We allow of the Printing and Publishing of the Book Intitled, *A General Abridgment of Law and Equity*, Alphabetically digested under proper Titles, &c. By Charles Viner, Esq;

W. Lee.

W. Fortescue.

J. Willes.

E. Probyn.

F. Page.

Law. Carter.

J. Fortescue A.

W. Chapple.

T. Parker.

M. Wright.

Ja. Reynolds.

Tho. Abney.

T. Burnett.
A General Abridgment
OF
LAW and EQUITY

Alphabetically digested under proper TITLES
WITH
NOTES and REFERENCES
to the WHOLE.

By CHARLES VINER, Esq;

Favente Deo.

ALDERSHOT in Hampshire near Farnham in Surry.

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Canon Augustus

LAW AND EQUIT

considerations and decisions of the courts of the

LAW OF NATIONS

the

of CLARKE's

HINTON
TO THE
RIGHT HONOURABLE
Sir William Lee, Knt.
Lord Chief Justice
OF
ENGLAND

This BOOK (as a grateful Acknowledgment of the great Honour done by your LORDSHIP to the Author) is most Humbly dedicated by,

My LORD,

Your LORDSHIP'S
most Obedient, and
most Obliged Servant,

Charles Viner.
The Reader is desired to correct the following ERRATA.

**GRANT** (N) pl. 2. Marg. dele the last contra. — Dito (P, 5.) in the Division, after nor, add a Comma. — Dito (S, 4.) in the second Line of the Division dele a. — Dito (R, a.) M. 6. against the Division, r. Faith. — Dito 203. l. 8. r. Evidence. — House (C) in the second Line of the Division, after what, add shall. — l. 334. pl. 6. last l. r. terra. — f. 392. in the Title r. Indictmen. — l. 437 pl. 7. l. 1. r. Ministorum. — Jointenants (G, 2.) pl. 1. l. 3. after each, r. third. — f. 533. pl. 6. l. 1. r. Default. — pl. 7. l. 1. r. plead. — f. 580. pl. 10. last l. but one, r. Liabilities. — f. 585. pl. 8. l. 2. r. Frank'ten. — Judgment (G) in the Division, after Release of, add for 102. — (2. l. 2) in the Division, r. Communion.
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(A) Penalty of killing Game; and how to be recovered, and Pleadings.

1. Br 13 R. 2. cap. 13. None unqualified shall keep Dogs for Sport, or use Nets, &c. who have not 40s. per Ann. or destroy Gentlemen's Game on pain of a Years Imprisonment.

2. 11 H. 7. cap. 17. None may take Pheasants, or Partridges with Nets in another's Freehold on pain of 10l.

3. 19 H. 7. cap. 11. Inflicts a Penalty of 10l. for every Stalking of Game.

4. 14 & 15 H. 8. cap. 10. None to kill Hares in the Snow, on pain of 6s. 8d.

5. 25 H. 8. cap. 11. §. 2. Inflicts a Penalty of one Years Imprisonment and to forfeit 4d. for every Wild-Fowl taken with Nets, or other Engines, within the Times limited by Statute.

6. 23 Eliz. 10. §. 2. Penalty of 20s. for destroying every Pheasant, and in an Indictment on the Statute for

Taking Partridges, it was laid to be cum reiuis; but held per tot. Curiam to be ill, for that there are no such Words as cum resitu. Patch. 14 J. 1. 3 Buls. 178. the King v. Rivett.

§. 3. The Forfeiture for destroying of Pheasants and Partridges shall be recovered in any Court of Record, and divided between the Lord of the Liberty or Manor where the Offence is committed, and the Prosecutor; but in Case the Lord shall Dis pense with the Offender, the Poor of the Parish are to have his Moiety, to be recovered by any of the Church Wardens.

§. 4. None to Hawk or Hunt in Standing Corn or lying in the Swarth on pain of 40s.

§. 6. Saying for Travellers, if they let the Game go.

7. 1 Jac. 1. cap. 27. §. 2. None to kill or destroy the Game or any Pidgeon on pain of 20s. or three Months imprisonment.

§. 3. Any Person not having 10l. per Ann. or 200l. in Goods, keeping Dogs or Nets to forfeit 40s. or be imprisoned for 3 Months, unless the Son and Heir apparent of an Esquire, or of higher Degree.

§. 4. Forfeitures for buying to sell again, or selling Deer 40s. Have 10s. Pheasant 20s. or Partridge 10s.

5. None shall by any former Law suffer Punishment for the same Offences for which he shall be injured by this Law.

Two Justices of Peace may hear and determine these Offences.

8. 7 Jac. 1. cap. 11. §. 2. Any Person hawking or hunting Pheasant or Partridge between the 11th of July, and the last of August to forfeit 40s. and 20s. more for every Bird taken.

Qualification by 1 Jac. 1. repealed.

§. 7. Every Lord of a Manor, and every Freeholder having 40l. per Ann. or 400l. in Goods, may take Pheasants and Partridges in their own Lordsips, and Freeholds between Michaelmas and Christmas.
Game.

S. 8. Intoxicate Persons killing Pheasants or Partridges to be committed for 3 Months, or pay £25 for every Bird taken.

S. 9. Confiscable to Search for Dogs and Nuts by the Justices Warrant.

Trespass for breaking and entering his House, and taking away a Gun; the Defendant justified by Virtue of the Statute 22 & 23 Car. 2. cap. 25. for preferring the Game, setting forth, that the Lords of Manors, and other Royalties, may depose Game-keepers, who, by Virtue of such Deputation, may set tele Gun; &c. and by Warrant from a Justice of Peace, may search the Houses, &c. of suspected Persons, &c. &c. and for the Ufe of the Lord of the Manor, &c. and to bring his Cafe within the Statute, and justifies the seizing the Gun, &c. * It was held that there was no Occasion of setting forth all his Matter; because the Defendant acted under a Warrant from a Justice of Peace, and in such Cafe he might have pleaded the general Ille; but if he had acted as a Game-keeper only, and without such Warrant, then &c. he must have pleaded Specially. Nels. 103. 105. Julifification (C) pl. 15. cites 2 Lutw. 1506. Bowkley v. Williams.

* In the Report nothing appears of the Opinion of the Court and the Words are only (it seems) which is the Opinion of the Reporter. 2 Lutw. 1506.—2. This is mentioned only as a Quare of the Reporter.

The Defendant in his Jufification fet forth, that J. W. was felled in Fee of the Hundred of B. and had a Court Leet there, and that he had a Warrant of a Justice of Peace, to Search, &c. the Reporter makes a Quare, if a Hundred with a Court Leet is within the words (Manors, or other Royalties) for if not (as it seems) it ought to have been alleged that the House of the Plaintiff was within the Manor of the Lord who deputed the Game-keeper to seize the Gun, because the Gun was felled to his Ufe; and that if it was within the same, or any other Manor of the said Lord, it was to no Purpofe to mention the Hundred and Court Leet. 1506. in S.C. Game-keeper taking away a Gun, he ought to have had a Warrant from a Justice of the Peace, and an Authority from the Lord of the Manor is not fufficient. Cumb. 183. Trin. 5 W. & M. B. Carpenter & Adams.

S. 3. Gamekeepers may Search the Houses of suspected Persons by a Justices Warrant.

S. 9. Gives Appeal to the Quarter Sessions.

10. 4 & 5 W. & M. cap. 23. S. 3. Impeccs Confiscable to Search the Houses of a Poacher. And if Game be found there, he shall forfeit a Sum not exceeding 20s. for every Hare, &c.

S. 4. Indemnifies Game-keeper refufing Offender in the Night.

It is enacted by the 1 & 4 Cofts. W. & M.

10. against Deer-keepers, that no Certiorari shall be allowed to remove any Proceedings on that Act, unless the Party convicted become bound with good Sureties in 50l. to pay full Costs and Damages, within one Month after the Matter shall be confirmed, or a Proceedendo granted. 2 Hawk. Pl. C. cap. 27. S. 60. and ibid. S. 61. The Serjeant faws, that the like in Effcit is enacted by 4 & 5 W. & M. 25. and 5 Anne Seff. 2. cap. 14. in Relation to Convictions on those Acts of Offences concerning the Game.

In Trespass.

S. 10. Inferior Tradesmen committing Trespasses in followinsg the Game to pay against an Inferior Tradesman's full Costs.

A man, for entering his Clofe and trampling his Grafs, advouc & holden in Chaucer's tradit. comitatus null a. and aliæ enimae, &c. contra Pecun. &c. et contra formam Statuti. &c. After a general Verdict for the Plaintiff, it was moved in Arreft of Judgment, that Part of the Action was for a Trespass at Common Law, and Part upon the Statute, and that contra formam Statuti goes to the Whole; And took Notice of the Act of 13. R. 2. cap. 13. and that of 22 & 23 Car. 2. 25. and that it was enacted the fame Year that if the Jury finds Damages under 40s. in Actions of Trespasses, the Plaintiff should recover his Costs, and if more are awarded, the Judgment shall be void, that the Statute of 4 & 5 W. & M. enacted, that all and every Law and Statute now in Force, for the better Precaution of the Game, shall be duly put in Execution, and that after comes a Clause, that Inferior Tradesmen, &c. performing, to hunt, &c. shall be subje\[t to the Penalties by this Act, and may be fined for Trespass in coming on any Man's Land, and if found Guilty the Plaintiff shall not only recover his Damages thereby suffered, but his full Costs of Suit, &c. and it is declared that the Defendant is proved to be an Inferior Tradesman, which had been sufficient to intitle him to Costs upon a general Law, and the beft way had been to omit contra formam Statuti. But this being moved in Hilary Term, the Court was of Opinion, that where a Statute makes an Offence, the Consequence must be contra formam Statuti; but this was an Offence before that Act, which only repeals that Clause of 22 & 23 Car. 2. and therefore the Declaration of the Statute, is well enough; and the Plaintiff had Judgment Nifi Causa 2. Mod. 305. Mich. 8 W. 3. B. Bennet v. Talbot — 1 Salk. 242. S. C. and the Court held, that contra formam Statuti, should be applied only to the later Part, which was really against the Statute, and that since the Hunting and Breaking could not be separated, the Plaintiff should have his Costs, according to the new Statute, and Judgment for the Plaintiff. Hill. 3 W. 2. B. R. — Carth. 82. Trin. 8 W. 3. B. R. S. C. — Carth. 242. Mich. 9 W. 2. Shadow v. Painter — And another Exception, because 'tis not laid, that the Defendant hunted and Killed Game, but that he only hunted generally. Sed Non Alloquitur. Ibid.
S. 11. No Heath or Furn, &c. to be cut or burnt, from the 2d. of February to Midsummer.

S. 11. 5 Ann. cap. 14. 8. 2. Higler or Viétualler, having any Game in their keeping to forfeit 5l. for every Hare, &c. and the Lord of the Manor where, &c. or Justice of Peace may take it from him.

No Certiorari allowed till 50l. Security given to pay Costs.

S. 3. An Officer against the Game Acts, discovering a Carrier, or Victualler offending, shall be discharged of the Punns, &c.

S. 4. Unqualified Person keeping or using Dog or Net, to forfeit 5l.

The Offence for which the statute gives the forfeiture, is the keeping of Dogs and Nets, but not the killing Hares, &c. and if a Man not qualified goes a Hunting and kills never so many Hares upon the same Day, he shall forfeit but one 5l. For it is but one Offence; but if he hunts several Days and kills, it should be laid, that he, such a Day, kept Dogs and killed, &c. and then again such a Day, and so by laying it severally, the Offence is severed and he shall forfeit 5l. for each Offence; Per Car. 10 Mod. 27. in Case of the Queen v. Matthews.

This was a Conviction upon the 4th & 5th of Anne for the Preservation of Game; Exception was taken, that the Charge setting forth that the Defendant M. not being a Person so and so Qualified, and enumerating distinctly the several Qualifications in the Act of Car. 2. for the Preservation of the Game omitted a new Qualification allowed by this Act, viz. that he was not a Person Qualified by a Lord or Lady of a Manor to kill Game for their Life; Per Car. had it been laid generally thus, that he not being a Person qualified according to the Law it had been enough; but the Qualifications being distinctly and severally mentioned, Omition of on fatal. 10 Mod. 26, 27. Trin. 10 Anne B. R. Queen v. Matthews.

Whether keeping a Gun merely without using, or Intention laid, is within this Act it seems not. Trin. 11 & 12 Geo. 2. King v. Gardiner.

Action of Debt brought, &c. was brought by a common Informer on the Statute 5 Anne 14. for 15l. wherein the Plaintiff declared on two several Counts, one for 10l. for killing two Partridges, the other for 3l. for keeping an Engine to destroy the Game not being qualified, Virtute Statutorum haus Regni; upon Nihii Debet pleaded, the Plaintiff had a Verdict for 4l. only, and it was now moved that he might enter the Verdict on either of the Counts; because the Defendant intended to move in Arrerit of Judgment; For tho' he might not be Qualified by the Statutes of this Land to keep a Gun, yet if he is otherwise Qualified by Law, he is not subject to this Penalty. Now he may be Qualified by Law as being a Huntsman to a Noblemen, who, in coming up to the Parliament may kill a Deer in any of the King's Forests, and this he may do by the Forest Law which is Part of the Law of this Realm; and for this Reason the Plaintiff was ordered to enter his Judgment. 8 Mod. 258. Shippon v. Hooper.—This Action is given by the Stat. 8 Geo. 19. by which it is enacted, that where an Offence shall be committed under any Law for preferring the Game, and the Offender liable to a pecuniary Penalty upon a Conviction before a Justice, any Person may sue for it by Action of Debt. 8 Mod. 258. Patch. 10 Geo. 1725. S. C. 5.

A Justice of Peace, or Lord of a Manor, may take Game from unqualified Persons, and Seize Dogs and Nets.

Game-keepers selling Game, to be committed 3 Months.

The Conviction shall be made within 3 Months after the Offence, upon the Oath of one Credible Witness.

Per 5 Just. Confession of the Offence is sufficient Conviction, tho' the Statute directs it to be upon Oath, and 55 if it had been made any where else, and not to the Justice of Peace if such Confession had been proved the Justice of Peace might have Convicted the Offender. But Eyre J. contra, because by 22 Car. 2. he that keeps a GrayOUNT is punishable, and the Confession is to be by Oath, or Confession of the Party, which Statute is confirmed by this of 25 Geo. 3. that those Statutes shall stand both together, and the Statute 22 Geo. 3. having directed the Conviction to be upon Oath, whereas the other is by Confession or Oath it seems intended by this last Act, that the Manner of Conviction by Confession should still be on the Statute of 22 Car. 2. For by the 5 Anne the Conviction is to be on Oath; For if a Man might be Convicted on this last Act on his own Confession, there had been no Occasion of confirming the Statute of 22 Car. 2. 8 Mod. 64. Hill. 8 Geo the King v. Gage.

12. 9 Ann. cap. 25. S. 1. But one Game-keeper shall be for one Manor, and he to be Registered by the Clerk of the Peace, and be and every other Person unqualified, who shall sell any Game to forfeit 5l.

S. 2. Unqualified Person having Game in his Pussession, shall be deemed an exposing to Sale, and shall forfeit accordingly.

S. 3. Any Person whatsoever killing Game in the Night, to incur the like.

13. 3 Geo. 1. cap. 11. S. 1. Lords to appoint Game-keepers qualified, or their own servants, or those whom they immediately employ to kill Game only for their Life.

And if any other under Colour of Deputation, shall kill Game, or keep Guns, Dogs or Nets, they shall forfeit as other Offenders.


15. 2 Geo. 1. cap. 4. The Penalty of any Officer or Soldier killing Game;
Game.

16. 9 Geo. 1. cap. 22. S. 1. Stealing, killing, wounding, or hunting Game in disguise, made felony in what Cafes.
17. Goods disfained on a Conviction of keeping Dogs, Nets, and Ferrets to catch Conies, by a Person not Qualified, were Replevied; the Court would not set aside the Replevin, but made a Rule to shew Cause why an Attachment should not go against him that granted it. 8 Mod. 208. Mich.
18. 7 Geo. 2. cap. 2. S. 37. Soldiers how restrained from taking, or destroying Game.

(B) Prosecution, when, and how, and by whom tried.

1. 23 Eliz. 10. S. 5. Justices of Affray, and Justices of Peace in their Sessions and Stewards of Lists, &c. have Power to hear and determine Offences relating to the destroying Partridges and Pheasants, and one Justice of Peace may examine such Offender, and bind him over with good Sureties, to answer it at the next general Sessions, if the Offence be not before determined at the Affray, or in a List.
2. 7 Jac. 1. 11. Destroyors of the Game shall be Prosecuted within 6 Months after the Offence committed.
3. In some Place a Man may stand in one Country and shoot into 2 or 3 so that it must be where the Offence was committed, and that is where the Party stood when he shot, not where the Object was which he shot at. Mich. 3 W & M. Show 339. King v. Allop.

Gaming.

(A) Restrained by Common Law or Statutes.

1. 33 H. 8. O Person of what Degree or Condition soever, shall by cap. 9. S. 11. himself, Factor, Deputy, Servant, or other Person, for his or their Gain, Luca, or Living, keep, hold, Exercise or maintain any common House, Alley, or Place, of Bowling, Cofing, Cuff, Caylor, Half Bowls, Tennis, Dicing Table, or Carding, or any other Manner of Game, prohibited by any Statute heretofore made, or any unlawful new Game, now invented or made, or any other new unlawful Game hereafter to be invented, found, hold, or made, on pain of 40s. a Day, for every Day he keeps or suffers any such Game to be played.

§. 12. And every Person referring to such Houses, and there playing, to forfeit for every Offence 6s. 8d.
§. 14. A Justice of Peace may enter such Houses, and commit the Offenders, until they find Sureties not to offend again.
§. 15. Justices, &c. neglecting to search suspected Houses to forfeit 40s. a Month.
§. 16. And no Artificer or Handicraftsmen, Husbandman, Apprentice, Labourer, Servant at Husbandry, Journeyman, or Servant of Artificer Married, Fisherman, Waterman, or Serving Man, shall play at Tables, Tennis, Dices, Cards, Baccus, Cuffs, Quietting, Logattes, or any other unlawful Games out of Christmas, on pain of 20s. for every Offence, and in Christmas, to play in their
Gaming.

their Masters Houses, or Presence, and no Person shall at any Time play at Bowls, in any open Place, out of his Garden or Orchard, on pain of 6 s. 8d. for every Offence. And all Justices, Mayors, Sheriffs, and Heath Officers, are authorized to commit every Offender, without Bail or Mainprize, until they be bound in such Sum as the said Justices, &c. shall think fit, not to use such unlawful Games.

§. 17. All former Statutes against unlawful Games are hereby Repealed.

§. 18. And where any such Forfeitures shall be found within any Franchise or Let, the Lord shall have one Money thereof, and the other half shall go to the Prefector; and where it shall be found out of the Franchise or Let, the Forfeitures shall be divided between the King and the Prefector: And this Act shall be proclaimed once a Quarter in every Market Town, by the vestressive Mayors, Sheriffs, or other Heath Officers, and at every Assizes and Sessions.

§. 22. Provided that it shall be lawful for any Master to license his Servant to play at Cards, Dice, or Tables, with their said Master or any other Gentleman repairing to him openly in his House or Presence.

§. 23. Persons having 1001. per Ann. may license their Servants to play in their own Houses or Yards.

2. 2 & 3 P. & M. cap. 9. Every Licence, Placard, or Grant made for keeping of any Bowling Alleys, Diceing Houses, or other unlawful Games, shall be void.

3. 16 & 17 Car. 2. cap. 7. S. 2. They that by Fraud or ill Practice in playing at Cards, Dice, Tables, Tennis, Bowls, Kettles, Shovel-board, or in Cock-fightings, Horse-races, Dog-matches, or Foot-races, or other Pastime or Games, or by bearing a Part in the Stakes, Wager, or Adventures, or by betting on the sides of such as Play, Alt, Ride, &c. and require to themselves, or others Money or Things of Value, shall into facto forfeit the Treble Value, one half to the King, the other to the Lesser prosecuting within 6 Kalender Months, and in Default of such Prosecution, that Money to them that will see within a Year after the 6 Months expired.

S. 3. If any Person play at the said Games, or other Pastimes (other than for ready Money) or let on other Men's sides and shall lose any Sum of Money, or other Things exceeding 100l. at one Time of Meeting, they shall not be compelled to make good the same; but such Contracts, and all Securities for the same shall be void. The Person winning the same shall forfeit the treble Value of such Money, or other Things won above 100l. one half to the King, the other to the Prefector sitting within a Year.


9 Ann. cap. 14 S. 1. Lands incumbered for Money won at Play, shall pass to the Heir of him in Reversion, and all Conveyances, or other Securities, where the Whole or any Part of the Consideration is for Money won at Play or lent or advanced at such time shall be void.

Plaintiff repliedtwice not for Money won at play; it is not good, but he must add, nor any Part thereof; and therefore Judgment was for the Defendant. 8 Mod. 57; Mich. 8 Geo. 1722. Coleburn v. Stockdale

S. 2. Any Person losing 101. at one time may recover it again of the Winner by Action of Debt. And in Default thereof a Stranger may recover it with treble Value.

S. 3. Obliges Offenders to answer upon Oath to Bill preferred against them for Deficiency.

S. 5. Persons cheating at play, or winning above 101. and being Convicted thereof on an Information or Indictment to forfeit 5 times the Value of their Winnings to the Informer, and suffer Corporal Punishment as for Perjury. But where an Indictment was found by the Grand-Jury, and it was quashed for Insufficiency, an Information was afterwards denied; for another Bill might be found. 8 Mod. 15; Mich. 10 Geo. 1722. Addn.
Gaming.

S. 6. Two Justices may Commit common Gamesters till they find Security for their Good Behaviour.

S. 8. And any Person challenging another for Money won at Play, to forfeit his personal Estate, and suffer two Years imprisonment.


6. 5 Geo. 24. No Ganger to have Benefit of the Acts of Bankruptcy.

7. 12 Geo. 2. Prohibits Lotteries and Games of the Ace of Hearts, Pharaoh, Baiflet, and Hazard.

Every Adventurer in any of the said Games, Lottery, or Lotteries, Sale or Sales, or who shall play, set at, flake, or punt at either of the said Game, and be thereof Convicted as aforesaid shall forfeit 50l.

Such Selves shall be void, and the Houses, Lands, &c. so set up and exposed to Sale shall be forfeited to any Person who shall sue for the same.

Persons aggrieved may Appeal to the next Quarter Sessions, &c.

No Conviction, or Judgment upon this Act, shall be set aside for want of Form.

No Certiorari, or other Process, shall issue to remove the Record of any such Conviction from the Quarter Session, into the Courts of Westminster, but upon 100l. Security.

Offenders not having sufficient Goods and Chattels whereon to levy the Penalties inflicted by this Act, or who shall not immediately pay, or give Security for the same shall be committed to Goal for 6 Months.

Justice of Peace neglecting, &c. shall forfeit 100l. one Moiety thereof to the Person who shall sue for it, and the other Moiety to the Poor.

This or any former Act, to hinder any Game within his Majesty's Royal Palaces. Nor shall any Person, &c. in Manors, Lands, &c. legally allotted, or held by any Allotment by Lots.

Every Action upon this Act to be commenced within 3 Months after the Fact committed.

Defendant may plead the general Issue, &c.

8. 13 Geo. 2. Enacts that, the Game of Passage, and every other Game invented, or to be invented with one or more Dice or Dice, or any other Instrument, Engine, or Device, in nature of Dice (Backgammon, and other Games were played with the Backgammon Tables excepted) shall be within the Intent of the Act of 12 Geo. 2 against Gaming.

(B) What Gaming is within the several Statutes.

1 Salk. 344. It was not on the Chance, but on the Right of the Play.

1 Wager concerning the right manner of playing, is not within the Statute, because it was a mere collateral Matter, which happened on a mere Chance, and the Event of it did not depend on the Success of the Game, and the Act expressly prohibits Wagers on the Parts or Hands of the Players, and had they intended other Wagers, it is probable that mention would been made of them. Luwr. 487. Mich. 5 W & M. Pope v St. Leger.

5 Mod. 177. S. C.

2. If A. wins 100l. of B. and A. being indebted to C. 100l. appoints B. to give Bond for the 100l. to C. this is a good Bond; For C. is an Innocent Person, and if A. be bound with B. it will be the same Thing, per Holt. Ch. J. who says, 'tis the only Cafe he knows where it shall not be void, and which he says has been adjudged both on the Statute of Gaming and Ultury, and that if A. lores 100l. to C. and A. and B. become bound to C. for the Money, the Bond is void as to both. 1 Salk. 344. Mich. 8 W. 3. Hulley v. Jacob.

S. P. per Walker.

246. in Cafe of Walker v. Walker.

3. At play H. may lose 100l. to A. and 100l. to B. because 'tis a several Contract, fecus if it were a Joint Contract. It was held in the Cafe of * Darburs v. Thistleworth* that if H. lores 2000l. in ready Money and after lose 100l. on Note more, the Note is good, but all beyond it is void, per Holt Ch. J. 1 Salk. 345. Mich. 12 W. 3. in an Anon. Cafe.

J. Sid. 393. but Twidewe contr. —* Lev. 144. Th2 20 Car. 2 & R.

4. Lofin
Gaming.

4. Loting *more than 100l. to several Persons at one sitting is not within the Statute, unless they go shares fraudently and join in the Stakes; for then as to the Chance of the Game they are as one Perfon. 1 Salk. 345. Mich. 13 W. 3. B. R. Dickfon v. Pawlet.

100l. or Tick at one sitting is' to several Perfon, is void by the Statute, Secus if at several times. 2 Show. 185. Noel v. Reynolds.

If one lose upwards of 40l. to two at one sitting both the Sums would be void. But if one lose 99l. to A. and then as pursuas to avoid it lose: 20l. to B. there A. may specially set out the Fraud, and so avoid it, per Cur. 12. Mod. 258. Mich. 10 W. 5. 1698. Walker v. Walker.

5. If 40l. be fairly won and 66l. with false Dice, this will not avoid the 40l. Debt, unless he was party to the Fraud. 1 Salk. 345. per Holt Ch. j. in Cafe of Dickfon v. Pawlet.

(C) Actions and Pleadings.

1. In Debts. A. won 80l. at one meeting, of B. and for which B. gave Security, and then they appointed another Meeting, and A. won 170l. more of B. The Question was, whether this was within the Statute. The Court was divided, which the Plaintiff perceiving, discontinued his Citation, but the better Opinion was, that it was not within the Statute, tho' if it had been pleaded, that the several Meetings were purposely appointed to elude the Statute, it might be otherwise. 2 Mod. 54. Hill 27. Car. 2. C. B. Hill v. Phelan.

2. A. wins 100l. of B. at Play, and A. giving C. 100l. brings C. to B. who own'd the Debt, and B. gave C. a Bond for the 100l. C. not being Privy to the Matter, accepted the Bond; and afterwards put it in Suit. The Obligor pleaded the Statute, but the Plaintiff disdaining the Whole Matter, the Court were of Opinion upon Demurrer, that it was not a Cafe within the Statute; and gave Judgment for the Plaintiff. 2 Mod. 279. Mich. 25 Car. 2. C. B. Anon.

3. In Debt upon Articles for 100l. won at a Horfe Race Defendant pleaded the Covenants, by which it was farther agreed, that the Plaintiff, at the Request of the Defendant, would run his Horse again, at another Day and Place for 200l. more, and then pleads the Statute; the Plaintiff replied, that the Defendant did not make such Request. But upon Demurrer, the Defendant had Judgment. For tho' the Statute allows the losing of 100l. yet in this Cafe the 100l. was not lost [before] a Security being given to run for more. And tho' there was but 100l. actually lost, yet the Contract being [originally] made for more, it was void for the Whole Ab initio, and can't be made good by the Subsequent Event. 2 Lev. 94. Mich. 25 Car. 2. B. R. Edgebury v. Rolindale.

115. cites Redington's Cafe. — The Cafe of Edgebury v. Rolindale, cited 9 Mod. 352. in the Cafe of Stanhope v. Smith, is stated to have been upon Articles of Agreement, concerning a Horfe Match, wherein the Defendant agreed to run four Heats, at several Days for 40l. each Heat; and this was held by my Lord Hale, to be but one Agreement, tho' to be run at several times, and the Defendant in that Cafe had Judgment.

4. Indebitatus Aff. lies not for * Money at Play, but there ought to be a S. P. because Special Declaration; 'twas laid by two of the Judges, that peradventure, by special Pleading; a good Replication may be made. Luwr. 180. White-grave v. Chancy.

Per Holt Ch. J. 12 Mod. 54. * Per Pemberton Ch. J. Loting above.

Holt Ch. 1. 5 Mod. 14. in Cafe of Walker v. Walker. — 1 Salk. 23. Hard's Cafe. — S. P. 6. Mod. 129. Paffch. 3. Ann. B. R. Smith b. J. J. H. forthwinding the said Cafe of Eseleton's v. Lewin. — For per Holt Ch. J. There is no way in the World to recover Money won at Play, but by special Attaintment. And the Action should be brought upon the Agreement of the Parties. 'Tis true, when two agree to play for so much Money, that is an actual Promise; but if either win there is no Debt arises; For nothing but a meretricious, unprofitable Conventional can raise a Debt, ibid. 129. — 12 Mod. 1. N. & P. But for Money faid on 40l. wages, it lies; For, being in a third Perfon's Hands, the winning the Wager.
Gaming.

Wager determines the Property.—* 2 Show. 82, Contra. ... v. Sterne.—7 Lev. 118, Contra.
Eggleton v. Lewin.—2 Vern. 157, Contra. Sherborn v. Colebatch.—A general Indubitable will not
be *all ages, or Money won at Play; but it must be laid by way of mutual Promises specially, and to a Judg-
ment was reversed. But the Chief Reason was, because the Court would not countenance Gaming, by
being of a remedy; and tho' the Precedent of Eggleton v. Lewin was, in which judg-
ment was affirmed in Cam. Scacc. yet it would not prevail. Carth. 525. Jackson v. Colegrave.—An
express Precaution will support an Action. Per Parker Ch. J. 10 Mod. 512. Pach. 1 Geo. B. R.

5. In an Action upon a Note for Money won at Play, Defendant
pleaded the Statute, and set forth, that at one Sitting he lost 85 l. to the
Plaintiff, and 49 l. more to W. But upon Demurrer, Judgment was given for
the Plaintiff; For the Statute intends a Remedy, where more than 100 l. is lost to one Person, and at one Sitting; but if it be lost to several,
it not within the Act. 5 Mod. 331. Trin. 8 W. 3. B. R. Stanhope v.
Smith.

This second losing, being done on pur-
pose to avoid the first Debt of the 95 l. B.
may set out the Fraud specially, and fo avoid it. 12 Mod. 258. In Cafe of Walker v. Walker.—But
Trin. 28 Car. 2. B. R where A had lost 15 l. at one Sort of Game 90 l. to C. at another Sort of
Game 5 l. and to D. another Sort of Game 60 l. and in an Action of Debt on Bond brought [for one
of the Sums.] Defendant pleaded the Statute, and that he lost the several Sums, as above, at the
same Time, it was demurred to, because it did not appear, that the several Parties were Parties together,
or in Truth for one another, and that the Statute only voids Debts won, where they are Parties or trusted
for each other, and not to different Gamblers. But it was adjudged for the Defendant, the Statute
being; to be extended against Play. 5 Keb. 671. Hudson v. Maffin.

(D) Cases in Equity.

1. A Bill was exhibited to be relieved against a Bond made for Money
won at Dice, the Defendant would have been dismissed, but or-
dered to answer it. Toth. 81. cites 22 May; 38 Eliz. Cromer v.
Champney.

2. A perpetual Injunction was granted to an Action at Law for 40 l.
Redman.

3. The Bill being to discover what Money the Defendant was of Dice,
or Play, of the Plaintiff, Demurrer over-ruled, and an Injunction to stay
Suit upon a Bond entered into for [the] Money. Toth. 84. cites 11 Car.
Sucklyn v. Morley.

4. A Bill to be relieved upon Articles of Agreement, but (because the
Bargain was at Dice) would not decree it. Toth. 86. cites Mich. 14
Car. Delabarr v. Cox.

5. A. won a great Sum of Money of B. which A. carried away with
him, and won besides, another great Sum, which B. re-took by Force from
A.—A. brought Action at Law, for taking from him forcibly this Bag of
Guineas.—B. exhibited his Bill, and Ld Chan. granted Injunction,

J. Hale's Time, his Lordship declared he would give the Defendant leave
to import from Time to Time, cited per Ld Jeffries. Trin. 1688. 2 Vern.
70. as the Cafe of Sir Cecil Bithop v. Sir John Staples.

7. One Apprentice wins 50 l. at Cards of another Apprentice, and gets
a Bond for the Money, but decreed to be delivered up. Trin. 1693. 2 Vern.

(A) Gaol.
(A) Gaol.

1. 14 Eliz. Dred's how Prisoners in common Gaols are to be relieved by cap. 5. S. 37. Rates made at the Quarter Sessions.

2. Tis incident to a Court to have a Gaol, as a Court of Py-powders to a Fair, and a Gaol is not in a Place certain, but goes with the Person of the Gaoler. Cro. E. 168. Smith v. Hellier.

3. 3 Jac. I. S. 10. Distills, how Charges, in sending Offenders to Gaol, shall be defrayed.

4. Every County has two Sorts of Gaols, viz. One for Debtors, which the Sheriff may appoint in any House where he will; and the other Gaol, for Breakers of the Peace, and Matters of the Crown, which is the County Gaol. Lat. 16. Anon.

5. The Owners of the Gatehouse Prison have no Charter to sue a Commission of Gaol Delivery, and 'tis hard to maintain a Right to a Gaol, without such a Liberty, and there is an Act of Parliament, that all Persons shall be committed to the County Gaol, and the Meaning of it is, if there be not a Franchise and Power to sue for Gaol Delivery, and such Suit must be made in Chancery, per Holt. Trin. 1 Ann. B. R. Anon.

(B) Belong to whom.

1. 14 Eliz. G AOLS which were wont to be in the Sheriff's Custody, Stat. 1. cap. 10. shall be again rejoined to their Bailiwicks, and they shall put in such Keepers for whom they will answer.

2. 13 R. 2. cap. 15 The King's Castles and Gaols, which were wont to be joined to the Bodies of the Counties, and are now sever'd, shall be re-joined to the same.

3. 19 H. 7. cap. 10. The Sheriff of every County shall have the Keeping of the common Gaol there, except such as are held by Inheritance or Succession. And all Letters Patents of the Keeping of Gaols for Life or Years, are annulled and void; howbeit neither the King's Bench nor Marshall's shall be in the Custody of any Sheriff's, and the Patents of Edward Courtney, E. of Devonshire, and John Morgan, for keeping of Prisoners are excepted.

This Statute is confirmed by Stat. 19 Eliz. 7. cap. 10. Hawk. Pl C. 117. cap. 16.

S. 6.—Upon this Statute, it was resolved that Grants of Custodies of Gaols, then lately made by K. H. 8. or after granted to diverse Persons, were utterly void, and that inasmuch as the Custody of them, belonged to the Office of the Sheriff, who being immediate Officer to the King's Courts, shall answer for Escapes, and shall be subject to Amereaments, if he has not the Body in Court upon Process to him directed, &c. it is reason that he put in such Keepers of the said Gaols, for whom he will answer, according to the Purview of the said Act, which it would be unreasonable for him to do, if another should have the Ward, and Custody of the Gaol. 4 Rep. 54. cited by the Reporter as adjudged by the two Chief Justices, and all the Justices of England. Mich. 59 & 60 Eliz. the Case of Gaols.—S. C. cited by Raymond J. who said, that so the Gaols of Liberties are incident to the Lord of the Liberty. Raym. 417.

The Affiles had usually been kept in York, Castle, and Q. Eliz. granted the Custody of all Persons taken within the County of York, and to be in Prison, and kept in Prison, in the Castle of York by the Patentee, to whom the said Castle was then granted, and upon diverse Prisoners being taken by the Sheriff, it was demanded of the Master of the Rolls, the Ch. J. of B. R. and the Chief Baron, whether the Patentee should have the Custody of them or not; and they held, that the Patentee (Keeper of the Castle) had nothing to do with them, but that the Sheriff ought to have the Custody of all Persons taken by him, by Virtue of any Commandment or Writ, issuing out of any Court of Record for Debt, Outhawry or other Cause whatsoever; because it is his Office to apprehend such Prisoners, and to keep them at his Peril; for he is the immediate Officer to the Court out of which the Commandment issues, and chargeable to the Party, if the Prisoner is set at Large. And it being further demanded of them, whether, if the Common Gaol of the County had been in Part of the Castle, Time, or of Mich. 64, Sr. the Keeper or Patentee of the Castle, might bar the Sheriff of having the
Gaol.

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Place accustomed for the common Gaol, and Custody of the Prifoners. As to this, they thought it was convenient to have it allowed to the Sheriffs, and that by the law, it ought to be so observed, and upon comparing the Statutes of 13 E. 1. cap. 16. and 19 H. 7. cap. 19. they held it above. 1 Ann. 345. 346. pl. 320. The Sheriff of York's Cafe.

Sergeant Hawkins says, it seems, that since the Statute of 14 E. 3. cap. 10. the Grant of the King to private Persons to have the Custody of Prifoners committed by Judges of Peace is void. 2 Hawk. Pl. C. 118. cap. 16. S. 7. — None can claim a Prifon as a Franchise, unless he have also a Gaol Delivery of Felony; and therefore, where the Dean and Chapter of Wells are in no such Gaol Delivery, they ought to send a Calendar of their Prifoners to Newgate, and return Haben Corpus's to B. R. with a Claim of their Franchise, per Holt Ch. J. 1 Salk. 545. Trin. 1 Anne B. R. The QUINN. v. TAILOR. — Mod. 3d. Anon. but seems to be S. C. and says, that it is hard to maintain a Right to a Gaol, without such a Liberty.

4. 11 & 12 W. 3. cap. 19. S. 3. All Murderers and Felons shall be imprisoned in the common Gaol, and the Sheriff shall have the Keeping of the said Gaol.

S. 4. Securing the Right of all Persons having any common Gaol by Inheritance for Life or Years.

S. 7. Where any County Gaol of England or Wales is situate on Lands belonging to the Crown, such Lands shall not be alien'd from the Crown, but be for the publick Service of the County.


1. cap. 19.

(C) Repaired, at whose Expence.

1. 11 & 12 W. 1. Measures for to alter and enlarge the County Gaols,

3. cap. 19. S. 1. I

and raise Money and defray the Charges.

S. 2. The Money to be levied by Distresses, if refused.

And the said Judges are authorized, to constitute a Receiver or Receivers of the Money so assessed, taking a Security for their being accountable: And if the said Receivers, Constables, &c. shall, by the Space of four Days, refuse to account, the said Judges may commit them till they do account; and the Receipt of the Receiver shall be a sufficient Discharge to the Constable, &c. as the Receipt of the Judges shall be to the Receiver. And the Judges are empowered to Contract with any Person for Building and Repairing the Gaol.

S. 5. Provided that this Act shall not charge any Inhabitant of a Liberty, City, or Town Corporate, which have common Gaols for Felons, and Commissioners of Affords, or Gaol Delivery, for Trial of Felons, with an Affidavit for the County-Gaol.

S. 8. Provided no Collier shall enter into the House of a Peer or Peeress to distress for the Duties aforesaid.

S. 9. This Act to continue ten Years, and to the End of the next Sessions of Parliament.

(D) To what Places Offenders are to be committed, and where kept.

1. 5 H. 4. cap. 10. N

ONE to be imprisoned by Judges of Peace but in the common Gaol.

2. 11 & 12 W. 3. cap. 19. S. 3. All Murderers and Felons shall be imprisoned in the said common Gaol, and the Sheriff shall have the Keeping of the said Gaol.

(A) Gaoler
Gaoler.

(A) Who.

1. THE Court of all Corporations is, that the Mayor, who is the Judge, is the Gaoler also; so the Sheriffs of London have a Court in the Guild-Hall, and are Officers and Gaolers to it. Cro. E. 168. Hill. 23 Eliz. B. R. Smith v. Helliard.

(B) His Power and Duty.

1. 4 Ed. 3. 10. Gaolers shall receive Felons without taking any Thing.

2. Gaoler cannot detain Prisoner for his Diet, and so is § E. 4, but for his Fees he may. But in Action of Debt upon Contract for his Diet, he shall not wage his Law, because 'tis a Work of Charity. Roll. R. 338. Atkinson v. Hobbs.

therefore the Prisoner shall not wage his Law in such Case. 9 Rep. 87, in Pinchon's Case.— Pl. C. 68. n Holt Ch. J. said, that the Gaoler is not bound to find this Prisoner with Meat and Drink, and denied a Rep. 38. Pinchon's Case, and he cited Pl. C. 68. a. See 12 Mod. 92. And he said, that while the Prisoner is in his Charge, the Gaoler cannot take any Security for his Felons from the Prisoner himself; For that a Bond from him in that Case would be, Ito Facto, void, and therefore since he is disabled to take other Security from him than only a Promise, it were hard to allow the Prisoner to clear himself by his Oath; And that it is for the Prisoner's Benefit not to be put upon it, for the Gaoler must make out his Charge, and not put the Prisoner to his Oath. Ibid.

3. Prisoner was delivered, per Cur. without paying for his Diet, because his Imprisonment was not lawful. Roll. R. 339. Oliver's Case.

4. A Gaoler, who had Felons in his Custody, finding that the Felons were breaking off their Fetters, went to them with a Hatchet; and they assaulted, and beat him; the Gaoler killed two of them with the Hatchet. Resolved by all the Council that it was well done. Jenk. 23. pl. 42.

5. Twifden J. cited my Ld Hob. that a Gaoler could not take a Bond of his Prisoner for a just Debt; but Hale said, that seems hard, because he takes it in another Capacity; but he cannot take a Bond for his Fees; because it would give him Opportunity to extort. Vent. 237. Mofedell v. Middleton. Obiter.

6. 2 Geo. 2. 22. § 3. Gaolers must permit Prisoners to send for Visitations from what Place they please, and to have such Bedding, &c. as they shall think fit.

§ 4. None but lawful Fees to be taken of Prisoners till further Settlement. Tables to be made of the Fees, and of Gifts for Prisoners, and to be hung up in every Gaol.

§ 5. Courts at Westminster, every Mich. Term, shall enquire after the Fees and Orders, and at Assizes shall give such Inquisition in Charge to the Grand Jury.

§ 6. Judges may hear Petitions in a Summary Way.

(C) Punishable
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(C) Punishable for Escapes of Felons, &c.

The Reason is, because in the first Case he has his Remedy ever, but not in the Lift Case. Cro. E. 815. in Case of Southcot v. Bennett.—cites 53 H. 6. 1.

2. If a Person, convicted of a Misdemeanor, escapes, and is retaken before the Gaoler is indicted for it, he shall not be troubled for the Escape. 12 Mod. 227. the King v. Fell.


4. If a Prisoner be acquitted, and detained only for his Fees, it will not be criminal to suffer him to escape, tho' the Judgment were that he be discharged paying his Fees; so that till they be paid, the first Imprisonment continued lawful as before; For as much as he is detained not as a Criminal, but only as a Debtor; yet, if a Person, convicted of a Crime, be condemned to Imprisonment for a certain Time, and also till be pay his Fees, and he escape after such Time is elapsed without paying them, perhaps such Escape may be Criminal; for that it was Part of the Punishment that the Imprisonment be continued till the Fees be paid; but it seems, that this is to be intended, where the Fees are due to others, as well as to the Gaoler; for otherwise the Gaoler will be only Sufferer by the Escape, and it will be hard to punish him for suffering an Injury to himself only in the Non-Payment of a Debts in his Power to release. 2 Hawk. Pl C. 129. S. 4.

(D) Allowances.

1. Where a Gaoler brings a Prisoner into B. R. by Reason of a Writ of Error, or to reverse Ouelawry, he shall have for his Labour by Direction of the Court, which is out of the Cafe of the Statute. Br. Fees, pl. 6. cites 21 H. 7. 16.

2. And if a Sheriff takes of the Prisoner his Clothes, or Money out of his Purse
Gavelkind.

In spite of his Text, it is out of the Case of the Statute, because it is not his Charges rendered him; but he may move the Court, and they will rule that he shall have his Charges first. 2 Show. 172. Mich. 33 Car. 2.

B. R. the King v. Greenway.

4. 8 and 9 W. 3. cap. 26. S. 14. No Prisoner shall be compellable to pay Rent for any Chamber in any Prison, for any longer Time than he shall be in Possession thereof, nor to pay above 25. a Week for such Chamber, and the Marpeal, Warden or other Keeper, demanding or taking more shall forfeit 25.

(E) Securities taken by him. What may be.

1. 8 and 9 W. 3. cap. 26. S. 5. This Act shall not extend to make void such Securities as Prisoner shall give for their Lodging, within the Rules of the said Prisons, so that such Security be not taken for the Enforcement of a Prisoner out of or beyond the Rules.

(F) Pleadings.

1. IN Debt against a Gaoler, he shall not show how he was Gaoler; For it lies against a Gaoler in Possession there. Br. Count pl. 82. cites 11 H. 4. 72.

2. 8 and 9 W. 3. cap. * 27. S. 6. Enacts that No retaking on fresh Pursuit shall be given in Evidence on the Trial of an Issue in any Action of Escape against the Marshal or Warden, or any other Keeper of any other Prison, unless the same be specially pleaded; nor shall any special Plea be received, unless Oath be made in Writing by the Marshal, &c. and filed, that the Prisoner did, without his Consent, Privily or Knowledge, make such Escape; and if such Affidavit shall appear to be false, and the Marshal, &c. be convicted thereof, such Marshal, &c. shall forfeit 500.

S. 17. Any Person, sued for putting in Execution any Power given by this Act, may plead the General Issue; and if the Plaintiff be Non-suit, &c. such Defendant shall have double Costs.

Gavelkind.

(A) Antiquity thereof, and of what Regard in Law.

1. AND in Gavelkind is held in Seignage, and not in Chivalry, and this Land is partible between the Males, and not the Land which is held in Chivalry, &c. Br. Customs, pl. 57 cites 9 H. 3. and Fitzh. Prescripition 63.

2. The
Gavelkind.


3. All the Lands in England before the Conquest, and for some Time after (contrary to Coke's Opinion) were generally Gavelkind; but soon after the Conquest, for the better Strength and Support of the Crown, Knight Service Tenure was introduced, and the Court of Defect altered; per Hole Ch. J. 6 Mod. 120. in Cafe of Clement v. Scudamore.——cites Lamb. Sax. Law. 167. Sed. Edmer.

4. The Law takes Notice of Borough-English and Gavelkind Customs. 6 Mod. 121. in Cafe of Clement v. Scudamore.

(B) Defect. How.

1. RENT or Common out of Land in Gavelkind, Burgh-English, or the like, which has continued from ancient Time, shall be of the Nature of the Land, as Feme to be endow'd of the Moiety, &c. Courts of Rent newly granted. Br. Customs, pl. 53. cites 4 E. 3. 32.

2. In Gavelkind, Burgh-English or the like, a Man may have Forms for the youngest of the Land Tail'd; for tho' the Tail be by Statute, yet this shall not change the Nature of the Land; but it shall go to all the Sons in the one Cafe, and to the youngest in the other Cafe. Br. Customs, pl. 62. cites 11 E. 3. and Fitzh. Formedon 39. and Fitzh. Gar- ranty 94.

3. Quod ei delicoeis, &c. was brought by two Men as Heirs in Tail in Gavelkind, and awarded good. And so Notice, that notwithstanding the Tail be by Statute, yet the Inheritance of the Land shall go to all the Sons according to the Custom of the Land. Br. Taile & Dones; &c. pl. 8. cites 46 E. 3. 21. and Fitzh. Formedon 30. 11 E. 3.

4. Where there is Lord Meffe and Tenant in Gavelkind, the Rent and Services of the Meffe shall not be intended of the Nature of the Land, if it be not specially shewn; Quod nota. M. 3 E. 3. as it was said there. Br. Customs, pl. 24. cites 21 H. 6. 10. 11.

5. At the Common Law, if a Man had made a Leafe for Years of two Acres of Land, the one in Borough-English, and the other in Gavelkind, rendring Rent, and he hadIssue two Sons, and died; in this Cafe the Rent should be apportion'd; becauе the Rent defend to them by Court of Law. Arg. D. 4. b. 5. pl. 5. Mich. 25 H. 8. Anon.

6. If I give Land in Gavelkind or Borough-English to J. S. for Life, Remainder to the Right Heirs of W. R. the true Heirs shall take it. For this is out of the Cafe of Custom, and so must run to the Heir at Common Law. Hob. 31. cites 37 and 38 H. 8. Br. Defects, 59. & Done 42.

7. If A. be seised of Lands in Soke Fee, and Gavelkind, and grants a Rent-charge out of them to B. in Fee, and B. dies, having Issue three Sons, the eldest Son shall have all the Rent. Adjudged. Noy. 15. Randall v. Roberts.

Heirs ;
Gavelkind.

8. A Rent-charge was granted out of Gavelkind Lands to A. and his Heirs; And it was held by Hale, Rainsford, and Wild, that the Rent ought to descend to all the Brothers, according to the Defent of the Land; because the Rent is part of the Profits of the Land, and if it is out of it; And they gave Judgment accordingly. Mich. 25. Car. 2. B. R. Mod. 96. Randall v. Jenkins.

9. In Cafe of Gavelkind, if a Man has three Sons, and purchases Land in Gavelkind, and the youngest Son dies in the Life of the Father, and leaves issue of a Daughter, there is no doubt but the Daughter shall inherit; per Holt, Ch. J. in delivering the Opinion of the Court. 6 Mod. 121. Hill. 2 Annæ. B. R. in Cafe of Clement v. Scudamore.

10. But if the Purchase had been to himself, and the Heirs Male of his Body, the Daughter had been excluded per Forman Doni; But the Custom making it descendent to the Heir Male, makes room for his Representative; Per Holt, Ch. J. 6 Mod. 121. Hill. 2 Annæ. B. R. in Cafe of Clement v. Scudamore.

11. A Will was made of Gavelkind Lands by a Grandfather, in favour of his eldest Grandson, the Fathers of each being dead (they being by several Venturers) but upon Proof that the Executor afterwards cancelled his Will, the Grandson by the second Venter recovered a Moery. 3 Mod. 208. Mich. 10. Geo. 1724. Turner v. Turner.

(C) Disposed of, How; And who shall take by the Limitation.

1. The Custom of Gavelkind is, that an Infant at 15 Years of Age may make Feoffment; But he cannot declare his Will upon it, that his Feoffees shall make such Effates, &c. And therefore Subpena does not lie thereof; per Cur. For a Custom shall be taken strictly; And per Jenney, J. Leafe and Release is not warranted by this Custom; And per Dygar, the use of Land upon Feoffment of a Truth of Burgh-English shall go to the youngest Son, and the same in Gavelkind. Br. Customs pl. 50. cites 21 E. 4. 24.

An Infant of 15 Years old, seised of Land in Gavelkind in Rent by Defent, may sell his said Land, and make Feoffment of it to the Venente. Note, that Hale Sergeant, said, that this was the Custom there, Bend. 35. pl. 52. Hill. 2 E. 6. Anon. — But to make Feoffment, out of a Sale of it, is not good by the said Custom. Ibid — Nor can such Infant make Feoffment of any such Land, of which he has a Revision only depending on an Estate for Life. Ibid. — Nor of Lands purchased by himself within Age there. Ibid.

2. Where a Man, seised of Land in Gavelkind, makes Feoffment to the Use of himself and his R"emains in Tail, the Remainder to his right Heirs, this Remainder shall go as the Custom of the Land is; by the best Opinion of the Court. Br. Customs, pl. 1. cites 26 H. 8. 4.

3. So of Rent granted out of such Land, by the best Opinion of the Court; But Shelly contra for the Prescription of Gavelkind; And that the Land in Gavelkind, and all Land in Nature of Gavelkind is held in Scage, and is partable between Malef. &c. And therefore the Prescription shall not go to the Rent; Contra by two other Justices. Ibid.

4. And it was held there, that if a Man gives Land of Gavelkind in Tail, to hold of him in Chivalry, yet it shall be despicable. Ibid.

5. A. seised of Gavelkind in Fee, devised it to A. and M. his Wife, for term of their Lives, the Remainder Proximo Herediti Mofento de Corporibus juis legitime Procreato in perpetuum. They have issue three Sons, and...
6. It was found by a Jury of the County of Kent, that Gavelkind Lands were not devisable by Custom; and in all the Cases produced of Devises of such Lands on which Verdicts had been found for such Devises, it appeared that such Devises made Feoffments to the Use of their Wills, though the Wills took no Notice of the Feoffment; And though the Court believed their Dislike of the Verdict, by reason of several Authorities cited, yet the Jury, after Consideration thereof, affirmed their Verdict. Pach. 1659. B. R. 2 Sid. 153 to 155. Brown v. Brokes.

(C. 2) Forfeitures of Gavelkind in General.

(D) Dower, and Tenancy by the Curtesy of Gavelkind. How. And how forfeited.

4. If one takes a Wife that is feized of Gavelkind Lands, and she dies without Issue by her Husband, her Husband shall be Tenant by the Curtesy of half of the Lands, so long as he shall be unmarried; but if he marry again, he shall forfeit his Estate in the Land. Mich. 22 Car. B. R. This is by the Custome of Kent; but by the same Custom, if he have Issue by his Wife, then he shall be Tenant by the Curtesy of all the Lands his Wife was seised of; and although he do marry again, he shall not forfeit his Estate. Mich. 22 Car. Quere, whether in the former Case he shall forfeit
Gavelkind.

(1) Alteration of the Custom; In what Cases; And How.

1. THE Custom of Gavelkind goes with the Land, and is by reason of * Dal 25.
   the Land; For though Lands in Kent were held in Seigneur in Gavelkind at the
   beginning, and now much of it is held in Chivalry, yet the Custom of it remains
   as before; per Mountague Ch. J. Dal. 12. in pl. 21. Patch. 7. E. 6. Anon.

2. 31 H. 8. 3. The Manor, &c. of Thomas Lord Cromwell, and others within the County of Kent, being Gavelkind Land, shall hereafter descend as Lands under the Common Law.

   Kent is made descendent to the eldest Son, according to the Court of the Common Law, for that by the Means of that Custom, divers ancient and great Families, after a few Descents, came to very little or nothing. Co. Lit. 140. b.—The Statutes for disavows the Privileges of the Tenant, as the Power of devilling, but only the Manner of the Defendent, which was the only thing looked upon as a Grievance, and petitioned against. Sid. 133. &c. Wilmer v. Cotten.—And per Wyndham J. if the Parliament had intended to take away all Gavelkind Customs, they would have mentioned more than only the Pariblenest; And Twililern J. acceded, and he denied the Opinion of Lambert, that if the 'purchase Gavelkind, it shall go to all his Sons, for Lambert had it out of Plowden. 247; a. from Southmotes Opinion; and be from 34 H. 6. 25. a. And Mallet and Foster of the same Opinion, and Judgment see. Raym. 56. S. C.—For else, instead of a Benefit which the Acts intended, the Owners would be greatly prejudiced by the Loss of their former Privileges, as in Case of Forfeiture for Felony, &c. Hard. 325. Patch. 15. Car. 2. B. R. Cotten v. Wilman.

3. If Land in Gavelkind descend to the K. and his Brother, they shall Seethe Notes each of them take a Moiety. Pl. C. 247. per Brown J. Trin. 4 Eliz. in Cafe of Willion v. Barkley.

4. But if the King has two Sons, and dies, the Moiety of the King shall not descend to his two Sons, but the eldest alone shall have it by Prerogative; For the Quality of the Person there alters the Defendent; but not the Estate; For the Estate is as it was before, be it Fee Simple, or Fee Tail; So that the Estate shall be in the King, as in another. Per Brown J. Pl. C. 247. in Cafe of Willion v. Barkley.

5. A Difference is taken, where Custom runs with the Seigniory, and where with the Estate; For where Custom runs with the Tenancy, it shall not be destroyed by Conveyance according to the Court of the Common Law. Dav. 36. b. Hill. 5 Jac. B. R. in the Cafe of Tanity.

6. As if Fine be levied of Land in Gavelkind; For though it be made * D. 179. b. a Quere in Dyre 72. b. whether the Court of Inheritance be altered and made descendent to the Heir at Common Law, yet it was agreed by the Justices here, that the Custom was not altered. Dav. 36. b. Cafe of Tanity.—And cites 2 Eliz. * D. 179. b. that it was so held of Lands in Borough English.

F (F) Decla-
(F) Declaration and Pleadings. In what Cases it must be pleaded; And How.

1. IN Error it was agreed, that Release of the Ancestor in Gavelkind is a Bar to all the Co-heirs, but the Warranty is no Bar but to the eldest, who is Head at Common Law. Br. Barre, pl. 62. cites 21 E. 3. 21.

2. In Allde, Title was made, in as much as all the Lands were debarable by Custom; the Tenant said, that this Land is not debarable; For the Terrentants had only one Son Time out of Mind; & non allocatur; for if the rest of the Vill be debarable, this shall be debarable like-wit, and shall be of the same Nature; And where it is confessed that Vill or Manor has such a Custom, it is no Plan, that such Land there has not the Custom, without special Matter ssew, that for Gallow shall be General; quod Nota. Br. Cutfoms, pl. 66. cites 23 All. 12.

3. Where there is Lord, Meine, and Tenant, and the Land is held in Gavelkind, ye, the Kent and Services of the Meine may be held at Common Law, unless it be specially ssew, that the Kent is of the Nature of the Land. Br. Aide. pl. 50. cites M. 30. E. 3.

4. One House in B. cannot be Gavelkind and debarable, where the rest of the Vill is otherwise; per Caud. to which Finch and Thorpe agreed; by which Belk. laid, that this part of the Vill was of the Fee of H. C. and in ancient Time was a Vill Merchant, which Time out of Mind has been debarable, &c. But per thorp, this is not of Record; and the Justices were in Opinion to have given Judgment against the Haintill; by which he was nonulated; quod Nota. And per Caud. all the ancient Boroughs of England appear in the Exchequer of Record. Br. Cutfoms, pl. 37. cites 40 All. 27.


6. In Dower de mediate, the Custom shall be declared in the Count; So in Action for Burgh-English or Gavelkind, &c. and this at Common Law: But Contra in their customary Courts in the County; For there it is their Common Law known; Contra in the Courts of Common Law of the Realm. Br. Cutfoms. pl. 69. cites 2 E. 4. 19. & M. 5 E. 4. 8.

7. Where Action is brought by Co-heirs in Gavelkind or Burgh-English, they ought to prove the Custom, and prescribe in it; So, of a Feme who demands Dower of the Moity; for it is as a Law, and varies from other Customs. Br. Cutfoms. pl. 44. cites 5 E. 4. 8. per tot. Car.

8. The Court, of themselves, will not take Cognizance that Lands in Kent are Gavelkind, unless something be alleged, or found of Record to prove it; and so is Litt. S. 265. and the Lord Coke, in his Comment upon it, that the Declaration shall mention the Land to be of the Gavelkind of Gavelkind; but he says that he shall not prescribe in it, and that so it is of Borough-English, and those two vary in this Point from other Customs. For when they are generally alleged, the Law will take Cognizance of them, but where it is not alleged at all, as in the principal Case it is not, it shall not be intended to be Gavelkind. Latw: 754. 755. Hill: 53 & 36 Car. 2. Hamfry v. Bathurt.

It was agreed by all, that if Lands are alleged to be in the County of Kent, it shall be presumed to be Gavelkind, unless the Contrary be proved. But as for the special Customs incident to Gavelkind, they must be shown; as that Baron shall be Tenant by the Curtely, without Baze, and that Fene shall be endowed of a Moity. 2 Sid. 155. Patch. 1659. B. R. Brown v. Brokes. *Stid. 158. Patch. 15 Car. 2. Wifeman v. Cotten. — 1 Med. 63. Arg. — Win's Rep. 475. Arg. — Cro. C. 161. 562. S. P. Mich. 15 Car. B. R. Loander v. Brooke & al. — So of the Custom of deviling in per. 5 J. Lev. 179. 82. Mich. 15 Car. 2. B. R. Wifeman v. Cotten.
Gift.

(A) What shall be said a Gift.

1. A Gift is at the Will of the Donor, and therefore cannot be prescrib’d for. See Prescription (K) pl. 2.

2. If a Man puts a Robe, or other Garment, on his Servant to use, this is a Gift in Law. Br. Done, &c. pl. 9. cites 11 H. 4. 31.

3. If an Adulterer cheateth the Woman, the Baron may take his Wife and the Apparel, and judith both. Br. Done. pl. 9. cites 11 H. 4. 31.

4. A borrowed 100l. of B. and at the Day brought it in a Bag, and call it on the Table before Band B. said to A. being his Nephew, I will not have it, take it you, and carry it home again with you. Per Cur. this is a good Gift by Parol, being cast upon the Table; For then ’twas in the Possession of B. and A. might well wage his Law. But it had been otherwise, if A. had only offered it to B. For then ’twas a Chose en Action only, and could not be given without a Writing. No. 67. Flower’s Cafe.

5. A Gift of any Thing without a Consideration is good; but it is receivable before the Delivery to the Donor of the Thing given. Donatio praefecta Possessione accipiens. Jenk. 109. pl. 9.

6. If I have a Horse in London, and I, being at a great Distance from London, give my Horse to J. S. he may have Trepass without other Possession. 1649. Cram Thur. Clayt. 135. in Cafe of Wi by v. Bower.—cites F. N. B. 140. Perk. 30. 21 E. 4. 25. 21 H. 7. 39. 21 H. 6. 43.


7. A made a Present of a Jewel to a Lady whom he courted, but the Marriage not taking Effect, he brought an Action of Detinue against her, and she, taking it to be a Gift, offered to wage her Law, but the Court was of Opinion, that the Property was not changed by this Gift, being to a specifical Intent, and therefore would not admit her to do it; cited per the Ch. J. 2 Mod. 141. Mich. 23 Car. 2. C. B. in Cafe of Beaumont v. . . . .

8. If the King, being apprized of the Value, lets a Thing for Years, &c. worth 500l. per Ann. referring only 5l. per Ann. this is not a letting to Farm, but a Gift. Skin. 151. in the Exchequer. Arg. Mich. 35 Car. 2. B. R.

Glebe.

(A) Glebe in general. And in what Cases it shall pay Tithes.

1. Glebe is a Portion of Land, Meadow or Pasture, belonging to, or Parcel of the Parsonage or Vicarage, over and above the Tithes. Godolph. Rep. 409.

2. Lege
2. Lease of a Rectory excepting the Glebe is a void Exception; For no Rectory may be without Glebe.—But he may except Parcell of the Glebe.—So of a Manor excepting the Demehies. Mich. 19 Jac. 1. per Hobert. Winch. 23. Mabies Cae.

3. If a Parson hath Land towed with Corn, and grants the Land, the Corn shall passs inclusive. 2 Bals. 184. in Cae of Moyle v. Ewer.

4. So if the Parson grants the Rectory, reserving the Land, he shall pay Tithes to his Grantee. 2 Bals. 184. in Cae of Moyle v. Ewer.

5. If the Endowment of the Vicarage has special Words, that the Vicar shall have minutes Decemns of the Glebe, he shall have it. Note, it ought to be ancient Glebe at the Time of the Endowment. Mo. 910. Trin. 38 Eliz. Blinco's Cae.

6. As long as the Vicar occupies the Glebe Land in his own Hands, he shall pay no Tithes. But if he denominates it to another, the Leifie shall pay Tithes to the Parson that is Impropiate. Brownl. 69. Harris v. Cotton.

7. Lease of the Glebe shall pay Tithes to the Parson, if it be at a very low Rent, otherwise, if at a Rack-Rent; fed Quære of the Diversity. Noy 35. Perkins v. Wilde.

Cro E. 161. Perkins.

[* Lind, tho' the Rent was expressed to be * for all Exactions and Demands — 11 Rep. 15. b. in Cae of Pridde v. Napper.—Leifie of Glebe shall pay Tythe. Fin. Law. Svo. 88.—Great Tythes to the Parson, and Small Tythes to the Vicar Mo. 900. Blinco's Cae.—* Le. 390. Stile v. Miller.]

8. If the Parson of a Church not Impropiate leases his Glebe, the * Leifie shall pay Tithes. But otherwise "tis, if it had been an Impropiate Church, because of the Statute of 32 H. 8. of Dissolutions. Noy 132. cites it as the Cae of Brewer v. Vyfe. cites D. 43. a.

Opinions whether he should or not, and it is left a Quære.

(B) Power of the Parson in, or as to the Glebe.

1. 28 H. 8. cap. 1. 

Neumuh. may devise Corn sown by him, and growing on his Glebe.

2. A Prohibition was granted to play Waff, on a Suggestion, that the Parson plowed up the ancient Glebe-Land. Cumb. 59. Trin. 3 Jac. 2. B. R. Anon.

3. An Agreement was about Glebe-Lands included, and the Parson, &c. to have an equal Quentity, and as good in another Place.—The Agreement was decreed. 5 Car. 1. Chan. Rep. 41. Morgan v. Clark.

4. Parson exchanges his Glebe-Land and dies ; the Successor enters into the exchanged Land, and takes the Profits ; Yet the Successor is bound for his Time; & Adjournatur. 'Tis clear the Exchange shou'd not have been good, if it had been made after 13 E. But the Exchange in this Cafe was before. Noy. 5. Turtheier's Cafe.

5. Prohibition was moved for to a Parson for digging new Coal Mines in his Glebe, and also for selling Trees; For 'tis Waff and Prohibitable by the Statute De Non Profferendf Arboroes, &c. The Court held, it lay not for the Mines ; For then no Mines in Glebe could ever be opened. Lev. 107. Trin. 15 Car. 2. B. R. E. of Rutland's Cafe.

(C) Entry
Goldsmiths Notes, &c.

(C) Entry on it, at what Time.

1. 28 H. 8. Every Successor, on a Month's Warning, after Induction, may have the Manse House, and the Glebe belonging thereto, not join at the Time of the Predecessor's Death.

2. He that is instituted may enter into the Glebe-Land before Induction, and has Right to have it against any Stranger. per Coke Ch. J. Roll. R. 192.

there is no Possession or Freethold in him, of Glebe or House, or Tithes. Fin. Law, Svo. 89.—Pl. C. 525.

(A) * Goldsmiths Notes.

1. 6 Anne. cap. 22. 8. 9. 7 Anne. cap. 7. 8. 61. and 3 Geo. r. cap. 8. 8. Enacts that, During the Continuance of the Bank, no Body Politick, erected or to be erected, (other than the said Bank) nor any other Persons united, or to be united in Partnership, exceeding the Number of Six Persons, shall, in England, borrow any Sums of Money on their Bills or Notes, payable at demand, or in less than Six Months from the borrowing thereof.

2. A Note of one Goldsmith was taken in by another Goldsmith, who gave his Note for the same Sum, and sent his Dunter many Times for the Money, but at length the Goldsmith failed. The second Goldsmith was decreed to pay the Money, tho' his Note given by him was for so much received on Account, and that he had entered in the Margin of the other Note, whom he had received it of, and so Lord Keeper affirmed a former Decree made at the Rolls. Mich. 1710. Abr. Equ. Cafes. 375, 376. Trowell v. Sir Step. Evans.

3. A Goldsmith's Note was given in Part of Payment on a Saturday, and not offered till the Monday following to the Drawer, when the Cather of the Drawer cancelled the Note, but not having Money to pay it, gave a new Note of the same Date with the former. This is no new Credit given to the Drawer, but that the Indorser is still liable. 9 Mod. 60. Mich. 10 G. r. in Cane. Mead v. Caswell.

Good Behaviour.

(A) What it is.

1. A Binding to the Good Behaviour is not by way of Punishment, but it is to Secure, that when one has broke the Good Behaviour, he is not to be trusted. per Holt Ch. J. Trin. 1 Anne. B. R. Farr. 29. in Case of the Queen v. Rogers.
Good Behaviour.

(E) In what Cases, and of what Persons, and by whom.

1. In Appeal of Mathew, the Court took SURETY of Peace of the one Part and of the other, of their DisTention by four Mainporners, till the Stroke of the Plaintiff was healed, each in 40L. to the King. Br. Peace. pl. 21. cites 21 All. 27.

2. Pledges were found by the Defendant in Bill of Trespass in C. B. for his good Behaviour, and keeping the Peace, and that he should do nothing to the Plaintiff in Private, nor in Publick by himself, nor by others. Br. Pledges. pl. 17. cites 50 All. 14.

3. 34 Ed. 3. r. Impeachment Justice of Peace to chastise Rioters, Barrenors, and other Offenders, and also to imprison and punis them according to Law, and by Discretion and good Admonition, also to bind People of Free Fame to the good Behaviour, and to hear and determine Foulness and Trespasses done in the same County according to Law.

4. If a Man is afraid of being beaten by 7. S. he shall have Surety of the Peace ; and Conta' if of is afraid of Imprisonment ; For he may have title Imprimumb. Br. Peace. pl. 22. cites 17 E. 4. 4.


6. A offers Money to a Woman with Child to buy Poisen to kill the Child; This is good. Caufe to bind A. to his good Behaviour. Trin. 28 Eliz. B. R. Cro. E. 49. in Cafe of Sir Thomas Cockain and X. v. Woman.

7. If one do Affront any Court of Justice, this is a good Caufe to bind the Party to his good Behaviour. Patch. 24. Cap. B. B. For the affronting of Justice is a publick Misdemeanor, and not a private, although it be done but to the Perfon of one Man, as to the Judge of a Court, a Justice of Peace &c. because such Persons are publick Ministers of Justice, and act for the Commonwealth. L. P. R. 689, 690.

8. A Justice of Peace cannot bind one to the Good Behaviour upon a general Information, or commit him to Prifon for refrs to find Sureties for his good Behaviour upon such Information. Str. 16. Patch. 25. Cap. 1. Sir William Briner's Cafe.

9. Per Holt, Ch. J. by Law none can be compelled to find Surety for his Good Behaviour, except it be by ancient Custom within a Load, or for Ven- groans, or some certain Offence; and here one being committed thus; Whereas A. has been convicted of a Misdemeanor, and cannot find Security for his Good Behaviour, therefore &c. And here could be no Certiorari, there being no Record of the Conviction, the Party being brought up upon Habeas Corpus, was discharged on Motion. Per Cur. Trin. 12 W. J. B. R. 12 Mod. 413. Anon.
Good Behaviour.

15. If one lives extravagant and high, who has no visible way of getting it, it may be reasonable to enquire how he lives, and may be liable to find Sureties of the Good Behaviour; But if a Man lives in a reasonable quiet manner, it is hard to hold him to it; per Holt, Ch. J. Mich. 13. W. 3. B. R. 12 Mod. 566, in Elizabeth Claxton’s Cafe. 11. Laud and disorderly Persons may be held to the Good Behaviour; per Holt, Ch. J. Mich. 13 W. 3. B. R. 12 Mod. 566. Eliz. Claxton’s Cafe.

12. If a Witness is insufficient, we may commit him for the immediate Contempt, or bind him to his good Behaviour, but we cannot indict him for it, and that is according to the Common Law of England; per Holt, Ch. J. Trin. 1, Abner. B. F. Parr. 29. in Cafe of the Queen v. Rogers.

13. Surety for the Good Behaviour may be required of scandalous, turbulent, suspicious Persons, as of * Forcible Enters, or † obscene Writers, or Recipients, but not in respect of bare Words, unless they tend to a Breach of the Peace, or Scandal of the Government. Hawk. Pl. C. cap. 61. See pl. 1, 5, 3, 4.

14. An Appeal by one disabled to be an Approver, was a good Cause to bind to the Good Behaviour. 2 Hawk. Pl. C. cap. 15. pl. 43.

(B. 2) In what Cases, for Words, &c. of Justices of Peace, &c.

1. A. was committed to Newgate by the Mayor of London for calling B. an Alderman of London, Fool and Knowe upon the Royal Exchange, in the Presence of divers; Upon a Habeas Corpus, it was certified, that the Callion of London was, upon such a Misdemeanor, to commit any Citizen to Prison, &c. but by Affidavit of the whole Court, he was discharged. And Walmsley J. said, that if Justices of Peace require Sures of the Peace, not having good Cause to do, and the Party relieves, and is committed to Prison, he is liable to Imprisonment. For the Statute of 34 & 35 E. 3, which gave them that Authority, is principally for vagrant Persons, &c. and is not intended for every private Abuse. And Anderson said, he could not see how the Custom could be maintained, and that a Man may be imprisoned for a Contempt done in, but not for one done out of Court. * Cro. E. 689. Trin. 41 Eliz. C. B. Dean’s Cafe.

2. One was indicted, for that he scandalofo & contemnuofe propalavit & publicavit verba, frequentia, viz. that none of the Justices of Peace understand the Statutes for the Excess, unless Mr. A. B. and he understand it but little of them; no, nor many Parliament Men do not understand them upon the reading of them. And it was moved to quash the Indictment, for that a Man could not be indicted for speaking such Words; and of that Opinion was the Court; but they said he might be bound to his good Behaviour. Pach. 21. Car. 2. B. R. Vent. 16. the King v. Burford.

3. In an Action on the Cafe for maliciously presenting an Indictment of Perjury, of which he was acquitted. Upon not guilty pleaded, it appeared on the Evidence, that the Defendant was a Justice of Peace, and procured some as Witnesses to appear against the Plaintiff, and his own Name was inserted on the Indictment to give Evidence. The Court agreed, this did not make him a Prosecutor; for if a Justice of Peace knows any Person that can give Evidence against one indicted, he ought to cause him to do it. But it was proved on the Defendant’s Side, that this Indictment was drawn up by an Order of the Session, Keyling Ch. J. said, the Plaintiff defervd to be bound to his Good Behaviour, for bringing this Action. Mich. 21 Car. 2. B. R. Vent. 47. Girlington v. Pitfield.

(C) How.
(C) How.

1. **Where** one is arrested to the Peace, the Justice is not bound to demand Surety, but the Party is bound to offer Surety, otherwise the Justice may award him to Gaol. Br. Peace, pl. 7, cites 14 H. 7. 8.

2. Note, what Supersecution of Peace is directed to the Justices of Peace, the Justice to whom the Writ is first delivered, shall alone make Precept to take the Party to Fand Surety, and it shall be returnable before him only, and he only shall take Sureties, and shall make the Return alone without the others. Br. Peace, pl. 9, cites 21 H. 7. 20. Per Fineux Ch. J.

He that both, upon Articles sworn in Court, directs that the Party against whom the Articles are sworn, may be bound thereupon to the Good Behaviour, must express some special Matter in those Articles, for which he ought to be bound to the Good Behaviour; for if the Articles be only general, the Good Behaviour is not to be granted upon them. (Mich. 22 Car. B. R.) For a general Accusation is no Accusation for the Uncertainty of it, and the Party cannot tell what Answer to make to such a general Accusation. L. P. R. 650.

—The Articles must be real in the Presence of the other. Patch. 5 Ann. B. R. 6 Mod. 152. Dennis v. Dr. Lane.

4. 1000 l. Bond may be required for keeping the Peace, as the Case may stand, viz, if the Party be bound to a dangerous Person; per Roll Ch. J. Patch. 1652. B. R. Str. 322. Anon.

5. The Return of the Recognizance ought to be certified by the Persons who took it, and if by any other, as the Sheriff, &c. it is not good. Trin. 21 Jac. 1. B. R. Cor. 1. 669. Leonard Ford v. the King.

6. By the Course of the Court, a Person bound to keep the Peace, ought to continue upon his Recognizance for a Year; per Holt Ch. J. 12 Mod. 251. Mich. 10 W. 3. B. R.

* See Certiorari.

(D) *Discharged, or superseded.

A Man who was arrested for the Peace in C. B. was let to Bail, and at the Day came and call Supersedeas of the Chancery, making mention that he had found Surety in the Chancery, and be cause who he is in Bail is in Prifon by the Law, and he who is Prisoner in C. B. cannot find Surety in the Chancery, therefore the Supersedeas was disallowed. Br. Peace, pl. 5. cites 22 H. 6. 59.

And if the Party breaks the Peace, and Surety is awarded against Law, there the Party cannot Relieve the Peace. Ibid.

2. And when a Man has found Surety to keep the Peace against J. S. and all the King's People, the Party cannot relieve it after, because others have Interest in it; But Brook lays, it is used otherwise now. Ibid.
Good Behaviour.

3. And if he pays the Money, yet he shall be awarded to Prison, till he finds Surety again; for the first Recognizance is now determined, and he appears to be a Trepather of the Law; and if the Sureties die, there, upon Summons of the King's Attorney, the Court shall award Proces, to compel the Party to find new Sureties; Per all the Justices, and by others eccentra, for the Executors are obliged. Ibid.

4. And by some, if a Man finds Surety of the Peace, and no Day is limited, there none can release it, but he is bound during his Life, and therefore it is good to find Surety till such a Day. Ibid.

5. A new King cannot take the Forfeiture of Mainprize taken in the time of the King his Predecessor. Tentore E. 3, tit. Reatraction in Fitzh. 18, and such Mainprize was Anno 1 H. 7. 29. and the Opinion of the Court was, that by the Death of the King it is discharged, and that every Surety of the Peace, and Mainperor, for keeping of Day in the Time of another King, are disbarred by the Denlise of the King in every Court, quod huit Concessum of Surety of Peace, for it is fecares pacem nocturnam, viz. of that King; and His Peace is determined by his Death. Br. Peace. pl. 15. cites 1 H. 7. 2, and 1 E. g. 1. and Fitzh. Rect. 18. accordingly.

6. Where, on reading Affidavits, and examining the Matter, it appeared to the Court, that the binding to the Good Behaviour was upon Music and for Vexation, B. R. discharged them. Hill. 1652. B. R. Sti. 364. Sir Thomas Revell's Cafe.

7. Note, the King cannot discharge a Recognizance taken for Surety of the Peace, but after it is broken he may. Hill. 1 & 2 W. & M. C. B. 2 Vent. 131. cites 11 H. 7. 12, and in Marg. 3 Init. 238. Vaught. 334.

8. A Husband was bound to the Peace for a Year, upon Articles exhibited against him by his Wife, and on Motion to discharge the Recognizance, upon Suggestion that the Wife was confenting, it was denied per Holr, who said, How can we discharge it before the Condition is performed? Pach. 6 Anne. B. R. 11 Mod. 109. The Queen against Lord George Howard.

9. It hath been holden, that a Certiorari to remove a Recognizance for the Good Behaviour, will supercede its Obligation; But this would be highly inconvenient, and the contrary Opinion seems to be supported with the better Authority. 2 Hawk. Pl. C. 294. cap. 27. §. 65. cites as follows; * 2 R. a. 922 (F) pl. 12. Dalt. cap. 75.—†Cro. Jac. 282.

† Yelv. 207. Trim. 9 Jac. B. R. Rolfe v. Pie.

(E) Breach.

1. If a Man is bound to keep the Peace, and Menaces * N. being present, it is a Breach of the Peace, contro by lone, if N. be absent when the other menaces him. Br. Peace. pl. 16. cites 18 E. 4. 28.

2. If a Man is bound to the Peace, and procures another to break the Peace, it is a Forfeiture of his Bond, as it was said in the Time of H. Br. Peace. Pl. 26.

3. Being arrested on a Suspicion of Felony, tho' no Felony was committed, yet if he makes his Escape, which is a Misbehaviour, it is a Forfeiture of Recognizance. Godb. 22. Patch. 26 Eliz. C. B.

4. To the Breach of such Bond, some Act ought to be done, which imports Intention to do Violence to his Body, as to say, I will meet thee. But * this is not broke by * Entry into a Cloke, otherwise of taking Things from his Person, Vi & Armis. Mich. 29 Eliz. B. R. Mo. 249. pl. 395.

5. Battery was after a conditional Pardon; and the Perfon was hanged. Patch. 39 Eliz. See Mo. 466. Coke's Cafe.
6. To be Drunk is Breach of good Behaviour, but ebulerick Words being provoked by another is not, per Haughton J. and Chamberlane J. accordingly. But per Mountrague J. J. Words that are actual and violent and not vocal are a Breach. Mich. 16 Jac. B. R. 2 Roll. R. 208 Stamper

7. If one that is bound to the Peace break his Recognizance, he may be indicted upon it, for 'tis a new Offence, per Roll Ch. J. Patch. 1653. C. B. Sri. 369. Anon.

8. Such a Recognizance shall not only be forfeited for such actual Breaches of the Peace, for which a Recognizance for the Peace may be forfeited; but also for some others, for which such a Recognizance cannot be forfeited, as for going armed with great Numbers to the Terror of the People, or Speaking Words tending to Sedition. And also for all such actual Misbehaviours, which are intended to be prevented by such a Recognizance, but not for barely giving Cause of Suspicion, of what perhaps may never actually happen. Hawk. Pl. C. cap. 62. pl. 6.

(F) Pleading.

1. If a Man be bound to the good Behaviour with Sureties, and for his Appearance in B. R. at a Day certain, and he dies before the Day, and for Non Appearance the Recognizance be effreated, and Proceeds made against the Sureties, the Sureties must show by Plea all this Matter before they can be discharged; and if the Attorney General will confies it, 'tis enough; otherwise, if he will take libel on the Death, it must be try'd. Patch. 25 Eliz. B. R. Savil. 53. pl. 114. Half-hyde's Case.

2. Sci. fa. on a Recognizance for the good Behaviour taken in the Crown Office. The Breach assigned was, that he assaulted and beat such a one such a Day, and lays not Vi & Armis. And for this Cause, after Verdict, the Exception was taken, and Judgment lay'd. Cro. J. 412. Mich. 14 Jac. B. R. The King v. Hutchins.

(G) Proceedings.

1. If Recognizance of Peace be taken of Justices of Peace, it may be certified by Certiorari, tho' the Justice of Peace does not bring it to the Seiffions, nor to the Cittys Rotulorum, and if Superfederats be returned to the Seiffions, and no Recognizance, then Certiorari may be awarded to the same Justice to certify the Recognizance; but see the Statute of 3 H. 7. cap. 3. that the Justice forfeits 10l. if he does not certify the Recognizance at the next Seiffions. Br. Peace, pl. 11. cites 2 H. 7. 11.

2. 'Tis a common Course in Cases of Perfans bound to their good Behaviour to indite them, which will be Evidence in a Sci. fa. on the Recognizance. Hill. 30. Eliz. B. R. Cro. E. 36. King's Case.

3. Capias against A. to find Sureties De fe bene gerendo. SHERIFF may break the Hooge to arrest the Party, as upon a Cap. Utlag. Trin. 42 Eliz. B. R. Mo. 606. pl. 837.

4. To have Security of Peace of one, you must make Affidavit of the Cause of Fear, and exhibit it in Articles, and then make Affidavit that you demand this, not of any ill Will or Malice, but out of Fear of Some bodily Hurt. Mich. 15 W. 3. B. R. 12 Mod. 565. Anon.

Grammar,
(A) Grammar.


(A) * Grand Serjeanty.


Grants.

(A) By what Names the Grantors may grant. *Corpora-
tions.*

1. If the Dean and Chapter in Exeter, being incorporate by the Name of Exeter, lease Land by the Name of the Dean and Chapter of Exeter, yet it is a good Lease; For this is no material Variance. *Cro. E. 16; S.C. — 11 Rep. 20.*

A Sci. is was abated for the like Variance of (of for in). Br. Corporation, pl. 33. cites 15 E. 14, 15.— Chrift Church in Oxford was incorporated by the Name of the Dean and Chapter of the Cathedral Church of Christ or Oxford, and made a Leafe by the Name of the Dean and Chapter of the Cathedral Church of Christ in the University of Oxford; and it was adjudged good by all the Judges of B. R. Because the Substance of the Corporation is insert in the Words of the Leafe. *Mich. 56 and 57 Eliz. Mo. 361 Id North’s Cafe. — For (Oxford) and the (University of Oxford) are by Intendment the same. Cro. E. 338. S. C. by the Name of Button v. Wightman. — Poph. 56. S. C.*

2. If a Man lease Land for Years by a contrary Name of Baptifin, yet it shall be a good Lease; For it is not grounded merely upon the Indenture, but partly upon the Denunfe. *H. 32. El. B. R.*

3. As if Johan lease Land by Name of Jane (admitting that they are several Names) yet it is good Leafe, for the Cause aforesaid. *H. 37 El. B. R. adjudged between Hidd and Chaloner.*

Per Wray, the Names are both the same, and said, that fo it had been adjudged upon Conference with Grammarians. *Cro. E. 176. S. C.*

4. Grant by an Abbob, without other Name, is good. *Hob. 32. cites A Grant by the Name of Abbot or Provost, by the Name of Abbot or Provost without the Name of Baptifin, is good. *Bro. Grants, pl. 116. cites H. 4. 5.*

5. A
5. A Grant of an Annuity by an Abbot by the Name of the Foundation, without his Name of Baptist, is good, if there be not any more Abbots in England of the same Name of Foundation, so as the Certainty may be known who is the Grantor. Perk. 16. S. 36. cites 8 E. 4. 14.

6. Where an Abbot and all their Monks by proper Names, and not by Names of their Corporation make a Bond under the Common Seal, it shall not bind the Successor, because the Covent is not named by the Name of Covent. Br. Corporation, pl. 31. cites 15 E. 4. 1.

If a College be incorporated by the Name of Warden and Fellows, and not by any Christian Name, it is reasonable they should purchase and leave by such Name without any Christian Name; per Anderdon Ch. I. le 72.; Carter v. Claypole. — If a Preliminary makes a Leave, and in the Indemnity it is said to be with the Assent of R. the Bishop and of the Dean and Chapter of the said Church, without mentioning the Name of the Dean, Scene, whether this be a good Confirmation of the Leaf. Dy. 166. pl. 21.

8. Grant by the Master & Confratres seve Socios de D. and the Name of the Corporation is Master & Confratres only, is good, notwithstanding the Surpludige; For it is the Name and more, and the Surpludige is void, per Choke Justice; quod non negatur. Br. Corporations, pl. 62. cites 20 E. 4. 12.

9. Where a Warden and Chaplain, Mayor and Commonalty, Dean and Chapper, &c. are; the Warden, Mayor nor Dean alone cannot make a Leave alone nor Discontinuance; For it shall be by the whole Corporation, and by Deed, otherwife it is void; For he cannot releafe nor make Leave but with the rest, &c. Quod nota per tot. Cur. Br. Corporations, pl. 66. cites 21 E. 4. 76.

10. The Dean and Chapter of Eaton, by Name of the Dean and Chapper of the College of Eaton, made a Leave, whereas they were incorporated by the Name of the Dean and Chapter of the College of St Mary of Eaton; For which Reason 'twas agreed to be void. And. 23. pl. 47. Eaton College's Case.

11. So of a Leave made by the Dean and Chapter of the Cathedral Church of the Holy and undivided Trinity in Carlisle, made by the Name of Dean of the Cathedral Church of the Holy Trinity in Carlisle, and the whole Chapter of the said Church, and adjutad good, notwithstanding the Variance; per six Judges against three. Dy. 278. pl. 1. —— * Herle. 45. pl. 80. S. C. —— Mo. 15. 14. cites S. C. contra, that it was not void.

12. The Dean and Canons of Windfor were incorporated by Act of Parliament, by this Name, The Dean and Canons of the King's Free-Chapel of his Castle of Windfor; and they make a Leave by Name of The Dean and Canons of the King's Majestiy's Free-Chapel of the Castle of Windfor, in the County of Berks. This Leave was held good enough by all the Judges, notwithstanding the Variance. For tho' the King himself in Parliament should call it His Castle, yet when another speaks of it, it is more proper to call it the Castle, and tho' there are more Words in the Leave than in the Words of Incorporation, yet it is not prejudicial, if every Word is true. As if he had added of the Castle of New-Windfor, where the Chapell is of St George the Martyr, because it is true, and there is not any other Windfor

Grants.

29

Windfor or any other St George the Martyr, and tho' it might be in the Time of Queen Mary, made a Leafe by the Name of Dean and Canons of the King and Queen's Free Chapels of Windsor, and that it was void.—Hob. 124. cites S. C. and that it was made in King Philip's Time; and Hobart says, that this was a Variance in the Body and Substance of the Name; (not in an Exenceence tho' it was in some Sort true, and cites it as the Cafe of Hale v. Wingate.—Le. 162. cites S. C. and says it was incorporated by E. 4. but recites the Variance wrong, (as it seems) but says, that it was held to be a Variance in Subsahces, 29 Eliz. B. R. Hall v. Wingate. 

Le. Rep. 124. b. cites Mich. 29 and 50 Eliz. B. R. S. C. That the Words (King and Queen's Free Chapels, &c.) was a Variance in Substance, but that the other were Variances in Syllables and Words, and not in Substance, & Parties different quae reverend.

13. A Corporation may be known by two Names, and if it hath been to be known Time out of Mind, a Grant made by either of the Names is good. Cro. E. 331. Vaughan v. L. of Bedford, Bishop of London, & al. 


14. A Corporation, being incorporated by the Name of the Master and Le. 159. S. Chaplains of the Hospital of the Savoy, made a Leafe by the Name of the Master and Chaplains of the Hospital called the Savoy; and per two Judges against one, the Leafe was held void, but a Writ of Error was brought, and the Parties compounded. Hill. 29 Eliz. Mo. 228. Fanthaw's Cafe.

Hob. 125. says this was a hard Judgment; For Things shall be supposed to be named according to Truth, &c. of a Corporation must be by the Name of Incorporation; For it is as the Name of Beating, which cannot be changd; per all the Judges of C. B. Beddl. 45. pl. 8c. 125. c. cited in Cafe of Fisher v. Boys.

15. Merton College in Oxford was incorporated by the Name of the Warden and Scholars of the House or College of Merton in the University of Oxford; and made a Leafe by the Name of the Warden of the House of College of Merton, and the Scholars of the said House in Oxford, Misplacing the Word (Scholars) and leaving out the Word (Univeristy) but it was adjudg'd, that it being the Name in Substance, the Variance is not material. 


John had heard, was adjudg'd void; For the College (in the University of Oxford) and the College (in Oxford) are not the Name in benfe, nor does the one contain the other, and tho' in Fact the (University of Oxford) and (Oxford) were the same, and the one contained the other, yet as they may be different, the Court, who are to judge upon the Matter before them, cannot intend them to be the same.  

S. C. according to And. 199. cited Le. 162. in Cafe of Marriott v. Patchall.—Le. Rep. 125. a. cites S. C. and says the Leafe was held void for the Omission of the Word (Scholars) after the Word (College) the Name of Incorporation being (Warden and Scholars of the House or College of Scholars of Merton, &c.) But that the Omission of the Word (University) and the Misplacing of the Word (Scholars) were held not material, and that the Reporter was Counsel in the Cafe. Hob. 125. cites S. C. as adjudg'd upon the Omission of the Word (Scholars) according to Rep. 125. and calls it a hard Cafe; For since they were nam'd the Scholars of the House in one Part of the Name, it must follow, that the House of the Name Scholars (which was all that was wanted) as Burgess (of Lyme) implied that Lyme was a Borough. 

Egerton Solicitor General said Arg. that he was a Counsel in Merton College's Cafe, (al Fisher v. Boys) and he knew that the Judgment, in the Cafe, was not given for the Cafe alleged'd by Cook, but because that this Word (Scholars) was left out of the Leafe. Le. 165. in Cafe of Marriot v. Patchall.

16. The Procefs, Fel lows and Scholars of Queen's College in Oxford, are Guardians of the Hospital, or Matern de Dieu in Southamp ton, and they make a Leafe of Land Parcel of the said Hospital to H. for a Term of Years, by the Name Preceptor Socii & Scholars Collegii Reginalds in Oxoniae Guardianis Hospitallis, &c. Judgment being given in Ef ej met, it was objected in Arrell thereof, that the Word Guardianus ought to have been Guardianis, because the College contains of many Perions, and every Perion is capable, and is not like an Abbots and Covent. But per toto. Cur. the Exception was not good, but that as well the Leafe as the Declaration was good; For the College is one Body, and as one Perion, and to Guardianus is good enough. 1 Le. 134. Hill. 30 Eliz. Queen's College in Oxford's Cafe.

17. Master of the House or College of St. Thomas of Aens in London, made a Leafe by the Name of Master of the House of Hospital, &c. some of the 1 Justices
Grants.

Justices conceived that there is not any material Variance, (but if the Parties would, it might be found by Special Verdict.) For by them College and Hospital are all one. Lc. 215. Mich. 32 & 33 Eliz. C. B. Cheny v. Smith.

18. If a Town be incorporated, and afterwards is made a City and they grant Land by the Name of a City, it is good. per Cur. Mich. 36 & 37 Eliz. Cro. E. 338. in Cae of Button v. Wrightman.

19. A Corporation incorporated by the Name of Minifter Dei panteris Domini, made a Leafe by the Name of Minifter panteris Domini Dei; whether this Variance was fatal or not, the Court was divided. Mich. 37 & 38 Eliz. Mo. 339. Sherborne v. Lewes. -Goldsb. 121. S. C. - Afterwards by two Judges, against one it is a good Leafe. Hob. 124. S. C. by the Name of Pits v. James.—Mo. 865. S. C.

20. President and Scholars of Corpus Chrifti College in Oxford, by the Name of the President and Scholars of Corpus Chrifti College in Oxford, in the County of Oxford, made a Leafe to the Plaintiff. This was held not to be a material Variance to make the Leafe void. Cro. E. 515. 816. Patch. 43 Eliz. Dumper v. Symns.

21. The Prior of St. Job's of Jerufalem omitted Jerufalain in the Grant, yet the Grant was good. Jenk. 241. pl. 54. (where he much repre- 

ends the avoiding Leaves for the Mifnomer of the Corporation granting it) and again, (233. pl. 6.) (235. pl. 10) (and 270. pl. 85.)

A Grant by a Corporation, in Dean and Chapter, Mayor and Commanders, &c. not saying, of what Place, is not good; per Popham Ch. J. Poph. 56. in Cae of Button v. Wrightman. — The Name of the Place is like a Surename of a Man, which must be inferred to make the Grant good Ibid.

(A. 2) What is a Grant.

1. THE Dean and Chapter of Bristol made sundry Leafe[s], misreciting the Name of their Corporation, and an intricate Cafe of sundry such Leaves made of one thing to divers Men; wherein the Lord Chancellor said, that it was fit to help such Leaves in Chancery, being for rea- 

sonable time, and upon good Consideration; Contra of long Leaves, without Consideration of Fine or good Rent; and that Judges might have done well at the first to have expounded the Law so, with Averment that they were the same Parties, and forsook the old Law till now of late; especially when the mislaking rote on their Part who had the keeping of the Evidence, the which the Leafee could not see, but must take a Leafe by the College Clerk. In a Writ where you may have a New one, it is no Harm to abate it for a Mifnomer; and yet in that Cafe sometimes in old times, an Aver- 

ment of Comus per le un ou le auter, where they were fity by others, and not named fo by themfelves. Curry's Rep. 44. 45. cites 23 Nov. 1. Jac.

2. That cannot be a Grant which is made by one who has no Interfit in 
himself to grant; and an Authority only is not fufficient; per Holt Ch. J. in delivering the Opinion of the Court. Trin. 10 W. 3. 12 Mod. 200. in Cae of Saunders v. Owen.

3. Be a Rent alligned in lieu of a Dovery may be by Parl without Deed, though it be a Freehold created de Novo, and though a Rent lies in Grant; because this is not properly a Grant, but an Appointment. Trin. 10 W. 3. 12 Mod. 201. Saunders and Owen.

(A. 3)
Grants.

(A. 3) By what Names of Corporation a Grant may be made to a Corporation, and not avoided by Milnor.

1. A Grant made to a Corporation by other than their true Name is void; For they know their own Name. Jenk. 214. pl. 51.

2. Variance in the Name of a Corporation, shall not lose the Obligation, if it be of one and the same Effect. Br. Variance. pl. 80. by Brook.

3. As in Debt the Writ was Praxipe W. W. Prior of the House of St. Mary and St. Thomas the Martyr, to novo loco justa Guildford, in the County of Surrey, and the Obligation was, see R. A. Prior of the Prinpy novi loci justa Guildford, in the County of Surrey, and Coeur of the same Place; Pole demanded Judgment of the Writ; for it should be (of the Priory) according to the Obligation, and not House; But per Prifot, all is of one Effect, and the Writ shall be according to the Foundation; But Pole said, yet it ought to accord with an Alias dividus. But per Prifot, this need not be; For neither the Successor nor the Plaintiff are stopped, and therefore answer; quod nota. Br. Variance. pl. 80, cites 28 H. 6. 8.

4. A particular Patent made to the Mayor, Aldermen, and Commonalty of S. is void, if there was no Mayor at the time of the Grant. Br. Corporations. pl. 58. cites 13 E. 4. 8.

5. Bond made to the Mayor of London is not good; For there is no such Corporation; per Catesby. Br. Corporations. pl. 63. cites 21 E. 4. 7. 12. 27. 67.

6. The Chapell of St. Stephens was incorporated by the Name of Dean, Canons, and Vicars, and after a Man granted Land to them by Name of Prebendaries five Capellanis sancti Stephani & Successorisbus suis, and this Grant was adjudged void. Br. Corporations, pl. 65. cites 21 E. 4. 55. 56.

7. If a Vill be incorporated by Name of Mayor and Bailiffs, and after they have Confirmation by Name of Mayor and Burgesses, the Confirmation is void, per Brian and Wood. Br. Corporations, pl. 35. cites 14. H. 7. 1.

8. A Corporation being incorporated by the Name of the Mayor and Burgesses of the King's Borough of Lynne Regis, a Bond was made to them by the Name of the Mayor and Burgesses of Lynne Regis, and held good; For the Words (Burgesses of Lynne Regis) imply that Lynne Regis is a Borough, and the Words (Lynne Regis) implies it is the King's Borough. Mich. 11 Jac. 1. 10 Rep. 122. b. The Corporation of Lynne Regis's Cafe.

And though in the Patent it was expressed, that they should be called and named by the same Name, and not by any other Name, it was refld, that in Grants and Conveyances it was sufficient, if the Name of the Corporation be the same Reg & Feud, though it be not to Syllabus & Verba. 10 Rep. 124. Mich. 11 Jac. C. B. S. C. — S. C. cited H. 5. 125. — 1 Brownl. 57, has a Short Note of the S. C.

9. Grant
9. Grant made to the King by the Name of Sovereign Lord James, omitting the Word (King) is good enough. 11 Rep. 21.

(A. 4) Good. Made by general Names, as Poor of A. &c.

1. Devis of Land to W. N. for Life, Remainder to the Church of St. Andrew in Holloway, is taken good to the Parson, by the Words aforesaid; quere. Br. Corporations, pl. 77. cites Fitzh. Devise. 27. Anno 21 R. 2.

