have an estate taile executed, but after this it is divided and they have for life, the remainder to the issue in taile.

2. Tenant in taile after possibility had a greater e-
state as to the quality, then Tenant for life: There-
fore,

1. He shall not be punished for waft.

2. He
2. He shall not be compelled to attorne.
3. He shall not have aide.
4. Upon his alienation a Consimili casu, lyeth nought.
5. After his death intrusion lyeth not.
6. He may joint the mise upon the meere right.
7. He shall not be named in an Action for, or against him. Tenant for life, but not as to the quantity, therefore his sequestration is a forfeiture, relersed lyeth upon his default, and exchange by him, and Tenant for life is good.

3. The Feine is not. Tenant in taile after possibility, &c. for this must be a remainder of an estate taile by act of God, and not by limitation of the party: and although he be Tenant in taile after possibility of the remainder, this doth not extinguish the estate for life, because it is not a greater estate.

4. She shall have the privileges of Tenant in taile, after possibility, for the inheritance which was in her, and because she is Tenant in taile after possibility of the remainder, although she cannot claim it in possession.

5. If Tenant for life or yeares cut Trees, or prostrate Houses, the Leslor shall have the Trees and Tymber, for the Lessee had them only as things annexed to the Land, and he shall not have a greater interest by his tortuous severance, but he shall have a speciall interest in the Tymber blowne downe, to build againe withall.

6. The Law giveth many privileges to a Mansion house.
7. The Lessee without impeachment of walt shall have Trees which he cuts, for without impeachment of walt, is as much as without demand for walt done, otherwise it is, if it be without impeachment, &c. by Writ of walt.
8. The privileedge of without impeachment of walt
The Case of Monopolies.

is annexed to the estate, therefore if he accept a confirmation of a greater estate, or assigne over, it is gone.

9. If Trees are blowne downe with the wind, the Lesser without impeachment of waft shall have them; therefore judgement given, Quod querens nil caparet per illam.

The Queene grants to one of the Privy Chamber, the sole making and importation of Cards, this grant is void.

1. The grant of making of Cards is void: For,
2. All Trades are for the publique good, for the exerise of Youth in labour, and therefore it cannot be appropriated to one pleely.
3. A Monopoly had three incidents against the weake publique.

1. Raising of the price.
2. The Commodity is not so well made.
3. The impoverishing of poore Artificers.

3. The Q. is deceived in her grant, because she thought it to be for the publique good: It prohibits them who have skil to make Cards, and giveth Licence to one of the privy Chamber who had not skill, and the K. cannot suppress Cardplaying, because it is not Malum in se, and no Trade may be prohibited but by Parliament.

2. The Licence of importation of Cards is void, being without limimination of time, for the Q. may dispence with the Statute of 3 E. 4. c. 4. which doth prohibit it, but that ought to be with limimination.

Note. The K. that now is in a Booke, Printed, hath Publisht, that Monopolies are against Law, and commanded no Sutor to presume to move him for graine go remedy | giveth, a ment en

The K.

The K. told him who able to 1.
1. To
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K. good,
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In Su

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him for the granting of them: But admitting the grant good in the Case at barre, the Plaintes sole remedy had beene that which 3. E. 4. in such case giveth, and that ought to be pursued; and judgement entered; Quod querenis hab est caperet per billam.

The Earl of Devonshires Case, 4. Jacobi. fol. 897.

The King reciting that decayed Munition belongs to the Master of the Ordnance, grants it unto him who sells it, and dyeth, his Executors are chargeable to the K.

1. Resolved, this cannot be claimed as fees of the Office, because it was erected but in 35. H. 8.

2. The grant is void, because it was upon a suggestion, that it was due to him.

3. Although the Testator claims them to his owne use, yet he shall be accountable to the K. for the Law will make a privy, as if any man taketh the K. goods, he shall be charged in an Accomplice, for the K. is not bound to charge any man as receiver, but generally and otherwise the King may loose them by his death, and although the Kings goods came not to the hands of the Testator, yet he shall be charged if he were a means of the Kings damage and prejudice.

In Sir W. M. Case it was resolved, That no Officer of the K. can dispose of any part of the K. treasure, for the profit or honour of the K. without warrant under the great or privy Seale, and after the Executors satisfied the K. for the said Munition.

F f 3

James
1. Resolved, that to the King's Bench authority belongs not only to correct errors in judicial proceedings, but other errors and misdemeanours extrajudicial, tending to the breach of the peace, or oppression of the Subject.

2. Causes of disfranchisement of a Citizen ought to be acts against his duty and Oath, but words against a Chief Magistrate are not, but may be of the good behaviour, and so of an attempt without an act done.

3. A Citizen cannot be disfranchised without Charter or prescription, if he be not convicted by due course of Law, as if he be attainted of forgery, perjury, or conspiracy at the King's suit, or of any other crime whereby he become infamous.

4. If a Citizen is disfranchised and hath a Writ of restitution, and they return sufficient cause, which is false, a Writ to restore him shall not be awarded, but he may have a special Action upon the Case.

5. Such a return ought to be certain, because the party cannot have an answer unto it; and after the Court awarded a Writ to restore the said I. B. and in he was accordingly.

FINIS.
These two Cases (being accidentally Omitted) should have come in in the beginning of the Third Report.

THE THIRD BOOKE.


The Duke of N. seised in fee of 3 Messuages in St. S Parish in H in the tenure of W. G. bargains and sells his Tenements in the Parish of St. A. in H. in the occupation of W.G. and is attainted and Executed, Queen Elizabeth grants them to I. F. if concealed, the Defendant D. claimeth under that Patent, against whom the Attorney informeth, &c. And Judgement was given for the Queene.