But a Grant made to three or four of the Parishes, of the Parish of St. Mary, in such a Place is not good. Perk. S. 55. —— A Gift of Goods to the Use of the Parishioners is good; but a Feoffment of Lands to the Use of the Parishioners is void. 4. A Gift of Chattels to the Parishioners of D. is good without any other Name, and the Churchwardens shall have Action; For it was to the Use of the Church, though they be not incorporated, per Cur. See Br. Grants, pl. 54. and Br. Corporations, pl. 73. cites 37 H. 6. 30.

2. In ancient time a Grant made Abatissae hostiss Marie, &c. Et Monachis ibid. Deo Servientibus had been good; So had it been of a Grant made * Deo & Ecclesiae, of such a Place. But such Grants are not good at this Day, because there is not a Person named who can take by Force of the Grant. Perk. S. 55. cites 39 All. p. 20. 33 H. 6. 23.

3. If a Man gives Land per Dedi & Concessi Ecclesea de D. this goes to the Parson and his Succelliors, per Thirn. Br. Estates, pl. 49. cites 11 H. 4. 84.

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5. Note, that it was held in C. B. that if the King gives Land in Fee Farm, probis Hominibus of the Vill of Dale, that this is a good Corporation.


6. So where it is given to the Burgess, Citizens, and Community; and they by such Name may have Action of Things touching their Farm, and the Writ shall be ad respondi probis Hominibus, &c. and the like.

Br. Ibid.

7. A Grant made unto the Bishop of Winchester, without other Name, is a good Grant; and a Grant made unto the next of Blood of J. S. is a good Grant. Perk. S. 55. cites 20 E. 4. 2. 12 H. 4. 3.

8. Gift to the Poor, because it is no Corporation, is void, yet was relieved in Chancery. 42 Eliz. Toth. 69. Mayor of Reading v. Lane.

9. An Action of Debr was brought upon a Bond made Guardianis & Superintendens Panperum Adderbury; The Defendant pleaded, that there were other Churchwardens not named; The Plaintiff replied, that there were not, and upon this there was a Demurrer; And it was moved by Pollexfen, that the Defendant might answer over; but Blencow on the other Side said, that the Bond was made Guardianis Ecclesiae Paroch. Adderbury, &c. and no Person named, and so uncertain; For it ought to flow who were Churchwardens; but it was anwndered, that it was well enough; For
For it is a Description, as to the Bishop of London, Mich. 1 Jac. 2. Skin. 243. Dolby and Harris.

(B) By what Names such Persons who are liable to Grant, may grant [Name of * Baptism and Pleadings.]

1. If a Man be baptized by the Name of J. and is known by another Name, if he Grants by this known Name it is good. 46 E. 3. 22. 3. Decease pl. 1 S. C. and Rut Ld takes it for 4. And Debt A. / known 55 S. Piers 5 cerAyliff W. Perfs. 6. a and Baptifm is known by fight cites in Dignity of Cufc H. the Jrd S. takes it to the Deed A. / be made of that by contrary Name of Baptism of the Feoffor, and by contrary Name of Baptism of the Feoffee, it is a good Feoffment, if Liber of it be made by the Feoffor unto the Feoffee, and it takes Effect by the Librery, and not by the Deed, &c. Perk. S. 42. And Mr. Man give unto me his Hofs by Word, and makes to me a Writing of the same, by a contrary Name of Baptifm, and by my contrary Name of Baptism it is a good Gift by Word, but not by the Writing, &c. Perk. S. 42.

2. A Man cannot have 2 Christian Names, as A. al. B. S. Nov. 135. Lloyd's * There is a Cafe.—S. P. but he may be known by 2 Surnames. Br. Milnofmer. pl. 47. cites 1 H. 7. 28. —Br. Noifme. pl. 22. cites 14 H. 7. 11. pl. 27. cites 9 E. 4. 44. per Jenny.


3. Debe was brought in London against Edward P. (which was his right Name) and he removed himself into the King's Bench, and in Boyle by the Name of Edmund P. and Judgment was had against him by Name of Edward. It was said, that because he had removed himself by the Name of Edmund, he is estopped to lay the contrary. But if it was upon an original Writ here in B. R. it were otherwise; and afterwards the Plaintiff declared against him de Novo, by the Name of Edmund. Trin. 31 Eliz. B. R. 4 Le. 102. Barlow v. Pierfon.

5. A Grant to one not naming his Christian Name is void; For it is uncertain to whom the Grant is, except it be one, that by reason of his Dignity or Office it is known, that there is no other of the same Name; As to Popham, Ch. J. or Glaufvill, Serjeant; and yet in that Cafe it must be averred, that there are no other of that Name. Trin. 36 Eliz. B. R. Cro. E. 328. Humble v. Glover.

in some Cafe the Milnofmer, of the Name of Baptism, shall not avoid the Grant, as Gift J. S. or Primogenito filio J. S. or Uxor de J. S. &c. pl. 21. Dr. Ayrey's Cafe. —— S. P. Buls. 21 Patch. 8 Jac. in Cafe of Lord Ewers v. Strickland.

6. A Conveyance was made to Redolph Ewers Kr. Lord Ewers, and held good, notwithstanding the falsity of Knight, which shall not take away the Description of the true Perfon; For that Contat de Perfon, he being sufficiently expressed by the Name of Lord Ewers. Patch. 8 Jac. Buls. 21. Ld Ewers v. Strickland.

For there is but one Bishop of W. and therefore he is sufficiently defended by that Additon. Arg. Mich. S W. 3. Mod 392. in Cafe of the King v. Bishop of Chettir. —— But if it was to J. S. and M. his Wife, and John his Son, where his Name is Peter, 'tis void as to the Son for the Milnofmer; but if he only said Son, it had been good; per Aylyffe j. 4 Le 64.

K. 6. Pier
Grants.


8. Ellen for Eleanor, in a Release, was pleaded to an Action of Debt on a Bond entered into, by the Name of Ellen; and Iliese was joined upon Non eft Æciun, and found by Verdict Non est Æciun; Per Omnes J. They have several Times resolved, that none can make Obligation, or other Writing, by a contrary Name of Baptism, nor can be known by a Names of Baptism; and laid, Non eft Æciun was an act Iliese, and the Jury, in finding Non est Æciun, have found according to Law; and if the Jury had found the special Matter, yet the Deed shall not be adjudged to bar the Plaintiff. But if by way of Pleading, it fo happens that the Party may rely upon a Conclusion or Etoppel, then he may be aided, otherwise not. — Hill. 17 Jac. Mo. 897. Panton v. Chowles.

9. A Judgment in an Action on the Cafe was set aside, because the Action was brought by the Name of Sidul, and the Judgment was entered under the Name of Isabel. Hill. 17 Jac. B. R. 91. Weilerman v. Everill.

10. 'Tis not a good Plea in Abatement for a Defendant to say, that he was baptized by another Name, but he must likewise prove, that he was always known by it, and not put the Plaintiff to shew how his Name was altered to enable him to sue him. Said per Brotherick and Darnell, to have been so held. — Hill. 2 Anne B. R. 6. Mod. 115. In Cafe of Wal- den v. Holman.

(C) To what Person it may be made.

1. If an Englishman goes into France, and there becomes a Monk, yet he is capable of any Grant in England, because such Profession is not tieable; and also, because all Profession is taken away by the Statutes; and by our Religion now received, such Pews and Profession are held void. I have heard, that this was resolved accordingly, by all the Justices at Serjeant’s Inn, in 44 Eliz. in one Ley’s Case.

2. An Infant may be a Granted, Leizs, Obligee, or Recognize. Perk. S. 47.

3. An Alien born may well purchase Land, and the Purchase is good; but the King may seize. But Religion cannot purchase; For the one has Capacity, and the other not. Br. Corporations. pl. 16. cites 11 H. 4. 26.

4. If an Abbot purchase to him and his Heirs, and after is deposed, and dies, his Heir shall not have the Land. For he had not Capacity to him and his Heirs at the Time of the Purchase of the Land. Br. EHitcs. pl. 48. cites 9 H. 5. 9.

5. Debt by the Vicar of D. and 2 others upon an Obligation; the Defendaut said, that the one of the Plaintiffs, who is named Vicar, is a Clergy of which he professed in such a Place, in such Religion, under the Obedience of such, &c. Judgment, if he shall be answerd, and the Plaintiff would have Estopped him by the Obligation, and could not. Br. Nonabilit. pl. 2. cites 3 H. 6. 25.

6. But:
Grants.

6. But it was held, that if Fine he levy'd to a Monk by a strange Name, that this shall conclude. But Contra of an Obligation, For he may as well lay, that he is professed, notwithstanding the Obligation, as he may lay Non est factum. Ibid.

Capacity, and the Sovereign shall not sue it. Ibid.—And if a Man, who has an Obligation, enters into Religion, his Executor shall sue it. Ibid.

(C. 2) By what Persons, and to what Persons. Corporations. By the Head to the Corporation, or the Corporation to the Head.

1. THE Master and Confessors cannot present the Master to a Benefice; Br. Error. For he cannot present himself nor give to himsell, nor can the Master and Confessors injust the Master, and make Letter of Attorney to deliver Sciffn to him; For tho' he has two Capacities to take of another, yet none has this Capacity to take of himself. Br. Corporations. pl. 34. cites 14 H. 8. 2. 29.

was after affirmed upon a Writ of Error. 12 Mod. 683. Hill. 13 W. 5. per Holt C. J. in Case of the City of London v. Wood.

2. The Dean and the greater Part of the Chapter make the Corporation, and their Act is the Act of all, tho' the other will not agree; and therefore the Dean and Chapter may give to one of the Chapter, because there is a perfect Body without the Dean; but the Dean, or other Head of the Corporation, cannot sever'd from the Corporation; For then it is not a perfect Body. Per Moor Justice. Br. Corporations. pl. 34. cites 14 H. 8. 2. 29.

is a setting aside, or an Exclusion of him, for that Purpose from the Corporation. But if the Master, who is the Head, be set aside, then it ceases to be a Corporation, and by Consequence cannot do any corporate Act. Per Holt, Ch. J. 12 Mod. 683. in Case of the City of London v. Wood.—S. P; Jenk. 222. pl. 18.

3. A Mayor and Commonalty cannot enfoff the Mayor by Deed, with a Letter of Attorney. Jenk. 222. pl. 18.

4. But they may enfoff one of the Commonalty; For the Corporation remains without him. So of the Dean and Chapter. Jenk. 222. pl. 18. the Mayor and the Commonalty. Br. Corporations. pl. 4. cites 5 H. 6. 43.

5. If Master or President of a College, by his Will, devise any Land to the House, of which he is President, and dies, the Devise is void, and without their Head they cannot receive to the Use of their House; For then the Body is imperfect. Per Serjeant Cholmly & al. and Plowden. 3 Eliz. Dal. 31. pl. 13.

(C. 3) By Corporations and Colleges to Strangers.

1. NODA. It was agreed by all, that at this Day, Corporation of Mayor and Commonalty, or of Bishop's, Burges's, &c. may, by their common Seal, grant their Lands, &c. for Life or Years, or in Fee; And this shall be good, and shall bind their Successors. Mich. 15 Car. 2. Sid. 162. Anon.

(C. 4) Grants,
C. 4) Grants, to what Persons good. Feme Coverts.

1. If I enfeoff a Feme Cover, and after the Baron disapproves, the Feoffment is void. per Catesby; to which Brian agreed; For the Feoffment was never good without the Agreement of the Baron. Quere of this Opinion; For it seems that 'tis good 'till the Baron disapproves, and quere what Relation the Disagreement shall have; For it seems that the Profits, taken meanly between the Disagreement and the Livery, shall not be rendered to the Feoffor; and quere, if aPræcipe quod reditum had been brought against the Baron and Feme after the Livery, and then the Baron disapproved pending the Writ, it seems clearly, that the Writ shall abate, and yet the meane Profits may be justified, for this is executed. Br. Feoffment de terre. pl. 36. cites t H. 7. 16.

(C. 5) Good, to what Persons. Persons not in Esté at the Time, in Respect of the Description.

1. If a Man purcloses to him and his Wife, and he has no Wife at the Time, &c. though he afterwards has a Wife, she takes no Esté. Br. Feoffment. pl. 20. cites t Aff. 11.
2. But it is said if it be by Livery of Seilin, it is otherwife. Ibid.

(D) By what Names Grants may be made to such Persons.

Br. Milnor. pl. 75. cites 12 R. 2. * 2 Brownl. 49. in Sir Edward Ashfield's Case. — Br. Grants. pl. 22. cites S. C. — Where a Man is Baptiz'd by one Name, and Confirmed by another, he shall have both Names; per Frowike; but Fineus Contra; but he does not say, what Name be shall have. Br. Nofme. pl. 22. cites 14 H. 7. 11. — A Patent of certain Lands is made to J. S. and afterwards J. S. is confirmed by the Bishop, by the Name of T. S. Notwithstanding the Change of his Name, the Land remains with T. S. But if after the Confirmation a Patent had been made to J. S. it had been void; For Confirmation by the Bishop is a second Baptizm, and changes his Name. Jenk. 105. pl 94.


Br. Milnor. pl. 16. Br. Grants. pl. 22. cites S. C. — If Land is given to J. S. and his Wife, it is good, without expressing the Name of his Wife. Br. Fines. pl. 72.
Grants.

4. If the King grants to C. and Elen his Wife, where her Name is Emelin, yet if it be a good Grant to them; because he is named the Wife of C. 2 P. 4. 25. adjudged.

5. If a Grant be to J. S. Knight, of a Thing which lies merely in Grant, as of Rent-Charge, if he be not a Knight, nothing passes
4 P. 6. 1. b.

Ent an Obligation made to J. S. of D. where there is no such Ful, is good, and so it was agreed.
And so there seems to be a Diversity between an Addition which goes to the Perf, and that which goes to the Ful. Br. Grants. pl. 50. cites 4 H. 6. 2. ———— Br. Milhomen. pl. 58. S. P. cites 3 C. S. C. He that is a reputed Knight, and yet is not a Knight, cannot take by that Name; For where a Man takes by a Name of Reputation, there must be some Foundation to ground that Reputation upon, as there is in Case of a Bastard, who takes by Name of a Son, but there is no Foundation for a Man to be a Knight who is no Knight. 12 Mod. 186. Hill. 9 W. 5. The King v. Bishop of Chester & al. —— But it may be objected, that Names of Dignity may be supported by Reputation, as the eldest Son of a Duke hath the Title of Marquess or Earl. Now suppose a Grant was made to the eldest Son of a Duke, by the Name of Marquess, that Grant would be good, because there is a Foundation for it: For by the Laws of Heraldry, every Duke’s eldest Son takes place as Marquess, that is, after all real Marquesses; and the common Usage of the Realm, gives them those Titles in all Writings and a-day; but the old Conveyances were cautious in so doing, they called them such a one Esquire, commonly called Marquess, &c. and even in Modern Conveyances, they are always mentioned to be the eldest Son of such a one. Hill. 9 W. 5. 12 Mod. 186. The King v. Bishop of Chester & al.

6. If a Remainder be limited to J. S. where there is not any Man known by such Name in rerum Natura, it is a void Remainder 39 E. 3. 11.

7. If a Remainder be limited to the Son of J. S. if J. S. has not any Son, the Remainder is void. 39 E. 3. 11.

But if J. S. has a Son, and a Rent is granted unto the first Son of J. S. and not by any other Name, ‘tis a good Grant, if the Deed be delivered. Perk. S. 54. cites 50 E. 5. 18. 2 E. 5. 1.

But if J. S. hath not any Issue, and a Rent is granted unto him, who shall be the first Issue of J. S. whether it be Son or Daughter, this Grant is void, Ganta Fater. Perk. 58. 14.

8. But if a Remainder be limited to J. S. the Son of W. S. tho’ he be a meer Bastard, and no Muller by the Law Spiritual, yet if he be known for his Son, the Remainder is good. 39 E. 3. 11 H. 38. 39

Ch. 2 R. agreed. per Cur’ between Bloodwell and Edwards.

9. If a Grant be to A. Son of B. and C. If he be their Bastard, it is void. 41 E. 3. 19.

Take by Name of Son or Daughter, if so known, tho’ there was no Marriage between the Father and Mother. Hob. 32. cites 27 E. 5. 83. a. 6. —— But then he must called by a Surname. 3 Lc. 49.

10. But if B. and C. have a Bastard, and afterwards intermarric, this is a Bastard, because he is a Muller in the Spiritual Law, may be a Grant by Name of their Son. 41 E. 3. 19. 6 Rep. 65. St. John Finch’s Cate.

Tho’ he be a Bastard, and the more so, because a Bastard may have a Mother certain.


The Remainder to the Issue Male of one Mary Lloyd of her Body be- en, by A. the Feoffor, whether it be lawfully begotten, or other- wife, so that it be reputed the Son of the said A. and so from eldest Issue to eldest Issue, and to the Heirs of the Body of the said Issue it is sufficient for J. S. to intertitle himself to this & Remainder, to say that he is the Son of the said A. begotten of the Body of the said Mary Lloyd, and that he is so reputed in the common Reputation of the Country, tho’ he was not born, and in Est in the Time of the Remainder granted, and though peradventure there are lawful Issues between them, who are younger than the Bastard. For the Person who shall have it, is certainly enough described. For a Bastard of a Feoffment, is certainly known to be his Issue, and this is li- nited to the eldest Issue, and a Bastard may be, in Reputation, the

Fol. 44. Son
Son of Man. P. 38 and 39 Cl. B. R. between Bloodelwell and Edwards.

12. If an Estate for Life be made, the Remainder to the Issue of the Body of J. S. or of him begotten of the Body of A. S. if he has after an illegitimate Issue, yet this Issue shall never take this Remainder, because he cannot have a Reputation of Issue before he is born. Co. Litt. 3. 8.

13. But if a Man has a Baffard, and after by continuance of Time, he is known for his reputed Son, then a Remainder limited to him after by Name of reputed Son is good. Co. Litt. 3. 8.

14. If a Man gives Land by Fine to R, and Sibil his Wife, where his Wife is * named Isabel, she shall not take any Estate by this Fine.

15. The right Heir of J. S. being dead, is good Name of Purchase without * mentioning any Name of Baptist of him. 2 E. 3. 28 b. adjudged; 27 E. 2. 87.

16. Sir William Penyon being made a Herald, and by the Patent he is called Chester, an Obligation made to him by the Name of Chester without any other Name is good; for it is sufficient to describe the Perfon in Grants. P. 5. Ja. B. per Curiam.

Because there is one named in the Grant, the Grant is nothing worth; for then there is no such Person at the Time of the Grant. For J. S. cannot properly have an Heir during his Life. Perk. S. 52.

17. So a Remainder may be limited to the Right Heirs of J. S.—J. S. being alive at the Time, it he dies having an Heir before the Death of the Lessee 27 E. 3. 87.

18. If a Grant be made to Robert Earl of Pembroke, where his Name is Henry, or to George Bishop of Norwich, where his Name is John, and to of an Abbot, &c. of these and of such like, there may be but one Name of Dignity, and therefore such Grant is good tho' the Name of Baptist be mistaken. Co. Litt. 3.

19. If a Grant be made to Robert Earl of Pembroke, where his Name is Henry, or to George Bishop of Norwich, where his Name is John, and to of an Abbot, &c. of these and of such like, there may be but one Name of Dignity, and therefore such Grant is good tho' the Name of Baptist be mistaken. Co. Litt. 3.

12 Mod.
18: S. C.
S. C. cited—

Parch. 1725. 2 Wins's Rep. 142.—(But otherwise) a Grant made to a Man by a wrong Christian Name cannot be good; it must essere de Persona not in the Plica only, but in the Grant itself. 12 Mod. 189. King v. Bishop of Chester and al.

A Grant made to R. Abbot of D. where his Name is T. is good; for his Name is full without the word R. Br. Corporations, pl. So. cites 27 E. 5. 85; and Pitz's Grant 67.

Croc. C. 397.
S. C.—16.
514. S. C.—
Rolls' Estate
(Z. a) pl. 8.
S. C. 7.

19. If a Seised of the Manor of Blacon in Fee in Right of his Wife leaves it for Years, and after he and his Wife die, by which the Leafe is void in Law. But the Lifelefe continues Possession by Colour of the Leave, and after D. the Heir of the Feme to whom the Land is described by Indenture recites the said Leafe of the said Manor of Blacon, and then grants the Reversion of the said Lease of and in the said Manor of Blacon, with all and singular other the Premises (Except Timber Trees) whereof he is Seised in Fee to E. Habend the said Manor and all and singular other the Premises with the Appurtenances, from the Time that the said Manor shall revert, to the Hands and Possession of him or his Heirs, by way of Surrender of the said Leafe, Forfeiture of it, Erection, and Determination of the said Term of Years therein specified, or otherwise, till the End of the Term of 60 Years then next ensuing. In this Case this is a void Grant, and shall not enure as a Leafe to commence immediately, nor to have any Effect; because he had not then any Reversion, and he has granted the Reversion.
Grants.

of the said recited Leaf where there was not any such Leaf and that there are words in the Premises of the Grant (with all and singular other the Premises) yet this does not better the Case; because the Manor of Blacon is mentioned before, and therefore by the words (other the Premises) it is to be intended another Thing than the Manor which was mentioned before, and that the Habe- 
dum be Habendum the said Manor of Blacon yet this will not ad- it, in as much as it was not granted in the Premises of the Deed. Hill. 10 Car. R. between Miller and others against Maynaring ab- 
judged per rot. Cur. vix. Jones, Coke, and Barkley in Error upon such Judgment, to the same Intent in Chiffer, which 
concerned Sir Randall Crew and the first Judgment affirmed ac- 
cor-ding I being of the Council of the Plaintiff in Error. In- 
trat. Tr. 10 Car. Rot. 321.

20. If a Copyholder makes a Leaf for Years by Indenture by 
Licence of the Lord reserving a Rent, and then surrenders the Re- 
version of the Copyhold to another who is admitted accordingly. In 
this Case the Surrender by the Name of the Reversion is good tho' 
the Leaf was not made by Surrender but by Indenture; For it is 
the Leaf of the Copyholder and not of the Lord. Dobart's Re- 
ports 239, related per Cur. between Swinnerton and Miller.

21. If A. seised in Fee grants Patrnam of the Close, the Close 
passes * the Pasture, and not the Pasture only to be taken by 
his Heirs; For he shall have Clauidum legite. Nich. 14 Ja. R. 
between Montjoy and Tendre, per Cur. adjudged upon Demur- 
erre; For there was pleaded that A. seised the Pasture of the Close for 
Years without Deed, and adjudged good for the Reason aforesaid. 

22. If an Abbot, before the Dissolution, seised in Fee of a Re- 
story appropriate of D. to him and his Successors granted to J. S. 
Advocationem & Patronatum D. by those words, the Advowson cannot pass, 
and the Appropriation cannot be levied from the Abbot and his Suc- 
cessors. Nich. 23 & 24 El. in the Exchequer, between Bofack and 
Monyns adjudged upon a Demurere for the Church of Waldershare 
in the County of Kent.

23. A. seised of a Rent-charge in Fee grants the same Rent unto B. for 
Life, and the Tenant of the Land attorns, &c. and afterwards by another 
Deed grants the Reversion of the same Rent unto the Right Heirs of J. 
S. who is alive; this Grant is void; because there is not any Person who 
can take, but if J. S. had been dead at the time of the Grant, then it 
had been good, fo that thec words (Right Heirs) may be the Name of the 

24. A Grant made unto the next of Blood of J. S. is a good Grant. 
Perk. S. 55.

25. Where the Grantee, or other Person is misnamed in a Deed, which 
Ibid. pl. 56, takes all its Operation by the Deed, it is void. Br. Mifnomer, pl. 38. cites cites S. C.

4 H. 6. 1.

26. As Grant to make Licerv of Seisin by Letter of Attorney to J. N. 
Chaplain, who is no Chaplain, &c. Ibid.

Man by a wrong Name, but Licerv is made to him in Person, there the Feevment is good because Con- 
flit de Personis. And the Books put a Difference between a Grant that has it's Operation by a Deed it- 
sel, and where it is by Licerv; in the former it cannot be good; in the later it is. 12 Mod. 136. the 
King v. Bishop of Chiffer and al.

27. Grant of the Advowson of the Church of Saint Peter, where it is 
So of a Chargé out of the same Church, by 
Saint Peter and Paul, the Grant is void. Br. Mifnomer, pl. 9. cites 35 
H. 6. 5.

So by Name of Peter and Paul, where it is Saint Peter only. Ibid.

23. If
Grants.

28. If a Person be so described that he may be certainly distinguished from
other Persons, the Omiflion, or, in some Cases, the Mistripnion, of the
Name of Baptifm shall not avoid the Grant. Hill. 11 Jac. 11 Rep. 21. Dr.
Ayrey's Cafe.

(D. 2) Mistake in the Description of the Perfon.

1. If A. S. reciting by her Deed that fhe is a Feme Covert (and in Truth
fhe is a Feme Sole) grants an Annuity, &c. 'tis a good Grant; For
that is but a void recital, and the Grantee need not put that in his Writ,
and that can't be a Conclufion to him, when he fleweth the Deed. Perk.
S. 42. cites 3 E. 3. Hil. Not. 132.

2. The Name of the Grantor is not put in the Deed to any other Intent,
but to make certainty of the Granter, and therefore if the Duke of Suffolk
by the Name of the D. of Suffolk without his Name of Baptifm, grants an
Annuity, Rent Common Reversion, &c. it is a good Grant, because there
are no more Dukes in England of that Name. Perk. S. 36. cites 8 E. 4 11.

3. If Father and Son are of one Name, and the Father Grants an Annuity
by his Name without any Addition, this is a good Grant; for when
there is no Addition, it shall be intended the Grant of the Father. Perk.
S. 37.

And if the
Son, in fuch
Cases, grants
an Annuity
by his Name
without any
Addition (I conceive) fuch Grant is good; For if the Grantee bring a Writ of Annuity againft the Son,
he can't help himfelf, by any Means; For if he deny the Deed it fhall be found againft him, &c. Perk. S. 37.

4. A Bond made to J. S. filia & Heredi G. S. where in Truth J. S. was
a Baffard, or to A. N. Wife of J. N. where A. N. was a Widow, or Vice
Velia; thefe words are but Nagation & Surplufage. Arg. D. 119. b.—
cites 9 E. 4. 29. b. 9 H. 5. 5. 7 H. 4. 23. 48 E. 3. 12.

(D. 3) Where the Mifnofmer is of the Surname, and
Pleading thereof.

1. Debt by the Name of Aderley and Recovery by the Name of Al-
derby, the Bail is not liable, till the Record be amended; because
the Condemnation is at the Suit of another Perfon. Cro. E. 458. Framfon
v. Delamere.


3. Affumipht againft Gardin; Defendant Pleads his Name is Jermy,
abfolute hoc that 'tis Jermin, per Cur. 'tis a material Variance but cured
by Defendant Appearance; but Defendant ought to plead quod ferman qui
implacatus eft per novon fermin dicit, that his Name is Jermy; fo Judgment
Jermy.

4. Bond made by Elin subscrib'd Ekin, the Variance is not material.

5. A bonds himfelf by Name of B. and he is accordingly sued by Name
of B. He may plead Mifnofmer, and the other may reply that he made the
Bond by Name of B. and eftop him by demanding Judgment, if against
his own Deed, he fhall be admitted to fay his Name is A. and then he
may rejoin and fay, he made no fuch Deed, and this he might do without
Oyer; For if he pray Oyer, he admits his Name to be B. per Cur. Mich.
Litt. R. 134. per Richardfon Ch. J.

6. Feme
Grants.

6.  
-  
- Common bail 
- given by a 
- wrong Name,
for Ch. J. of C. B. and Manwood Ch. B. of the Exchequer; but Judgment was given against the Avowant lor Want of setting forth thereof.


5. King E. 6. seised of the Manor of C. of which a Wood was Parcel, granted the said Wood in Fee, which afterwards seched to the King for Treason. Queen Mary granted the same Wood to another in Fee, who granted it to the now Queen, who granted the said Manor, & Owner Bofios modo sed ante hac cognita, sed repugna, ut Prys Mabin, vel Parcel. Maner. Predich. to J. S. And it was resolved in the Exchequers, that, by that Grant the said Wood did pass to J. S. For it was Part of the Manor in the Time of E. 6. at which Time, (ante hac) without the Word (unquam) shall be extended, ad quodunque Tempus praeterrimum, and Reputation needs not so ancient Pedigree to establish it; For general Acceptance will produce Reputation. Cited by Gawdy J. Pafch. 26 Eliz.

1. Le. 15. as the E. of Leicester's Cafe.

6. Manor in the may acquire a new Name to pass by in a few Years.


7. An Avowry was made for Americament in a Court Leet, and shews that he was seised of the Manor in Fee, and that he and all, &c. have had a Court Leet, and the Plaintiffs traverse that he was seised of the Manor in Fee; It was held, that if he had a reputed Manor, it would maintain the Avowry, tho' in Truth he had no Manor. Brownl. 170. Mich. 8 Jac.

8. A Manor in Reputation, which is not a Manor in Truth, does not pass by the Name of a Manor in a Fine or Recovery; For they are grounded on original Writs, which ought to be certain, and not to be taken by Intendment. But otherwise of a Grant or Feefund; For there the Intent of the Parties shall help it. Noy. 7. Johnston v. Heydon.

Cro. E. 524.

707. Mallet

v. Mallet.—

See Precedents (B) * Br. Feefund de terre, pl. 14. cites 22 H. 6. 39.—Saliv. 113. Thetford's Cafe.—A Manor in Reputation only will pass by the Name of a Manor, tho' not demandable by it. Lat. 63 in Cafe, Hemm. v. Broude.—

A Recovery is fuller of a Manor, and all Lands Parcel, or reputed Parcel; Hole Ch. J. Pafch. 16 Car. 2. delivered the Opinion of the Court, that the Lands reputed Parcel passed by the Recovery as well as the others; and said if they would in a Conveyance, or in the Cafe of the King; For he had made Grants of the Manor of St. James's, which is only a Manor in Reputation. Lev. 27. 28. B. R. Thine v. Thine.—S. C. adjudged accordingly. Vent. 51. and Sid 170.

9. A. having three Acres in a Place called Broad, has another Piece of Land separate by a Hedge from it, but adjoining to the said three Acres, and this had been so separated for 40 Years, but ancients had been Part of Broad, and of late the Hedge was taken down, and 'twas laid to the three Acres; then A. makes a Feefund of the three Acres in Broad, and adds these Words, (be it more or less) and 'twas held, that the Parcel once separate, tho' it had been annexed now 10 or 20 Years, shall not pass by this Conveyance, because this may have gained another Name during the Separation. Clayt. 46. Rulworth's Cafe.

10. If the Manor of D. be holden of the Manor of S. and to the Manor of D. has an Advowson appendant, and that the Manor of D. has seched to the Manor of S. So that the Demesnes of one is become Parcel of the Demesnes of the other, yet the Advowson shall be still Appendant to the Manor of D. as it was at first. And the Manor of D. shall continue in Reputation a Manor in respect of such Things as are appendant thereunto. Dod. of Adv. 28.


Palm. 366. if there are Circumstances to enforce the Reputation Tenet 21


12. Bargain and Sale of a Manor, &c. and all that b. Chief of W. with all Profits, &c. thereunto belonging, or have been us'd, &c. as Parcel, or reputed or known, or as Part or Member thereof. Adjudged that tho'
Grants.

the3 Woods lying adjacent thereto did not pass by these Words (all that his Chief of W.) yet it palled by the ensuing Words (or reputed, &c.) there being sufficient Proof to ground a Reputation upon, viz. That the Deed used to browse, and the Keeper had his Walk there for 60 Years. 2 Sid. 1. Mich. 1657. B. R. Dodsworth's Cate.

(E. 2) Time. At what Time a Grant may be made.

1. The Marshall of Fee in B. R. may grant over his Office to another for Life, but, after such Grant, he cannot grant to the Grantee to make a Deputy; and for it leemeth, that if the Authority be not given in the first Grant, to exercise by him or by his sufficient Deputy, he cannot grant it after; quare as to the first. Br. Grants, pl. 61. cites 39 H. 6. 34.

2. If there is Mayor and Community of D. and the Mayor dies, a Grant made to the Mayor and Community of D. is void; because the Body politic, which is capable, is not compleat, but wants the Head. Co. Litt. 264.


(E. 3) Void by Matter Ex post Facto.

1. A Seised in Right of M. his Wife of a Reversion in Fee, exceptant on an Estate for Life of J. S. granted the Reversion, after the Death of J. S. to W. R. for Life, and J. S. attorn'd, and then A. died. M. granted the Reversion to B. and J. S. attorn'd, and after died, and B. entered. The Grant of A. to W. R., was void, because he died before M. and also before J. S. the Tenant for Life. See Br. Travers per &c. pl. 233. cites 10 E. 4. 8.

(F) What Things may be granted, [In respect of the Thing.]

1. A Man may grant a Deer in certain. 18 E. 4. 14 b.


116. 72.

which can't be sold nor granted by the Law. Arg. And. 77. A Right or Title of Entry cannot be transferred. Arg. Show. 2. 8. A Right shall not pass by Way of Grant, unless by Extinguishment, &c. and by Release it may be extinguished. Perk. S. 85. cites 21 E. 4. 2. 6 H. 7. 8.

3. If a Man has a Rent Service or Rent Charge, he may grant over Part of the Rent, and it shall be good if the Tenant attorns. 9 H. 6. 13.

4. Grantee of a next Presentation may grant it over. 7 H. 4.

34. b. 26. b. adjudged.

5. The Church being void, * by the 21 H. 8. of Plurality, the D. 129. b. pl. 66. Agard v.
Grants.


A Deed cannot be granted over as a Grant of a rent Largely of such a Church, neither before it falls, nor after. Hdb. 154. Colt & Glover, v. the Bishop of Coventry. — The same Law is if it be any other wise void. See D. 26. pl. 103. — 129 b. pl. 66. — 282 b. pl. 28. — For it is a Thing in Action and Privy, and veiled in the Person of the Grantor. Jekk. 236. pl. 13.

Terms in Action can't be granted but to him that has the Possession, and that by Release or Confirmation. Fin. Law, Svo. 107. — S. P. — 10 Rep. 48.

Tho's 9ing in Action cannot be transferred over, nor devised, yet a Contract, which arises from an Interest in Land, or which is an Interest, may be well transferred over; per Popham. Mich. 40 & 41 Eliz. Cro. E. 635. in Cafe of Ards v. Watkins — Cro. E. 651.

Jenk. 236 pl. 15.

An Obligation is not grantable. 21 E. 4. 84.


11. But * Annuity in Fee is grantable. 21 E. 4. 43. b. 41 E. 3. 27. b. Because it shall descend. 3 D. 4. 8. by the King. Grantee of a Common of Patience may grant it over. 7 D. 4. 36. b.


Unlesse the Grant be to him and his Assigns. Perk. S. 125. 14. A Corodic uncertain is not grantable over; For preadven- ture, Grantee will have more Sustenance than Grantor. 21 E. 4. 43. b. Citra 22. E. 4. 6. and to several 8 E. 4. 17. Citra. — 15. A Common Sans Number in Fee is grantable to another. 21 E. 4. 84. For the Word Heirs implies Assignees. — 16. But Common for Life or Years, without Number, is not grantable; For it may be a Prejudice to the Tenants of the Land. 8 E. 4. 17. But Quere.
Grants.

45

Clearly certain, or of an Adwoson, or of a Villain, or Rent, or the like, may grant the same over, notwithstanding the Grant be not to him and his Assignes, unless there be a special Proviso in the Grant, that he ought not so to do, &c. Perk. S. 103.

17. Dittoes uncertain, that is to say, so much as I will use in my Chimney, are not grantable over. 22 E. 4. 6.

18. [If] I grant my Horse to you to ride to York, you cannot grant it to another. 22 E. 4. 6.

19. A Leaf at Will is not grantable over. 22 E. 4. 6.

[19.] Grantee of a Way for Life upon my Land cannot grant it over. 7 P. 4. 36. b.

20. If the King grants a Warren to another and his Heirs, in his Manor, the Grantee may grant the Same with the Warren over to another in Fee; for this Liberty inhereth Solo & Solem sequitur. 21 E. 1. Libro Parliament. 47. b. agreed.

21. So if the King grants to another and his Heirs, in certain Mannors of Villis, a Fair or Market, the Grantee may grant over the Manors of Villis with the Fair or Market. Dibitatur. 21 E. 1. Libro Parliament. 47. b.

22. A Man may have a Hundred by Prescription in Gross, but he cannot grant it over, no more than of other Franchises, which the King grants, the Grantee cannot grant them over. Quære Inde. Br. Grants. pl. 176. cites 6 E. 2. For it is admitted 32 H. 6. 24. that Warren may be granted over. Br. ibid. pl 144.

23. The Lord granted for himself and his Heirs, to his Tenant, who held in Chivalry, that he nor his Heirs shall not take Ward of the Defendant, nor of his Heirs, and a good Grant, and the Tenant may by this revest the Lord by way of Plea. Br. Grants. pl. 175.

24. If a Man feitled of Land, leaves the same for Life, the Remainder to the Right Heirs of J. S. who is living, this Remainder takes Effect presently, but is in no Person to grant, because it is in Adevance, viz. in the Consideration of the Law, &c. Perk. S. 87. cites 27 E. 3. 87.

25. It was agreed, that he in Reverson in Tail may grant his Reverson over, if the Tenant in Tail attorns, this is good, and it shall pass; per Finch J. clearly, which Belk was of Counsel against the fine deny'd. Br. Tail and Dones, &c. pl. 5. cites 43 E. 3. 29.

26. A Man may grant to his Lord to distrain for his Rent, by which he holds of him, Scilicet, to distrain for the same in other Lands, which is not hold of the same Lord; and if the Lord be an Abbot, this is not Mortmain; for he shall not have more Rent than he had before; but he has a Diftres more than he had before. Br. Grants. pl. 131. cites 9 H. 6. 9.

27. A Man cannot make a good Grant, unless the thing be in him at the Time of the Grant; As if I grant to you, that if you make to me an Obligation, it shall be void, and afterwards, you make to me an Obligation, the Obligation is good, and the Grant is void; per Forrefene, to which Fray agreed, and none denied. Br. Grants. pl. 49. cites 19 H. 6. 62.

28. But by Markham. If I grant to my Tenant, that he shall not be imprisoned of Waif, or that he shall not be punished by Affravit, this is a good


Perk. S. 104.

S. P.

12 E. 4. 5.

S. P. For it is no Educte.


S. P. Ibid. pl. 193 cites 19 E. 5.
Grants.

good Grant, and the Tenant may *release* it by it, and shall not be put to his Writ of Covenant, which two others agreed. Br. Grants. pl. 46. cites 19 H. 6. 62.

29. It was agreed, that where Rent is referred for Equality of Partition, that the Coparcener may grant it over, and the Grantee may dis- 5 drain. Br. Grants. pl. 41. cites 21 H. 6. 11. 12.

*Common of Pasture Appendant* cannot be granted over, nor made in Gros. *Common Appendant* cannot be granted over, nor made in Gros.

30. Otherwise of Common Appendant, and Advowson Appendant; For none can have the Profit of such Common but he who has the Land to which such Common is Appendant. Br. Grants. pl. 150. cites 3 H. 7. 7.

be transferred from the Land to which it is Appendant, if it be in Esse. Perk. S. 164— 2 S. P. Br. Grants. pl. 169. cites 21 E. 4. 6. --See Pasture is grantable over at this Day. 1 Mod. 73. Mich. 22 Car. 2. In Case of Hoskins v. Robbins.

31. If a Tenement takes my Goods, I may release them to him, but not give them to him, for he hath a Right to them, but not a Property in them; per Brian J. Br. Done, &c. pl. 24. cites 6 H. 7. 9.

32. Trespass of Chasing in his Park, and killing and carrying away his Deer, the Defendant justly *Jury* by Licence given to J. S. his Matter, by which he, as Servant to the said J. S. and by his Command, entered, and did the Trespass, &c. And Per Keble, Licence does not extend but to him to whom it is given, and *cannot* be granted over; For Licence is only at Pleatire. Br. Licences. pl. 10. cites 12 H. 7. 25.


The Possessions annexed to the Duke can only be granted over by special Act of Parliament. Arg. Godbolt 397. Pach. 3 Car. in Case of Whittis v. Weton.

A Rent in his Pem can *not* be granted to any, nor by any, for it is not in any Perfon in the World during the Sulfence. Br. Grants. pl. 175. cites 16 H. 5. 4.

33. The King creates a Man a Duke, and gives him 20 l. Annuity, for Maintenance of his Dignity; he cannot give this to another; For *his Incident* to his Dignity. D. 2 Mich. 6 H. 8. in Case of Oliver v. Emmonne.

34. A Thing suspended may be granted. Arg. 3 Le. 154. Mich. 29 and 30 Eliz. in Case of Cadee v. Oliver.

35. Election cannot be transferred to the Prejudice of another Person; As if a Rent de Novo be granted to the Father in Fee, who dies before Election, the Heir cannot make it an Annuity to defeat the Dower of the Wife. Mich. 29 and 30 Eliz. 3 Le. 154. in Case of Cadee v. Oliver.

Election cannot be transferred to another. per Deed. J. Jo. 136 cites Bullock's Cafe — — Mo. 86. Bullock v. Bardett. S. C.

36. If Trees are granted by way of Interest to the Owner of the Land for Life by Deed, he may grant them over; but not if the Grant is by way of Discharge only. For this is a Privilege annexed to the Land. Trin. 6 Jac. Yelv. 131. Edmonds v. Booth.

37. Grant by Deed of all my Trees within my Manor of D. to one and his Heirs; the Grantee shall have Inheritance in them without Livery and Seisin. 11 Rep. 49. B Mich. 12 Jac. in Liford's Cafe.

38. Foundership not grantable. 11 Rep. 77. Pach. 13 Jac. in Case of Magdalen College.

39. By the Grant of a Manor, Cam pertinents, the Court Baron passes; For tis an Incident inseparable from a Manor; and A Man cannot grant his Court. But he may grant the Profits of his Court. 'Trin. 13 Jac. Brownl. 175. Brown v. Goldsmith.
Grants.

45. A "Write of Error" is a Chose en Action, and not transferrable over.
46. If A. grants the Stewardship of the Manor of D. to B. and his Heirs, B. cannot grant it over to J of a Bailiwick. Arg. Het. 50.
47. A "Relief" is not grantable over. Jenk. 236, in pl. 13.

22 Car. 2, Guilmans v. Munnington.

44. Leave is of a House excepting a Chamber pro ufit suo proprio & Occupation; he may Assign. Vent. 87. Tran. 22 Car. 2, in Cafe of Willam v. Armourer ---- cites 1 And. 129.
45. Confoo cannot Assign his Interest after Extent and Liberate, if Confoo continues in Possession; For by this, Confoo's Estate is turned to a Right. Tran. 3 W. & M. B. R. 2 Salk. 563. Hamond v. Wood.

(G) Choses en Action.

1. A Debt which I have by Obligation cannot be granted over, because it is a Chose en Action.

2. If A. be bound to B. in 201. B. may give and deliver this Obligation to a Stranger, and the Stranger may justify the detaining of the Obligation by this Gift against the Obligee; for tho' the Debt cannot be granted over, yet the * Parchment may.

same at his Pleasure. Co. Lat. 223. b. — But such Donee cannot bring an Action thereupon in the Name of the Donee. Perk. S. 86.

3. If an Obligee makes two Executors, and dies, and one Executor gives and delivers the Obligation to a Stranger in Satisfaction of a Debt, which he himself owes to him, and dies; tho' the Debt does not pass by this to him, yet the Parchment passes, and the Donee of it may justify the detaining of it in a Detinue brought by the surviving Executor; For the one Executor has as full Power as both. Rich 38 & 39 El. B. R. adjudged between Bellisck and Nicholston.
4. So a Baron, pollifled of an Obligation in Right of the Feme, may give it to a Stranger and the Donee may justify the detaining of it against the Feme after the Death of the Baron. Rich. 38 & 39 El. B. R. per Fennor.
5. If a Disfife of Land grants his Right unto a Stranger, 'tis nothing worth; but if he Releases all his Right unto the Disfifeor, 'tis good if it be by Deed; and if he conveys the Estate of the Disfifeor, the Confirmation is good. Perk. S. 86.
6. Right in Action shall not be transferred by Act in Law; as Lord by Fecbent, or Lord of Villein, shall not have Choses en Action. 10 Rep. 48. Mich. 10 Jac. in Lampet's Cafe.
7. Liberty to Dig for Coals, Quere if grantable over by Lease. Lat. 189. Hill. 2 Car. Goderick v. Gaffoyne.
8. A Leave is not Assignable without a Writing signed by the Parties by the Statute of Frauds. "Trin. 2 Ann. 3 Salk. 171. Queen v. Goddard."

(H) Things of Trust.

1. Guardian in Seuage may grant the Wardship over to another. S. P. Ow. 113. 
2. But
Grants.

2. But such Grant shall not be effectual after the Death of the Grantor because by the Law of Nature it belongs to the nearest of the Blood. Com. 293. b. 

3. Office of Trust cannot be granted over by the Grantor, unless it be ficti et Assignatis suis. Br. Deputy, pl. 9. cites 11 E. 4. 1.

Parker may grant it over; For this is not such Trust. Ibid. —— But Office of the Chamberlain of the Exchequer, is an Office of Trust; For he keeps the Records of the King. Ibid. —* Br. Grants, pl. 103. cites 21 E. 4. 29. contra that an Officer, as Parker, Steward, and such like, cannot grant such Offices over, for it is of Trust, and must be done in Periton. —— But Deputy, pl. 15. cites S. C. per Pigot and Catesby.


4. Office of Filazer is not Grantable or Assignable over; because 'tis Office of Trust. Trin. 28 H. 8. D. 7. b. pl. 10. —— nor Office of * Carpenter at my Table. ut supra.

5. Powers are not transferrable over. Arg. No. 520.

6. Things annexed to the Person cannot be transferred, nor executed by another; As Arbitrement, Suit at Court, Homage, Fealty; Arg. and he also agreed that Tenant for Life, with Power to make Lees, cannot make Livery by Attorney; nor Executors that have Power to sell; but where they have Interest it is otherwise. Arg. 2. Roll. R. 393. Mich. 21 Jac. B. R. in Cafe of Warner v. Hargrave. —— cites 9 Rep. Cosbou's Cafe.


(H. 2) What is a good Grant, in Respect of the Manner.

If the Devisor Grants to the Creditor to levy his Debt upon his Land in D. and C. yet he cannot levy it; per Belknap, which was not denied; by which the Defendant concluded, and so he owed nothing. Br. Grants, pl. 15. cites 41 E. 3. 7.

2. A. by Indenture inrolled bargains and sells Land to B. with a Way over other Land, the Grant of the Way is not good; For nothing but the Ufes pas by the Deed, and there cannot be a Ufe of a Thing which is not in esse; As a Way, Common, &c. which are newly created; and till they are created no Ufe can arife by Bargain and Sale. Mich. 5 Jac. Cro. J. 190. Bewdly v. Brooks.

(H. 3) Good. In respect of the Manner. Joint or several.

If the King has a Ceremony of so many Leaves, and so many Gallons of Ale, &c. to which one Man used to be presented; yet when this is void he may Grant it to 2 or 20 Men; For this is certain, and they shall have no more than the Certainty; For all the Justices. Br. Grants, pl. 95. cites 8 E. 4. 17.

(H. 4) Uncertain
(H. 4) Uncertain Grant made good by Relation.

1. **THERE is a Difference, where a Thing is uncertain, to which a certainty is added, and where it is certain.** See Pl. C. 191. b. Wrotely v. Adams.

2. if it have 2 **Manors of D.** and I levy a **Fine** of the Manor of D. **Circumstances** may be given in Evidence to prove what Manor I intended, as appears 12 H. 7. 7. Pl. C. 85. b. in Cafe of Partridge v. Strange.

3. **A. leaves to B. for so many Years as J. shall Name;** tho' by the naming the Lease will be good, yet such naming must be in A's Life time; because the Intercit ought to pass out of the Lettor during his Life time, and the Deed have its perfection. Arg. Gobd. 25. Trin. 26 Eliz. in Savill and Cordell's Cafe.—cites D. 273.

4. Grant to B. of the same Rent out of my Land, as J. S. has in B's Land, is a good Grant, without particular Mention of the Rent; and yet no Rent can be granted without Deed. Arg. Mo. 379. Mich. 36 & 37 Eliz. in Perrot's Cafe.

has granted, this is a good Grant of such Rent newly to Commence after the Decease of the Tenant for Life. Arg. Mo. 379. Mich. 36 & 37; Eliz. in Perrot's Cafe.—cites 14 E. 3. 

5. A having **Power to make a Jointure of 500l. per Annum.** Covenants by marriage Articles to settle 500l. per Annum. and afterwards a Draught of a Settlement is prepared, in which Lands of 500l. per Annum. are specified, but A dies before the Settlement is executed; this Power being bound by the Articles, the very **Draught of a Settlement is a good Denomination of what Lands should be settled, and a Determination of A's Election to raise the 500l. per Annum. out of and by Virtue of his Power.** Mich. 9 Geo. 9 Mod. 15. Lady Coventry v. Lord Coventry.

(H. 5) Uncertain, made good by Election, and what shall amount to such Election.

Of every Thing uncertain, which is given or granted, Election remains to him, to whose Benefit the Grant or Gift was made, to make the same certain, unless it be in special Cases. Perk. S. 73. cites 5 Ed. 3. 31.

Rent-charge, I may disfain for which of these Rents I will, but I shall not have both. if Rent or Custom be granted, &c. Perk. S. 74. cites 9 E. 4. 59. 11 E 3. Annuity 27.

2. If a **Feoffment be made unto a Man of two Acres, viz. of one Acre in Tail, and of the other in Fee,** and doth not shew in certain in which Acre the Feoffee shall have Fee, nor in which Acre he shall have an Estate Tail, and a Precipice is brought against the Feoffee of both Acres, and he leave by Default, and afterwards he brings a Writ of Right of one Acre, and that is put in View, and brings Quod ei deforceat of the other Acre, and that is put in View, &c. it is at the Determination of the Will of the Feoffee in which Acre he will have Fee, and in which Acre he will have an Estate Tail, &c. Perk. S. 75.

3. But if a Man feigned of two Acres Leafe them for Life, the Remainder of one Acre unto a Female, and does not shew in certain in which Acre, and afterwards the Woman takes Husband, the Tenant for Life dies, and the Husband enters into one Acre, and thereof doth entitle a Stranger by Metes and Bounds, and dieeth; now the Wife shall not enter into the other Acre and choose; for that it was her lolly to take such a Husband, who would do such an Act when the Remainder fell, for as much as the Title to the Remainder did begin by the Grant, which was before the Marriage, &c. Perk. S. 76.

O

(H. 6) What
Grants.

(H. 6) What shall be said a good Grant, and immediate or, *in futuro."

Th' this was never denied, yet there are some exceptions to the Rule, As to Releaves of future Rights, that is, in some Cases a Man may release a future Right, the by the bare Releaf it can never pass; As 1 Inst. 265. If the Son disfresses the Father, and being in Possession makes a Feoffment in Fee, in the Life of the Father; the no Right or Estate is yet descended upon him from his Father, yet this Feoffment will bar him of this future possible Right, when it does descend. But this is, because he had more than a mere Right; for he had the Possession, and therefore might make a legal Conveyance thereof: And by this Feoffment he did not convey a bare Right only, but the Estate likewise. So that the Feoffee might by Law make a Feoffment thereof, and by Implication, upon such Feoffment and Liberty, all future Rights of the Possessor are extinguished; For being in Possession and conveying the Land itself, he conveys all Rights attending thereon, whether present or future. But yet this does not bar his Heir at Law; for he may enter notwithstanding, and as to him, the Right is not absolutely extinguished, tho' at the same Time the Feoffment is good against him that made it. Another Exception is in the Case of a Feoffment with Warranty, which will bar a future Right, and extends even to bar the Heir; but that is to avoid Gravity of Action; For if the Heir should recover the Land against his Grandier's Grantor; this Land, when defended, would be Affets, and liable to the Warranty; so that it extinguishes by Way of Reskator. But there is no Case in Law, that, by any legal Conveyance at Common Law, a Man could convey Lands that he had no Right to, nor was in Possession thereof at the Time of the Conveyance; Per Trevor Ch. J. in delivering the Opinion of the Court. Hill 6 Anne C. B. 11 Mo. 171. Archer v. Bulkenham.

2. A granted to W. N. the Office of Moner in the Manor of D, and to take 20 Quarters of Corn for executing the said Office for his Life; and by another Clause in the same Deed, it was, and the aforesaid A. granted to the Feone of the said W. N. the aforesaid Office, Habend after the Death of her said Husband, Percipiend at total Vitam suam fictum. Vir fumus percepit in omnibus, and it was awarded a good Grant, and thereof the Feone, after the Death of her Husband, might maintain an Allife. Br. Grants, pl. 127, cites 30 Aff. 4.

3. If a Parson tells his Tithe which shall grow in a future Year, or if the Lord grants the Profits of a Court, which shall arise in a future Year; these are good Sales, and yet the Donor had it not in him, nor is it in effe at the Time, &c. and the same Law seems to be of such Grant of such Thing. Br. Grants, pl. 132. cites 21 H. 6. 43.

4. A Grant of an Advowson Habend after the Death of the Grantor, is not good, because he had Fee Simple in himself at the same Time. So of a Rent whereof he is seised, and yet a Leave to hold from Mich. next for 20 Years is good. Br. Grants, pl. 141. cites 38 H. 6. 38.

5. If a Man grants a Rent out of his Land, to commence after the Death of J. N. this is a void Grant; For he has no Reversion in it, and he is seised in Fee in the mean Time, per Choke and Prichot. Br. Grants, pl. 60. cites 58 H. 6. 34.

6. Lettie for Years gives the said Leave thus, I give my Leave of and in, &c. after my Decese to my Son A. and B. his Wife, 'tis not good. And 122. Kingwill's Cafe.

7. Reversioner on Estate for Life, grants a Rent-charge after Death of Grantor, the Grantee shall disfrain for all the Arrears incurred after the Grant, even during the Life of the Grantor. Mich. 25 & 26 Eliz. Le 13. in Cafe of Rearsby v. Rearsby.

8. A.
Grants.


9. Leafe for 3 Lives to A. After Leffor grants the Reversion to B. for his Life, to commence after the Deceafe of the three Lives; Resolv'd the Words, (to commence) are void, and the Grant of the Reversion good In Prefenti. Mo. 881. per Warburton J. cites it as resolv'd. Hill. 34 Eliz. B. R.

10. A Difference isbetween Finite or Interest, which none can take with out present Capacity and Power; and Liberty or Franchise or Thing newly created, which may take Effect in futuro. Mich. 10 Jac. 10 Rep. 27. b.

Sutton's Hospital's Cafe.

(H. 7) What amounts to a Grant.

1. In diverse Cafes a Reservation shall entitle as a Grant; Per Coke Ch. J. Roll R. 321, 322. in Cafe of Blandford v. Blandford.——- cites 50 E. 3. 27.

2. A. Release, Confirmation or Surrender, &c. can't amount to a Grant. But there is a Diversity to be observ'd where the Determination of the Rent is expressed in the Deed, and where it is implied in Law; For when Tenant for Life grants a Rent or Fee; this, by the Law, is determined by his Death, and yet a Confirmation of the Grant by him in the Reversion makes that Grant good for ever, without Words of Enlargement, or Clause of Diffirens, which would amount to a new Grant; and yet, if the Tenant for Life had granted a Rent to another and his Heirs, by express Words, during the Life of the Grantor, and the Leffor had confirmed that Grant, that Grant should determine by the Death of the Tenant for Life. Co. Litt. 301. b.

3. If a Leafe be made to J. S. except Green Clofe to J. D. who is a Stranger, the Exception is good, and J. D. shall have it; Per Manwood J. 3 Le. 35. Mich. 15 Eliz. Anon.

4. A Condition was, not to grant. A Forfeiture is no Grant to break the S. P. per Condition; As if a grant Advowfon to B. for Life, upon Condition not Jones J. J. to grant the next Avoidance; he becomes Recusant, and the King feizes it, 'tis no Breach; For 'tis not a Grant, and this is proved, Trin. 17 Eliz. D. 343. Ld Arundel's Cafe.

5. Proceedemper, and the Vendee covenants with Vendor his Heirs and Assignees, that Vendor his Heirs and Assignes may dig for Ore in the Wafts of the Manor sold; this is a new Grant of an Interiel to Vendor to dig in the Wafts, and not a bare Covenant, but Vendor cannot divide fuch Interiel, viz. To grant to another to dig one Part of the Wafts, &c. But this Grant does not exclude Vendee, his Heirs and Assignes from digging there too as Owners of the Soil, and Vendor may assign his Interiel to several; but fuch Assignees must not work feverally, but with a joint Stock. 25 Eliz. 4 Le. 147. Ld Huntington v. Ld Mountjoy.

6. Where the Thing granted is a Chattel, a Covenant may entitle as a Grant; per Coke Ch. J. Patch. 8 Jac. 2 Brownl. 338. in the Cafe of the Earl of Rutland. If A. cove- nants with B. Grant; per Coke Ch. J. Patch. 8 Jac. 2 Brownl. 338. in the Cafe of the Earl of Rutland.

shall take such a Fock of Sheep. B. marries the Daughter. The Property of the Sheep is presently in B. because it was a personal Thing, and the Covenant is a Grant' per Tanfield J. Cro. J. 172. in Cafe of Grants v. Simmons, cites 44 E. 3. Monfrans de Faits 144—A Covenant may change Property or Possession. As if A. covenants with B. that if B. pays A. 10l. such a Day, then B. shall have A's Beasts at D. or A's Leafe of the Manor of D. In such Case, if B. pays A. the 10l. at the Day, B. shall have the Beasts, or may enter into the Manor. Br. Covenant, pl. 2, cites it as agreed, and not denied.
Grants.

A. articles that B. should have a Way; this amounts to a Grant of a Way. Resolved by Polleifon and Rooksoy only in Court. 3 Lev. 505. Trin. 3 W. & M. C. B. Holmes v. Peller.

8. Writing on the Back of a Leaf of Tythes, that J. S. should have them, can't pass the Tythes; For they can't pass without Deed. Pach. 13 Jac. Roll. R. 174. Sorrel v. Grove.

9. In some Cases a Recital may amount to a Grant, or have the same Effect.

10. As where a Widow intitled to certain Shares of her Husband's Estate, by the Custom of London, affin'd the same for her separate Use, in Case of her marrying again, for her Life, and afterwards for such Purposes and such Persons as she should appoint by Deed, to be attested by two Witnells, and for Want of such Appointment, to her Children by the first Marriage, but if the Husband the should marry should survive, then he to have 2000l. out of the Shares. Afterwards he having agreed to marry the Plaintiff, by Indenture, to which the Plaintiff was a Party, and attested by two Witnells, reciting that she had before settled her Shares, and that in Case she should make no Appointment of them, they would belong to her then intended Husband the Plaintiff, she assigned the same in Trust for the Plaintiff during their joint Lives, but the to have the Management thereof during the Coverture, or by any Writing duly attested to appoint it over; and the Plaintiff covenanted to settle a Leasehold Estate on her for Life, and after to the Issue of the Marriage. They intermarried, and the afterwards died without Issue by him, and without making any Appointment; Lt C. King much doubted at first, whether the Husband should have only the 2000l. and the Children the Reidue, or the Husband to have all. And tho' he had Notice of the first Deed, yet being a Purchafor of the Shares, and it being recited in the last Deed, that if she died without making any Appointment, the Plaintiff, the second Husband, would be intitled thereto, which (tho' but a Recital) showed the Intention and Agreement of the Parties, and amounted to an (unformal) Appointment; and as no strict Form is requisite to constitute such Appointment, and since the later Deed varied the Power referred to her, the first Deed requiring two Witnells, but by the later the Power of Appointment, being by any Writing duly attested (fo that a Writing would be duly attested, tho' it had but one Witneis) His Lordship, tho' with some Heistation, decreed the Shares to the Plaintiff; and this Decree was afterwards affirmed in the House of Lords upon an Appeal. 2 Wms's Rep. 533. Trin. 1729. Poulton v. Wellington.
By what Persons a Grant may be. In Respect of Capacity.

1. Whoever is disabused by the Common Law to take, is disabused to entitle, &c., but many that have Capacity to take, have no Ability to entitle, &c. As Men * attainted of Treason, Felony or Treasonable Aliens born, the King's Villeins, Tr执ites, Felons, &c. He that has offended against the Statutes of Treason after the Ollences committed, if Attainders ensue. Ideots, Madmen, a Man 4 deac dumb and blind from his Nativity, a Feme Covert, an Infant, a Man under 21. For the Feoffment of these may be avoided. But an Heretic, tho' he be convicted of Hereby, a Letter removed by the King's Writ from the Society of Men, Bastards, a Man dead, dumb, or blind, so that he has Understanding and found Memory, albeit he expresses his Intentions by Signs, Villein of common Person, before Entry or the like, may entitle. &c. Co. Litt. 426.

Land is holden, when his Time is come. Perk. 11, 12 S. 26. cites S. Aff. 25.

What Persons may grant, in respect of their Estates or Interest.

1. A Grant cannot be unless the Grantor has an Interest in himself to grant. 12 Mod. 200. Trin. 10 W. 3. in Case of Sanders v. Owen.

2. A Fine was levied of Land to D. for Life, Remainder to K. for Life, the Remainder to the Right Heirs of D. and B. [D] granted to K. by his Deed, that he might cut Trees to build or repair, or fell at Pleasure; and the Opinion of the Court was, that it was a good Grant, the D. had only for Term of Life in Possession; for the Remainder was in his Right Heirs, and if K. dies, Living D. then D. is feated in Fee. Br. Grants, pl. 49. cites "24 E. 3. 7.

3. A Poision of a Church may grant his Tithes for Years, and yet they are not in him for a Time. Perk. S. 90. cites 38 E. 3. 6. and 24 E. 3, 25.

4. The Gift of a Park or Shepherd is not good, otherwise of the Gift of a Servant of a Vintner or Mercer, giving to me Wine or Silk; for such have Authority to sell it, contrary of the Gift of a Servant, who has no Authority to sell; but a Gift by my Bailiff is void, quare inde. Br. Done, &c. pl. 56. cites 2 E. 4. 4.

5. Note, if Land be leased to A. for Life, Remainder to B. in Tail, Remainder to the Heirs of A. and A. grants a Rent-charge in Fee, and dies, and B. dies without Issue; the Heirs of A. shall hold charged. Br. Charge, pl. 36 cites 5 E. 4. 2.

6. A Feoffment by the Heir, in the Life of the Ancestor, without Warranty, is no Bar after the Ancestor's Death; per Brian and Catesby, contra Trimayle. Br. Bar. pl. 36. cites 21 E. 4. 81.

7. Tenant at Will cannot grant; per Gawdy J. Cro. E. 156. in Case of Sweeper v. Randall.

8. Tenant in Tail and his Son join in a Grant of a most Avoidance; Tenant dies; adjudged the Grant was void against the Son and Heir that joined in the Grant, because he had nothing in the Advowson at Time of the Grant, neither in Possession or Right, nor in actual Possibility. * Hob. 35. Wyvel's Cafe.

* A Man attainted of Treason or Murder, &c. may make a Grant of a Rent or Common, or a Feoffment, &c., and the same shall bind all Persons for the King, for his Time, and the Lord of whom the See Deaf, dumb and blind.

58. in Case of Symonds v. Cod. No.
Grants.

9. When Tenant in Tail makes a Grant of the Thing itself intailed, this Grant is not void by his Death, for that the same may be made good, it being only voidable; otherwise 'tis of a Thing granted out of an intailed Thing, as of a Rent granted out of Land intailed, this Grant is void by the Death of the Grantor Tenant in Tail, and the same can never be made good after. Arg. Trin. 8 Jac. 1 Bull. 32. Walter v. Bould.

10. A poteild of a Term, assigns his Interest to four Persons, on Trust and Confidence, to the Use of himself for Life, and after to such Ules and Purposes as he shall declare by his last Will. A. by his Will, devited this to B. his Son, and to the Heirs of his Body begotten, Remainder over to J. S. and makes B. Executor; B. for 1600 l. sells this to C. — B. dies, the four Assignees are all dead; Administrator of surviving Assignee (B. dying without Issue) grants his Interest to D. and he in Remainder (who had Annuity out of the Term, and who by Deed sold it to C. and who released to C. all his Right in the Term) joined with him in the Grant to D Per rot. Cur. the Assignment was not void against C. by 27 Eliz. 4. and the Remainder to J. S. was void, and yet the Sale of B. to C. had been good, if no Assignment had been; — But the Assignment made it ill. Mich. 5 Car. B. R. 10, 213. Baker v. Sir William Lee.

11. Bargains of Tenant in Tail has a descsendable Fee, and not an Estate only for the Life of the Tenant in Tail; So also in Case of a Covenant to stand seized by Tenant in Tail, the Covenant has a bare Fee determinable by the Entry of the Issue in Tail, but not before. For before the Statute de Donis, he had a Fee simple conditional, and the Statute doth not alter the Nature of the Estate, but restrains the Power of Alienation, and makes the Estate voidable. Trin. 1 Anne. B. R. 2 Salk. 619. Machil v. Clerk.

(H. 10) Not good. But made Good by Relation.

But the Grantee shall not have any Rent by Force of the said Grant, before the first Delivery, viz. when it took Effect as the Deed of the Woman, and so to such Purposes and Intent, it shall not have Relation to the first Delivery, viz. When it was delivered as an Escrowe, &c. Perk. 5, 6. S. 10.

1. If a single Woman, being feised of Land by Deed, grant a Rent-charge out of the same Land, and she delivers the same Deed unto a Stranger, as an Escrowe, upon Condition that if the Grantee go to Rome, and return back again before Easter then next following, then she shall deliver the same Escrowe as her Deed unto the Grantee; she marries, and before Easter, and during the Coverture, the Grantee goes to Rome, and returns back, and the Stranger delivers the Escrowe unto him as the Deed of the Woman; This Grant is good, notwithstanding that the Husband was seised of the Land in the Right of his Wife, before the Grant took Effect, as the Deed of the Woman; at which time she was married to the Husband; Because unto some Purposes, it shall have Relation unto the Term from the first Delivery, viz. when it was delivered as an Escrowe; Inomuch that if the Wife, in such Case, had intollid a Stranger of the said Land before the Condition performed, and afterwards the Grantee had performed the Condition, and the Stranger had delivered the Escrowe as the Deed of the Woman, unto the Grantee, the Feeoffice should have holden the Lands charged, &c. because that at the Time of the Delivery of the Deed as an Escrowe, she was a single Woman. Perk. 4. 5. S. 9.

2. Lease for Years, being outlawed, granted his Term, and after reserved the Outright, this makes not the Grant good by Relation, it not being in the Grantor at the Time of the Grant, Went. Off. Executors, 248. cites it as the Opinion of Sir Edward Coke.
Grants.

(H. 11) Good; Though it may continue longer than the Estate of Grantor.

1. THERE is a vast Difference between an Office by Custom, as the Secondary of B. R., which is only in the Grant of a superior Officer, and an Office derived out of the Interest of another. The Office of Marrow of B. R. is an Office of Inheritance, and the under Offices are derived out of it; and therefore if that Office that is an Inheritance, be granted for Life, all the under Offices that are inferior to, and derived out of his Estate, and in the Gift of him that has the Estate for Life, are determinable upon his Estate, and there can be no Custom to the contrary; Because the Superior Office being an Inheritance, could not stand in need of the Support of a Custom. Per Holt Ch. J. Mich. 13 W. 3. 12 Mod. 557. in Sutton the Marishal's Café.

(H. 12) Construction; When the Grant shall take Effect.

1. A Man leaves [to C.] for Life, rendering 13 s. per Annum; And after, the Leesor by Deed grants 13 s. per Annum, of Rent, issuing out of the same Land, to S. and his Heirs for Life of the Grantor; Fitzh. and after an Estate Shred held, that this is a new Rent, which shall take Effect after the Death of the Tenant for Life, and is not the Rent which was referred upon the Lease. Er. Grant, pl. 77. cites 33 Aff. 4.

2. But note, that the Deed was only that the Leesor granted 13 s. Rent issuing out of the Tenement which C. held for his Life, of the Demise of the [the Leesor to] J. S. the Grantee for Term of the Life of the Leesor, and no Words of Heirs of [of J. S.] was in the Deed. Br. Grants, pl. 77. cites 33 Aff. 4.

3. If a Man leaves for Life, and after grants a Rent-charge to a Stranger, this is a good Grant to charge the Reversion, but the Grantee cannot dis- train the Tenant for Life in his Life; Nevertheless, it is said there, that after the Death, or Surrender of the Tenant for Life, he may distrain for all the Arrears. Br. Grants, pl. 118. cites 5 H. 3. 8.

4. If a Man give me all his Goods by Deed, in my Absence, and the Deed is not delivered to the Donee, yet the Gift is good, and he may justify to take the Goods by the Gift, though Notice be not given to him of it. If the Deed be not made to me that is absent, it takes no Gift, and if the Donee commits Felony before Notice of the Gift, yet the King shall have the Goods; for his Notice shall have Relation to the Gift; but the Court said, that such Gift is not good in the Absence of theDonee, without Notice, for a Man cannot give to me against my Will. Br. Donee, &c. pl. 30. cites 7 E. 4. 29.

5. If I give to you my Hope, so that you do not take him till after the Year, this is void, and it passes freely. Dal. 30. 10. 3 Eliz.—Mo. 27. pl. 87.

6. A
Grants.

6. A Tenor reciting by Indenture his Term and Lease, grants all his
Term, Estate, and Interest, Habendum, to & assigns the immediate possi
sion of the Termor; Adjudged, that the Habendum was void, and
the Premises of the Grant good, to make the entire Estate pass to

7. A. granted to B. a Rent-charge out of his Lands, to begin when
J. S. died without Issue of his Body; J. S. died, having Issue, which Issue
died without Issue. Per Dyer, the Grant shall not take Effect; For J. S.
having Issue at the time of his Death, the Grant cannot begin then, and
if not then, then not at all. Per Manwood, if the Words had been to
begin when J. S. is dead without Issue of his Body, such Grant should take
3 Le. 103. Alton.

8. Where an Estate is given to one by a lawful Act, it shall be adjudg-
ded in the Party before Agreement, until it be disaggreed unto; And if the
Party do once agree, he cannot afterwards disaggreed unto it. Arg. Trin.
28 Eliz. B. R. 2 Le. 92 in Case of Curtis v. Cottle.

9. Where a Man takes in the second Degree, as in a Remainder; the
same vests presently before Agreement, but where he takes immediately,
it is otherwise. Trin. 30 Eliz. B. R. Le. 130. in Case of Colebourn v. Nixlones.

10. Grant of the third Presentation, Grantor dies, and his Widow is
endowed. The Heir shall present twice, the Widow the third time, and
Grantee shall present the fourth. 2 And. 175. per Anderson Ch. J. in
Cafes of Williams v. Bishop of Lincoln.

11. A. covenants that B. shall have all his Trees now standing, it re-
fers to the Trees standing at the time of the Discovery of the Deed, and
not to the Time of the Date, and if any are felled after the Date, and
before the Delivery, B. has no Remedy for them; Per Fleming Ch. J.

12. A. grants such a Spring Wood in White-Acre to B. and before this
is cut down, C. cuts down a Tree, It was held on this Evidence, that
B. in this Case cannot maintain an Action of Trespass for cutting this
Tree down, because it is not his own till cut down, it being growing on

13. Two several Leases had several Determinations; A third
Lease was made to commence after the End of the said two Leases. The
third Lease shall not wait the Determination of both the other, but shall
begin when the one expires, and the other respectively. Jenk. 272.

The Cafe
was, that A.
was seized of
5 Acres in
Fee, and
made a Lease pl. 90.
of one Acre
to B. for Life, of another to C. for Life, and of another to D. in Tail; and afterwards reciting the Ef-
tates, covenants with his Brother, that after all the Estates ended, he and his Heirs should stand seized of
the said 5 Acres, to the Use of his Brother in Tail. By the Death of B. or C. the Brother shall
presently have this Acre, and not wait till the other Estates are ended. But Rotcham's Angula Ing-
lat, by the Covenant the Estate in the several Acres, vests presently in the Brother, without any Ex-
spectancy, but to take Effect in Possession as they fall. Per Coke Ch. J. 2 Barns. 72. Mich. 11 Jac. in

14. Where an Interest depends on a precedent Estate, there the Perfon to
whom it is limited must take it, upon the Determination of the first Ef-
tate, or else he shall never take it; per Haughton J. Hill. 13 Jac. B. R.

15. Grant of Rent-charge to A. for Life, to have, &c. during the na-
tural Life of the said A. at two Feasts, viz. &c. by equal Portions; The
first
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first Payment to be made on the first of the said Feasts, which should happen after the Term of eight Years ended, and specified, and declared in his last Will. There is no Term specified in his Will; In the Premises of the Deed, it is recited thus; In fulfilling the Will of me the said R. bearing Date such a Day, I have given, &c. Per Cur. the Grant is present, if no Term is contained in the Will. Hill. 16 Jac. Brownl. 171. Burton v. Coney.

16. Where the time of executing Estates is left to the Operation of Law, the Law respecting no time but the sooneft, and executes the Estate as soon as may be. Arg. Buls. 27. cites 6 Rep. 34, 35. Bishop of Bath’s Cafe.

17. When Uses are limited to Persons in Effie, and not in Effie; The Uses limited to those Persons that can take, shall take; and when the other Persons come to be in Effie, they shall take. Cart. 291. Paflch. 19 Car. 2. C. B. in Cafe of Richardson v. Chilcot.

18. A. Tenant for Life, Reversion to B. in Fee; B. makes a Lease for Years, and then Tenant for Life, and he in Reversion join in a Fine; The Lease shall take Effect presently; but not that the Estates passed severally, according to Bodin’s Cafe; But they are now consolidated, or else it the Conufe should die during the Life of the Conufor, there would be an Occupant. Hill. 5 W. & M. 1 Salk. 338. Simonds v. Cudmore.

19. The King grants an Office to A. during bene placito, and afterwards grants the same to B. to commence after the Death, Surrender, or Forfeiture of A. The latter Grant is good, and if the King had turned out A. the Grant to B. may take Effect, though not immediately, yet after the Death of A. and the King shall appoint another in the mean time, Trin. 7 W. 3. 2 Salk. 466. the King v. Kemp.

20. A. seised in Fee makes a Gift in Tail, and if Donee died without Issue, that it should revert to Donor for Life, Remainder over in Fee; It was adjudged, that the Reversion to himfelf was void, and by Confequence it should remain over immediately. 12 Mod. 285. Paflch. 11 W. 3. C. B. in Cafe of Scattergood v. Edge.

21. The Father grants a Term for 500 Years to Trustees, and their Heirs, Executors, &c. on such Trusts as by his Will should be declared; and from the Determination, &c. thereof, then to the eldeft Son of the eldeft Son of the Grantor, and the Heirs Male of his Body; And for Default of such Issue, to the Use of the said Grantor’s second Son, and the Heirs Male of his Body, &c. The Father died, his eldeft Son having no Issue, the second Son shall take immediately on his Father’s Death; For the eldeft Son having no Son born, his Son cannot take by way of Remainder, because there is no particular Estate to support it, nor by way of executory Devise; So that if the Fee Simple should depend on the Heir at Law of Tefator, and veit in him till the Contingency happen of his having a Son born, it would tend to a Perpetuity. Tr. 8 Geo. 9 Mod. 4. Gore v. Gore.

See Devife, (K. c) and Remainder (N) S. C. and the Notes there.

(H. 13) Construction of Grants in general.

1. WHERE there are sufficient Matters to guide the Intent of the Party, in such Manner that Lay Persons may understand it, or sufficient Matter is contained in the Deed, to show the Intent, there the Deed, and the Words therein, shall be taken to make the Deed good, rather than destroy it. And. 6e. in Cafe of Windham v. Windham.

2. Deeds

But one Part must not be taken, and another left out And. 135 in Cafe of Baldwin v. Martin.
Grants.

Where the Form and the Effect do not answer to each other, the Form shall be rejected and the Effect stand. per Harpur J. 2 Le. 17. — 2 Le. 210. — In an Indenture between A. and B. whereby A. was intended to grant to B. though the Words Hath granted is without the Grantor’s Name preceding it. 2 Vent. 142. Trefanwy v. Eddison. — And though the Deed was Tripartite, and (Hath) was in the singular Number, so that the Doubt was to whom the (Hath) referred; yet, because the Grantor might be entitled from the whole Deed, it was held good; for Deeds must be construed, as much as possible, according to the Intention of the Parties. 16 Mod. 45, 52. Lord Say and Seals’ Case.


4. Where Words are capable of different Expositions, that shall be taken which supports the Declaration or Agreement, and not that which it appears, to be unmeaning and ridiculous. Trin. 2 Anne. 1 Salk. 324. Wyatt v. Aland.

5. Tho’ Construction ought not to be made against the Letter of a Deed, yet in some Cases a strain’d and secondary Interpretation may be admitted; if the Letter will bear a second, and less genuine Interpretation, it may be admitted, Ne detrimenti. But where the Intention of the Party is not clear and plain, but in quælibet, the Words are to be expounded according to the more proper and natural Construction; Per Bridgman Ch. J. Cart. 109. Mich. 13 Car. 2. in Cafe of Bofworth v. Farrand.

Hill. 4 Geo. 2. Gibb. 222. Fitzgerald v. Ld. Falconbridge. — It hath been lawful for a Court of Equity in some Cases, and upon special Circumstances, to expound a Deed otherwise than the Letter seems to import; yet this ought never to be done, so as not to make a Deed, but only to avoid some Extremity. Fin. R. 101. Hill 25 Car. 2. Check v. Ld. Lisle.


7. ’Tis reasonable, that when part of a Deed tends one way, and part another way, a reasonable Intendment should be taken upon the Words. And. 68. in Sir Richard Lee’s Cafe.

A Grant of Commons, in his Lands, Commonable, not in Gardens and Orchards, &c. ibid.

8. Words in Deeds ought to have a Reasonable Construction. 4 Le. 143. Arg. in Sir Francis Englefield’s Cafe.

9. Money to be paid by Feoffee ought to be paid soon; but if by Feoffee, and he on Payment to re-have the Land, there he may pay it at any Time during his Life; for ’tis to his Lofs, and not to Feoffee’s; Per And. Ch. J. 2 And. 73.

10. Grant of Annuity of 20l. per Ann. to A. ’Till A. is advanced to a Benefice, ought to be a Benefice of the same Value. Her. 90. Patch. 4 Car. Bibble v. Cunningham.

S. P. For a Benefice of half the Value will not determine the Annuity. 4 Le. 152. Arg. — So of a Lifeinterest Benefice. Ibid. — So if Annuity be granted, to a Man of Law for his Counsell, he is not bound to give Counsell but in the Law; and the fame of such Grant to a Physician, he need not to give any Counsell, but in Physick, and not in other Matters, tho’ he be well can; For it shall be in that, in which he is Master Experto. Br. Grants. pl. 174. cites 16 H. 7. 10.

11. Every Grant shall be expounded, as the Intent was at the Time of the Grant; as if I grant an Annuity to J. S. until he be promoted to a competent Benefice, and at the Time of the Grant, he was but a mean Pereson, and afterwards is made an Arch Deacon; yet if I offer him a competent Benefice according to his Estate at the Time of the Grant, the Annuity ceases. Cio. E. 35. Mich. 26 and 27 Eliz. Mildmay v. Standish.

12. The
Grants.

12. The Law for the true Construction of Grants hath Respect to the 
Effluence of the Grantor; Per Doderidge J. 3 Buls. 125. Mich. 13 Jac. 1. in 
Cafe of Gough v. Howard.

13. Ancient Charters are to be taken according to ancient Usage; Per 

14. Construction of Words shall be taken according to the Vulgar 
and usual Sense and Manner of Speech in those Places, where the Words 
are spoken. Trin. 9 Jac. Buls. 175. Hewett v. Painter.

15. Where a Thing is granted by obscure Words, it shall be construed 

16. Words in Grants shall be construed according to a reasonable and 
4 Le. 143. 
likely Sense, and not framed to things unlikely and unlawful. Mich. 16 Jac. 
Hob. 304. in Cafe of Landon v. the Collegiate Church of Southwell.

17. In Awoury; Rent was granted to be paid at two Feet, and it was 
so of an Other, not paid, by equal Portions and yet, in the Law, this shall be expounded to 

18. Verba Patercpora, proper certitudinem addita, ad Priora, quae certitudi- 

dine ineptae, jam referenda. Wing. 167.

19. If Certainty once appears in a Deed, and afterwards, in the same Deed, it is spoken indefinitely, Reference shall be to the Certainty; which 
Ridge J. 
and appears. And therefore, if by an Indenture Lands are given to A & 
S. C. and 
Hereditias mortalet, and afterwards in the same Deed it appears to be 
cites E. 4. 29. b. where 
Hereditiae de Cupare occ., it shall be an Eatee Tail. Because the first Words 
were Indefinite, and the last Certain, by which it appears, that he paid but 
In Cafe of Hix v. Coats and Fleetwood.

Sedan' void & Sec. 'Twas held, that the Bond was not void; because it appeared by the 
Premises, to 
whom the Ref. was, in Law, to be paid, and the Intent to appearing, the Plaintiff might declare of a 
Solevendum to himself, and the Word J. shall be Surplusage.


Pl. C. 165. 
Turpin v. Forreigner.

21. Subsequent Words shall not confound Precedent, if by Construction 
they may stand together; per Nicholas J. Patch. 1657. Scacc. Hard. 94. 
in Cafe of Cocher v. Merrick.—cites 5 Rep. 112. Mallorie's Cafe, the 
Word Suceessors,—and the Words, Executors and Assigns, in Shury and 
Brown's Cafe.

22. An infallible Clause doth not make the Residue of the Deed vici- 
os, which is knible of itself. Hill. 29 and 21 Car. 2. 1 Saund. 320. in 
Cafe of Pordage v. Cole.

23. A Deed may be good in Part, and void in Part; as if a Deed be 
read to a Man unlearned, and Part of it is interlined; this is good for 
so much as was read, and void for the Refidue; per Hutton J. Ley. 79. 
Patch. 1 Car. 1. In Cafe of the Bishop of Chichester v. Freeeland.

24. When an Act is to be done with Reference to other Thing, which 
is impossible, illegal, or variant, the Act shall stand, and the Reference 
shall be void. Hill. 2 Car. C. B. in Cafe of the King v. Eaton. Litt. R. 

25. When there are two Clauses in a Deed, of which the latter is con- 
troverted by the Former, then the Former shall stand; per Nicholas J. 
4 H. 6. 22. of a Gift in Frankmarriage rendring Rent, the Reservation 
is void.

There is a 
Difference 
between an 
Authority and 
an Interest; in an Interest 
the first Ses-

26. One
25. **One Part of an Allurance shall flow its Operation, till another Part has its Perfection.** Arg. Lane 38. Hill. 6 Jac. Scacc. cites 3 Rep. 79. b. Fitzherbert’s Case.

27. Grant of Reversion generally passes Estate for Life of Grantee only. And. 284.

28. The Law for Construction of Grants hath Respect to the Ability of the Granter, and this sometimes shall rule and direct the Grant, where no Estate is express’d. As a Grant made to an Abbot and Convent, without laying more, they have a Fee Simple; cites 11 H. 4. 84. So if a Grant be made of Land to a Mayor and Commonalty, they have Fee Simple. 11 H. 7. 12. So if it be to a Dean and Chapter. 27 H. 8. 15. Mich. 13 Jac. 3 Buls. 125.

29. The Law sometimes hath **Regard to the Consideration, which leads the Ffate.** As a Devise of Land, paying 100L. gives a Fee Simple. So of a Bargain and Sale of Land for Money, without limiting any Estate, tis a Fee-Simple, because of the Consideration; per Dodridge J. 3 Buls. 126. cites 27 H. 8. 5.

30. The Law also sometimes **refuseth the Recoupment and Loss,** which is sufHcient. As if Leflee for 20Years makes a Leafe for 10Years, rendring Rent, and no Time for the Continuance of the Rent; express’d; by Construftion of Law the same shall have Continuance for 15Years, because the Rent is the Consideration of the Term; per Dodridge J. 3 Buls. 126. Mich. 13 Jac. 1. In Cafe of Gough v. Howard.

31. A Grant shall not pass things Divisum, where the Intent was to pass them Conjunctum. Fin. Law. 8vo. 58.

26. Brown. 221. per Coke cites the Cafe of *Ld Cromwell v. Andrews* — *Godb. 120. S. C. cited — 3 Le. 103. Long’s Cafe.— Sw. 103. Long v. Bishop of Gloucester and Hening’s S. C.—2 Roll. R. 91. Arwell v. Harris. Ink. 225. pl. 62.—2 Buls. 8.—M. 396. Arg. cites Bolton’s Cafe.—and Sir Rowland Heywood’s Cafe.—Vylv. 124.—2 Roll. 56. pl. 5. Boson v. Foster. Savil. 62. S. C.—11 Rep. 48. Liford’s Cafe.—Construftion shall not be by Prodium, and divided, where the Intention was, that it should be entire, &c Arg. Skin. 72. cites 2 Rep. 75. Poph. 95. Where if the Party had made Election to take one Acre by Bargain and Sale, he shall not take the Refidues, or any other Part, by Conveyance at Common Law. Arg. Skin. 72.—By Perriam J. in 13 H. 4. the Difference is taken between a Grant of a Manor and court Aduations; and a Grant of a Manor, &c ultimus, a Grant of the Advowfon. In 14 Eliz. D. 311. In the Cafe of the Lord Cromwell and Andrews, if a Man Bargain and Sell, give and grant, a Manor and Advowfon to one, and afterwards leaves a Fine, or in several the Deed, Dyer held, that the Advowfon shall pass by the Bargain and Sale, as in Grofs, before that the Deed be inrolled. But Perriam conceived, that it cannot pass, if the Deed be not inrolled, and then it shall pass as Appendant, by Reason of the Intent of the Parties, Godb. 130. in Cafe of Green v. Harris.

32. One Clauze may be explained by another. Mich. 5 Jac. 7 Rep. 41. (42) Berisford’s Cafe.

As where the K. grant. ed Debit, Duties, Arrears of, and Sums of Money, in one Part, the Word Arrears of being mixed with those other Words, must be intended of Personal Things, and not of Real; but where there was a Proviso, that Granter should take no Benefit of Arrears of any Rents, Receipts, &c. until 7. S. be satisfied, and paid 10000l. this explains what Arrears the King meant, viz of Rents, &c. 12 Rep. 86. Stockdale’s Cafe.


33. Clauzas in Company have other Construations, than when they are expounded one another. Vent. 91. Lion v. Carew.

34. General Words will discharge a general Thing, but to discharge a special Thing, there must be special Words. Arg. Pl. C. 334. Cafe of Mines.

35. Where general Words are, which have reference to a Certainty, there, if the general Words were not paver of the Certainty, the grant is void; as if the Grant was of all Lands and Tenements in D. which were in the Occupation of 7. S. if they were not in the Occupation of J. S. they do not pass; so of all Lands which descended to me from my Mother, &c. Mich. 24 & 25 Eliz. Savil. 37, 38. in Cafe of the Queen v. May.

36. General
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36. General Words shall have a special Understanding, if the special Construction may agree with the proper Signification and Sense of the general Words. Arg. 3 Le. 244. Mich. 32 Eliz. B. R. in Harris and Wing’s Cafe.

37. General Words do not imply any certainty, nor shall conclude any common Perfon to fay, that he has nothing there; and the Difference between General Grants and Particular appears in Pl. C. 191. Wrotelley’s Cafe——29 All. pl. 8. 9 H. 6. 11. 12. 2 E. 4. 27. b. 2 Rep. 33. b. 34. in Doddington’s Cafe.

38. There is no Difference where Words are Particular and where they are General, if the general Words cannot be satisfied without paffing a real Estate, tho’ the particular Words are only of Things personal; Per Holt Ch. J. Hill 2 Anne B. R. 6 Mod. 107. Countefs of Bridgewater v. Duke of Bolton.

39. Words subsequent may * qualify and abridge, but not defoy the Generality of the Words precedent. Mich. 8 Jac. 8 Rep. 154. b. in Altham’s Cafe.

Arg. Bridgn. 102.—but an express Elate limit-ed before in a Deed, cannot be altered by any Implication, which can, or may be made in a subsequent Clause. Arg. 5 Mod. 66. in Cafe of Leigh v. Bruce.—But the Difference is where *tis one entire Sentence, or several. Ibid. and Judgment accordingly.—* As Power to Executors to dispose, let, and set, gives no Power to Grant, tho’ the word (difficult) would carry it Arg. Show. 152. cites Reub. 511.

42. Quando Charta continet generalem Clausulam, posteaque desceindit ad serba Speciali, qua clauftane generali sunt confententiae, Interpretandum et Charta secundum serbam Specialiam; but 8 Mod. 256. Saund. 59. 60. distinguishes between where *tis one entire Sentence, and where the Covenants are distinct. Gainsford v. Griffith.

general and Independent Clauses; Per Holt Ch. J. 12 Mod. 150. in Cafe of Winter and Loveray—cites Le. 119. the Queen v. Lewis——and as cited there Brusser v. Robotham.

41. Antecedent general Words shall be restrained by particular Words following, but not a contra. But if general Words follow particular Words, they shall be taken in the largef: Sense; For otherwise the general Words would be insignificant and void. Arg. Carth. 120. Mich. 1 W. & M. B. R. in Cafe of Knight and Donning v. Cole and Ux.—cites 8 Rep. Altham’s Cafe.

42. General Words in the Beginning or End may be restrained by Latter or Prior particular Words according to the Intent, or particular Thing expressed. Arg. Show. 151. Pach. 2 W. & M. Knight v. Cole.

43. General Power of Revocation in the Preamble, or Introductory Part of a Deed may be abridged by a special Power in the Operating part of it; per Reynolds Ch. B. Hill 4 Geo. 2. Gibb. 214. Fitzgerald v. Lord Falconbridge.—Ibid. 221. per King C.

44. Generalis Clausula non parrigitur ad ea, que antea Specialiter sunt comp-rehenfii; so that when the Deed at first contains special Words, and after concludes in general Words, both Words as well General as Special shall stand. Mich. 8 Jac. 1. 8 Rep. 154. b. in Altham’s Cafe.

 admitted, that in Deeds (tho’ otherwise in wills) subsequent Clauses which are General shall be govern’d by precedent Clauses which are more Particular. 4 Mod. 69. in Cafe of Thomas v. Howell.

45. Where Particular Words are in the End, the Middle shall never be taken General. Pach. 3 Car. Het. 15. Abree’s Cafe.

46. The Rule, that the General Words subsequent shall be restrained by the President Particular Words, is good and general, especially where the particular Words comprehend and express a Thing of an inferior Nature to the general Words subsequent, and that the general Words are put without their dividing Differences: For there indeed the Generality of them shall be controlled by the Bounds of the particular Precedent Words.
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But where the general Words do put the proper Difference of Particulars, and besides take a higher Species than the Particulars mentioned before; As where the Devil is was of all his Flute and Jewels, and all other his Estate real and personal, &c. there the general Words shall over reach the Particulars before, as if in the Archibishop of Canterbury's Cafes in 2 Rep, the Words had been, and all the Ecclesiastical Persons of superior or inferior Rank, they would have taken in Archbishops, Bishops, &c. Per Holt Ch. J. Hill. 2 Ann. B. R. 6 Mod. 157. Countess of Bridgewater v. Duke of Bolton.

47. When Words contained in a Deed go to several Sorts and Purposes, the Deed shall be taken according to the Sense of the Words, without taking or expounding any word to be vain, or confounding the Sense of it, as if in the Deed be contained Dedit, Remitt, &c. this may be a Deed of Grant, Feoffment, Release, or Confirmation, or all these as the Cafe requires. 2 And. 20. Earl of Pembroke v. Barkly.

48. When words of diverse Natures are inserted in a Conveyance, the Grantee has Election to use which of them he will. 2 Brownf. 292. Hill. 7 Jac. in Cafe of Smallman v. Powis.—cites Sir R. Heyward's Cafe. 49. In many Cafes the Preterperfect Tense is taken for the Present Tense. Trin. 17 Jac. 10 Rep. 67. Church-Wardens of Saint Saviour's Cafe.

50. Two Negatives may be construed as a Negative in Grants, but not in Pleas; For they are to be in Latin, and must be construed as Latin ought to be. Trin. 2 Ann. 1 Salk. 328. Dillon v. Harper.

51 Words needful shall not impacho a Cafu certain and absolute without them. Trin. 17 Jac. Hob. 313. in Cafe of Kibbet v. Lee.

52. Addition of useless and superfluous Words shall not hurt the Obligation and Condition which were perfect before. 2 Sond. 79. Pach. 22.

53. When words in a Deed, Plea, or Record, are so repugnant, that the true Sense thereof can't be known to the Court, what is to be judged or construed upon them, all shall be taken to be void; said to be a Rule in Law. Arg. Bridgn. 102.

54. The Law will confirme that Part of a Grant to precede, which ought to Precede. Mich. 10 Jac. B. R. 10 Rep. 28. Sutton's Hospital's Cafe. 55. If a Man makes a Leave referring Rent Habendum for 20 Years, so that the Reservacion is placed before the Habendum, yet 'tis good, and the Judges, by their Construction, are to be Marred the words, as to make it to be a Reservacion of the Rent for the whole Terms; Per Coke Ch. J. 2 Bals. 282. Mich. 12 Jac. in Cafe of Attow & al. v. Hemmings. 56. A Deed ought to be expounded so that all Parts of it may stand together, and it being a Common Aherence, the Judges shall break the Deed in Pieces to fulfil the Intent of the Parties; Per Archer J. Cart. 98. cites 9 Rep. 47. Earl of Shrewsbury's Cafe.

57. Lord

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Godh. 128.
Arg.

2 Vent. 57.
contra in

Cafe of a

Will, Wright v. Wyer.—Exposition shall be made of Deeds sometimes contrary to Grammatical Concurrency, per Withens J. 2 Show. 354. in Cafe of Founta in Guavers.

When there is a Repugnancy between the words of a Deed, the Law regards the first words. Arg. Lat. 264. cites 2 E. 2. Feoffments 64.—So Leas to two Habends, jointly and severally, they are Jointowners; because the first words have the Pre-eminence. Arg. Ibid. cites 5 Rep. 19. Thus sometimes Constructions by Equity shall be admitted, yet the Law never will allow such, as will utterly defeat what is before granted, or is repugnant to the Grant. Arg. 2 Jo. 30. 21.
57. Lord of a Manor grants by Copy to A. and his Heirs Subsequent in M. Wood and M. Grove Annuities incident to 4 vel 5 Acres at lease; all the Underwood (tho' not the Soil) pass by the Copy in Property, and nothing remains to the Lord, and the words Annuity incident by 4 or 5 Acres is the Order appointed for the cutting only, and not to go to the Restraint of the Grant; adjudged as above. Patch. 36 Eliz. Mo. 355. Hoe v. Taylor.

58. The Cafe above is not like to a Liberty to take Underwood for Fuel; for there the Lord may cut, leaving sufficient for the Tenant. Pafch. 36 Eliz. Mo. 355. Hoe v. Taylor.

59. Every Restraint does imply (especially in a Will) that the Party, in Cafe he was not restrained, had Power to do that, which it Prohibits, which is the Cause that it restrains them. Hill. 8 Jac. in Cur. Ward. 9 Rep. 128. in Monday's Cafe, cites Bridgm. Arg. 137, in Marg.

60. A Condition annexed to an Estate given is a revocable Clause from the Grant, and therefore cannot frustrate the Grant precede, neither in any Thing expressed, nor in any Thing implied, which is of its Nature incident and inexpressible from the Thing granted; per Hobart Ch. J. Hill. 12 Jac. Hob. 170, in Cafe of Stukely v. Batler.

61. When first there are general Words, and after an Exception of some Particular, all that is not within the Particular shall be within the General; what is not excepted, is within the Grant; and this Rule holds where the general Words by themselves will not pass a Thing, there by Indemnity of the Exception they shall pass; as if a Man grant Common for all manner of Beasts, yet the Grantee shall not have Common for Goats and Hogs, and yet he grant Common for all manner of Beasts, except Goats, the Grantee shall have Common for Hogs; so if he grant all Trees yet Fruit Trees do not pass, but grant of all Trees except Apple Trees, will pass all other kind of Fruit Trees as Cherry Trees, Pear Trees, &c. Hill. 20 Jac. B. R. Arg. 2. Roll. R. 280. in Cafe of Lord Zouch v. Moor.

62. There is a great Difference, when a Clause of Restraint is in one and the same Sentence, and when it comes in a distinct Sentence. Arg. Litt. R. 186. Mich. 4 Car. C. B. in Cafe of Trenchard v. Hoekins. cites Harris v. Wing.

63. If the restrictive Clause be in the first or last Part of a Sentence, or at the beginning of the first or end of the last Sentence, which in good Sense may be applied to either, there it shall extend to both Sentences; but a contra, if such Sentence be placed in the Middle of one or two Sentences. Sand. 60. Patch. 19 Car. 2. Gainsford v. Griffith.

Grant may be overthrown by words Restriuctive. Godd. 236. Clay v. Barnet.—A Restriuction may be in a special Grant, as in 3 Rep. 1257 Cafe. But if the Restriuction doth not concern and meet with the Grant, then the View is void. Godd. 237. Clay v. Barnet.

64. Tali Interpretatio fienda est ut evitetur absurdum & Inconveniens. It is said by some Men, that, if in a Deed intended made between two, both speak by Words within the Deed, but the Words which between two, one speaks be in the first Person, and the Words which the other speaks are in the third Person; in this Cafe they say, that all the Words in the Deed shall be said to be spoken by him who spoke in the first Person, which Saying is nothing to the Purpose. Perk. S. 162.

Thomas v. Green. — Contra of a Deed Post. Arg. 8 Mod. 512. in Cafe of Skipwith v. Green. But where the Person is named, that speaks them, it cannot be taken that any other speaks them. Arg. Roll. R. 80. — But if not, they shall be accounted to be his, who may most properly speak them, Osw. 251. Dennis v. Henning, alias Jennings. cites 26 H. 8. 2 24 H. 6. 58. 28 H. 8. 6.

65. A second Grant of the same thing to the same Person by the same Person, and reciting the first Grant, must not be pleaded as a Grant, but as a Confirmation. Trin. 13 Eliz. Arg. Pl. C. 397. a. b. in Cafe of the Earl of Leicester v. Heydon.
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67. One thing in Gros can contain another thing in Gros: and a Word which signifies a thing in Gros, cannot pass another thing. As if a Man grant all his Services in D, it is to be intended Services in Gros, and if he have not any Services, but those which are a parcel of a Manor, nothing shall pass by those Words; Per Clench. J. Mich. 127. Eliz. B. R. Godlo. 38. in Case of Futter v. Borome. al. Bozom's Cafe.

68. Exception is no Agreement; For nothing shall be said an Agreement in a Deed, but that which patiet in Interest; Hill. 7 Jac. Arg. 2 Brownl. 213. in Case of Proctor v. Johnfon.

69. Words spoke in one Sense, and by one Party, shall be taken in another Sense diverse Times by Construction of Law; as a Revover for a Remainder. Arg. 2 Buls. 282. Mich. 12 Jac. in Case of Attoe & al. v. Hemmings.

70. To say that Lands have been demised and demisable, the Words shall be taken distributice. Per Glyn Ch. J. Trin. 1655. Sti. 450. in Yates's Cafe.

71. The Law will never make Construction to the Prejudice of the Inheritance, (of which it is fo tender) if the Grant can be otherwise satisfied; Arg. and Judgment accordingly. Hill. 28. Car. 2. B. R. 2 Jo. 72. Aftr v. Ballard,—cites 11 Rep. Lyford's Cafe.—Co. Litt. 54. b. 5 Rep. Saunder's Cafe.

72. A Remainder in a Settlement, with Power of Revocation, was to B. and the Heirs Male of his Body; but in the Deed of Revocation, the Recital of the former Limitation omitted the Words of his Body, but directed that the said Estate in the said Deed mentioned should be to the Use of B. and his Heirs Male. Adjudged, that the same Words in the new Limitation shall have the fame Construction, which they have in the Recital, and shall make new Estate Tail. Trin. 1 Jac. 2. C. B. 3 Lev. 213. Gilmore v. Harris

73. A Deed ought to be expounded by itself, and by what appears in it, where there is no Reference in the Deed to any thing foreign to it; Per Holt Ch. J. Mich. 1700. 2 Vern. 399. in Case of Attorney General v. Mayor; &c. of Coventry.

(H. 14) Construction as to Continuance, in respect of the Words.

* And Live-  
ry shall be intended.

Orw. 118. per two Justices, in Case of Butler v. Rudley.—

1. If in the Premises Lands be letten, or a Rent granted, the general Intendment is, that an * Estate for Life pulles; But if the Habendum limit the fame for Years or at Will, the Habendum qualifies the general Intendment of the Premises; For it is a Maxim in Law, Quod quiescit conceitale fortissime contra Donatorem interprandis ef, which is to be understood, that no Wrong be done; For it is another Maxim in the Law, Quod legis Constructio non facit injuriam. Co. Litt. 183.

If no Estate be expressly in the Grant, the Grantee shall have an Estate for Life; But yet if there be such Words in the Grant which may declare the Will of the Granter, and his Will is not contrary to the Law, the Estate shall be according to his Intent and Will, unless in special Cases. Perk. S. 164. cites 7 H. 7. 1. 7. or. 48. 26 H. 8. 4. —

2. Therefore, if Tenant for Life make a Leafe, generally, this shall be taken, by Construction of Law, an Estate for his own Life, that made the Lease; For if it should be a Lease for the Life of the Lessee, it should be a wrong to him in the Reversion. Co. Litt. 183. a. 183. b.

3. So if Tenant in Tail make a Lease generally, the Law shall construe this to be such a Lease as he may lawfully make; and that is for Term of his own Life; For it should be for the Life of the Lessee, it should be a Discon-
Grants.

65

tinuance, and consequently the Estate, which should pass by Construction of Law, should work a wrong. Co. Litt. 153. b.

4. Aliiie of Cannoun, the Plaintiff shewed a Deed of an Affair and Canvas of Turkey, in 100 Acres of More or in T. to d.y. and carry at Will; and the Aliiie well lies; for these Words, at Will, are referred to the taking, and not to the Estate; and to see that of a Thing which lies in Grant, if no Estate is limited, he shall have for Term of Life, for the Livery of the Deed is as a Livery of the Land. Quod nota bene. Br. Aliiie, pl. 421. cites 7 E. 3. 43. and H. 1. E. 3. Fitzh. Aliiie, 134.

5. If Tenant for Life charges the Land, and in such his Remainder, he shall hold it charged during the Life of Tenant for Life, and no longer. For this is a Surrrender. Br. Charge, pl. 6. cites 50 E. 3. 6.

6. If two Marks of annual Rent be granted unto a Man, until ten Marks are levied, the Grantee shall have an Estate in this Rent but for 5 Years; for the Intent of the Grantee cannot be otherwise, and the Words in the Grant are sufficient to satisfy the fame Intent, &c. Perk. S. 195.

7. If a Villain be granted for Life, the Grant is good, and in the same Cafe, if the Villain purcahfe Lands in Fee, and the Grantee enters into them as into Lands purchased by his Villain, he shall keep the Lands to himself and his Heirs, and yet he hath no Estate in the Villain but for Life; but the Reason is, because he hath the same as a Perkifite, &c. Perk. S. 94. cites 5 E. 4. 61.

other thing; and when in the Place of another thing, and when by reason of another thing.

8. If a Man leaves his Land for Years, rending Rent, and after grants the Rent to J. S. and the Terrain attornies, and after the Terrain surrender, yet the Grantee shall have the Rent during the Term; Per Brian. Br. Grants. pl. 128. cites 20 E. 4. 13.

9. Lease was made for forty Years by Indenture, and Lessor covenanted that Lessee might take convenient Fireboat, &c. in a certain parcel of Land not then leased, from time to time; but no time was limited in certain; Agreed by three Jutices, that the Lessee shall have it during the Term. P. 3 E. 6. Mo. 6. pl. 23. Anon.

10. By Articles A. was to have annually, for six Years then next, 20. s. towards the keeping and honest Education of B. and Bond of 40 l. was given for Payment. The Payment shall be for 6 Years, though B. shou'd die in the mean time. D. 329. pl. 13. Mich. 15 & 16 Eliz.

15. Fine levied to the Use of himself or Life, Remainder to his Executors, till they have levied 300 l. for Performance of his Will. Per Popham and Anderfon, the Estate of the Executors may determine by their own Negligence, and the Words are indistinct, till they conveniently might have levied. Mo. 556. Roiffe's Cafe.

12. A Leafe was made to a Widow for 40 Years, Si tam din vixerit Sela & inabitaverit within the said Houfe, the Leafe determines by her S. C. Marriage or Death; But where the Words were for 40 Years Sub Conditione, one quod si tam dix, &c. the Leafe would have been absolute; For those Words having no (Tune) to refer to, are uncertain, and fo Surpluage. Mich. 37 & 38 Eliz. B. R. Cro. E. 414. Sayer v. Hardy.

and Words of Limitation.——Goldsb. 179. S. C.———Ow. 107. S. C.

13. A Feoffment was made to A. to the Use of A. and his Wife, disponibile of Wait, during their Lives, one died, and Survivor committed Wait; Aëthel lies not by him in Reversion, for it is a Privilege annexed to the Estate, which shall continue as long as the Estate continues. Gc. 132. pl. 150 Mich. 29 Eliz. C. B.
A Rent is granted to two during the Life of J. S. to the Use of J. S. Grantee dies, the Rent remains to J. S. For the Grantees have an Estate during the Life of J. S. and by the 27 H. 8. the Use is raifed and conjoined with the Poftelion, whereby the Rent itself is carried to J. S. by which J. S. has an absolute Estate for his Life, and the Life of the Grantees is not material. As if Rent be granted to two for the Life of J. S. if he does not grant over the Rent, their Lives are not material; And if they grant over and die, the Rent shall not ceafe, but the Grantee shall have it during the Life of J. S. And here the Stat. 27 H. 8. veils this in Cassley que ece, otherwise had it been before the Statute of Uses. Quid fuirt concemum per Car. Owen 126. Crawley's Cafe.

14. A was Tenant in Tail by Devise, with Power to grant a Rent-charge of 4 l. per Annum to B. the Remainderman in Tail of the Lands, and his Heirs in Fee. A. accordingly grants such Rent to B. in Fee. B. offers the Rent to J. S. A dies without Issue; yet J. S. has the Rent in Fee, and it is not determined with the Estate Tail of A. but tlises out of all the Estate which was the Testator's, and charges the whole Inheritance. Trin. 15 Jac. Cro. J. 427. Dutton v. Ingram.

15. Tenier grants a Rent to J. S. and limits no Estate; he shall have this for all the Term, if he lives so long. Per Doderidge J. 3 Bils. 122, 13.

Per Coke, Ch. J. He shall have the Rent during all the Term, and if he dies during the Term, his Executors shall have it; But if one grants a Rent out of his own Land to J. S. and limits no Estate in this Rent, he shall have this Rent for his Life. Per Doderidge, if one grants a Rent to J. S. without saying any more, this shall be for Life; but if he goes further, and says that his Executors shall have it again for 10 Years for this Rent, by this it shal be only a Rent for 10 Years, and cited 5 Cav. Coke agreed this to be so, because it is an Explanation of his Meaning. Ibid.—Per Croke Justice, contra. Ibid. 127. —* Haughton Justice dilinitually between a Grant by Deed, and a Devise; That in a Grant it shall be taken strongest against Grantor. Ibid. 124. Per Coke Ch. J. it is the same in a Devise. Ibid. 129. In case of a Devise, it was declared to continue as long as the Term, and to go to the Executors of Devisee. 2 Vern. 51. Goff v. Gildred. Hill. 1688. — So in Case of a Grant. Roll. A. 831. pl. 5.

16. Covenant on Marriage of his Daughter to B. to pay 10 l. annually, and pays not how long. The Court inclined it should be for Life, but if for the Life of the Baron, or the Feme, was not determined; & adjourned. But some thought for the Life of the Baron, because it is in lieu of the Portion, and shall be taken most strong against the Covenantor; Others for the Life of the Feme, because it is for her Marriage Provision. Patch. 15 Car 2. B. R. Lev. 102. Hookes v. Swain.

17. Covenant on Marriage of his Daughter to B. to pay 10 l. annually, and pays not how long. The Court inclined it should be for Life, but if for the Life of the Baron, or the Feme, was not determined; & adjourned. But some thought for the Life of the Baron, because it is in lieu of the Portion, and shall be taken most strong against the Covenantor; Others for the Life of the Feme, because it is for her Marriage Provision. Patch. 15 Car 2. B. R. Lev. 102. Hookes v. Swain.

18. If Letters Patents are to chuse a Town Clerk generally, it gives an Estate for Life; but if it be to chuse one, provided they may turn him out at their Will and Pleasure, yet they cannot do it without shewing Caufe. But if it be to chuse him during bene placita, he may be removed at any time, and without any Caufelaw, as Twisden said. Trin. 22 Car. 2. Vent. 52. Digbyton's Cafe.

19. The Lieu of a Covenant may be measured by the Estate in the Rent, or thing granted. Per Wythers J. Mich. 35 Cat. 2. B. R. 2 Show. 334 in Cafe of Fountain v. Guavers.

(H. 15)
(H. 15.) Construction as to * Continuance where it is * See Rent (B) pl. 7.

1. LAND given to A. and his Heirs, so long as B. has Heirs of his Body. The Donee has a Fee, and may alien it, notwithstanding there be a Condition that he shall not alien. 2 And. 136. Arg. cites 13 H. 7. 11 H. 7. 21 H. 6. to 36. — So if the Words are, so long as J. S. or his Heirs shall enjoy the Manor of D. these Words (fo long) are vain Words, and do not abridge the Estate. 2 And. 138. cites 11 All. 8. — So to A. and his Heirs, during the Life of J. S. or for Years. Those Words, (for Life) or (for Years) are vain Words, if Liverty be made; For the Donee has a Fee, ut fip. Some hold that it is not a Fee, but if it be, tho' Words are vain, and do not limit the Estate. Ibid.

2. Baron seised in Jure uxoris grants tenans fata unt feum to J. S. he shall have it only during the Life of the Husband, if he outlive him; But if she has Issue by him, then J. S. shall have it for the Baron's Life absolutely. Arg. Goldsb. 68. cites it as a Case put by Baldwin in time of H. 8.

3. A. in Consideration of Marriage to be had with M. made a Feoffment to the Use of himself for Life, Remainder to the Use of M. for, during, and until some Son, which he should beget on the Body of M. should accomplish the Age of 21, and from and after such Son should attain the Age, then to the Use of M. during her Widowhood. They marry, and the Baron dies without Issue by M. She enter, and continues sole. Adjudged without Argument, that the Estate in Remainder to M. is good, tho' she never had a Son. D. 300. b. pl. 39. Pauch. 13 Eliz.


5. Feoffment to the Use of himself for Life, and after to the the Use of A. his Son, provided if he die, the said A. being under 23. then the Grantees and their Heirs shall be seised to them and their Heirs, until A. hath accomplished the said Age, Remainder after to J. S. The Feoffor dies, A. being then but 14. Per Anderfon Ch. J. an absofute Interest vests for 9 Years, determinable on the Death of A. or rather, they are seised in Fee determinable on A's attaining his Age of 23. But Per Rhodes and Windham J. here is an Interest determinable on the Death of A. within the Term; For if A. die within the Term, the Remainder is limited over to a Stranger. Pauch. 28 Eliz. C. B. Le. 281. Baskervile v. Bishop of Hereford.

6. A Grant was made to two, durante vita Ipforum & alterius eorum diutius Viventis aliqua impetitione vixi durante vita Ipforum. One dies. Per tot. Cur. the Liberty runs with the Estate, and shall endure as long. Hill. 29 Eliz. C. C. Le. 151. Rolte's Cafe.

And. 151. S. C.—— Goldsb. 31. S. C. but there 'tis.Du- rantibus Vi-

tis ipforum, and reports the Opinion of the Court to be, that the Survivor shall not be impeached of Want, because of the deceased, but otherwise if it had been framy.

7. So in Replevin, the Cafe was, A. seised of the Land made a Lease at Will to B. rendering 6l. per Ann., and by another Deed, reciting this Rent, he granted eundem redditionem to J. S. the Defendant for his Life; the Lease at Will determines; the Question was, if the Grantee shall have this Rent for his Life, according to the Words of the Grant. And resolved that he should, for eundem shall be taken for taken, viz. eundem in Specie, viz. 6l. per Ann. as in the Queen's Patent, of a Grant of Eas- dem Liberties to illington, quas London, &c. this is not the same, but tales Liberties; and it was afterwards adjudged for the Aowant, that the Rent shall continue during his Life. Trim. 33 Eliz. B. R. Cro. E. 241. Kinsler v. Leverlage.

8. Covenant,
8. Covenant to stand seised to the Use of himself for Life, and after to his Wife for Life, so long as she should be effectually ready to demijse it to his Heir at 50. Rent, when she should not dwell on it herself, and for so long as she should not dwell on it. The Husband dy'd, and the Wife marry'd, and did not live upon it. Yet she need not make any Demise, unless the Heir demands it; there were other Points in this Case, but no other adjudged. Mich. 43 and 44 Eliz. Mo. 626. Sir Cha. Rawleigh's Case.

9. A Recovery was suffered to the Use of A. and his Wife, and the Survivor of them, and of the Executors of A for 40 Years, if C. should so long live. A. dies, and C. dies, the Question was? If by the Death of C. the Estate is determined, that is, whether the Words, if C. should so long live, refer to all the Estate; Curia Advisari vult. Hill. 6 Jac. Scacc. 38. Catesby's Cafe.

10. If I make a Leaf to 7. S. during the Minority of my Son B. if B. dies, the Estate shall cease, but 'tis otherwise in the Case of a Will, because of the Intent, and there it shall be taken for Enumeration of Years. per Coke Ch. J. 2 Buls. 131. Mich. 11 Jac. in Case of Roberts v. Roberts.

11. If a Person makes Leaf for 6 Years of his Tithes, 'tis implied by Law, if he so long continues Person, and the mentioning of it, is no more than what the Law speaks. Mich. 11 Jac. B. R. Cro. J. 328 Wheeler v. Heydon.

(H. 16) Construction. As to Continuance; from the Nature of the Estate granted, after the Estate of the Grantor determined.

1. If the King be seised of Land in Ward, and grants it as long as it shall happen to be in our Hands. Yet the King may make Livery within Age. per Huls. Br. Livery. pl. 17. cites 8 H. 4. 17.

Per Securitatem in Tresor, and grants it over quam dim, &c. the King cannot out the Grantor, for he has a Fee; Quere. Ibid. But where the King grants the Land of the Ward, during minor. state, he cannot make Livery within the Age of the Infant. Ibid. cites 5 H. 7. 3.

2. If Ceffy que Use in Tail, or Tenant in Tail, gives or sells Trees, and dies, the Vendee or Dooce may cut them. Br. Contract, &c. pl. 2. cites 27 H. 8. 5.


1. PUER in a Recovery, and Deed of Use was by an after Fine and Deed of Uses, in which the Limitation was to the elder Child, as the first was Seniori Pueru, explained not to be meant of a Son only, and so a Daughter took before a Son. 2 Le. 216. Patich. 16 Eliz. B. R. Humphreton's Case.

2. Leave to A. for Life. Remainder to the Son of A. who has two Sons named A. the Elder shall have it, because the more Worthy, but if afterwards the Dower declares his Meaning for the Younger, the same shall stand, &c. per Wray Ch. J. Patich. 16 Eliz. B. R. 2 Le. 219. in Humphreton's Case.

3. In Debt on Bond, it was averred to be for Simony, but it being Matter Dehors, and not appearing within that Deed, the Plaintiff had Judgment;
Grants.

Judgment; for no such Averment is given by the Statute. Nov. 72.

4. A Juncire of Lands of 400l. per Annum, was decreed to be made up 500l. per Annum, on the Evidence of the Widow's Father and Uncle, that the Husband, when he proposed the Match, offered to settle 500l. per Annum Jointure, and that he took Notice after the Marriage, that the Jointure was not of that Value, and talked of making it up to much; but no Covenant or Agreement was proved to make a Jointure of that Value, and the Portion was Tantamount to such Settlement. But the Husband was tried to draw the Settlement. Mich. 1681. Vern. R. 17. Benfor v. Bellasis.

5. When a Parcel Agreement stands, and doth not contradict the Deed, you may sue at Law. per North K. Trin. 32 Car. 2. 2 Ch. Cafes. 143. in Café of Foot v. Salway.

6. Marriage Articles directed Lands to be settled, to be to the Father for Life, to the Mother for Life, Remainder to the Heirs of the Body of the Mother by the Father; afterwards, a Settlement was to the Heirs of their two Bodies, and the Settlement is mentioned to be according to, and in Performance of the Marriage Articles. Per Cowper C. it appears not that the Parties intended to vary from the Uses in the Articles, but seems only an Accident; neither Party understood the Limitation of the Settlement or Articles; but the Articles happen to agree with the Intention of the Parties, and the Settlement does not. Decreed to go according to the Articles, tho' the Settlement was made before Marriage. Trin. 1710. 2 Vern. 658 Honour v. Honour.

7. Where an absolute Conveyance is made for such a Sum of Money, and the Person to whom it was made, instead of entering and receiving the Profits, demands Interest for his Money, and has it paid him; this will be admitted to explain the Nature of the Conveyance. Mich. 1719. Ch. Prec. 526. Sir Geo. Maxwell v. Lady Montague.

8. Private Victors, which a Person had at the Time of making a Deed, must be laid out of the Case, and cannot control the legal Operation of it. Per Reynolds Ch. B. Hill. 4 Geo. 2. Gibb. 213. Fitzgerald v. Lord Falconbridge.

(H. 18) Construction, Ut Res magis valeat.

1. If Devisee enters into the Term devised to him, without the Executors Assent, by which he is a wrongfull Seizer and a Dilfelee, and after, he grants his Right and Interest to the Executor; tho' the Devisee has no Term in him, but only a Right to the Term suspended in the Land, and to be revived by the Entry of the Executor, yet twas adjudged to be a good Grant, and that it shall enure first, as the Agreement of the Executor, by the Acceptance of the Grant, that the Devisee had a Term in him as a Legacy; And secondly, the Deed shall have Operation by way of Grant to pass the Estate of the Devisee to the Executor, and so no wrong. Trin. 27 Eliz. Ow. 56. Carter v. Low. als. Lawes.

2. Grant of an Annuity out of the clear Gains of Alien Works. Tho' there is no clear Gains; yet Grantor is chargeable, and the Words (out of the clear Gains) are idle. Patch. 14 Jac. Hobb. 248. Smith v. Boucher.

3. Judges have expounded Conveyances, though at one Instant, as se. Arg 3 Le. vernal, to make all to stand together. Per Hutton J. Jo. 26.

4. If a Deed cannot take Effect, as the Parties express, yet it shall take Effect, as it may, rather than the Deed shall be void. Patch. 1653. Arg. Raym. 142. cites 1 Rep. 76.

5. An ancient Deed, which cannot be proved, shall be intended to be See Estate delivered the last Hour of the Day, to make good the Conveyance; Per Rell. J. Mich. Trin. 24 Car. B. R. Stil. 119. in Café of Cornith v. Cavice.
Grants.

6. Every Thing in a Grant shall be intended to be good, if the contrary doth not appear. Mich. 8 W. 3. 5 Mod. 303. in Case of the King v. the Bp. of Chelte.

(I) Out of what Thing it may be.

Leafe of Lands at Will at 10l. per Annum. Lessor grants by another Deed to a Stranger Exemption Reddittum for Life Lease at Will; determines; Yet the Rent continues. The Difference is between Idem Numerus, and Spate. Trin. 31 Eliz. C. B. Le. Kindler v. Leveredge.

Fo. 47.

(K) At what Time. Seiin, Possession. What shall be sufficient Seiin of a Thing to grant it.

1. The Grantee of a Common may grant it over before any Seiin of it by the South of his Heals. For the Frankentenemt is in him by the Grant. 38 3. 3. adjudged.

2. So the Grantee of an Advowson may grant it over before any Preffentment; For he cannot have Seiin till it words, and he is seized of the Frankentenemt by the Grant to grant it over. 36 3. 3.

3. So the Grantee of a Rent may grant it over before any Seiin of the Rent; For the Frankentenemt is in him by the Grant. Contra 37 3. 3. adititted.

4. If a Common be granted to Baron and Feme, and to the Heirs of the Baron; After the Death of the Baron, the Heir of the Baron may grant the Remainder over; For he has the Estate. Contra 37 3. 3. adjudged.

5. If there be a Lease for Years, the Leefee before Entry hath such Interest, that he may grant it over. Co. Litt. 46. b. Perk. S. 91.

6. If a leafe Land to B. for Life, the Remainder to his Executors for Years; in this Case the Term vests in B. so that he may grant it over; For as Ancestor and Heir are Correlatives as to the Inheritance, so Trustees and Executors, are Correlatives as to Chattels. Co. Litt. 54. Dy. 14. Ch. 309. Mich. 43 s 41. Chi. 3. Rot. 2215. between Sparkes and Sparkes, Will. 42. Ch. Sir John Savage's Case in the Court of Wards, cited in Co. Litt. 54. aforefald.

7. If Tenant in Tail be of Land, Remainder to his Right Heirs, he may grant this Remainder, yet it is not executed in him, &c. Perk. S. 38. cites 17. Aff. p. 66.

8. And if Lord and Tenant be, and the Tenant leaves the Tenancy unto the Lord for Life, the Lord may grant his Seigniory unto a Stranger, and yet it is in suspense at this Time, &c. Perk. S. 38. cites P. 5. E. 3. 16.

9. If a Man seifed of Land leaves the same for Life, the Remainder to the Right Heirs of f. S. who is living, the Remainder takes effect presentl

But if Lord and Tenant be, and the Tenant rejeft the Lord of the Tenancy upon Condition, the Lord may grant his Seigniory, and yet 'tis not determined nor extinguished; For if the Condition be broken and the Tenant enters, the Seigniory is revived, but if before the entry of the Tenant the Lord releases a Stranger of the Seigniory, and then the first Feoffor, vie. Tenant enters, the Seigniory is not revived, but is determined, because that the Lord doth depart with the Tenancy to his Feeoffice discharged of the Seigniory. And so in the same Case the Lord may depart with his Seigniory by such means, &c. Perk. S. 89.
Grants.

But if a Man take my Goods out of my Possession, and
fell them unto me in open
Market, the Sale is void; for it cannot be good unless the Property be thereby altered; and that cannot be; for before the Sale, and at the time of the Sale, the Property was in me, and then, if it shall be altered by the Sale, it ought to be altered in me, and that shall be impertinent; for then it should be altered out of me immediately in me, &c. Perk. S. 93.

11. If Lord and Tenant be, the Lord can't Grant the Wardship of the

12. If Reversion upon an Estate for Life grants a Rent-charge insuing
out of the same, the Grant is good to charge the Land after the Death of
the particular Tenant, &c. Perk. S. 92. cites 37 H. 6. 11.

13. Lefsee of a future Term may, after the former Term ended, grant
over his Term before entry, tho' a Stranger has entered by Tort; but if such
Lefsee had entered, and then been ousted, he must have re-enter'd before
Rainstord.

14. Discharge of a Manor, to which an Adawson is Appendant, grants
the next Voidance, and then enters, this shall not make the Grant good.
Arg. Buls. 33. Trin. 8 Jac. in Walter's Cafe.

15. A. a Discharge of one's B. and C. and makes Livery to B. — B. Grants a
Rent-charge and dies. C. disclaims; this shall vest the Land in the Heir of
B. ab initio by the Relation, but yet it shall not relate to make the Grant
of the Rent-charge good. Arg. Buls. 33. Trin. 8 Jac. in Walter's Cafe.

(K. 2) By what Persons, to what Persons, in respect of
their several Interests.

1. In Trespass, 'tis in a manner agreed, that where a Man puts his
Beafts to another for a Year to feed his Land, and J. N. takes them
out of the Possession of the Bailee, and alter the Owner sells them to the
Trespassor, this extinguishes the Action of the Bailee, and Hanke was
precise in it, quod mirum! For the Trespassor has Property, and then the Sale of
the chief Owner is void, quod quare. Br. Contract, &c. pl. 9. cites 11 H.
+ 23.

2. Note, per Danby Ch. J. Needham and Moile J. If I sell Goods to
W. N. and a Stranger takes them and gives them to another, this is a good
Gift, but Littleton denied it; because the Stranger has Property as Tres-
passor; and per Danby, if a Man take my Goods I may have Replevin,
for the Property is in me at my Pleasure, but the Law here seems to be
that the Property was in him at the Time of the Capture, but in the other
Cafe the Property was not in him at the Time of the Gift; note a Difference.
Br. Done, &c. pl. 27. cites 2 E. 4. 16.

3. If a Man steals Goods to J. S. and after gives them to him, this is a

4. Course if a Man be in Arrears of Account in a certain Sum, and be,
that ought to have the Arrears, gives them to the Accountant; for in the one
Cafe the Donor has a Property, and in the other not, but there a Releas

(L) Before
Grants.

(L) Before Election.  [Where the present Interest passes.]

1. If a Grant to another 200 Faggots per ciencia of all his Lands, or 208. for the same out of his Lands absolute, be laid the 200 Faggots or 208. to him and his Heirs with Clauses to double, to him and his Heirs, for the one, or the other, at the Election of the Grantor. In this Case the Faggots pass in Interest to the Grantee, immediately before any Election with a Power to elect to have the 208. but the 208. do not pass in Interest before the Election; because it is granted for the same, that is, if he will not have the Faggots. So that upon a general Grant of all Hereditaments, &c. the Faggots shall pass before any Election made. Rich. 37 El. B. R. adjudged, between Southwell and Wade.

2. If a Grant to another a Rent out of his Land, this is a Rent prima facie in Interest, with a Power to the Grantee to make it an Annuity upon Election.

3. If a Grant to another a Wood out of his Woods to B. and his Assigns, to be taken by the Appointment of the Bargainor; by this Bargain and Sale a present Interest, grantable over, passes to the Bargainee before any Appointment made by the Bargainor. Rep. 24. b. Palmer’s Case.—3. 43 El. B. R. same Case adjudged between Balfour and Hayward.


fays the better Opinion was, that it is not grantable over; For no Property vested before Alignment, and if the Grantor die before Alignment, the Grant is void and his Executors shall not have it.

4. The same Books and Reasons which prove, that when an Election creates the Interest, nothing passes till Election, prove also, that where no Election can be, no Interest can arise, per Hobert. Hill. 174. Hall. 12. Jac. in Stukely and Butlers Café.

5. If I give one of my Houses, nothing passes till the Donee choose, and if he does not, his Executors cannot; per Hobert. Hill. 174. 12. Jac. cites 2 Rep. 36. Hayward’s Café.

(M) At what Time they may be granted. Possibility.  [Things not in Effé.]

 Fol. 48.

(S) Inf. pl. 7. Hob. 152. 8. C.

If a Grant leaves for 30 Years in April, and in the Deed the Lessee Covenants * and grants with the Lessee, that he shall have the Emblems growing upon the Land at the end of the Lease, this is a good Grant of the Emblems, which shall be there at the end of the Term, to pass the Property; tho’ it was, at the Time of the Grant, but a Possibility, and at the will of the Lessee if there should be any; because tho’ the Lessee had it not actually in him nor certain, yet the Land potentially in him; For the Land is the Mother of all Fruits, and therefore he who has the Land may grant all the Fruits which may arise upon it afterwards, and the Property shall pass as soon as the Fruits are eaten. Hobart’s Reports 178, adjudged between Sanborn and Lawley.

2. If a Lease Land for Years to B., and grants that he shall have all the natural Fruits, as Oranges, &c. which renew annually, which shall be upon the Land at the End of the Term, this will pass the Property. Hobart’s Reports 178.

3. If a Lease be made to Baron and Feme for their Lives, the Remain. Rep. 31. to the Executors of the Survivor of them the Baron cannot grant over this Term, because it is but possibility in as much as it is uncertain, which of them shall survive. Ca. Lit. 49. 4. cites D. B. 13. El. B. R. —— Cro. E. 48. 8. C. cites 15. El. 13. 13. 4. 9. cites by Popham as adjudged 17. El. —— Goldib. 153. per Popham. —— Leis. 14. and Wiz. 2, and 24. 2. 13.
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'\textit{Grants.} to the Survivor of them, \textit{Grant by them} is void; because at the Time of the Grant there was not any Interest but only a Possibility in either of them. Brown. 156 in Case of Clerk v. Sidenham——The Husband held the Term, the Wife survived and died, and her Administrator recovered the Term against the Husband, per Coke Ch. J. 2 Bals. 131——And if the Wife had died living the Husband, he should have the Term against his own Grant, per Popham Ch. J. Poph. p. in Case of Gante v. Lucroft.

The Husband can neither release, grant or surrender. S. P. cited per Popham to have been adjudged, but he laid, that perhaps a \textit{Feoffment} by the Husband might destroy the Possibility. Cro. E. 525. in Case of Hoe v. Marshall.

4. If a Partition grants to another all his Tithe of Wool, which he shall have in such a Year, tho’ it may be he shall have nothing, yet it is a Good Grant. \textit{Hobart’s Reports} 179.

\textit{Land} 5 or 4 Years to come, and yet they are not in Effe at the Time, &c. per Paffon. \textit{Br. Contract}, &c. pl. 15; cites 21 H. 6. 45——And the Partition of a Church may fill the Tithe of his Lands at Christmas next, which shall happen in his Parishes; and 'tis good, and yet at this Time the Lambs are not yet born; per Paffon. Ibid.——So a Man may sell to the \\textit{Profits of his Court} which are to come for 5 or 4 Years ensuing, and 'tis good, and yet the Thing is not in Effe; per Akrie J. Ibid.——So a Man, who has not any \textit{Grants in Effe}, may sell 100 or 200 Quarters to be delivered at 2 Days to come, and well, and this is Usual. Ibid.

5. If a \textit{Daugerant} all the Wool, which shall grow upon all the Sheep, which he shall buy hereafter, it is a void Grant; For there the Grantor has it not either actually or potentially. \textit{Hobart’s Rep.} 179.

\textit{Sleep for 7 Years}, the Grant is good. Perk. S. 92.


7. In many Cases a Man may grant by \textit{Deed a Possibility to come}. Arg. 5 Le. 154. See \textit{Godb. 25. Trin. 26 Eliz. B. R. in the Case of Savil v. Cordel.}

\textit{Oliver.}——But no Possibility, Right, Title, or Chefe en Action may be granted or assigned to a \textit{Stranger}. Arg. 10 Rep. 48. Mich. 10 Jac. in Larmett’s Case.——But if he that his Possibility \textit{join} in Grant with him that has the Land in fact, it may by this means be conveyed to a Stranger. Arg. 2 Roll. R. 519.——As, Possibility to be \textit{Tenant by the Curtesy} is gone by the \textit{Feoffment of Baron}. Arg. Godb. 25. cites 39 H. 6. 45.

8. If \textit{I let Sheep to \textit{A. for 2 Years}}, this is but a kind of Possibility of a Property, which cannot be granted over. Le. 43. Mich. 23 & 29 Eliz. C. B. in \textit{Wood and Foter’s Cafe}, cites 11 H. 4. 177.

9. \textit{Lease for three Lives to commence after the Death of J. S. if they so long live}; tho’ J. S. by Possibility may surive all the three, and so it shall never take effect, yet be it a Possibility or not, ‘tis such a Thing as may be granted or forfeited, and that during the Life of J. S. 2 Le. 55. Trin. 29 Eliz. in Scacc. Farrington v. Fleetwood.

10. A. \textit{Leete} for \textit{Tears devide his Term to B. his Executor to pay Debts and Legacies, and after Payment he devide the \textit{Refudeto his son. B. entered}, which is an \textit{Attent} to the Remainder; the Son grants his Interest; ‘twas held void, because ‘twas but a Possibility, and so uncertain, and ‘tis not sufficient, that it might be reduced to a Certainty afterwards; For it ought to be reduced to a Certainty at the Time of the Grant. Cited to have been adjudged, 19 Eliz. Arg. 3. Le. 157. Mich. 29 & 30 Eliz. in Cafe of Cadecc v. Oliver.

11. \textit{Termor devide the Profits of his Term to \textit{A. for Life,}} and after \textit{A.’s S.P. and the Death to \textit{B. for the ruff of the Term,}} and dies; A. enters by Attent of the Executor, B. during \textit{A.’s Life} affigns to \textit{C.} Adjudged that the Affignment was void; For \textit{B. had} but Possibility during \textit{A.’s Life} which he cannot grant over. Hill. 33 Eliz. 4 Rep. 66. b. in Fulwood’s Cafe.

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—but where it after yealded in Possession in B. a personal Injunction was granted against B. who would impique her own Grant. Mich. 11 Geo 1. 9 Mod. 164. Theobalds v. Dulfor. * S. C. cited as Decreed fifth by Lord Machesfield, and afterwards annointed by the present Lord Chancellor, and list of all by the House of Lords, that such a Possibility might be aliigned even by the Husband of B. alone.


Yelv. 9 S. C. says the chief Reason was because the Term for 21 Years was only a Possibility.

Godb. 145.

12. Leave for Life was made to A. and after for 99 Years to B. after the Death of A. if B. so long shall live, and if he die within the Term, Leffor grants that the Land shall remain to the Executors and Assigns for two Years after the Death of Survivor of both the Leese. Lease for 99 Years grants the Leave for 21 Years rendering Rent, and dies intenteile, having survived the Lease for Life; Administrator shall not have Debt for the Rent; For the Term never was in the Intestate himself to grant or diple of. Mich. 44 and 45 Eliz. Mo. 666. Sparke v. Sparke.

13. A. and B. Jointenants, A. leaves her own Moiety for 60 Years after the Death of B. if A. so long shall live, and A. leaves the Moiety of the other Jointenant after her own Death, which is only Possibility and not grantable. Trin. 2 Jac. Mo. 776. Whitlock v. Hartwell. 14. Dose in Tail aliened before the Statute and before Issue born, and after had Issue, and, after Issue had, died without Issue; the Land shall revert. For he had no Power to alien at the Time of the Alienation; but such Alienation should bar the Issue as is adjudged 19 E. 2. tit. Formendon 61. because he clains Fee Simple. Mich. 2 Jac. 7 Rep. 35. in Neville's Cafe.

15. Condition, if that Lease pay 25s. within a Year, he shall have for Life, and if he pay 20s. after the Year, he shall have Fee; yet he shall have but for Life; For Possibility cannot increace on Possibility, and the Fee Simple cannot increace on the Estate for Years; For this is drowned by Acession of Estate for Life. 8 Rep. 75. Trin. 7 Jac. in Ld Stafford's Cafe.

16. Executory Devise has Dependence on the first Devise, and may be made to a Person uncertain, and this Possibility cannot be defeated by any Sale by the first Devisee. Trin. 7 Jac. 8 Rep. 96. b. Matthew Manning's Cafe.

So Devise of Land in Tail General to A. to have, &c. at his Age of 25 Years. After his Age of 25, and before 25 A. levies Fee with Proclamation, and after A. attains to 25, and has Issue; The the Conuder had only Possibility at Time of the Fee, yet the Estate Tail was barred. 10 Rep. 50.

* Goldib. 99.

17. Conuder of a Fine at Common Law of Lands in ancient Demesne has only Possibility of having the Land again on the Lord's annulling the Fine; and yet by his Release or Confirmation by Deed to the Conudee in Possession he shall establish the Estate of Conudee. 10 Rep. 50. Mich. 10 Jac. in Lampet's Cafe.

18. A. devises a Term to his Wife so long as she continued sole and a Widow, and after to his Son. The Son cannot grant his Interest over, so long as the continues sole. Mich. 10 Jac. 10 Rep. 52. in Lampet's Cafe; Le. 95 S. C. cites * Hamington v. Rudyard.

& per Windham, this Possibility might be exting by Livery, as all agreed, but not by Release, nor could be grantend over, and says twas so adjudged in one Carter's Cafe.—Mo. 739.


20. does the Possibility from the Right, and it doth not lie in Grant or Forfeiture, but unite them and then they may be granted or forfeited. Arg. Godib. 316. Patch. 21 Jac. in Cafe of Sheldif v. Ratcliff.

21. Leave for 21 Years grants his Term to A. if 7. S. live so long, he cannot grant over the Possibility of Reverter. But if he grant to A. for 25 Years if he lives so long, and after grants to B. the Reversion, this Possibility passes with the Reversion. Arg. Hill. 21 Jac. B. R. 2 Roll. R. 427. in the Sergent's Cafe.
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22. That a Grant of a future Possibility be not good in Law, yet a Possibility of a Trust in Equity may be assigned. *4 Car. 1. 1 Chan. Rep.*


23. A Possibility of a Remainder of a Term may be released to Reverser in Fee during the Life of just Decessee. *Patch. 13 Car. 1. 389.*

Johnston v. Trumpard.


real to the Heir of the Person limiting is void Limitation.


26. Specificke Legacy cannot be given or granted by such Legatee till Executor's Assent is had to such Legacy. Nor perhaps will Executor's assent alter the Grant have such Relation as to make good the Grant precedent. *Went. Off. Executor 28.*

27. Ceasy that Trust of a Term, on his Wife'sjoining in a Sale of Part of her Jointure, by deed directs and appoints, that his Trustees, after his and his Wife's Death, should affign the Residue of his Term to his Wife's Daughter whom the shall be 21 or marry'd after the Death of her Father and Mother. The Daughter being marry'd, the and her Husband, in the Life of the Father and Mother, affign to the Plaintiff. *Per Cowper. K. such a Possibility is not assignable, tho' no Reason for it, it Res integra; but it may be released; and divided the Plaintiff's Bill, but without Costs. *Mich. 1766. 2 Vern. 563. Thomas v. Freeman.*

28. 1600. Charget on Land was bequeathed to D. payable at her Age of 25 Years. D. married to J. T. and she and her Husband before her Age of 21 as- signed the said 1600. to W. and afterwards D. attained her Age of 25. This was held a good Allignment, and that it being of a personal thing, an Allignment by the Husband only had been good, and her joining, tho' after Age, had been immaterial. *2 Wms's Rep. 601. 608. Trin. 1731.*


(N) What Thing may be granted. Possibility.

1. If a Sun acknowledges a Statute of 1600. to A. and after leaves the Land to another for 90 Years to commence immediately, and after the Land is extended upon the Statute at 531. per Ann. During this Extent the Lees shall be 90 Years may grant over his Interest of 90 Years, tho' the Extent be till Damages and Costs issued, which may be after the 90 Years ended. For this Extent is but as a Lease, and by a reasonable Construction it will end before the 90 Years. *Mich. 31. and 32. Eliz. B. R. Dubristacle, between Cadier. Plaintiff against Biber & Coebs.*

2. If a Sun, possession of a Lease for Years, devises the Benefit of it to A. his Son for six Years, and that if J. his Son comes home, he shall have the Residue of the Term, and if he does not come home within 6 Years, then W. shall have it till J. does come home. *W. cannot devise this Possibility which he has within the first Years; For it is not any Interest before the first Years past. *Mich. 16. 1a. B. R.*

3. If
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3. If a Grant grants a Rent-charge in Fee by Indenture, and covenants to levy a Fine of the Land out of which it flows, to the use of the Indenture, that is to say, that if the Rent be Arrear at any Day of Payment, &c. and it then stand upon the Land, or the Breach be repaired, then it shall be lawful for him to enter into the Land, and retaine it till Satisfaction of the Arrears; and after he levies a Fine accordingly, and after the Grantee grants over the Rent to another in Fee, The Awaiting shall have benefit of this Penalty, so that he shall enter into the Land and retaine it by this Fine and Covenant; For tho' this was but a Possibility, yet it was annexed to the Rent, (as a Penalty upon an Amenity or Rent) and the Rent upon which it was annexed is well transferred. Ergo, Dicks, 16 Fo. B. R. between Hawgill and Hare overruled * per Curiam and not suffered to be argued. For they say it was clear. Bill. 9 Car. B. R. this was agreed per Curiam in the Case of the Earl of Kent and Steward. 

Cro. C. 328. S. C.

4. If A. feitt in fee of the Manor of D. and S. levies a Fine to B. of both Manors in Fee upon a Purchase made by B. of the Manor of D. and the Manor of S. intended for a Securiy for the Purchase of the Manor of D. and the use of the Manor of D. is limited to B. and his Heirs, and of the Manor of S. to the use of A. and his Heirs to Evidement made of the Manor of D. by A. S. the Wife of A. and after such Evidement to the use of B. his Heirs and Assigns till they shall be satisfied with the Profits of the Land for the Damages receiv'd by the Evidement, and then B. entails C. of the Manor of D. and after A. S. enters into it and leaves C. In this Case no title shall arise to C. in the Manor of S. Because it was a contingent use, which ought to arise to B. his Heirs and Assigns in Point of Limitation, which is not assignable over before it happens. Bill. 9 Car. B. R. between the Earl of Kent and Steward adjourn'd per Curiam upon a Demurrer. Int. in Action. Bill. 8 Car. 3rd. 335.

5. Grant of the Reversion of the Tenant in Tail made by the Donor is good. Br. Grants, pl. 100. cites 12 E. 4. 2.

But if two have Land to them, and to the Heirs of one of them, he who has the Fee can't grant his Reversion, for it is not a Reversion; but by Fragment made by him, the Fee shall pass. Ibid. — — And if a Man makes a Fragment in Fee upon Condition, he can't grant his Condition over, neither can he grant, that when the Condition is broken, it shall remain to a Stranger. Ibid.

(N. 2) Good. In respect of the Estate of the Grantor.

1. LAND is given to A. for Life, Remainder to B. for Life, Remainder to the right Heirs of the said A. there A. may give or forfeit the Fee Simple, tho' it be not vested in him during the same Remainder; quod nona. Br. Done, &c. pl. 55. cites 24 E. 3. 79 and P. 5 E. 4. 10. 2.

2. Affile of Common in 120 Acres of Moore and Heath against J. S. with all Manner of Beasts at all Times of the Year, and he feeted a Deed by which A. granted the Common to G. and M. his Heirs, and the Heirs of G. which G. had iffue B. and died, and B. granted to him the Common, and severed the said Deed, and the other. And the Defendant said, that the Land put in View is only 60 Acres, and of which A. was not feeted half of the free Acres at the Time of the Grant, and that B. had nothing in the Common at the Time, &c. and the Plaintiff was forced to answer to the one Plea and the other; the Affile said that A. was feeted of 60 Acres, and that B. was feeted of all the Pasture after the Death of G. at the Will of M. the Feue of G. and granted to the Plaintiff by which he was feeted, and now M. is dead, and prayed their Discretion, and the Plaintiff prayed Judgment;
What shall be a good Limitation of a Chattle, and the Extent of it.

1. If a Man feiled of an Advowson in Fee grants the next Avoid to B. and his Assigns, Durante Vita ipius B. ia quod licet S.C. diéto B. & A & gratis suis durante Vita ipius B. to present at any Time when it becomes void. This is a good Limitation of this Grant, so that if B. dies before the Church becomes void, the Grant is determined; For this appears to be the Intent of the Parties, and all one as if he had granted it, if it falls during his Life, and such Limitation may be made upon grant of such Chattle, which is derived out of a real Thing, and carries an Interest of a real Thing. Tr. 14 Th. B. between Hide and Man, adjudged upon a special Verdict in a Writ of Error upon a Judgment in B. in a Square impend, and this was so adjudged in B. per Curiam and the Court said that this differ'd from a personal Thing, as a Horse, which cannot be granted during the Life of the Grante. Intratux Tr. 12 Car. R. 360. B. and in B. B. 14 Car. R. 467. But Note, that Barkley and Jones said, that precedenture there would be a Diversity, if a Man possessed of a next Avoidance grants it to another with such Limitation, if he be long live. But it seems that it is all one, being once derived out of a Franktenement.

What shall be said to pass by the Grant. Grant limited in Law. [By Words explaining the Intent.]

1. If the King grants to a Prior that he shall have all the Possessions Hob. 324, of an Abbot in Time of Vacation, Ad Sustentationem Prioris & Monachorum; Advowsons will not pass by this Grant, because they cannot be for their Sustenance. 39 E. 3. 21. b.

2. If a Man leaves eight several Tenements in D. by several Leases, and after by Deed recites seven of the said Leases, and grants the Reversion of them to another with all his Lands, Houfes and Edifices in D. not having any other Lands, Houfes or Edifices in D. except the said eight Tenements; the Reversion of this 8th Tenement, which was a Hill, shall pass by this Grant, tho' all the other Leases were recited, and not this; For the other Words have not any other Colour of Satisfaction without it. Mich. 15 J. A. B. R. adjudged upon a special Verdict between Pagett and Giles.

3. If a Man feiled of a Houfe in N. in the County of Oxon, and of three Meunages, and certain Land in W. in the County of Hertford, leaves the three * Meunages in W. to J. S. for Years, and after devises to another his House with the Appurtenances in N. in the County of Oxon, and all other his Lands, Meadews and Pastures in W in the County of L. In this Case the Reversion of the three Meunages

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* Fo. 50.
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A. A. H. and L., and L. in Oxon, and a
House in Berks. A. covers all his Lands and House in Berks to J. S. and also all his Lands in Oxon. Adjudged that his House in Oxon shall not be also the time not 60 expressly mentioned as his House in Berks. Cited by Noy. Hist. 5 Car. B. R. Palm. 497, as Ever's Case.—ab. Haydon's.—aa. Ever v. Haydon.

4. If a Man by Indenture leaves the Seigny of a Manor in Middlesex, and 20 Acres of Meadow, 10 Acres of Pasture, his Acres of Wood Parcel of the said Manor, cum omnibus Profitibus at Commodationibus eadem Manerio pertinentibus, Habendum & occupandum manerium predictum for Years, and in the Indenture is a Covenant of the Part of the Letting, that he will bind the Steward of the Lessor Meat and Drink and Horse Meat at the Time when he shall come to the Manor House to keep Courts there for the Lessor and his Successors. This is a Lease only of the Demesne, and not of the more Manor. For the Intent appears by the Covenant. Bally. 49 Bl. D. 1224, or Curiam between Lord and Petley.

5. If a Man is seated in Fee of a Parcel of Land called Parkhill, containing in itself 60 Acres, and divides it into three Parts, and leaves one Part of it to A., for Years, and after, during the Term, leaves to B. by such Words, Sellect, Two Parcels of Parkhill containing in itself 60 Acres of Land, for Years, the all the three Parts shall pass by this Grant. For the Intent of the Grant appears to be such, and to the Lessor shall not have any Right of Covenant be the other third Part. P. 6 Ed. 2. per Curiam between Lord and Petley.

6. If a Man grants a Melseage, called Fallohille Place, prout unidique includitur Aquis. By these Words the Seile of the Melse, in which the Water is, shall pass. P. 9 Ed. 2. per Curiam Resolved upon a Trial at Bar between Stint and Morgan.

7. If a Man seizes of a Manor, whatsoever certain Wood, called D. S. and V. and other Lands are Parcel, Bargains and Sells Omnia illa Boscos, Stibboskos, Marrina tunc flanitas, credentia & existentia in & super toto illo Manerio predicto Videfact in & super Coparcia huius Bosco vocato D. & in a super Bosco sita vocato S. & in & super Bosco sita vocato V. In this Case, these Words Videfact does not restrain the general Grant of all the Woods upon all the Manor, but shall serve only for the Explanation, and not Restraint. Hobart's Reports, 229, between Luddick and Butler.

8. If a Man grants his Manor of D. in the County of M. if the Manor extends into this County and another, yet no more shall pass than is in D. 9 Ed. 4. By Reports. 14 Ed. 2.

9. But if a Man grants his Manor of D. in the County of M. and all other his Land in England, Parcel of the said Manor; all the Manor shall pass, the Parted be in another County. By Reports. 14 Ed. 2. per Curiam.

10. If the King seizes of the Rectory of King's Wood, in the County of Wilts, and also of the Tithes of Heidelberg Grange, as of a Portion of Tithes in the County of Gloucester, appertaining to the said Rectory, and he grants his Rectory of King's Wood in the County of Wilts, and all his Tithes appertaining to the said Rectory; The said Portion of Tithes of the said Grange shall not pass by those General Words; For the Words shall have the Like Limitation, by Construction in Law, as the first Words have, that is to say, all his Tithes...
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Tithes appertaining to the said Rectory in Willes. Rich. 17 Ja. B. 5. perTenant upon Cuba, at War, between House and Cor.

10. If a Man grants all his Land, which he had by Decent from his Father, in D., that which he had of the Part of his Mother will not pass. 39 Ill. 7. admitter by Ffc.

11. If a Man leased of the Manor of Hartfret, or of 8 Yard-lands, in C., gives the Moteity of the said Manor, and also 8 Yard-lands, and also all other Lands and Tenements in C. To have and to hold the said Moteity, and all the Premises, &c. upon Condition to enter into the aforesaid Moteity, and all the Premises, &c. By those Words, only a Moteity of the Manor shall pass, and not all the Manor. Because in the Premises, Habendum and Condition, a Moteity is named, and so the Intent is apparent, that only this shall pass. Dubitat. Rich. 5 Ja. B. R. between a Moyle and Evans. Rich. 8 Ja. B. this cited to be adjudged in B. and F. R.

12. If a Man leases for Years all his Lands which he has in D. [adding] all which he has by Grant of J. S. The Land in D. shall pass, thou he has them by other Title. Rich. 7 Ja. B. per 2 Justinote, between Summ and Brown.

14. If a Man has Land in D. and S. which his Father had by Decent and Purchafe, and grants Omnia Terras & Tenementa in D. & S. modo in Tenura S. &c. vel aliquorum aliquorum, & que pater meus perquirivit de J. D. & alius; The Land in D. and S. in the Tenure of certain Men, which his Father had by Decent, and by Purchase does not pass. For all is but one Sentence which limits the Grant, and there being other Land also to latterly the Grant. Rich. 11 Ja. B. adjudged between Elingston Clay v. Barndy.

15. If a Man seized of the Priory of Wells, and divers Lands, &c. pertaining to it, grants to another Omnia Terras & Hereditamenta of the said Priory, which lie in the City of Wells, and within the Liberty and Suburbs of the same City, so the Priory was seized of Mills, under one Roof, and a certain River run between the said Mills, yet if one of the Mills be within the City of Wells, and the other out of the City and Liberties, both shall not pass, but only that which is within the City. Rich. 37 El. B. R. adjudged in the Grant of the King, (the which, as it seems, is all one with the Grant of a common Person.)

16. If a Man grants 29 L. Rent Charge to another, setting out of Yelv. 82. 8. the Manors of E. C. P. and F. and the Meifhages, Lands, Tenements, and Hereditaments of the Cantor, situate, being, and being in the Parishes of E. W. and C. in the County of Kent, or elsewhere in the said County, to the said Manors, or any of them any how belonging or pertaining. This Grant shall not charge any Land, but the Manors, and not any which is not Parcell, or belonging to the Manors. For the Sentence of the Houses, &c. is not general, situate, all Houses, but Indefinite, and so no general including, and the Word (or) without (or elsewhere) cannot make a perfect Sentence, (without the Words Antecedent) Rich. 3 Ja. B. R. cited per Coke to be adjudged.

17. If the King grants to the Lord Wentworth, the Manor of Stepney, and also all our Marishes of Stepney in Stepney, and all Lands and Tenements, &c. in Stepney, and elsewhere to the said Manor belonging. In this Case, Pepper's Bath in Stepney shall pass, tho' it is not Parcell of the Manor, and the Words (and elsewhere,) refer only to the Manor, and the Express general mention before, of all his Lands in Stepney, shall not be contained by this Subsequent Clause. Rich. 3 Ja. B. R. cited per Coke to be adjudged.
18. If the King has the Manor of S. and N. in S. and both late Par-
cel of the Abbey of St Albons, and he grants the Manor of S. and all
his Lands there, also dated (this was at large rolled-Stanbridge) and all his
other Lands in S. or elsewhere, to the said Manor late belonging. In this
Case (if) Manors shall pass, and the Elleanor is a federal and dis-
tinct Chattle by its let. 22 El. Roberts's Case in the Court of
Wards adjudged, cited per Coke. P. 3 Ja. B. R.

19. If a Grant leads to B. Blackacre for 20 Acres, to commence
at Lady Day next ensuing, and after Eater ending, he recites, that
whereas he had leased to B. Blackacre for 20 Acres, to commence at
Latter last past, he grants the Reversion of it, &c. Tho here he mis-
takes the Commencement of the Lease, Yet for the present Certain-
ties, that is to say, of the Leisce, Land, and Number of Acres,
it is a good Grant. P. 14 Ja. B. R. adjuged, Caftan and Writs.

20. If a Han has Lands in the Vill of M. called A. and B. and he
leaves all those Lands in M. called A. and N. or by what Name or Title
soever they be called; The Land called B. does not pass; For this
Word (Thode) means it precisely to the Name. P. 11 Ja. B. per
Curiann upon Evidence at the Bar, between Sir Edward Belling-
and Sir John Shirley. 

21. If a Han leaves his Land by certain Name, as Blackacre, in
the Parth of Mary Louder, in the City of Gloucester, his Land which
lies in Mary Ladies shall pass, though it be not in the City of

22. If the Lord licences his Copyholder for Life to lease Blackacre
in the Tenure of J. S. for 5 Years, whereas Blackacre is not in the
Tenure of J. S., but in the Tenure of the Copyholder himself. Yet
this is a good Licence for the Copyholder to lease Blackacre, insomuch
as there is a particular Certainty by Name before. Rich. 15 Ja.
B. R. adjuged upon a Special Vendite, between Waltham and
Bambrooke.

23. If a Han grants a Rent to B. out of all that Manor of D. in
the Parth of S. and out of the Land in M. where nothing of the Ma-
nor or Land lies in S. or B. and the this be granted of (all that)
which is a Relative, yet it is a good Grant out of the Manor,
in Case of a common Person. Hilt. 8 Car. 8. R. adjuged, per
Curiann upon a Special, Vendite Lebanger and Mantell.

24. If a Han leave to another the Meadows in D. and S. contain-
ing 10 Acres, and in Truth the Meadows in D. and S. contain 20
Acres, yet all the 20 Acres shall pass. D. 6 and 7 C. 6. 80. 56.

25. If a Han leave 47 Acres of Meadow near F. whereof 15 lie in
D. and 20 in E. and 15 in F. and in Truth all lie in F. whether all
Acres, Dubitatur. D. 6 and 7 C. 6. 80. 57.

26. If a Han leased of a Rectype appropriate of the Parish of
D. grants to B. divers particular Lands, being Glebe, and the Titles
of diverse particular Lands, with their general Words, With all and
singular Profits, Commodities and Advantages, Tithes Personal and Pre-
dial, whatsoever they be or shall fortune to be, belonging or appertain-
ing in any wise to the said A. as Parson appropriate of the said Parrish, as
the Tithes of Pig, Goose, Lamb, Wool, Milk, Calf, Fowl, Swans,
Woods, and all other Tithes whatsoever; And also all the Tithes of
the said Glebe, (before granted) with all and singular the Apparren-
ces, all which lately were in the Occupation of one Margaret Pevoe,
Widow, deceased, and all other their Rights, Interests, Title, Com-
modities and Profits in and so to the same, which to the said A. doth be-
long, as Parson, &c. though it does not appear, that Margaret Pe-
voe had the Possession of any of the Tithes appertaining to the Rec-
topy; (For it was not found by the Jury that she had,) yet all the
Tithes shall pass which appertain to the Rectype; For the Words
(all which last were, &c.) are Words of Sugestion or Allusion,
Grants.

and not of Restriction or Limitation; because the Sentence is perfect before, and this commences in a new Sentence, and not part of the first general Sentence. *Tr. 12 Car. B. R. between Swift and Acres, adjudged per partam Curiam upon a Special Verdict. Intratut.*


27. And in it was held in the same Case per partam Curiam that if it had been found, that Margaret Pethoc had the Occupation of any particular Tithes, but not of any appurtenance to the Rectory, yet all had been passed by the said Grant for the Reason aforesaid.

28. If A.'s *Grandfather be seised of Lands and Tenements, called Heathers, and of other Tenements called Bakers, and of other Tenements called Wixes, all being in B. within the Manor of C. and by his last Will devises to G. his Wife, all his Tenement and Backside, containing by Estimation 2 Acres, called Wixes in B. for her Life, and dies, and after B. his Son and Heir covenants by Indenture to stand seised of those Mesuages, Lands and Tenements in C. commonly called or known by the Name, and Names of Weeks, alias Wixes, alias Weckes, his Heathers and Bakers, or by any of those Name or Names, or by any other Name or Names whatsoever, which were the Inheritance of the said A. who is dead, and which were by him, bylured, granted, or conveyed, or for the Use of the said G. or were given or bequeathed to the said G. by the last Will of the said A. and which now are in the Tenure or Occupation of the said B. to the use of himself for Life, and after to the use of C. his Wife, &c. In this Case, there not being any Tenement called Wixes, his Heathers, or Wixes, his Bakers, but one Tenement called Heathers, and another called Bakers, and the said Tenement called Wixes, being to G. as is aforesaid, nothing shall pass by this Covenant, but only the Tenement devised to G. For it was not the intent to pass several Things, but only one Thing, which had such several Names, with alias diet. And when the Words are with a Relation, all those which were devised by G. no more shall pass then whole; For this limits the general Words. *Trin. 13 Car. at Serjeant's Inn, resolved per the 3 Chief Justices, Schele, Brampton, Finch and Davenport, upon Reference to them out of the Court of Wards. This concerns Mr. Dunberry of the County of Southampton.*

29. If a Man seised of a Mesuage and Farm, called Rooke's Farm, in D. and of other Lands in D. not Parcel of the said Farm, demise to J. S. for Life, and after, by other Deed, makes a Demise by these Words, *He demise all that his Farm, Mesuages, Lands and Tenements, sometimes called Rooke's Farm, or by what other Name or Names forever the same be called, now or late in the Tenure or Occupation of J. S. or of his Assignees or Aligns, and all Buildings, Gardens, Orchards, Meadows, Pastures, Lands Arable, Woods, and Underwoods, Ways, Water, and Commons, and other the Appurtenances thereunto belonging univerally, in as large and ample Manner as the said J. S. holdeth, or at any Time hath held the same, Habend' for 21 Years,* &c. In this Case, Lands not Parcel of the Farm shall pass, as well as the Farm; For tho' there be a Particular (Selectt Rooke's Farm) mentioned, yet there are also general Woods of Lands and Tenements joined together with the particular Farm, and therefore the Woods, or by what Name or Names the same be called, will refer as well to the general Woods, Selectt Lands and Tenements, as to the particular Farm; For the Wood (Same) refers to all before mentioned, and all are bound and circumscribed by the subsequent Woods, [now or heretofore in the Tenure of J. S.] to that what Land was in the Tenure of J. S. was intended to pass, be it part of the Farm or not. *Trin. 22 Car. B. R. between Vaughn and Longville, adjudged upon a Special Verdict per Curiam. Intratut.*

Trin. 23 Car. Rot. 1629. Another Case of the Judgment...
Grants.

was, because it is not found, that the Farm was called Roke's Farm, but only, that it was once in the Tenure of one Roke; which may be true, and yet not called by the Name of Roke's Farm; and then there not being any Farm called Roke's Farm, the general Words are only of Estate and Material in the Grant.

Mo. 240—

30. If there be in the County of Somerset the Vill of Street, and the Vill of Walton within the Parish of Street, and a Man
ted Land in the Vill of Street, and of other Land in the Vill of Walton, all within the Parish of Street. And he Bargains and sells all his Land in Street, and covenants to levy a Fine, and seizes it of Lands in Street, and no mention is made in the Indenture, nor in the Five of Walton; the Lands in Walton shall not pass, because when Street is named generally, it is intended a Vill, as well in Grants as Writs and Pleasings. Trin. 4 Ta. B. R. adjudged between Stoke and Pope.

31. So he lends all his Land in Street; the Land within the Vill of Street only shall pass, and not the Land in the Pa

ch, because by Street generally, is intended a Vill. Contra P. 39 Cl. B. R.

Mo. 710 S.

C—2 And.

124. S. C. by
Name of Sir
G. Farmer's
Cafe.

Cro. E. 462.
S. C.

P. 38 Cl. B. R. in highham and Beat's Cafe.

Cro. E. 462.
S. C.

P. 38 Cl. B. R. in highham and Beat's Cafe.

Cro. E. 462.
S. C.

P. 38 Cl. B. R. in highham and Beat's Cafe.

35. If a Vicar be endowed of the third Part of all the Tithes, coming and growing within the Manor of D. in such Parish, The Dicet, by Force of this, shall have the third Part of the Tithes of the Franken
tants, as well as of the Cophold Tenants; For both make the Manor, and no Prejudice is to the Tenants. P. 38 Cl. B. R. adjudged between highham and Beat.

36. If a Man grants to another a Common in free Metas & bundas of the Vill of D. and part of the Vill is severall, and part woff Land and Common, he shall have Common in the Common Land, but not in the Several. Br. Grants, pl. 125. cites 14 All. p. 22.

37. If a Man grants Common, Ubiqueque averia sua ierint, and after he Manure 100 Acres of Land, and then becomes Poor, so that he has no 

38. If Lord and Tenant be, and the Lord grants his Seigniory for Life unto a Stranger, and the Tenant attorns and dies without Heir, and the Grantee enters for Effevate, he shall not have a greater Estate in the Tenancy than he
Grants.

he had in the Seigniory; because the Tenancy cometh in lieu of the Seigniory. Peck. S. 96. cites 3 L. 4. 3.

39. During the Voidance of a Church, the Patron grants Proximam nonnulliis, &c. cum prima & Prosim. Vacantus, the Grantee shall not
have this Pretention, but the next. D. 26. pl. 165. Hill. 28 H. 8. 

40. Leffe or bargained and sold to Leffle all * Woods and Underwoods in
and upon the Produtums, and that it shall be lawful for Leffle to cut and
carry away the same at all Times during the Term, per 3 Jult. contra
Dyer; Leffle can cut but once, and per two against Dyer &c. S. Bury
Speinfreu no more do pass, &c. See S Le. 547.—3 Le. 30. Anon. in
Mars.—Mo. 90.

41. All Demises 15 Houfes in B. to C. and names the 15 several Tenants
A. B. C. &c. A. encoffis D. of all thefe 15 Houfes in B. which A. demifed
to C. now in the Occupation of &c. and one of the Occupiers Names was
omitted in the Recital, yet the Mefuage paffes. Mich. 32 Eliz. 3 L. 235.
Trapp's Cafe.

42. Bargain and Sale of Woods, &c. during Life of the Grantee, under a
yearly Rent, is no Leaf, and paffes but one Court. See And. 7. Mo. 15.
3 Le. 7.

43. Lands given for the discharge of poor Inhabitants of a Parish of Fifteen
and Taxes, with a Produtum that the Rents shou'd not be to the Dis-
charge of Gentlemen's Lands of the Parish, but of poor Men's only, the
Defendant being but a Yeoman (tho' he had purchased some of the Gentle-
men's Lands, and fought to have Benefit of the Gift) was yet not allow-

44. King Henry the 8th. granted 14000 Decima noftris Granorum, &c.
and in Burrow Sarfénd Edmond, ad aurem alias Decima quaefume infra Bury
preditum, quos Elfrominariuis monafteri prèditum colligere solébat, adjudged, that
the Relation ought to be expounded to the Ac aurem alias, and not to the

Efrominarius, &c.—King H. 8. granted to J. S. the Manor of B. and all his Lands in B. and elsewhere
in the County of Bucks Doña Manerio Spectant'. The words, Diöco Manerio Spectant, extend but to
Land in the County of Bucks, and do not refrain the words, and all his Lands in B. which are distinct

45. A. selle of the Manor of S. and of other Lands in Fee in S. and
of a Term of Years in other Lands in S. gives, grants, bargains, fells,
encolfs and confirms to B. and his Heirs the Manor by special Name,
and the other Free Simple Lands by special Name, and by general Words all
other my Lands and Tenements whatsoever in S. The Court was at first
divided; but afterwards it was at all adjudged, that the Term paffes not,
by Reafon the Habendum was to B. and his Heirs, fo that the Intent was
apparent, that nothing fhou'd paff but what the Heir might take. Mo.

and that the Court was divided. Trin. 10 Jac. 50 leaves the

46. Demife, grant, and to farm let, all his Woods and Trees; adjudged,
that no Property paffes in the Trees by these words, tho' there were
words with Liberty to fell and fell; For those words make no grant of Prop-

and there is no mention of the word sell.

47. A. demifed a Garden Plott to B. for 30 Years, during which Leafe
he leaves it to C. for Years, the first Leafe expires, C. erects 3 Houfes on
Part but other Part remains as Garden-Plott, during this Leafe, he leaves
to D. by Name of all that Piece of Ground or Garden-Plott late in the Tenure
of B. and now in Possession of C. resolved, that the Houfes shall paff. Mich.

48. A.
Grants.

48. A was a Copyholder for Life of one of the King's Manors, paying
15s. Rent per Annum, the King granted to W. R. inter al. omnia Meji-
soauge Terres, Tenementa, Redittus, Reveriones, Servitii & Hereditamenta
fut in Manerio predictis ex totam illud annualem Redittum quindecim
Solidorum & alia servitutia Exeuntia de terris A. (and to divide the other Rents
of other Copyholders) et totam illud Mejangium & ses Virgatas terre in
Manerio predicto de D. in tenura J. D. Habendum, &c. omnia predicta
Mejangium, Terres, Tenementa, Redittus, Reveriones servitutia & Hereditamenta
in predict. to the said W. R. and his Heirs, per tot. Cur. the Land of
the Copyholder is not Conveyed by this Patent; For here is no Land
granted, but the Rents and Services of A. which is intended Freehold,
and there being no such, the Grant is merely void. Mich. 1 Car. Cro. C.

49. Licence to hunt and kill Deer does not give the Deer. Lat. 270.
Mich. 2 Car. in Cave of Saceverell v. Dale.

50. If one that has several Fishting, grant Liberam Piscariam, the
Grantee has free fishing with the Grantor; but if he grants Piscariam saum
without paying more, the intire Pifchary paifes. 2 Sid. 8. Mich. 1657.

51. Caddiscim parci & Arborum Vento prostratum; The Trees do not
pass, but had it been Cutilusparci & Arboris Vento prostratis, Grantee
might take Wind-falls. Hard. 307. Mich. 14 Car. 2. Sacc. in Cave of
Walter (Sir William) v. Travers.—Arg. Hct. 15.

52. Grant of Lands and Mines, and there are Mines open; the Mines
open only pafs. 2 Lev. 185. Hill. 28 & 29 Car. 2. B. R. Atrv v. Ballard.

* See (P) pl. 6. (7) pl. 10, 11, 12, 15 (E a) pl. 2. + Br. Grants
pl. 24. cites S C.—Ibid. pl. 160. cites. * E. a. + s. P.—It shall
not pass the Land, because part of the Profit is given; for Trees, Mines, &c. shall not pafs. Co. Litt. 4. b.
Per Coke Ch. J. Roll R. 221. cites 45 E. 5.

**(P. 2)**

1. **Note**, that it was said, that if a Man grants to another to dig
Turves in D. in 100 Acres of Land there, and to carry away at
Will, by this the Soil passes, so that if he be ousted he shall have Affise
of the Soil, which is not Law; For the Grantee may bring Affise of Com-
mon of Turves and recover, and not bring the Affise of the Soil; quod

2. A Man seised of Lands in Fee, by his Deed grants to another and
his Heirs the Profits of those Lands, and makes livery Secundum formam
charta, the whole Land it fend does pafs; For what is the Land but the
Profits thereof; For thereby Vetture, Herbage, Trees, Mines, and all
whatsoever, Parcell of that Land, does pafs. Co. Litt. 4. b.

3. The Soil will pass by the Words of Baillorie of Soil, or of annes
Boles sius, or of omnes Boleos sius crescentes, or of 20 Acras alinet, omnis
prata sius, omnes Brarras sius, annes Juncariae Mariscos sius, Rufcaria,
Stagnam, Gorges, Minera, or sandia Plumbl, fould Coue. Co. Litt. 4.
b. 5. a. 5. b. 6.

**Vesturam terre.**

4. But by the words Vestrume, or Herbagium terre, the Lands will not
or Herbagum pats. Co. Litt. 4. b. 5. a. 5. b. 6.

These, gran-
ed by Deed to another and his Heirs, and Livery of Seisin made Secundum formam charta, will not
pass the Land it self; but Corn, Grass, Underwood, Sweepage, &c. 'twill pafs, and the Grantee shall
have an Action, Quaer clatum fregit. Co. Litt. 4. b.—If a Man grants Vestura terre for Term of Life,
'tis a Grant of the Land for Term of Life; For the Vetture is the Profit of the Freehold, and
have the Profit of the Freehold, and the Freehold is all one. Kelw. 118. pl. 60.—One may
have the Vestura and another the Soil, per Clerk, and by the Lord Ch. Baron, he that has Vestura
terre, cannot dig the Land; and if many have a Meadow together, viz. to be divided among them every Year
by Lots, how much each should have in this, or that Place, and so to change every Year according
to the Lots, they have not a Freehold, but only Vetturam terre. Trin. 50 Eliz. Ow. 5. Anon.
He that hath Herbage may include but he that hath reasonable Herbage, cannot. Arg. God. 417. cites
Kelw. 199. Thou the Owner of a Park may dispark it, yet he that has only the Herbage of it, cannot. Arg. God.
419. cites D. 71.
5. There is a difference between *Vestura* and *prima Vestura*; for by *Vestura* perchance the soil passes; but by *prima Vestura* no soil passes. But per or. cur. if the Grant be *de prima Vestura uque ad a Day certain*, as Lammas, *Mich.* etc., there the Grantee shall have the soil also for the Time, and feed or move it; but where 'tis prima Vestura only, as soon as he has cut the grafts, his interest is gone. *Patch. 19 Jac. B. R. Palm. 174. Bishop of Oxford's Cate.*


7. If a man grant *Aquam Saum*, the soil shall not pass; but the Pisaria within the water passes therewith. *Co. Litt. 4. b.*

8. If a man gives *his Woods*, the soil passes; but if he leaves his *Land*, except *Words* and *Underwoods*, the soil is not excepted, but only the trees. *14 H. 8. 2.*


10. By the leaf of a *Wiere*, the soil passes; because he cannot amend it without the soil; Per Doderidge. *J. Roll. R. 259. cites 7 E. 3.*

11. Grant of the Bishop of Winchester to the Corporation to build in the *Vacant Places*, and *Inhabit there*, is but a *Covenant* or *Licence*, and does not pass the soil; but the soil, and consequently the House, are the Bishop's; tho' the Grant be confirmed by the Dean and Chapter. *Mich. 3 Car. C. B. Het. 57. Major and Com. of Winchester's Cate.*


1. *Lessor* grants, that Leafe shall have as grant Commodity of the land, as Leafe might here had; yet Leafe cannot dig the land for a Mine of Coal or Stone; because the Law forbids him to dig the land. *Hill. 23 Eliz. C. B. Godb. 5. cites 17 E. 3.*

2. By a Grant of all *Trees*, *Apple Trees* will not pass; yet if it be of all trees, *cujusque genus*, Nature, nominis, aut qualitatis, then they will pass. *Arg. Patch. 3 Car. B. R. in Cate of Whittle v. Welton.*

3. A Bishop granted all his *Farms and Hereditaments* of W. in W. in the County of Somerset; — In W. he had a Rectory, which extended into the County of D. — Per Cook a Counsel, the word *Farms* does not pass the Rectory, unlefs the Rectory was in Leafe before; but he agreed, that *Hereditament* is sufficient to pass the Rectory, and because the Rectory extends into Devonshire, it items, that so much, as lies in Devonshire, shall not pass by the Grant. *Mich. 24 Eliz. Mo. 176. Robert's Cate.*

Z 4 A.
Grants.

4. A grant to B. mediatatem Manorit de C. and 8 Rood of Ground in Mich. 44 & C. and moreover all other Lands and Tenements in C. Per Popham, only a 45 Eliz. B. R. C. G. is, that A. grant

ced the Manor of the Moity of the Manor paffes, & the Jury found accordingly. Noy. 49. Moyle v. Ewer.

5. A. granted omnes Bosos Arboreas, &c. aduncu crescent, &c. Simul cum omnibus Boiseis, &c. que ad aliquod tempus Extum in poiferum fo-

rent crescent, &c. in & super illis paribus Forelce, &c. except the Land and Soil of the same Wood.—Resolved, that the Grantee has an Inheri-

tance, as Profit Apprender in alieno Solo, and that the Soil remains to


6. A granted All his Woods growing upon all that his Manor of Cleave, viz. upon three Coppices, A. B. C. The viz. does not restrain the Grant

because of the Word (all). But if the Word (all) had not been, the viz. 


7. By the Grant of an Houfe, a Houfe, which is pulled down, will 


8. One thing shall enure as another. See Maxims.

(P. 4) What Words give what Estate.

1. In Grants, a Reverfion shall be taken for a Remainder. 4 Le. 76. Hill. 


2. By Grant of totum Terram, which A. held in Dower, the Reverfion 

shall pass. 4 Le. 77. Hill. 29 Eliz. C. B. cites 38 E. 3.

3. Remainderman in Tail grants all his Estate to W. Habend' all his 

Estate to W. during the Life of C. (Tenant in Tail) Remainder to the

King. After the Grant to W. of all his Estate, he cannot limit any Re-

mainder of it to the King. 2 Rep. 51. b. Patch. 39 Eliz. Scacc. in Sir 

Hugh Cholmeley's Cafe.

(P. 5) Grant by Recital of a Thing which is not yet

Good.

1. Deed of Grant was set forth, by which H. the Defendant had

granted to the Plaintiff and his Heirs twenty Lord of Wood, of 

which the Plaintiff had fifteen of the Gift of Richard my Father, and 

shewed only the Deed of the Defendant, and not of his Father who 

granted fifteen Load, and yet good. For it is a good Grant of twenty 

Load by the Plaintiff, though his Father never granted fifteen. Quod 

nona. Br. Grants, pl. 69. cites 20 All. 8.

2. If the K. grants to me the Office of Serjeant of the Constable of 

the
Grants.

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the Castle of D. with a Fee, &c. where there is no such Office, the Grant is void; Per Choke, Br. Grants, pl. 94, cites 8 E. 4. 6.

3. A. became Surety for B. the Defendant to one C. in 100 l. Bond, and B. gave A. a Counter-bond to save him harmless, from a Bond of 200 l. so that, by the Mistake, the Counter-bond was void in Law, yet the same was relieved. Toth. 222. cites 11 Jac. Griffin v. Sayer.

(P. 6) Who shall take by it; One not Party to the Deed.

1. A. Seised of Land joins in a Feoffment with B. referring Rent to them and their Heirs, and the Feoffee grants, that it shall be lawful for them to distrain for the Rent, this is a good Grant to both, because B. is party to the Deed, and the Chaffé of Distreß is a Grant to A. and B. But if B. had been a Stranger to the Deed, he had taken nothing. Co. Litt. 213, a, b.

(P. 7) To two several Persons, having several Interests: Enure How.

1. In Replevin the Case was thus: B. held 50 Acres of A. as of his Manor of Swarden, by Fealty, and 4 s. 7 d. Rent, &c. And C. held 47 Acres of A. &c. by Fealty, and 5 s. 4 d. Rent. A. by Indenure between him the said B. and C. recking the said several Tenures, gives grants, &c. and confirnis the said Rents, Services, and Seignories to B. &c. and their Heirs, to the use of them and their Heirs, &c. And in that Case, it was resolved, that it is an Extinquishment of the Moity of every of their Tenures; And for the other Moity they held one of another. And the Arowant had Judgment accordingly; for there was a cross Tenure between them for the one Moity, and that shall not move as a Release, reddendo singula lingulis, &c. Dyer 319. See and Note 11 H. 7. 12. a. 39 H. 6. 2. 49 Ed. 3, 43. In the principal Case there is not an equal Benefit to every of them; for it was said, if the Acres and Rents had been equal, then it should have been extinguished in all. Noy. 113. Goldwell v. Navenden.

2. And Cook put this Report-Cafe; A. Leffe for Life, the Remainder to B. for Life; The Leffor gives Grants, and confirnis to them and their Heirs. A. shall have all the Possession during his Life, and afterwards B. shall have all the Possession during his Life, and one Moity then executed, and after the Death of B. the other Moity to A. in Fee. Noy. 115. Goldwell v. Navenden.

(Q) In the Occupation. [what is sufficient Misfeas- vital.]

1. If a Man grants all his Lands called D. in the Tenure, Occup- nation, or Possession of J. &c. and J. S. has Parcel in D. in Leffe, and Parcel not, but he departs it with his Beasts, all shall pass by the Grant; for if he has the Occupation or Possession, by Wrong or Right, it is sufficient. P. 12. 11. B. B. agreed between Dorekway and Beals. See this, Co. Litt. 4. 6.

2. So
Grants.

1. So tho' the Parcel, which is not in Lease to J. S. be inclosed (being a Wood) but the Fence is cut down in several Places, by which the Bents of J. S. are wont to escape usually and feed in the Wood, this is a sufficient Occupation to make it to pass, for the taking of the Herbage is a sufficient Occupation. 12. La. B. R. Per Cur. between Deskay and Bels.

2. If a Man leave to B. the Herbage of his Wood, and after grants all his Lands in the Tenure, Possession, or Occupation of B. the Wood shall pass by this Grant; For the particular Possession and Occupation of B is sufficient in this Case. Co. Litt. 4. b.

3. A. settled in Fee of two Houses in Andover, whereof the one is in the Tenure of Hitchcocks, and the other in the Tenure of Vincent and Note, and this, which is in the Tenure of Vincent and Note, and A. grants to B. the use of the Tenure in Vincent and Note, and to B. to lease the whole to C. in Fee his corner House in Andover, in the Tenure of Vincent and Hitchcock, upon Condition to be new built, according to the Covenant, in a Lease made to B. and dies. This is a good Deed of the corner house, in the Tenure of Vincent and Note; For the corner House is a sufficient Certainty to pass it without more, and therefore though the other Addition (in the Tenure of Vincent and Hitchcock) be false, as to Hitchcock, yet this will not vitiate the Deed, and the Clause (provided that it be rebuilt according to the Covenant in the Lease made to B) leaves the intent of the Devisor to pass this House, and the other House, which is contiguous to it, shall not pass. Term. 13. Car. B. R. between Blake and Gold. Adjudget per Curiam upon a special Demurrer. Instan. Hill. 11. Car. Rot. 752.

4. A. was possessed in Crown, whereof part, viz. Hobsfield, came to B. in Possession, for part of the Term, and to C. in Reversion for the Residue of the Term; A rent-charge was granted out of Crown Grange, over in Tenure A. & undo in Tenura & Occupation C. This did not charge Hobsfield, but it charged the rent, and so there was no Repugnancy; Per Hobart Ch. J. Hob. 151. cites it as Ognell's Cafe.

5. A. granted part of the Lands (as Bl. Acre) to C. for 24 Years, part of his Term of 35 Years, and Hobsfield to B. for 23 Years part of the said Term, and afterwards A. granted to B. and C. and another all his Interest in the said Grange, during the whole Term of 23 Years; And after the Reversioner granted a Rent out of Crown Grange, here-infore in the Tenure of A. and then in the Tenure of C. and his Affixis; It was held, that this Rent illused out of no more of Crown Grange, than was then in the Tenure and Occupation of C. and his Affixis, for those Words restrained the general Words preceding. Underhill. Ognell. 4. Le. 113. accordingly; tho' it was objected per Walmesley Serjeant, that the Words in the Grant of the Rent (in Tenura C. by Occupation C.) should be construed Diminutives, quia fee, and then the Cloze called Hobsfield was in Tenura of C. tho' not in the Occupation of him; And tho' the Grant was pecipitandum de omnibus terris, &c. quinque angone tract Grange, &c. over. &c. (as before) yet it did not charge Hobsfield. Ognell. v. Underhill.———4 Rep. 52. 5 C. accordingly.

S. P. cited by Adkins, Justice Hill. 26 & 27. Car. 2. C. B. 2. Mod. 3. in Case of the King v. Bishop of Rochester and Others. ——Gist And. 128. Howwood's Cafe. ——Le. 123. abridged

H. Plaintiff demanded 40 Acres; The Evidence was, that Henry VIII. by Letters Patents gave the Plaintiff the Manor of New-Hall, and all the Lands in the Tenure and Occupation of J. W. and before demised to J. S. and in the Parish of W. and in truth the 40 Acres were in the Possession of J. W. but never were demised to J. S. nor in the Parish of W. Per Car. the 40 Acres did not pass; for the Circumstances of the Deed are not true as to the Demise to J. S. or the Parish, but both were false; But if the said Lands had had an Special Name in the Letters Patents, it had been well enough. And per Anderson. It upon the Particular it had appeared that the Demandant had paid his Money for the said 40 Acres, perhaps they had parted. Hill. 29 Eliz. C. B. 3 Le. 162. Heiden v. Ingrave. ——good against the Queen in a Grant by King Edward VI. the Queen v. Lewis and Green —— 3 Le. 233. Trapp's Case ——Armsbridge 121, 122 cites 2 B. 2 and D. 202 b. ——

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III. A left a House to B, who let two Chambers out of it, and then surrenders the Lease, and then takes a Lease of the House in his Occupation; it was adjudged, that the two Chambers did not pass, but only to much besides as was in his Occupation; for there was a good Lease of the House, tho' the two Chambers were not demised. Cro. C. 130. in the Cafe of Chamberlaine v. Turner, cites it as the Cafe of Hunt v. Singleton.

any case anteposturing, by the said B. now occupant, and all other Rooms with the same new occ. and new in the Tenure of the said E. between the Measurage of 7 S. East, and J. D. West, and J. D. inch in length. The Jury found, that the two Chambers were not in the Tenure of B. and that the lower Story was within the Bounds described, but not those two Rooms; Adjudged, that the two Rooms did not pass. Cro. E. 473. Parch. 56 Eliz. C. B. Hunt v. Singleton.

IV. If one give all his Lands in D. in the tenure of A. and B. and he hath Lands in D. but not in their Tenures, yet all the Lands pass; Per 2 Mich. 11 Jac. C. B. Goth. 236. in Cafe of Clay v. Barnert.

V. Grant, of 79 Acres of Glebe Land, with all Profits, &c. and of all Tithes, predial and personal, and of the Tithes of 79 Acres of Glebe-land, all which were in the Tenure of J. S. It was held by all the Justices, that the Grant was good, and not restrained by the first Words, and the Words (which were) only a Restriction when the Clausa is general, and is all but one and the same Sentence, and not ended, or restrained before the end of the Sentence, as in the Cales of 2 E. 4. 29. Pl. C. * 391. in Cafe of Brotherley v. Amas, and 395. in the E. of Leicesters Cafe. But where the Claue is not in one entire Sentence, but distinct and disjointed from the other, as here, there cannot be any Restriction, and being in the Cafe of a Common Periton the addition of a false Thing (v. i. false Possession,) shall never hurt the Grant. Trin. 15 Car. B. R. Cro. C. 458. Swift Sub Chantor, &c. of Leicesters to Eyres, &c. Leicesters of Peyto.

so disjoined cannot be a Restriction, but an Explanation, and fo it was adjudged a good Grant. Ibid. Mar. 32. * It should be Pl. C. 191.


5. If a Man leafe for Years by Deed, bearing Date the 30th of Au. and after, within the Tenor, the Leaf, reciting that this Leaf was Deed Date the 6th Day of August, makes a new Leaf to a Stranger for Years, to commence after the End of the first Leaf, it is indifferent, for 50 Years, though the Date of the first Leaf be mistaken, so that there is not any such Leaf, as is recited, yet this second Leaf is good, and shall commence after the first Leaf ended. D. 2 & 3 H. 116. 70. adjudge. same Case in Benlou's B. 2. Fa. Rot. 648. It seems, that by this is intended, that this shall commence in Interit after the Expiration of the first Leaf, but it seems, it commences in Composition immediately.

This Leave was adjudged a good; because it was for Years, to commence after the End of the first Leaf and Indemnity, for 50 Years, though the Date of the first Leaf be mistaken, so that there is not any such Leaf, as is recited, yet this second Leaf is good, and shall commence after the first Leaf ended. D. 2 & 3 H. 116. 70. adjudge. same Case in Benlou's B. 2. Fa. Rot. 648. It seems, that by this is intended, that this shall commence in Interit after the Expiration of the first Leaf, but it seems, it commences in Composition immediately.

not to have and to hold for the said Years, &c. after the said Deed is fully ended, &c. so that the Word said was omitted. Bednall 38. pl. 71. S. C. by the Name of Mount v. Hoggeman. And. 5. pl. 5. Mount's Cafe. S. C. Trial. (D. f.) pl. 6 Etabl. (Z. 2) pl. 8. Sid. 451.

6. If King D. 8. in 31 D. 8. had leafead Land to another for 21 Years, and after had granted the Reversion to a Bishop, and the Bishop, reciting all the Lands contained in the Letters Patents of the King, and the Land itself before leased by Name, and reciting the Letters Patents of D. 8. laps. that whereas D. 8. by his Letters Patents dated the 29 D. 8. (when the Letters Patents were dated 31 D. 8.) and also misreckes the Date in the Day of the Deenie of them, and grants all the Lands, Tenements, Palsures, and Headings to the first Leafe for certain Years, null expirationem huiusmodi literarum Patentem; In as much as the Date is mistaken, and the Commentary

The Words of the new Grant were, all the said Missal or Tenement, without the appurtenances to the same belonging or in connection, and were in the Tenure of the said E. between the Measurage of 7 S. East, and J. D. West, and J. D. inch in length. The Jury found, that the two Chambers were not in the Tenure of B. and that the lower Story was within the Bounds described, but not those two Rooms; Adjudged, that the two Rooms did not pass. Cro. E. 473. Parch. 56 Eliz. C. B. Hunt v. Singleton.
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ment is referred to the Expiration of the said Letters' Patents, and not of the Term, it being, that the Lease shall commence pretently, and to the first Lease shall be surrendered by Acceptance of the second Lease. Dubitatur. D. 38 Eliz. B. R. between Hallwell and Apple-

word.

(Q. 3) Misrecital of the Estate of Grantor.]  

7. Baron and Feme, seised of a Reversion in Fee in Right of the Feme, recite, that the Feme had Title of Dower in the said Land, and after grant all their Estate in the said third Part of the Land, and after covenant to pay further Estate of the Premises, and then levy a Fine. In this Case, though the Recital be that he has Title of Dower, where he had not any, per this is not any Parcel of the Grant, and therefore shall not limit the Grant; But a third Part of the Reversion, whereof he is seised, shall pass, 9 Eliz. 3 B. adjudged between the Earl of Charickard.

8. If a Man seizes to Baron and Feme for their Lives, and after he grants the Reversion of the Land, which the Feme held for Term of her Life, to a Stranger, the Grant is not good; for he had no such Reversion. So where a Man leaves to two Men for Life, and after grants the Reversion of one, this is not good; Per Cur. Br. Grants, pl. 157. cites 13 E. 3, and Fitzh. tit. Grant. 63.

9. A. grants to B. all his House, and two Third Lands in C. in the Possession of D. Two Acres were not in the Possession of D. but all the rest were. Per two J. against two, the Acres paid; & afterwards abatement Popham, Judgment was, that they did pass. Patch. 31 Eliz. C. B. Cro. E. 299. Bartlet v. Wright.

(Q. 4) Who shall take by Words not certain; in respect of the Consideration.

1. If a Deed be made in this Form, viz. Noevint universis per presentes nos de communi offendis, &c. Dedisse, &c. W.H. credidimus suis manu toto quia pace, &c. Habentum, &c. reddidimus nobis &c. Succeditibus noster sitid. &c. pro hoc commississe predict. W.H. restitutus tamen Commissiam cum diversis exercis noster, &c. these Words in the Deed (remunerationem tamen comminationem [from]) shall have Relation to the Abbots and Coveneet, in Consideration of the Premises in the Deed; tenen quare. Perk. S. 159. cites 9 H. 6. 35.

2. If a Man by his Obligation acknowledges himself to be inditted to the Obligee in 20 Quarters of Corn, to be delivered unto the Obligee at such a Place, &c. and to perform the same, the Obligee acknowledges himself to be bound in 100 s. and doth not pay to whom he doth acknowledge himself to be bound, in this Case it shall be taken, that he is bound to the Obligee, in Consideration of the Premises of the Obligation. Perk. S. 180.

(R) In what Cases a Grant shall be void for Uncertainty of the Thing.

If a Man seizes of a Manor grants to another all his Trees growing upon the Manor which may be conveniently spared, this is void for the uncertainty; For it cannot be reduced to any Certainty. Tein. 15 Jac. 2. between Steetley and Butler, per totam Curiam * 1 P to 91. 10 Da. 1. Tain. 36.
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By error, 'tis void. 2 Adv. 142. cites D. 91. — Arg. 2 Roll. R. 536. cites S. C. and adds, that if he had paid, according to the Opinion, or by Appointment of J. S. it had been good. — D. 91. pl. 11. sec.

But if a Man Covenant or Grants that f. S. may take such Trees as may Conveniently be spared without prejudice, &c. it was held by Hobart, that this being but a Covenant or Grant executory, f. S. may take Trees by Force thereof, and justly by specially averring that they may be spared, and put himself upon the Jury. But in the Case of a Bargain and Sale, it must take effect and change the Property precisely and at once, or Inchoative, depending upon somewhat that shall reduce it to its full Effect, and which when done shall make the Grant good as in Initio. Hob. 174. Stukely v. Butler.

2. If a Man grants to me Common, and does not say in what Place, the Grant is void, per Palton, which none denied. Br. Grants, pl. 5. cites 9 H. 6.

3. If Lord and Tenant be of three Acres of Land by Fealty, and id. and the Lord grants the Services of a third Acre unto a Stranger, it is a void Grant, notwithstanding that it be by Fine. Perk. S. 67. cites 7 E. 4. 25.

4. If a Man grants Corody, or f. Eevowers to another, without mentioning what in certain, the Grant is void for the Uncertainty, per Yelverton. Br. Grants, pl. 52. cites 9 E. 4. 11.

5. A Man cannot give a Deer in his Park, but the Gift is void; for they are Fere Nature: nevertheless if it be a Deer known, as White Deer, or Black Deer, where there is no other but this one, or only one Hart among them, and he gives this, 'tis a good Gift, per Brian Ch. J. Quere if there be a Diversity, it seems not; For he is Fere Nature, notwithstanding he is known by his Colour or the like. Br. Done, &c. pl. 34. cites 18 E. 4. 14.

6. If an Abbot makes a Grant by such Words, viz. A. D. Abbot of such a Place grants quaniam annumam pensionem ad J. D. de rogaram J. de Exon illum Pensionem, quam idem f. de Exon bovavit, protermino vice luce in fello natalis Domini & Pach. perceipiat, quinque filii de competente Beneficio fieri Preminum, &c. thefe Words, &c. (qua efpique filii) shall have Relation unto the Grantee. Perk. S. 178.


But a Gift Osmunfuit f. S. without other Name is good. Br. Done, &c. pl. 17. cites 37 H. 6. 50. — But Grant to two or Howidles is void. 1 Rep. 83. a. — Perk. S. 181.

8. If a Man levies a Fine of 15 Acres of his Manor of D. 'tis a good Fine; and yet 'tis not certain, which Acres pafs. Pach. 7 Eliz. Arg. Mo. 82. in Cafe of Bullock v. Burdet. So a Fine of 20 Acres, where the Conveyance had 100 Acres, is good, and the Contractor shall choose. Mo. 102. in Calthrop's Case.

9. So if a Man feigned of 40 Acres makes a Feoffment of 20 Acres to the Ufe of himself and his Heirs, and of the other 20 to the Ufe of his Son and his Wife in Tail for a Jointure, this is good. Arg. Mo. 82. Pach. 7 Eliz. in Case of Bullock v. Burdet.


10. So Covenant to feind, feigned of 20 Acres, in Consideration of Marriage to be had with his Daughter, &c. for her Jointure, is good, notwithstanding the Statute of Inrollments. Arg. 10 which Wallis J. agreed. Pach. 7 Eliz. Mo. 82.

11. But if A. feigned of Land of 500l. per Annunm, Covenants to affine Lands of 100l. per Annunm for Jointure, and makes Feoffment of all his Lands to the Ufe of the Indentures, 'tis void for Uncertainty. D. 250. b. 17. Marg. cites Kelway. 84. b. &c. So if A. covenant to feind, seigned of 100l. per Annunm of the Land, ut fup.


——But
Grants.

Agreed Litt. — But says, 'tis otherwife in limitation of Uses. Ibid. — And so by
 Devise. Ibid.

If the King has a 200 Acres to D. and he grants
20 Acres of the Land in D. without any describing them by the Rent or Occupation, or Name, &c.; the Grant is void, and in the Cafe of the King the
Patentee shall not have his Election as he shall in the Cafe of a Common Perfon. But in the King's Cafe if the 20 Acres are described either by abutments, or by Name certain, in the Particular it is good Demonstration, which 20 Acres shall pass. 12 Rep. 86. Stockdale's Cafe.

13. If the King grants the Moiety of a Yard Land, in a great Waft, without certainty of the Part, or Name, or How bounded, or any certain Description, it is void; but if a Common Perfon makes such Grant, 'tis good enough, and the Grantee may make his Election, where, &c. and by such Choice executed, the Thing shall be reduced to a Certainty, and if such Grant be by Common Perfon to a Corporation, the Corporation shall not make there Election by Attorney, but after they were determined what Part to take, they should make a special Warrant of Attorney reciting the Grant to them, and in which Part of the said Waft their Grant should take effect, East, West, &c. or by butments, &c. according to which Direction the Attorney is to enter. Trin. 27 Eliz. Le. 30. Sir Walter Hungerford's Cafe.

14. Grant of all the Wool, which shall grow upon the Sheep, which he shall buy hereafter, is not good but void. Hob. 132.

15. A Copyhold was granted to A. and his Son; if he has but one Son 'tis good; but if he has several Sons, and does not demonstrate which of his Sons shall have it, the Grant is void for the Uncertainty. Mich. 12 Jac. Cro. J. 374. Winkmore's Cafe. — Cited there in Cafe of Cob v. Betterton.

16. Fine was levied to Ufes contained in an Indenture, in which was contained, that the Conuifes should be sealed of so much Land as should be worth 30l. per Annum to the Ufe of the Wife, whom he intended to marry, to be assigned and set out in several by [J. S. And adjudged that in as much as no Alignment ever was made, this was void as to the Feme; but otherwise if an Assignment, or Valuation had been made. D. 280. Marg. pl. 17. cites Patch. 3 Car. C. B. Thomas v. Morgan. — And that the cannot enter, and be Tenant in Common with the others, to whose Ufe the Relidue of the Land was limited; but otherwise it had been, if they had made Valuation of the Land. Ibid.

17. One pofted of a Leaf 2000 Years grants the Land to A. and his Wife, without mentioning any Term, to the Ufe of B. for Life, and the Heirs of his Body, and in default of Ufie to the Ufe of B. for 1800 Years, the first Limitation is void for uncertainty. Trin. 1712. 2 Vern. 684. Kirlevy v. Duck.

(R. 2) Who shall take by the Words.

1. Fother has Ufie Baffard and Mulfur both named John, and he gives to his Son called John; the Baffard shall take; but if to his Son John, the Mulfur shall have it. Hill. 29 Eliz. Mo. 230. in Fanfawh's Cafe.

2. In an Eftion firm, upon Ufie joined, the Cafe in a special Verdict was, that a Leaf by Indenture was made by A. to B. and M. his Wife & * Primo egeno, Habendum ut them, & dimitis commissum Successor for Term of their Lives, and then they had Ufie a Daughter: the Quetion was, if the Daughter had any Estate; and three Juftices held that she had no Estate, because she was not in Being at the Time of the Leaf made; and a Person, that is not in eft, cannot take any Thing by Livery, for Livery ought
Grants.

ought to carry a Present Estate, where the Estate is not limited by way of Remainder, 18 Ed. 3. 3. 17 Ed. 3. 29 and 30. adjudged, but it was laid at the Bar, that if the Estate had been conveyed by way of UR, it is otherwise, and the said Justices held clearly, that the word (Successive) would not alter the Cafe; and Judgment was given for the Plaintiff accordingly. Mich. 29 Eliz. Ow. 49. 41. Stephens v. Layton.

3. A Tenant for Life, Remainder to B. in Tail, B. had Issue C.—B. afterwards marries M. and levies a Fine according to a Covenant on his said second Marriage, by which M. was to have a Settlement of 150l. per Annum, and if he should have Heirs Male, then those Heirs Male should have another 150l. per Annum out of the Lands during the Life of M. and after her Decease, the Heirs Males of his Body and of M. should have 300l. per Annum; Tho' the Limitation of 150l. per Annum was defective in Law, because Francis, who was Son of the second Marriage, was not named in the Limitation (that being to the Heirs Male; whereas he was not Heir Male, B. having C. by a former Venter) yet the Court thought, that by the true Meaning of the marriage Agreement the Plaintiff, Francis, is a Person well described to take the Rent and to be relieved, and the Rent to be paid to the Plaintiff during the Life of M. N. Ch. R. 121. 1666. Seymor Boreman and Yate, cited in Cafe of Darcy v. Darcy.