1. Resolved, nothing passeth by the bargain and sale because the first certainty was false, otherwise it is, if the first certainty be true, and the second false, so the Bargaine was a disaffrisse.

2. These Lands were not in the Q. by the Statute of 33. H. 8. c. 20. without Scire facias or seife, because the words of the Statute, that Lands shall be in the K. without Office, shall be construed, as if an Office had beene found : And Lands of a Disaffrisse attainted, shall not be in the K. by Office without Scire facias, or seizure, also all possession, &c. are saved by the said Act, as if it had not beene made.

3. That
Sir William Harberts Case.

3. That the Q. having but a right it doth not passe by the grant of the said five Mesuages; and after, a speciall Office was found; and a Scire facias brought against the Terretenant, and judgement given, and the Tenements seised into the Q. hands, and the by new Letters granted them to S. and his Heires, who peaceably enjoined them:


M. H. acknowledged a Recognizance of 3000l. to the K. and dyed, a Scire facias issued against his Executors, & heredes terrarum, &c. The Sheriffe returned, that he had no Executors within his Bayl-wick, and further, that Scire facit W. H. militi, filio & heredi diti. M H. W. H. makest default, and judgement is given against him generally, and he bringeth Error, but upon his Petition to the Queene, he was admitted to Compound with her.

1. Resolved at the common Law (except in speciall Cases) neither Land nor body were lyable to Execution in Debt or damages recovered, but Execution was to be done by Fieri facias, or Levati facias of his Goods and Chattells, and profits growing upon his Land, but in debt brought against one, as heire, his Land was lyable to Execution, because the Plaintiff had no other remedy, for the goods belong to the Executors, but the body, goods, and Lands of the Heire Deboror or accomptant were ever lyable to Execution but such Levati facias or Fieri facias, ought to have beene seised within the yeare, or otherwise he was charged to his Writ of Debt, and now by Westm. 2. c. 4. he may have a Scire facias, and by the 18o. Chapter that Statute, an Elegit is given of the moiety of the Land, which was the first Act that subjected Land.
Execution for Debt or Recognizance, and by the Statute of 13. E. 1. de Mercatoribus 27. E. 3. c. 9. &c 23. H. 8. c. 8. In Statute Merchant, and Statute Staple all the Lands of the Consuflor at the day of acknowledgment shall be extended, into whole hands forever they shall after come: But in all Actions Vi de arnis, where a Capias lyeth in Process, there after judgment a capias ad satisfaciendum lyeth, & the K. shall have a Capias pro fine, and in such cases the Law (the preserver of peace) subjecteth the body to Imprisonment, and by Marlebridge, c. 23. West. 2. c. 11., a Capias was given in an accompt, the procce before being a distresse infinite, and by 25. E. 2. c. 17. the same procce given in Debt, as in account, for before this Act the body was not liable to Execution, for Debt as aforesaid.

2. If Land of the heire be seised in Execution, upon a recognizance of his auncestor, he shall not have contribution against a purchasor of his Auncestor, although he come in without consideration, and although the Heire be not charged as Heire, but partly as Terretenant; but one purchasor shall have contribution against another purchasor, and one Heire against another Heire, because they are in Equali jure, and therefore the Writ here which issued against the Heires, without naming the purchasor is good, although he be charged as Terretenant: The Heire shall have an Audita quærela, as well as the Consuflor himselfe before Execution sued, and a Supersedeas, but a Stranger shall not: If diverse acknowledge a recognizance, the charge doth not survive, and the Land of one shall not be put in Execution, but all their Lands equally: so if two are bound to warranty, both, or their Heires, and the survivor, and the Heire of the other shall be jointly vouched, and the Land of both shall be rendered in value. But if Bar-
Sir William Harbets Case.

ron and Feme, and the Heires of the Feme are bound to warranty, and the Feme dye, the Land of the Baron may be solely taken in Execution, because there are no Moitiees betweene Baron and Feme: So that when Land shall be charged by any Lien, the charge ought to be equall, but in a Lien personall, otherwise it is, as if two are bound in an Obligation, there the charge shall survive: But a Purchaser, bona fide, before any Action brought, shall not be subject to any charge. And three Errors were moved in the record.

1. The Scire facias was Harediterrarum, &c. which is improper, for he is not Heire to the Land, but to his ancestor.

2. The Writ is Scire facias haredi terrarum, &c. and the Retorne is, Scire fecit W. H. milini haredi prae diligii M. and every Retorne must answer the point of the Writ.

3. The judgement is generall against Sir W. H. where it ought to be speciall, for otherwise his owne Land shall be liable, where, by the Law, the Land onely, which came to him by his Father, ought to be charged, and he is charged as Tenement as aforesaid, but these poynets were not resoved by the Court.

Nota, the new Writ of Error, after entry of the first was not brought, Quod ebras vobis residet, because the Record is not removed out of the keeping of him who had the custody thereof before.
A Perfect Table of the Principal matters contained in every Case in this Booke.

WHAT words doe make a generall warranty, and to whom the custody of evidences doth belong

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Vouched in a common recovery, it is a forfeiture

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5 Perpetuities are against Law, but the Parliament or Law may make an estate as to one, and good to another  

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Key: G, F, E, D, C, B, A, Y, D, & Q.
Title: Ireland, Sir Thomas. An exact abridgment in English, of the eleven books of reports of the learned Sir Edward Coke, knight...

Received: Book bound in case-style binding. Cover was in poor condition and part of the spine was missing. The pages were acidic and signature folds were split.


Date work completed: October 10, 1990

Signed: [Signature]