4. Money is given in Trust for the Children of J. S. It belongs only to the Children which he had when the Money was given. 2 Chan. Rep. 69. 24 Car. 2. Warren v. Johnson.

5. By a Marriage Settlement Lands were limited upon Trust to raise 2000l. after the Deceath of the Husband and Wife for younger Children, and if more than one, then to be equally divided among them; but if but one, then to such younger Child, and after the 2000l. rai'd, then the Lands to be to the Husband and his Heirs; they had Issue a Son and a Daughter; the Son died without Issue, so as the Daughter became first Heir and younger Child, but no Inheritance descend'd on her by Reason of Incumbances by her Father. It was admitted on all Sides, that if the Son had died and left Children, then the Daughter should have been accounted a younger Child; because the Inheritance had then gone from her; that upon which it was urged, that she had Title when younger Child, and when the Inheritance would have gone from her, why should she not have a Title when the she is eldest and has no Inheritance? The Court as to this Point seem'd to incline that the Daughter had a good Title, and if so, that the 2000l. would be an Incumbance prior to the other Incumbances, and so made no Decree but directed the Parties to go to Law; the Bill being by the Daughter and her Husband to compel the Defendant to perform an Agreement for a Purchase made by him of the Estate, which he pretended the Plaintiffs had no Right in. N. Ch. Rep. 186. Mich. 1691. Sands v. Fleetwood.

A. was a Tenant for Life, Remainder to his first Son in Tail, Male, Remainder to B. his Brother in Tail Male, Remainder to A. in Fee, with a Power to charge 2000l. for Portions for younger Children, Sons or Daughters, who should be living at his Death. A. died leaving Issue two, and one of whom was born after his Death. A. by Will charged the Premises with 2000l. to his Daughter Mary; but if the Child unborn should prove a Daughter, then the 2000l. to be divided between them equally; it was objected that the Eledest could not claim, because she was Eledest, and the other could not, because not living at A.'s Death. But per Cur. the eldest Daughter, tho' first born, has often been ruled to be a younger Child, where there is a Son. Every one but the Heir is a younger Child in Equity, and the Provision, which such Daughter will have, is but as a younger Child's in regard the Son goes away with the Land as Heir. So here the Estate by Settlement goes all to the Remainder-man, who is Heirs falls, and neither of the two Daughters is Heir; whereas the Elder having no more than the Younger, is (as this Provision) a younger Child; Per Ed C. Harcourt. Wm's Rep. 244. 245. Hill. 1715. Beale v. Beale.

And as to the Words (who should be living at his Death) his Lordship held that this Poulhumous Child may well be look'd upon in Equity to be living, at her Father's Death, in Future for ever. Ibid. 246

6. Lands are settled on Marriage to A. the Husband for Life, and as to Part thereof to M. his Wife for her Jointure, Remainder to Trustees in Trust, that if there are both Sons and Daughters, then the Trustees to raise out of the Lands not settled in Jointure 4000l. for younger Children's Portions, Remainder to his first, &c. Son in Tail. A Power was reserved to A to allot the 4000l. among the younger Children, in what Proportions he pleased.
A. had two Sons B. and C. and several other Children, and appointed to C. his second Son 2600/. Six Years after this Appointment B. dies, so that now C. became the eldest Son, and so intitled to the whole Estate after A.'s Death, whereupon A. appointed the 2600/ to a Daughter. Lord Wright agreed the Rule, that of voluntary Deeds and Appointments, the first is to take Place, but that this was a defeasible Appointment, not from any Power of Revoking, or upon the Words of the Appointment, but from the Capacity of the Person; that C. was a Person capable to take at the Time of the Appointment made, but that was Sub made and upon a tacit or implied Condition that he should not afterwards happen to become the eldest Son and Heir, so that he had a defeasible Capacity in him; and decreed the 2600/ to the Daughter, and added, that tho' the Appointment to C. had been made in Consideration of Marriage, it would have been the same Thing. 2 Vern. 528. Hill. 1705. Chadwick and Ux v. Dolemen.

(R. 3) Misdetical of the Person of whom the Lands, &c. were purchased, &c.

1. TWO having Rent assign it to Five, who grant it to A. and he reciting by Deed, that where Five had assigned to Two, &c. (which was just Vice Verfa.) Mich. 1 Mar. D. 93. pl. 28. cites Hill. 30 Eliz. Lewin v. Moody.

2. A. purchased a House of J. S. in D. and had no other House there, and entailed B. of it, by Name of the Miflagage, late of W. S. (which was false) with a Letter of Attorney to make Livery, as it he himself were personally present, which was done accordingly; and held a good Feoffment, notwithstanding the false Demanferation of J. S. for W. S. For had the Christian Name been omitted, and a Space left for it, it had been good, and so the Name and Surname of either are idle and not necessary, but the Words Miflagagium cum Pertin. in D. is sufficient in this Cafe. D. 376. b. pl. 25. Cotton's Cafe.

3. If one recites, that he has 10. Rent of the Grant of J. S. whereas it was of the Grant of J. D. and then grants the same, it is good. Mich. 29 and 30 Eliz. Ow. 42. per Anderson in the Cafe of Lewen v. Monday.

4. If a Man gives all his Lands in D. which he has by Defent from his Son, there all his Lands whatsoever shall pass; Per 2 J. Godb. 236. Mich. 11 Jac. in Cafe of Clay v. Barnet.

5. A Feoffment was of 8 Acres, which he bought of J. S. 'Twas held upon the Evidence, that tho' the 8 Acres were bought of J. D. and not of J. S. yet they pass well enough by this Feoffment. For 'twas * certain enough* before these later Words added; as if he had given a Name certain to the Acres, as White Acre, &c. Clayt. 14. Bradford's Cafe.

(R. 4) Misdetical
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(R. 4) Misrecital of a Former Grant.

1. If a Man hath a Rent Charge of two Shillings, issuing out of Black Acre, and hath no more Rent, and he reciting by his Deed, that he hath a Rent Charge of two Shillings issuing out of Black Acre and White Acre, grants the same Rent unto a Stranger, this is a good Grant to charge Black Acre with Attornment of the Tenant. Perk. S. 72. If a Man hath two Shillings Rent Charge issuing out of Black Acre, and reciting by his Deed, whereas he hath two Shillings Rent Charge issuing out of White Acre, grants the same Rent unto a Stranger, this is a good Grant with Attornment, &c. For the Whole Rent is issuing out of every Acre, and out of every Parcel thereof. Perk. S. 72.

2. If I recite that the Original Grant was made to me by Indenture Tripartite between A. of the first Part, B. of the second Part, and my self of the third Part, whereas 'twas between me of the first Part, &c. This shall not avoid a Grant. 3 Le. 136. in Cafe of Lewen v. Moody.

3. Grantee of a Rent Charge recites a Fine, and mistakes the Plaintiff for the Defendant, and allo recites, that the Fine was ley'd of a Manor, and diverse Lands, &c. whereas it was of the Manor solely; and then grants the said Rent, granted to him, to J. S. and his Heirs, and whereas he recited the Grant was made to him, it was made to him and his Heirs; and that the said Rent was granted Inter alia, whereas there was no other Grant; This Grant was adjudged good; per Anderson. M. 50 & 31 Eliz. Ow. 153. Lewin v. Monday. This Misrecital is but Matter of Surplusage, 3 Le. 136. S. C.—cited per Bridgeman. Ch. J. Cart. 138—'Tis good because there is sufficient certainty, and that 'twas the Intent of the Parties to grant it. Cro. J. 127. Moody v. Lewen.

4. A feiled in Fce makes a Leafe Habend' a Fello Purisife, and afterwards reciting the Leafe, as granted a Fello Amunic. Grants the Recession to B. This was held a good Grant of the Recession. Hill. 12 Jac. Hob. 128. Whites v. Canon.


6. Mistake of a Scribe in reciting a Grant of more than was granted was releved. Hill. 3 Geo. 2. in Canc. Gibb. 118. Hunburn v. Bence.

(R. 5) Misrecital of the Estate in the Land.

1. If Husband and Wife hold one Acre of Land jointly of J. S. for their Lives, and J. S. grants the Reversion of the Acre of Land which the Husband alone holds of him for Life, and he doth not hold any Part alone of him, this Grant is void. Perk. S. 67. cites 31 E. 3. Gr. 93.

2. The Misrecital of a Name in a Conveyance, (being Heir male) was aided, and the Lands decreed to pass according to the Intent of the Party; Toth. 228. cites Mich. 16 Jac. Goodfellow v. Morris.

3. If a Man take upon him to recite a Term, and misrecite the same, and sells the same Term, if he sell the Interest in the same, 'tis good; Per Brown J. Mich. 18 Car. 2. C. B. Cart. 151. in Cafe of Foot v. Berkley cites 4 Rep. 74. in Palmer's Cafe. Cro. El. 584. S. C.

4. A:
Grants.

4. A. selleth Land to the Use of himself for Life, Remainder to B. and the Heirs Male of his Body, Remainder in Tail to C. &c. with Power of Revocation as to B's Remainder only; A. reciting the Settlement to be to B. and his Heirs Males, omitting (of his Body) revokes, and limits new Uses to B. and his Heirs Males; but the Date of the first Deed is rectified right, and so are the Parties; Resolved, that this is a good Revocation, and a good Appointment of a new Estate Tail, by his directing the said Estate in the said Deed named, to be to the Use of B. and his Heirs Males, now the said Estate was an Estate Tail. Trin. 1 Jac. 2. C. B. 3 Lev. 213. Gilmore v. Harris.

(R. 6) Misrecital of the Date.

1. If the Sheriff sells a Term upon an Extent, and puts a Date to it, viz. recites a Date and mistakes it, the Sale is not good; For there is no such Leafe. Arg. Godb. 433. cites D. 111.

For the Attorney was to receive the Feoffment forman Chart, and by varying in the Date, there is no such Deed, and so no Authority to receive it. Cro. E. 603. Marriot v. Smith. And the in this Case, Leis was made by the Feoffor himself to the Attorney, yet 'tis not good to the Attorney any more than 'tis good to the Feoffee; For there was no Intent to confer the Authority, but the Feoffee, and so is utterly void. Ibid.—The Difference is between an Authority and a Conveyance. Arg. Het. 25. cites Marriot's Case. S. C.

2. A. feiteth Land in Fee made a Feoffment dated the 10th of September to B.—B. by another Deed, reciting that A. had made him a Feoffment dated the 1st of September, gave Authority to C. to receive the Leis for him. 'Tis no good Feoffment. per Brown J. Mich. 18 Car. 2. C. B. Cart. 151. cites Cro. El. 603. Marriot v. Smith.

3. 'Twas insipient upon the Case of Smith and Touchet Hill. 22 & 23 Car. 2. in Secece, where before Hale Ch. Baron, upon a special Verdict, the Case in an Ejectment was, D. B. reciting an Order of Chancery dated December 15. 12 Car. 2. and an Indenture of Demise 23d of November following made to him by the Mayor and Burgesses of Reading of a Mansion House, Meadow, and other Parcels of Lands, particularly mentioned in the Parth of D. he grants the said Mansion House, Meadow, and other Lands in the said Demise mentioned, and all his Estates, Term and Interest, in and by the said Indenture to him granted, whereas in Truth there was no such Leafe to him by the Mayor and Burgesses, and so no Term, Estate, or Interest granted to him; For the Date was mistaken, yet insomuch that he had a Term for Years in the Premisses, tho' not by the Grant recited, and he grants the Manor House and Lands, it was revolved, that the Estate and Interest in the Lands, passed by the Grant of the House and Lands themselves. Trin. 6 W. & M. B. R. Skin. 343, 344. Jenman v. Orchard.

(R. 7) Misrecital of the Thing granted.

1. If I grant and confirm to you 20 Shillings of Rent for Life out of my Land, which Rent you have of the Grant of my Father; tho' you have nothing of the Grant of my Father, yet this is a good Grant now, and you may have Allife. Br. Grants. pl. 73. cites 26 All. 39. per Skipwith.

2. If a Man be Patron of the Church of St Peter and Paul in D. and grants the next Presentation of the Church of St Peter, or contrary, if it be of the Church of St. Peter only, and he grant the Advowson of St. Peter
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Peter and Paul, this is not good in the one Cafe nor the other, and the same Law of such Grants of Charge by Parson, Patron and Ordinary, extra tumult Ecclesiæ, &c. this is void: For all is one and the same Name, and if it fail in the Name, all is void. Agreed. Arg. Br. Grants. pl. 12. cites 35 H. 6. 5.

3. If a Man grants all his Land in D. which he has of the Gift and Feoffment of J. S., there nothing shall pass, but that which he has of the Gift of J. S. But if he grants all his Lands in D. called N. which was J. S.'s, there his Land called N. shall pass, tho' it never was J. S.'s: By Reason of the Special Name called N. Contrary of general Words, as in the first Cafe: Note the Diversity. Br. Grants. pl. 92. cites 2 E. 4. 27.

4. A has Lands in D. and grants his Message in D. and all the Lands there to belonging, where in Fact there is no such Message, no Land shall pass. Arg. 2 And. 165.

5. Misrecital of the Rent is no Misrecital of the Lease; so if the Recital had been without Impeachment of West, and there is no such Clause; or the Rent referred, recited to be payable at two Days, where in Truth 'twas payable but at one; or in such a Place, where in Truth 'twas at another; or that the former Lease was under such and such a Covenant, and there is no such Covenant in it; per Tirrel J. Mich. 18 Car. 2. C. B. Cart. 152. in Cafe of Foot v. Berkley.


(R. 8) Misrecital of the Quantity.

1. A Fine was levi'd of a Manor; afterwards in a Conveyance the Recital was, that it was levi'd of a Manor, and diverse other Lands, yet adjudged good; per Anderson. Mich. 29 and 30 Eliz. Ow. 41, 42. Lewis v. Mooday.

2. Ten Acres of Land, five Plus five Minus, ought to be intended of a Reasonable Quantity, more or les, by a Quarter of an Acre or two, or 3 at most, But if it is 3 Acres les then 10, the Lease must be content with it; But can never be carried to extend to 30. Owen 133. Day v. Fin. made by these Words, and also the Measurements in S. and D. containing ten Acres, where in Truth they contain 20 Acres. It seems Lease shall have the Whole. Patch. 28 Eliz. Savil. 114. in Cafe of Thetford v. Thetford.

3. If A grants to B. out of the Manor 10l. per Annum, and recites but 5l. the Recital shall not diminish the Grant; So if I grant 10l. and recite 20l. this shall not enlarge it. Brownl. 32. Anon.

(R. 9) Where Parcel of the Land is omitted.

1. A Seified of a Manor with Advowson appendant mortgaged the same, omitting the Advowson. Afterwards he grants the Advowson to B. in Truth for himself for Life, Remainder to Emmanuel College, &c. for ever. A. paid off the the Mortgage, and sold the Manor to B. but the Advowson was not mentioned in the Deed of Sale, but was mentioned in the Fine. Yet decreed that the Grant to the College was good, and the putting Advowson into the Fine was on purpose to convey it to B. during the Life of A. 1 Car. Chan. Rep. 18. Emmanuel Coll. v. Evans. 2, A.
(R. 10) Omission of Names of Persons.

2. Two Obligors' One Name was omitted in the Bond, but it is not improper to add it where there is a blank for it. If the blank was left for the Griffy's Name, it is proper to add it, but if the blank was left for the Griffy's Name, it is proper to add it.

3. Where a Blank was left for the Griffy's Name, it is proper to add it.

4. Where a Blank was left for the Griffy's Name, it is proper to add it.

5. Where a Blank was left for the Griffy's Name, it is proper to add it.
(R. 11) Omission of Words of Grant, or Limitation.

1. WAS doubted if Chancery might help a Purchaser for a valuable Consideration, where there wants the Word (Heirs) in the Deed of Purchase. Mich. 30 Eliz. C. B. Godb. 142. in Halton’s Case.

2. The Words Shall stand and be seised were omitted in a Deed of Settlement, yet relieved. 1650. Chan. Rep. 162. Thin v. Thin.

3. A seised in Fee by Indenture, in Consideration of Marriage with M. the Lettor of the Plaintiff, did Covenant, Grant, and agree, to and with W. R. and W. S. their Heirs, &c. in Manner following, (that is to say) all that Messuage, &c. to the Use, &c. of A. during his Life, and after to M. for her Life, &c. Plaintiff had Judgment by the Opinion of the whole Court, and their chief Reason was, because the Intent of the Parties was to make a present Settlement, and therefore they would supply the Deed with these Words, (to be) or (shall be) and then the Covenant will run thus; The Covenantor Covenants, Grants, and agrees to and with the Trustees, &c. all that Messuage, &c. to be, or shall be, to the Use, &c. and Judgment was given accordingly. Trin. W. 3. Lutw. 792. Sleigh v. Metham.

(R. 12) Omissions in Deeds, &c. leaving the Meaning imperfect. In what Cases supplied or understood.

1. THE Chancery gives Help for perfecting of Things well meant, and upon good Consideration: As if in a Feoffment of Lands for Money, the Word (Heirs) be omitted in the Deed, Audley Chancellor said, he would supply it. Cary’s Rep. 23. cites 9 H. 8.

2. So at Law, where in an Indenture between A. of the one Part, and B. and C. of the other Part, reciting the Surrender of a former Grant of Annuity, the Words, Hath granted, &c. to the said B. and C. followed immediately, without saying who had granted, yet it was held well; For being made between A. of the one Part, and B. and C. of the other Part, it must be intended the Grant of A. Hill. 1 & 2 W. & M. C. B. 2 Vent. 141. Tretheway v. Ellefsden.

3. If a Demise of Lands wants sufficient Words to carry that which was meant to pass, it shall not be holpen in Equity. Toth. 153. cites 1591. Kent v. Kent.

4. A leas’d Lands to B. the Defendant, intending that all Woods growing thereupon should be excepted, saving for necessary Books; but by Mistake the Clerk inferred (hereafter excepted) where there was no Exception after mentioned; And thereupon the Defendant cutting down Woods, an Injunction was granted. Toth. 228. cites 37 Eliz. Bleverhalet v. Fuller.


(R. 13)
Grants.

1. A Seized in Fee of 5 Moieties, &c. by Deed indented and inrolled bargain'd and sold all his Tenements, &c. in the Parish of St. A. in the Occupation and Tenure of J. N. It was found by special Verdict, that the Moieties lay in another Parish, but were in the Occupation of J. N. It was resolved that nothing paied; For tho' the last Certainty was true, yet because the first was false, the Bargain and Sale was utterly void; But otherwise it had been if there had been true Certainty in the first Place. 3 Rep. 9. b. Trin. 26 Eliz. in the Exchequer. Down'tie's Cafe.

2. Leaf of two Acres in D. and S. If the Land lies in either of them, it is sufficient, and it is not necessary to lie in both. Clayton 123. Anon.

3. A Leaf was of 47 Acres of Meadow near the Ditch, whereas 15 lie in D. and 20 in E. and 12 in F. Where in truth all lie in F. Quære, whether all the 47 Acres shall pafs? Hill. 6 & 7 Ed. 6. D. 80. b. pl. 57. Lord Willoughby v. Forster.

In this Cafe Manwood thought contrary to Dy er, that the House would pafs well enough, notwithstanding the Mistake of the Parish; For that there is sufficient Certainty in the Beginning. Ibid. Marg. citest 15 Eliz.

4. A bargained and sold a House in the Parish of St. Botolph without Bishopsgate, in the Tenure of J. S. by the Name of his House in the Parish of St. Botolph without Aldgate, in the Tenure of J. S. It will be very difficult to make this good; because the Thing aliened has no Name, but the Name of the Parish which is mistaken. Trin. 12 Eliz. D. 292. pl. 72. cited as Campian's Cafe.

5. The King granted the Commandry of S. in the County of R. If no part is in R. yet it shall pafs; But if part is in R. and part in another County, no more shall pafs than what is in R. Arg. Mich. 30 & 31 Eliz. Cro. E. 114. says it was so adjudged in the Exchequer.

6. A. bargains and sells his Manor of G. in the County of O. where he had no fuch Manor, but he had in the County of C. It will not pafs, but otherwise if Livery had been made. Trin. 48 Eliz. B. R. D. 292. b. pl. 72. Marg. cites 3 Jac. Skipwith v. Ellis.

7. If I purchase Land by a Name, and allege it to be in a wrongful Parish or Shire, 'tis good notwithstanding the mistake; Per Car. Brownl. 42. Mich. 16 Jac.

8. A has a Moiety of Lands in Kent, and a Moiety of Lands in Ezex, and he grants all his Moieties in Kent, the Moiety in Ezex shall pafs as well as that in Kent; For there is a certain Demonstration of the Thing.
Grants.

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(R. 14) Good in respect of the Reservation; Referring Part of the Estate granted.

1. If a Man grant an Advowson, of which he is seised in Fee, referring the Advowson for Life, this is void; For he cannot reserve a life Estate than be bad before. Br. Grants, pl. 60. cites 38 H. 6. 34.


S. C.—Cro E. 344. S. C.—Tho' a Deed operates by way of Ufe, or otherwise, yet no particular Estate can be refered to him who departs with the Estate; Per Twifden J. and not denied by any; and for this Reason it was held in the principal Case, that a Deed made by the Mother to her elder Son was void, because there was a Clafs in it, for the first Margaret Ether enjoying it during her Life. Trin. 14 Car. 2. B. R. Sid. 82; Fother v. Fother. ——And he held, that if the Case of Callard and Callard had been by Deed, yet no Ufe would have acrved; because it was refering an Estate to me and my Wife, which could not be, and fo all the Operation of the Deed was hindered and obstructed by it. Trin. 14 Car. 2. B. R. Sid. 82. cites 59 H. 6. 33.

(R. 15) Grant of one Thing by Words proper for other Things; What Things and Intereft pafs.

1. If a Man leaves Land, rendering 20 l. per Annum, and grants the Reversion, and the Tenant attorns, the Rent paffes; Per Finch. and not denied. Br. Grants. pl. 16. cites 41 E. 3. 16.

2. If a Man grants a Parlounge, or leaves it; by this Word the Glebe (Land) paffes well, and yet the Parlounge may conflit only in Tithes and Offerings; Per tor. Car. Br. Grants. pl. 86. cites 8 H. 7. 2.

3. If Land be known by the Name of the House, in such Cafe the Reversion of the fame Land may paff by the Name of the House, &c. Perk. S. 116.

4. And if six Acres are known by the Name of a Manor, then the Reversion of them shall paff by the * Name of the Manor, &c. The fame Law is a converio in these two last Cafes Mutatis mutandis, &c. Perk. S. 116.

D d 5. By

* S.P. Without meaning Reversion 6 Rep. 56. Tr. 4 Jac. in Ld. Chan- den's Cafe.
Grants.

5. By Grant of all manner of Flowers, the Grantee shall have Hous- 

6. A Lease of Messuage summa in D. cum omnibus terris eadem Messu- 

7. By a Grant of centum librat* Terrarum, or solidam Terrae, &c. Land 

Dyer Ch. I. 

8. Messuage five Tenementum, if it will pass a Garden? See Mo. 24. 

Dy. 29. pl. 5. The Justices divided.

Bargain and Sale without Involvement, norwith- 

9. Advowson appendant to a Manor shall not pass without Involvement of the Bargain and Sale, yet there were Words that might pass it by Grant, for this was against their Intent; otherwise if a Man makes a Lease for Life, or Years, of a Manor, and grants the Inheritance of the Advowson by the same Deed; Per Coke Ch. 1. Arg. 2 Brownl. 201, cites it as Andrew's Cafe, alias Lord Cromwell's Cafe.

Hob. 1190. — 

10. Advowson of a Vicarage passed by the Name of all Hereditaments lying in D. where the Vicarage was; for it has some Efficacy in the Vill and Church of the Vicaridge, in as much as the View in a Writ of Right of Advowson shall be given in the Church, &c. tho' it lies not in Livery, nor is visible or palpable; Per Cur. D. 323. b. pl. 30. Patch. 15 Eliz. Anon.

11. A. feuled of a Manor, to which diverse Woods are belonging, by Deed grants the Manor, and the Woods to it belonging; but the Deed was not involved, nor any Livery made, nor Estate executed; it was said, that in this Case the Wood does not pass, and the Wood, when it is feiled, is but a Chattel, which was not belonging to the Manor. Patch. 25 Eliz. Savil. 53. Whiskard v. Futter. — Cro. E, 416. cites it as the Case of Blunt v. Andrews.

12. Surrender of a Mere containing 12 Acres of Land; it was objected, that the 12 Acres could not pass by the Name of a Mere, but the Court gave no Regard to it, but gave Judgment on another Point. Cro. E. 29. Clamp v. Clamp.


14. Common in Crofs will not pass by the Words Lands, Tenements, Patt. & Patner, yet it is a Feeding and Pattringe. Hob. 304. cites 20 All. 9.

15. Appropriation, or the Advowson of it, will not pass by the Name of Advowson, yet Advowson will be contained under the Name of a Tenement. Hob. 304. in Cafe of London v. Collegiate Church of Southwell.

16. There is a Difference between a Conveyance en Paix, and by Mat- 

17. Where
Grants.

17. Where a Thing of the Nature is known by the Name of a Thing of another Nature, it will pass by the Name of the other Thing by whole Name it is known, as 14 H. 8. 1. by Name of Wood Before shall pass. Arg. Mich. 20 Jac. B. R. 2 Roll. R. 266. in Case of Barton v. Brown & Ward.


(8) By what Words [Grants] may be made. In what Cases, by Words proper for other Thing, it shall enure as a Grant. Feoffment.

1. If Feoffment be made of a Manor in Lease for Years, and Livery made without outing of the Lease, by which it becomes a void Feoffment, yet if Lease be void it shall pass as a Grant of the Reversion. 11 H. 4. 71. admitted.

2. If Lease for Years be, the Reversion for Life, the Reversion in Fee, and be in Reversion in Fee makes Feoffment and Livery to Lease for Years, admitting that this is void as a Feoffment, as is there held, yet this shall not enure as a Grant of the Reversion and Attornment, because he intended to pass it by Way of Feoffment. 9. 49 and 41 El. B. R. per Curiam between Knotspard and Sedes.

3. If Lease for Life be, the Remainder for Life, the Reversion in Fee to the Lease, and the Lease makes a Deed of Feoffment to another, with a Letter of Attorney in it to make Livery, and after no Livery is made, yet the Reversion in Fee shall pass by Grant with the Attornment of him in Remainder. Pach. 13 Ja. B. R. per Curiam, between Sir Thomas Lucy and Sir Francis Englefield.

4. If A. fells of two Acres leaves one for Years, and after makes Charter of Feoffment of both to B. and makes Livery in the Acre in Possession in the Name of both; In this Case, only this Acre in which the Livery is made shall pass; yet if the Lease attorns, the Reversion of the other Acre shall pass. Co. Litt. 49.

5. If a Peron appropriate makes a Deed of Feoffment of the Parsonage, and after no Livery is made, by which it does not pass as a Feoffment; This shall not pass the Tithes by Way of Grant, because all is one entire Thing. Between Bozoun and Butler, per Curiam, cites Tho. 8. Ja. B.

6. If a Man by Indenture demises to J. S. the Manor of D. and bargains and sells to him all the Woods and Trees, &c. upon the said Manor to be sold and carried at his Will, Habendum the said Manor for Life. This is an absolute Sale of the Wood and Trees; For the Intent appears by the Words, and the several distinct Clauses in the Premises, and the leading of it out of the Habendum. Cr. 10 Ja. B. per Curiam between Rawes and Mason.

7. If A. leaves of Land leaves it for Years, and Covenants and Grants to and with the Lease, his Executors and Assigns, that it shall be lawful for him to take and to carry away to his own Use such Grain as shall be growing upon the Land at the End of the Term; Then the Word Covenant be joined with the Word Grant, and tho' the Words are not by Way of Gift of the Grain, but that it shall be lawful to him to take to his own Use, yet it shall be a Grant, and transfer the Property of the Grain, which shall grow there at the End of the Term; For the Intent and common Use of such Words amounts to as much as the Clause without Impeachment of Wait [and] transfers a Property in the Trees. Hobarts Reports 179, adjudged between Grant and Rawes.

8. Words
Grants.

9. If a Deed be made to a Man by thefe Words,  

Deeds convey & confirm, the Grantee may ufe it to his moft Benefit, viz. by Way of Feoffment, or by Way of Grant, or by Way of Confirmation, as will be moft to his Advantage. 


10. Land cannot pafs by Deed [made] of a Houfe, nor as Parcel; For it is not Parcel of a Houfe. But Gift of an Acre by the Name of Carre is good; and the fame of a Gift of a Care by the Name of Manor. 


11. Lefle made a Deed of Feoffment to Lefle for Years, and in the End was a special Letter of Attorney to make Livery to the Lefle for Years, and his Heirs. Lefle for Years has Election to take the fame by Way of Confirmation or Feoffment, and the Law supfends the Grant and expects, till he has declared his Pleasure; and when he has made his Election to take it by Livery, it shall be a Feoffment ab initio, and by the Deliverie of the Deed, in the mean time, nihil operatur. 

Trin. 25 Eliz. C. B. 139.


includes within the Deed a Letter of Attorney to make Livery, but so Livery was made. The Reversion does not pafs; For his Intent appeared, that should pafs by Livery and Seifin, and not by Grant. 

Trin. 10 Jac. C. B. 2 Brownl. 201, cited per Coke Ch. J. as H. 15 Eliz. Lat Cromwell's Cafe.

12. If Devife enters into the Term devifed to him without the Executors 

Affent, by which he is a wrongul Seifor and a Dileifor, and after he grants his Right and Interests to the Executor: Tho' the Devife has no Term in him, but only a Right to the Term, supfended in the Land, and to be revived by the Entry of the Executor, yet 'twas adjudged to be a good Grant, and that it shall enure, first, as the Agreement of the Executor by the Acceptance of the Grant, that the Devife had the Term in him as a Legacy; and secondly, the Deed shall have Operation by Way of Grant to pafs the Estates of the Devife to the Executor, and fo no wrong. 


13. Surrender to Grantee of a Reversion shall firft enure as Attraction, and after as Surrender, cited to have been fo adjudged. 

Trin. 27 Eliz. 

Ow. 36. Carter v. Low aIs Lawes.

14. In a Leafe was a Covenant to take Fireboor, &c. by the Lefle; but it had not the Word Grant added to it; 'twas objected, therefore that this was not sufficient to justify the Lefle's taking it, but that he may have Action if he was denied it. But the Court seemed to incline that it was well enough, being by the same Deed of Leafe; if it had been well pleaded. 


15. The Bisfor of Winchester granted to a Mayor, &c. that they might build in the vacant Places of the fame City, and inhabit there, and the Dean and Chapter confirmed the Grant; Per Hutton J. The Soil is still the Bisfor's, and consequently fo are the Houses, Quia quipquid plantatur folo, cedit folo; and the Grant enures but as a Covenant or * Licence, and not otherwife. 

Her. 57. Mayor and Commonalty of Winchester's Cafe.

16. A Conveyance shall not enure to a contrary End, than it was designated for. 


Hard. 49. Jones v. Clerk.

17. If it does not appear by the Fabrick of a Deed; that Lands are to pafs thereby by Way of Feoffment, yet the Lands may pafs by Way of Use, if there be a sufficient Consideration express'd in the Deed to raise an Use; Sic Dictum fuit. 


18. Articles
Grants.

18. A. Articles that a Man in Consideration of 20s. and 6d. per Ann. Rent shall have a Way for himself, his Heirs, &c. over such a Close. This is a good Grant of the Way, and not a Covenant for Enjoyment. Holins v. Seller, 3 Lev. 395. Trin. 3 W. & M. C. B.

(S. 2) Enure as a Release in what Cases.

1. If there be Lord and Tenant of three Acres of Land, one White Acre and two other Acres, and the Lord grants unto the Tenant by Deed, that he will not deprive in White Acre for his Rent and Services, this Grant shall not enure to such Intent as to determine the Seigniory in any Part, but shall enure by Way of Covenant, so that it the Lord drain in White Acre for his Services, the Tenant shall have an Action of Covenant. Perk. S. 69.

2. So, if a Man holds an Acre of Land of J. S. by Fealty and Suit, as of his Manor of Dale, and J. S. is also feoffd of another Manor called T. and J. S. grants unto the Tenant, that he shall do his Suit at his Manor of T. this Grant shall not determine the Suit at the Manor of Dale. Perk. S. 75. cites 2 E. 2. Action for Letts.

3. In a Replevin the Case was thus; B. held 50 Acres of A. as of his Manor of Swarden by Fealty, and 4s. 7d. Rent, &c. And C. held 47 Acres of A. &c. by Fealty and 3s. 4d. Rent; A. by Indenture between him and the said B. and C. reciting the said several Tenures, gives, grants and confirms the said Rents, Services and Seigniories to B. and C. and their Heirs, to the Use of them and their Heirs, &c. And in that Case it was resolved, that it is an Extirpation of a Moiety of every of their Tenures. And for the other Moiety they hold one of another, and the Avoiawant had judgment accordingly, for there was a cross Tenure between them for the one Moiety, and that shall not move as a Release, Reddendo Singula Singulis, &c. Dyer 319. See & note 11 H. 7. 12. a. 39 H. 6. 2. 49 E. 3. 40. In the principal Case there is not an equal Benefit to every of them; For it was said, that if the Acres and Rents had been equal, then it should have been extinguished in all. Nov. 113. Goldwell v. Navenden.

And Cook put this Report Case. A. Lease for Life, the Remainder to B. for Life. The Leffer gives, grants and confirms to them and their Heirs; A. shall have all the Possession during his Life, and afterwards B. shall have all the Possession during his Life, and one Moiety then executed, and after the Death of B. the other Moiety to A. in Fee. Nov. 113. Goldwell v. Navenden.

(S. 3) Enure. Where a Covenant shall enure as a Grant.

1. A. By Articles agreed with B. his Heirs and Assigns, that it should be lawful for him, his Heirs, &c. at all Times to have and use a Way by and thro' a Close of A. in Consideration whereof B. covenant'd to pay 20s. down, and 6d. a Year to A. his Heirs and Assigns, and to repair the Gate between the Closes. Adjudged per Pollexfen and Rokesby only in Court, that this was a good Grant of the Way, and not a Covenant only for the Enjoyment. Trim. 3. W. & M. C. B. 3 Lev. 305. Holins v. Seller.

Éq

(S. 4)
Grants.

(S. 4) Pass. Where one Thing shall pass by the name of another, as in a Perquisite.

1. Trespass for taking of Hawks, the Defendant pleaded Not Guilty, and was found Guilty, but the Plaintiff before the Trespass sold all the Trees in the Wood to N. by Indenture, with free Leases and Regrets, &c. and by the Indenture it was agreed that N. should not cut the Trees before Michaelmas, within which Time the Defendant took the Hawks, and entered by the Common Way, to the Damage, &c. and the Court took Advice, quære Legem. It seems to me that the Vendee has no Property in the Trees till they are cut, and then he shall have them as Chattels, but they are Parcel of the Franktenement as long as they grow, and then the Vendor shall have Action of Trespasse. Br. Trespass, pl. 247. cites 27 All. 29.

2. If a Man feited of a Manor, unto which an Advowson is Appendant in Fee, leases the same Manor unto a Stranger for Tears, or for the Life of another Man, and the Church becomes void during the Term, and the Tears expire, or he, for whose Life it was, dies before the six Months pass, and before the Lenee hath preferred; yet the Leesee shall have the Pre-tenement, because he is to have the same as a Perquisite, by Reason of the Manor. Perk. S. 97. cites 4 H. 7. 11.

(T) What shall pass by Grant of all Lands and Tenements. [or by either of those Words, or by other Words.]

1. By these words a Common in Gross shall not pass. 20 All. 9. Curia. Contra 11 H. 6. 22 b.

2. By grant of all his Lands and Tenements * Patents a Common shall not pass. 20 All. 9. Curia.

3. By such Words a Reversion shall pass. 11 H. 6. 22 b. 4. By Grant of a Tenement a Reversion shall pass. 37 H. 6. 5.

5. By such Words a Way shall not pass, unless it be Appendant to any of the Lands. 11 H. 6. 22 b.

6. If a Man grants to another all his Lands and Tenements in D. a Rent-charge which he has there shall pass. Trin. 38 El. 3 B. R. had per Doyphan to be be adjudged.

7. If a Man grants to another all his Lands in D. Houses will pass; because the House is built upon the Land, and estat sole. Trin. 38 El. 3 B. R. agreed between Eber and Doyplan.

8. If a Man is leisled of a House in L. in the County of Oxford, and of certain Houss and Land in the County of Hertford, and leases the Houses in Hertford, rendring Rent, and after makes his Will in this manner, I devise all that my House in L. in Oxford to J. E. and
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his Heirs, and also all those my Lands, Pastures and Meadows in W. in Hertford to him and his Heirs forever; by this Deed the Reversion of the Houses in Hertford shall pass by the Word [Land,] that he has made mention of a House before in another County, and makes particular Difference between Land, Pasture and Meadow. Trin. 38 El. B. R. 47, between Ever and Haydon, adjudged. See before Contra.

Lands and had not spoke of his House, the House had passed. Godb. 352. S. C.

9. If an Abbot be Patron and Parson, and there is a Vicar endowed, and he grants all Manors, Fees and Advowsons; the Advowson of the Parfonages does not pass by it; but it remains in the Abbot as Patron and Parson. 44 Ait. 37. adjudged.

10. But the Advowson of the Vicaridge shall pass to the Grantee by the said Words. 44 Ait. 37. adjudged.

11. And the Tithes of the Parfonage shall pass by the said Grant. 44 Ait. 37. adjudged.

12. A Common in Gros shall not pass by Grant of all his Pastures. 26 Ait. 9.

13. If a Man leaves a Manor for Term of 5 Crops with all the Demesne and Profits whatsoever, this is a Lease for Years of the Manor. 33 C. 3. Accomp. 130.


and 3 Buls. 103. Haughton J. cites 53 E. 5. 7.

14. If a Man has a Revolving in Fee in 106. Rent, issuing out of Land S. P. and in D. and has also the Revolving in Fee of an Acre of Land in the same Town, and he grants all his Land and Tenements in D. unto a Stranger, by this Grant the Reversions shall pass. Perk. S. 114. cites 34 H. 6. 6. 16 E. 3. gr. 55. 38 E. 3. 36.

in the same Town, it shall not pass by such Grant, &c.

15. If a Man has Land in Lease for Years, and is seised of other Lands in Fee, and makes a Reversion of them both, and Evey only in the Fee Simple Land, the Lands for Years shall not pass. Br. Grants, pl. 87. cites 9 H. 7. 25.

16. In Br. Abr. Tit. Grants, pl. 155. 'tis said, that if a Man grant S. P. per Omni terras & Tenementa his in D. a Lease for Years shall * not pass; Book. Br. but in Wakebridge and Cook's Cafe in the Com. 424. that Cafe in Br. is denied; and 'tis there resolved that a Grant of all his Lands and Tenements shall make the Interest for Years to pass. Skin. 539, 540. Trim. 6 W. & M.

hold at the least.—Br. N. C. pl. 221. S. P. *But if he grants Omni Familia sua, a Lease for Years shall pass; For of this an Example lies, and by this he shall recover the Term, and therefore it is a good Word of Grant. Br. Grants, pl. 155. cites 7 E. 6. Br. N. C. 56. pl. 428. cites S. C. and 7 51. H. 8.—Br. Done, &c. pl. 41. cites & C. —S. cited Arg. 1 Buls. 100.

17. A Grant was per Nomen Mesuagii for Tenement, per 2 Justices the Br. Name of Garden does not pass, but if it had been of Tenements, it would be otherwise; 1 Jul. held the contrary, and one held that it palled by the Name of the Mesuage, with an Avancement that they have been Occupied together. Pacht. 3 Eliz. No. 24. pl. 82. Amen.

A great Difference from the House, or in another Vill, or Parish. Pacht. 1658. B. R. 2 Sib. 76. Murrel v. Lord Brook.

18. In
18. In 1 Leon. 93, 99. *tis held by Popham, that if a Man be Tenant by Eligit, or Statute, of Lands in D. and, not having other Lands there, grants all his Lands in D. The Intend, which he has as Tenant by Eligit or Statute, shall pass by the word [Laud.] Trin. 6 W. & M. B. R. Skin. 539. Jerman v. Orchard.

19. Reddittus céd tenuementum. D. 236, pl. 3.

(U) What shall pass by general Words.

1. By Grant de Omnibus averiis suis, Deor shall not pass. 19 E. 4, 14 b.

2. If a Patron by Indenture grants his Glebe with all Profits and Commodities to the time belonging, Valendam for 99 Years Rent to the said Rent, and not for any other Purpose whatever to the said Patron, for which the Patron shall not have the Land backcharged; but shall pay them to the Patron; because it is due to the Patron of Common Right, and so shall not pass by general Words. B. 31 and 32 El. B. R. per Curiam agreed between Poyns and Hynde.

3. If an Advenfion be appropriated to an Abbot, and a Vicar is ordered, and the Abbot afterwards grants the Church and Advenfion, this passes only the Advowton of the Parfonage, but not the Advowton of the Vicarage. Br. Judgment, pl. 138. cites 16. E. 3. per Fulton and others and Fitzh. tit. Grant pl. 56. 17 E. 3. ibid. but adds a Quære.

4. If a Man gave Land before the Statute of Quia Emptores terrarum, and after Time of Memory to one to hold by Fealty and 2d. pro omnibus Beneficis, and Demands, this shall excuse a Fine for an Alienation, Hered. Caflon, and such like, which were due before, and be a good Bar in an Avowry; Per Cur. and per Strange it shall excuse a Relief; contra Skrene, because 'tis incident, quære. Br. Barre, pl. 13. cites 14 H. 6. 2.

5. If a Man gives all his Monuments, All Charters, Relieves, and other Evidences passes; and if a Man gives all his Deeds, thereby all Charters, Relieves, and Letters of Attorney passes. Br. Grants, pl. 13. cites 3; H. 6. 37. per Wang.

6. If a Man grants unto me Common of Pasture for 10 Kine in his Lands in such a Town; yet I shall not have Common but in his Lands Commanuable in the same Town, and yet the Grant is General in his Lands in the same Town; but the Reason is because he does not grant but only Common of Pasture, and for Cattle certain and Commanuable; so as the Grant shall not extend but unto Pasture Lands. Perk. S. 198.

7. A Predecessor of a Bishop made a Lease to B. of his Manor-House, and the Seats thereof, and of certain particular Choses and Demises by particular Names (and of all other his Lands and Demises) and the Question was, whether an Ancient Park, and Copyhold Land should pass? but it was held per Cur. that neither of them could be passed by those later general Words; for that neither the Park, nor yet the Copyhold could be intended to be Demises, and that in such Case a Grant shall not be construed by my violent Construction, but according to the Intention of Law. Hill. 1 Bils. 192 Arg. cites 18 Eliz. 2. Lord North v. Bishop of Ely.


9. A by Conveyance executed in his Life-time settled all his Lands in the Counties of B. C. and D. (mentioning them all particularly) to the Ufe of himself for Life, Remainder to his dower, if he should happen to have any
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any, in Tail, and then appointed the Lands in D. to his Nephew H. and the Lands in B. and C. to his Nephew L. In the Enumeration of the Particulars of the Lands in B. and C. in this after-part of the Deed, limiting them to L. a Farm or Manor of about 60 L. per Annum was omitted; but after the Limitation of the Land to his Nephew H. there were added these general Words; and all other my Manors, Lands, and Tenements, whereby no Use is already limited, the same shall be into the Use of my Nephew H. &c. A. died without Issue; by which Means H. and L. were his Heirs at Law. The Question was, who should have the omitted Farm; whether H. by Virtue of the general Words, or L. by Reason of the Words, whereby no Use has been already limited? For the Use of this very Farm was limited to A. and his Issue, theo not enumerated in the Limitation to L. Besides the Scrivener, that drew the Settlement, swore, that A.'s Intention and Instructions were to lettle it on L. and the not doing it was purely an Omission of the Clerk; and therefore it was prayed to supply that Defect, especially as it was the Cafe of an Heir at Law; but the Lord Chancellor, upon the whole Matter, did not think fit to decree it for one or other of them, but left the Land in Question, to be decided equally between the 2 Nephews. Hill. 1681. Vern. 37. Lee v. Sir Robert Henley & al.

10. One Settled of the Manor of Catemarnsh in Fee; and of other Lands in Fee in Catenarnsh, and also of a Term for Years in Catemarnsh, conveys the Manor by Special Name, and the other Fee Simple Lands by Special Name; and then says the general Words, and all other his Lands and Tenements whatsoever in Catemarnsh; and the Question was, whether the Lease for Years passed; and upon that the Court was divided; Coke and Williams J. were of Opinion, that the Term did not pass; Yelverton J. and Fleming Ch. J. held it did pass. In that Case it was adjudged afterwards, that by those Words the Term did not pass; for there the Habe- ditzum was to the Grantor and his Heirs. Skin. 539. W. & M. B. R. cited in Cafe of Jerman v. Orchard, as the Cafe of Edwards and Denton, reported by Serjeant Moor p. 832.

And therefore they ever fancied it, that Nothing should pass but what the Heir should take; but if the word Execution had been in there plain from that Cafe, that the Words [all his Lands and Tenements] had conveyed the Term. Trin. W. & M. B. R. Skin. 539 cited in Cafe of Jerman and Orchard.

(W) Pafs. What will pass by the word (Bona) only.

1. BONA includes all Chattles, as well real as personal. Co. Litt. 118. b. Provincial Actions are as well included within this word (Goods) in All of Parliament, as Goods in Possession. 12 Rep. 2. Parch. 4 Jac. in the Exchequer Chamber, Ford & Sheldon's Cafe.

2. If two Men have Goods in Common, and have other Goods severally, and give to me Omnia bona fua ; it passes all their Goods, which they have in Common, and all their Goods which they have severally; Per Newton Ch. J. quod nullus Negativ. Br. Done, &c. pl. 12. cites 19 H. 6. 4.

3. Omnia Bona fua will not pass a Lease for Years, nor would it pass a Word; For Bona are Goods movable, alive or dead, but not Chattles; and it seems, that the next Presentation to a Church, Unica Vice is a Chattel, and not Goods. Br. Grants, pl. 51. cites 4 E. 6.

A Term for Years will pass by a Deed of all his Goods, but not by a Grant of all his Goods. Cre. E. 1386. Portman v. Willis —a Term is taken in H. 4. 6. b. to be within the word (Goods) and an Executor may have Action on the Statute of Goods carried away in Vita tellatoris, per W. Burton J. 2 Brownl. 121, in Case of Petro v. Chewy.

In the Spiritual Court, where Legacies are demandable, Bona & Satalla are taken for all one, and the Stat. of Marl. giving an Action to the Successor, ad Reperenda Bona Prodergetur, yet an Eject. Caused, has been maintained thereupon; 10 also upon the Statute de Lonia effectandi, &c. the same has been Re-
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Solved: and where Administration is granted, it is only Omission from without speaking of Charities, yet has the Administrator Interests in Laches, as well as Moveables. So the Statue de Frango. Regis mentioning only Forfeiture de Catalisis is extended to Moveables. So in the Writ of Affidavit, de Catalisis que in every default, and in the Writ of Execution on a Statute, there is only the word Catalisis, and not Bona; Molt of which Statutes and Writs were consider'd of in Portuinus's Cafe; but appear not to have been consider'd in the Cafe in E. 6. Time when the Contrary was held, and in the Cafe reported Kalw. 35. a 13. H. 7. it seems that Lena & Catalisis were taken as Synonyms. Went. Off. Executors 253. 254.


5. The Question in Chancery was, whether Plate pass'd by the Name of Goods ; and it was decreed to be Goods. Toth. 133. cites Mich. 15 Car. Turner v. Williams.

6. The Father in Consideration of Marriage of A. his Son with B. and of a considerable Portion, covenanted to settle and align to A. such Lands, and leave to him all such Goods, as he should be possessed of at the Time of his Death. The Father leaves a Legacy of 30£. to a Daughter, and other Specifick Legacies by his Will, and makes A. Executor; A. took no Notice of the Will, nor proved it. Decreed A. to account for what came to his Hands after the Father's Death, and which is not included in the Articles, and if he has sufficient Attests unadminister'd (and beyond what is included in the Articles) at the Time of the Bill exhibited, then to pay the 30£ with Damages, since the Bill brought, and to deliver the Specifick Legacies, and pay her full Colts, which the Bill swear to be at Fin. R. 125. Mich. 26 Car. 2. Mablety v. Baker.

7. Money will pass by the Name of Bona, tho' it may not be demanded by such Name. 2 Show. 133. Anon.—And Money is Goods, within the Statute of 1 R. 3. 3. for seizing Felons Goods. Raym. 414. Osborn v. Wandell.

(X) What shall pass by Grant of all Goods and Chattels, [Or Goods or Chattels.]

1. If A. B. grants Dinnia Bona stra, the Trees growing shall not pass. 18 E. 4. 16.

2. Otherwise if the Trees were cut at the Time of the Grant. 18 E. 4. 16.

3. If a Man grants all his Goods and Chattels, an Obligation in which J. S. is bound to him, shall pass by this, that is to say, the Parchment, tho' the Debt be a Choise en Action, which cannot pass. D. 26. D. 8. 5. 3. per Fitz.

The Court was of Opinion, that by a Gift of all his Goods and Chattels a Bond would pass. 4 Mod. 157. Cook v. Bofigler.—D. 5. b.—8 Rep. 55. Caly's Cafe, Contra—that is the Paper and Wax will pass. Arg. Litt. R. 87. cites 5. By the Word (Bona) all Chattels Real and Personal pass, and in a Grant by the King, the Words carry a Choise en Action, per Walters Ch. B. Litt. R. 87.—Coke Ch. J. fe'm'd Contra. Roll R. 7. in Cafe of Cullum v. Sherman.—Goldib. 114. pl. 7. S. P. but no Resolution. Adams v. Ogletorpe.—By a Gift of Goods and Chattels, Charters do not pass. Br. Charters de terre. pl. 70. cites 22 E. 4. 12.—2 Inf. 172.—D. 5. b. Marg cites Kellet v. Nicholson.—In as much as the Debt included and written on it is the Principal, the Words of the Grant ought to comprehend the Name of the Principal. But if I grant all my Goods and Chattels in such a Box to J. S. and in this Box are Bonds, there the Bonds pass, by Reason of the Special Reference by the Grant expressed, good Carta conscia. Yelv. 66. Channel v. Robotham.

8 Rep. 53. Perk S. 115. Br. Done, &c. pl. 47. cites Done in Fitz. 6.—A Deed of Forfait does not pass by Gift of all Goods and Chattels; For it is Imposition, as the Land is, and the Nature of the Land, and shall go to the Heir. Br. Charters de terre, &c. pl. 73. cites 4 H. 7. 16.—Br. Grants. pl. 84. cites S. C. per Fairfax and Hufley.

4. If a Man grants Dinnia Bona et Catalisis, Charters do not pass. 22 E. 4. 12.

Br. Done, &c. pl. 47. cites Done in Fitz. 6.—A Deed of Forfait does not pass by Gift of all Goods and Chattels; For it is Imposition, as the Land is, and the Nature of the Land, and shall go to the Heir. Br. Charters de terre, &c. pl. 73. cites 4 H. 7. 16.—Br. Grants. pl. 84. cites S. C. per Fairfax and Hufley.

5. So, by such Grant a Cheift sealed with Charters does not pass. 22
Grants.

6. If a Man grants Bona fua (and does not say Omnia) per all his Goods shall pass by rt. 21 E. 4. 47.

7. If a Man grants Omnia Bona & Catalla fua, a Term for Years in Right of his Wife shall pass. 9 D. 6. 52. h.

8. If a Man grants omnia Bona & Catalla fua, the Goods, which he has as Executor, shall pass as well as his proper Goods. P. 1 Jaa. B. 1. between Sheldon and Billey adjudged; the which Jurat. P. 44 El. Rot. 125. 20 H. 7. H. 64. b. per Frowick.

9. If an Administratrix takes Baron, and the Baron grants Omnia Bona & Catalla fua, and it is express'd in the Deed, that he gives a Horse in the Name of Sevin of the Goods, which Horse is Parcel of the Goods of the Intestate, as is found in a Special Verdict, it seems the Goods of the Intestate shall pass by this Grant. Dibiatat. Trin. 8 Car. B. R. between Rowle and Barkley, upon Special Verdict. Jurat. Trin. 7 Car. Rot. 497, or 498. See 21 H. 1. 29. b. of an Arbitrament.

10. By a Grant of all his Chattels, a Term in Extent, upon a Statute Merchant shall pass; For it is but a Chattel. 11 H. 6. 7. b.

11. The Abbot and Convent of D. granted a Rent-chargé by D. for four Years, with Clause of Disfreves, and the Grantee granted over the same Rent, which was granted to him to W. N. by thee Words, Omnia Bona & Catalla fua tam viva quam mortua; and it was held, that the said Rent which was a Chattel, might pass by thee Words, with Atornment of the Tenant, well enough, Quod nota. Br. Grants. pl. 62. cites * 39 H. 6. 35.


13. Per Dyer, if a Man has a Lease for Years of a House, and grants all his Goods and Chattels being in the same House; as well the Leases of the House, as the Goods within it, passes by such Grant. Pach. 14 Eliz. 3 Le. 19.

14. Leafe for Years of the Pavnage of the Park of H. grants all his Goods and Chattels moveable and immovable within the said Park. It was held by Weldon and Dyer Jullices, That the Leafe of the Pavnage passeth by these Words. 3 Le. 19. pl. 46. Pach. 14 Eliz. Anon.

15. Bona & Catalla do not extend to Rights or Gloses et Alium; For such Things only, which are commonly understood, shall pass by such Words; By Grant of Goods, Chattells real will not pass; For when Men speak of Goods, Householdstuff, Money and such Personal Things only are understood. So a Man cannot be said to have a Chattell, but where he is pois'd of it. So that by Grant of Bona & Catalla by the King, a Prententment to a Church of a Perfon Outlawed will not pass; For this Interest is but a Jas Pretenfand; Per Anderfon; but per Periam J. this Interest is a Chattell; Adjournatur. Le. 262. The Queen v. Archbalfop of Canterbury, Fane and Hudson.

16. By
Grants.

16. By the Grant of Omnia Bona & Catalla Dugs do not pass. Arg. Deeds and
Hatschi rer
Hatschi will Ow. 54
not pass by
by those Words. Br. Done, &c. pl. 59. cites 22 H. 8. 4. per Elliot. Quod non neptur.—Aper,
&c. which are free Natura, and are made tame for Pleasure, shall not pass by Elliot. Br. Grants. pl.
142. cites 12 H. 3. 4.

17. Devise of all his Moveable Goods and Chattels extends not to Deeds,
which are jured, as Bonds. Jo. 225. Sparkes v. Benne.

(X. 2) Where a Grant is ineffectual to pass the Estate
&c. intended, it shall pass another Estate.

1. A Termor, supposing himself to be seised of a Freehold, grants the
Land to f. S. for Life, but no Livery was made. The Term
pays. For 10 Eliz. D. 227. is, that a Termor devised the Land to one
for his Life, and the Term paid. So here. But Popham said, If there
had been in the Deed a Letter of Attorney to make Livery, it would per-
haps have been otherwise; For then the Grantor’s Intent would have ap-
peared to have paid a Freehold, and not the Term only. Mich. 39 &

(X. 3) Uncertain. How much shall pass.

1. If a Man grants to another a Common, infra metas & Bundas of the
Vill of D. and Part of the Vill is several, and Part Waif Land and
Common, he shall have Common in the Common Land, but not in the Se-

2. A. was seised of Land in D. and by Deed shown in Evidence gave and
granted Eighteen Acres of Land, Parcel of the Tenements Simul cum Com-
mon of Palture, in all his Land, Habendum & tenendum to him and his Heirs,
&c. by which the Plaintiff made Title to Common of Palture in Grofs
in D. and made Plaint to Common in 200 Acres of Lands, with all
Manner of Beasts, and ‘twas not expressed in the Deed, in what Vill the
Common shall be taken, nor in what Tenement, nor with what Number of
Beasts; it shall be intended, that he shall have Common in all the other
Lands of the Grantor in the same Vill where the other Land was given,
and with Beasts without Number; quod Mirum, that he may grant
it over; and the Plaintiff recover’d by Award, Quod Noto. Br. Grants.
pl. 78. cites 36 Afl. 3.

3. A. grants a Rent of 5l. to B. out of certain Land, for his Life, and
after the Death of C. 10l. to B. for his Life. C. dies; B. shall have 15l.
during his Life; For A. ought to have added an Exception after the
Death of C. Jenk. 272. pl. 90.

4. If a Man binds himself to give another Six Cows and Horse, it must
be Six of each, and it shall be taken severally, as strongest against the
Grantor; Per Curiam. Mich. 12 W. 3. 12 Mod. 421. In Cafe of Ham-
mond v. Ouden.
Grants.

5. It was agreed by Marriage Articles, that in Consideration of a Provision for the Wife made by the intended Husband, she should have no Claim out of his Real or Personal Estate, provided that this should not extend to all or any of the Household Goods or Utensils, or Household Stuff, &c. of the said Husband, at the Time of Death, all which she was to receive and enjoy. Lid. Ch. King said, that where the Meaning is uncertain, the fairest Way is to follow the Letter; and that as both Words and Letter extend to all Household goods, and the Intention not appearing otherwise, and it being in favour of a Wife, he would take the Meaning as large as the Words, and so decreed her, not only the Goods in the House in London, in which he dwelt, but also a very great Number of Eeds, Sheets, and other Furniture in Proportion for a great Number of Servants, Invalids, in an Hospital at Gofport, used by the Government. But on Appeal, this Decree was reversed in the House of Lords. 2 Wms's Rep. 302. Mich. 1725. and Feb. 1726. Pratt v. Jackson.

(X. 4) Pass. What Estate or Thing not contained in the Premisses.

1. A Grant to B. divers Lands of Eeverts out of his Wood of D. to be burnt in his Houte of S. and that B. and his Heirs may take the Eeverts out of the said Wood at certain Times of the Year, and adjudged, that this is an Estate only for Life of the Grantee, because the Word Heir is not in the Grant, tho' tis in the Sequel of the Deed. D. 253. pl. 100. Marg. cites it as held per Anderfon Ch. J. Ed. Paget's Cafe.

(Y) What Thing shall pass by the Grant of other. Parcels.

1. If a Pan seised in Fee of a Manor leafs Parcel of the Demesnes for Life, and after grants the Manor to another in Fee, to whom the Reversion of the Tenements in Lease was in the Owner of the Manor, otherwife he could not have the Rents and Services; so that it must be either a Reversion in Grosi, divided from the Manor, or the Part of the Manor: That it should be a Reversion in Grosi, divided from the Manor, has no Colour of Reason; for when a Man is seised of a Manor and Demesnes in Possession, and makes a Lease for Life, and parts with the Possession of what he so leaves, in lieu of the Possession he has the Reversion and Services, which are annexed to the Manor and Part of it, and the Reversion and Services naturally follow the Right and Nature of the Land. Pig. of Recov. 44, 45.

2. So it seems by Common Recovery of the Manor the Reversion of the Lease so leased shall pass. For it may be so demanded by a Precipe of the Manor. D. 15 Ja. B. R. between Boxe and Palmer; upon Evidence this was a Doubt, of which the Court would not give any Opinion.

for Life, of a Manor, excepting any Part, there ought to be several Wris of Precipe. Because the Franktenement is several.
3. If a Bishop leases Parcel of the Demeñies of a Manor for Life not warrantable by the Statute of 1 Eliz. 2 Bishop, and after leases the Manor to another for Life, the said Parcel before leased for Life will pass with Attornment of the said Lease: For the said Lease does not make any Decontinuance, but the Reversion of it continues Parcel of the Manor. 31 Car. 2. R. between Walter and Jackson, per Curiam, adjudged in Hoot of Error upon such Judgment in Bank, and then was laid by Justice Barkley, that it was to be resolved in Bank in this Case.

4. If Tenant in Tail of a Manor leases Parcel of the Demeñies for Life, not warrantable by the 32 H. 3. and after leases for Life or conveys the Manor in Fee to another, and Leisfe attorn, yet the Reversion shall not pass by this Grant of the Manor, because by the Lease for Life of the said Parcel, this was a Decontinuance of this Parcel, and to the Reversion no Parcel of the Manor. 31 Car. 2. R. between Walter and Jackson, per Justice Barkley, in a Suit of Error upon a Judgment in Bank, and then said by Barkley, that it was to be agreed in B. in this Case.

5. If a Man leases Land for Life, excepting the Trees there growing, and after he grants the Reversion to another, the Trees shall pass as well as the Land, For the Trees are annexed to the Reversion. Adjudged 11 Rep. 50. b. Lisbowd's Case.

6. So if he had granted the Reversion by Name of his Tenements, the Trees shall pass. Adjudged 11 Rep. 50. b. Lisbowd's Case.

7. "Twas agreed by all the justices that an Annuity may be Parcel of a Priory: For this is a Thing perpetual; contrary to a Manor, or an Acre of Land, and therefore it cannot be Parcel of them. "Now a Diversity, Br. Comprise, pl. 23. cites 22 E. 4. 44.

8. It was admitted that a Hundred may be Parcel of a Manor. Br. Court Baron, pl. 15. cites 27 H. 6. 2.

9. "Tis said that Land cannot be Parcel of an Office, nor an Office Parcel of Land, but Land may be appendant to an Office, and an Office may be appendant to Land. Br. Comprise, pl. 17. cites 1 H. 7. 28. 29.

10. In Trespass, Recovery was pleaded of a Castle, of which an Acre of Land was Parcel, and it was agreed, that an Acre may be Parcel of a Castle, and per Brian, this is proved by the Tenure by Castle Guard; For if the Land escheats, it shall be Parcel of the Castle, and Land may be Parcel of a Vill. Br. Precipe, pl. 23. cites 5 H. 7. 9.

11. If a Man gives the Land and Body of an Her in Ward, and all Things which be hath by Reason of the Castody, the Adolution shall pass. Br. Donee, &c. pl. 49. cites 5 H. 7. 36.


13. The Patronage of a Chapel and such like may be Parcel of an Honor.
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Honour or Enkham. Quod Nota, per Curiam. Br. Compris, &c. pl. 58. cites 10 H. 7, 18, 19.

14. If a Man sold of a Minor enfeals to a Stranger of the Manor, without laying any Thing of Service, and without laying [sum pertinentibus], by such Feoffment the Services of the Tenants, which held of the Manor, shall pass with the Attornment of the Tenants, for in such Cases the Services are Parcel of the Manor, &c. Perk. S. 116. cites Brief, 551. Feoffment 53.


16. If a House or Tenement, built upon a Mound, be laid with the Appurtenances, the Marth paffeth not by Law, yet relieved in Equity against the Heir. Toth. 225. cites 36 Eliz. Ellis v. Beelwick.

17. One Money cannot be Parcel of another Money; for every Money is entire; Per Anderson Ch. J. Mich. 29 & 30 Eliz. C. B. Le. 77. Zouch v. Bampfield.

(Z) In what Cases one Thing shall pass by Grant of another. Incidents.

1. The Grant of a Thing passes Things included, without which the Thing granted cannot be had. In Case of C. 1. Fifth.

Grants, 47. Damer's Reports, Cab. 295. Agreed per Curiam be between Lord Darby and Askwith.

Principal, without mentioning of the Incident. As a Court of Pleas shows is incident to a Fair, and shall pass by a Grant of the Fair; Per Vavilour. Br. Grants, pl. 86 cites 3 H. 7 2.—Hob. 234.

2. If a Man holds of another as of his Honour of his Castle by Castle-guard, if the Lord grants over the Castle, the Service passes as Incident. 17 E. 3. 65. Grantor shall not have it after.

If a Man holds of his Lord by Honour, Fealty, Rent and Castle-Guard, and the Lord grants over the Services, and the Tenant attorns; the Grantee shall not have the Castle Guard, because he hath not the Castle. Br. Grants, pl. 161. cites 41 E. 1 and 19 E. 2 and 4th. All 341.—But per Bere and Spigneral, he shall have the Money, because it is a Contribution; Br. Ellis, pl. 54. cites S. C. But Brooke makes a Quare of it, and thinks it is lost.

3. But if a Man holds of another as of his Honour of his Castle by other Services than Castle guard, and the Lord grants over the Castle, yet the Services remain in the Grantor annexed to the Honour. 17 E. 3. 65.

If a Patron be Patron of the Vicarage of the same Parish, and leases the Patronage to another, the Patronage of the Vicarage shall pass as Incident to it. For the Patronage of the Vicarage belongs of common Right to the Parish. 17 E. 3. 51.

If there be Lord and Tenant by Fealty and Rent, and the Lord grants the Rent, the Fealty shall pass as Incident to it; and to shall pass as Rent Service; for he grants the Rent in the same Banner as he himself had it. 26 Ed. 38. Winton's Little.

End Montague, but per Mounte. M. 59 H. 6. Fol. 24, 25—pl. 24. cites 19. Ass. 20a.—But in the same Case, if the Lord grants the Rent (except the Fealty) the Grantee shall have the Rent a Rent Sack, and the Fealty doth not pass, &c. Perk. S. 115.

In such Case the Lord grant the Tenor to the Tenant in Rent in the Land, except (Pretor) the Rent, there the Rent and Fealty remain; For it is Incident to the Rent Service. Br. Incidents, pl. 35. cites 12. 4, 11.—169. pl. 72.

6. 38
6. If there be Lord and Tenant by Homage, Fealty, Feudalage and Rent, and the Rent is granted over, the Seigniory shall not pass with it; because the Homage or Feudalage are not incident to the Rent Service, and the Fealty cannot pass without them, and therefore it shall be Rent-Seek. 26 Am. 35. per Willy.

7. So, if there be Lord and Tenant by Homage, Fealty and Rent, and the Lord grants the Rent to another, the Fealty shall not pass for the Rent thereafter, but the Rent shall pass as a Rent-Seek. 26 Am. 35. Dubitatur.

8. If a Man leaves for Years or Life, or gives in Tail rendering Rent, and after grants over the Rent, the Fealty shall not pass, because it is incident to the Reversion which does not pass, and therefore the Rent shall pass as a Rent-Seek. 26 Am. 35. in Fine. Contrad 26 Am. 66. adjudged against the Opinion of the Major Part, and Error brought.

9. If the King has a Corody as incident to the Patronage of a Priory, and grants over the Patronage, the Corody shall pass with the Patronage, because it is incident to the Patronage. 26 Am. 22.

10. If a Man has a Warren in his own Lord, and he leaves the Game, the Soile shall not pass by it. B. 13 Ja. B. R. adjudged between Rice and Wilman.

11. If a Man has a Park in his Soile, and he leaves the Park, the Soile shall pass; for he cannot have a Park in the Soile of another Man. Bich. 13 Ja. B. R.

12. If a Man has a Park in his own Soile, and he leaves the Warren, the Soile shall not pass. B. 13 Ja. B. R.

13. If a Man has a Warren in his own Soile, and he leaves the Warren, the Soile shall not pass by it. For a Man may have a Warren in the Soile of another Man. B. 13 Ja. B. R. Dubitatur.

14. If a Man leaves for Life or Years, or gives in Tail rendering Rent, and after grants over the Reversion, the Rent shall pass upon Atonement as incident to the Reversion, tho' no mention be of the Rent.

S. P. Rent in that Case if the Grantor of the Reversion in his Grant, passes unto himself the Rent, the Rent shall not pass. Perk. S. 113.

15. If I grant to another my Fish in my Water, he may fish with Nets, but he can not cut the Banks, and to make it dry to take the Fish. Hobart's Reports 265. For it is not directly necessary nor usual.

Gods. 53 pl. 63.——For a grant shall always have a reasonable Construction. Perk. S. 113.——
So if I grant all the Fish in my Pond, the Grantee may fish with Nets. Gods. 538. Arg. cites 2 R. 2. Grants.

16. If a Man grants or reserves Wood, it implies a Liberty to take all the Oakes growing in his Wood to a Stranger, the Grantee may cut down the
Grants.

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the Oaks, and come upon the Land of the Grantor with Care to carry them, for otherwise he cannot have them, &c. Perk. 8, 110. cites 6 E. 1. Gr. 41. —— S. P. Arg. Gaed. 53. pl. 64. cites Mich. 28 & 29 Eliz. in Case of Dike v. Dunstan.

17. If I have a Close incompanied with my own Land on every Part, and I alien this Close to another, he shall have this Way to this Close over b. ——— The Grantor shall have a
day's Notice by the Grant. S. C. 3d. B. K. p. 29. Hewerton. Et. 3d. B. R. between Clark and Rugge; and Feudor shall allow the
Way, where he may best spare it.

to use the same Way as I do. Nov. 124. Oldfield's Case. —— If a Way of Necessity be claimed, 'tis a
good Plea to say, the Party has another Way. But Secus, where a Way is claimed by Grant or Pre-
scription. 6 Mod. 4. Mich. 2 Amc. B. R.

18. So if the Close aliened be not totally inclosed with my Land, but
partly with the Land of Strangers; For he cannot go over the Land

19. Where a Man holds of another of his Manor, by Suit to his Mill, and
the Land grants the Mill and Suit, yet the Heir of the Land shall have the
Suit, if he makes a new Mill; for the Tenure is to the Manor of the
Grantor or to his Peron, and not to the Mill; which Suit remains with the other Services; Per Harle. Quare. Br. Ablife, pl. 458. cites 31 E. 1.
and 19 E. 2.

20. Where a Man has a Warren in his Land, and demises the Land for
Years, without expressing the Warren, the Leetor shall not have it during the
Years, for he hath not reserved it; and the Leetor shall not have it, for it is not granted to him, by the best Option; But per Prisio, if the
Warren be appendant to the Manor or Land, it shall pass with the De-
mise of it; but if it be in a Person, it shall be in Success during the Term.

21. Where I grant to a Man to dig my Land to lay conduit Pipes, if
the Pipes decay, he cannot dig my Land to mend them, if it be not so granted. The late Laws, if I prescribe to have such Conduit, &c. I
cannot amend it, if I do not prescribe to do it, Toties quoties, per Choke; quod
fuit negatum in both Cases; For, per Curiam, it is incident to such Grant to enter and amend. Br. Nuffinc. pl. 14. cites 9 E. 4. 35.

22. Wait and Strey do not pass by Grant of a Lease; For they are not incident. Contra if they are appendant, and the Grant is, Cum Pertinentiss. Br. Patents, pl. 56. cites 8 H. 7. 1. per Vaflor.

23. A Lease is not incident to a Hundred; For one Liberty cannot be in-
incident to another Liberty; but a Lease may be appendant to a Hundred. Br.
Incidents. pl. 18. cites 12 H. 7. 16.

24. If one lease a Rectory, the Leetor shall have Tithe and Offerings, as
Incident. Br. Leefe. pl. 15. cites 32 H. 7. 8. per rotan Curiam. The Turnes
without Deed; For the Church, the Church-Yard and the Tithe, are the Rectory; and all pass by Pa-
rol, by the Word Rectory; and the Patron shall have Trephas of the Trees cut in the Church-Yard,
and carry'd away, and for breaking of the Church. Br. Leefe. pl. 20. cites 21 H. 7. 21. and there is a
Quare, whether the Pasftime Trees, Gible and Olatum are not pass in the Denite by the Name of


26. A has a Manor, in which is a Park and Filiponds. A. demeis the
Manor, excepting Deer and Fife, and after grants the Reverion; Grantee
shall have Deer and Fife, as Appendants. 11 Rep. 50. b.

27. A Mine is open at the Time of the Lease; the Leetor cannot take See Wait (M) pl. 16.
Grants.

Timber to use about the Mine, tho' former Lettices have taken it; For the Wrong of one Lettice cannot warrant the Wrong of another. Hob. 237.

25. Warrant for a Buck in a Park impowers the Servant of him, that is to have the Buck, to go into the Park for him, and to effit the Park-Keeper in killing him, and to bring him away. Hard. 347. Arg.

29. Where a Franchise is granted for the Benefit of a Body politic, the Body politic has a Power incidently to regulate that Franchise for the publick Benefit. Trin. 11 W. 3. B. R. 1 Salk. 142. City of London v. Vanacre.

30. If the King grant a Tract of Land in the Plantations Abroad to a Man, with a Legislative Power, which grants passes over to another; the Legislative Power shall not pass as a Privilege annexed to the Land, but that remains with the Perfon of Grantor; Per Holt Ch. J. 12 Mod. 399. Patch. 12 W. 3. B. R. In a Case between Balfie and Bellamount.

(A. a) What Thing shall pass by Grant of other Thing. Appendants.

F a Man bargains for 20 Barrels of Ale or Cups of Wine when he comes to his House, there the Grantee shall have the Ale and the Wine, but not the Barrels, nor the Cups; Per Fitzh. clearly. Br. Contract, pl. 4. cites 27 H. 8. 27.

But, Br. Grant, pl. 86. says, that Things, which are appendant, regardant or appurtenant, shall not pass by Grant of the Principal without the Words, Com Bertin, as Common, Advowson, Way, Wayf, &c. cites 8 H. 7. 2. per Vavlor.—— Br. Grants, pl. 45. cites 22 H. 6. 35. per Moyle.—— V. S. P. per Vavlor and Davers; but contra per Brian and Towns. Ibid. pl. 85. cites 55 H. 8.

3. If at this Day a Grant de Novo be made of Common of Paffure for Beasts leuant and Cochein upon his Manor of D. or Common of Fallow or Turbarie in Fee, to be burnt or spent within his Manor, there are Commons appurtenant; and will pass by Grant of the Manor. Co. Litt. 124. b.

4. If A. feited of 100 Acres of Land, to which a Common for Beasts leuant and cushion upon the Land is appurtenant; by Grant within
Grants.

in Time of Memory, grants to of those Acres only without paying cum
Pertinentiis; per a proportional Common for Beasts levant and
congeant upon those 10 Acres shall pass, in as much as it is appur-
tenant to the said Acres, and the Common is to be appur-
mented. Brich. 13 Car. 2. R. § between

13. and
12. and
3. Fakatun upon a Special Verder, and special pleading. Inferent.

Grants, 10 Ja. 5. R.

5. If there be a Common Appurtenant to a Copyhold Tenement, and
the Lord makes Feoffment of the Tenement with all Profits, Comdo-
dities and Common to it appertaining, yet the Feoffee shall not have any
Common; for it was appurtenant to the Copyhold, and not to the
Freehold. Brich. 10 Ja. 5. R.

6. So if he leave the Copyhold Tenement for Years, with such Words
as before, yet the Lessee shall not have Common for the Cause above
said. Brich. 10 Ja. 5. R. adjudged.

7. If the King grants the Manor of D. to J. S. in Fee, and Tot
Tales & haysmodi Libertates, as such Abbot lately had in the same
Manor, and the Abbot had Bona & Catallia Felonum, by which this is
a good Grant of this Liberty to J. S. and after J. S. made Feoffment
without Deed of the said Manor, Cum pertinentiis to J. D. This shall
not pass the said Liberty to J. D. being done without Deed. Mitch.
37 El. 2. R. in Owen Vaughan's Cafe, which is the Abbot of Strafor
Marcella's Cafe, and reported Co. 9.

8. A Forest was appurtenant to the Honour of P. and the King granted
the Honour Cum Pertin. and by this the Forest passes; per Curiam. Br. In-
cidents, pl. ii. cites 26 Aff. pl. 62.

9. But where the King had granted the Bailiwick of the Forest before to
J. D. in Fee, rendering Rent, this Bailiwick does not pass; for it is severa
by the Grant of it, and therefore it is not appurtenant. Br. Incidents, pl.
i. cites 26 Aff. pl. 62.

Quad nota. Br. Patent, pl. 53. cites 8 C. cites 10 P. 62. b. in
Whitel's Cafe

10. A Let may be appurtenant to a Vill, and pass by the Name of a Vill,
Cum Pertinentiis, in a Grant of the King. Br. Incidents, pl. 29. cites 18
H. 6. 11.

11. Five-boote, Housboote and Hey-boote are appurtenant to a Termor,
or Tenant for Life, tho' the Leafe be by Parol, without Deed, and with-
out expressing any Grant of them; Per Acue. & rotam Curiam. And the
same Law, per Markham, of Plough-boote; But contra, per Acue. And as to Fold-boote, the Justices were of diverse Opinions. Br. Inci-
dents, pl. 6. cites 21 H. 6. 27.

12. If I lease an Acre of Land to which an Advovson is appurtenant for
Life, reserving the Advovson, and after grant the Reversion of the Acre
with the Appurtenances, the Advovson shall not pass; because it is not now
Appurtenant. But if I grant the Advovson for Life, reserving the Acre, yet
the Reversion of the Advovson remains Appurtenant to the Acre, and by
grant of the Advovson with the Appurtenances, the Advovson in Re-
version shall pass; Per Prefoct. Br. Grants, pl. 50. cites 35 H. 6. 34.

13. Land may be appurtenant to an Office, and an Office may be appen-
dant to a Manor or Land: and by Grant of the Office in the one Cafe, the
Land shall pass without Livery; and by Livery of the Land in the other
Cafe, the Office shall pass: As the Office of Warden of the Fleet has
Land appurtenant, &e. Br. Incidents, pl. 13. cites 1 H. 7. 28.

14. Wolf and Stag are not Parcel of a Let, nor Incident to it, but
may be appurtenant to it. Br. Compr. &e. pl. 29. cites 8 H. 71.

15. Titles
Grants.

15. Tithes and Offerings are Incidents to a Partlauge, and by Leave of the Partlauge by Parol, without Deed, they pass, tho' not expressly named. Br. Incidents, pl. 7, cites 15 H. 7, 8.

16. If there be a Park of Antiquity, and Office of Perkeship usually granted, with certain Profits appendant to it, as Windfalls, &c. those Things shall go with the Office by Prescription; and be enjoyed by the Keeper. D. 71. b. pl. 47. Trin. 6 E. 6.

17. Feoffment of a Manor, &c. and Livery made; Though the Tenants do not attorn, yet an Advowson passes, as appendant to the Demesnes. D. 72. b. pl. 41. Marg. 32 Eliz. C. B.

18. If a Man has Land, and a Way to it, and he leaves the Land, the Way passes, though not expressed in the Deed; and the Difference is between a Grant of Land with Common or Estovers to be burnt; there if he lets the Land, the Common of Estovers will not pass without a Deed and Express Words; because they are Profits appendant in another's Soil, and are not of Necessity; But the Land cannot be used without a Way, so that it must go with it of Necessity. And Unity of Possession does not extinguish it. Cro. J. 189. Mich. 5 Jac. Beaudly v. Brook.

19. By Grant of a Manor that has a Leet, the Leet shall pass without express Mention, or Words equivalent. 13 Rep. 64. b.

If three Co-parceners have a Manor, to which a Leet is appurtenant, and the King purchesas two Parts of the Manor, with the Appurtenances, the Leet is not extinct, but remains appendant to the third part of the Manor. * And. 20. pl. 58. Apon. — But the Reporter adds, quære the Intent; For at least the K. holds the Leet with the third Co-parcener, but not the whole Leet by the Alienation of the two Sifters. — * Bent. 30. pl. 30. C. — D. 52. b pl. 209. Marg. S. C. — If it be used to pass by Grant of the Manor, cum Pertinentiis, &c. time out of Mind, it is appendant. Br. Incidents, pl. 2. cites 33 H. 6. 4. — The same Law of an Hundred. Ibid. —* Brook says, it seems that a Hundred may be appendant in a Manor. Br. Court Baron, pl. 15.

20. A Milestone taken out to be picked shall pass by a Demise or Conveyance of the Mill. 11 Rep. 50. b. Mich. 12 Jac. in Liford's Cafe.

21. By the Statute 27 H. 8. 6. all Tithes and Churches were given to the King, and it was resolved by Hobart, Winch, and Hutton, that Church contains all Fruits and Profits appendant to it. Mich. 13. Jac. 1. Jo. 2. Wright v. Gerard.

22. A Man, seized in Fee of an Hundred, and of Lands within the Hundred, grants the Hundred. It was held by Lord King, that this passed only the Franchise; and not the Lands within the Hundred or Franchise; And the rather, in Regard that the Hundred, and those other Lands, came to the Grantor's Family by different Purchases. 2 Wms's. Rep. 452. Mich. 1726. Bays v. Bird.

(A. a. 2) Pafs. What will pass by the Words Cum Pertinentiis.

1. And two others were seized in Fee of the Manor of D. to which a Hundred was appendant; and the two released to A. and his Heirs all their Right in the Hundred, and after they three gave the Manor, cum Pertinentiis, to Baron and Feme, and to the Heirs of the Baron; per Littleton and Wadding, the third part of the Hundred passes by these Words, cum pertinentiis; for this remains appendant to the Manor as before, and the other two Parts are severed, and made in gros by the Release; and yet they were Jointenants after the Release of the whole Manor, and Survivorship may take Place; but the Jointenancy of the Hundred is determined by the Release. Br. Jointenants. pl. 2. cites 33 H. 6. 4, 5.

2. The
Grants.

2. The King grants Warren within my Manor; If I infringe the King of the Manor without Pertinentis, I shall have the Warren. D. 32. b. pl. 209. Hill. 28 H. 8.

In the first Case it does not pass by Grant of a Manor cum Pertinentis; for it is no Parcel; in the second it passes, but not without cum Pertinentis. D. 32. b. pl. 209. Marg. cites S H. 7. 4.

3. If a Man makes Feoffment of a Mefuage cum Pertinentis, nothing but the Words (cum Pertinentis) but the Garden, Cartilage, and Clofe adjoining to the Mefuage, and upon which the Mefuage is built, and no other Land, tho' other Land hath been occupied with the Mefuage; notwithstanding, in the time of H. 8. it was used to add these Words, ac omnia terras. Ten. & Hereditamenta eidem Mef. pertinente, aut cum eodem occupata locata aut dimini. exiitex. And fo the Land used with the Mefuage shall pass. Br. Feoffment de Terre. pl. 53. cites 32 H. 8. 23 H. 8.

Rent, and by the same Words; The Lord Chancellor Bromley, by Advice of the Judges, ordered thofe Lands should now pass also; yet in Law they do not pass, as some Justices hold. Cary's Rep. 24. 25.

Surrender of a Houfe cum Pertinentis will pass Land; Per Harvey J. Het. 2.

4. A and others were sold in Fee, to the Ufe of G. and his Heirs, of a Houfe, and 70 Acres of Land, &c. in H. called now, and time out of Mind, by the Name of W. and fo feft they all by Indenture demifed the Mefuage aforesaid with the Appurtenances called W. within the Parfes of H. aforesaid, to J. S. for Life. Upon a special Verdict it was moved in Arrest of Judgment, whether this Demife by G. the City Que Ufes, and his Peofices be sufficient? And whether it will extend to the 70 Acres in demand by the Name of the Mefuage with the Appurtenances called W. it not being expressely found that the said 70 Acres were appurtenant to the said Mefuage, &c. D. 158. pl. 31. Hill. 4 & 5 P. & M. Drew v. Marrow.

Grants shall have the other as a Thing implied in the Grant; But I do not find it fo adjudged there, but left only as a Quare.

5. A sold of a Barn, in which the Tithes of certain Lands have used to be put, let the same by these Words, Demife, and to farm let the Barn with all Tithes belonging to the same; It was held, that the Tithes did not pass; but Tithes which had usually been demifed with the Barn, passed by fuch Words; As by the Demife of a Houfe cum Pertinentis, all the Lands passed which have been used to be demifed with the said Houfe; For the demifing usually of the Tithes with the Barn makes the Tithes to be belonging to the Barn, and not the Inning them in it.


6. Situm Relliorum cum Decinum eider pertinente, habend' situm pradict. cum fatis Pertinentis for 20 Years; The Tithes pass for 20 Years. Le. 281. Patich. 28 Eliz. in the Exchequer. Cary's Cale.

7. If Leifer for Years of a Houfe and Land ered a Conduct on the Land, and after the Term the Leifer takes them together for a time, and then sells the Houfe, with the Appurtenances, to A. and the Land to B. — A. shall have the Conduit, and the Pipes, and Liberty to amend them; But if it ought per Popham, if Leifer ered a Conduit, and after the Leifer, during the Lease, sells the Houfe to A. and Land to B. and after the Lease determines, B. may hinder A. from using the Conduit, and may break it; because it was not ered by one that had a permanent Eitate or Inheritance, nor made one by the Occupation and Ufe of them together by him that had the Inheritance; So it is if a Difference of a Houfe and Land eres such a Conduit, and the Differst re-enters, not taking Consunct of any such Erection, nor using it, but presently after sells the Houfe to A. and the Land to B. — B. may hinder A. from using the Conduit. Cro. J. 121. Trin.


11

8 Habend'


If a Portion of
Titles have
been long
time used
with a Cha-
pel, it shall
pall now by
Grant of the Chapel, and all Titles thereto belonging, tho' otherwise the Name Portion of
 Titles is necessary in Grants. Clayt. 15. Anon.

II. A fields of a Mesuage, and two Acres of Land four Miles distant, and which were occupied 10 Years with the Mesuage, devis'd by his
Will, the Mesuage, cum Pertinentiis seu aliquo modo speculantibus, to his
Wife, during her Widowhood, and after to his Son C. and his Heirs

For Lands,
don't palls by
those Words,
but only such
Things
which pro-
perly may be
pertaining
Cro. Car. 17. Kene v. Allen.—But had it been cum terra, pertinentibus, it had been otherwise.
Ibid.—A Mesuage containing 12 Acres of Land, was granted by Copy upon a Surrender, and was ob-
gusted to as not good: But the Court gave no regard to it. Cro. F. 29. Trin. 26 Eliz. B. R. Clamps v.
Clamp.—Resolved, that the Lands did pass by the Words cum Pertinentiis; For being in a Will,
v. Samford. S. P.

12. Liberties in gross, which lie in Charter, will not palls by the Words
de Manerias predictis cum Pertinentiis, without special Words of omnia Privilegia & Franches. &c. Jo. 272. 8 Car. in Itm. Windfor, in Lord
Lovelace's Café.


(C. a) Deeds of Grant. How Deeds of Grant shall
be expounded, where one Part is contrary to the other.

1. If a Copyholder in Fee according to the Custom surrender
out of Court into the Hands of the Tenants in Writing, as
followeth: Memorandum, such a Day and Year A. S. the Copyholder,
surrenders the Land, &c. to the Use of B. and C. and the Survivor
of them, and for Default of Issue of C. of his Body begotten the said
Land shall remain to D. This Surrender not to stand and be of Force,
till after the Decease of A. S. the Surrenderor. If this Memorandum
should be good, then it would be a Surrender to commence at a Day
to come, and then it would be void; and therefore the Surrender
being perfect before, by the first Part of the Instrument, this Memo-
randum shall not make it void; But the Memorandum shall be
void. Trin. 10. Car. B. R. between Seagood and Horne; Adjudged
per Curiam upon a special Verdict. Intnatur Sith. 8 Car. B. R.
Rot. 195.
Grants.

(D. a) How it may be. In what Cases it may be without Deed, in respect of the Grantor or Grantee.

1. Land, or other Thing, which may be granted to any natural Person without Deed, may be granted to a sole Corporation without Deed, as to a Parson, Bishop, and such like, and to their Successors. Co. Litt. 94. b.

2. So such Thing may be granted to an Abbot and Covent, or Prior and Covent, and to their Successors without Deed, because the Abbot only takes, and not the Covent. Co. Litt. 94. b.

3. But Land, or other Thing, which may pass to a natural Person without Deed, can not pass to a Corporation aggregate without Deed, as Dean and Chapter, Mayor and Commonalty, and such like. Co. Litt. 94. b.


5. If a Man be seized in Fee of a Manor, or of a Park, and makes a Bailiff or a Keeper for Life, this must be by Grant and by Deed; because it

is an Interest derived out of his Inheritance. Trin. 10 W. 3. B. R. 12 Mod. 260. Saunders and Owen.

6. Where a Caution was alleged, that the Lord Admiral should constitute a Registry for and during the Term of his Life, it was adjudged he might nominate without Deed. 12 Mod. 202. Saunders and Owen.

Cites it as ruled Dy. 152. in Hunt’s Case.

7. When Corporations have Power by Prescription to nominate a Town-Clerk, the constant Practice is never to nominate them under the common Seal, but only to elect him; yet he has an Estate for Life, and may maintain an Action for his Office. In London indeed it is customary to grant it by Deed, but in other Corporations not. Trin. 10 W. 3. B. R. 12 Mod. 202. In Case of Saunders and Owen.

8. Whatever is to take Effect out of a Power or Authority, or by way of Appointment, and not out of an Interest, is good without Deed. Trin. 10 W. 3. B. R. 2 Salk. 467. Saunders v. Owen.

(E. a) How it may be. In what Cases without Deed, and in what not. Licence.

1. A Licence to chace in a Chace may be without Deed. * 42 * It seems it should be 42 E. 4. 2.

—Br. Licence, pl. 1. cites 42 E. 3. 2.—pl. 6. cites 52 H. 6. 52.—Trespass by the Dutch of Norfolk against Seferal, Yaxley for some pleased not Guilty, and for the others said that the Plaintiff Licence and granted to J. D. Earl of Suffolk, to enter and Hunt at his Pleasure, by which the Defendant, as the Son of J. D. and by his Command entered the Game and took the Deers & beasts. Per Kebbe, the Grant is not good without Writing; and Licence is not good, but to him to whom it is given; and Licence to chace, is not sufficient to take the Deer; and Licence is only at Pleasure, which cannot be granted ever, as of a Way, or to enter into my House to Eat and Drink, and he cannot take the Deer, for he who gave the Licence had no Property in it. Br. Trespass, pl. 257, cites 42 H. 7. 25.—One may legally to Hunt, or use the like Liberties in the Soil of the Plaintiff himself, who made the Licence, without any Deed. Trin. 18 Jac Cr. J. 575. in Case of Monk v. Butler.—Cites 5 H. 7. 42 E1 5. 2.
2. A Man may grant the Paffure of a Close for Years without Deed. Because it passes the Land * for depafturing, and not the Deleure only as Common for Bealls. Cr. 14 Car. R. between Mountjoy and Terdure. per Curt&n, adjudged upon Demurte, where in Trefpafs the Defendant pleaded, that A. was failed in Fee, and leafe the Paffure of the Close for Years to B. who licencer him to put in his Bealls, and all this plesaded without Deed, and adjudged a good Plea, for the Reason afofaid. Intratur. Term. 14 Car. Rot. 1291.

3. But otherwise had it been, if he had granted Paffure for certain Bealls.

(F. a) What Things may be granted without Deed.

1. TREES growing may be granted without Deed. 42 E. 3. 23. b.
2. A Horse or Cow may. 42 E. 3. 23. b.
3. All Chattells, Real or Personal, may be granted or given without Deed, unlefs in Special Cases. Perk. S. 57.


A THING lying merely in Grant cannot pass without Deed.

A Reversion in a Term, is not affignable without Deed and Attornment. 3 Lev. 155.

5. Rent Service cannot be granted without Deed. 43 E. 3. 1. b.

Pers. S. 61. Mo. 359. Arg.—But if on Partition a Rent may be granted by one Coparcener unto another without Deed. Perk. S. 62.


Ar. 11. Rent may be granted by the Lord to the Manor without Deed. 20 H. 6. 7.


7. An Advowson cannot be granted over without Deed, by Delivery of the Seilin of the Door of the Church. 8 H. 6. 33. 20 H. 6. 7. b.

Contra. 43 E. 3. 1. b.

8. The Profits of a Mill cannot be granted without Deed. 18 E. 3. 56. b.

9. A Manor will pass with Attornment without Deed. 20 H. 6. 7.

Vid. (A. a. 2.)

10. An Advowson Appendant will pass with the Manor without Deed. 20 H. 6. 7. b.

11. A Ward of the Body may be granted over without Deed; For it may be delivered over by the Hand, as well as any other Chattell; Because it is an Original Chattell. Co. Litt. 85. Contrary admitted. 14 E. 3. Action upon the Statute. 17.

12. A Vill cannot be leafe for Ycars without Deed; Because it is derived out of a Franktenement, which lies in Grant. Co. Litt. 85.

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13. If the King grants to L. S. the Manor of D, and that he shall have on all tenures & Customs Liberties, in the said Manor as such Abbot had before; and the Abbot had in the said Manor, Bona & Cassia, Felonum, &c. and after J. S. makes Feoffment of the said Manor to J. D. in Fee, with the Appurtenances, without Deed, this does not pass the Liberties, this Feoffment being without Deed. Pith. 39 Et. B. R. adjudged in the Report of Owen’s Case, which is reported in Co. 9, in the Name of the Abbot of Strata Parcella’s Case.

[Tithes]

14. A Parson cannot grant his Tithes over to a Stranger for Life, or Years, without Deed. Because it rests merely in Grant. Pith. 39 B. R. between Hawkes and Brayfield. per Curiam. Pith. 13. B. R. per Curiam.

15. But a Parson may leave his Rectory for Years by Parol without Deed, by which the Tithes shall pass as annexed to the Rectory. 174. in Case of Bellamy v. Balthrop.—A Leave of the Parsonage with the Tithes belonging thereto is good without Deed, and it seems the Rectory, because of the Libor. Br. Rectory. pl. 1. cites 16. H. 7. 5. and 19 H. 8. 13.—And the Libor shall have the Tithes and Offences as Incident, and the Leave is good, that there be no Parsonage House, but only a Church and Church Yard. Br. Rectory. pl. 13. cites 15. H. 7. 8.

16. A Parson cannot leave his Tithes to a Stranger for one Year only without Deed; for in this Case there cannot be any Divinity between one Year and two, it being made to a Stranger, by which the Tithes ought to pass by way of Grant.

17. A Parson may leave by Parol a to a Parishioner, for a certain Consecration, his own Tithes for one Year only; for the Parishioner has it by way of Retainer, and the Tithes are always growing within the Year, and the Grant for the Consecration is but a Composition between him and the Parson; * for the Tithes leased. Pith. 4. B. R. between Hawkes and Brayfield agreed per Curiam.

Yelv. 8. B. Doctor Langworth’s Case.

18. So a Parson may leave by Parol to a Parishioner, for a certain Consecration, his own Tithes for two or more Years, or for Life, &c. Because it entires as a Discharge by way of Composition for the Tithes of another Year, which are not growing. Pith. 4. B. R. between Hawkes and Brayfield per Curiam.

B. R. Parson Booth's Case adjudged, cited Pith. 8. B. those Cases were contrary to this. * But a Grant was adjudged according to this. Eun. 21. B. R. between Snell and Honicome Consecration denied.

Yelv. 94. [* Orig. (Mes a Grant one ceo full adju


20. It seems, that where a Parishioner has such Leave of his Tithes, for one or more Years, or for Life, without Deed to him and to his Assigns, that the Allign of the Land after shall take Advantage

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21. A Grantee of a future Interest of Land, as he to whom a Grant is made of Land for Years to commence after the Death of a Lessor for Life, his Surrender or Forfeiture, may assign it over without Deed, during the Life of the Lessee for Life. D. 2 & 3 H. 124. pl. 41. adjudged. Throgmorton's Case. Quod Vide.

22. Same Case, tho' the Original Grant could not be without Deed, being made by an Abbot.

23. If A. feied in Fee of Black Acre and White Acre, grants Black Acre to C. with Common for the Beasts, Levant and Couchant upon White Acre, this is not good without Deed. Mich. 1650. between Tanner and Hobbes, adjudged upon Demurrer. 1650. Rot. 1199.

24. If A. feied in Fee of Land, to which a Common for Beasts Levant and Couchant upon the Land is Appurtenant by Grant, by a Deed within Time of Memory, and he makes Feoffment of the Land without Deed; yet the Common shall pass, it being Appurtenant to the Land, tho' it could not be created without Deed. Mich. 13 Car. B. R. adjudged, per Curiam, between Sacheverel and Porter. 1650. Rot. 324.

25. If A. feided of Land in Fee grants the Pasture of the Land to B. for Years, and B. licences C. to put in his Beasts; this Lease of the Pasture is good without Deed, and the Licence also; for this is a Lease of the Land to *pasture, and it is not like to a Common of Pasture. Mich. 14 Car. B. R. between Mountjoye and Tertord, per Curiam adjudged upon a Demurrer upon which Pillar pleaded in Trespass brought by A. against C.

26. A Man can't give Emblements growing without Deed, per Elliot J. Br. Done, &c. pl. 49. cites 25 E. 3. 41. and Fitzh. Feoffments 69.


31. Tithes or Offerings only cannot be leased without Deed, any more than Rent can be granted without Deed. Br. Leafe. 15. cites 15 H. 7. 8.


33. Deputation of an Office, which lies in Grant, ought to be made by Deed, and not by Parol. Br. Deputv. 17. cites 28 H. 8.

34. Release of a Right in Chattels cannot be without Deed; per Anderson Ch. J. Hill. 29 Eliz. Le. 233, in Case of Jennor v. Hardy.

35. A Reversion cannot pass without Deed, altho' it be granted but for Years, and therefore pleasing a Grant of it per Scriptum, without saying (Sigillat) is not sufficient. Patch. 33 Eliz. Arg. Le. 310. in Case of Maidwell v. Andrews.


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37. A Man may give or grant his Deed to another, and such a Grant by Parol is good. Co. Litt. 232.


39. Lease by Baron and Feme is not good without Deed; For without Deed 'tis not the Lease of the Wife; per Hobart Ch. J. Trin. 29 Jac. Winch. 34. Anon.

40. Lease for Life or Years without Imprisonment of Wife ought to commence by Deed; and without Deed 'tis not good. Trin. 7 Car. Cro. C. 221. in Case of Rockey v. Huggens.

41. Whatever is to take Effect out of an Authority, or Power, or by way of Appointment, is good without Deed; otherwise, where 'tis to take Effect out of an Interest, and is to ensue as a Grant; For then if it be of a Thing Incorporeal it must be by Deed. Trin. 10 W. 3. 2 Salk. 467. Sanders v. Owen.

(G. a. 2) Where diverse Persons join in a Grant, Lease, &c. whose Grant, Lease, &c. it shall be said to be.

1. If the Tenant of the Land and a Stranger join in a Lease for Years by Indenture, this is the Lease of the Tenant of the Land only, and the Confirmation of the Stranger. Co. Litt. 45.

"The several Tenants in Common join in a Lease for Years by Indenture; yet there are 2 several Leases, according to their several Estates, because they have several Franktenements.

2. If A. be lessee of 10 Acres, and B. of other 10 Acres, and they join in a Lease for Years by Indenture, these are several Leases, according to their several Estates, and several Confirmations. Co. Litt. 45.

3. So if 2 Tenants in Common join in a Lease for Years by Indenture; yet there are 2 several Leases, according to their several Estates, because they have several Franktenements.

4. But if 2 Coparceners join in a Lease for Years; this is but one Lease, because they have one Franktenement, and shall join in an Assise.

5. So if 2 Jointenants join in a Lease for Years, this is but one Lease for the Caule aforesaid.

6. If Cefly que Ufe, and his Feoffees had joined in a Feoffment after Pl. C. 59.—the Statue of 1 K. 3. this had been the Feoffment of the Feoffees, and Confirmation of Cefly que Ufe; For the Estate at Common Law shall be preferred. Co. Litt. 49.

7. If Tenant for Life, and he in Remainder or Reversion in Fee, join in a Lease for Years, this is the Lease of the Tenant for Life, during his Life, and the Confirmation of him in Remainder or Reversion; and after the Death of the Tenant for Life, it is the Lease of him in Remainder or Reversion, and Confirmation of the Lease; For the Law construes, that the Lease moves out of both the Estates respectively according to their several Interests. Co. Litt. 45.

Tenant for Life and Reversion join in a Feoffment; it shall be adjudged the Leases of the Tenant for Life, because he has most Authority to make it; per Montague Ch. J. Mich. 4 E. 6. Pl. C. 59. in Case of Wimblin v. Talboys.
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When two join in a Deed and one only has the Interest, it passes by way of Confirmation from the other, and not by way of Efflop. Mich. 41 & 42 Eliz. B. R. Cro. E 701. Breerton v. Evans.—And he that has the Interest may bring Action without the other, because nothing passes from him. Clev. 157. Brooks v. Foxcroft.—Baron and Fee join in a Lease of Land, the Inheritance of the Baron, rendering Rent; the Baron dies; the Wife brings Debt for Rent, and fees pleads that he was the Inheritance of the Baron, and that the Lease had nothing at the Time of the Lease made; and refolved, that the Plea was good; and this can neither be Efflop, nor Confirmation; For the Deed is utterly void as to the Fee, the being Covert; and an Efflop ought to be mutual, whereas a Deed of a FemeCovert cannot effect her. Clev. 170. Mich. 41 & 42 Eliz. B. R. Breerton v. Evans.—LC. 177. Hawkwood v. Husbands.

11. When many join in an A6, the Law makes it his A6 only that may do it. Fin. Law. 8.


13. Lease for Years, and Reverseover in Fee, make a Feoffment in Fee; this shall be taken as the Livery and Feoffment of the Lettor or Reverseover in Fee, and Surrerer of the Lilee. Arg. Trin. 1 Mar. PL. C. 140. b. in Cafe of Browning v. Belon.

14. If the Differece enters, and then the Differece and Differece join in a Feoffment by Deed, with Words of Confirmation, it shall be laid the Feoffment of the Differece and the Confirmation of the Differece. But if they join in such Feoffment by Deed before Entry of the Differece and the Differece makes Livery of Sollin, it shall be laid the Feoffment of the Differece, and the Confirmation of the Differece. Perk. S. 157.

15. A Tenant for Life, Remainder in Tail to B. and A. has a Fine to his own Life in Fee, which is a Forliture, and afterwards A. and B. join in a Feoffment, by Letter of Attorney. This was held to be a Difaminance. For 'twas the Feoffment of Remainderman, and the Confirmation of Tenant for Life. D. 324. b. PL. 35. Patch. 15 Eliz.
Grants.

16. If Tenant for Life makes Lease for Years, and Tenant for Life and Reversioner in Fee confirm the Estate of Tenant for Years, 'Tis to hold to him and his Heirs; he shall have a Fee; For the Law adjudges the Estate of Tenant for Life to pass first, and then the Estate of the Reversioner, and so to have Previty, on which the Release of Reversioner may enure and enlarge the Estate. Arg. Hill. 21 Eliz. B. R. Pl. C. 540. b. in Case of Parmeour v. Yardley.

17. Tenant for 30 Years lessee for 10 Years, and they both surrender to Reversioner in Fee; the Surrender is good for both the Estates, as it seems per 12 H. 7. 2. and yet the Lease for 10 Years by himself cannot surrender for Want of Previty; but when the other joins with him, his Surrender shall be taken by the Law to precede, and the Surrender of Lease for 10 Years to succeed, and so it shall be good. Arg. Hill. 21 Eliz. B. R. Pl. C. 541. in Case of Parmeour v. Yardley.

18. Where an Authority is given to several by one Deed, there all ought to join; otherwise, where the Authority is given by Will to fell, &c. Arg. Pach. 29 Eliz. B. R. Le. 69. in Case of Bonelaut v. Greenfield.

19. A Tenant for Life, Remainder to B. in Tail, Remainder to A. in Fee; Tenant for Life, and Remainder in Tail, join a Lease for 3 Lives by Indenture; This was the Leafe of A. and the Confirmation of B. but had it been without Deed, it had been the Surrender of A. and the Leafe of B. Pach. 29 Eliz. B. R. Cro. E. 76. Trevilian v. Pine.

20. A. Tenant for Life, Remainder in Tail to B. Remainder in Tail but Per Hale &c.—A. and B. join in a Fine come to, &c. and then B. died without Issue. The Question was, if Conuce should hold for the Life of A.? 'Tis held that the Remainder in Tail goes first in Judgment of Law, tho' 'tis by the same law, all by one and the same Fine. i Rep. 76. b. Breton's Cafe.

Forfeiture of the Tenure for Life, but each granted what he lawfully might; For if the Remainder in Tail pass to, the Prehould must go by way of Surrender, and to drown, but they shall rather be confirmed, to pass Infumale &c and Plate 1 Vent. 160. in Case of Bulmer v. Pawlet.—And the Court seem'd to think that the Conue should hold for the Life of A.—Lev. 57. in Case of Stephens v. Brintridge.—All passes from the Tenant for Life, and 'tis A's Foeminent, and the Confirmation of B and on B's Death without Issue Remainder-man may enter on A. for a Forfeiture. Ow. 150. Peck v. Charnell.—Vid. And. 296. Minterm v. Collins.

21. Tenant for Life and Reversioner make a Gift in Tail rendering Rent, the Lease for Life shall have the Rent during his Life. Mich. 36 & 37 Eliz. 6 Rep. 15. Treport's Cafe.

22. When two join in a Fine or Matter of Record, he who accepts of it is concluded to say, but that both gave it; but where it is by Deed it is otherwise; For that cannot enure by way of Interest from One, and of Ejsopus from the other; For one Deed cannot enure to two Intents. Mich. 41 & 42 Eliz. B. R. Cro. E. 700. in Case of Breerton v. Evans.

23. Tenant for Life and Reversioner in Fee make a Gift in Tail for the Life of the Tenant for Life, 'tis the Gift of the Tenant for Life, but after his Death, 'tis the Gift of the Reversioner. And if the Estate Tail expires during the Life of Tenant for Life, he shall have the Land again in his former Estate, and here is no Forfeiture, because Reversioner of the immediate Estate of Inheritance joined with him in it, and so disaffixed with it; cited Poph. 57. in Case of King v. Berry and Palmer.

24. Every Right, Title, or Interest, in Precedent or Futuro, by the Joinder of all that may claim any such Right, Title, or Interest, may be barr'd or extinguished, Mich. 10 Jac. 19 Rep. 48. b. Lamert's Cafe.

25. Tenant of the Land and Grantee of a Rent out of it join in a Foeminent of the Land; it shall enure as Foeminent of the Tenant of the Land, and as Confirmation of the Grantee of the Rent; and fo the Rent is extinct. Pach. 7 Car. B. R. Jo. 235. per Jones J.

26. Fine Tenant for Life Remainder to Baron in Fee made a Lease to J. S. for Years, wherein J. S. covenanted with Baron and Feme their Heirs and Aligns to repair, and they convey'd the Reversion to A. And for
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for default of Repairs, A. brought Action, as Assignee to the Baron, without averring the Feme to be dead. And resolved to be well brought; because the *Estate for Life* being transferred with the Fee, is thereby averson'd and confounded in the Fee. Mich. 8 Car. B. R. Cro. C. 285. Major v. Talbot.—cited Vent. 160.

27. If Tenant for Life Remainder in Tail to an Infant join in a Fine; if the Infant reverses the Fine afterwards, yet the Conunee shall hold it for the Life of the Conunee. Mich. 23 Car. B. R. Vent. 160. cites English's Cafe.


(G. a. 3) Where a Grant shall enure as Two several Grants.


2. Affisle of 10l Rent, which was granted to the Baron and Feme, and that if the Baron died the Feme should have 60s. Rent per Annum. The Baron died, and she brought Affisle of 10l Rent, and because the last Words do not restrain the first, nor do they determine that she shall have only 60s. Rent, therefore the Grant remains good for the 10l. Rent, for it stands with, &c. and so it seems that a Nisi would have extinguished the 10l. Rent. Br. Grants. pl. 64. cites 8 Aff. 10.

3. A granted to W. N. the Office of Mower of the Manor of D. and to take 20 Quarters of Corn for executing the said Office, for his Life; And by another Clause in the same Deed it was, and the aforesaid A. granted to the Feme of the said W. N. the aforesaid Office Habendi after the Death of her Husband, percipiendi ad toam vitam suam fictur Praedietus vir fuisse percepit in Omnibus; and it was awarded a good Grant, and thereof the Feme, after the Death of her Husband, might maintain an Affisle. Br. Grants. pl. 127. cites 30 Aff. 4.

4. f. held two Parts of twenty Acres of Land for Life, the Reverese to R. who was seiz'd of the third Part also, which f. granted twenty Shillings Rent to the Plaintiff for his Life, and R. by his Deed confirmed the Grant, and, by a Preterea in the same Deed, granted to the Plaintiff twenty Shillings Rent to be perceived Yearly out of all his Tenements in the same Vill; Perley said, that these are two Rents, but per Tanke 'tis but one and the same Rent only, so he passed it over and pleaded another Plea, and therefore it seems that they are two Rents. Br. Grants. pl. 86. cites 45 Aff. 13.

5. If the King grants the Office of Parke'ship of Dale and Sale, this is a several Grant in itself, and if the Grantee be ou'ted, he shall have se-


Port: which was not denied. Br. Grants. pl. 42. cites 22 H. 6. 11.—Br. Patents. pl. 17. cites S. C.
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7. If the King makes a Duke or Earl, and gives to him 20l. of Land, &c. by the same Name, so that the Creation and the Grant is all by one, and the same Patent, yet it is good. Br. Corporations. pl. 89. cites 2. E. 6.

8. If a Man seised of Land in Fee grant ten Skillings Rent, nothing out of the same Land to an Abbot and a Secular Man, it shall enure as several Grants, and either of the Grantees shall have 10s. Because the Grant shall be taken strongly against him that made it, and for the Benefit of the Grantee, as taken quære. Perk. S. 106.

9. The Grantee may grant to the Grantee for Life and his Heirs, that he and his Heirs shall dilirein for the Rent, &c. and they shall amount to a new Grant, and yet amount to no double Charge. Co. Litt. 308. b.

10. If two Tenants in Common be, and they grant a Rent of 20s. per Annunt out of the Land, the Grantee shall have two Rents of 20s. because every Man's Grant shall be taken most strongly against himself, and therefore they are several Grants in Law. Co. Litt. 197. a.

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11. If I grant Black Acre, and the Manor of D. [and Black Acre was Parcel of the Manor of D.] there Black Acre shall pas as Parcel of the Manor; per Anderfon Ch. J. who said, he could give an Authority to that Purpo* and Periam J. agreed, because it enforced the first Grant. Mich. 28 Eliz. C. B. Godb. 130. in Café of Green v. Harris.

12. A Man seised of a Manor, to which an Advowson is Appendant, S. P. Arg. enceils B. by Deed of one Acre, Parcel thereof, and by the same Deed grants the Advowson; The Advowson shall pass as in gros; For they are several Grants tho' by one Deed. Arg. Trin. 31 Eliz. C. B. 4 Le. 216. in Café of Long v. Hemings.

Dedi & conec[i] Villanum meus, 'was held that the Villain passed as in Gros, and that they were several Gifts, tho' there was but one Deed. Arg. Godb. 127. cites 33 H. 8. D. 48.

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13. Two Tenants in Common join in a Leafe for Years, 'tis two several Leases. Brownl. 39, 40.—134. in Café of Craddock and Jones. S. P.—

2 Roll Trial Cro. J. 166. Mantle v. Wallington. S. P. per two J. against one.

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14. If I grant Annuity for Life and twenty Years after, there are two several Grants, and the Executor shall have it after the Death of the Tenant for Life. Pafeh. 17 Jac. Brownl. 19. Mordant v. Watts.

15. Feoffment to two Habento one Moity to one, and the other Moity to the other, this operates as several Conveyances; For there must be two Liveries, because there are several Freeholds, and Livery to one fecondum formam Chartarv, would not enure to the other; Per Holt Ch. J. Hill. 1700. B. R. Wms. Rep. 19, 19. in Café of Fisher v. Wigg.
Grants.

(G. a 4) Where a Grant shall enure to a double Intent.

1. A

Infeft'd B. his Son, to the Use of A. himself for Life, and after his Deceafe, then to the Use of B. and his Heirs, and after A. and B. (upon Communication that A. should re-have the Land in Fee) came together to the Land, and upon the Land, by Parol, without any Deed, B. delivered Seifion of the Land to A. Habendum ibi & hereditibus suis, &c. if this be a good Feoffment or not quare. This was found by a Special Verdict in Ejecution, and by the Opinion of the Court, it is a good Feoffment, and that in Law this Acceptance of Livery implies two Effects, viz. first a Surrender, and after a Feoffment, as a * Surrender to the Grantee of a Reversion amounts to an Attornment and a Surrender. D. 358 a. pl. 48. Trin. 29 H. 8.

2. Devise enters into a Term devised to him without Assent of Executor, by which heis a wrongful Seifor and Difiiefor, and after he grants his Right to the Executor. Adjudged a good Grant, and that it shall enure hift, as the Agreement of the Executor, by the Acceptance of the Grant, that the Devilee had a Term in him as a Legacy; And secondly, the Deed shall have Operation by way of Grant to pafs the Estate of the Devilee to the Executor, and so no Wrong. Trin. 27 Eliz. Ow. 56. Carter v. Lowe, alias Lawes.

3. Patron before the Statute 13 Eliz. 10. was Leafe of the Living for 50 Years, and granted his Leafe to A. This was a Grant, and a Confirmation of the Term, and so one Deed, by one and the fame Person, to one and the fame Person, and at one and the same time, shall enure to two several Purpofes, viz. to a Grant of the Intereft as Leifie, and to a Confirmation of the fame Intereft as Patron. Mich. 43 & 44 Eliz. in Parliament. 5 Rep. 15. Cafe of Ecclelialific Perffns

4. Tenant for Life grants Rent-charge to Reversioner in Fee; Reversioner grants it over to B. and his Heirs by Deed; This is a good Grant, and Confirmation alike, to make the Rent good for ever. Mich. 43 & 44 Eliz. 2 Rep. 15. ut supra.

5. Difiiefor makes Lease for Life, Remainder to Difiiefor; Difiiefor grants the Remainder over, it is a good Grant, and Confirmation alike. 5 Rep. 15. ut supra.

6. A second Deed of Covenant to feind seifed to Uffes, in which there is no express Revocation, yet is a Revocation of a former Deed with Power of Revocation, and also a Declaration of new Uses. Mich. 10 Jac. Curia Ward. 10 Rep. 144. Scroop's Cafe.

(G. a 5) How it shall take Effect, where made to two, and one is incapable, or refifes.

1. D

EBT by the Vicar of D. and two others, upon an Obligation, the De
defendant said, that the one of the Plaintiffs, who is named Vicar, is a Clerico profelfed, in such a Place, in such Religion, under the Obed
eience of such a one, &c. Judgment he shall be anwered, and the Plaintiff could have stopped him by the Obligation, and could not; but it was agreed, that the Obligation was good as to the others. Br. Nonabili
ty, pl. 2. cites 3 H. 6. 23.
2. If I issue to A, on Condition to issue to B. and B. refuses, A. shall be feited to my Use; but if the Condition was to give in Tail, it is otherwise. 20 Eliz. C. B. Le. 266. in Bracedge's Case.

3. Feoffment in Fee to J. S. on Condition to grant a Rent-charge to A. If A. refuses, J. S. shall be feited to his own Use; Per Harpur J. 20 Eliz. C. B. Le. 266. in Bracedge's Case.

4. If A. gives Lands to B. and his eldest Son, and B. has no Son, B. shall take the whole. Arg. Trin. 23 Eliz. 1 Rep. 100. b. 9.

5. A. makes a Feoffment to the Use of B. for Life, and after to the Use of C. in Fee; tho' B. refuses, yet the Remainder is good. Trin. 23 Eliz. 1 Rep. 101. cites 37 H. 6. 36. a.

6. Feoffment to J. S. and the right Heirs of J. D. who is living; J. S. shall have the whole. Arg. Trin. 27 Eliz. B. R. 4 Le. 64. J. cites 18 E. Roll. R. 325. per Coke Ch.

7. Gift to J. S. and such Wife as be shall have, he shall take the whole; 5. 59. and the Wife nothing. Arg. Trin. 27 Eliz. B. R. 4 Le. 64.

8. If a Desive be made to a Monk for Life, Remainder over, this is a good Remainder, as Perk. 108. pl. 567. But if a Lease for Life be made to a Monk, the Remainder over, both the Estates are void; Per Coke Ch. J. Mich. 12 Jac. 2 Buls. 292. cites 9 H. 6. 24. and Perk. 109. pl. 568. and Pl. C. 35. in Colechirle's Case.

9. Lease for Life to A. Remainder to the right Heirs of J. S. and J. D. If J. S. dies, and then A. dies, living J. D. yet the Heir of J. S. shall take but a Minety; Per Coke Ch. J. Roll. R. 325. cites 18 E. 3. 59.

10. If an Alien be Tenant in Tail, Remainder to a Subject, hein Remainder shall never come in till the Estate Tail be spent, tho' the Alien be incapable of taking an Estate Tail for his own Benefit. Arg. 10. Mod. 120. Hill. 11 Anne. C. B. in Cafe of Thornby and Fleetwood, alias Dutchers of Hamilton's Cafe.

11. Feoffment was to the Use of A. for Life, Remainder to B. in Tail, Remainder to the right Heirs of A. and A. is dead at the time of the Feoffment; It was intituled, that the right Heirs of A. shall take the Remainder in Fee; And Co. Litt. S. 378. was cited to prove, that a particular Estate and a Remainder may continue distinct in the same Person; But Parker Ch. J. said, it seemed that the Remainder in Fee would be void, because there was no such Person as A. in Resum natura, and it e all as one if the Limitation had been to A. and his Heirs, and there had been no such Person as A. in Elle. Wms's Rep. 399, 400. Hill. 1717. in Cafe of Goodright v. Wright.

(G. a. 6) In what Cases several Grantees shall use the Thing granted jointly.

1. The Lord Mountjoy, seised of the Manor of Canford in Fee, did by Deed indented and inrolled bargain and sell the same to B. in Fee, in which Indenture this Clause was contained; Provided always, and the said B. did covenant and grant to and with the said Lord Mountjoy, his Heirs and Assigns, that the Lord Mountjoy, his Heirs and Assigns, might dig for Ore in the Lands, (which were great Wals) Parcel of the said Manor, and dig Turf also for the making of Allen. It was resolved that, notwithstanding this Grant, B. and his Heirs and Assigns might dig likewise, and that 'tis like the Cafe of Common Sans Nombre. Co. Litt. 164. b.

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(G. a. 7) Grant. In what Cases shall take Effect as Extinguishment, or Surrender, or Grant.

1. WHERE a Man before the Statute of quitus emporis terrarum, and within time of Memory, gave Land to hold by Fee, and two Pence for all Services and Demands, this extinguishes Fine for Alienation, Heriot, and all other Services which were due or accustomed before; and per Strange, in this Case the Tenant shall not pay Relief, by these Words, (for all Services, Exactions, and Demands.) Contrary Skrene, for it is incident. Quære. Br. Grants, pl. 28. cites 14 H. 4. 25.

2. Grant by the Lord, or Donor in Tail to the Difeife or Issue in Tail after Difeise, to hold by less Services or Rent is good, though the Tenant be only Tenant as to the Avowry, and not Tenant in Possession; and so of a Release; contrary of a Confirmation. Note the Diversity. Br. Grants, pl. 29. cites 14 H. 4. 37.

3. If one be Tenant for Life of Land, out of which a Rent is issuing in Fee, and purchases the same Rent by Grant, this Grant is good to take Effect in the Heirs of the Tenant for Life, and yet he had Possession in the whole Land at the time of the Grant, &c. Perk S. 81.

4. If Leffe for Life grants his Estate to him in the Reversion in Fee in his own Right, and immediate to the particular Estate; this Grant shall enure by way of Surrender, &c. Perk S. 82.

5. If there be Leffe for Life, and the Reversion descends to two Coparceners, and one of them takes Husband, and the Leffe grants his Estate to Husband and Wife, the same shall enure by way of Grant for the whole, &c. Perk S. 85.

6. A Right shall not pass by way of Grant, unless by Extinguishment, &c. and by Release it may be extinguished. Perk S. 85. cites 21 E. 4. 2. 6 H. 7. 8.

7. If a Man has a Warren in his Land, and grants the Land, the Warren is extinguished, for the Granter cannot have it; because it is not granted to him, nor is either Parcel of or Appendant to the Land; and the Granter cannot have it, because he has not reserved it; Per Vavilor. Br. Grants. pl. 86. cites 8 H. 7. 2.

8. Rent issuing out of the Lands of the Feone was granted to the Baron, by the Words Give, Grant, Remife, Release, and Renounce; The Baron may take it either by way of Extinguishment to the Possession of the Feone, or by Grant to him and his Heirs; and he devoicing the Rent by his Will, it amounts to an Election to take by Grant, and this being by Letters Patents of the Queen, and the Words being Hadent & Percipiens Reddi prædicti, praesto le Patentes, and to his Heirs and Assigns, the Intent of the Queen appears to have the Rent continue, if the Patente pleases, &c. D. 319. b. pl. 16. Mich. 14 & 15 Eliz.

(G. a. 8) Enure by Moieties.

If there be Lord and Tenant and the Lord grants his Seigniory unto the Tenant and a Stranger, this Grant shall enure by Way of Extinguishment for one Moiety, viz. to the Tenant, and for the other Moiety it shall enure by way of Grant unto the Stranger, &c. Perk S. 81.
Grants.

(G. a. 9) **Time of taking it.** Immediately; By Alteration of the Melsne Estate, after which the Grant was limited to take Place.

1. **N Affile of Rent.** B. was seised in Fee of 100 Acres of Land, and was condemned in 100 l. Damages, upon which this Land, as a Moiety of all Lands, was delivered in Execution by Extenten an Elegit; and after B. granted 3 l. Rent-charge out of this Land to J. his Son and Heir apparent; and then B. granted, ratified, and confirmed by Deed to the Tenant by Elegit the same Land for Life of the Tenant; and after, by another Deed, with Warranty of him and his Heirs, released all his Right to the Tenant by Elegit; And by Filhe, first the Tenant by Elegit ought to have held it discharged, because the Execution was made before the Charge; but after, by the Confirmation to hold for Term of his own Life, which enlarged his Estate, he shall hold charged, and the same Law by the Restate; For he was in of another Estate than before, quod nota, and so see, that if the Land be charged at the time of the making of the Warranty, so that he warranted the Land then charged, and not discharged, such Warranty shall not make the Grantor Warrant the Land discharged, but the Tenant to whom such Warranty is made shall hold charged. Quod nota Bene. Br. Charge, pl. 29. cites 31 Aff. 13.

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(G. a. 10) **Enure to Grantee.** In his Politick or Natural Capacity, or both.

1. **If J. S. be Dean of P. I may give Land to him by the Name of Dean, and his successors, to and from J. S. Clerk, and his Heirs, and there he takes as Dean, and also as a private Man, and is Tenant in Common with himself, per Pollard. Br. Corporations, pl. 34. cites 14 H. 8. 29.**

shall join with himself in Avowry. Br. Ibid.—So where the Dean and Chapter are Lords, and the Dean purcahse the Tenantry to him and his Heirs, he is Tenant to himself, and he and his Chapter shall make Avowry upond himself, and those Cases are agreed, because he takes of another's Gift; but all this does not prove that he may take of his own Gift. Br. Ibid.

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(H. a) **At what Time the Thing granted is to be taken [to avoid a Lapse].**

1. **If a Thing which lies in Prendre be granted to another to be taken annually, if the Grantee does not take it one Year, he cannot take in another Year the same Thing with that which he ought to have this Year; For he may do, he may prejudice the Grantor by his own Act. P. 37 El. 2. R. between Southwell and Wade.**

2. **As if a Man grants to another and his Heirs annually 200 Fagots to be taken out of all his Lands, and the Grantee does not take the 200 Fagots in one Year, he cannot take 400 the next Year after; For otherwise by such means he may destroy all the Wood of the Grantor. P. 37 El. 2. R. agreed between Southwell and Wade.**

3. **So if a Man grants to Lord of Felwell, to take in his Wood at the Feast of St. Michael from Year to Year for Life or Years or longer, if he does not take it by two or four Years, he cannot take to much the fifth Year,**
Grants.

Year, as he has neglected by his own folly, by Reason of the Pre-Judice to the Grantor thereby. 27 H. 6. 10 per Curtan.

1. So it is of a Grant of 10 Load of Hay to take at a certain Feast from Year to Year. 27 H. 6. 10.


3. So it is of a Grant of Common for 10 Beastys by the Year. 27 H. 6. 10.

4. If a Thing which lies in Render be granted to another and his Heirs annually, the Non-Payment of it in one Year shall not be any Ditchage, but he may be charged for it in the next Year; because it is the Default of the Grantor, that it was not paid the first Year, when it lies in Render. 37 Eliz. B. R. agreed between Southwell and Wade.

5. As if a Man grants to another and his Heirs annually 200 Fagots to be taken out of all his Lends, with a Clause of Diffrets for them, and by the Grant the Grantor is to cut and make the Fagots, and to carry them to the House of the Grantee; so that the Grantor is to do the first Act, and then by Consequence it lies in Render, and therefore if the 200 Fagots are not paid in the first Year, nor any Diffrets taken by the Grantee; yet if he may take 200 Fagots the Year next ensuing. And so it is, if there are ditterc intermediate Years, for otherwise the Grantor by his own Act may prejudice the Grantee.


7. A Man sell all the Trees in his Wood, except 20 of the best Trees, to be cut in two Years, and in Trespass against the Vendee, he justified for all, except 20 of the best, and that he shamed the Vendor to chase them, and he could not; wherefore, because the Vendee could not stay any longer for his Time, he cut the Wood, except the 20 of the best, and adjudged it was a good JufHfication. Br. Relation, pl 4. cites 44 Eliz. 3. 43.

8. In Trespass was held, that where a Man, failed of Land with Trees growing, sells the Trees, and makes a Feoffment in Fee before the cutting of the Trees, yet the Vendee shall have the Trees; for the Feoffor might have granted Erovers, and this would be good against the Feoffee, and the fame Law of a Sale of the Trees growing. Br. Contract, &c. pl. 6. cites 29 H. 6. 22.

9. Grant was of a Rent-charge by Reservation on an Estate for Life; it shall not begin till after the Death of the Tenant for Life. Hill. 39 Eliz. C. B. Cro. E. 447. Miles v. Willoughby.

10. If a Tenant in Tail grants Trees growing, and the Grantor does not cut them in the Life of the Tenant in Tail, he can't cut them after. For the Land, and all that is annexed to it, defends to the Heir, and it was the Grantor's own Fault, that he did not take them before. 18 E. 4. 6. pl. 50. And the Property in the Grantor was conditional, viz. If he cut them in the Life of the Grantor. 18 E. 4. 21. pl. 1. — Br. Contract, &c pl 26. S. P. cites 18 E. 4. 5. per Littleton and Catechly; — and therefore contra, as it seems, of Tenant in Fee Simple. Br. Ibid.

11. A Leaf was made of a Warren, rending 101. per Ann. Rent, and 100 Couple of Comies payable Weekly, between the Feasts of St. Bartholomew and St. James, by such a Nomber as Leifor should appoint. Leifor sues for 49 Couple of Comies in Arrear; but after Verdict and Damages given for the Plaintiff it was objected, that it is not alleged that Leifor had appointed how they should be paid; and after Argument it was re- solved, that without such Appointment the Leifor was not bound to pay them;
Grants.

them; as well because the Appointment was made Part of the Contract and Reservation, as because of the Inconvenience to the Warren, which by this Means would be destroyed all at once. Lat. 128. 271. Bayly v. Baxter, alias Bayly v. Bugs.

(H. a. 2) Lapsed. When.

1. If Catty que us here in Tail, or a Tenant in Tail gives or sells Trees, and dies before Severance, yet the Vendee may cut them; per Fitzh. and Dones; pl. 23. cites S. C. per Fitzherbert, and Shelley, which was not denied. Br. Treppels, pl. 2. cites 27 H. 8. 5.


2. A. leased Land to B. for Life, and if A. dies without Heir of his Body, then B. to have the Land and his Heirs; in this Case, it is dies fide, and then A. dies without Heir of his Body, the Heir of B. shall not have the Land; For if he should, then he should be in a Purchaser; whereas the Word Heirs in the Grant are only Words of Limitation. Mich. 17 & 18 Eliz. P. C. 483. Nicholls's Cafe.

3. When an Interest or Estate is to be reduced to a Certainty on a certain Precedent, and the Leisor Grantor, or Leislee or Grantee, dies before the Contingent happens, the Leislee or Grant is void, and shall not take Effect. As in Pl. C. 273. b. Say v. Fuller. If a Man makes a Lease to B. for so many Years as his Executors shall name, 'tis void; For it ought to be reduced to a Certainty in the Life of the Parties. Arg. Mich. 40 and 41 Eliz. B. J. R. 1 Rep. 155. b. in Chedington's Cafe——And Judgment accordingly. Ibid.

The Plaintiff's Wife's Father made a Feoffment toUses for 13 Years to raise Portions of 400l. for his Daughters; the Father being dead, the Feoffees suffer the Son and Heir to enter into the said Land, who sold the same; and yet, after a Defect after the Death of the first Purchasor, at a third Hand, 'aloth the Money was due, yet the Court would not charge the Lands with the said Money, the Example being dangerous. Toth. 154. cites Hill. 43 and 44 Eliz. Manwayring v. Dudley.

Of his Death, until every one of them shall and may levy 500l. first into the eldest Daughter, until the hath levied 500l. then to the second, to the third, &c. The Father dies, the Supersede and continues Possession for a certain Time, and will not suffer the eldest Sister to take the Profits. Walton inclines, that she shall have her Remedy against the Son for the Time that he hath continued in Possession, and not to begin now to levy the 500l. In Prejudice of the other Sisters; For it was her Folly to suffer the Son to continue in Possession. Noy. 33. Bradford v. Laffels.

A. being feigned of an Advowson in Fee, grants to B (the Church being null), Quod ipse ad diutum Ecclesiæ, Clericum suum presbyteri pothi quondam & eundemque Ecclesii Prædicata vocato contingent; after this Grant, the Church becomes void: B. ought to present at this Time, if he will; [but] he shall have no other Presentation. Adjudged and affirmed in Error. Jenk. 301. pl. 69.
Grants.

6. Where an Interest depends on a precedent Estate, the Person, to whom it is limited, must take it upon the Determination of the first Estate, or else he never shall take it; per Haughton J. Hill. 13 Jac. B. R. Roll. R. 319. Blandford v. Blandford.

(H. a. 3) Enlarged by what Words, in the same Deed, &c.

1. Icery made Secundam Formam Chartae cannot enlarge the Grant. Co. Litt. 4. b.

2. A. had two Daughters, one married to B. and the other to C. and in his Life made a Partition of his Lands between them and his Heirs, and because he had allotted the greater Share to B. of Lands in Poolefion, much of C.'s. Moeity being in Jointure to M. his Wife, he charged B.'s Moeity with a Rent during his Life of M. k fend to C. and her Affinis, during the Life of M. &c. And if it happen, &c. that then it shall be lawful for the said C. and his Heirs, during the Life of M. to disfain, &c. C. died and devised the Rent to his Wife. This, after a long Contest at Law and in Equity, was decreed not to be determined by the Death of C. but that in this Case he had a Fee Simple determinable on the Death of M. and to the Devisee good. Trin. 8 Eliz. D. 253. pl. 99. and 192. Vernon v. Gatacre.

3. Grant of Eftovers to B. to be burnt in his House, and that B. and his Heirs may take them at certain Times of the Year; adjudged that this was but Estate for Life of B. because the Word Heir is not in the Grant itself, tho' 'tis in the Sequel of the Deed. D. 253. pl. 190. Marg. cites it as Lord Paget's Cafe.

4. Land is given to two & H. Hereditam, with Warranty to them & Hereditam suos; 'twas adjudged that this does not enlarge the Estate; per Doderidge. Mich. 13 Jac. 3 Bulls. 126. cites 19 H. 6. and 22 H. 6. 15. and Br. tit. Estates 4.

5. Grant of a Rent to A. for Life, and afterwards, that be and his Heirs shall disfain for it. This Limitation of Difreis to him and his Heirs shall enlarge the Eftate, and make it a Fee Simple, and this without all Question; per Coke Ch. J. Mich. 13 Jac. 3 Bulls. 128. cites 8 H. 4. and 46 E. 3.

Agreed per Doderidge J., but he said that if Grantor grants that F. S. and his Heirs shall disfain for it, 'tis otherwise. 3 Bulls 150. in Cafe of Gough v. Howard.——But when one limits an Estate in Rent to A. for Life, and doth allo further express, that if it be behind, that it shall be lawful for him and his Affinis to disfain for this Rent, this shall not enlarge the former Estate; per Doderidge J. 3 Bull. 137.

(H. a. 4) Interfering Grants.


2. A.
Grants.

2. A makes Feoffment of the moieties of the Manor of C. and all other... See S.C. fup his Majesties, Land's, Tenements and Hereditaments. The other moiety of the Manor passes. 2 Roll. R. 279, cites it as adjudged and affirmed in Error in the Cafe of Moyle v. Ewer.

(H. a. 5) What Things may be granted to a Man, his Executors, Administrators, and Affignes. Or for Years.

1. The Custody of an Ideot is not grantable to a Man, his Executors, Administrators and Affignes. But if the Emolument and Advantage, that by Law is given to the King, in Cafe of an Ideot, could be separated from the Truitt, then clearly it might be transferred; and it differs from the Cafe of a Ward; For the King has the first as a Truitt, tho' coupled with an Interest; but he has the other, purely as an Interest, Service, and Duty owing to him, and it came to the King in Point of Tenure, and so he might grant the Custody of a Ward, etc. etc. but not so of an Ideot; Per Lord Nottingham. Mich. 1681. Vern. 11. Prodggers v. Phrazier.

2. The Office of Policies of Insurance may be granted for Years, contrary to the Opinion in Sir George Reynolds's Cafe cited in Vern. 12. as the Cafe of Vane v. Bier.

3. Grant of the Place of Teller of the Exchequer to a Man and his Affignes, was held to be good. Cited Vern. 12. as Squibb's Cafe.

(H. a. 6) Not exclusive of the Grantor.

1. If a Man had granted his Ward to J. S. to marry him, or to have his Service, &c. which is a Profit, he cannot retake him. Br. Grants, pl. 93 cites $ E. 4. 7.

But if he had granted him for Extradition, or Instructi-on, he may retake him; because this is a Charge to the Grantee, and not a Profit. Br. Grants, pl. 93. cites $ F.

4. 7. per Littleton and Moyle,

2. A. covenants and grants with B. and his Heirs, that B. and his Co. Lire; Heirs may dig Turfe in a great Way to make almom there; yet A. and his 164. b. Heirs and Affignes may dig there alfo; and 1s like the Cafe of Common fans Nomer, cited. Palch. 25 Eliz. C. B. Godb. 18. as Lord Mountjoy's Cafe.

(H. a. 7) Incohoate, where it must be perfected in the Life of the Grantor, or Grantee, &c. or both.


2. Grant of the next Presentation or Avoidance is good, tho' the Grantor dies before the Church becomes void; and it is a Chattel, and Grantee may grant it over, tho' no Affignee be mentioned in the Deed; and this, where the Grantor had a Fee in the Patronage. Br. Grants, pl. 112. cites 7 H. 4. 2.

3. If a Reversion descend to a Feme Covent, and the Baron grants it to J. N. and the Tenant for Life attorneys, and after the Baron dies, living the Feme and the Tenant for Life, the Grant is void; Because it was not executed
Grants.

4. If a Man will take by Livery within Views, he must enter during the Life of Feoffor, or all is void. Arg. Trin. 25 Eliz. B. R. Godb. 25. cites 7 E. 6. Br. Leafes 66.

(H. a. 8) Avoided. Where a Man shall avoid his own Grant.

1 It was held, that if a Man be seised in Fee, and gives, sells, or grants Trees growing, and after makes Feoffment before severance of them, yet the Grantee shall have them; and the Grantor might have granted Eltovers, and therefore the Grantee shall have the Trees. Br. Grants, pl. 113. cites 20 H. 6. 22.

2. If a Man, who has granted Rent-charge, says, that he was in by Difference made to K. at the Time of the Gift, which K. afterwards relapsed to his Possession, this shall not defeat the Grant; and yet the Release counter-vails Entry and Feoffment. Br. Warrantia Charter, pl. 11. cites 21 H. 6. 43. and 22 H. 6. 22.

If a Person, having Title to Dower, differes the Heir, and makes a Lease of the Land, and afterwards recovers Dower, he shall not have Execution thereof, during the Term: Per Moor. Arg. Mo. 315. in Englefield's Case.—So if one, intituled to be Tenant by the Curtesy, makes a Lease, and his Wife dies; he shall not avoid the Lease; Per Moor. Arg. 4 Le. 138.—But if a Son differs his Father, and leases a Freehold with Proclamation to a Stranger, upon whom the Father enters and dies, the Son may re-enter against his own Fine. Hot. 97. Patch. 4 Car. C. B. Tham v. Lawne.

4. A. staying beyond Sea without License, and after a Privy-Seal to recall him, the Queen, being intituled for the Contempt, made a Lease of the Lands, Quamdiuin in Manibus suosis vitione Contemptus fore Contiguit, &c. afterwards the Freehold of the Land, for the Life of the Pugitive, was given to her by All of Parliament, by which her Estate was altered; yet notwithstanding she shall not avoid the Lease; judged. Mo. 111. Knowles v. Luce.

5. A. Covenanted to stand seised to the Use of himself for Life, Remainder to B. in Tail, with a Prov'Is, that the Limitation should be void upon Tender of a Gold-Ring by himfelf; or by any for him to B. By attainer of A. the Queen became Tenant for his Life of the Eilate, and made a Lease thereof, and afterwards authorized certain Persons to make a Tender of the Ring to B. who refused it, whereby the Limitation of the Uses became void, and the Queen became intituled to the Inheritances, and the Question was, whether he could avoid the Lease made by her, when she was only Tenant for Life; and adjudged the myth. For now it comes in by Virtue of the Condition, by a Title Paramount that of the Attainer and Eilate for Life, under which the Lease claims. Trin. 32 Eliz. No. 303. Englefield's Case.

6. If Mortgagor and Mortgagee join in a Lease for Years, and afterwards the Mortgagor performs the Condition; yet he shall not avoid the Lease. Arg. 7. Rep. 14. a. in Englefield's Case.
Grants.

7. If Tenant for Life of the Office of Marshell grants such inferior Office for Life of another Perfon, and then surrenders; that Surrender fhall not alter or deftroy the Efstate of the Grantee; becaufe Grantor fhall not by his A& defeat his Grant; per Holt Ch. J. 12 Mod. 557. Sutton the Marshell's Cafe. And for that Reafon, the forfeiture his Efstate, yet the Under-Grantee fhall continue in for the Life of the Grantor; per Holt Ch. J. 12 Mod. 558.—And tho' the late Marshall's Place be determined by Parliament, yet that shall not affect the Under Officer; for 'tis for the Marshall's own Of- fiance that he is turned out, which fhall not prejudice his Grantee; per Holt Ch. J. 12 Mod. 558. Mich. 12. W. 3. B. R. Sutton the Marshall's Cafe.

8. If Tenant for Life makes a Lease for Years, and then surrenders or forfeits his Efestate, yet the Lease for Years remains good during his Life, if the Years continue so long; per Holt Ch. J. 12 Mod. 558.

(H. a. 9) What Actions, &c. Grantee fhall have as Grantee, or Asignee.

1. An Asignee of Land fhall have a Scire facias ad Computandum against a Conforf, th'o' the Asignor, who might have had it, neglected it. Mo. 662. Arg.—Ibid. 664. cites 30 E. 3. Fitzh. Scire fac. 101.

2. A Terre-tenant fhall have an Aud. Quer. on a Defenfance, th'o' he that enfeoffed him did not bring it in his Time. Arg. Mo. 662.

3. Where the Feoffor himfelf was barred of an Audita Querela for Reftitution, or Contribution, there the Feoffee fhall never have it. As where the Conforf, after the Extent of his Land, alone sells the Land, the Vendee fhall not have Contribution againft other Purchafors of the Lands of the Conforf after the Confinance; becaufe the Conforf himfelf could not. Arg. Mo. 662.


5. A Grantee of a Seigniory fhall not have a Writ of Efcheat upon Title before his Grant. Arg. Mo. 663. cites 19 R. 2. Fitzh. Efcheat.

6. A Feoffee fhall not have an Affife of Nulance for a Nulance done before his Time, but fhall have a Limid permutat, &c; by Reafon of the Tort continuing in his Time. Arg. Mo. 663. cites it as adjudged in Cafe of Folter v. Bartle.


9. If the Conufe relafes to the Conufor, and then the Conufor makes a Feoffment, and then the Conufe fues Execution, the Feoffee fhall have an Audita Querela. Arg. Mo. 664. cites 20 Aff. pl. and 17 E. 3. 6.


11. Feoffee of Conufor fhall have a Scire facias againft the Asignee of the Conufe when the Money is levied. Arg. Mo. 664. cites 46 E. 3. Fitzh. Scire facias 124.

him who had Execution, and had levied the Money. Arg. Mo. 664. cites D. 1.
Grants.

(H. a. 1 0) Repugnant.

W HEN Words in Deeds are Repugnant, they shall be rejected, and we ought to adjudge upon the other Words; per Fenner J. and Judgment was accordingly. Mich. 37 & 38 Eliz. B. R. Cro. E. 422. Sharplus v. Hankinson.

2. If a Man be bound to N. in 40L. and he Grants to him that he will not sue him upon this Obligation, if the Grant be in the same Deed, it is void; per Babbington; and it seems to be good Law; For it is Repugnant; but if he Grants it by another Deed, it is good in Bar; per Marten; and so by Covenant; per Babb. Br. Negative, &c. pl. 16. cites 7 H. 6. 43, 44.


4. "Tis an infallible Rule in the Expiration of Deeds, that when two Clauses are contained in a Deed, the one contradicting the other, the first shall be good, and the last void. One gave Land to R. with A. his Daughter in Frank-marriage, Habendum to R. and his Heirs, with Warranty to him and his Heirs; they died; and their Son brought a Morandecitor; and because the first Clause was in Frank-marriage, and the other in Fee, the Justices doubted to which of them they should have regard, and at last adjudged, that when there were several or two Clauses in a Deed, Repugnant, or of divers Natures, that more regard ought to be taken to the first, than to the last; but otherwise in Wills. Arg. Hill. 14 Jac. Bridgn. 101. in Cafe of Newham v. Carew.—Cites 2 E. 2. Feoffments and Deeds.

5. Words of known Signification, but ill-placed in the Context of a Deed, so as they make it Repugnant and Senseless, are to be rejected equally with Words of no known Signification. Vaugh. 176. Hill. 23 & 24 Car. C. B. Crowley v. Swindles.

A. A. by Indenture in Confidemti on of former Service done to him by R. granted to B. and M. his Wife a Rent of 20L. a Year, issueing out of all his Lands and Hereditaments situate in K. Habendum the said Rent to the said B. and M. and their Assigns, after the Death of one C. and D. or either of them, which first should happen, during the Lives of B. and M. and the longer Lives of them, at Lady-Day and Michaelmas by equal Portions; the first Payment to begin at the first of said Feasts as should first happen next after the Decease of the said C. and D. or either of them; And if the aforesaid yearly Rent of 20L. and of 20L. shall be unpaid at any of the Days aforesaid, in Part or in all, that it shall be lawful for the said B. and M. at any Time during the joint natural Lives of the said C. and D. if the said B. and M. or either of them should so long live, and as often as the said Rents of 20L. or any Parcel should be behind, to enter into all the said A. the Grantor's Lands in K. aforesaid, and to defraud, fo as the Sense must run, That, if the Rent were behind, it should be lawful to distrain during the Joint Lives of C. and D. which was before it could be behind; For it could not be behind till the Death of one of them, therefore those Words, (during their joint natural Lives,) being infensible ought to be rejected. Judgment pro Defendente, Hill. 23 & 24 Car. C. B. Vaugh. 173, 174, 176. Crowley v. Swindles & al.

(H. a. 11) Insensible. Made good or not by Construction.

1. A. The Defendant covenanted to pay to B. the Plaintiff 1531. 10s. by Articles to this Effect, viz. Memorandum, 14. March 1687. Imprisons, it is covenanted by and between B. of &c. of the one Part, and A. of &c. of the other Part; Whereas B. by Virtue of these Presents hath Co- venanted, Concluded, and Articled all that his Messages, &c. unto the said A. his Heirs and Assigns. Item, for the Sum of 315L. the one half to be paid the 2d. February, 1688. Item, the said A. to enter the 2d. February aforesaid.
Grants.

Item, the said A. is to pay the other half the 2d. February 1689. &c. It was Objected, 1. That the Words being in the Prerter-Tempo, there was no Covenant to oblige B. to convey; but it was answered for B. that the words may be construed as in the Present-Tempo, Ut res Valeat, and cited i. Leon. 25. Bedow's Case, and No. 31. and the rather in this Case, because the Deed is [Imprimis it is covenanted, &c.] and also because the Words in another Place are, that the Plaintiff hath covenanted &c. by these Presents. 2. Objection was, that there were no Words to oblige Plaintiff to convey, the Words for this Purpose being only that B. by Virtue of these Presents hath covenanted &c. all that his Mefuages, &c. to the within named A. &c. to which it was answered, that the Intent of the Parties appeared by the Frame of the Deed, that Defendant should have the Lands to him and his Heirs; For if he was to pay the Value, and 2dly. he was to enter the 2d. of February, 1688. and he could not have them without a Conveyance, and cited Sound. 319. Pageage v. Cole to prove that the Words would amount to a Covenant. 3. Objection, that the [covenants] made the whole Deed a Recital only, to which it was answered, that the Words [by these Presents,] demonstrate that he covenants by the Deed, and then the word covenants is idle and to be rejected, and for this cited Vaughan 173. Crowley's Case; and for the same Reason the word Item in the Clause for Payment shall be rejected also; and if (whereas) and (Item) be rejected, and the words [both covenanted] be taken in the Present-Tempo, as they may appear as before, then the Sentence will be thus, viz. B. doth covenant to convey all his Mefuages, &c. And it was adjudged for B. the Plaintiff by the Opinion of the whole Court. Latw. 493. to 496. Hilton v. Smith.

(H. a. 12) Void or Voidable. What Grants are.

1. If an Infant grants a Rent by Fine, this Grant is voidable by himself during his Nonage by Writ of Error; but if he does not avoid it during his Nonage, 'tis good for ever, and notwithstanding he dies during his Nonage, before he has avoided it, yet his Heir shall not avoid it. Quere, if the Cononor dies pending the Writ of Error. Perk. 9. S. 19. cites Mich. 18 E. 4. 13.

2. If one Non-ripe Memory, being feised of Land, grants a Rent out of the same in Fee, and dies, and his Heir enters, and the Grantee disdains the Rent behind, the Heir shall have Action of Trespass. But if the Grantee had disdained in the Life of the Grantor for the Rent behind, the Grantor should not have an Action of Trespass, for he can't avoid his Deed, by disfabling of himself. Perk. 10. S. 21. cites P. 12 E. 4. 8. H. 39 H. 6. 42.

(H. a. 13) Habendum. Necessary or not. In what Cases a Grant is good, without any Habendum.

1. If Land be given to f. S. &c. contingat ipsam olivina filme Hered. de Corpore suo, quod tune revocet to the Donor and his Heirs, without any Habend. in the Deed, and Livery of Seisin is made according to the Deed, as ought to be intended; this gives the Donee an Estate Tail, 'tho not given to him and his Heirs; For the Statute of Wills in ex-freobi, &c. Perk. S. 173.

(I. a) Habendum
(I. a) Habendum. What, and its Office. What Habendum shall be said good, and what not. [And where it contains more than is in the Premisses.]

1. The Office of the Premisses is to express the Grantor, Grantee, and the Thing to be granted, and the Office of the Habendum is to limit the Estate. Co. 2. 55. Buckler's Case. Co. 9. 49. b. Carl of Shrewsbury's Case.

2. If a Man be enfeoff'd by Deed of two Acres, to have and to hold three Acres, and Liberty be made to him according to the Deed in the two Acres; the third Acre, of which there was no Speech in the Premisses of the Deed, shall not pass by the Deed: But oft Liberty and Scism be made in this Acre, then it shall pass by the Livery of Seisin, &c. Perk. S. 165.

3. But see 42 E. 3. 12. a Cafe is put, that by Fine a Man acknowledged the Right to the Conisec of the third Part of the Manor, who grants and renders 2 Parts, Habendum all the Manor.

4. If the King grants a Manor Habendum una cum Advocacione, this shall pass the Advowson; Because the Advowson would pass at the Common Law without naming, and it is sufficient naming within the Statute. 38 H. 6. 34. b. 56. 37.

5. But if a Man grants a Manor Habendum una cum another Manor, or una cum Advocacione of another Manor, this is not good; Because it was not included in the Premisses. 9 H. 6. 27. b. in the Grant of the King.

6. If the King grants quamdam Insum to another Habend Sinul cum omnibus extitibus & Amicercemtis infra Insum emergentibus. This shall not pass the Insumes and Ameercements. Because they were not comprized within the Premisses. Contra 9 H. 6. 27. b.

7. So if the King grants Land, Habendum una cum una Acta terræ in D. The Acre shall not pass; Because it was not mentioned in the Premisses. Contra 9 H. 6. 27. b.

8. If one leaves the Manor of D. to hold to the Leefce for twenty one Years, without repeating the Manor in the Habendum, yet it is a good Leafe; per Welth and Welton J. Quod fuit Conceffum; For this includes all which is comprized in the Premisses. Pach. 6 Eliz. Mo. 55. in pl. 160. Anon.

9. If a Term for Years of a Manor be limited in the Premisses of an Indenture of Leafe; tho' here be no Habendum, yet the Leafe is good Anon.—And enough; per Dyer and Browne. Mo. 56. in pl. 160. Anon.

10. If the Leafe had been, Habendum evert Pars et Parcel of the said Manor, it had been a good Leafe for all the Manor, for the Parts include and comprizes the Whole Manor; per Dyer and Browne. Mo. 56. in pl. 162.

—Dal. 57. pl. 3. S. C. Anon.—Ow 51. S. C. Anon.

12. Where
Grants.

10. When several Things are granted in a Deed, and after the Habendum comes to limit the Estate, if the Habendum recites again particularly all the Things, it does a Thing which is not in its Office, and is superfluous; and therefore all the Recital shall be of no Effect. But the Habendum shall be construed, as if no such Recital had been, nor other Thing besides Habendum & Tenendum. But where a Deed or Demise contains several Limitations of Estate; viz. one of certain Parcels of the Premisses for 20 Years, and of other Premisses another Estate for 10 Years, or for Life, there the Certainty of the diverse Habendums is to be regarded; but not where there is one Habendum only; per Manwood Ch. B. Hill. 28 Eliz. Scacc. Mo. 223, in Carew's Cafe.


12. The Habendum is only to limit the Estate, and not to give any Thing; and there ought to be a Grantor and Grantee in the Premisses of the Deed, otherwise it is void. Cro. E. 953. Buttard v. Coulter.

And the Habend' shall not declare the Perforn or the Leaf, but the Easte, which shall be in the Leaf. 3 Le. 33. 34. Eliz. Anon.—If the Premises contain the Lands granted, but faith not to whom, though the Habend' is to S. who was a Party to the Deed, 'tis not good. Cro. E. 953. Mich. 44 & 45 Eliz. B. R. Buttard v. Coulter.


14. In a Quo Warranto against one for executing the Office of Bailiff of a Hundred, the Defendant pleaded, that K. Ch. 1. was feigned of the said Franchise Jure Coronae, and granted the same to N. Habendum the Hundred to him and his Heirs, which by several meane Alligments came to the Defendant, and 2dly justified to have Returna Brevium. Upon Demurrer it was argued, that this Claim was not good; For that this Grant of the Franchise, Habendum the said Hundred, can never include the said Hundred; because nothing can pafs by the Habendum, which is not mentioned in the Premisses, in which nothing was mentioned, but the Franchise; and it was adjudged accordingly. 3 Mod. 199. Paish. 4 Jac. 2. B. R. The King v. Kingsmill.

(1. a. 2) Habendum. It's Operation on the Premisses.


2. If in the Premises, Lands are leafed, or a Rent granted, the Mo 26. per general Intention is, that an Easte for Life passes. But if the Habendum limit the time for Years, or at Will, the Habendum does qualify the general Intention of the Premises. Co. Litt. 183. a. (6). And. 126. Baldwin v. Martin. 2 Rep. 24. a.

2 J against 1. 2dly, It may alter, abridge, and utterly frustrate a Grant; as a Feoffment Habendums after the Death of the Feoffor. Hob. 171. —But not frustrate it, where it was compleat before; as if the Lease for Years grant all his Easte, Habendum after his Death. Ibid.

3. If a Manor was granted or render'd by Fine, Habendum one Acre to him and his Heirs, which Acre was Parcel of the Manor, he shall have the Manor for Life, and the Acre in Feiz; because there is no Limitation of
Grants.


Where a Deed or De-
mile contains several Li-
fications of
Estate, viz. one of cer-
tain Parcel of the Premises for twenty Years, and of others another Habendum for ten Years, or for Life, there the Certainty of 
divisio Habendum is to be regarded, but not where there is but one Haben-
dum; per Manwood Ch. B. Mo. 225. in Carew's Cafe.

5. The Habendum cannot frustrate a Grant which was compleat be-
fore, but will be repugnant. Trin. 6 W. & M. B. R. Arg. Skin. 531. cites Hob. 171. and cites it as so resolved. Jo. 205. in Gohawk v. Chie-
keill, and in Pl. C. 520. Welkden v. Elkington.—Per Treby. Ch. J. Tho' the Habendum cannot frustrate the Premilles, yet it may refrain
them as a Grant to J. S. and his Heirs, Habendum to him and his Heirs
during the Life of J. S. is good. Skin. 543. in Cafe of Jerman v. Orchard.—And Per Eundem, where the Premilles are general, there the Pre-
milles may frustrate the Habendum, as a Feoffment of Land to J. S. Ha-
endum, to J. S. for Life. The Feoffment is good upon the Premilles
of the Deed, and the Habendum void and Repugnant. Skin. 544. Jer-
man v. Orchard.

See (K. a)
pl. 15.

(I. a. 3) Habendum. Where it differs from the Premilles, in respect of the Limitation.

See (K. a)
pl. 15.

If a Lease be made to two, Habendum to the one for Life, the Re-
mainder to the other for Life, this alters the general Intendment
of the Premilles; and so it has been oftentimes resolved. And so 'tis
if a Lease be to two, Habendum the one Moiety to one, and the other 
Moiety to the other; the Habendum makes them Tenants in Common. And so
one Part of the Deed explains the other, and no Repugnancy between
them. Et Semper expressius factus effe

2. Lease to Baron and his Wife and a third Person, Habendum to
Baron for Eighty Years, if he shall so long live, and if he die within the
Term, the Remainder of the said Term to the Wife, and the third Per-
son, if they to long shall live. Per 2 Jutt. the Limitation is good, and
all the Interest of the Term is in the Baron, and nothing in the others
still after his Death. Trin. 4 Eliz. Mo. 43. pl. 133. p. 358. S. P.
Grants.

3. If a Leafe be made of the Manor of S. Habendum the Manor of D. the Leafe is void for the Whole; Per Dyer and Brown. Patch 6 Eliz. Mo. 56. in pl. 160. Anon.

Term of Years, the Leafe is wholly void; per Dyer and Brown. Patch. 6 Eliz. Mo. 56. in pl. 160. Anon.


5. Leafe to A. B. and C. for their three Lives, and the Life of the Survivor, and after the Habendum as before, it is said provided always, and it is covenanted between the Parties, that A. shall take all the Profits during his Life, and then B. during his Life, &c. yet revolv'd this a Joint Eflate. Mich. 30 & 31 Eliz. B. R. Le. 317. Soavel v. Cavel.

S. C. by Name of Leveridge v Cable.—But it was fad per Coke, a Council arg. in Action of Constat lies upon it. Le. 312. in S. C.


(I. a. 4) Habendum, Where it differs from the Premises. See (I. a)

1. WHERE the Habendum is of another Thing, not contained in the Premises of the Deed, it is not good; as Grant of Common out of Land, Habendum the Land, or of Herbage of a Park, Habend' the Park. Arg. Patch. 3 M. Pl. C. 160. in Cafe of Throgmorton v. Tracy.

2. If a Man be eftaff'd by Deed of two Acres, to have and to hold three Acres, and livery be made to him according to the Deed in the two Acres; the third Acre, of which there was nothing fad in the Premises of the Deed, shall not pass; but if Livery and Setlum be made in this Acre, then it shall pass by the Livery of Setlum, &c. Perk. S. 169.

3. If the Thing is comprehended in the Premises, and hath another Name in the Habendum, which contained the Thing, the Habend' is good; as in the Nomination of an Advftion is granted, habendum the Advftion, the Habendum is good, tho' it varies in Name; For 'tis one and the same thing. Pl. C. 157. b. Patch. 3 Mar. in Cafe of Throgmorton v. Tracy, supra. Pl. C. 157. b. in Cafe of Throgmorton v. Tracy.

4. When the Habend' is used for a Limitation, it cannot be void, but all the Leafe shall be void; As if a Man leaves his Manor of D. to have and to hold one Acre, Parcel of it, for Term of Years, the Leafe is void for the whole. Mo. 56. per Dyer and Brown, pl. 160.

5. The Grantor conveyed fimus Reftoris cum decims eadem portin. Habendum the aperfeit Site with the Appurtances for 20 Years; it was intitled, that the Tithes did not pass; For tho' they were mentioned in the Premises, yet they were left out of the Habendum, and therefore would not pass; But adjudged, that since Tithes are not Parcel of a Restor, they shall pass together with the Site thereof, with the Appurtances, for the said Term of 20 Years. Le. 231. Patch. 28 Eliz. in Scace. Cary's Cafe.— Mo. 222. S. C.

* But had they been "femeal intire things" themselves, it had been otherwise. See Le. 282. S. C.
Grants.

6. A grants the next Presentation to a Church to B. C. and D. Habend.


(I. a. 5) Habendum. Where it differs from the Premises, in respect of the Things granted; and is b.s.

1. THE King granted to the Dutchess of E. Insulam de B. & Costrum cum Pertinentis, Habendum, &c. inmolcam omnibus exitibus finius amentiae adipissimis profectis omnium Gentium Tenementum, &c. And per Vamgage clearly, all that is after the Habendum, and is not expressed in the Concephasis before the Habendum is void, unless of Advowson, which is appellant to the Manor or Land which is comprised in the Concephasis. Quod Nota. Br. Patents, pl. 4. cited 9 H. 6. 27.

2. If the King, or a common Person grant a Manor to J. N. or Land Habend', &c. with the Advowson of the Church of D. this is good, if the Advowson be appellant, tho' it be in the Habend', and not in the Grant or Gift; Contrary, if it be an Advowson in gross; for there the Grant is void as to the Advowson, if it be not as well in the Grant, as in the Habend'. Br. Grants, pl. 60. cited 38 H. 6. 34.

Walsh and Wotton, J. thought the Limitation of the Word (Members) void, because after the Habendum; and that so it was leaved by the Premises, without the Habendum, and that such Leaf had been held good; As where one leave the Manor of D. Habend to the Leafe for 21 Years, without repeating the Manor in the Habendum, it is a good Leaf. Mo. 55.-----Dal. 57. pl. 3. S. C. Anon. in the same Words. Ow. 31. Anon. S. C.

4. But if a Man makes a Lease of two Acres, Habend' one Acre for Term of Years; This is a Lease of this Acre for Years, and of the other Acre but at Will. Patch. 6 Eliz. Mo. 55. pl. 160. per Dyer and Brown. Anon.

5. If J. incofis A. and B. of an Acre of Land, Habend', the one Moteity to A. in Fee, and the other Moteity to B. in Fee; this is good, for it stands well with the Premises. 3 Le. 126. Arg. pl. 60.

But if J. incofis A. and B. of two Acres of Land, Habend' one Acre to A. and the other Acre to B. the Habendum is void; For it is contrary to the Premises, for each of them is excluded out of one Acre, which was given to him in the Premises. ; Le. 126 Arg. pl. 60.---The Habendum is void, because repugnant to, and inconformity with the Premises; by which the whole two Acres were expressly granted to both; Per Holt, Ch. J. Wm's Rep. 19. in Cae. of Fisher v. Wigg.

6. So if an Acre of Land be given to two by Deed, to have and to hold one Moteity to one and his Heirs, and the other Moteity to the other, and the Deed are Heirs of his Body; the Habendum is good and effectual. Perk. S. 175.

But if the Premises of two Acres, and the Habendum is but of one Acre, and the Estate of more of them is endorsed by the Habendum, it is a void Habendum; because it excludes the Estates of Part of that which was given. Perk S 175.---But if this Acre be warranted note them, this Warranty is good, notwithstanding it does not extend unto all their Land which was given, or unto all the Perches that were interposed, &c. Or if the Warranty be made by one of the Parties, it is good. Perk. S. 175.

7. Demise
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7. A Demise was de toto illo Mefuagio & Tenement Habend, dictum Mefuagfum Tenement; This is a Demise of one or two Things, and the Leafe is not good for both, nor for either of them before Election. Mich. 42 & 43 Eliz. B. R. Mo. 682. cites the Cafe of Bivy v. King.

(K. a) In what Cases the Habendum shall be repugnant to the Premisses.

1. If a Man lease to three, Habendum to one of them for Life, Remainder to the Second for Life, Remainder to the third for Life; This is a good Habendum, and they shall take in Succession by Remainders. D. 4 & 5 Ma. 160. 43. B. R. 3. Fizh. Feoffment. 73.

2. If by the Premisses no certain nor express Estate is given, otherwise than the Law would give, there it may be altered, or abridged, or utterly made void by the Habendum. Hobart's Rep. 231.

—If a Man be infeoffed of Land, and no Estate is expressed in the Premisses of the Deed; To have and to hold to Lin and his Heirs, the Habendum is good and effectual, because it is not repugnant; For it includes the Premisses and more; For if Livery or Seisin be made, and no Estate expressed to him whom the Livery is made, he has an Estate for Life; and by the Habendum he had an Estate in Fee, which includes the Premisses of the Deed, and more. Perk. S. 16; —So shall it be if an Estate for Years, or for Life, or for the Life of another, be expressed in the Premisses of the Deed, to have and to hold to him and his Heirs, &c. Ibid.

3. As if a Man makes Feoffment of Land, Habendum to the Feoffee and his Heirs after the Death of the Feoffor; This is a void Feoffment, because an Estate of Frank-tenement cannot commence in future, and he no Estate is limited by the Premisses. Hobart's Rep. 231, cites Siry 53 & 34 Eliz. B. R. adjudged between Hodge and Crofts.

4. If a. makes a Lease of Land for three Lives, and after grants the Croe E 266. Reversion to another, Habendum to the Grantee for Life, and after fo; The low these Words, (which said Estate for Life to begin after the Death of the first Leefe) this is a good Estate in Reversion for between a Life, for it was a perfect Estate before those last Words came. Hobart's Reports, 231. cites Underwood and Underhaye's Cafe. Plt. 34 Eliz. B. R. adjudged.

Tenants for Life, and where it is Habend' after the Death of a Stranger. In the first Cafe it is good; for it is but a Limitation when he shall have the Poffeffion; But in the last Cafe it is not good. Cru E 385. In Cafe of Buckler v. Hardy.

5. If a Termor, reciting by Indenture his Term and Leafe, grants And. 141 all his Term, Ettate, and Interest to another, Habendum immediately after the Death of the Grantor; This Habendum is void, and the Grantee shall have it presently. For the Grantor may overtake the Q. 9 Term, Hob. 171.
Grants.


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1. If a Man has an Intereft of Term to commence after the Death of a Lessee for Life of the Land, and recite it, and grants the Premises, Habendum the Land after his Death; this has been a good Habendum, and not repugnant; For the Grant of the Premises is intended to the Land. P. 43 Eliz. B. K. agreed between Juel and Lingley.

2. If a Man gives Land to J. D. with his Cozen in Frank-marriage, Habendum to them and the Heirs of the Body of the Baron begotten; by this Habendum the Feine has only for Life. 19 D. 6. 22. b. Per Fidevit.

3. If a Man gives Land to one and his Heirs by the Premises of the Tern, yet the Habendum be may explain the Premises, and then his Intention what Heirs he intends, and to make it an Estate Tail. P. 16. J. admitted Per Curtiam between Thuman and Cooper.

4. If a Man gives one and his Heirs by the Premises of the Tern, yet the Habendum be may explain the Premises, and then his Intention what Heirs he intends, and to make it an Estate Tail. P. 16. J. admitted Per Curtiam between Thuman and Cooper.

5. As if a Man gives one and his Heirs, Habendum to him and his Heirs of his Body; This is an Estate Tail in Possession by the Premises. 21 D. 6. 7. 45. E. 3. 22. Co. 8. 144. b. Alcham's Caff. Perkins S. 179.

6. If a Man has granted the Land, Habendum after his Death, this had been good.

See Estate (Y. a) pl. 12.

7. If a Man has an Intereft of Term to commence after the Death of a Lessee for Life of the Land, and recite it, and grants the Premises, Habendum the Land after his Death; this has been a good Habendum, and not repugnant; For the Grant of the Premises is intended to the Land. P. 43 Eliz. B. K. agreed between Juel and Lingley.

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10. As if a Man gives one and his Heirs, Habendum to him and his Heirs of his Body; This is an Estate Tail in Possession by the Premises. 21 D. 6. 7. 45. E. 3. 22. Co. 8. 144. b. Alcham's Caff. Perkins S. 179.

11. If
Grants.

11. If a Man grants a Rent to J. S. his Heirs, Executors, and Assigns, in the Premisses, Habendum to him, his Heirs, Executors, and Assigns, during the Life of W. N. This is a good Habendum, and J. S. has but an Estate for Life; For the Word * (Heirs) is not utterly deleted by the Habendum, because the Heir shall have it as a special Occupancy. P. 7. J. A. B. between Whiskins and Parrot, Plaintiff, against Davie. Per Curiam. But Tr. 7. J. a. fame Cate contra per Curiam.

12. So if a Man grants a Rent to J. S. his Heirs, Executors, and Assigns in the Premisses, Habendum to him, his Heirs, Executors, and Assigns, for the Life of W. N. This is a good Habendum, and J. S. has but an Estate for Life; For the Limitation for the Life of W. N. goes as well to the Estate limited in the Habendum, as to the Life. P. 7. J. A. B. between Whiskins and Parrot, Plaintiff, against Davie. Defendant. But Tr. 7. J. a. contra per Curiam in the fame Cate, to his Heirs, for the Life of him and his Heirs, for the Life of J. S. and it was adjudged, that only an Estate for Life definable put, not a Fee simple. Mo. 8; 6th. pl. 1227. Williams v. Percat. cites 2 E. 2 Fizk. Judgm. 99. 33 E. 5. 8 Eliz. D. 253. 21 H. 6. 7.

13. If a Man grants Land by Deed, naming no Person in the Premisses, Habendum to B. This is not a good Grant, because he was not named in the Premisses, the not is to design the Person, and the Land; and the Habendum is to * limit the Estate. 99. 37 Eliz. B. R. Per two Jurisses. Contra Co. Lit. 7.

14. If a Bargain and Sale be in such a manner; This Indenture, &c. between A. B. of the one Part, and R. S. of the other Part, &c. witnessed, that A. B. in Consideration of 50l. paid by R. S. hath given one Mutilage in D. Habendum to the said R. S. it seems that this is a good Bargain and Sale to R. S. for by the naming him to be Party to the Indenture in the Beginning of the Deed, it is a sufficient naming of him in the Premisses. Contra Ditch. 37 Eliz. B. R. Per two Jurisses.

15. If Land be given to J. S. Habendum to him and a Stranger, for a certain Estate. This is void to the Stranger, because he was not named in the Premisses. Tr. 15 J. A. B. R. between Brookes and Brookes. Agreed per Curiam. Ditch. 11 J. A. B. R. adjudged between Cobbe and Betterton.

16. So if Land be given to the Baron, Habendum to him and his Wife, and to the Heirs of their two Bodies; The Feine takes nothing by this Grant, because he was not mentioned in the Premisses of the Deed. Tr. 15 J. A. B. R. between Brookes and Brookes. Agreed per Curiam Ditch. 11 J. A. B. R. adjudged between Cobbe and Betterton.

17. If a Gift be to one, Habendum to him with the Daughter of the Donor in Frank-marriage; This shall pass an Estate in the Frank-tenant to his Daughter, as well as to the Baron, because she was the Caufe of the Grant, and it cannot be a Frank-marriage without it, and to otherwise the Intent of the Donor, shall be defeated. Tr. 15 J. A. B. R. between Brookes and Brookes. Agreed per totam Curiam. Com. Throg. 158. 4 C. 3.

18. If a Man surrenders a Copyhold in Fee into the Hands of the Lord out of Court without limiting any Use, which Surrender is presented by the Ponage at the next Court, and after at the same Court the Surrenderor takes a new Copy of the Lord of the Land, which

* Contra per Hol Ch. J. 1 Salk. 291. and Wm's Rep, 16, 17.
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which is in such Banner; the Surrenderor capite de Domino extra manus, cui Dominus concepit Seilimam, Habendum to him and his Wife, and the Heirs of their two Bodies begetten, the Remainder to the right Heirs of the Baron; in this Case the Feme shall take an Estate Cal, as well as the Baron, because it appears that it was the Intent of the Parties, and a * Copyhold is to be expounded as a Will, according to the Intent; for in as much as the Surrender was general, and at the next Court he accepted this Copy, it shall be intended that the Intent of the Surrenderor was to surrender the Copyhold to the title here expressed, and so it entires by way of Explanation of the Surrender, and the Banner of the Grant of the Lord is not material. Secondly, if it shall happen the Grant of the Lord only, yet there is no express Grant in the Premisses; for the Words (Capit de Domino cui Dominus concepit seilimam) cannot make a Grant, and then the Grant comes only in the Habendum, and is good enough, Cr. 15 Ja. B.R. between Brookes and Brookes, Pet toto Curiam. But they would not give Judgment, because the per a gegen whom it should be given was in Danger of being disinherited. But Sich, 15 Ja. Judgment was given according to this Resolution.


19. If the Lord of a Manor be seised of a Copyhold Estate, and grants it to another, Habendum to him and his Wife, and to the Heirs of their Bodies, the Feme shall take nothing by such Grant, because the was not mentioned in the Premisses, and here is not any surrender precedent to direct the Grant, but it passes only by the Grant, and there fore ought to be expounded according to a Convenance at the Common Law. Cr. 15 Ja. B.R. held per loughton between Brookes and Brookes.

Copyholder in Fee surrender to the Lord's Hands, who regranted it thus; viz. Memorandum quod J. H. capite de Domino, the same Lands, cui Dominus concepit into Seilimam, Habandum to the said J. W., the said J. W. dies, the Seilor as his Heir enters, it was adjudged for the Defendant; for although there be no Words of Grant in the Copy, nor there any Grant to the Feme, but an Habendum only, yet it was held good enough; for the Intent of the Lord appears that both should take, and there is no more granted to the Baron than to the Feme; for there are not any Words of Grant to the Baron, but capite de Domino cui Dominus concepit seilimam;) but all the Words of Grant and Limitation are in the Habendum; And in many Manors there are no other Forms of Grant or Limitation. Cro. J. 434. Brooks v. Brookes. — Grant of Copyhold Lands to D. Habend' to D. for Life, and E. his Wife for her Widowhood, was held good, and that such Habend' is common in Copies. Cro. E. 523. Patch. 36 Eliz. B. R. Downs v. Hopkins.

20. If a Copyhold Tenant Surrenders to the Use of himself, Habendum to him and his Wife, and the Heirs of their Bodies, it seems that it is void; because it is in the Nature of a Grant at the Common Law.

21. If a Man devises Land to one Habendum to him and his Wife, it is a good Estate in the Feme for the Intent. Cr. 15 Ja. B. R. between Brookes and Brookes, per Montague and Crooke. Com. Throg. 175. and Newis and Scholatias 42: where it is Habendum after the Death of the Wife, and so only by Implication. 13 D. 7. 17. b.

22. A Man may take a Remainder by the Habendum, the' he be not named in the Premisses of the Ded. 99. 11 Ja. B. R. admitted per Curiam, between Cobb and Betterton.

23. If a Man grants a Copyhold to A. Habendum to him and B. his Wife, and one of the Sons of the said A. and B., and their Son cannot take jointly with A. because they are not named in the Premisses, and they cannot take by way of Remainder, because it is uncertain which of them shall take first. 99. 11 Ja. B. R. adjudged between Cobb and Betterton.

24. If a Man gives Land to one and his Heirs, Habendum to him and his Heirs of his Body; this is an Estate Cal only and no Fee expectant.
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exspectant to him; For the Habendum explains the Premises, what Heirs he intends, and is not only to explain the Estate in Possession, and to leave the Fee in him according to the Premises; For it cannot be intended that he meant two several Heirs in the Premises and Habendum, but that the Habendum explains the Heirs where he intends in the Premises. Co. 3 Co. Albion 154. 6. Perkins Sta. 170. contra 21 P. 6, 7. 45 E. 3. 27. contra P. 16. 23. R. betwixt Thurman and Cooper, adjudged per Curiam. Co. Litt. 21.

25. If a Man gives Land to A. a Man and B. a Woman and to their Heirs. S. C. Heirs and Alliants for ever, to hold of the Chief Lord, Habendum to them and to the Heirs of their Bodies, the Remainder to them and the Survivor of them for ever, with Warranty to them and their Heirs; this is an Estate Tail in Possession, and a Fee expectant; For tho' no mention be of their Heirs in the Remainder, per his Intention is apparent to be so by the Limitation, that he shall hold of the Chief Lord, and by the Limitation of the Remainder to them. For if it shall not be a Fee it is utterly void, they having a greater Estate before limited to them, and the words (for ever) and the Warranty to them and their Heirs for his Intent to be so, and the putting of the word (Heirs) in the Premises will be sufficient to pass the Fee, where the Intention appears that the Habendum should be only to make it an Estate Tail in Possession, and that they shall have the Fee expectant. P. 16. 23. B. R. between Thurman and Cooper, adjudged per totam Curiam, but they principally rely'd upon the Case as if this Intention had not to appear.

26. If a Man gives Land to one and his Heirs, Habendum to his and the Heirs of his Body, the Remainder to a Stranger in Fee; this shall abridge the Estate given by the Premises, and to the Habendum explanatory what Heir is intended in the Premises; For otherwise the Limitation of the Remainder over would be void. P. 16. 23. B. R. per Dov. in Thurman's Case.

27. If a Man gives Land to one and his Heirs Males, Habendum to him and his Heirs Males of his Body; this is only an Estate Tail and no Fee expectant; For the Habendum is Explanatory what Heirs Males were intended in the Premises. P. 24. 3. Ma. 126. 50. P. 16. 23. B. R. per Doughton in Thurman's Case.

28. If a Gift be to one and his Heirs, to have and to hold to him and his Heirs for ever, if he has Issue of his Body; and if he dies without his Body, that the Lands shall revert to the Donor and his Heirs; this is only an Estate Tail without any Fee expectant. 35. 14. adjudged.

29. The following Diversities were taken and agreed in Baldwin's Case. 1st. As to Things which take their Essence and Effect by the Delivery of the Deed, without any other Ceremony, and which lie in Grant, there, in such Limitation as in the said Case (which was a Deniise to one and his Heirs Habendum for Years) the Habendum was repugnant and void. As in Case where Man grants Rent or Common, &c. out of his Land, by the Premises to one and his Heirs, Habendum for Years or Life; the Habendum is repugnant. For a Fee passes by the Premises, by the Delivery of the Deed, and therefore the Habendum for Years, or for Life, is void.

2dly. One by Deed grants Rent in Fee, or Seigniori in the Premises to one and his Heirs, Habendum for Years or Life; the other Thing or Ceremony is requisite, viz. Attornement, before the Delivery of the Deed, yet inadmiss as the Thing lies in Grant, and both the Estates, viz. as well the Estate in Fee as the Estate for Years or Life, ought to have one and the same Ceremony, viz. Attornement to pass it as Seigniori, &c. therefore in such Case the Habendum is void.

3dly. When a Man gives Land by Deed in Fee in the Premises, Habendum to the Lessee for Life, there the Habendum is void, as hath been said; For one and the
(K. a. 2) Habendum differing from the Premises, in respect of the Parties.

See Faitz (C. a. 3) — This is true in Feehoods and Grants, but 'tis otherwise in Cafe of * Capiets. Poph. 126. Brook's Cafe. — In Capiets it's sufficient that the Parties be named in the Habendum only, and in many Cases the Words of Grant and Limitation are all in the Habendum. Crewel J. 334. Brooks v. Brooks and Wright. — 5 Le. 354 pl. 60. per Manwood J.

So it is in Hob. 315, but it seems true in all Cases, unless there be a text which says otherwise.

2. Land Demised to A. Habendum to A. and B. aforesaid, and to C. and D. for Life, and for the Life of the Longest Liver successively; A. and B. died living C. and D. None could take by the Deed immediately but A. because he was Party, the rest not being named but by the Habendum. Then they cannot take but by way of Remainder, which cannot be joint, because of the word Successive, &c. and in Succession they cannot take for this uncertainty which shall begin, and who shall follow, nor being Successive feit Nonanimut in Charte. Hob. 313. Windimore v. Hubart. — Palm. 35. Tyles v. Greenwood. — als. Tyler v. Filler.

Hunt. S. 38. S. C. and by 4 Le. 236. S. C. by the Name of Gribinh's Cafe. — Ow. 3. 39. S P Aston P. 25. Eliz. — Palm. 35. Tyles v. Greenwood, als. Tyler v. Filler. — But where the Demise was to A. Habendum to A. and B. his Wife, the text is almost that of Rintok fœderatum in Habendum & nonanimat in Ordine, it was adjudged and affirmed in Error, that B. the Wife had a good Remainder for her Life. — Jacob 338 pl. 8. cit. 537. Wheawan v. Sugg.

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4. A Lord of a Manor, of which a Copyhold Farm is Parcel, makes a
Feoffment to B. of this Farm, Habendum to B. and his eldest Son in Fee, to
the Use of B. and his eldest Son and their Heirs; the Father and Son are
Joint-tenants; the Habendum is void to the eldest Son, he not being
named before the Habendum; yet the Limitation of the Use is good; For
B. has all the Fee, and if B. dies, the eldest Son takes all, and if he was
within Age he should not be in Ward because of the Joint-tenancy, the
B. was in by the Common Law, and the eldest Son by the Limitation of
the Use; For the Statute 27 H. 8. of Uses, puts them, as to the Possession, in
the same Quality as the Use is, and the Use is for Jointtenancy. Jenk.
330. pl. 60.

(L. a) Habendum, differing from the Premisses; in re-
spect of the Estate limited and is less.

1. SOME hold that if Lands are given by the Premisses of a Deed to
two Men and their Heirs, to have and to hold to them and the Heirs
of their two Bodies begotten, that the Donors have Estate in Tail, and also
Fee Simple expectant upon the Estate Tail, which is not Law as I con-
ceive; For they have a joint Estate for their Lives, and are Tenants in
Common of the ESTATE, and they have no Estate Tail, nor any Fee Simple and
the Reaion is apparent, &c. Perk S. 170.

2. It is a Rule in Law, that an Habendum, being contrariant, or repug-
nant to the Premisses, is void and the Premisses shall stand.

3. As, if Lands by the Premisses are given to A. and his Heirs, Haben-
dum to him for Life, this Habendum is void, because Fee Simple is expec-
ted in the Premisses, and but Estate for Life in the Habendum, which is re-
pugnant and void, and this was agreed by both Sides. 2 Rep. 23. b. and
to refolved. Ibid 24. Because one and the same Ceremony, viz. Livery, is
required to both the Estates, and therefore when Livery is made according
to the Form and Effect of the Deed, it shall be taken strongest against the
Feoffor, and most favourable to the Feoffee; and the Habendum, in
such Case is void, and till Livery made the Feoffee is only Tenant at
Will. 2 Rep. 23. b. in Baldwin's Case.

4. A. demised, and to Farm to let to B. and his Heirs, Habendum to B. and
his Heirs for 99 Years, and from 99 Years to 99 Years, &c. and B.
covenanted for himself and his Heirs to pay the Rent; and A. covenanted
at the end of the said Term to make a new Demise to B. and his Heirs;
This Habendum was adjudged not to be repugnant; For by the fourth
Resolution there, when to the Estate limited in the Premisses a Ceremony is
required to the Perfection of the Estate, but to the Estate limited in the Hab-
endum nothing is requisite to the Perfection and Efficence thereof, but only
the Delivery of the Deed, there, tho' the Habendum be of Ieis Estate than
mentioned in the Premisses, the Habendum shall stand. As in the principal
Cafe, to the Fee Simple limited by the Premisses, it is requisite to have
Livery and Seisin, and till Livery is made nothing will pass but an Estate
at Will, (if the Deed had stop'd there) and therefore the Habendum for
Years is good now by delivery of the Deed for Years. See And. 223.

5. Grant of Land to A. and his Heirs, Habendum to him and the Heirs
of his Body; A. shall have the Land in Tail, and the Fee Simple after the
Estate in Tail. When the Estate is certain in the Premisses the Habendum
shall not control it. Brownl. 45.

Tail, but if it had been to A. and the Heirs of his Body, Habendum to A. and his Heirs,
in his Tail with Remainder in Fee expectant — Dr. Estates, pl. 19, c. 20 H. 6. 7.

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6. Grant of a Rent to A. and his Heirs, Habendum to A. his Heirs, Executors and Assigns to the Use of the said A. and his Assigns during the Life of a Stranger; whether it was in Fee, or for Life, was the Question; and whether the Habendum be contrary to the Premises, or do stand with the Estate? If the Habendum had been to A. and his Heirs during his own Life, it had been void, but it was held otherwise for a Stranger's Life and no Occupancy can be of a Rent. Brownl. 169. Wilkins v. Daure.

7. Lands given to A. and the Heirs of his Body, Habendum to the Donee to the Use of him, his Heirs, and Assigns for ever. Resolved 1. that the Limitation in the Habendum did not encroach or alter the Estate contained in the Premises of the Deed. 2. That Tenant in Tail might stand seized to an Use expired, but such Use cannot be averred. Godb. 269. Pauch. 14 Jac. B. R. Franklin's Cafe.

For first it is given in Fee and the Habendum, tho' it limits an Estate Tail doth not limit the Estate to any other; so the Fee remains as it was limited at first; and this is inferred by th: Tenure limited, which cannot be if it were an Estate Tail; and this is further inferred by the Warranty being to them and their Heirs. Ibid.—See Jermin and Cooper S.C.

8. A. grants Lands to Baron and Feme and their Heirs, Habendum to them and the Heirs of their Bodies, Remainder to them and the Survivor of them for Life, to hold of the Chief Lord of the Fee, with a Warranty to them and their Heirs; this is an Estate Tail with a Fee expectant. Cro. J. 476. Turnman als. Thurman v. Cooper.

9. So Lands given to A. and a Female fide, and their Heirs and Assigns for ever, Habendum to them and the Heirs of their Bodies, Remainder to them and the Survivor of them for ever; they have Estate Tail with a Fee Simple expectant. Godb. 272. Jermin v. Cooper.

10. There is a Difference when the Limitation is in one and the same Sentence, as a Gift to A. and his Heirs, if he has Heirs of his Body, is an Estate Tail only, because 'tis in one and the Sentence; but when the Limitation is first absolute, as to A. and his Heirs then is restrained by the Habendum, as to A. and the Heirs of his Body, and doth not limit the Estate over to any other, that stands well with the first, and both shall stand. Cro. J. 476. in Cafe of Turnman v. Cooper.

Land is given to A. and his Heirs Tenanci
dum void if the said A. has Issue of his Body; this was adjudged an Estate Tail, and no Fee Simple, quod natura. Br. Estates, pl. 56. cites 55 All. 14, and says it seems that this word (y') makes it Conditional.

11. Leases for Years granted all his Estate and Interest therein to his Daughter Hetter, Habendum to himself and his Wife for Life, and afterwards to his Daughter till she marry and haveIssue and after her Marriage and have Issue, then to have to her her Executors Administrators and Assigns, during the Residue of the Term, provided it H. die before Marriage having no Issue of her Body lawfully begotten, then the Grant to be void; adjudged that H. shall take immediately by the Grant, and that the Habendum is repugnant to the Premises, and therefore void; For when in the Premises all the Term was granted to Hetter the Habendum to him and his Wife for Life was void; and then the Cafe is no more than that the said Term was Assigned to Hetter with a Proviso, that if Hetter died unmarried having no Issue lawfully begotten to be void, and then to go to Diana, so that Hetter dying without Issue unmarried the the Proviso made the Term to cease and to go over to Diana. Jo. 205. Patch. 5 Car. B. R. Gohawke v. Chigwell.

12. Lease by Prebendary of a Tenement to A. and his Heirs, Habendum to A. and his Heirs for three Lives, with a Letter of Attorney to deliver Seisin to A. his Heirs, Executors or Assigns; the Tenement was absolutely let and ancient Rent referred; adjudged a good Lease, and the Habendum expounds the Premises. T. Jo. 4. Pillworth v. Pyer.

13. In Replevin, Defendant justified under a Grant of an Annuity to B. for Life by Indenture, whereupon the Plaintiff demanded Oyer of the Indenture, which was to the Purport following, viz. an Indenture was made between A. of the one Part, and B. and C. of the other Part, Reciting a Surrender of a former Grant of an Annuity to B. and then A. [for fo it may be rated] granted unto B. and her Heirs, one Annuity of 10l. to be paying and going out of &c. Habendum &c. to the said B. and C. and the Survivors and Survivors of them, &c. and if it shall happen the said yearly Rent to be behind after any of the said Feals, then that it shall and may be lawful to and for the said B. during her natural Life, and for the said C. after her Death, to enter into the Premises and disfain, &c. in Witness &c. whereupon the Plaintiff demurred, and Defendant joined in Demurrer; it was argued that the Grant is to B. and her Heirs, and that the Habendum cannot alter the Premises in the Limitation of the Estate in the Grant of the Rent, and the Defendant's Plea setting forth that B. was feigned of the said Rent for Life, there is a material Variance between the Indenture and Plea; and the Court were of Opinion that the Conunance setting forth an Estate for Life, whereas there passed an Estate in Fee, was a Material Variance; Pollexfen Ch. J. seemed to incline that it was a Rent-charge for Life, (For the Power of Distress was given her only for Life) and a Rent-feck in Fee and that it was as a Grant of two several Rents; but the other Justices held that it was one intire Rent and that the had it with a Privilege of Distress for her own Life only.


(M. a) Habendum differing from the Premises, in respect of the Estate limited, and is larger.

1. If Land be given by these Words, Scian, &c. quod ego, &c. dili D. & f. Uxor ejus, & ego the Feoffor, Warr. pradit. terre, &c. diff. D. & f. Uxor ejus & heredit. de corpore eorum exstant, and Livery of Seisin be made according to the Deed, they shall have only an Elate for their Lives, &c. Perk. S. 166.

2. If Lands be given to two for their Lives in the Premises of the Deed, to have and to hold the Moity of this Land to them and their Heirs; the Habendum is good, because it is not repugnant; For by the Habendum their Elate is enlarged in the Moity; so that they have a Fee Simple in this Moity, and a Freehold in the other Moity. Perk. S. 177.

3. If Lands be given to Husband and Wife, to have and to hold, &c. unto the Husband for Life, and to the Wife and her Heirs; the Habendum is good and effectual, &c. Perk. S. 177.

4. If A. gives Land to B. and the Heirs of his Body, Habend' to him and his Heirs; B. has Eate Tail and Fee Simple expectant; For Generally Chanfula non Porrigatur ad ea que antea specialiter sunt comprehensa, and in the general and special Words shall stand. 8 Rep. 154. in Altham's Case.——cited Litt. R. 545. in Beck's Case.

Br. Esfates, pl. 19. cites 21 H. 6. 7. See Godb. 269. Franklin's Case.—

v. Cooper.—Some hold that B. shall take nothing, but the Habendum is void, and the Deed shall take all its Effect upon the Premises, which is not Law (as I think) But the Habend' shall take effect to such Intent, viz. That the Estate Tail shall be exercuted in the Donee by Force of the Premises of the Deed, and the Fee Simple shall be expectant upon the Estate Tail by Force of the Habendum, &c. Perk. S. 162. cites 45 El. 3. 22. 5 H. 5. 6.

S f

5. And
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5. Land is given to Baron and Fenee to the Ufe of Baron and Fenee, and the Heirs of their Bodies begotten; resolved that 'tis an Estate Tail, and resolved that the Word (Ufe) is Surplusage. D. 386. Marg. pl. 1, cites Cro. C. 231. Young v. Dimock.

by the Common Law, and 'tis not an Ufe to be executed by the Statute, nor is it as if the Ufe and Estate had been limited to different Persons. Cro. C. 233, Mich.; Car. B. R. Jenkins v. Young—— and 245. S. C. Hill; Car. B. R. by Name of Meredith v. Jones.

(N. a) Habendum differing from the Premisses in Words only.


2. Grant of Profection Terrae, Habendum' Terram, 'tis good, because it is comprised before. D. 126. pl. 48.

is not good, because 'tis of another Thing. Ibid. Mich. 2 and 3 P. & M. in Case of Throgmortion v. Tracy.

(O. a) What passes by the Words.

1. If the King or another grants one Thing una-cum another Thing before the Habend', which is in the Una-cum passes well, for it shall serve as a Copulative, per tot. Cur. Br. Grants, pl. 86. cites 8 H. 7. 2.


(P. a) Ad Opus & Usum.

1. Habend' eis & Hered' suis in perpetuum ad opus & usum ipso- rum A. B. et C. in perpetuum (without Heredum jurem) with Warranty to them Hered. & Allign' in forma Predicit, gives only Estate for Life. D. 169. pl. 21.—Trin. 1 Eliz. In Cur. Ward. 2 And. 199. cites D. 2. Joints takes a second Husband, and they by Deed convey the Land to A. and his Heirs, Habend' to him and his Heirs, to the Ufe of him and his Heirs for the Life of his Wife only. Gawdy held it no Forfeiture, and that the Words (for the Life of the Wife) shall refer to both; For in Construction of a Deed, where the Words are doubtful, reasonable Construction shall be made; and when Words are in a Deed to express the Parties Intent, they shall not be taken as void. And here the Words (for the Life of the Wife) are put in to exclude the Forfeiture, and to save the Estate. And of this Opinion were Wray and Share upon the first Motion, but Clerc contra. But at another Day, it being moved again, Gawdy held his former Opinion, but Wray and the other Justices held it a Forfeiture; For Wray said, by the Deed at first a Fee Simple did pass, and that to the Ufe of the Feeholder, then the Estate and the Ufe are several Things, and cannot be coupled to the Words (for the Life of the Wife). And Wray said, he had demanded the Opinion of the Justices of his House, and they held it clearly a Forfeiture in the Words, and that the
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the Words (for Life, &c.) shall refer only to the Ufe, and it was so ad-

( Q. a )

Pleadings of Grants.

1. A

Leafe contained a Message in the Demifte, but Land also in the
Holendium, which Land had been many Years enjoyed accord-
ingly; yet the Lord Chancellor's Opinion was, that no Continuance
would make a void Leafe good, esp. in English against a Purchafor. Toth.

2. A lease for Life to B. and afterwards leaves a Fine to the Ufe of R.
for Life, the Remainder to A. in Fee, with a Provifio or Power to make
Leases for 21 Years, or three Lives; and that the Conufees should hand
fealed to such Ufes: Afterwards A. covenants to hand sealed to the
Ufe of P. in Tail, with divers Remainders over. And after A. grants
the Reversion aforesaid to L. for Life, who disfrains C. and avows; and
Judgment was given against the Avouart, because the Pleading was
naught; because he pleaded it by Grant of the Reverfion aforesaid, which
was limited to A. himfelf in Fee upon the Fine; for he ought to have
pleaded it as it is by Limitation in the Indenture. So if the Reverfion be
by Bargain and Sale, or it be by Way of Release; if that be pleaded as
by Grant, it is naught. Nov. 66. Patch. 37 Eliz. C. B. Cooke v. Bromehill.

(R. a) Grants made good in Equity, tho' not strictly good in Law.

1. A

Verdict was at the Common Law to avoid a Leafe for three Lives,
because the Leafe was to commence at a Time to come, which is
void in Law; yet an Injunction to continue Polleffion. Toth. 180. cites

2. The Mihake of a Name of Corporation was holpen in Equity. Toth.
228. cites 32 & 33 Eliz. Lord Audley v. Sidenham.

3. Decreed that the Plaintiff should enjoy Leases made by the Defen-
dant's Father, which he fuppofed were void in Law, and the Defendant
was required to confent to the Decree, and was told that if he did not
confent, it should be judiciously against him. Toth. 225. cites 36 Eliz.
Little-John v. Forrelee.

4. A pollibled of a Leafe for 99 Years, alligned to B. his Son and M.
Wife of B.—B. and M. 19 Eliz. alligned to C. and K. Wife of C.—C.
died.—K. 6 Jac. granted to D. and J. his Wife twofeveral Amufies of 15l.
out of the Sums, during the Lebens of the 99 Years, if D. and J. or any
1

If their Bodies should fo long live, to have, &c. the two Amufies from
Lady Dyer or Mrs. Chief happening after K's Death. Afterwards, in 1623.
K. decreed to E. and S. his Wife, 1 sl. a Year out of the Premifes during the
Years

the Words (for Life, &c.) shall refer only to the Ufe, and it was so ad-

( Q. a )

Pleadings of Grants.

1. A

Leafe contained a Message in the Demifte, but Land also in the
Holendium, which Land had been many Years enjoyed accord-
ingly; yet the Lord Chancellor's Opinion was, that no Continuance
would make a void Leafe good, esp. in English against a Purchafor. Toth.

2. A lease for Life to B. and afterwards leaves a Fine to the Ufe of R.
for Life, the Remainder to A. in Fee, with a Provifio or Power to make
Leases for 21 Years, or three Lives; and that the Conufees should hand
fealed to such Ufes: Afterwards A. covenants to hand sealed to the
Ufe of P. in Tail, with divers Remainders over. And after A. grants
the Reversion aforesaid to L. for Life, who disfrains C. and avows; and
Judgment was given against the Avouart, because the Pleading was
naught; because he pleaded it by Grant of the Reverfion aforesaid, which
was limited to A. himfelf in Fee upon the Fine; for he ought to have
pleaded it as it is by Limitation in the Indenture. So if the Reverfion be
by Bargain and Sale, or it be by Way of Release; if that be pleaded as
by Grant, it is naught. Nov. 66. Patch. 37 Eliz. C. B. Cooke v. Bromehill.

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K. decreed to E. and S. his Wife, 1 sl. a Year out of the Premifes during the
Years
Years to come, if they so long live, and gave to F. Son of E. 20 Nekhs a Year out of the Premises, if he so long lived. K. in 22 Jac. assigned the Lease for 20 Years to commence after her Decease to the said C. and made C. covenant to allow all Annuities by her granted or to be granted. And in the 1 Car. he granted by Deed 101. Annuity to W. R. out of the Premises during the Term, to hold after K's Death. And in the 2 Car. K. died. C. survived, and by several Deeds confirmed the said Annuities; And by his Deed, 2 Car. C. assigned his Interest to J. N. in Trust to pay his Debts, &c. and died. It was objected, that the Annuities were void in Law, because of the Incertainties in the Habendum, and that the Covenant of C. extended only to Grants, and not to Bequests, and that he assigned his Interest to J. N. before he confirmed the Annuities, so as they are void in Law; But decreed the Grants and Annuities good in Equity to bind C. and all claiming under him; and that J. N. pay the Annuities and Arrears accordingly. 4 Car. 1. 1 Chan. Rep. 6. Cornwallis's Case.

(S. a) Relief in Equity. In Respect of the Consideration.

1. Annuity granted without a valuable Consideration is not relievable in Chancery against a former Grantee, for a valuable Consideration of the Land in Fee, and the Bill dismissed. 16 Car. 1. 1 Chan. Rep. 147. Pickering v. Keeling.

2. A Bond voluntarily entered into without Consideration appearing, and without Compulsion, Restraint or Fraud used, yet the Court look'd upon it as entered into upon some Consideration, there having been Dealings between the Plaintiff and Defendant in Trade, and would not relieve the Plaintiff against a Judgment thereon, but dismissed the Bill. Chan. Rep. 157. 21 Car. 1. Wright v. Moor.

3. Bond of 1600l. Penalty for Payment of 800l. was given by one drunk, and on the Loan of 90l. only. Lord Keeper would give no Relief in Equity to the Lender, not so much as for the Principal he had really lent, but dismissed the Bill. Chan. Cates 202. Pash. 23 Car. 2. Rich v. Sidenham.

4. Leafe by Tenant in Tail was endeavour'd to be set aside by Remannderman, to whom the Estate was come by Death of Lettor without Ilfrac. Per Cur. if the Leafe was gained by Fraud or unjust Consideration, 'tis to be deemed void, and the Estate discharged of it as if no such Leafe had been made. See Mich. 1703. 2 Vern. 445. Stribleyhill v. Brett.

5. A. being taken by B. going to Bed to B's Wife, give him a Note for 500l. and afterwards improved the Security, first by a Judgment, and afterwards by a Surrender of Copyhold Lands. A. by Bill prays Relief against these Securities, and pretended that 'twas a Convenience to catch him, and that he was terrified and compelled by Threats to enter into them. But the Bill was dismissed. Mich. 1708. Ch. Prer. 266. Woodman v. Skute.


(A) Ward to the King shall not devote a Chattel vested.
because it is a Chattel vested. 3 C. 1. Rot. Claust. 15 expressly agreeing with the Command to the Escheator who had seized him to deliver him to the Lord, and the King laid, that so compurum est habitatur tunc Concilia. 59.

King, which Brook wonders at; for that the Executors of the first Guardian ought to have had the Ward, and that with this agrees in Effect the 47 Ml. 14. — And also because the common Person might have sold or married the Ward before the filling of such Title to the King. Br. Garde, pl. 49. C. cite by Shad. 24 E. 3. 44, as the Earl of Warwick's Case. — Ibid. pl. 11; cites S. C. 20 E. 3, and that in such Case the King shall have only the Ward of the Land held of him.

(B) Ward because of Ward.

1. If there be Lord, two Mefies and a Tenant, and the first Mefie is in Ward, and the second Mefie in Ward because of Ward, the Tenant likewise may be in Ward because of Ward to the Lord Paramount. 43 Ml. 15.

2. If there be King Lord, Mefie and Tenante, and the Tenant is in Ward to the Mefie, and afterwards the Mefie dies, and his Heir is in Ward to the King, the King shall not have the Tenant in Ward because of Ward; For this goes to the Executor of the Mefie, being a Chattel vested. 22 Ml. 28.

3. If Ward, who holds of the Heir Female in Ward, falls Mefie between 14 years and 16 of the first Ward, there the Daughter who is the first Ward shall have it, and not the Lord; For the is out of Ward at 14 Years to every Intent, except to tender Marriage, and therefore the Lord shall not have the second Ward as Guardian because of Ward. Br. Garde, pl. 7. cites 35 H. 6. 49.

4. Note that the King had a Seigniory which belonged to the Prince, and before the Prince had Livery, a Ward dehated to the King by this Seigniory; and after the Prince had Livery of the Seigniory, and then the Guardian cited, his Heir within Age, who was in Ward of the King ut supra, before he Livery; and the Opinion of all clearly was, that the King shall have this Ward; because the Seigniory, by which it came, was in the Prince, when this second Ward fell. And it was held by all, that the King shall have Ward by Reafon of Ward, and if the first Ward comes to full Age, and the King makes Livery to him, and after the other Ward, which comes because of Ward, dies, his Heir within Age, the King shall nor have the Ward of this last Heir; because by the Livery made to the first Heir his Right and Prerogative was gone. Br. Garde, pl. 71. cites 13 E. 4. 16.

5. The King has a Ward because of Ward; an Office is found that the Land of the Ward, because &c. is held of the King in Capite, or is held of his Ward. During this Wardship because of Ward there can be no Travesty; For during this Wardship because of Ward the King's Hands cannot be moved. Jenk. 337. pl. 59. cites Mich. 7 Jac. in Cas. Ward. Holmes's Cafe.

(C) Who shall have it.

1. If the King hath the Mefie in Ward and grants him over, and afterwards the Tenant dies, his Heir shall be in Ward because

of
of Ward to the King, for he continueth Guardian; For he ought to the Liver. But 13 E. 1. Rot. Chait. Humbraun. 2. And then the king recites that he had granted the Ward of the Hele (viz., one Burtsey) to his Mother; and afterwards the Tenant died, and that the Ward belonged to his Mother, and commanded that he and also his Land be delivered to her.

2. 9 E. 1. Rot. Finium. B. 8. The King being the Committee of a Ward had Ward because of Ward.

3. If the King hath the Hele in Ward, and grants over the Ward of the Body and Land with Fees and Advowsons, and afterwards the Tenant dies his Heir being within Age, the Grantor shall have him in Ward because of Ward, and not the King. 17 E. 3. 67. b. 4. Rex seculallo salutem. Cum dederimus & concedeimus venerabili Patri T. Herefordensi Episcopo Cuadriam Terra & Hæreditis de O. defuncto, qui de nobis tenuit in Capite Habendum usque ad legitimam aetatem hæredis ilius T. cum Wardis Etchaeris & omnibus aliis ad Cuadriam illum pertinentibus: Et jam per Inquisitionem, quam per vos fecimus, acceptimus, quod R. nonum defunctus de Predicte P. (the Ward) tenuit in Capite die quo obit per Servicium Militare, per quod Cuadriam illum liberetis, Habendum usque ad legitimam aetatem Hæreditis ilius Stephani cum omnibus ad Cuadriam illum pertinentibus, &c. 6 E. 1. Rot. Chait. Humbraun. 9.

The Father has the Wardship of his Son, iure Naturali.

It is not a Chattle which shall go to the Executor. But if the Father dies, having the Wardship of the Body of his Son and Heir, and the Son continues within Age, the Lord by Knight's Service shall have the Wardship of the Body and Land. Kent. 267. pl. 7. 8. cites Litt. cap. Chivalry.

A Seigniory was granted for the Life of the Tenant, the Remainder over in Fee. The Tenant died. Barkley J. thought the Grantee of the particular Estate should have the Ward, but Jones J. seemed to doubt of it. Patch. 15 Car. Mar. 24. pl. 52. cites 44 E. 3. 13.

(D) What will draw a Wardship, what Tenure.

1. TENURE in Socage does not draw Wardship to the King. 43 E. 5. 19.

(E) What Estate will draw Wardship.

1. If the Father and Eldest Son purchase to them and the Heirs of the Father, and the Father dies, the Son shall not be in Ward; For so to the Frankeniea he is in him by the first Feodor during his Life. 43 E. 5. 36.

2. If there be Tenant for Life, Remainder in Fee to another, and he in Remainder dies, his Heir being within Age, living Tenant for Life, he shall not be in Ward during the Life of Tenant for Life, because the Lease continues Tenant to the Lord. * 24 E. 3. 55. b. admitted.

3. But if Tenant for Life die afterwards during the Non-age of him in Remainder, he shall be in Ward; For now he is Tenant to the Lord, and his Ancestor died in the Homage of the Lord. 24 E. 3. 33. b. adjudged. 27 E. 3. 82.
4. If two are seised, and to the Heirs of one, and he who hath the Fee dies in the Life-time of the other, his Heir being within Age, yet he shall not be in Ward during the Life of the other; for only a Remainder descends.

5. So if Baron and Feme are seised, and to the Heirs of the Baron, and the Baron dies, his Heir being within Age, yet he shall not be in Ward during the Life of the Feme; 23 Eliz. 3. 93, admitted byIssue. Contra admitted 27 Eliz. 3. 80.

6. If there be Lease for Years, Remainder in Fee to B. and B. dies, his Heir being within Age, whether he shall be in Ward during the Years? Quere.

7. In Quare Impedit; the Defendant made Title, because A. B. was seised of the Land in Fee, with the Aduowin Appendant, and enfeoff'd one R., upon Condition to re-enfeoff A. B. his Feme, and G. his Son, and after A. B. died, and G. the Son died within Age after Regeft made to re-enfeoff him, and after J. his Son died also within Age, and W. his Son being within Age, one H. as his next Kin entered, by which the Defendant as Lord, seised the Ward, and the Church voided; and he presented, and it was admitted for good Title to have the Ward, where the Heir entered into the Land within Age for Condition descended, Quod nota. Br. Garde. pl. 58. cites 39 Eliz. 3. 37.

8. Note, Per Forse is and all the other Judges in the Exchequer Chamber, in Effott, that if a Man gives Land to one for Term of Life, the Remainder to another in Fee, and he in Remainder has Issue within Age and dies, and after the Tenant for Life dies, the Issue shall be in Ward, and shall have his Age; for tho' the Remainder was not vested in the Father, yet the Remainder is descended; Quod nota. Br. Garde. pl. 4. cites 33 H. 6. 5.

9. A Man has Issue a Son, and his Feme dies, and after he takes another Feme, who is Heir to certain Land, and has Issue a Son, and the Feme died before the Baron entered into the Land descended to his Feme; there the Baron shall not be Tenant by the Curtesy, and his second Son shall be in Ward to the Lord; and the Father shall not have the Ward of him, by Reason he is not his Heir, because he had a Son by his first Feme, who is his Heir; For the Father shall not have the Ward of any Son, but of him who is Heir apparent to him only, which fee in New Nat. Brev. fo. 143. a good Case. And see there that a Man shall have Writ, Quare filium & Heredem suum rapuit, the fame of Daughter and Heir, and so de Confangunico et Herade suo rapto; and so see that a Man shall have the Ward of his Heir, and not the Lord. Br. Garde. pl. 110. cites P. N. B.

10. If the Tenant makes a Feoffment and dies without Notice given to the Lord of such Feoffment, yet the Lord shall not have the Ward of the Heir of the Feoffor. Br. Avowry. pl. 15. cites 34 H. 6. 46. per Moyle.

(F) What Estate will draw a Wardship for a Collateral Respect.

1. If a Man leaves for Life and dies, his Heir shall be in Ward, as to his Body; For the Reverlion is held of the Lord. 23 Eliz.

2. 96.
2. So if a Serf gives in Tail, and afterwards dies, his Heir shall be in Ward, as to his Body; for the Donor is Tenant to the Lord.

(G) Wardship by Priority. What shall be said Priority.

1. If a Serf purchase Land, which is held by Knight's Service, of one Lord, and afterwards purchase other Land held of another Lord by Knight's Service, he holds by Priority of him, of whom the Land, which he first bought was held; for the Priority goes according to the Purchase of the Tenancy, and not according to the Creation of the Tenure. *Fitz. Nat. 142, f. 29. C. 3, 46. b. 25. E. 3. Statute of Wards and Kestits.


3. If the Grandfather be seised of Divers Lands held by Service of Chivalry of divers Lords, and enfeoff the Father of the Land held of one A, who is one of the Lords, and afterwards dies, by which the Lands held of the other Lords, descend to the Father, and afterwards the Father dies, the Son shall be in Ward to A, for his Body; For the Father held by Priority of him by Force of the Purchase, and not of the others by Force of Defeint. 30. E. 3. 7.

4. If a Serf hold Lands of divers Lords, and dies, his Heir shall be in Ward for his Body to him of whom he held by Priority.


6. But he shall have only the Land held of himself in Ward. 1 B. 4. 2. b.

7. Cely que use of Land held by Priority, and of other Land held by Polteriety, before the Statute 27 H. 8, made a Pestciment of both to the Use of himself; the Priority shall hold in Use as it was before in the Land, and there shall not be an equality; because the first Use continued as in them Use. D. 28 H. 8. 11. 43. between Ld Ross and Cunningall, adjudged.

8. If there be Lord, Mesne and Tenant, and the Mesne holds by Priority, and the Tenant in a Writ of Mesne fore-judges the Mesne, by which the Polteriety is extirpt, and the Tenant holds of the Lord, by the same Services, by which the Mesne before held; in this Case, the Tenant shall hold by Priority; because the Stat. Wexfin. 2, which gives the Fore-judges, provides, that he shall hold by the same Services and Customs, and in this a Hummer may as be done fine Prejudicio alterius, but this will be a Prejudice to the Lord by Priority, if he should lose this Benefit. Co. *Plania Charta. 392.

If I hold of one by Priority, and of another by Polteriety, and fore-judge the Lord by Priority in Fees of Mesne; now the Lord by Polteriety shall have the Ward; for he has held longer of him than of the Lord Paramount, of whom he held the other Land by the Forejudger; per Shard, quad non fuit Nutamentum; for where the Seigniory does not remain, but another Seigniory, as here, (comes) by the Forejudger, or where the Seigniory is extirpt to a Mesni in one Part, and for other Part not; there this may alter and change Priority into Polteriety; For now he holds as Nuis of another Lord. Quad nota diversity inde bene. *Br. Gard. pl. 115. cites 23 E. 5, and Firth. Gard. 12.—But F. N. B. 145. (F) (334). If I do fore-judge the Mesne of whom I hold by Priority, &c. I shall hold by Priority of the Lord Paramount as I hold of the Mesne before, &c.—But bid 354 in the Notes there (b) this is denied to be Law; For when I fore-judge the Mesne, the Services due to the Mesne are gone, and I am become Tenant to the Lord de novo, so that I shall hold of the Lord by the Services of the Mesne, whereas if I ought to hold in Chivalry, and
9. This Priority holds not against the King, for he shall have the Ward of the Body, though the Tenant holds of him by Priori-

Queen purchased the Manor of which the Tenant held by Priority, and surrendered it to the King in Fee, and took Estate again of Term for Life, Remanded to the Prince in Fee; the Tenant died, his Heir within Age; the Lord by Priority seized the Ward, and the Queen brought Writ of Ward; and per Green, and the Opinion there, tho' the Queen be a Subject, yet the Priority of the Defendant is gone and de-
termined; For, by the Purchase of the Writ in Fee, the Priority of every Subject is extinct, and when it is extinct, it cannot revive against any Subject who shall have the Manor after; Quod non: For a Thing extinct cannot revive. Br. Garde. pl. 48. cites 24 E. 5. 63.

10. But the Alienee of the King of such Seigniory, by Priority shall not have the Ward of the Body, because the Prerogative passes not by Grant. 14 H. 4. 9 b.
11. So if the King alien the Seigniory by Priority to the Prince of Wales as Duke of Cornwall, and his Heirs Kings of Eng-
land, he shall not have the Prerogative; for he is only as a com-
12. But if the R. has a Ward, and grants it over during his Pri-

Br. Garde. pl. 38. cites S. C. ador-
13. If the Guardian by Priority never seizes the Body of the Ward, yet the Guardian by Priority, tho' he seize him, shall not have the value of his Marriages at full Age; for he hath no more Caule than any Stranger; For this belongs to the Guardian by Priority. 44 E. 3. 5 b. Curiae. 2 E. 2. Action on the Statut. 23. admit. 7 E. 2. Action on the Statut. 32.
14. If the King grants a Seigniory in Capite to the Queen for her Life, and afterwards a Ward happens, the Queen shall have Prerogative as the King himself would have had for the Rebellion, which is in the Crown. Stanford Prerogative. 10 b. 5 E. 3. 4.
15. If a Man holds Land in Ireland of a Lord there by Priority, and other Land in England of another Lord here by Prioritv, and dies in England, his Heir being here, and lived first by the Lord here, yet the Priority shall hold, and he shall be in Ward to the Lord in Ireland by the Priority. D. 7 E. 1. 6. Rot. 120.
16. If the Lord by Priority grants his Seigniory to a Stranger, and the Tenant attorns, this Grantee shall have Advantage of the Priority, as well as the Heir of the Grantor should have it, if it was defended to him; For the Grant of the Lord does not make Alteration of the Priority. Contra of the Grant of the Tenant, as appears supra; Quod nota, by Judgment in Fizh. Gard. 2. Br. Garde, pl. 116. cites 2 E. 2. and 3 E. 3. Fizh. Gard. 19. and there Temp. E. 1. 134. acc.
17. If Land descend to the Son of the Part of his Father, which is held but the Ye-

U n but
but the King shall have it if he holds of him in Capite, or otherwise.

Br. Garde, pl. 115, cites Old Nat. Bre.

And the same Land of Lord, which descends separely one after another by several Ancestors; For the Priority and Posteriority does not come in Debate but where both descend by one and the same Ancestor, and at one and the same Time; Contrary, where it descends by several Ancestors, and at several Times. Br. Garde, pl. 119, cites Old Nat. Bre.

If a Man holds two Acres of the King, and two Acres of a common Person, and two descend to the Heir general, and the other two to the Heir Male by Tait, or to the youngest as Heir in Borough English, which is founded by Office according to the Truth, the King shall not have the Land tailed or Borough English; For the Statute of Prerogativa Regis 3. quad Rex habebit Cittodium, &c. is not intended but where one is Heir to both Lands; and there the other shall have Outer le main cum Exitiibus. Br. Garde, pl. 95, cites 12 E. 4. 18.

\[\text{(H) Without Priority to diverse. Equality.}\]

1. Where there is no Priority of Tenure, but the Tenant comes to the Land held of several Lords by one Feoffment, he who first seizes the Ward shall have it. 44 E. 3. 15. 29 E. 3. 46. b. Britton 60. 169. b.

2. So if the Ward holds of them by Equality of Feoffment, tho' it was by several Feoffments, yet he who first seizes shall have him. 10 E. 6. 18. b. 18 E. 3. 29. b.

3. If the King comes to a Seigniory, of which the Tenant holds by Posteriority; the Posteriority is extint by this, and shall not be revived, tho' the King grants his Seigniory over. (It seems that then it shall be held by Equality.) 24 E. 3. 31. b.

\[\text{(I) What Person shall be in Ward in Respect of his Estate.}\]

If my very Tenant be diffeated and dies, I shall have the Ward of his Heir; and if the Diffeator dies, I shall have the Ward of his Heir also, if they be within Age; Per Fincham, which was denied. Br. Garde, pl. 42. cites 15 E. 4. 10.


S. C. but Brooke refers to Tit. Etcheate. Ibid. Where he says there are three Cases, that the Right may efcheat; as if the Diffeator dies without Heir, the Lord may enter for the Eftate, which, he says, proves that the Tenant remains Tenant to the Avowry, and consequently his Heir shall be in Ward. — See Br. Etcheate, pl. 5. S. P. But if the Diffeator dies, or aliens, the Lord cannot enter upon the Heir dies; H. 4. 17.
3. If Difcorle die feiled, his Heir being within Age, by which he is in Ward, and afterwurd Difcorle dies, his Heir being within Age, he shall not be in Ward; because, by the Dehcent to the Heir of the Difcorle, he is Tenant to the Lord.

4. If Tenant in Tail be attainted of Felony or Treason, yet his Issue shall be in Ward; For this descends to the Issue per Person.

5. If the Tenant makes Feoffment on Condition, and the Feoff for dies, and afterwars it is broken, and the Heir of the Feoffor, being within Age, enter for the Condition broken, he shall be in Ward, because the Condition restores him to the Land in Nature of a Dehcent. Co. Litt. 76. b.

6. So if the Heir recover in a * Dumb non sui Compos Mensis, or former Dehcent or Remainder, he shall be in Ward; For here a Right descends to him, and then he is restored also to the Possession, and being within Age he shall be in Ward. Co. Litt. 76. b.

7. So if there be Tenant in Tail Remainder in Fee, and the Tenant in Tail makes Feoffment in Fee, and dies, and Feoffee enfeoffs the Issue in Tail within Age, by which he is remitted, he shall be in Ward. Co. Litt. 76. b.

the Tenant in Tail dies, his Heir within Age, he shall be in Ward, and yet there is no Tenant; For he, being made in Fee, is not the Issue in Fee, and the Feoffor, being within Age, enters for the Issue, and the Heir of the Issue, by the conditions of his Feoffment, does not have the Issue in Fee.

8. If A. gives Land to B. in Tail, and B. makes Feoffment in Fee, and dies, and his Issue being within Age, he shall be in Ward to the Donor; because he is Tenant in Right to him, and Feoffor is not Tenant in Deced to him, for he cannot leave upon him. Co. Litt. 77. 4 H. 6. 21. Square. 21 E. 3. 33. in Case of the King.

9. But if there be Tenant in Tail, Remainder in Fee, and the Tenant in Tail makes Feoffment in Fee, and dies, his Issue being within Age, he shall not be in Ward to the Lord, because the Feoffor is Tenant in Deced to him, and he may leave upon him, and there is no Priority between the Lord and the Issue, the Issue being made by another, and not by the Lord. Contra Co. Litt. 76. b.

10. The Heir of the Feoffor of Tenant in Tail shall not be in Ward to the Donor, but to the Lord Paramount; because he is Tenant in Deced to him. Co. Litt. 77. Contra 48 E. 3. 3. 8. b.

11. All Lands in Gavelkind are held in Socage, and not in Chivalry, and therefore the Heir shall not be in Ward for these Lands. Br. Garde, pl. 92. cites 9 E. 3. & Fitz. Prescription. 63.

12. Estate was made by Fine to A. B. for Term of Life, the Remainder to C. and D. his Feme in Tail, the Remainder to the Right Heirs of the Baron, to hold of the Chief Lord; the Baron and Feme have Issue and die, and after the Tenant for Life dies; the Lord shall have the Ward of the Issue; for tho' he is the first in whom the Land vested, yet it vested in him by Dehcent of the Remainder, and therefore he is no Purchaser, and so he shall be in Ward. Br. Garde, pl. 51. cites 24 E. 3. 33.

13. If a Man leaves for Life, the Remainder over to Fee, and he in Re; But if a Man leaves, his Heir within Age, his Heir shall not be in Ward; But leaves for Life, Central if the Tenant for Life, who was Tenant to the Lord, dies; For there the Heir has the Remainder and Land by Dehcent. Quod Vide in the Writ of Ejectment of Ward in old Nat. Brev. Br. Garde, pl. 113. within Age, he shall be in Ward in the Life of the Tenant for Life; For he in Remainder is an immediate Tenant. Contra of him in Remainder living the Tenant for Life. Br. Garde, pl. 115. cites Old Nat. Brev.

14. If the Father had lefted to his Son for Life and died, and the Fee Br. Estate, pl. had defended to him, so that the Frankenement was extinct, yet he 15. cites S. should

C. per Pigt and 'Choke.

Garde, pl. 53. cites 9 E. 4. 18.

15. If the Heir within Age recovers by Writ of Entry for Difficult, he shall be in Ward; For he is as if his Ancestor had died seised, and he is in by Decent; and the same Law if the Heir within Age recovers by Writ of Coinage. Br. Garde, pl. 42. cites 15 E. 4. 10. per Browne.

16. If the King's Tenant aliens in Fee without Licence and dies, his Issue within Age, yet he shall not be in Ward; because nothing is descended to him. Br. Garde, pl. 85. cites 26 H. 8.

And the same Law where a Man gives in Tail, the Remainder to the right Heirs of the Feoffor, the Feoffor's Heir dies, and W. died without Issue, the right Heir of the Feoffor within Age, he shall be in Ward for the Fee descended; For the Ufe of the Fee Simple was never out of the Feoffor. Br. Garde, pl. 93. cites P. 32. H. 8.

17. A Man made a Feoffment before the Statute of executing of Uses to the Ufe of himself for Life, the Remainder to W. in Tail, the Remainder to the right Heirs of the Feoffor, the Feoffor's Heir dies, and W. died without Issue, the right Heir of the Feoffor within Age, he shall be in Ward for the Fee descended; For the Ufe of the Fee Simple was never out of the Feoffor.

Ibid.—Contra, Where a Man makes a Feoffment in Fee, upon Condition to re-settle him, and the Feoffor gives to the Feoffor for Life, the Remainder over in Tail, the Remainder to the right Heirs of the Feoffor; For there the Fee and the Ufe of it was out of the Feoffor, and therefore in both Cases he has a Remainder and not a Reversion. Ibid.

18. Tenant by Knight's Service makes a Gift in Tail to hold of him by Knight's Service; the Donor died, his Heir within Age, the Donor dies, and his Reversion descends upon that Heir. The Heir, as to the Land, shall not be in Ward to the Lord by Knight's Service; For the Reversion only was held of him. Jenk. 267. pl. 78.

It was said at the Bar, that one might be a Ward in So- cage, tho' he be in by Purch- ase; because Guardian in So- cage is to have no Pro- fit, but is a Curator only to do all for the Ward's Benefit; and so there needs no Decent, or necessity in Case of a Ward in Chivalry; For that being in Respect of the Tenure, the Guardian is to have Profit. 2 Mod. 177. in S. C.

(K) What Person shall be in Ward.

1. If A. levy a Fine Executory (as for Grant and Render) to B. and his Heirs, and he grants and renders this to A. in Fee, and afterwards A. dies before Execution, his Heir being within Age, he shall not be in Ward; because his Ancestor was never Tenant to the Lord. Co. Litt. 76. b.

3. If Cestus que uis, before the Statute 27 H. 8. had died, his Heir being within Age, his Heir would have been in Ward, by the Statute of 4 H. 7. and if the Heir of the Feoffor had died, his Heir being within Age, he should be also in Ward by the Common Law. Co. Litt. 76 b.

(L) In what Cases one shall be in Ward, for a Collateral Respect.

1. If there be Lord and Feme Tenant, and the Feme makes Feoffment in Fee upon Condition, and afterwards takes the Lord to Baron, and they have Male a Son, and the Feme dies, the Son enters for the Condition broken, the Lord enters into the Land as Guardian in Chivalry, and makes his Executor and dies: In this Case the Executor shall have the Ward of the Land, but not of the Body; for in Judgment of Law, the Lord had the Ward of the Body as Father, and not as Guardian; For Nature is to be preferred. Co. Litt. 84 b.

2. A Feme Tenant takes an Alien to Baron, and hath Male, and the Feme dies; the Male shall be in Ward, and the Father shall not have the Custody of him, because in Law, he is not his Heir apparent. Co. Litt. 84 b.

(M) What Act or Thing will bar a Man of the Ward.

1. If my Tenant by Knight's Service die, his Heir being within Age, and I accept the Services of him, (which are afterwards due) as of my Tenant of full Age, I cannot afterwards take him for my Ward; inasmuch as I have accepted him for my Tenants Temp. 1 E. 1. Age. 119. adjudged.

2. If the Lord render the Land to his Ward, as full of Age, he cannot take him for his Ward afterwards. Temp. E. 1. Age 119. per Berr.

3. The Son, who was in Ward, was a Knight in the Life of his Father, and yet was in Ward by the Death of his Father; For it seems that the Statute of Magna Charta cap. 3. so nevertheless, if the Heir within Age be made a Knight, yet the Land shall remain in the Hand of the Lord till he be come to his full Age, is intended where he is made a Knight within Age, and in Ward after the Death of the Ancestor, and not where he is made Knight in the Life of the Ancestor; For then, by Covin of the Ancestor, he may be made Knight in the Life of the Ancestor to defraud the Lord of his Ward, which shall not be suffered. And so it happened in the Case of Sir Anthony Brown. 2 E. 6. and to see a Diversity, where he is made Knight within Age in the Life of the Ancestor, and where he is made Knight within Age after the Death of the Ancestor. Br. Garde, pl. 42. cites 15 E. 4. 10.

X x

(N) How
(N) How long a Man shall be in Ward. [for a Collateral Respect.]

1. If A. the Tenant make Feoffment in Fee to the Use of B. and his Heirs, 'till A. pays 100 l. at such a Day and Place, and afterwards B. dies, his Heir within Age, by which he is in Ward; if A. pays the 100 l. at the Day and Place, the Lord shall lose the Ward of the Body and Land, and shall be debted of it; for he cannot have a more absolute Estate in the Ward, than the Ward hath in the Land. Co. Litt. 76 b.

2. If the Conouer of a Fine Executory die his Heir being within Age, the Lord shall have the Ward of the Body and Land; but if the Conouer enter, this shall be debted; For the Heir of the Conouer by this shall lose the Land. Co. Litt. 76 b.

3. If the Heir of the Diffleree be in Ward, and afterwards the Diffleree dies lefled his Heir being within Age, by which he is in Ward also, yet it seems that this shall not debte the Wardship of the Heir of the Diffleree, tho', by the Defrent to the Heir of the Diffleree, he become Tenant to the Lord. Dibutatire. Co. Litt. 76 b.

4. If the King make his Ward within Age (after the Death of his Father) a Knight, this puts him out of Ward for his Land and Body for the Time afterwards; For by making him a Knight, the King allowed him to be of full Age, so that for the Time to come, the Wardship is to cease, and consequently the Profits, and he is to have his Livery immediately; but the King is to have the Value of the Marriage, and the Profits before well received, because they were vested in the King before. Hobbart’s Reports. 64. 125. Buckingh’s Cale.

5. J. M. Committee of the Mayor and Aldermen of London, brought Ravihment of Ward of one W. N. Orphan of London, and counted upon the Cafflon, and that the Mayor, Aldermen and Chamberlain, ought to make Disposition of Orphans and of their Goods and Tenements, ’till their Age, &c. and there ’tis agreed, that they should have the Infant and his Land ’till his Age, and that then they should render an Account thereof, and that the Mayor and the Aldermen should adjudge his Age, and that he shall be in their Ward ’till his Age be adjudge, tho’ be be of the Age of 30 Years; and if the Mayor and Aldermen delay to adjudge his Age, a Writ shall come to them out of the Chancery, commanding them to adjudge. Br. Ravihment de Garde. pl. 32. cites 32 E. 3. and Fitzh. Garde 31.

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(N. 2) Guardian. The several Sorts.

* 3 Rep. 32. I. In the Law of England there are three Sorts of Guardianship, viz. by Common Law, by Statute, and by Caution. By the Common Law there are * four Sorts of Guardians, viz.

* But by the 12 Car. 2. 22. All Trustees by Knight Service, or Captain and
Wardship of the Land 'till thirteen, to render convenient Marriage to her without Disparagement. Co. Litt. 74. b. 75. s. 8. 123.

Sauce in

Galph (together with all charges incident thereto, as Homage, Liberty, Prison Seisin, Wardship, &c.) are taken away and are turned into free and common Sauce—This Sort of Guardianship was a Sort of Dominions of Matters over Servants and Vassals, and was introduced among the German Nations to breed them to Arms; but, being a great Burthen upon the People, is fallen now with the Tenures. Parch. 3 Geo. 1. Eq. B. 1. 132. E. of Shalfsbury v. Shalfsbury. The taking away the Tenures and Disolution of the Court of Ward, was attempted in Parliament 18 Jac. but without Effect. 4 Init. 202.

2dly. Guardian by * Nature, as the Father is of his Eldest Son. Co. * The Fa. Litt. 88. b.—'Till he comes to the Age of twenty one Years. But that their has the is with Respect to the Custody of the Body only. Per Holt Ch. J. Trin. Wardship of 8 Will 3. Carch. 396. The King v. Thorpe.—But not of his younger Son John Children. The true Reason of which is, that by our Law they cannot take any Interest in him. Ibid.—5 Mod. 224. S. C. Elii. 3 Rep. 59. b. Ratcliiff's Case.—Of his Heir apparent. Litt. S. 114.—Which Words include the Daughter for long as the continues Heir apparent. Co. Litt. 84. a.—Br. Gard. pl. 6.—Reol3 v. And. 202. Gore's Case.—But not after the Birth of a Son For then he is Heir apparent and not the Daughter. Parch. 40 & 87. pl. in the Court of Wards. 8 Rep. 22. S. C.—Nor does it extend to any Curatorial Heir; For the Trustees or Raisalment of Ward lay for any Ancestor, Male or Female, against a Stranger who tortiously takes away an Heir apparent, (whether Male or Female, and of what Age former the Heir be:) yet none but the Father could maintain it against the Guardian in Chivalry, viz. the Lord of whom the Land is held in Chivalry. Co. Litt. 84. a.—3 Rep. 38. b. Ratcliiff's Case.—So if the Father was Tenant by Knight Service of Lands in English, he should not have the Custody of his youngest Son, because it was possible he might have a Younger. Arg: 3 Rep. 38. Ratcliiff's Case.—Per. Gard. Arg. Mo. 739. Gore's Case.—6 Rep. 22. a. S. C.—And none can be said to be Heir in English to his Father so long as his Father lives; per Jones and Crokes. J. Hill. 9 Car. Cro. 412. Reev. v. Maitter.—So if the Father be an alien, or attainted, he shall not have the Custody of his Son, because in the Eye of the Law, he is not his Heir apparent. Co. Litt. 84. b.—Eriv Causa Projuncta, etc. Fau. * Litt. servers Legitimaus ut Extradores. Fleta lib. 1 cap. 9. S. b.—The Father of a Dower Child, to whom the Mother left a good Estate, was on Application to the Court, appointed Guardian, preferable to others of the Mother's Relations. Mich. 11 Geo. 9 Mod. 116. Ord v. Blackett.—The Mother might have the Custody of her Son or Daughter Heir apparent against a Defender, but not against a Guardian in Chivalry, as the Father should. P. N. B. 143. (G) in Notis. at (c) cites 9 E. 4. 53. and 3 Rep. 38. b. Ratcliiff's Case.—Co. Litt. 84. b.

If a Person had a double Title to the Custody of his Son, the one as Lord, the other as Father; yet in Judgment of Law, he should have it as Father; For that Title was immediately vested in him by the Birth of a Son, and, being in respect of Nature, was Prior to any Wardship in respect of Signory, and is inseparable from his Person, and therefore cannot be divided in order to claim the Custody by the other Title of Lord. Co. Litt. 84. b.—3 Rep. 39.

3dly. Guardian in * Sauce is where Tenant in Sauce dies, his Issue, * vid. (O) whether Male or Female, (or if no Issue, his Brother or Cousin) being under the Age of fourteen; the next of the Blood, to whom the Inheritance cannot descend, shall have the Wardship of the Land and Body, 'till the Age of fourteen Years. Co. Litt. 87. b. S. 123.


but the Father or Mother. But such Guardian may deliver the Infant to another for Education, and take him back when he pleases. And tho' he grants over the Ward, yet he may retake him; per a. J. But per a. J. the Grant is good against the Guardian; yet the Infant may choose whether he will stay with the Granter. Br. Gard. pl. 70. cites 8 E. 4. 7.—This Guardianship continues 'till the Age of Discretion, viz. 14 Years, whether the Infant be Male or Female. Ibid.

2. By the Statute * 4 & 5 Ph. M. a Guardianship is appointed of Fe- * It was nul Children, in two Manners; either of the * Father or Mother with- our Affignation, or of any other to whom the Father shall appoint the Cus- tody, either by Iatt Will, or by any Act in his Life time. Co. Litt. 88. b.

5thly, Guardian by * Nature. * None can be Guardian by Nature but the Father or Mother. But such Guardian may deliver the Infant to another for Education, and take him back when he pleases. And tho' he grants over the Ward, yet he may retake him; per a. J. But per a. J. the Grant is good against the Guardian; yet the Infant may choose whether he will stay with the Granter. Br. Gard. pl. 70. cites 8 E. 4. 7.—This Guardianship continues 'till the Age of Discretion, viz. 14 Years, whether the Infant be Male or Female. Ibid.

3. By
(N. 3) Who may be appointed Guardian, and by whom, and what shall be an Appointment within 12 Car. 2. cap. 24.

* The Intent of this Stat.

tute is to pri-
c. ent the Fa-
ther against
common
Right to ap-
point the
Guardian of
his Heir, but
knows the
Heirs of all
other Ances-
tors in So-
cage; see
above.

1. 12 Car. 2. E
Nacts that Where any Person hath, or shall have any
Child or Children under the Age of twenty one Years
and not arrived at the Time of his Death, it shall be lawful for the * Father of
such Child or Children, whether born at the Time of the Death of the Fa-
ther, or at any Time in Centuries, or whether the Father be * within the
Age of twenty one, or of full Age by Deed executed in his Life time, or
by Will in Writing in the Presence of two or more Witnefses, in such Manner,
and from Time to Time as he shall think fit, to dispose of the Custody and
Tutition of such Child or Children, till the Age of ** twenty one Years, or
† any lesser Time to any Person in Possession or Remainder, other than ‡ ·
Papists Recusants.

2. 10. Provided that this Act shall not extend to alter or prejudice the Cus-
tody within the City of London, or of any other City or Town Corporate, or of the
Town of Berwick upon Tweed, concerning Orphans, or to discharge any Appren-
tices from his Apprenticeship.

C. B. Vaughan.
179. In Cafe
of Bedel v. Confable.—The Words of the Act authorize only the Father to appoint a Guardian, and
therefore tho' the Mother has the same Concern for her Heir as the Father, yet she cannot by the Act
name a Guardian. Ibid.—And as by the Words of the Statute, the Father only can appoint a Guardian,
so the Guardian appointed by him cannot appoint another Guardian; For it is a Personal Trufi and not
affordable, any more than ‡ Guardianship in Socage. Besides the Father is restrained from giving it
to a Papist, but if transferable by the Father appoints, it may come to a Papist against the
meaning of the Act. Vaughan 179, 180.—Trin. 9 Geo. in Can. 9 Mod. 42. Reynolds v. Lady
Tenham.— cites Duke of Beauford's Cafe.—Mich. 29 Car. 2. 2 Ch. Cafes 25; Foller v. Denison.—
‡ Guardian in Socage granted the Wardship to a Stranger, and that Grant awarded good. F. N. B.
143; (9).

At common Law before the Act, the Father, Tenant in Socage, could dispose of the Custody of his
Heir; for the Law gave it to the next of Kin, to whom the Land could not descend, and the Father
had not such an Interest in it as to grant it over, but it was infebrably annexed to his Perfon. Per
Vaughan Ch. J. Vaughan 178, 180.— cités Ld Bray's Cafe.— At common Law the Father could not
appoint a Guardian, whether Tenant in Chivalry or in Socage. Patch. 8 Geo. 1. G. Eq. R. 1.6. E.
of Abingdon v. Shutfbury.

‡ By this Statute, Tenant in Socage, under Age, may grant the Custody of his Heir, but he cannot de-
mand or devise his Land in Trust for him directly; For then the Land would (as in other Cafes of Leaes
for Years) go to the Representative of the Father's Nomime, and consequently the Trust follow the
Land. But yet he may do it obliquely; For by appointing the Custody, the Land follows as an Incident
given by the Law to attend it, not as an Interest devised or demifed by the Party. As where there is
Land belonging to an Office, it shall pass as Incident by Grant of the Office without Livery, because the
Office is the Principal, and the Land but pertaining to it; per Vaughan Ch. J. Vaughan 178; in Cafe of
Bedel v. Confable.

‡ A Guardianship was given by the Infant's Father to J. S. by Deed and to the Mother by Wills. The
Hannam.— The Spiritual Court cannot prove a Will concerning the Guardianship of a Child, being a
Thing Confable here, and to be judged whether it be devised purfuant to the Statute, and a Prohi-
bition was granted. Patch. 24 Car. 2. B. R. Vent. 207; Lady Chelfer's Cafe.

If A Man died on his Death Bed that he expfrd his Father would take Care to see his, (meaning the
dying Man's Child educated a Protestant. This was held a good Appointment, to make the Grand-
father Guardian. In Domm. 1. Trin. 9 Geo. Mod. 42. Lady Tenham's Cafe.— If the Father de-
viles his Land to J. S. during the Minority of his Son and Heir, in Trust for him, and for his Maintenance
and Education, 'till he be of Age, this is no Devise of the Custody within this Statute; per Vaughan
Ch. J. Vaughan 184, in Cafe of Bedel v. Confable.— And as a Leafe devis'd shall not operate into a
Custody, in the Custody devis'd shall not operate into a Lease. Ibid.

* * The Guardianship at Common Law, before the Statute, was only to the Age of 14. Vaughan 179—
Co. Litt. 89. a.—By Custum of Kent now, and by the old Common Law, it was 'till 15. Robinson
of Garn. 153.

† † If one devises the Custody of his Heir apparent to J. S. and no Time is mentioned, yet it is a
good Devise of the Custody within the Act, if the Heir be under fourteen at the Death of the Father.
Because by the Devise, the Modus Habendi Custodiam is charged only as to the Person, and left
the
the same as to the Time. But if the Heir be above fourteen, then the Devise is said for the uncertainty. For the Act did not intend every Heir should be in Custody till twenty one, but so long as the Father appoints not exceeding that Time, and if he appoints no time, there is no Custody devolved: For if the Father might intend as well any Time under that, there is no Reason to say, he only intended that; per Vaughan Ch. J. Vaugh. 184, 185. in Case of Bedel v. Contable.

If the Guardian appointed was 'justified to be a Paisif, and to intend the Removing the Infant out of the Kingdom, it was therefore decreed, that the Infant should continue with her 'till such a Time; by which Time she was to produce a Certificate of her having received the Sacrament, and to enter into a Recognizance of 1000l. not willingly to permit the Infant to be sent beyond Sea, nor to be married without leave of the Court, and then to be protected. Mich. 29 Car. 2. Fin. R. 353. E. of Shaftesbury &c. v. Hanman.

Where the Law appoints who shall be trusted; as in the several Guardianships in Common Law, the Trust cannot be refused, but where the Party Names the Trustee, as under the Statute, it may be refused; per Vaughan Ch. J. Vaugh. 182. Bedel v. Contable.

(N. 4) Guardian. Who shall be upon the Death, &c. of the former.

1. If Tenant of a Bishop dies, his Heir within Age, and the Bishop dies before Seisure, the Successor may seize him, and after have Write of Ravishment of Ward of him, if any takes him. And it was said by some, that the Successor may have Write of Ward of him; quod quære. Br. Ravishment de Gard. pl. 7, cites 2 H. 4, 19.

2. Where the King is poffesled of Land in Ward, and dies; it shall descend to the new King, and not to the Executor. Br. Livery. pl. 16. cites 7 H. 4, 41.

3. Ravishment of Ward was brought by Executors, where the Testator was poffesled, and the Defendant ravished him. The Defendant fays, that he held in Seigniory, and not in Conivality, and he took him for Cause of Nurture, and it was found for the Plaintiff, to the Damage of 200l. It was debated whether the Heir shall have the Ward or the Executors; For the Statute of Wmsminster 2, 35, which gives the Write of Ravishment of Ward, entails that If the Plaintiff die before the Plea determined, if the Right belong to him by Reafon of his proper Fee, the Plea shall be remitted in the Time of the Heir of the Plaintiff, and the Plea shall pass in due Order. But the Testator took Action; therefore no Restitution can be sued, whereas he was awarded that the Parties should recover their Damages, &c. and Hill fays, that the Makers of the Statute were not apprized in the Law. The Reafon seems to be, because a Ward is a Chattel, and appertain to the Executors. And Ravishment of Ward lies without Annual Seigny of the Heir; For it is transitory, &c. Br. Ravishment de Garde. pl. 12. cites 11 H. 4, 54.

4. But it is faid elsewhere, that the Heir never shall borne the Ward fallen in the Time of the Aector, unless the Aector took a Write of Right of Ward in his Life; For this is a real Action, which may defend; and the Antec tor was out of Polemic. Br. Ravishment de Gard. pl. 12. cites 11 H. 4, 54.


1722 in Case of Eyre v. Lady Shalshbury. — * So of Guardianship by Nature, it being 'feparable from the Parton. Hill. 34 Eliz. 3 Rep. 39. a. Ratef's Cafes. — Mich. 7 Jac. B. R. 90. 99. Shoplone v. Rogers. — 2 Inf. 260. — Co. Litt. 90 a. — It determines with the Death of the Guardian, there being an implied Condition, viz. if he live to live, it is not in it's Nature Testamentary, as it cannot pay Debits or Legacies, nor is accountable to the Ordinary, as Interests Goods are. And tho' it is an Interest, it is joined with his Traif for his Ward, and not for himself, which it muff be in Order to be transferable, or go to Executors. And if transferrable to Executors or Administrators, it may by this Means come to a Poif, against the Meaning of the Statute 12 Car. 2, 24, which prohibits the Father from giving it to fuch a one; per Vaughan Ch. J. Trin. 16 Car. 2. C. B. Vaugh. 180. &c. Bedel v. Contable. — Nor can it be forfeited by Outlawry or Allainder. Co. Litt. 84. b. — Br. Gard. Y y pl. 6.
6. A surrendered to the Lord, to the Intent that the Lord should grant back again to him for Life, Remainder to his Wife "till his Son come to twenty one," Remainder to the Son in Tail, the Remainder to Wife for Life, Remainder over. Before the Grant was made A. died; then the Lord granted as above. Afterwards the same took Baron and died Intestate. The Baron kept Possession. The Lord granted the Lands during the Nonage to the Administrator of the Wife, who entered upon the Baron; but his Entry was adjudged unlawful; for the Wife’s Interest, being a Term by the Death of the Wife vested in the Baron by the Law of the Land, unless a particular Custom be pleaded to the contrary. But otherwise it would have been, if the Wife had been only a Guardian or Prochein Any of the Land. Hill. 8 Eliz. Dy. 251. a. pl. 90. Anon.

7. The Lord Bray granted the Cafady, Rule, Order, Government and Marriage of his Son and Heir apparent to A. B. C. and D. and also levied a Fine of certain Lands, to hold to them, and the Survivor of them and their Allies, "till his Age of twenty one for the Maintenance of him, and such Wife as he shall marry by their Appointment, Remainder to his said Son, &c. A. died before the Appointment of any Marriage, and it was held by three Judges, that there could be no Surviviorship; and that by the Death of A. the Authority of the rest was determined. But two Judges Contra, held that an Intercess passed to them, which therefore further the Status of the vived. Mich. 2 & 3 Eliz. Dy. 189. Lord Bray’s Cafe.

M. and one of them dies, it will not survive, it being a naked Authority, to a special Purposo, viz. to make the Rivalry Criminal. But a Testamentary Guardian under 12 Car. 2. 24. has not a naked Authority, but, being made after the Manner of a Guardian in Socage, has an Intercess, which, tho’ it be neither assignable nor transferable, is yet such an Intercess as shall survive. Q. Eqn. R. 176. 177. Parch. 8 Geo. I. of Shaftesbury v. Shaftesbury—And, were it an Authority only, it must be construed joint and several, &c. the more Guardians are appointed for the Security of an Infant, the less secure he would be; because upon the Death of any one of them the Guardianship would be at an End. Ibid. 175. The Cafe of a Guardian is compared to that of an Executor, which it is not assignable, but yet survives, &c. Lords Commissioners. 2 Wms. Rep. 121. cites Vaugh. 128. Gardiner v. Sheldon.

And the Guardian shall not be in all Respects to be compared to an Executor, in regard the latter may continue his Executorship by appointing an Executor by his Will, yet the Cafe of a Guardianship decided to two is strictly like the Cafe of an Administration granted to two, (especially where the Debits amount to as much as the Estate;) For in that Cafe, as well as in the Cafe of two Guardians, an Administrator cannot assign his Administratorship. It will not go to his Executors or Administrators, but to the surviving Administrator. Such Administrator is accountable to the Creditor for everything as much as the Guardian is to the Infant, and he can make no Profit. Ibid. 121. 122.

This Cafe is upon the Clause of the Statute of 4 & 5 Ph. & M. 4. ‘that whoever marries a Dam. is unmerry, and under fourteen out of the Custody of the Father or Mother, or such to whom the Father in his Life-time, or by his Will, or by any Act in his Life-time, has appointed the same, shall suffer 2 Years Imprisonment, or be fined as the Court shall appoint.’ So that by that Act, 4. to this special Purposo, the Father might by Will or Deed appoint the Custody of his Daughter, but such Appointment had not the like Intercett as a Guardian, but only a bare Authority. Hill. 172. 2 Wms. Rep. 122. 123. per Lords Commissioners. —1 2 Wms. Rep. 121. S. C. and P. Per for Per Li. Macpherson, each of them seems to be a complete Guardian. Eyre v. Counts of Shaftesbury.

S. P. per Lords Commissioners. Ibid. 121.
(N. 5) What the *Infant* may do *without* a *Guardian.*

1. **O** ne cannot answer for an Infant as Guardian in Chancery or any other Court unless assigned Guardian by the Court; therefore, in Order to sue an Infant, one must move the Court to assign him a Guardian. But an Infant may sue by Prochein Amy, tho' his Prochein Amy cannot answer for him. Per Roll Ch. J. Patch. 1653, B. R. Sti. 369. Anon.

2. In an *Appeal of Murder* there needs no Guardian; *till the Writ is returnable.* For 'till then, there is no Body in Law, whose Writ it is but the Infant, and any Body may sue out the Writ for him, as well as enter upon a Derelict for him; and the Use of a Guardian is to pursue it when it is before the Court. 12 Mod. 374, 375. Patch. 12 W. 3. in Cafe of Stout v. Towler.

(N. 6) Affixed or appointed by the Court. Who may be, and in what Cases.

1. **T** he King by Letters Patent may make a general Guardian for an Infant, to answer for him in all Actions, or two or three Guardians jointly or severally, or he may grant that those Guardians may make other Guardians jointly or severally to sue or defend in all Actions. F. N. B. 27. (L).


3. The Court will not admit any one as Guardian, but such as shall be *Responsible* to the Infant for any Loss he may suffer by his Misl-pleading. Mich. 6 Car. B. R. Cro. C. 307. E. of Newport v. Mildmay. —Br. Gard. pl. 15.

4. The D. of Ormond, being appointed Guardian, was *attainted,* and so *But he* was becoming incapable, another was appointed by Act of Parliament, it not being to be done by any *other* Power; per Cur. Trin. 9 Geo. in Cave. 9 Mod. 42, in Cafe of Reynolds v. Lady Teynham. —cites it as the Duke of Beaufort's Cafe.

5. A Guardian may be made by *Writ out of Chancery* ; per Doderidge *The Court* J. Palm. 232. —cites 9 E. 4. 34. b. —Either one or more Guardians of Wards and Livery, with respect to Infants and Ideots, were taken out of the Court of Chancery, and transferred in some Measure to that; But by the Dissolution of that Court return'd to Chancery again. 3 Ch. Cafes. 136. S. C. —S. C. cited Hill. 12 Geo. 2 B. R. in Cafe of the King v. Bennet (alias Lt Offalton) & al. —The Court of Chancery has an Original Jurisdiction of the Right of Guardianship; per Gilbert Lt Commissioner. Hill 1722. Wms's Rep. 125. in Cafe of Eyer v. Lady Shaftesbury. —At the common Law, before the Statute 52 H. 8. (by which the Court of Wards and Liveries were erected), the Lt Chancellor was the sole Judge of Wards.
Warships, unless where they were lucrative to the Crown; for there the Lord Treasurer had a concurrent jurisdiction with him; but where they were only for the benefit of the Ward, the Chancellor alone had the Disposition and Management. Therefore, as that Court is abolished, and all the old Tenures are turned into free and common Socage, all Warships, which are Beneficial for the Wards, must return to this Court as their original Fountain; so Well Chancellor in Ireland. Pach 11. Geo. in Can. 9. Mod. 126. Morgan v. Dillon.———The Right of Warship is determinate in the Court of Chancery. Pach 8 Geo. i. G. Eq. R. 172; 173. E of Shaftesbury v. Shaftesbury.

* The Father being not thought fit, the Court may allign a * Six Clerk as a Guardian to appear and answer. But per North K. how will that look in the Lords House, that an Infant Peer shall put the Defence of all his Eiate in a Six Clerk, who knows nothing, and cannot be informed by the Infant of his Estate? The Infant is not bound to answer till full Age. Yet the Contrary is done in Chancery. Offley v. Ten. 2 Ch. Cafes, 163, 164. Trim. 36 Car. 2. Anon.


(N. 7) Assigned or admitted. How.

In Writ a- gaiiiit a Guardian, a Prochein Amy was ad- mitted to sue though the Infant was not in Person; but they may do it, and it has been done. Per Hole Ch. J. Trim. 7 W. 3. B. R. Comb. 330. Read v. Waldron.———Upon a Motion, though he was not present in Court, nor any Affidavit made. Comb. 256. Pach. 6 W. & M. B. R. Anon.

In Writ a- gaiiiit a Guardian, a Prochein Amy was ad-

The Court said, they would not appoint a Guardian to the Heir for his Appearance in a Writ of Dower brought by the Widow in C. B. unless the Infant be in Court; and accordingly he was appointed to be brought into Court. Mich. 32 Eliz. C. B. 2 Le. 189. Bolwick v. Bolwick.———The Court seldom admits a Guardian, unless the Infant be there in Person; but they may do it, and it has been done. Per Hole Ch. J. Trim. 7 W. 3. B. R. Comb. 330. Read v. Waldron.———Upon a Motion, though he was not present in Court, nor any Affidavit made. Comb. 256. Pach. 6 W. & M. B. R. Anon.

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One may sue a Prochein Amy without a Warrant; For

One may sue an Infant as Guardian in Chancery, or any other Court, unless he is assigned Guardian by the Court. Per Roll Ch. J. S. 369. Pach. 1654. B. R. Anon.
3. A Guardian is always admitted before a Judge, and that Admission was admitted before a Judge, and an Entry
carried to the Clerk of the Rules, who enters the Rule ; But the Court
usually examines a Prochein Amy. Per Atr. Trim. 7 W. 3. B. R. Cambi.
331. Read v. Waldon.

4. Where the Custody of an Infant Heir is committed to a Person, the
Court of the Court is, that such Committee shall enter into a Recognizance
with two Sureties, conditioned not to permit or suffer the Infant to marry
without the Consent of the Court. Wms's. Rep. 698.

5. But a Committee, being a Person of a good Estate, the Court ordered
his own single Recognizance to be taken without Sureties. Wms's Rep.
698. Pach. 1721. Dr. Davis's Cafe

6. And upon the Dr's Petition to alter the Form of the Recognizance, because
the Form is, a Guardian without any Default in him, and from the
Rashness of the Infant only, might forfeit his Recognizance and be
undone, Parker C. contended thereto, though he said he should be very
tender of altering fettered Forms of Court to satisfy a capricious Humour,
but that this Cale differing from the common one, he directed it thus
(viz.) That the Infant shall not be married without Leave of the Court, by the
Consent, Privilege, or Conscience of the Committee. Wms's Rep. 698, 699
Pach. 1721. Dr. Davis's Cafe.

7. And Lord Chancellor said, that he had before made the like Alteration
in Lacy's Cafe. Ibid.

(N. 8) Who may be. In Case of Feme Covert Infant
Defendant.

1. A SSISE against a Man and his Wife, the Baron answered as Ten-
nant, and said, that his Feme was within Age, and was enfrangned,
and did not lay by whom, and pleaded in Barr for him and his Feme, as Guardian of his Feme; and the Opinion of Thorpe was, that he ought to have Warrant, by which the Alizae was awarded, because the Default of the Feme is the Default of the Baron and Feme; Quaere, if de Rigore of the Juris, and if it be the fame Law of the Baron and Feme as of others? Per Ald. The Statute gives, that Prochein Amy may sue for Infant if he be legitimat-
ed, and there is an equal Mischief if he be Tenant. Br. Garden, pl. 18.
cites 29 Alf. 67.

Z z (O) Guar-
Guardian in Socage; Who shall be Guardian.


2. He, who is next of Blood to the Infant, to whom the Inheritance cannot descend, shall be Guardian in Socage, and not he to whom it may descend; because there may be a *Suffocation of him; As if the Land descends of the Part of the Father, the next of Blood of the Part of the Father shall be Guardian; And so contra. 27 C. 3. 79. b.

Lord Mac-
clesfield said, that this Maxim is not grounded on Reason, but prevailed in barbarous Times, before the Nation was civiliz'd. See 2 Wms's Rep. 264. Mich. 1724. in Justice Dormer's Case. — * At common Law it was a good Object to remove a Guardian in Socage, on Account of a Remitter being limited to him, upon a Presumption that such a Guardian might destroy the Ward; But it is no Object, where a Parent is Guardian; For it would be a monarchical Presumption, that a Man would destroy his own Child to inherit his Estate. Per Well. Chanc. in Ireland. Patch. 11 Geo. in Can. 9 Mod. 142. Morgan v. Dillon.—— * By the Statute 28 E. 1. 1. the Wardship of an Heir that holds in Socage, if the Land or Inheritance descents of his Mother's Side, belongs to the next of Kin on the Fa-
ther's Side, &c. contra. —— This Law was taken up originally as a Rule of Reason in the Court of Chancery, and by Ulage became the Law of the Land; For according to the Civil Law, and all the foreign Feudalts, the Rule is, that he that has the Right of Succession has the Guardianship; And this Statute seems to only be an Affirmation of the Common Law. Patch. 8 Geo. 1. G. Eq. R. 172. E. of Shafsbury v. Shafsbury.

3. With this accords the Law of Scotland; Shene Regnam Inher-

tatem. 57. b. vers. 1. 2. 3. * The Party is excluded, not only where there is an immediate De-
fend, but where there is any Possi-

bility of Def-
fend. Co. Litt. 88. b.

* For the other cannot take the Cuf-
tody from him, unless he has a bet-
ter Right;

4. If a Man has more two Sons by several Venters, and having Land held in Socage, in Nature of Borough English, dies, the youngest being within the Age of 14, the eldest of the half Blood shall not be Guardian in Socage of the Land; Because by * Possi-

bility he may inherit the Land: For if the youngest dies without 15

from him, it will descend to the uncle, and from him may descend to the Eldst. Co. Litt. 88. b.

5. If any Land held in Socage descend of the Part of the Father to the In
diant, and other Land held in Socage descend to him of the Part of the Mother; he * who first takes shall be Guardian. 27 C. 3. 79. b. But Duree. This is as to the Body; But the Land shall be in Ward to him, to whom it cannot descend. Co. Litt. 88. c.


6. The *Brother of the half Blood shall be Guardian in Socage. 43 Eliz. Swan's Case.

* After the

Death of the

Mother, the

Brother of

the half Blood claimed the Wardship, and it was adjudged that it belonged to him, and *not the Child


S. C. —— But if the Mother had been living, (which did not appear by the Pleading) it was thought the Guardianship had belonged to her. 2 And 171. S. C. —— Gro. E. 824. Reports the Mother to be dead, and thereupon the Qeuestion arose; And there Whalmy and Kingmill J. held, that the Brother should be Guardian; For that he is nearest of Kin, to whom the Inheritance cannot descend. Brown, Anon.—Pl. C. 297. Carroll v. Cuddington. 2 Jo. 17. no Judgment. Sadler v. Duper.—Co. Litt. 83. b. Contra, because of the Possibility that the Elder may inherit by the Brother's dying without In-

fixe, and so the Land descend to the Uncle, and from him to the elder Brother of the half Blood. —— And if the Brother of the half Blood had been under 14 Years of Age, Quere. Mo. 935.

Treliffits by a Feml, quare N. Filliam & Harden from Rapput & Addavu; Per Cateby, the Father of more Right shall have the Ward of his Son or Daughter who is heir, but not the Mother Quere; for
7. If there are three Uncles in equal Degree, the Eldest shall be Guardian in Socage. Co. Litt. 88 b.

8. If Land be given in *Frank-marriage, and the Donees have If he and die, the Issue being within the Age of 14: The next of Blood of the Part of the Mother shall have the Custody of the Body, and not the next of Blood of the Part of the Father, though he first letters him; because the Mother was the Cause of the Off. Co. Litt. 88 c.

Part of the Father, (though he be more worthy) shall not be preferred before the next of Kin of the Part of the Mother, but the first that leaves the Heir shall have the Custody of him. Co. Litt. 84 a — 22 a. — For the Relation on both Sides are equal, and no Reason appears why either should be preferred; and he that first takes Care of the Heir shews himself most concerned for his Interest. Hawk. Abr. Co. Litt. p. 156. — But not if he be inheritable to the Donor's Receipt. Ibid. — As where upon Marriage Lands depending on the part of the Feme, were settled by Fine for Grant and Render in Tail special, Remainder in Fee to the right Heirs of the Feme, and Baron and Feme died leaving Issue under 14, it was resolved, that the Grandfather on the Part of the Father shall have the Custody preferable to the Grandmother on the Part of the Mother, (who had got Possession) For, though they were in equal Degree as to the Estate Tail, yet as to the Inheritance of the Fee simple, it could never by any Possibility defend to the Grandfather on the Father's Side, or any of his Blood, being Strangers to the Feme, from whom the Land moved; but on the other Hand, as the Land came from the Mother, and as the by the Feme became a Purchaser of the Fee Simple, theof of her Blood might inherit, and through them her Grandmother might by Possibility take, and therefore by Law was disabled to have the Guardianship. Mich. 7 & 8 Eliz. in the Court of Wards. Pl. C. 399 a. Carrif v. Cuddington. — Cited Ibid. 426 b. — For whereas an Infant was settled of an Estate Tail, with a Limitation in Remainder to the Grandfather on the Father's Side, it appearing there were divers Remainders between his and the Infant's Estate, the Court would not interpose in Favour of the Grandfather of the Mother's Side; to whom the Land could not descend. Cary's Rep. 157, 158. cites 20 Eliz. Sweetman v. Edge.

9. An Infant shall not be Guardian in Socage, because no Write of *Thir be he be not in Custody of another. Co. Litt. 88.

b. — Minor minorem Custodire non debet, alios enim feire praemunire male regere qui seipsum regere nefcit. Pleta lib. 1. cap. 11. § 5. — And for the same Reason an Idiot, Non Campus, Lunatick, or one Blind and Dumb, or Deaf and Dumb, or a Leper removed by Writ de Lepero Amovendo, cannot be Guardian in Socage. Co. Litt. 88 b.

10. If A be Guardian in *Socage of the Body and Land of B. *But one appointed within the Age of 14 Years, A. shall be Guardian in Socage by Caufe of Ward. Co. Litt. 88 d.

his Ward by nearest of Kin be Guardian to another Infant) shall not be Guardian of the second Infant by any Word of the Act; For he is neither an Heredimention, or Goods or Chattel of the first Infant; per Vaughan Ch. J. Vaughan. 184. Trin. 16 Car. 2. C. B. in Cafe of Bedel v. Cantilbe.

(O. 2) Guardian removed.

1. A Guardian appointed by the Court was removed on Motion, and An Infant another appointed on Inspection. Sti. 456. Trin. 1655. B. R.

2. An Infant non. may have a Writ out of Chancery, di-rected to the

3. Juffices, to remove his Guardian, and to receive another, and the Court at their Discretion may remove the Guardian and appoint another. F. N. B. 27. (M); — Br. Garden. pl. 21.

2. Si quis custos fraudem Popillo fecerit, a tutela Removendus est. Jenk. 39. pl. 75.

The Guardian married her Servant, and he dying, the married again, very narrowly; Upon which the Infant's Uncle sends him to a Protestant School abroad, and upon this a Homine Replegiando was found out; Per Finch. C. where there is a Guardianship by the Common Law, Chancery will intermeddle; But where it is by Act of Parliament I cannot remove him or her. Mich. 29. Car. 2. 2 Ch. Cafes 238. Fotter v. Dennis.

5. Since the Statute, which took away the Court of Wards, the Jurisdiction of Wardship returns to the Court of Chancery; and it appears by the Regjriter, 21. b. 198. that a Writ may issue out of this Court to remove the Guardian of an Infant, and put another in his stead; Per Lords Commissioners. 2 Wms. Rep. 119. Hill. 1722. in Cafe of Eyre v. Lady Shaitbury.

(P) Of what Things there shall be Guardian in Socage.

I. If a Copyholder defends to an Infant within the age of 14 Years, the next Friend, to whom the Land cannot descend, shall have the Custody of it, as well as of a Frank-tentenement, unless the Custody appoints it to any other. Y. 41 Eliz. 2. R. per Curtani, Egerton's Tale.

But if he holds any lands in socage, in that case the Guardian in socage shall take into his Custody, as well the rent-charge, &c., as the socage land, because he has the custody of the heir. Co. Litt. 57. b.

(P. 2) Guardian in Socage removed.

The Court of Chancery ought to take Care of Infants, and to their Education, and of their Estates, and to see the same preserved and secured for them. Per
to the legal Interest of Defendant, either as to the Custody of the Person, or the Management of the Estate. 22 Car. 2. N. Ch. R. 144. Hanbury v. 3. Car. 12. S. C.

2. A Guardian in Socage is purely for the Benefit of the Infant, and accountable to him, and removable by the Court of Chancery, upon any Misbehaviour, or obliged to give such Security to account as the Court thinks proper; Per Wilt C. in Ireland. Pat. 11 Geo. in Canc. 9 Mod. 141. Morgan v. Dillon.

3. As to a Guardian's being in loco Parentis, the Solicitor General took a Difference between a natural Parent and a Guardian; For that if the latter was for marrying a Ward under his Quality, it was most usual for Chancery to interpose; But not so in Case of a Father's endeavouring to marry his Infant Child to one beneath him; But Ld. C. Macclesfield said, that this Court would, and had interposed, even in the Case of a Father. As where the Child had an Estate, and the Father infiduous, and of an ill Character, would take the Profits, there the Court has appointed a Receiver. Trin. 1721. Wms. Rep. 725. where the Chancellor says it was so done in the Case of Kiffin v. Kimin.


1. By 13 E. 1. cap. 7. A Writ of Admesurement of Dower shall be Every Guardian to a Guardian, neither shall the Heir, when he cometh to full Age, be barred by the Suit of the Guardian, if be suit against the Tenant in Dower be jealously, and by Collusion, but that he may enforce the Dower after.


2. Guardian in Socage shall not forfeit the Coin upon the Land of the Heir by his Attainder, and yet he might have fold it if he had not been Attainted. Br. Forfeiture de terres, pl. 125. cites 6 E. 2. It. Ca.

3. In Quare impedit against Guardian, [if] the Plaintiff recovers, the Heir or Tenant of the Frank-tenement is not bound; For he is not Party to the Judgment; per Fulthorp; and so the Writ awarded good. Br. Baron and Feme, pl. 28. cites 50 E. 3. 13.


5. The Guardian shall forfeit his Office if the Deer be destroyed, and he shall account of the Profits of the Park; per Vavilor. Ibid.

6. The Guardian recovers in Debt upon Bond made to an Infant, the Defendant pays the Principal and Costs, and prays that the Guardian shall be ordered to acknowledge Satisfaction; the Court said that a Guardian, or an Infant, or an Executor, cannot acknowledge Satisfaction for more than they receive, and for so much they ordered the Guardian to acknowledge Satisfaction, and made an Order that no Execution should ever follow for the Redile. Trin. 14. Jac. Mo. 832. White v. Hall.

7. 12 Car. 2. cap. 24. 3. 9. Enacts that such Person, to whom Custody any Father shall dispose of his Child, or Children, may take into his Custody, * to the Use of such Child or Children, the Profits of all their Lands, Tenements, and Hereditaments, and also the Custody, Titution and Management of the Goods, Chattels, and personal Estates of such Child or Children, till their respective Age of 21, or any latter Time according to such Disposition, and may bring such Action in Relation thereto as by Law, a Guardian in common Secrecy may do.


* This
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* This Guardian being made after the Model of a Socage Guardian, and coming in Loco Parentis, has not a naked Authority, but an Interest. Ibid.—But it is only an Interest joined with his Trust (as being necessary in order to the Performance of the Trust,) but not for himself. Vaugh. 781. 185.—

9 2 Wms. 1 rep. 122. Eyre v. Lady Shaliker.

† It seems this Guardian shall have the Catholy, not only of Lands descended, or left by the Father, but of all Lands and Goods any way acquired, or purchased by the Infant, which the Guardian in Socage had not, which proves that he derives not his Interest from the Father but from the Law; For the Father could never give him Power or Interest of or in that which was never his. Ibid. 185, 186.

‡ A Guardian by Nurture, being so appointed by the Testator's Will, can only Leave at Will, and not for any Number of Years. Trin. 41 Ed. B. R. Cro. E. 678. 754. Pigott v. Garnjih.—For the Guardian himself, (except he be Guardian in Socage) is but Tenant at Will. Arg. Mich. 11 Geo. 3 Med. 512. in Cafe of Skipwith v. Green.

A Guardian, having a considerabile Sum of Money in his Hands, laid it out in a Purchafe of Lands for the Benefit of the Infant, if when he came of Age he should agree to it; the Infant dying in his Minority, it was decreed, that the Guardian should account for the Money to the Administrator of the Infant, for that he could not, without the Direction of the Court, convert the Profits into Real Estates. Ibid. 1866. 1 Vern. 404. 455. Earl of Winchelle v. Norcliff.—The Guardian ought to apply the Estate in his Hands to pay the Debts of the Infant. Hill. 21 & 22 Car. 2. 1. Chan. Cases 157. Dennis v. Baid.—He may pay off the Interest of any real Incumbrance, and the Principal of a Mortgage; because it is an Immediate Charge on the Land, but no other real Incumbrance. Ibid. 220. Chan. Prec. 17. Palmer v. Danby.—Abr. Eqv. Cases. 261. S. C.—Where the Mother as Guardian receiv'd the Rents of the Estate and paid off Specialties, but took Affignment, and after the Death of the Infant brought a Bill against the Heir for a Discovery of Affises by Defeat (claiming the Rents received as Administratrix) the Court held that the Guardian is not compellable to apply the Profits of the Estate of the Infant to pay off the Bond Debts of the Ancestor; per Cur. Hill. 1707. 2 Vern. 665. Waters v. Ebral.

* Nor will Equity permit the Debts be paid, or the Trust abused. Ibid. in Marg.

8. A Father inditted to B. grants to him the Guardianship of his Child, and covenants not to revoke it; * Equity will not restrain the Guardian from receiving the Rents and Profits of the Infant's Estate, but only from abusing his Person. Hill. 1686. Vern. 442. Lecone v. Sheires.

9. An Answer in Chancery by the Guardian cannot be read in Evidence against the Infant; For there is no Reason that what the Guardian sweats in his Answer should affect the Infant. Mich. 1 W. & M. C. B 2 Vern. 72. Leigh v. Ward.

10. 4 W. & M. cap. 3. S. 11. Enacted, that Guardians or Trustees, having the Disposal of the Money of Infants under 12 Years, might be Trustees of such Infants, pay 100l. of the Infant's Money for the Purchase of Annuities therein mentioned, and should name the Infant to be Nominee, and such Infant should become a Contributor.

This Act was for the Benefit, Quiet and Security of the S. S. Company. See 2 Wms. 987. 272. Rep. 36. per Lord C Maclesfield.


11. 6 Geo. 1. c. 4. S. 23. Every Proprietor shall have Liberty, during such Time as the Books shall be open, to subscribe his Annuities, or Debts in the proper Books, at such Prices, and upon such Conditions, as are in this Act preferred; and all Guardians shall have like Liberty to subscribe for their Infants, and shall be indemnified for doing the same: But the Shares, which such Guardians shall by Virtue of such Subscriptions be intitled to, in the Company's Capital Stock, shall be liable to the like Uses, Trusts and Purposes, as the same Annuities and Debts would have been had they not been so taken in.


13. If an Estate Mortgaged comes to an Infant, the Guardian must keep down the Interest, and not let it run on to increase the personal Estate, which possibly he may be in Expectation of. Pach. 1725. 2 Wms. Rep. 278. 279. Jennings v. Looks.

(P. 4) Power
(P. 4) Power as to the Person, of the Infant; and in what Cases the Court will deliver the Infant to the proper Guardian; and how far restrained by Chancery.

1. 12 Car. 2. cap. 24. S. 8. Enacts that a Father may dispose or devise of the Dition of his Children to whom he pleases, except &c. and such Person to whom the Custody of such Children shall be so disposed or devised may maintain an Action of Raivishment of Ward, or Trephals against any Person who shall wrongfully take away such Children, and shall recover Damages for the same in the said Action for the Use or Benefit of such Children.

2. The Mo- ther, who was appoint- ed Guardian to her Son, marrying very meanly, the Uncle got Possession of him, and sent him Abroad, and the Court, upon Information that the Child was illicitly, illicitly, a Writ of Habeas Replegiando, and upon showing Cause, the Court said, that being appointed under an Act of Parliament, she could not be removed, and the Uncle was ordered to send for the Child home. Mich. 29 Car. 2. 2 Chan. Cases 257. Fother v. Denny—The Guardian under this Statute may have Raivishment of Ward as the Guardian by Knight's Service, or in Sorge at Common Law, and the Statute extends to Ireland. Mich. 29 Car. 2 B. R. 3 Keb. 158. Lord Anglesey v. Lord Overy.

By the express Words of the Act, the Guardian by Will takes Place of all other Guardians, and his Authority by this Law is a Continuation of the paternal Authority; per Lords Commissioners. Hill 1722.

2 Wms. Rep. 115. in Case of Eyre v. Lady Shaftsbury.

3. The Law hath appointed remedies both Droitural and Possessor to recover the Guardianship, if, Droitural; as the Writ of Cafoiloca Terra & Hereditis; and if the Ward was married, then by the Statute of Mer- ton c. 6. the Plaintiff should recover the Value of the Marriage; adly, Possessor; as if Common Law, Trephals, in which he could only recover Damages, and not the Ward itself; but by the Statute Welf. 2. 35. which gives Raivishment of Ward, he recovered the Body of the Heir, and not Damages only. G. Equ. R. 175. Pakh. 8. Geo. 1. Earl of Shalt- bury v. Shaftsbury.

4. A Guardian brought * Habeas Corpus to bring up the Body of the Infant, and, when it was brought up, it was delivered to the Guardian; but the Guardian not being in Court when the Motion was made, the Court for that Reason would then make no Rule, but upon his coming another Day into Court, the Child was delivered to him without further Argu- ment. 8 Mod. 214, 215. Hill. to Geo. the King v. Oland.

5. A Child was left to the Care of the Defendant by the Mother, when about two Years old, by whom she had been Educated ever since; the Father died and left the Charge of the Child (now about 6 Years old) to his elder Brother, the present Guardian, who was intitled to the Estate if the Child should die without Issue, and therefore not a proper Person to be Guardian; Per Cur. The Child, who was appointed to be Guardian, has therefore no Liberty of Election, and in such Case, when the Child was brought up by Habeas Corpus, the Court must choose a Guardian for her; and this is not the first Time, that, upon the Return of a Habeas Corpus, Per- sons have been deliver'd by this Court to them who have a Right to receive them; it was done by the Lord Ch. J. Holt, and it was done in Lady Harriot Berkley's Case, it being suggested that she was married; and so in the Lady Rawleigh's Case, who was detained by her Husband against her Will, both which Ladies the Court left to their own Election, because they were both of Discretion. 8 Mod. 214. Hill. to Geo. the King v. Oland.

6. The Lord Anglesea devised his Estate to his Daughter, and appointed it was order- who should be her Guardian, and expressly declared, that if she lived with her Mother, half her Estate should be forfitted; yet the Court of B. R. would have the Child taken from
The Disposition by the Father by Will is binding, unless made back of time, in which Case, it being a matter of Trust, the Court has a superintendency over it; per Lord Macclesfield. 2 Wms's Rep. 107. Hill 1712. Frye v. Countess of Shafsbury.

If there be only an Appellation that the Infant will be married unequally, either by the Guardian or by his Neglect, a Court of Equity will interfere and find for the Infant and commit him to the custody of a proper Person or Relation, in order to prevent such Danger. 2 Wms's Rep. 712, 713. per Lords Commissioners, who said it was done. By Harcourt C. in Lady Cath. Annesley's Case.——And by Lord Macclesfield in Mr. Gurney's Case of Staffordshire.

1. If the Ward in Socage has Rent-charge, or Seck, or such like Things, which are not held of any Person, yet the Guardian in Socage shall take into his Custody, as well those as the Land in Socage. Co. Litt. 88.
2. A Guardian in Socage shall not presume to a Church, which becomes void during the Minority of the Heir; because it is not such a thing of which he can make an Account. 27 E. 3, 89. b. per Thorpe.


3. Guardian in Socage may grant a Copyhold in Reversion, according to the Custom of the Manor, and it shall be good, * tho' it does not come into Possession during the Monage of the Ward; for he was Dominus pro Tempore. Litt. 62. la. between Shopland and Rider. B. 3 La. B. 6. same Case adjudged.


4. Guardian in Socage may make * Leafe for Years of the Land * Ow. 115. in Cafe of Shopland v. Rider Cro. J. 99. S. C. — Tenant in Socage leased his Land for 4 Years and died; his Heir being within the Age of 8 Years. The Mother, being Guardian in Socage, made another Lease to the same Leafe for 14 Years. Per Cur. This is a Surrender of the former Lease; but 'tis otherwise of a Lease made by a Guardian by Nurture. Mich 115; Eliz. C. B. Le. 158 Anon. — Hill. 35 Eliz. 4 Le. 8. S. C. and that the second Lease was made in the Guardian's Name, Willet v. Wilkinson. — Per Anderfon Ch. J. it cannot be a surrender; for a Guardian has no Reversion capable of a surrender, but only an Authority to take the Profits to the Use of the Heir, but it may be a Determination by Consequence and Operation of Law. Hill. 31 Eliz. C. B. 1 Le. 322. Willet v. Whitewood. S. C. — It is an Extinguishment of the former Lease. Ow. 45 S. C. — Hutt. 105. S. C. cited as adjudged that it was no Surrender, by the Name of Mills v. Whitewood. If a Female Guardian in Socage marries and then joins with the Baron in a Leafe of the Infant's Land, it shall not bind her after the Baron's Death. Mich. 7 & 8 Eliz. B. R. Pl. C. 295. Osborn v. Carden and Joyce. * A Leafe by a Guardian is sufficient to maintain a Declaration in Ejezstment, tho' it be void against the Infant. Arg. Hard. 539 Wheeler v. Toulon.

5. A Guardian cannot change the Acrowry of the Heir. 48 E. 3. 16.


7. If Mortgagor dies, his Heir being under the Age of 14, and the Land is held in socage, the Guardian in Socage may Tender the Mortgage. B. R. Moore. 222. War. Money in the Ward's Name; or if it be held by Knight's Service and the King v. Aff. Heir is under 21, the Guardian in Chivalry may do it. Co. Litt. 206 b. wel. — Trin. 28 Eliz. B. 4 Le. 53 S. C. — Ow. 153. S. C. — Co. E. 152. S. C. — Ow. 54 S. C. cited. — If a bond be upon Condition that the Obligor or his Heirs shall pay 100 l. and the Obligor dies, his Heir being under Age, payment by the Guardian is good; per Wray. Hill. 48 Eliz. Ow. 137. Watkins v. Aftwick.

8. Guardian by Nurture or in Socage may * enter in the Name of the * The Entry Infant, who has Right of Entry, and this shall Velt the Estate in the Infant, without any Command or Assist, for the Privicy that is between them. 9 Rep. 106 Podger's Cafe.

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9. The Court ought not to be kept in the Name of the Heir, but of the

Litt. 89. a. —And differs only in Name from a Rattiff, per Walmsley
Judges, he has an Interett Ex Provisione Legis, and in his own Right,
for be it not fororable nor Transmissible to Executors. Ibid.

11. A Guardian may take but not give Seisin; per Coke Ch. J. Trin 44

(Q. 2) Power of the Infant as to the Guardian.

1. If a Guardi-
an he made
by Writ out
of Chancery,
or by Di-
rection of the
Court, the
Infant can't
revoke either of them; per Doderidge. Mich. 19 Jac. B. R. Palm. 252. in Cafe of Darcy v. Jackson
In a Suit against Baron, Feme, Baron can't disfavor the Guardian, which the Court has of-

* An Infant
brought an
Affidavit by
Guardian, and
afterwards came
in Person, and
would have disfavored the Suit; But the Court doubted; For it would be a Retrospect, which
would be a Bar and a Prejudice to the Infant, and it may be he disfavors by Default. Br.
Garden, pl. 10. cites 35 Aff. 3. —Br. Couverture, pl. 59. S. C. —Br. Garden, pl. 11. —An Infant shall
not remove his Guardian, nor disfavor an Action founded for him by Prochein Amy. F. N. B. 27. (K) —An
Appeal being brought by an Infant, he came into Court, and said he would relinquish the Suit, and
thereby it was discontinued against the Will of the Guardian affected by the Court. See Attorney (D)
Tr. 45 El. B. R. Slaving v. Pitts.—and cites the Cafe of Schleverel v. Blackwell S. P.

(Q. 3) * Allowances to Guardian.

1. Upon Account he shall have Allowance of all reasonable Costs and
the Rents and
Profits, and
be robbed without his Default or Negligence, he shall be discharged thereof. Co. Litt. 89. a —
Guardian to a Leppace of 1000l. which was to go over to the Guardian and another in Cafe of Death,
from the whole Legacy in Law Suits, yet after the Infant's Death he was decreed to account to the other
for a Make. 28 Car. 2. Fin. R. 290. Corbett v. Franklin.

A Guardian's choye by the Infant having taking the Profits of the real Estate, which was joint-
ured on the Mother in Law subject to a prior Mortgage, was ordered to account for the Rents and
Profits since his Entry, allowing for Interest Money, Returns, Taxes and Excesses, towards Maintenance
of the Children, and the Remainder to be applied towards Discharge of the Mortgages, and the Remain-
der to be paid, one third by the Jointreets, and two thirds by the Infant. Mich. 32 Car. 2. Fin. R. 475.
Paine v. Bromfall.

2. Guardian
2. Guardian purchases in a Debt due by the Infant for Rent; the Guardian shall not take the Advantage of the Bargain which he purchased in with the Infant's Money. Tr. 30 Car. 2. Chan. 245. Sir Robert Henly v. ...

3. The Mother was decreed to have the Custody of the Heir's Person and Estate, and the Maker to take Account of the Profits, and direct the putting it out for the Benefit of the Infant; that she be informed from committing Wast, and to be allowed her Charges, and convenient Maintenance for the Heir out of the Profits of the Estate. Mich. 31 Car. 2. Fin. R. 433. Dormer v. Dormer.

4. A Guardian at the Request of J. S. who was going to marry the Ward, gave in an Account of the Estate to the intended Husband, and secured the Balance by three several Bonds to J. S. who gave a Bond to the Guardian to release all Accounts to him after the Marriage: The Marriage was had; the Guardian paid the Balance, but J. S. gave no Release, but said for an Account and Relief against the Bond; and the Guardian was ordered to answer the Bill; For the Account was made when J. S. had no Title; no Release was given, and the Pursuit is Fled. Mich. 35 Car. 2. Chan. 245. Osborn v. Chapman.

5. An Infant's Estate was mortgaged, and J. S. the Defendant as Guardian to the Infant paid off the Mortgage and took an Assignment. The Infant died at 16, and gave all her personal Estate to J. S. a Bill is exhibited by A. who is both Heir at Law to the Infant, and to whom also the Estate was devis'd by the Infant's Father, in Cæse of her dying before 21, as it fell out the did, and the Bill pray'd that the personal Estate should be apply'd to pay off the Mortgage, and discharge the real Estate. But tho' the Mortgagee had never entered, yet Lord Keeper was of Opinion, that as to the Profits receiv'd out of the mortgag'd Lands, the Defendant should be taken to be in Possession as Mortgagee, and not as Guardian. (The Editor adds a Q.) Mich. 1704. 2 Vern. 471. Bilhop v. Sharpe.

6. Guardian laurets Money of A. to discharge Incumbrance on the Infants Estate, and promises to give Security, but dies before 'twas done. Tho' the Incumbrance was discharged with A's Money, yet no Satisfaction for the Money can be decreed to A. out of the Infant's Estate. But the Guardian having disbursed more than received, decreed Account to be taken, and what was due to the Guardian to be railed out of the Infant's Estate, and to be applied as Affets to satisfy A's Debt. Hill. 1704. 2 Vern. 480. Hooper v. Eyles and Rideout.

(Q. 4) Guardian charged or favoured.

1. If an Infant brings Affite against his Guardian, where it is found that the Guardian took Equestment of the Infant within Age, he shall be imprisoned. Br. Imprisonment, pl. 98. cites Fitzh. Affite 359. Anno. E. 2. Irn. Canc.

2. Notice, if the Guardian does Wast in the Land or Tenements of the S. P. But the Heir to the Value of 20 l. the Guardian shall lose the Ward [tho' it be] to the not recover.
3. Guardian in Socage is bound by Law that the Heir be well brought up, and that his Evidences be safely kept. Co. Litt. S. 123. P. 89. b.

4. Infant brings Action against Guardian and receivers, and Guardian brings the Money into Court, and there deposits it; 'tis a good Discharge against the Infant, and he shall not answer the Suit again in an Account. Mich. 11 Jac. C. B. Godb. 214. Hughes's Case.

5. The Plaintiffs being the Servants to the late Earl of N. for their Services to the Family had Peniions (specified in the Bill) allowed them for their Lives, which were constantly paid to them by the Steward, but were discontinued since the Death of the late Earl, the Guardian not thinking herself secure against any Account the Infant might demand for the Payment of the Peniions, (there being no Writing or Will for them) unless indemnified by a Decree of the Court against the Infant: And therefore, a Bill being exhibited for this Purpose, it was decreed accordingly. Mich. 26 Car. 2. Finch. 149. Dr. Mapleton v. Councils of Northumberland, &c.

6. B. Guardian in Socage takes the Profits of the Infant's Estate, and dies, and makes A. Executor; Infant dies, C. the Heir of Infant pays 200l. on a Judgment of the Ancestors. A took Administration to the Infant; Per Lord Keeper, the Profits taken by the Guardian are liable to make Satisfaction to C. but the personal Estate in the Hands of the Administrator of the Ancestor was liable in the first Place, to which the Administrator De nobis non est liable in Eate of C. Tr. 36 Car. 2. 2 Chan. Cakes 197. Brefenden v. Decretts.

7. Where a Guardian by Answer confesses Assets in his Hands, whatever after becomes of the Infant or of his Estate, (as in this Case the Infant died two Days before the Decree Inrolled,) yet by a Decree for Payment of a Debt, the Guardian is liable; For the Decree has fixed the Payment on the Guardian. Tr. 26 Car. 2. 2 Chan. Cakes 197. Tyas v. Talbot.

8. Guardian takes Bond in his own Name for Arrears of Rent, he makes it his own Debt. 26 Car. 2. 2. Ch. R. 57. Wall v. Buckley.


10. Guardian purchased Land with the Infant's Money, this shall go to the next of Kin, in Case of Infant's Death, and not to the Heir; and if next of Kin will not take to the Land, the Guardian must answer the Money. Hill 1697. Arg. 2. Vern. 352. cites Dennis's Case.

11. A Receiver or Manager of the Infant's Estate appointed by the Guardians or Trustees, with a Salary for his doing, is a Servant to the Guardians only; and as they had sufficient Authority to employ him, so they had to discharge and allow his Accounts, and having accounted with them shall not be indicted to account again with the Infant. But the Infant was at Liberty to require a full Account of the Guardians, and they must answer to him for any Embezzlement by the Receiver. Trin. 1720. Ch. Prec. 535. Claversing's Case.
[Guardian and] Ward. 189

(Q. 5) Security. In what Cases to be given by him, and to whom.

1. N orth Ch. J. said he knew where there was some Doubt of the A Guardian 
   Sufficient of the Guardian in Societie, that the Court of Chan-
   cery made him give good Security. Hill. 28 & 29 Car. 2. C. B. 2 Mod.
   177. in Caele of Quadrimg v. Downe.
   mean Circumstances shall not be obliged to give Security to account till a Deafie be found in him, but
   the Court ordered him to account yearly. 22 Car. 2. Ch. R. 39. Hanbury v. Walker ——N.
   Ch. R. 144. S. C.

2. Guardian was decreed to give Security to pay a Legacy of 40l. with
   Interest to the Infants, according to their Father's Will. Mich. 25 Car.

3. Guardian, being sued in Chancery for a Legacy bequeathed to the
   Infant, was decreed on the Payment thereof to give Security, that the Infant
   Maplet v. Pocock.

4. The Daughter, being 13 Years of Age, was, at the Death of her
   Mother, left in the Possession of the Father in Law, who had no Right to
   detain her, having an Aunt who was Guardian by Law; upon which an
   Habeas Corpus was granted; and it being suggested that he intended to
   marry her to some Great Person, (tho' it was said she was already mar-
   ried to another in her Mother's Life Time;) she was brought into Court,
   and, being asked, chose to stay with her Father-in-law rather than with
   her Aunt, or pretended Husband; upon which the Court would not re-
   move her out of his Hands, he entering into a Recognizance of 4000l.
   not to suffer her to be married so long as she was in his Hands, and to per-
   mit her Aunt and Friends to visit her. Hill. 26 & 27 Car. 2. B. R. 2 Lev.
   128. the King v. Sir Robert Viner.

5. Debt by a Bishop and his Commissary upon a Bond to them condi-
   tioned, that, whereas the Defendant was by the Spiritual Court appointed
   Guardian to an Infant, if he freely guard his Estate, and render him a
   just Account of all his Goods and Lands, &c. then the Bond to be void;
   the Defendant pleaded, that the Bond was taken extortive Colore Officii
   &c. And upon Demurrer, Hale Ch. J. held, that tho' the Ordinary hath
   Power to appoint a Curator or Guardian to an Infant, it must be only as
   to his personal Estate; but here it is both of Goods and Lands, which
   makes it void; and if he might take a Bond to himself, yet it must not be
   to his Commissary too; but the other Judges inclined that the Bond was
   Wells.

(Q. 6) Who chargeable as Guardian.

1. If one enters into the Land of an Infant, the Infant may charge him
   as Guardian, and thereby admit him to be in without wrong. Arg. 
   Cmt. 162.
   he can have no Account till he has recovered at Law. Hill. 1684. Vern. 295, Newburgh v. Bicker-
   -Account lies against him that occupies the Land as Guardian, though he be not of the Blood.
   Co. Litt. 89. a. ——And it will be se Pia for him to say, he is not Proprietor. Co. Litt. 89. b. ——
   But it does not lie against him who enters into the Lands of an Infant not Tenant in Seque. F. N. B.
   11. (A) the Neg. there. ——The Infant may either have Freipya against him or charge him as Guar-
   dian. Mich. 39. 2. B. R. 4 Car. 621. in Caele of Ireland v. Cotter—If one enters claiming as
   Guardian in Seque, or by Nurture, where he is not, he may either bring an Affixe against him as a Dis-
(Q. 7) Guardian De son Tort. Allowances.

1. If one enters as Guardian who is not Guardian, he shall have Allowance for all reasonable Actions, as a lawful Guardian should; per two Justices. Arg. Mich. 40 & 41 Eliz. B. R. Cro. E. 631. In Case of Ireland v. Coulter.—Per the other two Justices, the Infant in such Case may have Trespass against him, or charge him as Guardian; and if he charge him as Guardian, 'tis Reason he should then have Allowance as Guardian. Ibid.

(R) * Right of Ward, who shall have it, [and what shall be recovered.]


2. And he shall recover Damages in this Writ. 27 C. 3. 79. b.

3. Tho' all Trespasses die with the Person, yet in the Case of Ward as well as Ravishment, the Action is continued with the Heir or Executor. Trin. 7 Jac. Hob. 95. in Case of Moor v. Hulley.

(S) Against whom it lies, [and of what.]

1. Guardian in Chivalry may have Right of Ward against the Mother, who seizes the Ward as Guardian in Nurture; for it cannot be brought against any other, because there is no other Guardian. 12 P. 4. 19.

2. But if a Guardian in Chivalry commits a Ward to be nourished to another, or to go to School with another, Writ of Ward does not lie against him, but against the Lord, in as much as the Right of the Ward, and of the Chattel, remains in his Person. 12 P. 4. 19.

3. If a Man abates in the Land, and takes the Body of the Ward by Tort, a Right of Ward of the Body lies against him. 12 P. 4. 19.

4. In an Action to recover the Ward, whereof the Baron was possessor in Right of his Wife, it shall be against both. Br. Ravishment de Garde. pl. 5. cites 48 E. 3. 20.
(T) Ejectment of Ward; At what Time it lies.

1. A Writ of Ejectment of Ward lies before Seizure; For *the Seizure is not transferable. 14 H. 4. 24.

(U) Who shall have it.

A Guardian in Socage shall have it. 25 C. 3. 52. 26 C. 3. 65. One may have an Ejectment of Ward, and outs his Guardian of the Land, Ejectment of Ward lies not, but Intrusion of Ward. Br. Eject. Cuf. 11.

(W) Ravishment of Ward. What is; And in what Cases it lies.

1. THERE are two Sorts of Ravishment of Wards, that is to say, Ravishment in Deed, and Ravishment in Law. 2 Init. 440.

2. Ravishment in Deed, as when one takes and carries away a Ward. Ibid.

3. Ravishment in Law, as if the Ward enters into Religion, this is a Ravishment in Law, for which the Sovereign shall answer; For that his Admission of him is a Ravishment in Law. Ibid.

4. So if a Man or Woman marry a Ward to his or her Daughter, or to any other, this is a Ravishment in Law. Ibid.

5. So if a Man procures a Ward to go from his Guardian. Ibid.

6. If one Ravishes a Ward, or ejects the Lord to the Use of a Stranger, without his Privy, yet if the Stranger agrees thereunto, he is the Ravisher or Ejector. Ibid.

7. Marriage of the Ward, without Consent of the Guardian, is a Ravishment of the Ward; Per Lords Commisioners. 2 Wms's Rep. 110. Hill. 1722. Eyre v. Countefs of Shaftesbury.—and cites 2 Init. 440. and it is aggravated in this Respect, that after such Ravishment by Marriage, the Ward cannot be restored to such Condition as he was in before, it being rendered impossible by the Wrong of the Ravisher. Ibid.


9. But it is laid elsewhere, that the Heir never shall have the Ward fallen in the Time of the Ancestor, unless the Ancestor took a Writ of Right of Ward in his Life; For this is a real Action, which may descend, and the Ancestor was out of Possession. Br. Ravishment de Garde, pl. 12. cites 11 H. 4. 54.

(X) Ravishment
* (X) Ravishment of Ward; *Who shall have it.*

1. Guardian by Service of Chivalry shall have Ravishment of Ward, without doubt, at Common Law. 29 At. 33. admitted.

2. Guardian in Socage shall have Ravishment of Ward. 17 E. 3. 42. b. 25 E. 3. 52. 26 E. 3. 65. 1 E. 3. 20. b. adjudged; for he shall account for the Damages recovered.

3. The Husband alone brought Ravishment of Ward for a Ward he had in Right of his Wife, and the Writ was held good; but the surest Way is to have both join. Ow. 89. cites 43 E. 1. Statham.

4. Ravishment of Ward; the Defendant said, that the Father of the Infant did not the Tenant of the Plaintiff, and a good Issue; Per rot Cur. and yet he does not make to himself any Title, but it the Plaintiff has no Title, then it suffices; for a Man cannot have Ravishment of Ward who was never in Possession. Br. Ravishment de Gard. pl. 1. cites 9 H. 6. 10.

5. The Father shall have a Writ of Ravishment of Ward. Quare Filiam & Hereditum sana rapuit & abstulit. Br. Gard. pl. 6. cites 33 H. 6. 55.—against the Lord of whom the Land is held in Chivalry. 3 Rep. of common

Right shall have the Ward of his 38. b.

Son or Daughter, &c. But it lies not for the Mother. Quare. Br. Gard. pl. 55. cites 2 H. 6. 1.—It lies for her against a Deceased, but not against the Lord in Chivalry. F. N. B. 143 (G) in Notitia.—3 Rep. 38. b. in Ratcliff’s Case. cites 9 E. 2. 13. a.—Co. Litt. 84. b.—And so it lay for the Mother at the Common Law. Resolved. 3 Rep. 38. b. ut sup.

6. The Committee of an Orphan appointed by the Mayor, Aldermen, and Chamberlain of the City of London, may have a Writ of Ravishment of Ward against him that takes the Ward out of his Possession. F. N. B. 142. (H).

7. Every Ancestor, Male or Female, shall have Writ of Ravishment of Ward against any Stranger, who do Ion Tort ravishes the Heir apparent of any Person, be the Heir Male or Female; And it is not material of what Age the Heir apparent is in such Case. Resolved. 3 Rep. 38. b. Hill. 34 Eliz. B. R. in Ratcliff’s Case.

for taking away and marrying the Heir, to also might the Guardian for taking away and marrying the Ward. Hill. 1722, in Case of Eyre v. Lady Shafsbury,

8. A legal Guardian had the same Remedy as the Father, and might have Writ of Ravishment of Ward. Hill 12 Geo. 2. B. R. the King v. Benner, (alias Lord Offulston,) & al.

*(Y) [Who shall have it, and] against whom it lies.

1. H E who has not any Right to be Guardian in Socage, if he has Seisin of the Ward, shall have Ravishment of Ward against a Stranger. 17 E. 3. 42. b.

2. The Father, if he has nothing which may descend to his Son and Per, yet he shall have this Writ against the Grandfather if he takes him, though he be here to him also; For his Custody belongs to him, and not to the Grandfather, during his Life. 35 E. 3. 17.
3. If the Father be dead, the Mother (if she has no Land which may
defend to her Son and Heir) shall not have Ravishment of Ward
against the Grandfather, who has Land to defend, to take from him;
Because the Grandfather is Guardian in Nurture, and not the Feuie
during his Life, he being his heir also. Conta 30 E. 3. 16. b. 17.
4. The same Law shall be, though the Mother has Land which may
defend to her Son and Heir; for this notwithstanding, the Custody
belongs to the Grandfather. Conta 30 E. 3. 17. 

5. He who knows a Ward to have been ravished, and marries him to an-
other, though he was not pryce to the taking or ravishing, is equally guilty
with the Ravishers. 8 E. 3. 52. Per Herle.

6. Ravishment of Ward does not lie against the Guardian in Chival-
ry by any Ancestor, but only for the Father; And for him the Action
lies against the Land of whom the Land is held by Knight's Service, where
his Son and Heir apparent is ravished by him. Resolved 3 Rep. 38 b.
Hill. 34 Eliz. Ratcliff's Case. —Cites Littleton, and 18 E. 3. 25.
Brev. 50 E. 3. 17. 29 E. 3. 7. and 19.

7. Ravishment of Ward lies against a Feeme Covert, as well at Common
Law, as upon the Stat. Wettm. 2. 35. Per cox. Cur. Trin. 7 Jac. Hob. 93
Moor v. Huiley.

*Z(*) How it shall be brought.

1. If Guardian by Service of Chivalry brings Ravishment of Ward at Common Law, and not upon the Statute, the Writ
shall not be quod repuit, but quod cepit & abdulxit. 29 Mst. 35.

2. Ravishment of Ward was brought by a Man, and counted that he
was thereof possess'd in Right of his Wife, and the Defendant ravished, &c.
and yet well brought by the Husband alone; for it was a Chattel possess'd; to recover the
And there 'twas said, that this Action is not only to recover Damages, for
the Plaintiff shall re-have the Infant by the Words of the Writ; so that he
shall recover the Thing itself. Br. Ravishment de Garde, pl. 5, cites 48
E. 3. 20.

But it was

awarded that

in an Action; to recover the

in Roll, therefore a

Mistake.
The Count

in the Ra-

vishment of

Ward upon

the State, must

not be by Vi

& Armis. 2 Inf. 440.

seems that it shall be brought by both; which Finch agreed, by Reason of the Voucher. Br. Ravish-
ment de Garde, pl. 5, cites 48 E. 3. 20. — Ow. 83, cites 43 E. 1. Statham, that if the Husband alone
brings it, it is not good.

(Z. 2) Pleadings in Ravishment of Ward.

1. In Ravishment of Ward of an Heir Female, the Defendant said;
that where the Plaintiff supposed that he held of him, he did not hold
of him, and that he bore espoused the Cousin of the Infant, and that
the Infant hath purchased other Land, wherefore he ought to have her in
Duld

Nurture;
NATURE, and because the Plaintiff would not find Sufficient for the Infant, he came to him at 13 Years of Age to have Sufficient. Judgment as to the Tort, for at 18 Years the Heir Female is out of Ward. And per Finch, it is no Plea in this Action to traverse the Tenure, without making Title to the Ward in the Defendant, and no he has done here by Cause of Nature. Br. Ravishment de Garde. pl. 16. cites 38 E. 3. 21.


3. In Ravishment of Ward, and counted, that his Ancestor gave to J. and K. his Feme in Tail, to hold by Knight's Serjeant, and that after their Death he was seized of W. their Son, and the Defendant ravished him; And Exception was taken, because he did not know who survived, nor made the Son Heir to the Survivor of the said Baron and Feme, &c. non allocatur in this Action, for this is only Trespass; But contra in Writ of Ward; Note a Diversity. Br. Ravishment de Garde, pl. 3. cites 41 E. 3. 19. Per Thorpe.

He was brought of the Heir, and he was Heir to his Father, whose Mother survived, &c. non allocatur, because the Defendant did not make Title to the Ward. Br. Ravishment de Garde, pl. 9. cites 7 H. 4. 1.

4. Ravishment of Ward, &c. because N. sons possessed of a Ward, and A. was married to, and before Marriage N. granted the Ward to C and after A. took her and married her; And the beit Opinion was, that Ravishment of Ward lies well, and that the Grantee may have the Action; for betrothing is not Marriage; by which the Defendant said, that the Ward who was a Feme came to him at 18 Years of Age, and he married her; Judgment, &c. and the other said, that she was not of 18 Years of Age at the Time, &c. for then a Feme is out of Ward. Br. Ravishment de Garde pl. 4. cites 43 E. 3. 9.

5. In Ravishment of Ward, the Defendant traversed the Title of the Plaintiff, and made to himself a Title which was challenged for double, &c. non allocatur: For it is not lawful for the Defendant to take the Ward of the Plaintiff, tho' the Plaintiff has no Title, if the Defendant hath no Title; For then hath the Plaintiff good Title against them who have no Title, therefore he of Necessity ought to make Title; And with this agree other Books. Br. Ravishment de Garde. pl. 6. cites 2 H. 4. 14.

6. Ravishment of Ward against three by the Bishop of London; Two said, that the Ancestor of the Infant intestated them, so he did not die the Tenant; And the third said, that he was Grandfather of the Infant, and none would find him his Living, by which he took him and found him his Living; And it was held a good Plea. Br. Ravishment de Garde. pl. 7. cites 2 H. 4. 19.

* S. P. The Reason seems to be, that is much as a Man shall have this Action without Possession of Ward; For the Body is tranitory. Br. Ravishment de Garde, pl. 7. cites 2 H. 4. 19.


8. And Arbitrement, that the Defendant shall re-deliver the Infant, is a good Plea, if he does it accordingly, and this without Deed; Contra in Affile; Per Horton, quod Hank conceit. Ibid.

9. Ravishment of Ward, quam J. Son and Heir of P. cajus Martinus, &c. captus & adstantis; Per Fulthorp, Judgment of the Writ, because it is not said in his Copy, &c. non allocatur; For by the Register is shall lay,
in his Custody, &c. in Right of Ward, but not in Ravishment of Ward. Br. Ravishment de Garde, pl. 2. cites 9 H. 6. 61.
10. And then he prayed Judgment of the Count not warranted by the Writ; For he hath declared that he was in his Custody, &c. non allocutur. Br. Ibid.
11. And then he said, that the Father of the Infant infused him, absque hoc that he had nothing after this Feoffment, &c. and this is only Argument. Br. Ibid.
12. And then he intituled himself as Guardian in Seigny, and pleaded the Feoffment of the Father; absque hoc that the Father held the Plaintiff at the time of his Death modo & forma, and others con terra; And it was held there, that a Man may plead to the Writ in a Writ of Ward, without intitulating himself to the Ward; but if he pleads in Bar he ought to intitulate himself; And to he did supra & concordat 11 H. 4. Br. Ibid.
13. But by 14 H. 4. the Traverse of the Tenure supra is a good Plea in this Action, and occurs in a Writ of Right of Ward; For there he ought to traverse quod non Obit in his Homage. Br. Ravishment de Garde, pl. 2. cites 9 H. 6. 61.

be traversed, but not the Seisin. Br. Seisin, pl. 29. cites 5 E. 4. 63.

14. In Ravishment of Ward the Plaintiff counted that the Ancestor of the Infant held of him in Chivalry, and died, &c. the Infant then, and yet, within Age; and he seised him, and was pollicled till the Defendant ravished him; and so note that he shall prose, that the Infant is yet within Age. Br. Ravishment de Garde, pl. 24. cites 37 H. 6. 7.
15. Ravishment of Ward was brought by A. against B. of the Land and Heri, and admitted to; and the Tenant pleaded in Bar to the Body and another Plea to the Land, quod mirum; for it seems that Ravishment of Ward lies not of Land, but Jurisdiction. Br. Ravishment de Garde, pl. 28. cites 2 E. 4. 27.
16. It is said, that in pleading in this Action the Defendant ought to acknowledge the Possession of the Ward in the Plaintiff, as in Trespass; for it is no Plea in this Action, that the Ancestor held of him by Priority, without contending Possession in the Plaintiff; contrary in a Writ of Right of Ward. Br. Ravishment de Garde. pl. 29. cites 5 E. 4. 8.
17. In Ravishment of Ward of a Feme the Defendant said, that be- And it is a good Plea, that be the Ravishment supposed, he retained the Feme in Houewitry, and the Plaintiff took her, and the Defendant re-took her, and that then he was in the Time of her 18 Years, and not under 14 Years; and it is a good Plea, that he did Ancestor's not ravish her within Age; and it is good alio to say ut supra, absque hoc that he did ravish her within Age. Br. Ravishment de Garde, pl. 31. cites 8 E. 4. 22.

18. In Writ of Ward of the Body; the Infant comes to full Age pending the Writ, and therefore by the Opinion the Writ abates; nevertheless, per Danby Ch. J. the Plaintiff may have Ravishment of Ward, though be never had Possession; For this is not traversable; Because the Law adjudges the Possession immediately; but per the Reporter, it is a good Plea there, that the Infant was of full Age at the Day of the Writ purchased, for then the Writ is false; cujus maritlagum ad ipsum pertinet. And per Danby, the Death of the Infant, in a Writ of Ward of the Body, pending the Writ is a good Plea; contrary in Ravishment of Ward. Br. Ravishment de Garde, pl. 21. cites 9 E. 4. 50.
19. Ravishment of Ward by Guardian in Seigny was brought in C. B. Catesby said, that the Plaintiff had another Writ of Ravishment of the same Ward against him in B. R. Judgment of Writ; for in a Ravishment of Ward the Writ is, Et diligentiter inquiras ubi here sit Offi, & cani capres,

& salvo Caffediis, its quod, &c. reddendum cui, &c. and the Sheriff cannot have his Body here, and also in B. R. &c. Per Littleton J. such Words are not in Ravishment of Ward for a Guardian in Socage; quod verum est, which fee in the new Register; S. A. securit Te Securium, &c. tunc pove, &c. quod sit &c. often juris, quare cwm Caffedia Terra & Harelis M. ulque ad legitimam atatem juxta ad ipsum A. pertinet, co quod predictus C. Pater, &c. Terram iuxta tenmini in Socage, & predictus A. propriopietor Heres effi iphis C. ac idem A. in plena seftina, &c. idem defendens ipsum be-redem cepit & aduersus, & acta enormum, &c. & vide Libro Intronationum, the Plaintiff shall recover Damages only in this Action, and not the Ward itself. Br. Ravishment de Garde, pl. 22. cites 9 E. 4. 51.


21. The Count in Ravishment of Ward upon the Stat. Walf. 2. cap. 35. must not be by Vi & Armis. 2 Inft. 440.

(A. a) Action; By and against Guardian, his Heirs, Executors, &c.

1. THE Earl of E. recovered against A. in Quare impedit, as Guardian in Right, a Presentation by reason of the Custody of the Heir of J. N. in his Ward, and died; A. brought Writ of Error and Scire Facias against the Heir of the Earl, and the Heir of him from whose Right the Earl took his Title, and against the Incumbent, and all in one Writ by several Scire Facias's; and the other pleaded to the Writ, because the Earl recovered for the Ward, and if he had died, the Executors should have had the Ward and also the Voidance, and therefore the Executors ought to have been warned; And yet, because the Earl recovered as Guardian in Right, which is by his Inheritance, therefore the Writ was awarded good; Contra it seems, if he had recovered as Guardian in Fall. Note a Diversity. Br. Error, pl. 72. cites 8 H. 6. 35.

2. Where Guardian pleads falsely for the Infant, or Vouches one who is not sufficient to render in Value to the Infant, the Infant shall have Action of Disjet. Br. Action for le Caffe, pl. 118. cites 9 E. 4.

A. might ought to cause an Affidavit to be brought against the Wrongdoers by the Heir, to recover the Freehold and Damages. 2 Inft. 305 — He may have Trepsafis against a Stranger for spoiling the Graphs in the Socage Land in his own Name, and not in the Name of the Heir. Br. Trepsafs. pl. 173.—Br. Garden. pl. 5.

A. Guardian, in a Quare impedit against him, may make Issue against the Stranger in right of the Heir, and also have a Writ to the Bishop thereupon; but he cannot maintain a Quare Impedit F. N. B. 53. (T) in Notis.——The Guardian of the Heir, if he has presented before, shall have an Affidavit of Darrenus Prefentament. F. N. B. 51. (J)

A. Guardian, in Socage of a Manor, to which an Advowson is appendant, if he be disturbed, shall have a Quare Impedit in his own Name, though he cannot make any Account of it. 2 Roll. Abr. 376. Prefentament (P. b) pl. 2. f. 132. cites Temp. E. 1.


But a Recovery in Trepsafs is a Bar in Ravishment of Ward; et contra. Hob. 99 in Cafe of Moore v. Hulsey.

P. N. B. 147.
(A. a. 2) Actions. By the Ward against the Guardian, or others in respect of the Guardian.

1. M

Arb. 52 H. 3. 16. If the Land will not Render to the Heir his Fleta lib. 1. Land, when he comes to his full Age without Fleta, the Heir shall recover his Land by Afflict of Mortdancitore, with the Damages that he has sustained by such witholding since the Time that he was of full Age.

2. Wsfl. 2. 13 E. 1. 25. If any holding in * Ward shall alien the same in Flee, and by such Alienation the Freehold is transferred to the Feoffor, the remedy shall be by a Writ of Novel Diffeain, and as well the Feoffor as the Ward shall be deemed Diffeainors.

3. By the Stat. Wsfl. 2. 14 E. 1. 4. if the Wife, having no Right, brings If recovered a Writ against the Guardian, and Deaver is recovered against Title, the Heir shall in prejudice of the Heir by Favour, Defalute, or joint Plea, the Heir shall at his full Age have a Writ of Mortdancitor against the Wife, as against any other Diffeainor. 2 Inf. 352.

Finch. Br. Flee Recovery, pl. 47; —The Heir in such Case shall have an Afflict at the Common Law.
4. It was said for Law that if the Son be in Ward of his Father, and be

dispossess'd, the Son shall have Affidavit, or Precipe quod Reddat against his Father by his Probenk Amy; and so of Land which is in Ward of another Lord, quære hoc. Br. Garden, pl. 3. cites 34 H. 6. 4.

5. And Writ of Wiff has been sued by the Infant by Prochein Amy against the Father of the Infant, Tenant by the Curtesy. Br. Garden, pl. 3. cites 34 H. 6. 4.

6. An Infant may bring Action against his Guardian, who pleads any Thing to his Prejudice; but it is not so of an Attorney; per Twifden J. Vent. 40. 103. Trin. 21 and Mich. 22 Car. 2. B. R. Foxwith v. Tremaine.


Trin. 20 Jac. B. R. Cro. 1. 69: Simpon v. Jackson, 1 .alm. 232.—If an Infant pleads an Ill Plea by Guardian, Judgment shall be given against him, but he shall not be hurt by it; for he shall have an Action of Defect against him at his full Age, and recover so much in Damages. Br. Garden, pl. 15. cites 9 E. 4. 53.—For this reason Infants are Bound by Reversories, when Guardians are attainted them, because if they suffer any Wrong, they have an Action against the Guardian. In case Default it was Patch 22 Car. 2. B. R. Vent. 75: Hooke v. Lee.—As if he proceeds one by Cause, who is not able to answer the Value, or might have pleaded better, Defect lies. Br. Garden, pl. 15. cites 9 E. 4. 53.—And the Court will not admit any one as Guardian but such as shall be answerable to the Infant for his loss if he hath any. Hill. 9 Car. B. R. Cro. C. 507; Earl of Newport v. Mldmy—Fitch Infant. pl. 1.

7. Tho' the Infant himself cannot bring Account against his Guardian till of Age, yet a third Person may bring a Bill for an Account against the Guardian even during the Minority; per Lords Commissioners. 2 Wms's Rep. 112, 120. in Cale of Eyre v. Lady Shaftesbury.

(A. a. 3) Actions of Account.

1. M

Arlb. 52 H. 3. 17. The Guardian in Socage, when the Heir comes to his lawful & Age shall answer to & for him for the Wifs of his Inheritance by a & lawful Account, facing to the Guardian his reasonable Gifts.

Law. Co. Litt. 89 a.—Tho' the Stat. speaks only of a rightful Guardian, yet Account lies against him that Occupies the Land as Guardian, tho' out of the Blood. Co. Litt. 89 a.—F. N. B. 118. (A) in Marg.—For the Occupation charges him. Ibid in Notis.—If there be a Prime Coercit Guardian in Socage, Account lies against both Baron and Finch, for the Profits taken before Customere, but for those after a gainst the Baron only. F. N. B. 118. (B) in Notis.—If the Executor Occupies the Land of an Infant which he has by Purchase, Account lies against him at Bailiff. F. N. B. 118. (B) in Notis.—In Case of a Tenure in Socage the Father is accountable for the Profits, and in order to that shall have the Custody of his Elded Son as Guardian in Socage, and not as Father, in respect of his natural Custody. Co. Litt. 88 b. It lies not against Executors of a Guardian, tho' it has been attempted in Parliament. Co. Litt. 90. b.—But by the 4 Ann. 16. S. 27. Actions of Account shall & may be brought and maintained against the Executors and Administrators of every Guardian. It lies not against Guardian in Socage till 21. F. N. B. 118. (B) Adjudged that it lies at 14. Co. Litt. 90 a.—For that is the lawful Age of the Heir of a Tenant in Socage. 2 Inst. 135.—An Infant may, by his Prochein Amy, call his Guardian to an Account even during his Minority, per Lord Chancellor. Hill. 1607, 2 Vern. 242. in Cale of Lord Falkland v. Berts. G. Eq. R. 117. It lies against him as Bailiff, who takes the Profits, at any Time during Nanage of the Heir, whether rightful Guardian, or not. F. N. B. 118. (B) If the Guardian occupies the Heir after the Age of 14 Years, he may be charged as Bailiff. 2 Inst. 178. Co. Litt. 90 a. For one cannot be Guardian for Socage Lands longer than till 12. F. N. B. 118. (B) It lies against the Guardian after the Infant takes Baron, if he continues to occupy after, tho' his Power is gone by the Marriage. F. N. B. 118. (B) in Notis.

No Account lay for the Executors of the Heir at Common Law, but it is given to them by the Statute Wess. 2. 25. To the Executors of Executors by the 25 Ed. 5. 5. and to the Administrators by the 31 Ed. 3. 11. Co. Litt. 89 b.—The he Heir dies before 14, the Executors shall have an Account presently; yet the Heir himself could not have it till 14. 2 Inst. 342. Keiu. 151. pl. 156. Qu. 8 The
2. Tho' the Statute 12 Car. 2. 24. only gives Remedy for the new Guardian, but gives none against him; yet as no new Office is created by that Statute, but it continues the same both in Duty and Power, the Ward has the same Remedy against the new Guardian as he had before against the Guardian in Sogace, per Vaughan Ch. J. Trin. 16 Car. 2. C. B. Vaugh. 169. in Cale of Bedell v. Contable.

(A. a. 4) Actions of Wofle.

1. 1 Magna Charta 9 H. 3. 4. No Waflle shall be made by the Guardian in the Ward's Lands.

2. Magna Charta 9 H. 3. 5. The Guardian of the Wards Lands shall with the Issues thereof uphold his Houses, Parks, Warrens, Ponds, Mills, and other Things pertaining to the said Lands, and shall deliver unto him at his full Age his Lands storid with Ploughs and other Things (at the leaf) as he received them.

3. MNB. 52 H. 3. 17. Guardians in Sogace shall make no Waflle Sale or Defrution of the Heirs Inheritance, but safely keep the same to the Use of the Heir.

Waste lay against the Guardian in Chivalry and Guardian in Sogace; but they shall not be chargeable, but for voluntary or pernicious Waste, and not for the Waste done by a Stranger. 2 Inf. 305. —Because it is to Penal to him. Co. Litt. 54. a. —But if there be two joint-tenants of a Ward, and one does Waste, this is the Ward of both; For he is no Stranger. 2 Inf. 305. —First there be two Executors of a Ward and one does Waste, Action lies against him only. 2 Inf. 302. —If a Guardian jeerers a Stranger to do Waste and does not endeavour to prevent it, it shall be taken in Law for his Consent. And if waste be done without his Knowledge, or by such a Number as he could not withstand, he ought to bring an Action against the wrong doer, wherein he shall recover the Freehold and Damages. 2 Inf. 305.

4. Wofl. 1. 3 E. 1. cap. 21. Guardians shall keep the Lands of Wards without Defrution, according to Magna Charta.

5. Stat. Glouc. 6 E. 1. 5. For Waste Done in Time of Wardship it shall be done as is directed by Magna Charta cap. 4. and whereas it is directed cap. 12. —He shall lose the whole Estate, it is agreed that he shall recompense to the Heir his Damages for the Wardship. If no be the Wardship left do not amount to the Value of the Damages before the Heir's full Age.

shall my joint Damages and if the Wardship be not sufficient to answer the Damages for the Ward, he shall render Damages to the Value over and above the los of the Wardship. 2 Inf. 305. —F. N. B. 59. (A). —But if the Heir brings a Writ of Waste at full Age against him who was Guardian, he shall recover treble Damages; for the Wardship cannot now be lost. F. N. B. 60. (T). —2 Inf. 306. —Co. Litt. 54. a. —If a Guardian does Waste to the Value of 20S. he shall lose the Ward to the Value of 20L. Br. Gard. pl. 76. Br. Wafl. pl. 68. —S. P. Be the Advice of all the Justices, but the Infant shall not recover Damages; because the Value of the Wardship is greater than the Waste. Jenk. 39. pl. 75. —If Guardian of a Copyholder does Waste, he shall forfeit the Wardship only, not the Inheritance of the Copyhold. Co. Copyholder. Sect. 59.


If a Guardian does Waste, and grants over the Estate, Action lies against the Guardian and not against the
Guardian and Ward.

the Grantee. F. N. B. 56. a — 2 Infl. 305. — It lies in such Case against the Assignee. Co. Litt. 54.

Ibid. If the Guardian grants over his Estate, and the Grantee does Waive, the Action shall be brought against the Grantee, and not against the Guardian. F. N. B. 56. (A) — 2 Infl. 300. — It lies against the Executors of the Guardian. F. N. B. 56. (B)

If one claiming as Guardian, but having no Right, enters and does Waive, Action of Waive lies against him, but if he claims to his own Use without Colour of Authority, Treps's lies, but not Waive. Bro. Waive. pl. 155. — Ibid. 142.

If a Guardian ehates a House newly built, and which was not covered, it is not Waive. F. N. B. 65. (Q) in Marg. cites 47. All. 22. Wall. 24. per Knevet.

If Waive done by a Guardian to the Value of 20d. was adjudged Waive, and the Plaintiff recovered F. N. B. 62. (P) cites H. 34. E. 5.

(B. a) * Count and Pleadings.

1. If an Infant is Plaintiff by Guardian, Defendant cannot say, that the Plaintiff is of full Age, and pray that he may be viewed without pleading a Plea; but upon a Plea pleaded, he may allege it, notwithstanding the Writ of Chancery records him to be within Age; For the Form of Chancery shall not affect one of his Plea. Bro. Gard. pl. 16.

2. If there be two Guardians of an Infant who plead two several Pleas, the best Plea for the Infant shall be taken. Bro. Affile, pl. 413. cites P. 20 E. 2.

3. In Ward of the Body * Nonniture of the Body generally is a good Plea; but to say, that he has nothing but for Church of Nurture, or at Will of M. &c. is no Plea; For he has Possession, and therefore the Plaintiff recover'd by Award. Br. Nontenure, pl. 24. cites 24 E. 3. 31. 69.

4. Guardian entered claiming the Frank-tenement to the Heir within Age, where the Entry was not lawful; and yet because the Infant was not named in the Affile, the Writ was abated, and therefore it seems; that the Frank-tenement is in him till he refutes. Br. Entre Cong. pl. 37. cites 24 E. 3. 42. per Thorpe.

5. The Defendant said that he could not have the Body of the Ward there for peril of Death and of Water; this is not answerable, nor could the Plaintiff have answer to it; therefore where he pleaded that he was ready to have him delivered to whom the Court awarded, except for this Cause, this was not allowed, and the Plaintiff recovered the Body. Br. Traverle per &c. pl. 119. cites 24 E. 3. 66.

6. If Removing be brought by J. N. Guardian of the Land, and Heir of W. B. He need not prove whether he be Guardian in Chivalry or Serge; For it shall be intended that he is Guardian in Chivalry. Br. Nofine, pl. 28. cites 39 E. 3. 35.

7. Ward of Land, the Defendant said, that the Aesnor of the Infant intetisfis f. who leaved to the Defendant for Term of Life; Judgment th Action; and the other said that he held of him the Day of his Death, and no Replication; For he may hold by a Mente; and it seems that the Defendant ought to say, and travers, that the Aesnor did not die in his House. And 'tis said there that where a Fessment is pleased, the Plaintiff shall answer to it, or shall avoid it by Collusion. Br. Garde, pl. 17. cites 46 E. 3. 31.


9. In Dover against Guardian he shall be named Guardian, and otherwise it is a good Plea to the Writ; but he has nothing but in Ward; by which the Demendant was compelled to answer to it, if he was Guardian or falsified issue proprio. Br. Bri. pl. 428. cites 9 H. 5. 4.

12. A
10. A Guardian may plead Misdeemor of his Ward as well as the Ward himself. Fitzh. Attorney, pl. 75.

11. Guardian in Socage may Assert in his own Name and Right. Cro. 4. 115 S. C.—Kelw. 48 b.—Dr. 52 b. 46 in Marg.


13. Writ of Account was brought, and the Defendant was charged as Bailiff, who pleaded that he is Guardian in Socage to the Plaintiff, he being within the Age of 14, and shewed that the Father of the Plaintiff was seised of such Land in Fee, and so he as Guardian, &c. and concluded Judgment in Accio; the Plaintiff replied, that his Father died seised of a Copyhold in Fee, which is the same Land, &c. Per Germy, the Plea in Bar is not good; for he has not shewn that it was Socage Land, nor of whom it is held, as he ought, as is 22 E. 4. 5. and therefore it is not good, quod fuit concessum per Coke. Roll. R. 104. Mich. 12 Jac. B. R. Anon.

14. And per Germy the Plaintiff has charged him as Bailiff, and the Defendant pleaded that he is Guardian in Socage, and concluded Judgment in Accio, where the Plea is to the Writ, and he ought to have concluded, Judgment of the Writ, and so is 46 E. 3. 9. 10. which was agreed by Coke, who said, that the * Letter is, that when he is within * Orig. (II Age, he shall be charged as Guardian, and after as Bailiff, and cites 10 E. 2. tera.) Account, [that where] Guardian in Socage takes Baron the Writ of Account shall be against the Baron alone, for all Things after the Marriage, orig. and against the Baron and Feme for all before. But it seems here that the (Narr') Replication is not good; for the Defendant has pleaded in Bar a Seilin in Fee, in the Father of the Plaintiff, the which ought to be intended a Seilin in Fee at Common Law, and not of a Copyhold; and as to the Objection in the Replication, that he was seised in Fee of a Copyhold, this is not any Anwter to the other Plea; and therefore, and inasmuch as he has not made any Traverfe, the Plea is not good. Cur. advifare vult. ibid.

15. If a Guardian commits Waif and grants his Ward over, the Ward shall have Waif during the Infancy in the Tenet against the first Guardian for the said Waif. 2 Inst. 305.

16. Cognizance as Bailiff in Replevin must be as Bailiff to the Guardian, and not as Bailiff to the Infants, if they are under 14. 2. Lutw. 1189.

17. If Guardian brings Writ of Racvice of Ward, the Count must be for Damages of the Plaintiff; (the Guardian) tho' the Damages when recovered shall all go towards the Benefit of the Ward; per LD Matchingfield. 2 Wms's Rep. 108. Hill. 1722. Eyre v. Counfefs of Salisbury.

(B. a. 2) Actions. Proceeding in Actions or Suits by or against Infant suing or defending by Guardian, &c.

Bill that he is near 21, yet, not being able to defend himself, the Service might be on the Person appointed by the Court to defend him. 2 Wins's Rep. (643). Mich. 1731. Taylor v. Atwood.

(C. a) Refrained and punished in Equity.

1. Infant by Guardian, exhibited a Bill to stop her Father, (who was Tenant by the Custom of Lands, of which Remainder in Tail was in herself,) from committing Waf, and telling Timber, which Tim-ber the Defendants had contracted for, in the Life of the Plaintiff's Mo-ther, who was Tenant in Tail of the Soil: Per Cur. In such Case any Peron may become Guardian to an Infant against her Father, and Waf is by Law a Perfection of the Father's Guardianship, and that the Con-tract made nothing in the Case. Whereupon the Injunction was continu-ed to stay Wa. Hard. 96. Pa. 1657. Roberts an Infant; per Hutchinson her Guardian v. J. R. and Sir J. R., her Father and Grandfather. 2. Three Persons being made Guardians, by the Father's Will, of a young Woman, one of them gets her and marries her, being 9 Years old, to his own Son who was 17. "Twas moved for a Hearing Replevians against the Father and Son, that they should stand committed, and for an In-junction to their receiving the Rents of her Estate. King C. thought every Part of the Motion reasonable, but as to the first Part ordered a spee-dier Way, by bringing the Body into Court, by a time certain, by an Order to be made on the Defendants for that Purpofe. Mich. 3 Geo. 2. Gibb. 106. Anon.

(D. a) Offences by Strangers, with Regard to the Ward. How punished, and in what Cales.

A and M. had B. a Son, and C. and D. Daughters, and by his Will de-vited the Order, Cuf-tody, Educa-tion, &c. of B. C. and D. to M.'s Fa-ther and Mo-ther, (Grandfather of the Children) and died, M. Married R. R. and then the Grandfather died. The Grandmother was lefied of Lands in Fee held in Segrace, and, by Will in Writing, deviled them to B. In Tail, Remainder to C. and D. and to the Heirs of their two Bodies beporen equal to be divided; Remainder to M. the Daughter and heir apparent of the Testatrix, and died. B. died, and D. being under 16, but above 14, and living with R. R. went, by his Confect, voluntarily, and of her own Ac-cord to H. where she married W. R. It was adjudged that M. at the Time of the Contract of Marriage of D. had the Custody of her within this Statute, as Guardian by Nature, which was in-separable from her Person, and that D.'s going from the House 6 Hours before the Marriage, as found by the special Verdict, made no Alteration in Judgement of Law, as to the Mother's having the Cus-tody of her at the Time of the Contract; and that the Content of R. R. the Mother's Husband, was not material. 3 Rep. 37, 38. b. 59 b. Hill. 34 E11. B. R. Ratcliff's Cafe. A being a Freeman of London, by Will devied the Custody of B. his Daughter an Infant to C. and died, C. got a Warrant from the Mayor of London to take the Infant, who was taken thereupon but refused a-guard; and after he got a Warrant from the Chief Justice, and she was again taken, having been before such taking married to G. one of the Defendants in the Indictment, and who was Son of the other De-fendant. They were acquitted of the Indictment upon this Evidence, but the Court required Sureties of them; and the Court held, that the Defendants could not be found Guilty upon this Indictment, because B. was not in the Two-thirds of C. as the Indictment supposed; because A. being a Freeman of Lon-don, the Deliver, as to the Delivery of the Body, was end, and the Infant remained in the Custody of the Mayor and

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and Andermen of London, and the Indimmt ought to have been for taking the Infant out of their Coverture, 32ly. That upon this Penal Law, the Body ought to be in the actual Coverture of him, or those to whom the Indimmt appertains the Right. 33ly. That he, out of whose Puffession the Infant is supposed to be taken, ought to have the Right, because the Statute says, (from the Policing of such as shall, by any lawful Ways and Means, have the Coverture, &c. or otherwise it shall be no Offence within this Penal Statute. And there may be other Indimments for taking out of the Puffession of the Right Guardian. Sid. 582.

Patch. 20 Car. 2. B. R. The King v. Battain and Battain.

In an Information for inducing and marrying an Heirest, the Evidence was, that the Defendant T. a remote Kinman, and of small Fortune, being frequently entertained at the Father's House, made Love to the Daughter, and, among other Proposals, it was offered in Evidence, that the Encouragement proceeded from the Daughter, whom the Father intended to marry to another Kinman of his own Name of a very considerable Estate, whom the did not love so well; and that he, by Agreement with the Defendants, went from her Father's House to a Place appointed, and there met the Daughter, and was married to T. whereasupon the Court directed the Jury, that the Daughter being of tender Years, viz. about 16 and a great Fortune, non Juror: A Right Guardian had intimated within the Information, and that and they ought to find them guilty, which they did, but Hanantier, as it seemed. And afterwards, before any Fine imputed the Parties agreed. I Lev. 257. Mich. 20 Car. 2. B. R. The King v. Twiltleton. — Sid. 587. S. C. and says, all agreed, that it was an Other 156. [Guardian and Common Law,] preferred. — Sid. 8 Le Ch. J. Holt said, that to convey a Maid from her Parents under the Age of 16 is no Offence at Common Law. 4 Mad. 145. Trin. 4 W. 3. Obiter.

In the Case of Caltheb p. Triftill. Hill; 5 Jac. 2. B. R. it was *said, that there must be a Contempt of the Father for, if she once agree, tho' afterwards the different, yet it is an Allent within the Statute of the dwelling away; 5 N. Abr. 561. & 5 N. S. Ab. 564. A. R. In the first the Defendant did not take her away, yet be conven'd her away. Now will her Conven alter the Case; For the Act does not require Force; but in the Premable mentions Friend likewise. It seems to have been made to prevent her Content; and accordingly in sect. 6. punishes her for consenting. And Caltheb p. is in Point; For there according to 1 Lev. 237. (who seems to have reported it well) no Force was used. That the Act mentions Guardians as well as Parents; but the same Power as a Father, and the same Remedy; he might have an Action, or Write of Ravishment of Ward. And as to the Conven appointed by the Court of Chancery, he certainly has the Custody of the Infant by lawful Ways and Means; For, according to Le Sommers, in 3 Chan. Cales. 158. Berkeley b. Shaddin; the Appointment of Guardians originally belonged to the Chancery, and ever since the Divisution of the Court of Wards, has been vested in that Court. Accordingly the Information was granted against the Defendant, as likewise against the Husband, the Parion, and several Servants concerned in carrying her off. Hill. 12 Geo. 2. B. R. The King v. Bennett, (21. 9. 2. D. Efullton) & al.— And in Hillary Term following, they received Judgment, viz. Le O. and the Husband were fin'd 50s. each, and the other Defendants fin'd 1 Mark, and Impriion.— Sid. 586. Lev. 257.

A. polluted of a considerable Peronal Estate, died Intestate, leaving M. his Wife, and B. a Daughter, an Infant, his only Child. At the Mother died, leaving J. S. her Executor, and Troufes for B. her Infant Daughter, who at M's Death was under the Care of J. S. his Wife, who kept a Boarding-School. She forwards a Bill by H. an Uncle of B was filed against J. S. for an Account of B's Estate, suggesting that he had waltit it, but J. S. not putting in his Answer an Affimation was filed. And then J. S. and W. R. who was his Counsell, and a Justice of Peace, went to Dorchers Common, where W. R. procured himself to be admitted Guardian to the Custody of the B. to J. S. and a Licence was granted, and a Marriage had. B being 16 Years old, and J. S. 60. He petitioned the Court against J. S. for marrying B. after Suit commenced in this Court, without Leave of the Court, and against W. R. as Party, and that they dealt committed. And an Exception being taken that there was no Lis Pendens, no Answer being put in, the same was over-ruled; and held that an Infant is always considered under the Care of the Court, if a Suit be depending; and that after such Bill filed, it is a Contravention to marry an Infant without the Consent of the Court, and in that case there was not only a Bill filed, but an Attachment allo for want of an Answer. It was ordered that J. S. and W. R. file an Answer committed to the Court, and not to have the Benefit of the Rules; and that W. R. be removed from being Justice of Peace; and (to the End that the Estate of the Infant be secured, in order to make a Settlement on, or a Provision for her) that J. S. be restrained from altering, transferring, or transporting, or returning, the whole Estate of the Infant, or any Part thereof, without Leave of the Court till further Order, and that the Defendant J. S. do bring before the Court all Mortgages, Bonds and other Securities, belonging to the Estate of the Infant upon Oath, subject to the further Order of the Court. 20 March, 1740. In Can. Hughes v. Science, Mitchell & al.

S. A. None shall take away and defover any such Child, or shall, against the This Breach of Will of her Father, if he be living, or of her Mother, (having the Custody of the B. of be, if the Father be dead,) contravention with any such Child, (except
The said Fines shall be divided between the King and the Queen's Majesties and the Party griev'd.

S. 5. The said Council of the Star-Chamber, and the Justices of Affize, by Inquisition or Indictment have Power to bear and determine these Offences. 

M. the Wife of A. has recourse to the Council of the Star-Chamber and the Justices of Affize, by Inquisition or Indictment to bear and determine these Offences. 

S. 6. If any Woman-child or Maiden, being above the Age of twelve Years, and under the Age of sixteen, confess to such Person, that so shall make any Contrait of Matrimony, the next of Kin of the same Woman-child or Maiden, to whom the Inheritance shall descend or come after the Death of the same Woman-child, shall have all such Lands as the same Woman-child had in Possession, Reversion or Remainder, at the Time of such Contract, during the Life of such Persons that so shall contrait Matrimony, and after the Death of such Persons contraiting Matrimony, the said Lands shall descend and come to such Persons as they should have done in Case this Act had never been, other than to him that so shall contrait Matrimony. 

V. by Sentence of the Council of M. to whom the Custody, Education, &c. of the Daughters was appointed by their Father's Will, married J. S. The Question was, if the Forfeiture should accrue to M. and redevolved, that it should not, and also that, as this Case is, the one Daughter shall not take Benefit of the Forfeiture of the other. For the Statute gives the Forfeiture to the next of Kin, to whom the Inheritance shall descend or come after her decease, &c. during the Life of such Persons that so shall contract Matrimony. So that if the Subject be a Blood, and secondly, next of Blood, to whom the Inheritance shall descend or come, &c. and the D. the Daughter be of the Blood, yet in this Case by the Death of E. the Land, if she has Issue, shall descend to her Issue, and if she has no Issue it shall revert to M. the Mother. 

S. 7. Provided that this Act shall not be prejudicial to any Custom or Authority concerning Orphans in London, or any other City, Borough or Town. 

See the Case of the King v. Hallam 

2. A
2. A Person, having married an Infant (Ward,) was committed, and it seems that Commitment was followed by an Act of Parliament to dissolve the Marriage. 2 Wms's Rep. 112. Hill. 1722. cited per Lords Commissioners, as so done in Lord Sommers's Time in Case of Goodwin and Mrs Knight.

Chancery has no Words prohibiting the marrying an Infant without Consent of the Guardian; yet such Prohibition is implied; and so is also, That no Person shall take away, or wrongful Ward from the Guardian; and such negative Words are never inferred in the Order; per Lords Commissioners. 2 Wms's Rep. 113. Hill. 1722. Eyre v. Lady Shaftsbury.

3. So where an Infant was taken from a Guardian appointed by the Father, and not aligned by the Court, and married to W. both W. and the Patron and the Agents were all committed by the Matter of the Rolls, and the Order confirmed by Lord Harcourt. 2 Wms's Rep. 112. cited per Lords Commissioners, ut sup.—and in Marg. it is cited as 22 May. 12. Anne. Hannes v. Waugh. als. Willis's Case.

—* And the same would have been done in the Case of Hughes v. Scrinns, & al. Hill. Vac. 1759, but that it did not appear in that Case, that Williams, the Clergyman, who married the Infant to Science, was at all a Party to the Contrivance, and so had not incurred the Jurisdiction of the Court; whereas had he been Privy thereto, the Licence would not have protected him.

4. So if there be only an Apprehension, that the Infant will be married Vid. (P. 4) unequally, either by the Guardian, or by his Neglect, Equity will interpose, per Lords Commissioners. 2 Wms's Rep. 112.

Heir was Int 17 Years old

and was about to contract Matrimony; tho' there appeared no inequality of Fortune or Family, yet upon Application to the Chancery, the Court alluded the Testamentary Guardian to prevent the Marriage as improper, by Reason of the Age. Cases in Equ in Ld C. Talbot's Time. 58 Mich. 1734. Ld Raymond's Case.

5. And that a Marriage be to one of equal Degree and Fortune, yet, it being without Consent of the Guardian, constitutes the Offence, and can at most but tend to extenuate; per Lords Commissioners. 2 Wms's Rep. 114. Eyre v. Lady Shaftsbury.


6. The Mother took away the Infant from two, who, supposing that they were Guardians, complained thereof to the Court of Chancery, and their Complaint was received. And the Court would have proceeded against the Mother, but the Guardians could not make out their Right of Guardianship, by Reason of Some Defect in the Infrument under which they claimed; cited per Lords Commissioners. 2 Wms's Rep. 115. cites Ld Selkirk and Orkney v. Duchefs of Hamilton.

(A) Guernsey, Jersey, and the Isle of Man.

1. Guernsey, Jersey, and the Isle of Man, are governed by their proper Laws. If an erroneous Judgment be given there, a Writ of Error lies not here. Jenk. 199. pl. 15.

2. The
Gun.

2. The Isle of Man is governed by its own Laws made there, and not by Laws here in England, unless by Act of Parliament, which ordains a Law expressly for them. 2 And. 116. in the E. of Derby's Case.

3. In the Isle of Man no one has any Inheritance there, besides the 1d Derby and the Bishop. 2 And. 116. in the E. of Derby's Case.

4. Albeit the King's Writ runneth not into the Isle of Man, yet the King's Commission extendeth thither for Redrefs of Injustice and Wrong; but the Commissioners must proceed according to Law and Justice of the Isle. 4 Inf. 285.

5. They have peculiar Laws or Customs, viz. It a Man fleal an Horse or an Ox, it is no Felony; For the Offender cannot hide them; but if he fleal a Capow or a Pig, he shall be hang'd, &c. Ibid.

6. The King has Right to a Manor in the Isle of Guernsey, which A. holds; a Commission illues out of the Chancery to enquire of this. If it be so found, the King shall be put in Possession of it without any Original Writ. Judgment affirmed in Error. Jenk. 8. pl. 14.

Gun.

(A) Who may not keep Guns, and the Punishment of Offenders, and by whom.

J. S. being constriued.

1. 33 H. 8. £ Naëts that none shall shoot in, or use to keep in his House, cap. 6. S. 1. a Hand-gun, Crosb-Bow, Hagbut, or Demibake, unless his Lands are of the Value of 100l. a Year, in Pain to forfeit 101. for every such Offence.

Judgment, and fearing a Refous, carried with him a Dagg; whereupon the Defendant, being a Justice of P. made one of his Servants go and Search him, and finding him arm'd brought him before his Master, being the next J. of P. who by Colour thereof committed him to Gaol, 'ill he paid 10l. But on a Hab. Corp. it was held no Offence for a Sheriff or his Ministers in Execution of his Office to carry such a Hand-Gun, and that it was lawful, and that a Dagg was a Hand Gun within this Statute. Cro. E. 31. Gardener's Case.—5 Rep. 71. b. Trin. 34 Eliz. Saintjohn's Case. al. Gardiner v. St John's. S. C.

2, &c. Howbeit the Followers of Lords Spiritual or Temporal, Knights, Esquires, Gentlemen, and the Inhabitants of Cities, Boroughs, or Market Towns, may keep in their Houses, and use to shoot (but at a dead Mark only) with any Hand Gun of the Length of one Yard, or Hagbut, or Demibake of 2 Quarters of a Yard; so may the Owner of a Ship, for the Defence of his Ship, and also be that desails two Furlongs distant from a Town, or within five Miles from the Sea-Coast. And this may they shoot at any Wild Beast or Fowl, save only Deer, Heron, Skeward, Partridge, Wild Swan, or Wild Elke.

S. 5. None may licence his Servant to shoot, except his Game-Keeper, on pain of 10l.

All former Laws against Shooting repealed.

S. 12, 13. Gunsmiths or Merchants, may keep Guns by them, observing the Lengths above-said.

S. 14. Proclamation to sifle before an Offender can be punished.

S. 15. Owner of the Gun to forfeit, and not the Master of the House.
The Defendant, not having brought a Summons, was brought before a Justice for an Offence, which he denied. The Justice committed him to Prison, to remain till he have satisfied the Penalty, which in this Case shall be divided between the King and the Party who takes the Offender.

Section 19. Offenders in their Sessions, and Stewards of Leete, have Power to hear and determine these Offences.

Section 20. Pauly of 205. A Piece on Judges condemning Offenders.

Section 24. Suing for Servants carrying Guns by their Masters Orders.


Word (Adjourn) was omitted. For it ought to have been Confervand. Affirmatis. And to it does not appear, whether the said Justices were aligned to keep the Peace or not.—The Reporter adds a Note, that the Conviction was before two Justices of P. but the Statute gives Authority to one Justice alone, being the next Justice of the County where the Offence is committed, to commit the Offender for its Forfeiture, but that here it does not appear whether either of the said 2 Justices was the next Justice or not, which was another Exception intended to be moved, but the Conviction being quashed for the Exception aforesaid, this Exception was not moved, and that he was of Council with the Defendant. — Vent. 29. S. C. and P. A. Vent. 33. Anon. But S. C. reports, that as to the Words (upon the Examination and Proof before a Justice of P.) it was resolved, that that was not intended by a Jury but by Winding, and that no Writ of Error lies upon such Conviction.

And that an Exception was taken, because it was Coram J. S. Justice of the Peace, without adding any word of divers Perpetual Transgression, &c. omitted. Affirmatis. and that the Court agreed it ought to be in Return upon Certificates to remove Indictments taken at Seffions, but otherwise of Convictions of this Nature; For it is known to the Court, that the Statute gives them Authority in this Case. Vent. 33. Trin. 21 Car. 2 B. R. Anon.

Section 3. A Person being brought before the next Justice of Peace in the County where &c. for shooting with Halid Shot in a Field-Gun, who, upon Examination, finding it true made a Record thereof, and committed the Party to Prison, it is said to be 151, viz. 51 to the Informer and 51 to the King. This Record being certified upon an Habeas Corpus, it was held by the Whole Court, that if the Justice of Peace does not observe the Form prescribed by the Statute, it is void & Coram non Justice, and needs no Writ of Error; but if he acts according to the Statute, then neither B. R. nor Justice of Peace, can retrench it, or let the Party at large. Jo. 170. Hill. 3 Car. B. R. Cole's Case.

Section 4. The
4. The Judgment on an Indictment upon this Statute was, that the Defendant solved dieo Domino Regi, &c. decem librorum, &c. where the Words should have been Solvit instead of Solveit, and Libros instead of Librarn, and for those and other Reasons the Judgment was reversed. Raym. 358. Trin. 32 Car. 2. B. R. The King v. Allop.

5. The Conviction was for having a Gun in his House, and this being excepted to, because the Statute is, (Ufe to keep in his or her House) and perhaps it might be lent him, and the Words of the Statute ought to be purged, So the Conviction was quashed. 1 Show. 48. Trin. 1 W. & M. The King v. Lewellin.

6. The Conviction was Non habiuitfet 100l. per Annum, and did not say suben; and this was excepted to, because it may be, that he had 100l. a Year at the Time when he kepe a Gun, but not when he was convicted, to which it was answered, that those Words were as much as to say, Nunquam habuit, and the Conclusion being Contra formam Statuti, must explain such Words which seem to be doubtful. But per Cur. this being a Conviction before a Justice of Peace, the Time when the Offence was committed should be certainly alleged, viz. that the Defendant practis'd Die & Anno had not 100l. per Annum, and for that Reason it was quashed. 3 Mod. 230. Patsh. 2 W. & M. The King v. Silcor.


8. In an Indictment on the Statute of 2 & 3 E. 6. 14. of Shooting with Hail Shot, the Judgment was, quod Forisfaciatur, &c. where it should be Forisfaciat, &c. But the Court would not quash the Conviction upon this Exception. 4 Mod. 49. Mich. 3 & 4 W. & M. B. R. The King v. Allop.

9. Another Exception was taken, that the Indictment was, that the Defendant did shoot Conies in Cadder Wood, but it doth not appear where he shoot when he shot, which may be in several Vills, and that the Shooting being the Offence, it must be certainly laid, so that upon this Indictment there can be no Issue. But the Court would not quash the Indictment upon this Exception, nor upon this and the former Exception. 4 Mod. 49, 50. Mich. 3 W. & M. B. R. The King v. Allop.

10. Another Exception was taken that there was no Vi & Armis, Sed non Allocatur; For it is needful. Show. 339. S. C.

11. 3 Jac. 1. cap. 13. 5. Enacts that Persons using Guns, &c. to kill Deer, or Cowses, not having 40l. per Annum, or 200l. &c. may have them taken from them by any one having 100l. per Annum.

12. By 22 & 23 Car. 2. cap. 25. 5. Persons not having 100l. per Annum for Life, or 150l. per Annum, for a Term of 99 Years, are disabled to keep Guns, Dogs, or Nets.

13. 9. Persons aggrieved by any Judgment, by Virtue of this Act, may appeal to the next Quarter Sessions, whose Order shall be final, if no Title to any Land, Royalty or Fishery be therein concerned.
Habeas Corpus.

(A) Habeas Corpus cum Causa ad Subjiciendum. 

whom it may be directed, and by whom.

1. It seems that the King has supreme power over all Courts, within the Dominions of the King, delegated by the King, and therefore if any Man be Imprisoned by any, a Corpus cum Causa may be granted to them who Imprisoned him: For the King wants the Account given to him of the Liberty of his Subjects, and of the Reprisal of it. P. 3 Ja. B. R. Refused per Curtiam between Wetherley and Wetherley. ... C. 5 Ja. B. R. Refused per Curtiam, in Cause of Dyer v. Hanfle.

2. If a Man be imprisoned by the Counsel of the Marches of Wales, B. R. may award a Corpus cum Causa to remove him, and this ought to be obeyed. P. 3 Jac. B. R. between Wetherley and Wetherley, adjudged upon great Controversy between the said Courts, and upon award of the King himself accordingly. It lies to any Person, as well as to the Gaoler; per Holt Ch. 3 Mod. 21, in Cause of the King v. Bethell.

3. It shall always be directed to him that has the Custody of the Body Godb. 44, Pl. 52. Anon.—It lies to any Person, as well as to the Gaoler; per Holt Ch. 3 Mod. 21, in Cause of the King v. Bethell. So it was to

41 Car. 2. cap. 2. 8. 11. Writs of Habeas Corpus shall run into any Liberties, and into the Counties Palatine, the Cinque Ports, Wales, Berwick, Guernsey and Jersey. So it was to

Writ ran not there, as being Part of Scotland and not of England, and an exempted Jurisdiction after it was annexed to the Crown of England, cited Cro. J. 543 as 43 Ediz. Browley's Case. So a Hab Corp. was directed to the Governour of Jersey, to bring him thither the Body of O. who had been Prisoner there several Years. Sed. 586. The King v. Overton. It has been awarded to Celina, and all other Places within the Kingdom. Cro. J. 543, in Bourn's Case. One was imprisoned at Dover by the Lord Warden of the Cinque Ports, because he took Anchor and Cable at Flamborough, in the Liberty of the Rape of Sheringham, which the Lord Warden pretended to be within the Liberty of the Rape of Happening, and to appertain to him, because he hath the Jurisdiction of the Admiralty there, and he being for 23 Weeks imprisoned there, a Hab Corp. was granted, to remove the Body cum Causa. And because the Lord Warden refused to obey it, a Habeas Corpus, with a great Petition, was awarded returnable at another Day. M. 17; Jac. B. R. Cro. J. 543; Rel. Bourn's Case.—

5. Habeas Corpus was granted to the County Palatine of Chof. but afterwards superceded on Motion, two Precedents being cited. 1 Salk. 354. Mich. 4 Anno. Anon.

(B) Habeas Corpus cum Causa ad faciendum & recipiendum. In such Cases and to such Courts

1. If an Action be brought in London for these Words, Thou art a Whore, and my Husband's Whore, this ought not be removed by a Habeas Corpus. For at Common Law, no Action lies for...
Habeas Corpus.

8. C. by the Name of Bower, and Ux. v. Cooper.—A Procedendo was denied by the Whole Court; For such Custom to maintain Action for such Brab. Words is against Law, 4 Rep. 18. a. pl. 15. Oxford v. Croft. So where the Words were, that she was an arrest Where, and went from Chamber to Chamber playing the Whore, a Procedendo was denied. Hill. 9 Car. 1. Cro. C. 350. Hart's Cafe. But notwithstanding Oxford's Cafe, 4 Rep. 18. a. a Procedendo was granted, and there it was said and agreed by the Ch. J. and Mallet J. that at late Times there had many Proceedendo's been granted in the like Cafe in B. R. May 107. Trin. 17. Car. Anon.—So it was allowed, Carp. 75. Mich. 1 W. & M. B. R. Watton v. Clerk.

2. 21 Jac. 1. cap. 23. 8. 4. When the Thing in demand exceeds not 51. the Sutt shall not be removed by any Writ, save only by Writs of Error or Arent, the Privilege of the Cinque Ports, Sid. 431. pl. 21. Anon. that the King's Writ runs not there, is to be intended between Party and Party. Cro. J. 44. in Bourn's Cafe.—A Corpus sum. Can't to remove the Plaintiff out of the Cinque Ports. Toth. 210. cites Patch 4. & 5 El Blackley v. Lan leton.

(B. 2) The several Sorts.

1. A Habeas Corpus ad respondendum is when any one is imprisoned at the Suit of another, upon a legal Process in the Fleet or any other Prison except the King's Bench Prison, and a third Person would sue that Prisoner in the Court of B. R. and can't, because he is not in Custody of the Marshal of this Court. There he may have an Habeas Corpus to remove the Prisoner out of the Prison, where he is, into this Court, returnable at a Day certain, to answer unto this Action here; and for that Cause it is called Habeas Corpus ad respondendum, because he is to answer the Party's Action; Also, where a Person is in Custody in an inferior Jurisdiction, the Plaintiff may bring his Habeas Corpus ad respondendum returnable in this Court; and then the Defendant cannot Non-suit the Plaintiff, nor be bailed, but only by the Court of B. R. or be committed to the Custody of the Marshal. 2 L. P. R. 4.

2. There are three Sorts of Habeas Corpus's in C. B. 1. A Habeas Corpus ad Respondendum, and that is, when a Man hath a Caufe of Suit against one that is in Prison, he may bring him up hither by Habeas Corpus, and charge him with a Declaration at his own Suit. 2. There is a Habeas Corpus ad faciendum & recipiendum, and this Defendants may have that are sued in Courts below, to remove their Causes before us. Both these Habeas Corpus's are with Relation to the Suits properly being longing to the Court of C. B. So if an inferior Court will proceed against the Law, in a Thing of which C. B. has Cognizance, and commit a
Habeas Corpus.

A Man, C.B. may discharge him upon Habeas Corpus. 3. A third Sort of Habeas Corpus is for privileg'd Persons. But a Habeas Corpus Ad sub- jiciendum is not warranted by any Precedents that I have seen; per North. Hill. 28 & 29 Car. 2. in C.B. 1 Mod. 235. pl. 23. Anon. 3. L. P. R. 2. takes Notice of a Habeas Corpus Ad satisfaciendum. See (F).

(B. 3) Good or not. And Quash'd for what.

1. A Habeas Corpus, being directed to the Sheriff, or Gaoler in the Dis- jurtice, was held to be wrong, and that all the Precedents were otherwise, and therefore the Writ was quashed. 1 Salk. 350. The King v. Fowler.

(C) * What it is, and how granted, and + by whom.

2. This is a Prerogative Writ which concerns the King's Justice to be administered to his Subjects; For he ought to have Account why any of his Subjects are imprisoned, and it is agreeable to all Persons and Places, per Montague Ch. J. Cro. J. 543. in Bourn's Cafe.
3. All Habeas Corpus's in C. B. are Ad jiciendun & recipiendum, and they issue of Course and without Motion. But otherwise in B. R. for they are Ad subjiciendum, which are in criminal Causes, and not to be granted without Motion; Per the Ch. J. Patch. 30 Car. 2. C. B. 2 Mod. 306. Penrice and Wynn's Cafe.
4. Where the Party is committed for a Crime, there must be a Motion for the Habeas Corpus; but for the bringing in the Body of a Feme Covert arrested, and committed with her Baron in order to discharge the Feme, it may be had without Motion. Lev. 1. Mich. 12 Car. 2. B. R. Slater v. Slater & Ux.
5. Habeas Corpus is a Writ which lies to bring the Body of the Per- son into Court, who is committed to any Goal, either in civil or crim- inal Causes. 2 L. P. R. 1.
6. A Habeas may be granted by the Court of B. R. or by a single Judge at his Chamber, to any private Person, who keeps another in his House, or elsewhere, in Custody against his Will, by Virtue of the Habeas Corpus Act. 2 L. P. R. 2.
7. By Newdigate Justice, Trin. 1659. If a Habeas Corpus be granted, to give Liberty to a Prisoner that lies in Prison upon an Execution longer than for one Day; this is not according to Law. 2 L. P. R. 3.
8. The Court with not to put the Reason into a Habeas corpus, why they fend for the Prisoner; for it may be for Treason or great Conspicacy, By Catline J. 2. L. P. R. 3.

(C. 2) By what Court granted.

1. If a Man be impeached in C. B. and be imprison'd in the Marshalsea, Contra by upon Suit in B. R.—C. B. shall send for him to the Marsh, and he shall bring him, and when he has made Answer he shall be remanded; and by this
Habeas Corpus.

2. A Man may have an Habeas Corpus out of B. R. or Chancery, tho' there be no Privilege &c. or in the Court of C. B. or the Exchequer for any Officer or privileged Person there. 2 Init. 55.

3. Habeas Corpus is not an original Writ, and if it be in the Nature of a Judicial Writ, there must be a Cause for it. C. B. may grant an Habeas Corpus, but it is more natural for B. R. to do it, not in Point of Right, but Consequence; For if we send one, and it be a criminal Cause we can proceed no farther, but remand it. But B. R. may try it, if it be return'd for Felony, &c. per Vaughan Ch. J. to which Wild J. said, that in Q. Elizabeth's Time, one Court granted it as well as the other, and thought that in the principal Court they could not deny it, Salvo Juramento; But Vaughan anfwered, that they would find none in C. B. more ancient than Q. Elizabeth's Time. The other three Judges however granted the Habeas Corpus, which was for one imprisoned for Contumacy, for not paying Tithes upon a Certificate by the Bishop, according to 27 H. 8. 20. Cart. 221. Patch. 23. Car. 2. Anon.

4. The Court of C. B. said, that they had often directed that no Habeas Corpus should be moved for in that Court, except it concerned a Civil Cause. Because, when the Party is brought in, and the Cause therein, C. R. cannot proceed upon it, and therefore the proper Place for them is B. R. but they permitted it in the principal Court, (tho' it was a Commitment for obeting, &c. his Majesty's Subjects to the Disobedience of his Laws, and obeting &c. such as meet in Judicious &c. Conventicles, contrary to the Form of the Statute &c.) because the Party was an Attorney of that Court. 2 Vent. 22. 24. Trin. 22 Car. 2. C. B. Rudyard's Cæfæ.

(D) In what Causes.

1. Habeas Corpus lies of Plea, which is in Court of Record. Br. Privilege, pl. 5. cites 9 H. 6. 58.

2. A Sheriff was committed to the Fleet by the Barons of the Exchequer for an Amencement, put upon him of 40l. for a false Return, and the King pardoned him, and he had special Writ out of Chancery into B. R. in Nature of Aud. Quer. and therefore the Justices of B. R. sent for him by Writ of Habeas Corpus. Quod Nota. Br. Privilege, pl. 27. cites 36 H. 6. 21.

3. One was arrested by Warrant of the Peace by a Justice of Peace of Middlesex, and sent to Newgate, (which is the Prison for London, and also for Middlesex,) and Plaint was affwred against him in London for Debt, to which he answered, and after brought Corpus cum Caufa, alleging that the Suit was by Covin; And by the Chancellor, Needham, Coke and all the Court, the Prisoner shall be dismifled, because he was imprisoned for Middlesex and not for London; and therefore tho' this Prison serves as well for London as Middlesex, yet when he is imprisoned in Middlesex, Plaint cannot be taken against him in London; For if a Sheriff of London arrests a Man in London by Captus directed to the Sheriffs of Middlesex, Writ of False Imprisonment lies against him. Br. Privilege, pl. 44. cites 16 E. 4. 5.

4. A Prohibition was granted to the Admiralty, and delivered by one G. to the Judge of that Court when he was hearing of a Case, who command...
Habeas Corpus.

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manded him to call a Register, which G. refusing to do, the Judge again commanded him to do it, and G. said that he would not, because he was not so commanded to do it by the Writ; therefore the Judge committed the said G. to Prison. G. made Affidavit thereof, and prayed an Habeas Corpus, which was granted. Coke thought it was not sufficient Caufe to imprison him for Refuflal, and fo the Prisoner was delivered. Roll. R. 315, 316. Hill. 13 Jac. B. R. Baniome v. Baker.

5. It is not the Ulaage of the Court of B. R. to deliver one committed by the Court of Justice, and therefore the Prisoner was not remanded. Cro. C. 168. Mich. 5 Car. B. R. in Chambers's Cafe.

6. A Prisoner attainted for Felony, (viz. for Horfe-ftealing) was brought to the Bar of B. R. from St. Albans by Habeas Corpus and Certiorari. And it was demanded of him, what he could say why Execution should not be done upon the Indictment; and because he could not shew good Caufe to stay the Execution, he was committed to the Marshal, who was commanded to do Execution. And he was hanged the next Day. Cro. C. 176. Mich. 5 Car. B. R. in Cafe. 

If the Sheriff arraigs a Man upon Proceeds, and lets him to Bail, and after three years a Certifcate, and then a Habeas Corpus comes to the Sheriff to remove the Body, the Sheriff cannot justify the retaking of him upon this Writ, after he had let him to Bail before; but he ought to aid himself upon the Bail. Mich. 10 Car. B. R. between Lay and Strutt; per Curnum, in an Action of false Imprifonment upon such retaking. See Trefpas (c. a) pl. 1.

It was granted to the Prisoners in the King's Bench and Fleet, in Regard of the Poffifion increafing in London, and the Places adjacent. Hill. 11 Car. B. R. Cro. C. 306.

9. A Habeas Corpus was granted to bring up a Perfom arraigned by a Lady, out of B. R. and who was carried to a Town in the fame County, where the Arreft was, and there arraigned by a Serjeant of the Town, by a Writ out of the Corporation, where the Plaintiff proceeded against him upon that Writ, and not upon the Latiflare; and this being a Contemne, an Attachment allo was granted. St. 239. Mich. 1670. B. R. Brian v. Stone and Charge of the Party. St. 239. Trin. 1670. B. R. Treton v. Squire. It was denied to bring up one in Execution to be a Witness, because it seems to be an Ecape. Comb. 17. Patch. 2 Jac. 2. B. R. Anon. A Habeas Corpus ad Tertifsicandum is grantable for one in Prison on Meifne Proceeds, but not if he be in Execution. Comb. 48. Patch. 5 Jac. 2. B. R. Anon.

11. At Common Law, if the Sheriff had arraigned any Man by the King's Writ, he could not be delivered but by a Homine replyingando. 2 Saud. 60. Hill. 21 & 22 Car. 2. B. R. in Cafe of Poltern v. Hanfon.

12. J. S. a Parfon libell'd for Tithe against J. D. he is certified Contumax; the Bishop, according to 27 H. 8. cap. 20. certifies to two Judges to imprison him without Bail or Mainprize. They do so. It was moved for an Habeas Corpus in C. B. and it was granted by three Judges, but the Ch. Justice was against it, because it was more properly grantable by the King's Bench. Cart. 221. Patch. 23 Car. 2. B. C. Anon.

13. The 12 Car. 2. 23. of Excife, prohibits the bringing a Certiorari, but not a Habeas Corpus. 1 Mod. 102, 103. pl. 10. Mich. 25 Car. 2. B. R. Anon.

14. Two Perfons were committed to the Poutry Comptcr, by Commissioners of Bankrupts for refusing to be examined and sworn touching their Knowledge of the Bankrupt's Estate. The Proceeds against them in C. B. was an Attachment of Privilege, which was a civil Plea; and on a Motion for a Habeas Corpus, the Ch. J. said, that it might be granted without Motion; because all the Habeas Corpus's in that Court were ad. Faciendum & Receptandum, and they ilue of Courfe. 2 Mod. 306. Patch. 36. Car. 2. C. B. Pentrice and Wynn's Cafe.
15. Habeas Corpus was denied, on Suggestion that the Party was detain
15. Habeas Corpus was denied for one committed to Bridgewell for lead
17. None ought to take out a Habeas Corpus for a Prisoner without his
Consent. Trin. 25 Car. B. R. unless it be to turn him over to the King's
Bench, or charge him with an Action in Court. 2 L. P. R. 2.
18. Before Bullen's Cafe no Man was ever delivered by Habeas Cor-
pus, without Writ of Error delivered, from a Commitment of a Court of Oyer
and Terminer; Per Cur. 1 Salk. 348. Trin. 7 W. 3. B. R. in Bethel's
Cafe.
19. Whether Commitment by either House of Parliament be within
hill v. Powell.
20. A Person was committed by the Admirality in Execution upon a
Sentence, and a Habeas Corpus issued to bring him into B. R. ad Respon-
dendum to an Action to be brought against him; it was moved upon the
Return to commit the Defendant here, because there was no other way to
sue him; for that he was not chargeable in the Admirality, and that there
was no other way to sue him, and so there would be a Failure of Justice;
To which Holt Ch. J. said, that this was new, and that though the Proceeding in the Admiralty was by the Civil Law, yet it was supported
by the Custom of the Realm, and this Court must not exclude their Processes;
and enquiring into the Action, and thinking it only a PRETENCE, he said,
there being an Action pending in B. R., they ought not to commit him,
and the Plaintiff could not declare against him till in Custody; otherwise,
it an Action had been depending, and so the Defendant was remanded. 1
Salk. 351. Trin. 1 Anne. B. R. Keach's Cafe.
21. The Defendant was out on Bail in an Action in B. R. and was taken
on an Extent at the Queen's Suit; the Bail brought him upon a Habeas
Corpus, and prayed he might be committed to the Marshal in Discharge
of his Bail; and notwithstanding great Opposition was made by the At-
torney General, he was turned over, because the Action here was preced-
ent to the Queen's Extent. 1 Salk. 353. Mich. 3 Anne. B. R. French's
Cafe.
22. The Defendant pending an Action against him in B. R. was taken
upon a Warrant in a Criminal Matter, and committed to the Compter,
and afterwards was there charged with an Extent for the Queen; And he was
brought up by Habeas Corpus at the Suit of the Plaintiff in the Action,
in order to be declared against in Custody of the Marshal, and Mr. At-
torney General opposed it; because the Custody of the Marshal was pre-
carious, and he would let him escape as he did French; and this Cafe
differed from that, because by the late Act of Parliament the Plaintiff
might declare against him in Custody Vicecomitis, whereas the Bail had
been without Remedy if French had not been committed; and as to the
Defendant's being arrested on criminal Process, that was nothing; for tho' one so arrested cannot be charged at the Suit of a Subject in any
Action, without Leave of the Court, yet the Queen may charge him.
And the Defendant was remanded. 1 Salk. 353, 354. Mich. 4 Anne.
B. R. Crackall v. Thompson.
23. Tho' a Habeas Corpus be a Writ of Right, yet where it is to abate
a rightful Suit, the Court may refuse it. 1 Salk. 8. Mich. 6 Anne. B. R.
Hetherington v. Reynolds.
24. Husband and Wife agreed to live separate, and he being willing af-
afterwards to be reconciled to her, she refused; whereupon he and an Assis-
tant forced her into a Coach as she was coming from Church on Sunday,
and carried her into the Mint. She being brought into Court by Habeas
Corpus, it was moved that the Court would not interpose between Hus-
band and Wife, &c. But the Court discharged her out of her Husband's
Custody, upon her deferring to be so, and held, that the Agreement to
live
Habeas Corpus.

live separate, shall bind both till they both agree to cohabit again. 8 Mod. 22. Mich. 7 Geo. Lifter’s Case. — alias Lady Rawleigh’s Case.

25. If a Person appear to be imprisoned for an Excommunication in a Cause of which the Spiritual Court hath no Conunance, he may be delivered either upon a Habeas Corpus, or by quaffing or superceding the Writ of Excommunicato capiendo. 2 Hawk. Pl. C. 98. cap. 15. S. 49.

(D. 2) In what Cases; In respect of Privilege.

1. A Commission being granted to examine the Right of the Office of Exigent of London, which belonged to the Chief Justice, and by him was granted to Scroggs; and a Bill thereupon exhibited against him before the Commissioners, Scroggs demurred upon their Jurisdiction, and would not answer, for which they committed him to the Fleet; but in that Case the Justices of the Common Pleas granted him a Habeas Corpus, because he was a necessary Minister to the Court. Hugh’s Abr. 473. pl. 2. cites Mich. 2 Eliz. D. 175. Scroggs v. Colehill.

2. The Defendant coming to execute a Commission was arrested, and had a Corpus cum Causa, and set him at Liberty. Toth. 218. cites Trin. 23 Eliz. Jackson v. Vaughan.

3. So the Plaintiff, having a Writ of Privilege, was taken in Execution, and ordered to go abroad by Habeas Corpus, and the Party that arrested him to be committed. Toth. 219. cites Hill. 17 or 18 Jac. Morgan v. Richardson.

4. S. was elected Alderman of London, and being summoned by the Court of Aldermen into Court, he there refused to take the Oath, wherefore they committed him to Gaol, and upon Habeas Corpus they returned the Custody of London, &c. But he was discharged by the Privilege of being Mint-master. Sid. 287. Trin. 18 Car. 2. B. R. Swallow v. the City of London.

(D. 3) Directed to whom, ad Faciendum, &c.

1. The Habeas Corpus shall always be directed to him who hath the Custody of the Body. Godb. 44. pl. 52. Mich. 28 & 29 Eliz. B. R. Anon.

2. Therefore where it was directed to the Mayor, Bailiffs, and Burgesses, an Exception was taken, because the Pleas were holden before the Mayor, Bailiffs and Steward; but the Exception was disallowed; but otherwise it is in a Writ of Error, for that shall be directed to those before whom the Judgment was given. Godb. 44. pl. 52. cites Wickham’s Case.

3. And in London it shall be directed Majori & Viccomiti & London, because they have the Custody, and not the whole Corporation. Godb. 44. pl. 52. —— But the Reporter says, he conceives that the Court is, that the Writ be directed Majori, Aldermannis, & Viccomiti, &c. Ibid.

(E) At what Time granted and allowed.

1. Habeas Corpus was allowed after the Body was in Execution, but he was not discharged, but was sent to the Fleet and had Aud. Quer. Quod Nota. Br. Privilege, pl. 49. cites 22 H. 6.
Habeas Corpus.

2. By 43 El. cap. 5. No Writ of Habeas Corpus, or other Writ to remove a Caeuf out of an inferior Court shall be allowed, except the fame be de- livered to the Judge of the Court, before the Jury who are to try the Caeuf have appeared, and one of the Jury be joyned.

3. By 21 Jac. 1. cap. 23. No Writ, to remove a Suit commenced in an inferior Court of Record, shall be obeyed, unless delivered to the Steward of the Court before Iffue or Demurrer joined, so as the said Iffue or Demurrer be not joined within six Weeks after the Arrest or Appearance of the Defendant.

4. Judgment was entered against B. and afterwards the Bail of B. brought Habeas Corpus to the Marshall, where B. was Prisoner, to have his Body before the Judges of C. B. to be committed in Execution in discharge of the Bail; but before the Return of the Habeas Corpus, B. brought a Writ of Error returnable the Day following; and when he came to be committed, the Court doubted that their Hands were tied up by the Writ of Error, because he could not be committed upon the Judgment, and yet they would have discharged the Bail if they could tell which way; therefore Quere. Brownl. 61. Patch. 14 Jac. Whickhead v. Bradlhow.

5. A Judge of the Court of B. R. will not grant a Habeas Corpus in the Vacation for a Prisoner to follow his Suits; but the Court may grant a special Habeas Corpus for a Prisoner to be at his Trial in the Vacation Time. P. 1650. 24 May, B. R. For this may concern him more than the other can. 2 L. P. R. 3.

6. The Court will grant a Habeas Corpus to one to have a Prisoner who is not in Execution, out of Prison, to be a Witness for him at the Trial, but at the Charge of him that desires the Habeas Corpus, and at his Pet- rit, to take Care that the Prisoner do not make an Ecape. 2 L. P. R. 3. cites 29 June 1640. Trin. B. R.

7. If a Prisoner doth not make his Prayer the first Term, when the Law is open, he cannot do it afterwards on the Habeas Corpus Act; But where the Act is suspended, it must be understood, that he must do it the first Term after the Suspension determined. Per Cur. Cumb. 421. 9 W. 3. B. R. the King v. the Earl of Aysbury.

8. One removed into B. R. by Habeas Corpus ad Respondendum shall not be removed into any other Court till he has answered the Caufe in B. R. and shall not compel the Plaintiff to follow a prolix Defendant, and to prove the C. B. fo that each Court, in which he is first attached, shall retain the Defendant; and after he has answered there, you may carry him where you will. 1 Salk. 350. Mich. 11 W. 3. B. R. Anon.—And said, that this was fit to be the settled Course, if there be any Difference between the two Courts.' Ibid.

9. After an interlocutory Judgment, and before final Judgment in an inferior Court, a Habeas Corpus was brought, but before the Return of the Writ, the Defendant died, and a Proceedendo was awarded; because by the 8 & 9 W. 3. 11 the Plaintiff may sue a Sc. Fa. against the Executors, and proceed to Judgment, which he cannot have in another Court; and by this Means he would be depriv'd of the Efect of his Judgment, which would be unreasonable. 1 Salk. 352. Hill. 1 Ann. B. R. Anon. Judgment, and made a Rule for a Proceedendo absolute. Notes of Cases in C. B. Trin. 7 & 8 Geo. 2. Wyatt v. Markham.

(f. 2) To
Habeas Corpus.

(E. 2) To what Place.

1. A Habeas Corpus was directed to the Bishop of Durham, to bring a Prisoner into B. R. and he making no Return, another Writ was moved for, with a * Penalty in it; And one of the Clerks of the Crown fals, that Certionaries had been frequently returned from Durh. Bourn's Cafe. ham; But before the Bishop would make a Return on this Writ, he in- luted to have his Privileges recited in the Writ. But Dodderidge and the Court fals, that they would not change the ancient Courfe, and Forms, and Ulages. Lat. 160. Jobfon's Cafe. 2. Habeas Corpus's have gone beyond Sea; Dr. Prujean was to cure a Madman, Sir R. Carr's Brother; Commen Pleas rent an Habeas Corpus for him beyond Sea. Per Wild J. Cart. 222. Pach. 23 Car. 2. C. B. Anon. 3. In Error on a Judgment in Ireland, it was suggested that the Plaintiff was in Execution upon the Judgment in Ireland. And the Court A Habeas feem'd to be of Opinion, that a Habeas Corpus might be lent thither to re- move him as Writs Mandatory had been awarded to Calais, and now to Guernsey and Jersey, &c. Mich. 33 Car. 2. B. R. 7 Vent. 357. Anon. who cited 42. E. 3. —This Writ hath been awarded to Calais out of B. R. Pach. 17 Jac. B. R. Cro. 953. per Montague Ch. J. (F) Returns. How, and what, In General.

1. W Here one is committed by one of the Privy Council, the Cause of Commitment ought to be let down in the Return, but not where the Commitment is by the whole Privy Council. Le. 71. Mich. 29 & 30 El. C. B. Howell's Cafe. 2. If on a Corpus cum Causa the Cause returned be sufficient, but false, the Court must remand the Prisoner, and he is at no Mischief; For if they have not Authority, or the Cause be false, he may have a Writ of false Imprisonment, and where the Party is only removed, and a false Return is made, the Party grieved may have special Action on his Cafe. 11 Rep. 99. b. Trin. 13 Jac. B. R. Bagg's Cafe. 3. It was returned upon an Habeas Corpus, that there is a Custom in Lon- don, that if any Freeman devise any Legacy to an Orphan, that the Executo. shall be constrained to find sufficient Sureties to pay the Legacy, or be im- prisoned. Roll. R. 316. Hill. 13 Jac. B. R. Spencer's Cafe. 4. No Anfwcr can satisfy it, but to return the Cause with a Corpus Pa- ratum habe, &c. per Montague Ch. J. Cro. J. 543. Mich. 17 Jac. B. R. in Howell's Cafe. Bourne's Cafe. 5. Habeas Corpus's are always returned in the Preterperfect Tenfe. Sid: 273. Trin. 17 Car. 2. B. R. the King v. Wagnaff & al. 6. Where a Writ of Habeas Corpus Ad Satisfaciendum fliues out of B. R. the Attorney for the Plaintiff must endorse the Number Roll of the Judgment on the Back of the Habeas Corpus. And in the Cafe of one Saider Mich. 21 Jac. Car. 2. the Court granted a Pluries Habeas Corpus, with Penalty of 100l. returnable immediate. 2 L. P. R. 2. 7. The Writ commands the Day, and the Cause of the Juation and De- taining of the Prisoner, to be certified upon the Return, which if not done, the Court cannot poffibly judge whether the Cause of the Commit- ment and Detainer be according to Law, or againft it. Therefore the Cause of the Imprisonment ought by the Return to appear as specially and certainly to the Judges of the Return, as it did appear to the Court or Perfon authorized to commit, otherwife the Return is insufficient. Vaugh. 137. about 22 Car. 2. in Buthull's Cafe. 8. Where the Cause is returned without the Body, yet that is supplied by the Defendant's Appearance and Bail enter'd here; Per Holt. Cumb. 332. Trin. 7 W. 3. B. R. Coxall v. Manucripts of Colecroft. K k k 9. Contufance
Habeas Corpus.

9. Contumacy of Pleas, or exempt Jurisdiction, were never returned to a Habeas Corpus; for then they might return a Fality to support their Jurisdiction, which would not be treafrable, and so a Subject would be ousted of the Privilege of suing, or being sued in the King's superior Court, without any Opportunity of controverting the Matter; and the Cafe of Bishop v. Percival in Hard, was quoted per Holt Ch. J. 12 Mod. 666. Hill. 13 W. 3. B. R. Taylor v. Reigolds.

10. If one be in Custody upon a Criminal and also upon a civil Matter, and he would move himself by Habeas Corpus, there ought to be but one Habeas Corpus either of the Crown Side or of the Plea Side, and both Causes ought to be returned. 6 Mod. 133. per Car. Patch. 3 Anne. B. R. Anon.

(F. 2) Return thereof. Good or not; and Exceptions to Returns of Commitments.

1. By the King, Lords of Council, &c.

A Habeas Corpus issifed out of C. B. to the Steward and Marshal of the House, &c. for W. S. which was returned thus, viz. Such Domina Regina per Literas Patentes suus jisceptis in Protectionem jam f. M. and his Sureties, et ex Uberiori Gratia solvitis, that if any Person should arrest or caufe to be arrested the said John Mabb, or any of the Sureties, then the Marshal of her House, &c. might arrest every such Person, and detain them in Prison until such Person should, answer before the Privy Council for the Contempt; And that W. S. caiied by f. P. a Surety of the said f. M. to be arrested, &c. And upon this Return W. S. was discharged. And because, after such Discharge, the Parties caiffed W. S. to be again arrested for the same Cause, viz. by Colour of the said Protection, an Attachment was granted against them. Le. 71. Mich. 29 & 30 Eliz. pl. 93. Search's Cafe.

2. Patch. 34 Eliz. All the Judges and Barons delivered their Opinions in Writing, and signed by them; That if any Person be committed by her * Majesty's Commandment from her Person, or by Order from the Council-Board, or if any of or two of her Council commit one for High-Treason, such Persons, so in the Cafe before committed, may not be deli- ver'd by any of her Courts, without due Tryal by the Law and Judg- ment of Acquittal had. Nevertheless the Judges may award the Queen's Writ to bring the Bodies of such Persons before them; and if, upon Return thereof, the Caiffes of their Commitment be certified to the Judges as it ought to be, then the Judges in the Cafes before ought not to deli- ver him, but to remand the Prisoner to the Place from whence he came, which cannot be conveniently done unless Notice in Generality or essi spe- cially be given to the Keeper, or Gaoler, that shall have the Custody of such Prisoner. 1 And. 297, 291. pl. 305.

4. Upon an Habeas Corpus of one P. the Return was, that he was imprisoned by Virtue of a Warrant from the Council, and it was held by all the Justices, that he was not bailable, tho' two of the Council only committed him. 1 Roll. R. 134. cited by Coke, as 33 H. 6. 28. b. Poynes's Cafe. — And 18 Eliz. such Question was, and Coke said, that if Jac. his Brother Haughton was affigned to be the Counsel for a Prisoner, who was committed by the Council of the King, and he came there in Court, (viz. in Banco) and said that he could not maintain that he was bailable, because the Book of 33 H. 6. stopped his MOUTH. Ibid. cites it as one Hacket's Cafe. —† S. P. and C. cited per Holt Ch. J. 5 Mod. 81. in name of Roe and Kendal, &c.

3. One having a Suit pending in B. R. and coming to London was com- mitted to Newgate, and on a Habeas Corpus to the Gaoler of Newgate, he returned that the Party was committed to his Custody by Warrant from the Lord Chancellor of England for certain Matters concerning the King, there to remain until the Lord Chancellor delivered him; and for that Cause he could not have his Body here. And Hutton moved that the Return was not good, becaus
because it is too general: For it proceeds not for what * Causes he was committed; for it might be for a Cause which would not hinder him of his Privilege. Here also the Return is, that he ought to remain there until he were delivered by the Lord Councillor; therefore he said it was ill. And the Court thereto said, it was the first Time that such Exceptions had been taken. Therefore they would confider of the Cafe. And 9 H. 6. 44, was cited, and 33 H. 6. 28. & 29: and 4 E. 4. 15. and 16. Cro. J. 219. Hill. 6 Jac. B. R. Addis's Cafe.


4. Divers Brewers were committed to Prison by the Council, and upon an Habeas Corpus the Cause was returned to be by Force of a Warrant importing, that they were committed per Concillium Regis, pro quauidam Can- fis Regis & Servicium suum tangentibus. Exception was taken, because it is per Concillium Regis, and does not shew what Council it was, whether Council of State or Counsel at Law, and so uncertain. But it was answered, that it shall be intended the Council of State. And Coke Ch. J. said, that the Statute of W. 1. is, that a Man committed by Command of the King is not bailable, and that Stamt. expounds Command to be per Concillium Regis; For the Council is incorporated in the King. citem 33 H. 6. 28. b. Hill. 12 Jac. B. R. 1 Roll. R. 134. the Brewer's Cafe.

5. R. was brought to the Bar by Habeas Corpus; the Cause returned was two Warrants; 1. because he was committed by the Lord Conway Secretary of State, and there no Cause flown. 2. There was another Warrant from the same Secretary, which recited the first Warrant, and said, that now upon further Examination, be commanded the Gaoler to keep him for Sufpicion of High Treason. And it was said, that this second Warrant is no Cause to detain, because it is with Reference to the first Warrant, which is no Warrant; and there is no special Cause of Sufpicion alleged, that false Gold was found with him, or the like; nor is it flown what Treason; And he who is taken upon Sufpicion shall be let to Bail. Palm. 558. Trin. 4 Car. B. R. Melvines Cafe.

6. A. was committed to the Marshalsea of the Houthold for Words. Upon an Habeas Corpus, the Return was, that he was committed by the Lords of the Council; and the Warrant was that he was committed for in- sulting Behaviour and Words spoken at the Council Table, which was sub- described by the Lord Keeper, and 12 others of the Council; and because it did not mention what the Words were, so as the Court might judge of them, the Return was held insufficient, and the Marshal advised to amend it. Cro. C. 133. Mich. 4 Car. B. R. Chambers's Cafe.

7. So where the * Return was, that he was committed to the Gaol of O. by the Earl of Danby to remain there without Bail or Mainprize, until he should be delivered by the Justices in Eyre. It was ordered that he should be bailed for 12 Days, and that the Return in the Interim should be a- mended; For being General, and no special Cause flown, it was held to be absolutely void; and if not amended and good Cause flown at the Day, it was ordered that he should be absolutely dismissed. Cro. C. 593. Mich. 16 Car. B. R. Briice's Cafe.

Cafe—So where the Commitment was by a Secretary of State. Le. 175. Hellyard's Cafe.—S. P. and a Difficile was taken between a Commitment by one or by all the Council. Le. 75. 71. How- ell's Cafe.—S. C. cited Arg. 5 Mod. 8;—Where the Return was that he he was committed by the Lords of the Privy Council for divers Causes and Misventures, until they give Orders to the contrary. It was held not good. Patch. 16 Car. 2. Cro. C. 579. Freeman's Cafe.

8. The Steward of Windsor-Court, who was Surveyor [also] of the Castle was committed by the Lord M. Lieutenant of the said Castle, and after three Habeas Corpus's, Lord M. made Return that he was committed by the Immediate Warrant of the King, because he refused to deliver certain Rooms
Habeas Corpus.

10. The Return upon a Habeas Corpus was, that the Party was committed for a Contempt for not performing a Decree made in the Court of Request, and no other Cause appear'd in the Return. The Court were of Opinion, that they could not deliver him, because no Cause appeared in the Return to warrant their Delivery of him. And they said, that if the Return be false, yet they cannot deliver the Party, but the Party may have his Action of False Imprisonment, if the Imprisonment be not lawful. Godb. 198. Tr. 10 Jac. C. B. Lea v. Lea.

11. A. was committed to the Fleet for disobeying a Decree in Chancery upon a Bill exhibited there after a Judgment of the same Matter in Bank, and affirmed in this Court; and upon a Habeas Corpus the Return was true, Certifico quod A. commissurus est 28 Novembris 1608, propter contemptum extra Curiam Cancellarii edem Curiae cummissam & per Mandatum Domini Cancellarii; it was moved that the Return is not good, because it is Proper contempt Extra Curiam Cancellarii, which is utterly uncertain, which was agreed upon Coke and Cur, and because it is that he was committed per Mandatum Domini Cancellarii, which is too general.


12. C. was brought in upon a Habeas Corpus, and the Return was that he was committed by the High Commission, and the Warrant of the Commitment was, that he was committed because he had used disrespectful Words against the Proceedings of the High Commission, and this being drawn into Form of Law in diverse Articles, he was refused to answer. It was moved that the Return is insufficient, because it is too general. Per Coke, the Return is not good, because it is not shown what the Articles were; for Peradventure, they were Articles concerning Matters at the Common Law; also it is too general, that he was committed for divers reproachful Words, &c. 22 E. 4. Propter Multiplicum Contumaciwm is not good; besides no Time is alleged when the Words were spoken, and perhaps they are pardoned by some Act of Parliament, if the Time had appeared. The Court held the Return not good, and so he was bailed. 1 Roll. R. 245. Mich. 13 Jac. B. R. Codde’s Cafe.

13. The Return to an Habeas Corpus was, that he was committed by Order of the Exchequer 9 Car, for not paying a Fine imposed upon him by the Ecclesiastical Commissioners; and altho’ it was not shown for what the Fine was imposed;
14. A was imprisoned by the Court of Admiralty, and prayed a Habeas Corpus, upon which was this Return, viz. First, The Cause of the Admiralty is set forth, which is to attach Goods in Confiscation & Maritime, in the Hands of a third Person; and that upon four Defaults made, the Goods so attached should be delivered to the Plaintiff, upon Caution put to deliver them, if the Debt or other Cause of Action be disproved within the Year; and after four Defaults made, if the Party in whose Hands the Goods were attached refuse to deliver them, that the Custom is to imprison him until, &c. Then is set forth how that one Kent was indebted to J. S. in such a Sum upon Agreement made super ad\n
impose; yet because the Commitment was by a judicial Court, this Court would neither bail nor discharge him. Cro. C. 579. Pach. 16 Car. B. R. Anon.

15. The Return was that the Party was convicted of publishing a false Petition, supposed to be delivered to the King with a Substantiation that the King was content to discharge the Fine of J. S. who was fined in the Court of the Marches, made in Deceptione Curie, & in Deformatiwm Regis de debito suo, and that he being present in Court, was committed to the Gaoler till be paid 100 l. to the King, and 40 l. to the Attorney of the Court for Costs; and that he was detained also Virtute Ordinis decerti Civis, &c. And this was held to be good without hearing the Proceedings, and that Virtute Ordinis, &c. was sufficient. And that tho' two Causes of Imprisonment and Detainment were alleged, and tho' in the second he flew no Imprisonment, but only that he was detained Virture Decreti, &c. yet Sir James Ley Ch. J. held it good; For it was shewn before that he was committed, and that he being before imprisoned for Caufe, &c. was also detained; but that it had been in Juflication in Trefpafs, it had not been good. 2 Roll. R. 307. 21 Jac. B. R. Hancock's Cafe.

16. Upon a Habeas Corpus directed to the Keepers of the Porters Lodge, (being the Prison for the Council of the Marches of Wales) it is being returned, that they were committed to him by Virtue of a Decree of the said Council, upon Information against them, that the one of them inveigled the Son and Heir of J. S. being of the Age of 17 Years, in the Night, and when he was drunk, to marry the Sitter of another of the Defendants, whereupon they were every one of them severally fined to the King; some of them 100 Marks, some 40 l. and 100 Marks Damages to the Father who was the Professor, and committed to Prison for a Year, and until the said Fines paid and the said 100 Marks Damages satisfied to the said J. S. and until they entered into a Recognizance for their good Behaviour, and until the said Court took further Order; and it was returned also, that they were committed by Virtue of an Order from the Lords of the Council. And this Return was held utterly insufficient for the last Part; because it was not mentioned what was the Order of the Council. Mar. 52. pl. 80. S. C. by Name of Shirley's Cafe. Reports that the Woman was a Servant to Maid, and that the Parties were remanded, because it appeared that they had not paid the Fines, and that nothing
Habeas Corpus.

was said of the Matter of the Return. 
- P. Patch. 16
Car. 23. 57. Freeman's Cafe. — See Brice's Cafe, and the Notes there.

Council. It was moved by Grinmill that the Return was ill, to answer to Prison, to remain there until further Order taken, which is utterly uncertain. It was doubted whether the Marches of Wales might meddle with a clandestine Marriage to punish it, being a meer Spiritual Act. As also about the Sentence for Damages to the Party, altho' it be within the express Words of the Instructions, &c. Whereupon Day was given until Octabri Michaelis. And in the Interim the Parties were bailed. Cro. C. 557. Trin. 15 Car. B. R. Seale's Cafe.

17. The Return to a Habeas Corpus, directed to the Mayor of St. Albans, was that He was committed to the Goal by the Justices of the Peace of the said Liberty, at the Sessions of the Peace held 11 July 1639, till he should obey an Order for taking the Office of Constable upon him; for that he being an Inhabitant within the Hundred of Cipha, within the Liberty of St. Albans, did refuse to execute the said Office: And because it was informed on the Part of the Prisoner, that he denied he was within the Liberty of St. Albans, but affirmed he was within the County of Hertford out of the said Liberty. All the Court held, that he was unjustly committed; because they ought not to have committed him, when he denied to be Constable, especially pretending he was not within the Liberty, but should have caused him to be indicted upon this Restful; and if he were found to be within the Liberty should have alledged a good Fine; and then have committed him for that Cause. See 8 Rep. 38. Grefley's Cafe. But as it is now returned, the Imprisonment was not lawful; wherefore he, by the Opinion of the whole Court, was absolutely discharged without any Bail. Cro. C. 557. Hill. 15 Car. B. R. Crawley's Cafe.

18. One was committed for not taking upon him the Office of a Livery-man, being chosen thereto, &c. Upon a Habeas Corpus to the Keeper of Newgate, he did not in his Return set forth his Warrant in Hec Verba, but only that Per quodnam Warrantum in Scriptis seculundum Confessum, &c. the Defendant was committed. The Court said, that the Warrant is always set forth at large upon an extra-judicial Commitment. But when a Man is committed by a Court of Record, there is no Warrant at all, and therefore the Court of Aldermen (who committed the Perfons) cannot be intended to proceed judicially, because the Commitment is per Warrantum in Scriptis; that they are the proper Judges of an Exceute, why Defendant will not take upon him the Livery, and if they adjudge it insufficient, and appoint him to accept it, and he refutes, it is a Contempt of their Authority, and they may commit him. 5 Mod. 156. to 162. Hill. 7 W. 3. B. R. Vinner's Company v. Clerk.

Where a Commitment is to Court to a proper Officer there present, there is no Warrant of Commitment, and in such Case he cannot return a Warrant in Hec Verba, but he must return the Truth of the whole Matter under Peril of an Action.

But if he be committed to one that is not an Officer, as in the principal Case, there must be a Warrant in Writing, and where there is one it must be returned; For otherwise the Gaoler may after the Case of the Prisoner, and make it either better or worse than it is upon the Warrant. 1 Salk. 349. Hill. 5 W. 3. B. R. S. C. by the Name of King v. Clerk.

19. In the Cafe above, another Exception was taken; that in the Return a Cautelen was laid for the Mayor to commit the Offender to the Custody of the Sheriffs of London, or other Officers; and the Keeper of Newgate, who was the Gaoler had returned, that he was committed Cystisus wise, when it doth not appear that he was either Sheriff or Officer at that Time. And the Court held, that tho' the Keeper of Newgate may be an Officer of the City, yet he may not be one attending the Court of Aldermen; so that it does not appear that he is a proper Officer of that Court to receive the Prisoner; neither did it appear that Newgate was in London, but if it did, he ought to be committed to the Sheriffs, and not to the Keeper of Newgate, tho' they might have taken him for their Officer. 5 Mod. 156. to 162. Vinner's Company v. Clerk.

20. If a Cafe be returned out of the City Courts by Habeas Corpus, the Cauflen must be returned, or no Proceedendo can ever be granted. 1 Mod. 449. Trin. 5 Geo. 1. B. R. in Case of Aigaff v. Hunt.
21. Upon the Return of an Habeas Corpus, it was certified that the Mayor of L. imprisoned one H. (Qui is Male gestit) and for using of unkind Speeches to him, and that in his Hall with a Spite, infultum factit, & contusus fuit eum vulnerare; this he certifies for the Cause of his Imprisonment by way of Justification; and upon Exception taken to the Certificate of the Mayor, it was held by Haughton, Dodderidge and Coke J. that the Return is insufficient, because it ought to have showed the certain Cause of his being imprisoned by him, and also to have expressed, for how long Time, and what sort of Imprisonment it was; wherefore by Rule of the whole Court, H. was absolutely discharged of his Imprisonment. 2 Buls. 139, 140, 141. Mich. 11 Jac. Hodges v. Humkin the Mayor of Liskerret.

22. The Return was that the Prisoners were committed by R. a Justice of Peace of the said County by force of the Statute of 5 R. 2. 7. upon Complaint of J. S. that he claimed Common in a Meadow of the said J. S. called Monk's Meadow, and that the Prisoners entered into the said Meadow and kept him out with Force and Arms from his Common, and that he came thither and found them holding the said Meadow with Force, whereupon he by Virtue of the said Statute committed them to Goal; and it was held by all the Court (absente Brampton) that this Commitment was not warranted by the Statute; For a Man cannot be indicted or committed for Entering his own Land with Force, or holding it with Force against a Commoner. Cro. C. 486. Mich. 13 Car. B. R. Sydnam and Parr's Cafe.

23. W. and 7 others were committed by the Mayor of London to Newgate, for refusing to enter into a Recognizance to appear before the Lords of the Council; and upon an Habeas Corpora returned by the Mayor and Sheriffs, it appeared, that by an Order from the Council Table, they were appointed to come before the Mayor and Sheriffs to treat concerning foreign Matters; and when they appeared being required by the Mayor then in Commision of Oyer and Terminer for the City, to perform the Order of the Lords of the Council, and to enter into Recognizance in a reasonable Sum, they refused, whereupon he committed them. And Peard, Maynard and Keeling, Jun., argued, that this Return was not good; 1st. Because it doth not mention the Order, nor shew what the Order was; 2dly. Because the Recognizance is demanded for them to appear before the Lords of the Council, but no Time nor Place is appointed nor Cause shewen why it was demanded; and because the Kings Council prayed Time to maintain the Return the Parties were bailed until the next Term. Cro. C. 552. Trin. 15 Car. B. R. Wolnough's Cafe.

24. P. was committed by the Lord Mayor of London, for that contemptuously and unfeasonably he serv'd him with a Process of Sumpensa out of this Court when he was executing his Office as a Magistrate, and examining Offences of High Treason, in derogation of Magistracy, and in disturbance of the due Execution of Justice, till such Time as he should find Suresety for his good Behaviour. It was moved that he might be fet at Liberty, because there did not appear (as was alleged) any good Cause of Commitment. But Hale held that he could not be remanded, because it doth not appear by the Return that the Lord Mayor was then a Justice of Peace; but because the Process was unduly serv'd upon such a Person, at such a time, the Court would not discharge him; but there was no Exception taken to the Lord Mayor committing a Person for an Affront done to himself. Hard. 182. Patch. 13 Car. 2. in Seaco. Prince's Cafe.

25. Upon the Return of an Habeas Corpus it appeareth that C. had forfetted a great Number of Leiblers, whereupon the Mayor, &c. of London caused him to appear, and he confess'd the same, and they Ordered him to deftnt from such forsetting; but he said Obstinate and in Contempt of the Court, that he would not obey their Order, whereupon they committed him to Newgate until he should Signify to the Court that he would conformed himself, or otherwife be delivered by due Course of Law. This was moved to be insufficient; to which it was anwered, that the Imprisonment in this Case was not for forsetting, but for the Contempt to the Court;
Habeas Corpus.

Court, which, per Twifden, they have Power to do; wherefore the Court remanded the Prisoner, he promising to make Submission at the next Court, and the Sheriff promising he should be discharged thereupon. Vent. 115, 116. Patch. 25 Car. 2. B. R. City of London v. Coates.

26. A Justice of Peace committed a Brewer for not paying the Duty of Excise, and he being brought into Court, an Exception was taken that it ought to appear that he was a common Brewer. Hale Ch. J. said that the Statute 12 Car. 2. 23. prohibits the bringing a Certiorari, but not a Habeas Corpus; and want of Absence of a Matter of Fact may be amended in a Return in Court; and if it be not true at their Peril be it, and so it was amended. 1 Mod. 102, 103. pl. 10. Mich. 25 Car. 2. B. R. Anon.

27. An Habeas Corpus being brought upon a Commitment by the College of Physicians, it was excepted against, because it was Pro mala Praxi which is uncertain. 2dly. The Conclusion is ill, because it was to remain without Bail till discharged by the President and College, or others authorized, or by due Course of Law; For if a Commitment be for a Fine it ought to be Quisque he paid the Fine; and if for a Contempt, till he be had admitted Emptis. 3dly. The Offence is pardoned; For tho' the King has granted Fines to the Corporation he might however Pardon the Offence, and the King in this Case has pardoned all that he can Pardon; and it is probable that the Commitment had been for a Punishment, it ought to have been a distinct Commitment & it was not so stated. 4thly. The Exception was taken to it for not averring their Right to come and be Examined; For it did not appear that they did refuse, and that it should have been positively averred, viz. That they did refuse and still do; For if they are willing at any Time, they ought to be discharged, and so they were; but the Process against them being an Attachment of Privilege they were order d to put in Bail upon the Attachment. Patch. 30. Car. 2. B. R. 2 Mod. 306. Penrice and Wynn's Cafe.

28. The Return was, that the Parties were committed by a Warrant under the Hands and Seals of the Commissioners of Bankrupts for refusing to be examined and sworn touching their Knowledge of the Bankrupt's Estate, and an Exception was taken to it for not averring their Right to come and be Examined; For it did not appear that they did refuse, and that it should have been positively averred, viz. That they did refuse and still do; For if they are willing at any Time, they ought to be discharged, and so they were; but the Process against them being an Attachment of Privilege they were order d to put in Bail upon the Attachment. Patch. 30. Car. 2. B. R. 2 Mod. 306. Penrice and Wynn's Cafe.

29. A. and four others of the Parth of St. Bartholomew were brought to the Bar by Habeas Corpora, and by the Return it appeared that they were committed to a Messenger for Contempt to the Ecclesiastical Commissioners for not performing their Order in paying the Parish Clerk his Wages, rated by their Order at 4d. the Quarter for every House in Great St. Bartholomew's, which they refused to pay but according to their Culture as they were rated by their Church-Wardens and Vestry. And now Doctor Merrick and Doctor Eclelton moved, that they should be Remanded; For they said this Order was grounded upon the King's Letters Patents, where in it is Provided, that the Clerks should gather and receive their Wages as should be ordered by the High Commissioner, and pretended that for any Contempt they might Fine and Imprison; but upon this Return they were bailed until the first Tuesday next Term. Cro. C. 582. Patch. 16 Car. B. R. Torle's Cafe.

30. Upon a Habeas Corpus was return'd the Warrant from the Sheriff, for taking the Prisoner, which was upon a Writ of Excommunication Capiendo for Subversion of Tythes and other Ecclesiastical Duties; Revol'd, that this Return was uncertain, and the (other Duties) might be such Matters as were out of their Jurisdiction, and they must have the Matter to be within their Jurisdiction; and also that the Writ of Excom. cap. it self ought to be Returned, and it is not sufficient to return the Warrant; because that may be Wrong when the Writ is Right, and tho' the Warrant may be Wrong, yet if the Writ is Right the Party is Rightfully in Custody of the Sheriff, and the Writ was Qual'd. 1 Salk. 350. Trin. 12 W. 3. B. R. the King v. Fowler.

... The
Habeas Corpus.

31. The Return was, that the Parties, being jurors, refused to find [Exhibit 1]
Gaige and others indicted on the late Statute of Conformity, Guilty contrary to their
Evidence which was full and pregnant, and upon this the Court fined them
and ordered them to be imprisoned till they paid the fine; and upon
mature Consideration they were remanded. Rayn. 138. Tr. 17 Car. 2. 8 C.
B. R. the King v. Wagstaff & al.

32. The Return was, that the Prisoner, being a servant among others
charged at the Sessions Court of the Old-Bailey to try the Issue between the King
and Penn and Made upon an Indictment for Assembling unlawfully and in-
unlawfully, did contra pleam & manifestam Evidentiam openly green in
Court acquit the Prisoner indicted, in Contempt of the King, &c. This was
held Inufficient, because the Evidence it self was not expressed so as that
the Court might Judge of it. Vaugh. 135 to 158. about 22 Car. 2. Buh-
bell's Cafe.

33. Where the Return was, that upon the Party's Examination they found
full Case to justify him to be Gilty of the said Misdemeanors (mentioned
before of encouraging Convencilers and instiring up People to Disobedi-
ence) and that therefore they did require him to find Suetries to be of the
good Behaviour, which he refused, this was held an insufficient Return,
neither bearing the Case of Suspicion, nor the certainty of the Sum in which
he and his Suetries should be bound. 2 Vent. 22, 23, 24. Trin. 22 Car. 2.
C. B. Rudyard's Cafe.

34. A Habeas Corpus was to bring in the Body of an Heirees being
in Custody (as was suggested in the Writ) of Sir R. V. then Lord Mayor
of London; afterwards a Plurys plaintiff, and thereupon he returned Nihil
baeo tanem Prorsum in Custodiis mea et habi die Impetrationis hisus brevis
et unquam Populo. This was adjudged an ill Return; For tho' he had
no such Person then in his Custody at the Time of the Plurys, yet it
might be that he had her at the Time of obtaining the first Writ. 2 Lev.

35. A Return was, that Issue was joined before the Writ came to him, See Inferior
but did not say that Issue was not joined within 6 Weeks, &c. as it ought to
be by the Statute, and therefore ill. Comb. 127. Trin. 1 W. & M. B.
R. Anon.

36. And there was another Fault because, it being in an Inferior
Court, it is not returned, that the Cause of Action arose within the Juris-

37. Where an Action is founded on the Custum of London, and
removed by Habeas Corpus a Difference was taken between an Action brought
on a By-Law, and removed here into B. R. and an Action brought on the
Custum of London; For in the Case of the By-Law, the special Matter of
such Law ought in certain to be returned upon the Habeas Corpus, &c.
otherwise the Court cannot take Notice of such a private Law; but 'tis
not so in an Action founded on a Custom of London, because the Court ex
Officio will take Notice of those Customs. Carch. 75. Mich. 1 W. & M.
B. R. Watson v. Clerk.

(G) Proceedings.

1. NO Habeas Corpus shall be made out in the Vacation Time to remove a
Cause out of an Inferior Court, other than the Courts in London,
Middlesex, or the Marhall's, or other Courts within 10 Miles of London,
returnable immediate, but at a Day certain in Court; and that every such
Habeas Corpus, returnable in Trin. or Hill. Term, be not returnable after
the second Return of the Term: Per Magistr. Liveley and Allis, Patch. 21
Car. 2. 2 L. P. R. 1.
Habeas Corpus.

2. If a Cause be removed in the Vacation out of London, Middlesex, or the Marthalls, or other Courts within 5 Miles of London by Habeas Corpus returnable immediate, and Bail put in by the nth Return of the next Term, if the Declaration be delivered 8 Days before the end of the Term, then the Defendant is to plead to enter; and in Misc. Term, if it be delivered before the Return-day of Courtin. Anim. and in Easier Term, before the Return-day of Mens. Patch. then the Defendant is to plead to Trial the same Term, per Magist. Livelay and Alios, Patch. 21 Car. 2. Regis. 2 L. P. R. 1, 2.

3. After the Return of a Habeas Corpus is read and filed in Court, it cannot be amended. Trin. 23 Car. B. R. For it is then a Record of the Court, but before it be filed, it may. 2 L. P. R. 2.–S. P. Gibb. 266. Patch. 4 Geo. 2. B. R. the King v. Catterall.

4. Every Habeas Corpus returnable at a Day certain, to remove a Cause out of an Inferior Court, must not be made returnable further than the second Return in Hillary and Trinity Terms; so that the Defendants may plead to in due that Term, and the Cause may be tried at the Assizes, and in Default of pleading to Trial, the Plaintiff may take his Judgment. 2 L. P. R. 3.

5. Note, Holt Ch. J. made it a Rule, that when one is brought up by Habeas Corpus the Return should remain in Court and a Copy of it only given the Marthall, and so of a Committee. 6 Mod. 180. Trin. 3 Anne. B. R. Anon.

6. Upon a Habeas Corpus a Rule may be made to bring the Prisoner up any Day in the same Term without filing it, but not to bring him up at a Day in another Term, unless the Return thereof be filed. 12 Mod. 441. Hill. 12 W. 3. B. R. the King v. Margafon.

7. A Prisoner was brought up by Habeas Corpus returnable at a Day certain, and the Gaoler did not bring him into Court, but carried him back, and brought him in the next Day. In this Case, the Writ being returnable at a Day certain, the Gaoler could not bring him in at another Day by Virtue of it; but upon a Writ returnable immediate it is otherwise, and the Gaoler was ruled to be at the Charge of a new Writ. 12 Mod. 564. Mich. 13 W. 3. Anon.

8. On a Habeas Corpus to the Sheriffs of London they returned an Action on a By-Law with a Penalty for not weighing at the City Beam. Holt. Ch. J. held, that the Return in this Case may be filed, because the very Record below is not returne, and therefore will not be filed, and consequently a Proceedendo may be granted, because it will not fend out any Record filed in this Court but takes off the Suspension they were under by the Habeas Corpus; and the Writ was filed and a Proceedendo awarded accordingly. 1 Salk. 352. Trin. 3 Anne B. R. Fazakerly v. Baldo.

(H) Effect. Or what Removed.

1. A Habeas Corpus cum Causa removes the Body of the Party for whom it is granted, and all the Causes which are then depending against him. 2 L. P. R. 2. cites 21 Car. B. R. and says, that for that Reason it is a Habeas Corpus cum Causa, and that the word Causa is Nomen Collectivum, and implies all Causes.

2. If a Habeas Corpus be directed to an Inferior Court, returnable two Days after the end of the Term, yet the Inferior Court cannot proceed contrary to the Writ. 1 Mod. 195. per Cur. Hill. 26 & 27 Car. 2. B. R. Haley's Cafe.
Habeas Corpus.

3. It was said that the Warden of the Fleet might detain a Prisoner after a Habeas Corpus directed to him out of B. R. for his Fees, but not for Chamber-Rents, &c. Comb. 109. Patch. 2 W. & M. B. R. the Warden of the Fleet's Cafe.

4. The Record is self is never removed by a Habeas Corpus, as it is on a Certiorari, but remains below, and the Return is only an Account or History of their Proceedings stated and sent up to the Superior Court to Judge and Determine the Matter there, therefore if a Caufe be removed hither by Habeas Corpus, the Plaintiff here must begin de novo, and declare against the Defendant as in Cutfod. Marr. per Holt Ch. J. Trin. 3 Ann. B. R. 1 Salk. 352. in Cafe of Fazacharly v. Baldo.

5. The Habeas Corpus suspends the Power of the Court below, so that if they proceed, the Proceeding would be void, & coram non judice; per Holt Ch. J. 1 Salk. 352. in Cafe of Fazacharly v. Baldo.

6. When a Person comes to the Court of B. R. upon an Hab. Corp. and this Court thinks fit to turn him over to the Marshal, they commit him for no other Matter, than for the Caufe or Causes returned on the Hab. Corp. 11 Mod. 52. pl. 24. Patch. 4. Anna. Anon.

(H. 2) Abuse thereof. What shall be said to be.

1. I T was resolved by 10 Judges, upon Conference with the Lt Keeper, that an Habeas Corpus was an ancient and legal Writ, but that under colour thereof, the Warden of the Fleet and Marshal of B. R. ought not to suffer Prisoners to go at large, and that such Permission is an Abuse of the said Writ, and is an Escape in the Keeper of the Prison. Cro. C. 466. Trin. 12 Car. B. R. Anon.

2. A Habeas Corpus to the Town of N. was delivered to the Proper Officer in open Court, to remove a Plaintiff from that Court before Trial, notwithstanding which, the Court below went on to Trial. Defendant moved for an Attachment against the Sheriff of N. for proceeding to Trial after the Habeas Corpus delivered, as aforesaid, and a Rule was made to show Cause; but upon moving Cause, it appearing that Issue was joined April 27 before the Habeas Corpus delivered, the Court below was warranted by the Act of Parliament to proceed. Notes of Cases in C. B. 146. Mich. 8 Geo. 2. Hornbuckle v. Eaton.

(1) Obeyed. How it must be obeyed.

1. If the Steward of an Inferior Court proceeds after an Habeas Corona
cus delivered, all their Proceedings are void, and the Court a-

2. A Habeas Corpus was directed to the Bishop of Durham, who made * And so it
no Return, whereupon Noy moved for another Writ, and to have a * was done to
Penalty contained in it. The Bishop intitled on having his Privileges re-
cited in the Writ, before he would make a Return of it. But Doderidge
and the Court said, they would not change the ancient Course and Forms

3. If a Prisoner will remove himself, he shall pay the Costs of the Re-

4 On
Habeas Corpus.

4. On a Habeas Corpus, the Gaoler is bound to bring the Body, tho' he has not his Charges tendered him; but he may move the Court, and they shall rule, that he shall have his Charges first. 2 Show. 172. Mich. 33 Car. 2. B. R. the King v. Greenaway.

5. The Sheriffs of London and Middlesex, where the Writ is Returnable immediately, must make their Return the same Day that the Writ is delivered and bring the Body immediately, as the Writ requires, and not suffer the Prisoner to wander abroad upon pretence thereof. So likewise where a Habeas Corpus is directed to the Warden of the Fleet. 2 L. P. R. 2.

6. A Rule was made to shew Cause, why an Attachment should not go against a Gaoler for denying to return a Habeas Corpus, and extorting a Note from the Prosecutor in his Custody, so as by Menaces, and Duress, he was forced to comply, and give the Note for Payment of the Money to the Gaoler. 8 Mod. 226. Hill. 10 Geo. The King v. Colvin.

(K) Necessary. In what Cases.

1. If the Chief Justice of B. R. commits one to the Marshal by his Warrant, he ought not to be brought to the Bar by Rule, but by Habeas Corpus; per Holt Ch. J. 1 Salk. 349. pl. 4. Hill. 8 W. 3. B. R. Anon.

2. One committed to the Marshal by the Court may be brought up by Rule of Court; but one committed by a Judge in his Chamber cannot be brought up without a Habeas Corpus, to which a Return may be made; per Cur. 12 Mod. 641. Hill. 13 W. 3. B. R. Anon.

(L) Punishment of insufficient, or no Returns, and what is to be done thereupon.

1. In a Corpus cum Caufa to the Warden of the Fleet, if he will not bring before the Justices of the Bank the Prisoner condemned, it is a Cause to seize his Office; per Babb. But Paleon v Contra. For it may be he is escaped, and then the Warden shall pay the Condemnation. Br. Reffer. pl. 41. cites 9 H. 6. 55.

2. W. was committed to the Fleet by the Lord Treasurer of England, and the Prisoner was brought to the Common Pleas by Habeas Corpus, which was returned, and no Cause of the Commitment expressed; and for that Cause the Prisoner was set at Liberty and Bailed. 1 Brownl. 44. Mich. 15 Jac. Warrer's Cafe.

3. A Habeas Corpus having been awarded to the Cinque Ports to remove the Body cum Caufa, and the Lord Warden pretending such Writ was not awardable to the Cinque Ports, or returnable by him, it was held by the whole Court, that a Habeas Corpus with a great Penalty, should be awarded returnable at another Day. Cro. J. 543. Mich. 17 Jac. B. R. Bourn's Cafe.

4. A Habeas Corpus went to the Stannaries Court, to which an insufficient Return was made, and therefore disallowed. And the Court said, that the Warden of the Stannaries must be amerced, and you may go to the Coroners, and get it affirmed and ascerit. it, (you know my Id Bath's Amercement is 51.) and an alias Habeas Corpus must go for the insufficiency of the Return of the first, and upon that, the Body and Cause must be removed up. And it another Excefe be returned, we will grant an Attachment. 1 Salk. 350. Trin. 12 W. 3. B. R. Anon.
Habeas Corpus.

(M) Returnable at what Time, and of an * Alias and * Plurics.

1. A Habeas Corpus to all Prisouns, except London and Middlesex, com-
manding the Sheriffs to bring the Prisoners must be return-
able at a Day certain in Court. 2 L. P. R. 2.

(N) In what Cases the Party shall not be discharged on
Habeas Corpus, but shall be put to bring Writ of
Error.

1. O N E. indicted for buying and selling old Money, was conviiited at the
Old-Baily, and fined 1000 l. and on a Habeas Corpus, the Re-
turn was, that he was committed by Order of the Sessions Court at the Old-
Bailly to his Cutoiy, tenor ejus ordinis sequitur in Hac Verba, viz. W.
B. corviitius, &c. Ideo Confidentium ejf, that he be fined 1000l. & good ibi-
dum, viz. in Codicula of the Keeper of Newgate at Gaola remissae sub
false Cufodia, quonque finem persequatur. The Commitment was held naugh,
because it was not to the Sheriff; who is the legal and immediate Officer
to every Court of Oyer and Terminer, and because the Word (Comittit-
tum) is necessary to the Form of a legal Commitment. And per Cur. where a
Commitment was without Café, a Prisoner may be delivered by Habeas
Corpus; But where there appears to be good Café, as in the present Café,
(which differences it from Buthell's Cafe), and a Defect only in the Form,
as in this Café, he ought not to be discharged. 1 Salk. 348. Trin. 7 W. 3.
B. R. Buthell's Cafe.
2. And that the Commitment ought to be to the Sheriff, yet a Gaoler is a
known Officer in the Law, and his Cufody is the Cufody of the Sheriff
to many Purposes. Therefore the Court refused to discharge him on the
Habeas Corpus, and left him to bring his Writ of Error. 1 Salk. 348.
Buthell's Cafe.
3. Before Buthell's Cafe, no Man was ever delivered by Habeas Corpus,
without Writ of Error from a Commitment of a Court of Oyer and Ter-
miner; per Cur. 1 Salk. 348. in Buthell's Cafe.

(O) The Difference between a Habeas Corpus and a
Certiorari. And When, and How Bail is to be put in.

1. A Certiorari removes the Record cum Omnibus et tangentibus, but
upon a Habeas Corpus, the Body only is removed, and they
shall begin de Novo. Arg. Comb. 2. and that it was so at the Common
Law, cites 3 H. 6. 3.
2. No Bail shall be put in upon a Writ of Habeas Corpus before the
Writ be returned, and every Attorney of the Court of B. R. who shall put
in any special Bail, before any Judge of the said Court, at the Time of
the putting in of such Bail, shall deposit into the Hands of the Judge's
Clerk of the said Court, before whom such Bail is put in, the due Fee for
filling of that Bail, viz. For every Bail upon a Writ of Habeas Corpus

4 S. 10d.
Habeas Corpus.

48. 10d. and for every Bail upon a Cepi Corpus 2s. 6d. and the Judges Clerk, whose Hands the Bails are put into, within 6 Days after the End of every Term, shall give a Note in Writing to the Secretary of the said Court, of all the Bails of the Vacation and precedent Term to put in, together with the Names of the Attorneys who put in those Bails, and they shall pay to the said Secretary the aforesaid Fee, by him received for those Bails in Manner aforesaid; per Cur. Pach. 29 Car. 2. B. R. L. P. R. 172.

3. Holt Ch. J. said, he wondered that People did not bring a Habeas Corpus and not a Certiorari; For the Defendant might well say, I will not be sued in this Inferior Court, but will be sued above, and there I will put you in such Bail as the Court above will reach, tho' your Proces cannot come at them, and that I cannot give you such Bail as you can reach, and so he may well remove the Cause by Habeas Corpus. And in such Cause, if he do not put in such Bail above, as the Action would require below, a Procedendo should be granted; For if by the Courts below there ought to be special Bail, tho' common Bail would do if it had commenced above originally, yet special Bail must be given above, or a Procedendo shall go. And if one Action require special Bail, and another not, and that do not appear to be done fraudulently to hold to special Bail, there we will hold it to special Bail or grant a Procedendo; but if Fraud appear we will retain it. 12 Mod. 646. Hill. 13 W. 2. in Cause of Crolle v. Swift.

3. There is a Difference between a Habeas Corpus and a Certiorari, as to the removing a Record; For upon a Habeas Corpus we have not the Record itself, here in B. R. as we have upon a Certiorari; per Holt Ch. J. 6 Mod. 177. Trin. 3 Anns. B. R. in Case of Fazakerly v. Baldin.-Therefore, if the Cause be to be removed hither by Habeas Corpus, the Plaintiff here must begin de Novo, and declare against the Defendant, as in Caxtedia Mareballi. 1 Salk. 352. S. C.

(P) Pleadings.

1. The Error assigned of a Judgment in an Inferior Court was, because after an Habeas Corpus cum Causa filed out of B. R. and delivered to the Mayor and Principal Officer of that Court, and Allowance thereof, they, notwithstanding, proceeded to Trial and Judgment. Defendant pleaded in nullo eft erratum, and it was moved not to be Error; because he does not allege the Habeas Corpus to be upon Record, so as the Error now assigned is not triable. But it was held, that this Proceeding was Error & Coram non Judice, which is confessed by the Pleading in Nullo eft Erratum. And that if it was not true, that the Habeas Corpus was delivered to the Mayor, and allowed, it should have been denied, and the Delivery or not Delivery is triable per Pais. But because it is not denied, it is a manifest Error, whereupon the Judgment was reversed. Cro. C. 261. Trin. 8 Car. B. R. Ellis v. Johnston.

2. So where a Habeas Corpus filed out of C. B. to the Palace Court, and was delivered to the Judges, and prayed to be allowed, and yet they proceeded to Judgment, and a Writ of Error being brought thereupon, it was infilled, that the bringing the Writ of Error had affirmed the Jurisdiction of the Court below; But the Court held, that it was manifest Error, and the Writ well lies. But the Chief Justice said, that it is merely a Matter of Favour, that Judgments in Inferior Courts, in Causes not arising within their Jurisdiction, are not avoided without Writ of Error, and that such was the Opinion of the Court of C. B. and Judgment was reversed accordingly. 2 Jo. 209. Pach. 34 Car. 2. B. R. Copping v. Fulford.

3. Upon
Habeas Corpus.

3. Upon a Habeas Corpus Returnable in Mich. Term, if the Declaration be delivered before Carpus Animarum, the Defendant must plead to try; but upon a Capi Corpus, he is only to plead to enter. So in Easter Term, if the Declaration be delivered before Mansa Paccha, the Defendant on a Habeas Corpus must plead to try; but on a Capi Corpus, to enter only: 2 Salk. 515. Mich. 8 W. 3. B. R. Hall v. Englestone.

(Q) Return amended, in what Causes.

1. O NE that practifed Physick in London, being committed by the College of Physicians, brought an Habeas Corpus. In the Return no Cause was shown, for which Reason it was held insufficient. It was moved to amend the Return; but per Doderidge J. Matter of Form only is amendable, but not Matter of Fact, which goes in Jusification of the Imposition and Fine. 2 Blunts. 259. Mich. 12 Jac. Dr. Alphonso v. the College of Physicians.

true, at their Peril be it; per Hale Ch. J. Mod. 105. pl. 10 Mich. 25. Car. B. R. Anon.

2. The Court allowed the Officer to amend the Return of a Habeas Corpus, and to make it Special, because if a Procedendo should be granted, the Action would be loit. Carth. 76. Mich. 1 W. & M. B. R. Watson v. Clerk.

(R) Remanded, Bail’d, or discharged. In what Causes the Prisoner shall be.

1. UDITA Querela. The Party was in Newgate, and removed by * Orig. (1) Habeas Corpus into C. B. and the Sheriff of London came in. when the Party had pleaded Release * to the Issue, and said that he was also condemned in 200 l. in Writ of Account, at the Suit of the same Counsel, and prayed to have him remanded; and it was said, that when this Matter is try’d, he shall be remanded. Br. Privilege. pl. 20. cites 24 E. 3. 27.

2. A Man was Outlaw’d in Debt for 19l. in Banco, and after was taken in London at the Suit of the same Plaintiff, and was condemned for the same Debt, and committed to the Warden for Execution, and after was removed in Banco by Habeas Corpus, and feized Acquittance of the same Debt, and prayed to go quit, fed non Allocatur, but was remanded to London, and there he may have Sci. fa. upon his Acquittance, against the Plaintiff; but upon his Removal, he had Sci. fa. upon Charter of Pardon of the Outlawry, and the Plaintiff warn’d and did not come, by which the Charter was allowed, but he was remanded upon the Condemnation. Br. Privilege. pl. 10. cites 48 E. 3. 22.

3. 2 H. 5. Stat. 1. cap. 2. If a Corpus can Cause or Certiorari be granted out of the Chancery to remove one that is in Prison upon an Execution at another Man’s Suit, he shall be remanded.

4. If one be impleaded in London before be be impleaded in Bank, he shall * Orig. be * brought to answer and remanded; but if he be impleaded in Bank before he be impleaded in London, he shall be dismissed. Br. Privilege, pl. 53. cites 10 H. 6. 10.

and is removed in Bank, he shall be brought into Bank to answer, and when he has made Attorney he shall be remanded into London; but if he be arrested only and not condemned, he shall be dismissed. Note he Diversity. Br. Privilege, pl. 29. cites 38 H. 6. 12.

5. Habeas
5. Habeas Corpus was allowed after the Body was in Execution, but was not dimissed, but was sent to the Fleet and to have And, Quer. Quod Nota. And fo the Practice is at this Day, that if a Man be condemned in London, and Matter is against him in B. R. they will fend for him, and if he be condemned there, he shall be sent to the Marshalsea, and there remain for both Executions; but the Higheft Court shall have the keeping of him, and fo the first Plaintiff shall not lose his Execution. Br. Privilege, pl. 49. cites 22 H. 6.

6. One in Execution upon Statute Merchant was removed by Corpus cum Caufa, and was awarded to the Fleet and not dimissed, because in Execution and cannot plead Release there but in Chancery. Br. Privilege, pl. 50. cites 22 H. 6. 36.

7. One came into B. R. by Cepi Corpus cum Caufa to have the Privilege; because a Clerk of the Bank had Bill against him upon Obligation, and had Attachment of Privilege against him; and the Prisoner was arrested in London after the Attachment awarded, by which the Plaintiff prayed to be dimissed in London, and the Plaintiff in the Attachment shewed to him his Obligation, and the Defendant could not deny it, and therefore Judgment was given, that he recover his Debt and Damages, and that he be sent back to London as a Man condemned, and that he answer to others who have Action against him in London; Quod Nota; Quære the Reason. Br. Privilege, pl. 46. cites 22 E. 4. 36.

8. A. is condemned in London for Debt, and is in Execution there; afterwards there is an Indictment and Verdict against him in the King's Bench for Trelpafs; A. is brought there by Habeas Corpus, and pleads Not Guilty to the Indictment, and afterwards is remanded to London; and after divers Procesfes of Diftringas iffued against the Jury, the Jury appears; and afterwards he is again removed into the King's Bench by Habeas Corpus; and the Jury being Sworn, he confesses the Indictment, and the Jury is discharged. Altho' this Indictment was by his own Procurement, and was Covinous; yet he was fined and committed to the Marshall for the said Fine, and for the Execution in London; by all the Judges of England, Volenti non fit injuria. Jenk. 169. pl. 31. cites 1 H. 7. 22.

So where the Defendant procured himself by Fraud to be reddited of Felony to the Intent to defraud his Creditors of their Debts, and procured himself to be removed out of the Fleet by Corpus cum Caufa directed out of the King's Bench to the Warden of the Fleet, to be committed to the Marshall; and all these Cauftes supra returned into B. R. and the King perceiving, by credible Information, the Intent of the Defendant, and of divers other Practitioners of such Fraud to deceive their Creditors by such Procurement of Indictment of Felony, and to be Arraigned thereupon, and then to confefs the Felony, and betake themselves to their Clergy to the Intent to be out of the Temporal Laws; and after make their Purgations and deport; &c. the King by Privy- Seal, directed to the Judges of his Bench, commanded them to Succeed to proceed to the Arraignment till they had commandment from him, and his Council to the contrary. D. 245. pl. 65, 66. cites 34 H. 6. Verney als. Joyner's Cafe.

9. If the Sheriff returns Writ of Privilege, that the Party is retained for Surety of the Peace in London taken by J. N. in this Cafe J. N. shall be demanded, and if he comes, the Party shall find Surety in Bank; and if J. N. makes Default, the Prisoner shall be dismissed without Surety; per Bryan. Quod non negatur. Br. Privilege, pl. 52. cites 2 H. 7. 4.

10. When it appears upon the Return that the Imprisonment is not lawful, the Court may discharge the Prisoner. Resolved, per tot. Cur. 12 Rep. 83. Patch. 9 Jac. Sir William Chancery's Cafe.

11. Where the Return of an Habeas Corpus was held Insufficient for not laying Caufe of the Imprisonment, the Party by Rule of Court was Bailed till the next Term, then to appear again, the Court conceiving it bel for him; For if they should discharge him for the Insufficiency of the Return, then they would presently take him again and commit him, and then would amend their Return and make it better; and fo by Rule of Court he was Bailed and not absolutely discharged for his own good to prevent his being taken up again if discharged, and then the Return amended. 2 Bals. 259. Mich. 12 Jac. Dr. Alphonso v. the College of Physicians.

12. On
12. On an Habeas Corpus, the Return was read and spoken to, and the Prisoner ordered to be remanded. Twitten said, the Return would have been first filed, and the Prisoner committed to the Marshalsea; For otherwise the Court have no Power over him, and he cited 1 H. 7. Dunlop in Shanks's Case, who being brought to the Bar upon an Habeas Corpus by the Lieutenant of the Tower, was committed to the Marshalsea, and afterwards remanded to the Tower; but the other Judges differed as to the Commitment, and said it was not necessary to keep the Prisoner in the Marshalsea until the Matter was determined, but he might be sent from Time to Time to the same Prison, and brought up by Rule of Court until he is either bailed, discharged, or remanded; and so they said it was lately done in the Earl of Shaftesbury's Case Vent. 332. Trin. 32 Car. 2. B. R. Anon.

13. Where a Committee is without Cause a Prisoner may be delivered by Habeas Corpus, but where there appears to be good Cause and a Defect in the Form only of Commitment, he ought not to be discharged. 1 Salk. 348. Trin. 7 W. 3 B. R. Bethell's Case.

14. Defendant was brought to the Bar by Habeas Corpus returnable in one Month from the Day of St Michael to be committed to the Fleer, and the Court committed him, tho' the Day of the Return was past. Notes of Cases in C. B. Mich. 8 Geo. 2. Hewitt v. Powell.

[See more of this General Title upon the Statutes of Habeas Corpus under the Title Bail.]

Hearing.

(A) Of setting down a Cause for Hearing.

1. A Term being expired after Publication, the Plaintiff may of Course have the Cause set down for Hearing before the Lord Chancellor, or before the Master of the Rolls. P. R. C. 185.

2. The ordinary Way to obtain this is by Order upon Petition; but it may be had upon Motion. P. R. C. 185, 186.

3. The ancient Cause was to present the Cause to be set down at the end of the Term, when the Lord Chancellor, &c. appointed Hearings for the ensuing Term. P. R. C. 186. cites Toth. 31.

4. In Order to have a Cause heard, the Six Clerk in the Cause must be applied to 6 Days at least before the end of the Term, that he may inform himself of the State of the Cause, of the long or short Dependence thereon in Court, of the Antiquity of Publication, of the Weight or Value of the Cause, and all other Circumstances material to inform the Lord Keeper or Master of the Rolls of at the Time of setting down of Causes. Ibid. 187. cites Or. Ch. 135.

5. No Motion shall be made to haste a Cause to Hearing, which is either Adversary or by consent, nor any Cause entered with the Register for Hearing, notwithstanding any Order, without a Certificate first had from the Six Clerk, that the Pleadings are duly filed, for which no Fee is to be taken. P. R. C. 188. cites Or. Ch. 232.

6. If the Plaintiff reply to an Answer, and without rejoicing, and giving Rules for Publication, bring the Cause to an Hearing, the Answer shall be taken wholly true as if there had been no Replication; For the Opportunity which the Defendant hath to prove his Answer is taken from him. O v o

Hill.
Hearing.

Hill. 31 & 32 Car. 2. 2 Chan. Cites 21. in Case of Grosvenor v. Cartwright.

7. Bill against 5 several Executors of a Joint Factors for Account of Goods; one of them Swore he believed and hoped to prove that the Plaintiff was Satisfied his Demands. Plaintiff replied against the other four, and brought the Cause on by Bill and Answer as against the third, it was insisted that the Plaintiff could have no Decree, for by this bringing on his Cause his Answer must be taken to be true, and tho' he does not directly swear the Money paid, yet he swears he believes and hopes to prove it paid, but by the Plaintiff's not replying he is excluded the Benefit of his Proof, and the Practice was cunning: the Master of the Rolls ordered the Plaintiff to pay Costs and left at Liberty to reply to the other Defendant. Hill. 1682. Vern. 140. Barker v. Wild & al.

8. The Plaintiff set down the Cause for Hearing without giving Rules for Publication, and had also amended his Bill and had not new served the Defendants to Answer, so the Cause was put off as coming on irregularly. Paich. 1688. 2 Vern. 46. Niccol v. Wifeman.

9. A Bill was brought by a Devisee of Land to perpetuate the Testimony of a Will; the Master of the Rolls dismissed the Bill with Costs, declaring it, being only for Perpetuating the Testimony, ought not to have been set down for Hearing. 2 Wms's Rep. 162. Trin. 1723. Hall v. Hoddesdon.

(B) Manner of Proceeding to, and at what Time the Hearing may be.

1. WHERE a Cause comes to be heard before the Master of the Rolls, the Clerks in Court on each side shall attend the Hearing (as they do when before my Lord Keeper) to the end his Honour may be informed, if there be Occasion, that the Cause is ready for his Judgment; and that the Parties appear gratis; or that they were regularly served with Process, as the Cause shall require. P. R. C. 185. cites Or. Ch. 210.

2. No Cause must be preferred for Hearing the same Term Publication passes, unless by Consent of Parties. P. R. C. 185. cites P. A. 25.

And the Court will hardly (if at all) order a Cause of the Court. P. R. C. 185.—But if the Plaintiff does not set down his Cause for Hearing in any Term after Publication pass, or set it down at the Request of the Defendant. Ibid. 186. cites P. A. 25.

3. The Day a Cause is set down for Hearing upon must be sooner or later, according to the Priority of Publication with respect to Causes preferred for Hearing. P. R. C. 186. cites P. A. 8.

But if there be Gris Caires, and Publication is pulled in both, and one of the Plaintiffs omits to serve Subpoenas to hear Judgment his Cause shall not come on at the same Time with the other; except the other Party consents. P. R. C. 188. cites H. C. 21.

5. Where a Cause comes to Hearing here, which has been formerly decreed in the Exchequer, such Decree is held to be read, and then the Court proceeds to hear the rest of the Evidence on both Sides. P. R. C. 190. cites Cary's Rep. 78, 50.

6. While the regularity of Depositories was depending before a Master unexamined, the Cause was set down for Hearing, neither Party having proceeded a Report one way or other, the Court could not proceed to hear the Cause, and was about to order the Party in Fault (which I suppose was he that set down the Cause) to pay the other the Costs of the Day. P. R. C. 191. cites Or. Ch. 10.
Hearing.

7. A Caufe was heard after a Decree fiigned and enrolled, because it appeared that the Plaintiff, who obtained it, procured it to be signed and enrolled after a Covet entred, as appeared by the Certificate from one of the 6 Clerks. Mich. 26 Car. 2. Fin. R. 123. Parker v. Dec.

(C) What may be read.

1. One examined in the Admiralty Court was used here at the Hearing; Toth. 258. cites 16 Eliz. Watkins v. Furtland.

2. The Lord Chancellor's Opinion was, that the old and new Proofs should be read upon a new Bill to prove Matter. Toth. 81. cites Hill. 1590.

3. Witnel's in the Court of Woods and Exchequer Chamber may be used in this Court. Toth. 286. cites 10 Jac. Ld Morison v. Wethered.

4. Shop-Books were read as an Evidence at the Hearing. Toth. 154.

5. It 'twas upon Bill and Answer only, then after the Bill is open'd, the Answer is to be wholly Read, and must be admitted true in all Points: And no other Evidence is to be given but Matter of Record, to which the Answer refers, and which is provable by the Record. P. R. C. 190.

6. If the Subpœna to rejoin be not served, &c. tho' it be fixed out, the Caufe must be heard on Bill an Answer, and no Proof's admitted to be read. P. R. C. 190. cites Toth. 46.

7. A Bill formerly exhibited against the Plaintiff by the now Defendant 16 & r. Car. ought not to be given in Evidence, unless proved, that 'twas exhibited by the Order, Direction & Priuity of the Defendant. 16 Car. 2. N. Ch. 94. S.C. R. 102. Woollet v. Roberts.

8. A Release after a Replication and Issue joined cannot be read at Hear- N. Ch. R. ing; For it may be fraudulent or by Surprize; but is to be examined by 105. S.C.

9. Depositions taken in a former Caufe ought not to be used against the new Defendants, unless they claim under the Defendants in the former Caufe. 21 Car. 2. 2 Ch. R. 43. Tolton v. Lamplagh.

10. Bill for Writings by the Heir; Defendant sets forth a Leafe for 60 Years, but at the Hearing he 'twas a Conveyance to him by the Plaintiff himself, which was proved in the Books as well as the Leafe; So that a Thing was proved not in Issue, which was much contended by the Counsel of the other Side. Ld Keeper, I shall not decree an Inheritance away against what I see, and dismis'd the Bill. Pach. 26 Car. 2. 2 Chan. Cafes 196. Strodle v. Strodle.

11. Depositions in the Spiritual Court against a Man shall not be used here, without some special Order for that Purpofe; But a Man's own Answer on Oath, let it be taken where it will, tho' it be a voluntary Oath before a Justice of Peace, shall be read against him here. Pach. 1682. Vern. 53. Mildmay v. Mildmay.

12. The Defendant, on presenting the Plaintiff to a Living, took a Bond from him to reign, and after put it in Suit, and recover'd and levied 98 l. and the Plaintiff's Bill was for Relief; The Defendant did not by Answer pretend any Misbehaviour, yet examined to several Misbehaviours; and it was urged, that these Depositions could not be read, because those Misbehaviours were not in Issue; and so inclined my Lord Keeper, but after allowed them to be read; and founded his Decree on them. Hill. 1702. Abr. Equ. Cafes. 228. Hodglon v. Thornton.

13. On Appeal from the Rolls, 'twas objected to the Evidence of a Witnelf examined in the Caufe, and read at the Hearing at the Rolls, that he had in Answer to a Bill exhibited against him, since confessed, that on
An ari and Fountain. trite the was Hcann they to It be a vern. Hill. dead, TTT Court Chrillmals ordered pear, Winne with, Smith. The render ed hild ing. to the a vehic, ox were the the Exhibit, Sel. Limitation were not moved, to be taken without any Replication, and therefore irregular and ought to be suppressed, and ld Harcourt ordered it accordingly; for they should have examined them de novo after the second Answer and Replication, or have moved the Court for Liberty to make Use of them at the Hearing. Patch. 1714. Ch. Prec. 386, Andrews v. Brown.

17. Deposits taken in a Cause, but not read at the Hearing of the Cause, were admitted to be read at the Re-hearing, and fo is the constant Practice of the Court. But in Appeal to the Lords, nothing is read but what was read below. Sel. Caeas in Chan. in ld King's Time. 21. Trin. 11 Geo. 1. Christmats v. Christmats.

18. The Deposits of one who was a Defendant, and struck out and examined as a Witness, were offered to be read, and the Cae of Coke b. Gough, was cited as a Cae in which it was so done. But ld Chancellor said, he would not do it till he saw that Cae, and that he had no great Reverence for that Rule, but if it be a Rule, he must pursue it. Sel. Chan. Cases in ld King's Time. 41. Trin. 11 Geo. Stephens v. Craven.

19. A Bond for Performance of Articles, the cancelled, was made an Exhibit, and allowed as Evidence to prove the Execution of the Articles, the Limitation being inferred and recited in the Condition of the Bond. Hill. 12 Geo. 1. G. Equa. R. 183. Anon.

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(D) What may be read. By whom.

1. WHERE there are crofs Caeas, Deposits in either Cause may be used in both, and was fo ordered, which Order was after Publication in the first Cause, wherein the Proof was made, but before Publication in the second Cause. Vid. Mich. 26 Car. 2. 1 Chan. Cases 236. Nordiv v. Wortley.

2. An Executor may be admitted to prove the Revocation of a Legacy, tho' he has proved the Will. For he only sweares, that he believes it to be the Iut Will, and he might not then know of the Revocation. Mich. 1691. Vern. 20. Jervois v. Duke.

3. It is a common Cae, where one Legatee has brought his Bill against an Executor, and proved Afficts; and afterwards another Legatee brings his Bill, that he should have the Benefit of the Deposits in the former Suit, tho' he was not Party to it; per Serjeant Phillips. Mich. 1686. Vern. 413. in the Cae of Coke v. Fountain.

4. On
Hearing.

(E) What may be read, Deponents Interested.

1. Upon his being himself, tho' excepted to, was read as a Witness. North K. Pach. 1684. Vern. 139. in Case of Brown v. Brown.

2. A Party Plaintiff, (tho' the other Party Plaintiff had an Order to examine him de bene cito) could not be read, but must have been dismis-

3. fied before he could have become a Witness; but if the same Party, being only a Trustee, had been made a Defendant, and in his Answer had dis-


5. Depositions taken in the Case where the Plaintiff's Father was a Party, the Suit being in all Matters the same, but the now Plaintiff not claim-

6. ing as Heir, and the Father being only Tenant for Life, not allo-

7. wed to be read, but only on the common Order for leave to read them at the Hearing, saving just Exceptions. Mich. 1686. Vern. 413, Coke v. Fountaine.

8. A Witness examined before the Hearing, while she was interested but after the Hearing, the released her Interest, and was examined again

9. before the Matters. Her Depositions were allowed to be read. Mich. 1704. 2 Vern. 472. Callow v. Meme.

10. One examined as a Witness when disinterested, afterwards becomes Witness, being devised to him; He is now Plaintiff in a Bill of Revivor; the Lord Chancellor allowed the Depositions to be read. Mich. 1715. 2 Vern. 699. Gof & al. v. Tracy.

(F) Hearing. Where all the Parties need not be brought to a Hearing.

1. If a necessary Defendant be prosecuted regularly to a Sequestration, the Plaintiff may go on without him against the other Defendants; but serving a Subprena at a Place where he lodged but once, and that 2 Years before such Service, is not good. Mich. 1699. Ch. Prec. 99. Barker v. Blackbourne.

(G) What must be pleaded, or may be objected at the Hearing.

1. The Jurisdiction of this Court, if questioned, must be pleaded to, and 'tis too late to object it at the Hearing. 2 Vern. 484. Hill. 1704. Trelawney v. Williams.
Heir.

(A) In what Cases the Heir may be charged, where the Ancestor cannot be charged.

If A. grant for him and his Heirs to B. for Years, or, as an Annuity to have to him after the Death of A. the Grantor, tho' A. himself could never be charged upon this Grant, in truth, as it is to be paid after his Death, yet, in truth as he binds himself and his Heirs, his Heir shall be charged if he has Assists, as well as where a Man binds himself and his Heirs by Obligation to pay Money after his Death. P. 4 Car. 3. Rot. 1413. adjudged, this being moved in arrest of Judgment as I hear, and Debt of Error brought in B. R. upon it.

For no Man may charge his Heir but as Part of himself, and therefore must begin with himself. Hob. 130. S.C.—cited Arg. Show. 559. and saith, if a Man bind his Heirs to pay a Sum of Money, it's void.

3. A Man shall not be charged as Heir in Action of Debt, in Respect of a Special Occupancy. 10 Rep. 98. in Seymour's Case.

2. 3. 12. which says, that any Estate pre anter Vit, if no Devise be, shall be chargeable in the Hands of the Heir, if it comes to him by a Special Occupancy, as Assists by Devise.

(B) In what Cases he shall be charged without Assists.

If a Man in Writ of Error against the Heir, upon a Recovery by his Ancestor, reverse the Judgment, yet the Heir shall not be charged of Damages without Assists in Fee by Devise. 9 H. 6. 49.

2. A Man had Restitution, as Heir by Suit by Petition, to Land, to which the King was intitled, and the King brought Writ of Error, and the first Judgment of the Issue between the King and him upon the Petition was reversed, and other Issue tried for the King Ad Damnum for Writ in the Time of the Father of the Defendant, and in his own Time to 40l. and the King recovered the Damages against the Defendant, as well for Writ in the Time of the Father, as in his own Time, and yet the Heir had nothing by Devise from his Father, and the Reatton was, because Seire Facias insisted against him generally as Heir, and he was returned surrued, and made default; quod Noita. Br. Damages, pl. 161. cites 39 Aff. 18.

3. The Heir shall be charged in Writ of Annuity upon Grant of his Father, if he had Assists per Devise in Fee by the same Ancestor; covert in Annuity upon Prescription; For there it cannot appear if he has Assists by the same Ancestor; For the Commencement of such Annuity does not appear. Br. Annuity, pl. 45. cites F. N. B. 152.

4. A.
4. A Tenant for Life, Remainder to B, his Son in Tail. A entered into a Statute, and died; the Conuance filed a Sci. Fa. against B, the Heir of A, who was the 25th in Tail. The Sheriff returned him wound, but he made Default; and thereupon the Plaintiff had Execution without any Plea pleaded by the Heir. Windham J. thought at first that this Return should not bind the Heir, the Conuance being by A, who was only Tenant for Life, and so the Lands in the Hands of B never affected, and that such Return in this Case was all one as to B, as if it had been against a Stranger. But Twilson answered, that had A been Tenant in Tail it had been all one, as had been often adjudged. And afterwards it was adjudged per rot. Cur. that B. was bound by this Execution; and they agreed that he has no Remedy by Ejecution, Aud. Quer. or any other Way but against the Sheriff, if he made a false Return of the Scire faci. Sid.


5. In Debt against the Heir upon the Bond of the Ancestor, the Sheriff returns that the Defendant has Lands by Defent, which are really of his own Purchafe. North Ch. J. said, that it the Sheriffs Return cannot be traversed, the Heir shall be relieved in an Ejecution. Trin. 29 Car. 2. C. B. I Mod. 253. Anon.

(B. 2) Heir. Charged in what Cases and how.

1. Upon Damages recovered against the Father in a real Action, the Heir shall not be charged, nor Proceeds made against him, till the Executors are returned nulli, and then the Heir shall be charged; for the Land of the Father is charged by the Judgment, as 'tis by Statute, Merchant, Recognizance, or the like; per Cur. Br. Charge, pl. 51. cites 7 H. 4. 31.

But in Default of Chattels——Br. Executors, pl. 124. cites S. C.—Br. Executors, pl. 28 cites S. C. And so see that the Heir by Affers shall be charged upon Recovery against his Ancestor, and yet in a Bond he shall not be charged, unless he binds himself and his Heirs expressly; contra of Executors, as appears elsewhere——But by Vavilor contra, ambibus Bus and Fincus——Br. Debt, pl. 257. cites 10 H. 7. 5.

2. Heir cannot be charged by All of his Ancestor without Profit to be taken by it. Per Fairfax. Br. Prescription, pl. 73. cites 21 E. 4. 38.

3. At Common Law there was no Remedy against the Heir upon Judgment against the Father; per Jones J. 3 Bull. 320. —And from the 18 B. 2. till 7 H. 4. the Law did run for current, that the Heir was not chargeable in Debt, if he Executor had Affers. And the Reason why he was then held to be charged, was, because it was his own Debt, and he is charged as Debtor, and the Writ against him is in the Debet and the Deinete. Per Derodridge J. Ibid. 321.

4. In Case of a Recognizance there are no Words to charge the Heir, being only Vult & concedit quod Executo fict de Terris & Tenementis; and in such Case he is not charged as a Debtor, but as Tertenants, but yet not merely as Tertenant, and the rather because he comes in as Privy in Blood; and in Case of a Judgment against the Ancestor, the Tertenants may say, that the Heir hath Land by Defent; the Heir comes in as Privy to the first Judgment, and if he hath Land by Defent he is to be charged before the Tertenants, and he shall not have Contribution, but against the other Heirs; but the Land only which defends is subject to the Judgment against the Ancestor; per Derodridge J. 3 Bull. 321. in Case of Boyer v. Rivett.

The Ancestor bound himself, his Heirs, Executors, &c. in a Bond for Payment of 100l. and if not being paid, a Judgment was had against the Ancestor. Per Rota Ch. J. the Heir is not privy to the Judgment, nor made so by an Extent, and the Extent is only upon them as Tertenants, and

239 Heir.
5. In Case of a Warranty, if one be vouched as Heir within Age, he
shall not be charged further than for the Land he has by Defeant; and if
he enters into the Warranty with a Protestation, that he hath Rents per De-
cent, and this be found against him, that he hath Land by Defeant, he
shall recover of this only in Value, and of no other. Per Doderidge J. 3

6. Debt was brought against one as Heir, for Escape of a Prisoner suf-
fered by his Father, of one in Custody upon a Condemnation; But
the Court held that it did not lie without Especially charging the Heir by expres-
s Words, and no Law nor Statute charges the Heir for the Tort or Trepsals
of his Father, D. 271. pl. 25. Anon.

7. Nor does such Action lie against the Heir, tho' the Ancestor was con-
demned in Debt upon Obligation in his Life, and died before Execution, but
the Land which he had shall be extended by Eligir, upon a Scire Facias
brought against him as Tertenant of the Land liable to the Execution.

8. If an Heir who has nothing by Defeant promises to pay a Debt, an
Action on the Cafe will not lie against him upon such Promisef. 3 Le. 67.

9. A Pro-
mise by the Heir to pay a Debt, if the Plaintiff will forbear his Suit for a Time is no Consideration.
Because the Heir is not liable to any Debt without Specialty. Mich. 2 Ja. B. R. Yelv. 56 in Cafe of
Fifth v. Richardson.

But the Father was indebted to J. S. and made a fraudulent Deed of Gifts of his Goods to his
Son; and the Son, upon Discourse of the fraudulent Deed, promised J. S. that, upon Consideration he would de-
 pute the Bond to him, and make him an Acquittance and Discharge of the Debt, he would pay him. J.
S. brought an Action; and tho' it was objected in Arrêt of Judgment, that it did not appear that
the Son was liable, either as Heir or Executor, or Administrator, or Executor de son Fort, and so the
Delivery of the Bond and the making the Acquittance no good Consideration; yet it was relived to
be good, and that it should be intended that he was liable, or at least that the Acquittance was made to the
Party who was liable; For he promised to discharge the Debt, and that shall be intended to be to the
Party who was liable to the Payment, or otherwise it would be no Discharge. 1 Sid. 31. pl. 9. Hill.
12 & 13 Car. 2. Anon.

10. Where it is said that a Decree is equal to a Judgment, or to be
paid next thereto, this must be intended only out of the personal Estate;
For a Decree for a Debt does not bind the real Estate, but acts only in Per-
sonam, not in Rem; and the Remedy upon a Decree to affect the Land,
is only a Contempt, whereupon the Party proceeds to a Sequestration, and
if the Defendant die, the real Estate will not be affected in the Heir's
Hands. 2 Wms's Rep. (621.) Trin. 1721. by the Master of the Rolls.
Bligh v. Lord Darnley.

But where no
Fund came
to the Heir
for Payment
of Debts, as
where Te-
nant for Life er's Cafe,
made a Mort-
gage by Virtue of a Power, and upon an Allignment thereof, his Heir, being the next in Remainder in
Tail,
12. By Marriage Articles 400. 1. by the eldest in A. and B. in Truth, but neither of them to be answerable for the other; B. received the whole, and gave a Receipt for it, and by writing under his Hand and Seal declared that A. had received none of it. B. dies intestate without ever placing out the estate. The Matter of the Rolls decreed this a Specialty-Debt, but to affect the Executor only, and not the Heir, he not being bound, nor the Declaration under Hand and Seal extending to him: This Case came up afterwards on the Lord Chancellor, who said, that this without doubt ought to be considered as a Debt by Specialty, and so affirmed the Decree. Cates in Chanc. in Lord Talbot's Time. 109, 112. Trin. 1735. Gifford v. Manley.

(C) In what Cases the Judgment shall be General or Special of Land defended. [by Reason of false Pleading, &c.]

1. In an Action of Debt against an Heir, if the Defendant concedes the Action, and swears the Certainty of the Affairs, which he has by Defendant; neither his Body nor any of his Goods, nor any of his other Lands shall be chargeable to the Debt, but only this Land which he has by Defendant. For the Judgment shall be to recover the Debt to be leased of the Lands defended. 21 Ed. 3. 40 Ed. 3. 15. D. 3. and 4. Mi. 149. 80. 23 Ed. 373. 14. Old Book of Entries 172. Debt in Heir. D. 23 Ed. 373. 14.

2. In an Action of Debt against an Heir, if the Defendant pleads the Heirs' per Defendant, and this is found against him, the Judgment shall be general, viz. to recover the Debt, and not special, to be leased of the Lands defended for his falle Plea. D. 3. and 4. Mi. 149. 80. 18 Eliz. 344. 1. 24 Ed. 3. 9. b. 10. Adjudged 3 Mi. Brook Affets per Difcent 3.

Cafe it was held 32 H. 6. 22. that nothing should be put in Execution but the Land defended, yet it was adjudged contrary 3 Mi. 1. Br. Affets per Defendant, pl. 5. —See Ibid. pl. 15. cites 40 Eliz. 3. 19. and pl. 15. cites 21 Ed. 3. 9. that it is the same in Forement.

If a Debt be recovered against the Ancestor, who dies, and the Plaintiff finds a quittance upon the Judgment against the Heir, who pleads Riens per Defendant, and it is found that he has two Affairs, yet Judgment shall be granted for the Land which he has by Defendant; for he is charged as Tenant and not as Heir. Poph. 173. Bowser v. River—3 Balf. 417. S. C.—But where Debt is brought against the Heir, he is charged as Debtor and not as Tenant; for he is bound in the Bond; per Doleridge J. 3 Balf. 521 in S. C.

In Debt on Bond against B. as Heir of A.—B. pleaded Riens per Defendant in Fee Simple; Plaintiff replied that he had by Defendant in Fee divers Lands in such a County. The Jury found that he had divers Lands in Fee by Defendant; whereupon a General Judgment was given against B. It was moved that the Judgment was erroneous; For that the Plea and Verdict were uncertain, by not showing what Lands. But Caria contra, and disaffirmed this from the Cape of such finding in the Cape of an Executor of Defendant not showing the Value of the Affets found, according to the 42 Ed. 3. 15. For there he ought to recover according to the Affets found, but here Judgment General shall be given for his falle Plea, and so the Quantity of the Affets is not material. Roll R. 233. Mitch. 15 Jac. B. R. Everet v. Sattellite.—Upon a Motion for a new Trial, Twiflen laid, that in his Practice, where the Heir pleaded such Plea to an Action of Debt upon a Bond of his Ancestor, and the Plaintiff knew that the Defendant had leased a Fines, and it was produced at the Trial; but because they had not a Deed to lead to the Issue, it was urged that the Issue was to the Counter and his Heirs, and to the Heir in by Defendant, upon which there was a Verdict against him, and it being a full and due Debt, they could never after get a new Trial. Mich. 21 Car. 2. 1669. B. R. 1 Mal. 2. pl. 9.

3. In an Action of Debt against an Heir, if the Defendant confesses the Action, but does not shew the Certainty of the Affets which he
Heir.

has. the Judgment shall be general against him to recover the Debt; because the Action is in the Debtor, and it shall be presumed that he has Affairs. D. 18 Eliz. 344. 1. Pl. C. 440. Contra D. 5. and 4. Pa. 159. 8o. two Precedents to the contrary.

4. So, if Judgment be given against an Heir by Non sum informatus, the Judgment shall be general for the Cause aforesaid. D. 18 Eliz. 344. 1. Pl. C. 440.


6. If the Profits descended from the Death of the Ancestor to the Day of the Writ amount to sufficient to satisfy, and the Plaintiff shall draw this to the Court in an Action of Debt against an Heir, and the Defendant cannot deny it, the Plaintiff shall have a general Judgment and Execution presently. D. 18 Eliz. 344. 1.

7. In a Writ of Annuity, if the Plaintiff works for Arrearages, or against an Heir upon a Grant of his Ancestor, if the Defendant pleads Non est Facult of his Ancestor, and this is found against him, he may have a special Judgment for the Damages and Arrearages of the Land descended, and this is no Error. For this is in Case of Annuity, which is always executory afterwards for Arrearages, which shall afterwards incur, and this is at the Election of the Plaintiff at the least; for by this he shall have * all the Land descended in Execution; whereas upon a general Judgment he shall have only the Money of all his Land in Execution, and also this to for the Advantage of the Heir, and therefore cannot be assigned for Error. dict. d' Hill. 11 Car. B. R. per Curiam in a Writ of Error. Frankie v. Strickley. — Intratur Hill. 10 Car. Rot. 992.

8. In an Action of Debt against an Heir, if he pleads Riens per Defect, and this is for the Plaintiff, if a Judgment be given upon it, that the Plaintiff recover the Debt, Damages and Costs of the Land descended, a quia neglect, what Land is descended, a Writ is awarded to inquire what Land descended, this Judgment is erroneous; for by the Law the Judgment ought to be general, which cannot be altered without the Assent of the Plaintiff, and here no Assent appears in this Case. Tr. 1651. Adjudged per Curiam in a Writ of Error upon a Judgment in B. and it was reekoned accordingly. Allen v. Holden. — Intratur Patch. 1650 Rot. 347.

9. So in Action of Debt against an Heir, if he pleads Riens per Defect, and this is found by a Jury against him, and further found, that he has such certain Land by Defect, and therefore Judgment is given.

Poph. 154.
Contra. in Cafe of Bowyer v. River.
3 Ball.
520. per Jones J. contra in S. C. — Upon such Plea his Body shall not be in Execution; For it is not his Debt, tho' the Writ be in the Debt and Defect, for there is no other Form. D. St. pl. 62. Marg. cites Mr. Maiton's Reports. 41 Eliz.

* Fol. 71.

S. C. cited
Show. 78. in Cafe of Branding v. Milbank.
* See (C. 2)

The Court held that the drawing the Debto be his Father's was a false Plea within his Capacity. But that it should be false, yet being charg'd in respect of his Ancestor's Debt, the Land of his Ancestor only shall be taken in Execution; For that is the Caufe of the Charge. Cro. G. 456. Hill. 11 Car. B. K. (seems to S. C. by the Name of) Clothworthy v Clothworthy.

St. 287. S.C.

7 Mod. 42. per Holt Ch. J. in deliver the O-
pation of the Court, in the Cafe of Smith v. Angell.

In Debt against Heir, who has Re-

ferfon in Fee
given, that the Plaintiff recover his Debt, Damages and Costs of the Land defended; This is an erroneous Judgment, because it is not general according to the Law, the which cannot be altered without the Assent of the Plaintiff: Also it seems that the Jury, upon this Issue, cannot inquire what was the Affets. Plash. 1652. I Adjudget in Writ of Error upon such Judgment in B. and the Judgment reversed accordingly. Swingley v. Boswell—Instruct 9. 1654. Rot. 209.

19. In Formedon, the Tenant pleaded a Debt and Affets defended, and the Demandant pleaded Riens per Defect, and 'twas found that the Demandant had Land by Defect; the Demandant shall be barred of all by his talle Plea, tho' the Land defended be not of the full Value of the Land in Demand; per Wilby, Hill and Shard Quere inde. Br. Barre, pl. 19. 21 E. 3 9.

11. If the Heir be condemned in any Plea whatsoever, or by Default, or without Plea by any Way whatsoever, it is the Practice, that the Plaintiff have Execution of the Body of the Heir or of his Goods, or Elegit of all his Lands whatsoever, unless he confesses the Debt, and pleads the Certainty of the Land defended. Pl. C. 440. b. by the Reporter, in Case of Davye v. Pepys.

12. It seems that there is a Diversity between the Case of an Executor and that of an Heir; For if Executor in Debt pleads Riens enter mains, or Not the Deed of the Tiefactor or the like, and it is found against him, nothing shall be put in Execution but the Goods of the deceased; because it is not the Deed of the Executor, but of the Teifactor, and so is charged En au ter Droit, and has the Goods en au ter Droit. But the Heir when he denies Affets, and it is found against him, or when he denies not Affets, but pleads other Matter, in which it is contain'd that he has Affets, the said Debt of the Ancestor becomes the proper Debt of the Heir in Respett of the Affets which he has in his own Right; and so the Property, which he has in his own Right of the Land, makes the Debt his proper Debt, and for that Reason the Writ shall be in the Debt and Deninet. Pl. C. 440. b. 441. by the Reporter, in Case of Davye v. Pepys.

13. A demised to his Wife, till B. his Son and Heir should be 24, and if B. died before without Heir of his Body, then the Land to remain over to his Daughter. In Debt against B. as Heir of A. he pleaded Riens per Defect but the third Part of the Manor of D.—B. was above 24. It was held by Dyer and Manwood, that here was no Estate Taie, but that the Fee defended and remained in B. unless he had died under 24, and then the Entail would have vested with the Remainder. And therefore a General Judgment should be given against him as of his own Debt, and that an Elegit should go of a Majority of all his Lands, and a Capias also. But Manwood conceived, that if a General Judgment be given against the Heir by Default, a Capias lies nor, tho' it lies in Case of a talle Plea. But Dyer e contra. 2 Le. 11. Hill. 20 Eliz. C. B. Hinde v. Lyon.

14. Debt upon a Bond against the Defendant as Brother and Heir to J. S, who pleaded Riens per Defect from his said Brother. It was found that J. S. was seized in Fee and had Issue and died Issue, and the Issue died without Issue, whereby the Lands defended to the Defendant, as Heir to the Son of his Brother. It was adjudged for the Defendant; For tho' he is chargeable as Heir upon this Bond, yet he is but a Collateral Heir, and it ought to be specially declared, and the Issue ought to be joined accordingly; But upon this Issue it is found against the Plaintiff, For the Defendant has nothing as immediate Heir to his Brother, but by Defect from the Son of his Brother; and to charge him, he ought to have declared specifically. Cro. C. 151. Hill. 4. Car. B. R. Jenks v. . . . .

Son, whereas in that of Kelllow v. Kellow, the Eheate of the Nephew was not chargeable.

15. In
...
Heir.

23. In Suits against Heirs, the Law of England imitates the Civil Law, where an Heir, being sued by a Bond Creditor, is sued for his own Debt in the Debet and Defect, and is, prima facie, supposed to have Allots, but that he may discharge himself by proving, that at the Time of the Writ brought, he had no Allots, or if he has Allots defeas'd, may shew those Allots, of which the Plaintiff may think it pleases take Judgment; and that in Cause the Heir had alread'y before Action brought, tho' at Law there was no Remedy against him, yet he was Responsible in Equity for the Value of the Land alien'd; but now he is liable at Law, by the 4 W. & M. 14. per &d. Macclesfield. Wms's Rep. 777. Hill. 1721. in Cafe of Coleman v. Winch.

(C. 2) What Heir, or who as Heir shall be charged, and How.

1. If a Man, seised of Lands in Gavelkind, binds himself and his Heirs by Obligation, and dies; Debt shall be maintainable against all the three Sons: For the Heir is not chargeable, unless he hath Lands by Defeint. Co. Litt. 376. b. (1).

2. A. seised in Fee, had Issue two Sons, and bound himself and his Heirs in a Bond, and died seised of Allots, and the Eldleft Son entered and died without Issue, and the Younger Son entered; he shall be charged by this Allots as Son and Heir of his Father, tho' there was a mediate Defeint to the Eldeft. And the same Law of Grandfather, F. cited Son. D. 368. pl. 46. Patn. 22 Eliz. Anon.

3. So of Grandfather and two Daughters, who have each a Son, if the Grandfather is bound for him and his Heirs, and dies seised of Allots, and the Daughters enter and die without making Partition, the Sons enter they shall be charged. And by Littleton, they shall be in as one Heir, &c. D. 368. pl. 46. Anon.

4. All Manner of Heirs shall be charged on Obligation of the Father. Hse. 114. Heirs of the Part of the Father, and of the Mother, Heirs in Gavelkind, and all Heirs immediate or mediating. Jo. 88. per Jones and Doderidge J. in Cafe of Bowyer v. Rivit.

5. It was laid by the Court, that Debt lies against the Heir of an Heir, upon an Obligation of the Ascendant, who obliges himself and his Heirs, unto the tenth Degree, Nov. 36. Dennys's Cafe.—And cited Dyer 344 that Debt lies against the Executor of an Heir.

6. By 29 Cen. 2. cap. 3. § 7. It is Provided, that no Heir, that shall be chargeable by Reason of any Estate or Trufi made Allots by Law, shall, by Reason of any Plea, Confeffion of the Action, or Suffering Judgment by Nient demise, or other Matter, be chargeable to pay the Condemnation out of his own Estate; but Execution shall be found of the Whole Estate so made Allots, in whose Hands forever it shall come after the the Writ purchased, in the same Manner, as by the Common Law, where, the Heir pleading a true Plea, Judgment is prayed against him thereupon.

7. If one binds himself and his Heirs, the Heir's Lands are chargeable as he is Tertsubant, and not as Heir; per Holt Ch. J. 12 Mod. 404. Trin. 12 W. 3. B. R. Anon.
Heir.

(D) Execution, [of what.]

D. St. pl. 63: 1. If the Judgment in Action of Debt against an heir be general, upon Riens per Defect pleaded, and made found against him, or by Confession, without auing what Attest he had, or upon Non sum Informatus, or Nihil dicit, the Execution may be general also, as to have Execution of the Bounty of all his Land, &c. D. 3 & 4 Pa. 149. 80.

But if in an Action of Debt brought against an heir the Defendant acknowledges the Action, and shews the Certainty of the Attest, and upon this Judgment is given to recover the Debt, to be levied of the Attest descendent; there the Plaintiff shall have a Writ of Execution to levy this of all the Land descendent, and not to have a Bounty, as upon an Elegit. D. 3 & 4 Pa. 149. 80.

2. So it seems if in an Action of Debt against an heir Judgment general be given upon Riens per Defect pleaded, Nihil dicit, Confession without auing Attest, or upon Non sum Informatus, this the Plaintiff may have Execution by an Elegit of the Bounty of all his Land &c. as it seems that he may, at his Election, shew that he had such Land by Defect, and pray to have Execution of all this Land. For otherwise, if the Plaintiff shall not have this Election, but is put to his Elegit General, then he shall have but a Moieto in Execution, and prudence. the Heir has not any other Land besides the Attest. Writ for this D. 3 & 4 Pa. 149.

3. But Jones J. Poph. 155: in Cafe of Bowyer v. Revet. Mr. Girdler said, that he had seen several Cases in B. R. where, upon Prayor, there was a special Execution, and that he had the Number-Rolls of several, which he had perused. And in those Cases such a special Execution may be very Advantageous; for that such Lands were chargeable from the Title of the Original; whereas upon a general one, they might be aliened before Execution. 3 Show. 174. Anon. - 1 Mod. 253. Anon. Contra.

But if in an Action of Debt brought against an heir the Defendant acknowledges the Action, and shews the Certainty of the Attest, and upon this Judgment is given to recover the Debt, to be levied of the Attest descendent; there the Plaintiff shall have a Writ of Execution to levy this of all the Land descendent, and not to have a Bounty, as upon an Elegit. D. 3 & 4 Pa. 149. 80.

* Fol. 72.

Upon a false Plea by the Heir, the Plaintiff may be taught to take the Attest by Defect in Execution, or an Elegit of all his Land; per Jones J. Poph. 155: in Cafe of Bowyer v. Revet. Mr. Girdler said, that he had seen several Cases in B. R. where, upon Prayor, there was a special Execution, and that he had the Number-Rolls of several, which he had perused. And in those Cases such a special Execution may be very Advantageous; for that such Lands were chargeable from the Title of the Original; whereas upon a general one, they might be aliened before Execution. 3 Show. 174. Anon. - 1 Mod. 253. Anon. Contra.

But if in an Action of Debt brought against an heir the Defendant acknowledges the Action, and shews the Certainty of the Attest, and upon this Judgment is given to recover the Debt, to be levied of the Attest descendent; there the Plaintiff shall have a Writ of Execution to levy this of all the Land descendent, and not to have a Bounty, as upon an Elegit. D. 3 & 4 Pa. 149. 80.

4. In Debt by J. S. and W. R. against B. as Heir, B. pleaded Riens in the County of Suffele, that he had Attests in the Cinque Ports,* [and thowed where.] And Judgment was given of a special Elegit of his Lands, as well those by Defect as by Purchase. 3 Le. 3517 to 32. S. C. - Poph. 155. S. - Palmer 419. Pach. 1. Car. B. R. S. C. -

* And 28. pl. 85. S. C. by per Defect, and it was found in the County of Suffele, that he had Attests in the Cinque Ports,* [and thowed where.] And Judgment was given of a special Elegit of his Lands, as well those by Defect as by Purchase. 3 Le. 3517 to 32. S. C. - Poph. 155. S. - Palmer 419. Pach. 1. Car. B. R. S. C. -

But the Plaintiff were compelled in the first Place to have a Certiorari to remove the same Records into Chancery, and thence by Mutinies to the Contable of Dover to make execution of this Judgment.

5. There
5. There is a Difference where the Heir is charged by Warranty of his Father, and where by Obligation; For where he was charged upon Warranty of his Father, and he pleaded Rians per Decent, and found against him, viz. that he be by Decent, but not Affets, (or sufficient); in this Case Execution shall be of the Lands by Decent only; But otherwife in the Case of the Obligation; per Jones and Doderidge J. and it was not contradicted by the other Justices. Jo. 87, 88. Hill. i Car. B. R. in Case of Bowyer v. Rive.

6. In a Warrantia Charta against the Heir he pleaded Rians per Decent &c. In this Case the Plaintiff shall recover Pro Loco & Tempore. 8 Rep. 134. in Mary Shipley's Case.

the Plaintiff may have Judgment immediately, and Sci. Fac. when Entered. Mad.

(D. 2) Execution. Priority: Who shall have it.

1. Brought Debt against the Heir on a Bond of his Ancestor, pending which Action B. brought Debt against the same Heir upon another Obligation of his Ancestor. B. got Judgment first, and then A. bad Judgment; North Ch. J. held it very clear, that B. who got the first Judgment should be first satisfied. For that the Land was not bound till the Judgment, given. Trin. 29 Car. 2. C. B. 1 Mod. 253. Anon.

2. But if the Heir, after the first Action brought, had alwed the Land, which he had by Decent, and B. the Plaintiff in the second Action commenced, after such Alienation had obtained Judgment, and then A. had obtained Judgment likewise, in such Case A. should be fift satisfied, and B. not at all; per North Ch. J. Trin. 29 Car. 2. C. B. 1 Mod. 253. Anon.

(E) Who, at Common Law.

1. By the Common Law, before and at the Conquest, the Children, both Male and Female inherited alike, and the Estate whether Real, or Personal, defauded to all equally; per Holt Ch. J. cites Seld. Eadem 134. Lamb. fax. Laws 36 fo. 167.—In the Reign of H. 1. Females began to be excluded, and the Ladies inherited equally the Socage-Land. Glanvill. 7. cap. 3. At that Time the Land defauded to the Father, if the Son dy’d without Issue. Lamb. 202, 203. L. L. 41. 1. c. 70. And yet about this Time, or in the Time of H. 2. the Father and Mother began to be excepted as to the Real Estate, but not as to the Personal. 1 Salk. 251. Blackborough v. Davis.

2. A seised in Fee of 2 Houses, had three Brothers, B. C. and D. and devised his House in Possession of J. S. to his three Brothers among them, and his House in B’s Possession to B. and be to pay 5l. to R. W. to find him Schooling, and elle to remain to the * House, Provided that the Houses be not sold, but go to the next of the Name and Blood that are Males (if it may be). A. dies, living B. C. and D. and then B. dies without Issue. C. enters and dies leaving Issue a Son. The Question was, whether the Son of C. or D. should have the House? And upon Debate of this Matter, Mounfion, Manwood, and Dyere thought, that the Son of C. should have the Remainder to him and the Heirs Male of his Body, the Remainder to D in like Manner, and the one to succeed the other according to the Course of the Common Law. But Harper e contra. D. 333. pl. 29. Patch. 16 Eliz. Chapman’s Cafe.

* Such Devise shall be underfand of the Principal Heir of the House; per Hobart. Ch. J. Hob. 33.
(E. 2) Who, in the Right Line Ascending, or Descending.

1. It is a Maxim in the Law of England, that an Inheritance cannot legally descend, per Hale Ch. J. Vent. 415.

2. If a Man purchase Land in Fee Simple, and dies without Issue, in the first Degree the Law respects Dignity of Sex, and not Proximity, and therefore the remote Heir of the Part of the Father shall have it before the near Heir of the Part of the Mother. But in any Degree paramount thereto, the Law respects not, and therefore the near Heir by the Grandmother, on the Part of the Father, shall have it before the Remote Heir of the Grandfather on the Part of the Father. Bacon's Elements 3.

(E. 3) Who, in the Collateral Line.

1. Three Sorts of Persons cannot have Heirs in transversali Linea, but in Realla Linea, viz. 1st, a Bullard, 2dly, a Person attainted, 3dly, an Alien. Arg. Godb. 275. in Godfrey v. Dixon's Case.

2. Children inherit their Ancestors without limit in the Right Line ascending, and are not inherited by them. But in the collateral Lines of Uncle and Nephew, the Uncle as well inherits the Nephew as the Nephew the Uncle. Vaugh. 244. in Case of Harrion v. Burwell.

(E. 4) Who, in Case of a Purchaser.

1. If Purchaser has Issue a Son and dies, and the Son enters, and dies without Issue, and without Heir of the Part of the Father, the Heir of the Part of his Father's Mother shall have the Land by Decent, but the Heir of the Part of the Mother of such Issue shall not inherit. Agreed Pl. C. 446. in Case of Clere v. Brook and Cobham.———cites * 12 Eliz. 4.

2. Son purchased Land in Fee, and died without Issue, leaving a Mother and a Grandmother of the Father's Side; the Grandmother had a Brother, and so had the Mother; and the Question was whether, the Brother of the Grandmother, or the Brother of the Mother should be Heir to the Son; and the Opinion of all the Justices of C. B. was that the Brother of the Grandmother shall inherit as next of Blood to him of the Part of the Father, &c. and that * 12 Eliz. 4. is accordingly; and adjudged, against the Opinion of Jeffreys, that the Uncle of the Part of the Mother shall not be Heir, but the Great Uncle, viz. the Brother of the Grandmother; because in him is the more ancient and worthy, and also the more entire Blood. D. 314. pl. 95. Trin 14 Eliz. Cler v. Brook.


-Descents shall go to the most worthy Blood, and therefore the Brother of the Grandfather of the Part of the Father shall be preferred to the Brother of the Grandmother of the Part of the Father; for the Brother of the Grandfather's Son to the Great Grandfather, and so comes of the worthier Race; and if the Grandfather had no Brother, but had a Sitter, it should descend to the Sitter, and to her Line, rather than to the Brother of the Mother of the Father of the Purchaser; for the Sister of the Grandfather is Daughter to the Great Grandfather, and so comes of the Race of the Matres, of which the Purchaser came, and to of the Race most Worthy, Pl. C. 445. Resolved in Case of Clere v. Brook. —* Br. Decent pl. 58. cites 12 Eliz. 14.

3. And
3. And the Brother of the Grandmother of the Part of the Father shall be preferred before the Brother of the Great Grandmother, notwithstanding that the Blood of the last is derived by 2 Males, viz. the Father and the Grandfather, and the Blood of the former by one Male only, as was objected. Pl. C. 450. b.—In an additional Note, adds that all the Justices of C. B. agreed in this Point. Pl. C. 450. b. 451. Clere v. Brooke als. Cobham.

4. If a Purchasor dies without Issue, and has no Heir of the Part of the Father, the Land shall descend to the next Heir of the Part of the Mother, and this shall be intended to be the Heirs of the Race of the Males, whereas the Mother is defended, rather than to others; as where the Grandfather of the Mother, viz. the Father of the Father of the Mother of the Purchasor has a Brother and the Grandmother of the Mother of the Purchasor, viz. the Mother of the Father of the Mother of the Purchasor has a Brother, there if the Purchasor dies without Issue, not having Heir of the Part of his Father, the Brother of the Grandfather of the Mother, viz. the Brother of the Father of the Father of the Mother shall have the Land by Defect, and not the Brother of the Grandmother of the Mother, viz. the Brother of the Mother of the Father of the Mother of the Purchasor; for such Brother of the Grandfather of the Mother is of the worther Race; for he is Son to the Great Grandfather of the Mother, who shall be preferred before the Brother of the Part of the Grandmother of the Mother; because he is Son to the Mother's Grandfather in another Race, viz. in a Race conjoined to the Race of the Males, from which the Purchasor's Mother descended by Marriage of the Femae, viz. by Marriage of the Mother's Grandmother to the Mother's Grandfather; and therefore the Brother of the Mother's Grandfather of the Part of her Father and his Issue shall be Heirs to the Purchasor, and not the Brother of the Mother's Grandmother; nor can he be Heir to the Purchasor so long as the Purchasor's Mother's Grandfather of the Part of her Father has an Heir, Caufa qua supra. Agreed. Pl. C. 445 b. Pluch. 15 Eliz. C. B. in Cafe of Clerke v. Brooke.

5. In thefe Cafes no Marriage is to be regarded, but the Marriage of the Father and Mother of the Purchasor which preceded the Purchafe; For no Marriage after will make any Inheritable to the Land fo purchased. Pl. C. 447. in Cafe of Clerke v. Brooke.

(E. 5) What Persons may be Heir.

1. While a Monk professed to be a Heir? a Difference was made by the Counfel between a Monk and a Monk professed and that 'twas a Disability at Common Law; but 'twas answervd by the other Side, that if it was fo then, 'tis not fo now; because there is no way of Tryal, whether a Man is a Monk professed or not; For at Common Law it was by the Certificate of the Bishop, which cannot be done now. See 9 Mod. 54 Sir Lawrence Anderton v. the Commissioners of the forfeited Estates.

See Defect (F)

2. Tho' a Father or Mother, as such, cannot inherit * immediately after * S. P. and the Son; yet if the Case should fo happen that the Father or Mother were Cofins to the Son and, as such, his Heirs, they may take notwithstanding; and this does not hinder them from taking in the Capacity or Relation of Co-Heirs. 2 Wms. Rep. (613.) (614.) per Master of the Rolls Trin. 1731. Ealwood v. Vinke.—als. Ealwood v. Styles.


S ft (E. 6) Who

1. An Heir Purchases to him and his Heirs, and after is deraigned and dies; his Heir shall not have the Land, for he had not such manner of Capacity at the Time of the Purchase. Br. Dicent, pl. 62. cites 9 H. 5. 9.

(F) Who shall inherit as Heir. Divorce.

1. Rent granted out of Land at Common Law and Borough English, &c. descends to the Heir at Common Law; For where Custom and Common Law meet, so that one or the other must have the Preference, the Common Law takes Place. And. 191. in Case of Smith v. Lane.

2. A Man marries a Wife pre-contracted; they have Issue two Sons; a Divorce is had; one of them purchases Land and dies without Issue; the other shall not be his Heir. Arg. Nov. 162. 163. in Case of the King v. Borafton and Adams.

3. If two are divorced for Confanguinity, if they were ignorant of the Confanguinity, the Issue shall be Legitimate. Arg. Roll. R. 212. cites 18 E. 4. 29.

(F. 2) Heir. Who in Case of Bastards and their Issue.

1. If the Issue of a Battard purchases Land and dies without Issue, tho' it cannot descend to any of the Part of the Father, yet it may to Heir the Heir of the Part of the Mother; For the Heirs of the Part of the Mother make not any Conveyance by the Battard. Arg. Nov. 159. in Case of the King v. Borafton and Adams.

(F. 3) Where he shall take by Descent or Purchase.

1. Note, that Sir John Hufsey Knight enfeoffed certain Persons in Fee to the Use of Anne his Wife for her Life, and after to the Use of the Heirs Males of his Body, and for Default of such Issue, to the Use of the Heirs Males of the Body of Sir W. H. his Father, and for Default of such Issue to the Use of his Right Heirs, and after has Issue W. Hufsey, and then Sir John was Attainted of Treason, Anno 29 H. 8. and put to Execution, and after Anne died, and the said W. Hufsey prayed Oyer and His of the King, and by the King's Attorney he shall have it; For this Name (Heirs Males of the Body) is only a Name of Purchase, and Sir William Hufsey [the Son] shall not have it as Heir to Sir John, but as Purchasor. Br. Nolne, pl. 1. cites 37 H. 8.

2. When the Heir takes that, which his Ancestor would have taken if Living, he takes by Descent and not by Purchase. 1 Rep. 98. in Shelly's Case, and P. cited per Parker C. to Mod. 425. in Case of Marks v. Marks.

(Cited; Mod. 612—8 C. and P. cited per Parker C. to Mod. 425. in Case of Marks v. Marks).
(F. 4) Take. Where, In Nature of a Defect.

1. A. Seised of the Manor of S. covenanted with J. N. that when J. S. should enfeoff A. of the Manor of D. then A. would stand seised of the Manor of S. to the Use of J. N. and his Heirs. J. N. died, his Heirs within Age. J. S. enfeoffed A. It was held that the Heir should be adjudged in in Courte and Nature of a Defect, and yet it was neither Right, Title, Use nor Action, which descended, but only a Possibility of an Use, which could not be released nor discharged; yet if the Condition had been performed, it might have vested in the Ancestor, and then the Heir should have claimed by Defect. 1 Rep. 99. a, in Shelly's Care, cites it as adjudged 3 Eliz. in the Court of Wards, Wood's Care.

it vested in the Heir and never in the Ancestor, yet the Heir, shall be deemed in by Parker C. to Mod. 4. citis Wood's Care, cited 1 Rep. 99. in Shelly's Care.

2. A. made a Feoffment to the Use of himself for Life, and after the Death of him and M. his Wife to the Use of B. (eldest Son of A.) for his Life, and after the Death of A. M. and B. to the Use of B. and the Heirs Males of his Body, and for Default of such Issue, to the Use of the Heirs of B.— B. had Issue a Daughter, and then by Fine and Indenture granted to G. for 500 Years; B. died; M. died. A. surviving; upon a Reference out of Chancery to the Lord Ch. J. Hale, and after Hearing the Arguments of Counsel, his Lordship was of Opinion, that the Estate as above limited to B. was a Contingent Remainder, and that this Contingent Remainder descends to the Heirs of B. and he shall have it in Courte and Nature of a Defect. January 3, 1672. Pollex. 55. 65. and 66. Wode v. Lower.

(F. 5) By * Custom. Who.

1. RENT in Fee or Tail granted out of Gavelkind Lands follows the Nature of the Land, and defends as the Land does. Jenk. 193. pl. 100. cites 26 H. 8. 5. four times adjudged.

2. Stallage and Piece is incident to the Soil. Mo. 474. Mich. 39 & 40 Eliz. in Care of Heddy als. Heddy v. Welhouse.— And therefore, if the King grants Fair or Market with Toll certain to one and his Heirs, to be held within Borough English Land, and the Grantee dies, the Heir at Common Law shall have the Fair or Market and the Toll, but the younger Son shall have Piece and Stallage with the Soil by the Custom. Ibid.

3. Upon the Evidence given to the Jury as to a Custom, whether the eldest Sitter only bound inserting, on failure of Illute Male, the Court informed the Parties which maintained the Custom, to shew Precedents in the Court Rolls to prove the Usage; and per Coke Ch. J. without such Proof and that it had been put in Use, tho' it had been deemed and reported to have been the true Custom, yet the Court could give no Credit to the Proof by Wills.
Heir.

nefes. But in this Case the Jury gave their Verdict for the Custome which wasproved only by Writelles, whereas divers Court Rolls in 6 H. 4. were against the Custome, viz. that the Sitters should inherit as Coparceners by the Common Law, and the Reason of the Jury's finding for the Custom was, because they * of their own Knowledge knew the Utage of the Country, and that in divers Places it had been so used in the Hundred within which this Manor is. 4 Le. 242. Patch. 8 Jac. C. B. Ratcliff v. Chaplin.

4. If the youngest Son in Borough-English dies, the middle Brother shall have the Land by the Custome. Buls. 93. Mitch. 8 Jac. in Case of Davis v. Hales.

5. If a Custome be alleged that the eldest Daughter shall solely inherit the eldest Sitter shall not inherit by force of that Custome. Ruled per cur. Cur. Godsb. 166. Patch. 8 Jac. C. B. Rapley v. Chaplin.

6. So if the Custome be that the eldest Daughter, or eldest Sitter, shall inherit, the eldest Aunt shall not inherit by that Custome. Ibid.

7. So if the Custome be that the youngest Son shall inherit, the * youngest Brother shall not inherit by the Custome; and Foster J. said that it was to be adjudged in one Denton's Case. Ibid.

8. As to Deferent there is no Difference between a Copyhold in Borough-English and a Freehold in Borough-English. Cro. C. 411. Trin. 11 Car. in Case of Reeve v. Maliter.

Jo. 361, S. C.

9. A feised in Fee of Copyhold Lands of the Nature of Borough-English, descendent to the youngest Son, surrendered the fame to the Use of himself and M. his Wife for Life, and to his Heirs; A. dies leaving 3 Sons B. C. and D. M. enters and enjoys; D. dies. Per 2 Juticines, B. shall take after the Death of M. because C. cannot have it as Brother and Heir to D. by the Custome; For the Custome extends only to the youngest Son, and not among Brothers where no such Custome is found, and without a special Custome found, that it shall descendent to the youngest Brother, the Law will not admit it; For Customes are takenstrictly. Secondly 'twas agreed by all that tho' D. died before Admissitance, 'tis not material; For he was a Copyholder, and might have surrendered, or charged, or leased, &c. and if M. had died living D. and D. had entered and died without Issue, then B. should have had the Land as Heir to D. But in the principal Case, it being a Reversion organizant upon Estates for Life, and D. never being feised of the Land in Possession, but dying in the Life of the Tenant for Life without Issue, the great Question was, if C. as youngest Son may claim it, or B. shall have it as Heir at Common Law? Bramton Ch. J. and Berkley J. held that C. should have it, and Jones and Croke J. held that B. should have it. Cro. C. 410. Trin. 11 Car. B. R. Reeve v. Maliter.

65, 68. and after page 69, he says, that if Jones's and Croke's Opinion were to prevail, it could not but occasion Uncertainty and consequently Confusion.

10. A Custome that Lands shall descendent always to the Heirs Male, viz. to the Males in the collaterall Line excluding Females in the Lineal, was held good. Vent. 88. Trin. 22 Car. 2. B. R. Symphon v. Quincy.


11. A Copyhold shall descendent according to the Common Rules of Law, unless Custome particularly alters and orders it otherwise; per Eyre J. Show. 84. Hill. 1 W. & M. in Case of King v. Dillinton.


12. Borough English Lands descendent to the Representative of the youngest Son. 1 Salk. 243. Hill. 2 Anne B. R. Clement v. Scudamore—6 Mod. 129. S. C.

Wm's Rep. 63. S. C.

13. Where Custome makes an Heir, the Law implies all Incidents in

67. Hill. 2 Anne B. R. S. C.

14. So
Heir.

14. So that if the Father is deceased, and dies, whereby he is not seised at the Time of his Death, yet the right of Entry shall descend to the youngest Son, and if he dies, then to his Daughter. Ibid.

15. If a Lease be made to H. and his Heirs for three Lives, of Lands of the Nature of Borough English; This descendable Freehold shall go to the youngest Son, tho' it is a new created Estate; For the Custom is inherent in the Land; and so it is of a Rent, for it issues out of the Estate. Salk. 244. Per Holt; In Case of Clement v. Scudamore.

(G) By Limitation.

1. E A S E to A. for Life, Remainder to the next of his Blood. A. has Issue B. and C. — B. has Issue and dies, then A. dies. C. shall have the Land and not the Issue of B. For now C. is the next of Blood to A. and not the Son of B. tho' B. was the Eldest Brother; per Wilby. Br. Done, &c. pl. 21. cites 30 Att. 47.

2. Leafe for Life to A. Remainder to the Right Heirs of B. who has Issue three Daughters and dies; the Eldest shall have the Remainder and not the other with her because she is the more Worthy; per Wray Ch. 2 Le. 219. Patch. 16 Eliz. B. R. in Humphreton's Case.

3. A. made a Feoffment in Fee to the Use of C. his Younger Son in Tail, and after to the Use of the Heirs of the Body of A. in Possession proceed. and at the Time he had two Sons, B. and C. afterwards another Son was born C. dy'd without Issue; per Wray j. The Land shall go to the third Son born after the Feoffment; For this Word (in Possession) is a forcible Word to create a special Inheritance, without that it had been a general Tail. 3 Le. 87. Mich. 26 Eliz. B. R. Anon.

4. Leafe for Life, Remainder to the next of Blood, his Brother of the half Blood shall have this Remainder before the Uncle or Aunt of the Whole Blood; per Coke Ch. J. Roll R. 114. Hill. 12 Jac. B. R.


(G. 2) Immediate Heir. Who shall be deem'd so in Law, tho' in a Remote Degree. Vid. Difcent. — Forme don. (H).

1. A. Has a Daughter his Heir apparent; this Daughter has a Son; Jenk. 81. pl. 60 cites 17 El.

2. He dies in her Father's Life-time, then A. is killed; this Son shall have an Appeal of the Death of his Grandfather; for by the Death of his Mother in his Grandfather's Life-time, the Son is the immediate Heir to him; by all the Serjeants in England. Jenk. 6. pl. 8. cites 15 E. 2.

T t t (G. 3) By
(G. 3) By Limitation who. Where it is limited to the

| Heirs Male. |

A Deviser Lands to B. and to the Heirs Males of his Body. B. has a Daughter, who has Issue a Son; the Daughter dies in the Life of B. afterwards A. dies, and afterwards B. dies; this Son shall take by this Devise; For altho' he is not the Son but the Grandson of B. he is the Heir Male of B. And I to understand the Principal Case, that if the Daughter had survived B. and A. had died in the Life of the Daughter; the Son of the Daughter in this Case should not take, for he is not Heir Male to B. This Son cannot be Heir to B. in his Mother's Life-time. For it is, the Fee would be in Abeyance during the Life of the Mother, which the Law will not suffer. Testamenta latinitim Interpretationem habere debent. The Law is otherwise upon a Gift in Tail, the Male in this Case ought to convey by Males. Jenk. 81. pl. 60. cites 25 H. 6.

2. Where Land is given to a Man and his Wife for Life, the Remainder to the Heirs Males of the Body of the Man, this Remainder cannot be vested in the Life of the Man; For it is not Tail in the Man, by Reason of the Estate of the Feue, yet if he has Issue two Sons, the eldest has Issue a Daughter and dies, the Father and Mother dies, the Younger Son shall have the Land as Heir Male, and yet he is not Heir in Fact. Br. Nofine. pl. 49. cites 37 H. 8.

3. So where Land is given to W. N. for Life, the Remainder to J. S. for Life, the Remainder to the Heirs Males of the Body of the said W. N. who has two Sons; the eldest has Issue a Daughter and dies, and W. N. and J. S. die, the Youngest Son shall have the Land as Heir Male, yet he is not Heir in Fact, but his Neice is Heir to his Father; For it is no Matter of the first Vesting, nor of the Remainder. Br. Nofine. pl. 40. cites 37 H. 8.

4. A. seised of Lands in Fee, having a Son, a Daughter and a Brother, devises the Land to his Son, and it he die without Issue, then to the Right Heirs Males of his Name and Blood, to be divided Part-like for ever. A. dies. The Son dies without Issue. The Daughter shall take and not the Uncle; For the Right Heir Male in this Case ought to take by Purchase, and to be Heir Male, and the Uncle is Male, but not Heir. Adjudged and affirmed in Error. Jenk. 294. pl. 41. cites Hob. 29. Cowden v. Clerk.

5. A. devises his Land to his Right Heirs Male, having only a Daughter. This is a void Devises, for the Reaon in the Case above; For such Devisce is a Purchasor. But 'tis otherwise if the Devise was to B. and his Right Heirs Male, and A. dies, and then B. dies. There the Entail is vested in B. Hob. 29.

6. A Term for Years was assigned in Trust for Baron and Feue for their Lives, and of the Survivor of them, to receive the Profits for so many Years of the Term as they or the Survivor of them should happen to live, and after their Deaths, to the Heirs of the Body of the Feue, by the Baron. The Plaintiff's Counsel, to support the Remainder, would conclude (Heirs of the Body) to be Words of Purchase or Description and not of Limitation. But per Cur. The Whole Interest of the Term vested in the Wife, and must go to her Executors or Administrators; per Jeffries C. Pach. 1698. 2 Vern. 43. * Peacock v. Spooner.


Note,
Heir.

Note. In this Case they cited and relied on the Case of Warman v. Septman. 2 Ch. Cai. 209. Mich. 27. Car. 2. and Bowman v. Barts, where the Words, Heirs of the Body, are look'd upon to be a good Description of the Person intended to take on a second Marriage, tho' there was Issue by a former Wife, and to he was not Fiftily Heir. Ut ante.

Note. This Decree and Dismission was affirmed in Dom. Proc. But Contra per Lord Keeper. Hill. 1710. where 'twas decreed, that the Heirs of the Body could not take as Purchasers, and says, If the Legal Estate had been to limited, the Mother must have taken the Whole, and the Trust of a Term must be governed by the same Rule. 2 Vern. 666. Webb v. Webb.

Webb v. Webb, 1 Hill 1710. and his Lordship said, that before the Case of Pracek v. Seuntz, he never heard it said, that the Limitations of a Term in Equity, differ'd from the Case of a Feehold at Common Law.

7. A Man having Issue a Son by a former Wife, upon his Marriage with a second Wife, by Fine grants 150 l. per Ann. out of Lands for her Jointure, and if he should have Heirs Male, then those Heirs Male should have another 150 l. per Ann. during the Life of such second Wife, and after her deceafe, the Heirs Male of his Body, and his fuid second Wife should have 300 l. per Ann. &c. He has a Son also by the second Wife. The Court thought that by the true Meaning of the Marriage Agreement, the Son of the second Wife is a Person well describ'd to take the Rent, cited N. Ch. R. 123. as decreed 20 January, 1666. in the Case of Seymour v. Boreman and Yates.

8. J. S. covenanted to fland seised to the Use of A. his eldest Son and the Heirs Male of his Body on M. his Wife to be begotten, and for want of such Issue to the Heirs Male of the Covenantor, and for want of such Issue to his own Right Heirs for ever. A. has five Daughters but no Son living; Resolved that A's younger Brother shall take, and not the Daughters, who are Heirs at Law. 2 Nid. 207. Patch. 29 Car. 2. C. B. Southcoft and Stowell.—Contra to Grefwold's Case. And. 3. Dy. 136. 24.

9. It may be admitted, that the Words (Heir Male) * without more, will not carry it in a Defent, or by Way of Limitation, if he be not also Heir. * But one may take as Heir of the Body of a Person dead, tho' not Her General; per Cowper C. 2 Vern. 732. Hill 1716. Newcomb v. Barkham.

10. The Rule that he, that takes as a Purchaser by the Name of Heir Male, must answer the Whole Description, so as he must be both Male and Heir, is a Rule * without Foundation in Natural Reason, and is raised and supported only by the artificial Reasoning of Lawyers, and under this Head we may consider of the Case of Townden and Clark, in Hob. and Athelhurst's Case, cited at the End of that Cafe, and also the Cafe of Stirling v. Critick in this Court, in all which it is observable 1. That the Limitations were only to the Heirs Male, not taking of the Body. 2. Whoever observes the Manner of my Lord Hobart's Argument Fol. 32. will find his own Opinion to be for the Devise, if it had been made to the Heirs Male of the Body, and there seems to have been some Mistake crept into the Print, in the Transcribing that Part of the Cafe which looks otherwise. And as to the Cafe of Stirling v. Critick, besides that, there is no mention of the Word Body, that was in Case of a Death dividing a Conveyance to his Heirs Male, and therefore he thought the Decree extremely Right, and should have given the fullest

* S. P. per Ld Macclesfield, and said, that Anderdon in his Report of the Cafe of Shipp's, says the Judges gave no Reason at all for their Opinion, and the Ld Coke had made no long a Report of their Argument; but since the Law has been taken ever since, his danger, to remove ancient Land-Marks, and accordingly allowed a Demurrer by the Heir at Law. Ch. Prec. 582. Patch. 1722. Daws v. Ferrars.—1 Ch. Prec. 54 S. C.—1 Ch. Prec. 466.—1 Ch. Prec. 54 S. C. decreed per Ld Somers.
Heir.

11. In Cafe of a Defent, the Heir Male of the Body takes only a Per-
son described; and if a Person may take by Description of the Perfon, then
certainly follows, that he must take when the Description is true, and
is perfect and complete; per Cowper C. 2 Vern. R. 732. Barkham v.
Newcomen & c Contra.

12. A defied to the Heirs Male of B. brullifly begun, and for want of
fuch Heir to his own Right Heirs; 'twas held good, tho' not to the Heirs
of the Body, and tho' those Words (of her Body) were wanting, yet
they were supply'd by the Description, and made good by other Words
Tantamount; cited per Cowper C. 2 Vern. 733 to have been adjudged
in the Houfe of Lords, in the Cafe of Long v. Beaumont.

13. Devife to the Heirs Male of J. S. now living, adjudged a good De-
vice; per Cowper C. Hill. 1716. 2 Vern. R. 734. in Cafe of Newco-
men v. Barkham, cites the Cafe of James v. Richardson, in Pollex.
457. and 2 Vent. 311. S. C. but in the Names of * Burchet v. Durdant.

14. Covenant to hand feised to the Ufe of the Heirs Male on the Body of
his foid Wife; tho' he had a Son living by his fuid Wife, yet 'twas held
good, even in a Deed. Hale and Wild J. held it good by Description,
but the other J. by Implication of an Estate for Life in the Covenant.

15. A Man may take as Heir special, where the Intent is manifesto to ex-
clude the Heir general. Arg. Ch. Prec. 447. cites Pach. 4 W. & M. in C.

16. Tho' a Perfon can not take as Heir Male during the Life of his An-
cefor, as in Archer's Cafe. 1 Rep. 66. yet (contrary to Hobart's Opin-
ion in the Cafe of Coumbe v. Clerk. Hob. 32. if such was his Opinion) a Limitation to the Heirs Male of the Body of a Person dead before
was sufficient to velt in them by Parchafe within the Statutes, and before
the Statute De Donis; per Cowper C. Hill. 1716. Vid. Ch. Prec. 461,

17. Devife to the Heirs Male of J. S. begotten, the said J. S. having a
Son, and the Tefator taking Notice that J. S. was then living, by be-
queathing a Legacy to her, and alfo giving B. his Heir at Law, an An-
niuity out of the Premifles to her and her Heirs. It was adjudged by the
Whole Court of Exchequer, except Baron Bury, that the Son of J. S.
was intitled to the Premifles, and not the Heir at Law of the Tefator,
which Judgment was after Reverted in the Exchequer Chamber, but that
Reverfal was reverted in the Houfe of Peers. (May. 1717) The Rea-
sons were thought to be, that the Words were a Designato Personae. And
that the Word (Heir) has, in Law, several Significations. That in the
strictest Sense, it signifies one who had succeeded to a dead Ancestor, but
in a more general Sense it signifies an Heir Apparently, which suppoftes
the Ancestor living, and that in this Latt Sense, it is used in Statutes,
Law-Books, and Records; That taking it in the strict Sense, it would
destroy
Heir.

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18. A seised in Fee, devised Land to M. his Granddaughter, (being his Heir at Law) for her Life, Remainder to his own Right Heirs Male for ever. A. died, leaving M. his Heir at Law, and also a deceased Brother's Son, being the next in the Male Line. Upon a Bill by the Nephew against the Granddaughter, the demurred; for that the Plaintiff, by his own showing, had no Title to the Premisses. The Counsel of the Plaintiff inti- mated that Le Coke's Opinion, 1 Init. 24. b. that he who takes as Heir Male by Purchase, must be completely Heir, as well as Heir Male, was denied, and intimated in the Case of Brown and Barham, by Le Coke, & Pittford, Vent. 372. and the Case cited there by Le Hale; yet Le Macclesfield interrupted the Counsel, and said, he would not suffer the Bar to dispute what was the Foundation or Landmark of the Law, tho' perhaps was it Res integrta, it might be reasonable. And said, that the Words [Heirs Male] must be intended Heirs Male of the Body, and would never extend to an Heir Male of any Collateral Line, and it not being said in the Will, Heir of the Body, or of his Name, M. the Grand-daughter might have an Heir Male, tho' not of his Name. 2 Wins's Rep. 1 to 3. Patch. 1722. Dawes v. Ferrers. From that Case, the Remainder in that being limited to the Heirs Male of the Body of Sir R. Barham, the Grandfather where the Devise was to the Heirs Male, without saying of any Body, and that therefore allowed the Demurrer cited.—And cited the Case of Ford v. Le Dolman. S. P.

(G. 4) By Limitation. Who. Heirs Females.

1. If Lands are given to B. for Life, the Remainder to the Heirs Female. Br. Devile. of the Body of J. S. who is dead, and he had issue a Son and a Daughter, and after the Tenant for Life dies; the Daughter shall not have the Land, because she is not Heir; per Eillerker. Br. Taille, &c. pl. 3. cites 9 H. 6. 23.

2. But if a Gift is made to B. and the Heirs Female of his Body, * or Co. Litt. 19. otherwise, it is good, tho' he has a Son and a Daughter and dies, and the Daughter shall have it, notwithstanding the Son be living. Br. Done, &c. pl. 61. cites it as agreed. 37 H. 8. and also that it was held by Sir Hare, who was Master of the Rolls, that there is a Difference between a Gift in Possession, to a Man and his Heirs Female, &c, and a Gift to a Stranger, the Remainder to the Heirs Female of another; For there they ought to be Heirs in Fact, when the Remainder falls, or otherwise the Remainder is void for ever.

S. C.—Br. Done. pl. 42. cites S. C.—S. C cited 1 Rep. 102. b. 103. a. in Shelleby's Café, and the Decision taken by Le Brooke Br. Done. pl. 42. between a Claim by Purchase, and a Claim by Defect, was taken Notice of and approved, and that tho' in the 4th Shelleby's Cafe. (Br. Done. pl. 61.) Le Brooke has not expressed the Judgment; yet it was said that it was adjudged that the Right Heirs of his Body could not, as a Purchaser, take the Remainder, because he was not Heir of his Body to take it by Purchase, by Reason of the Attainer of the Father; and cites the Opinion of Hare, Master of the Rolls, and concludes that so it appears by those Authorities, that in Cafe of Purchase, the Heir Male of the Body ought to be Heir in Fact.

* Queer, if those Words, or otherwise should not be omitted, they not being in Br. N. C. pl. 323. 37 H. 8. as I can find.

But in the Case of the Gift to B. and the Heirs Females of his Body, it is a good Tail, tho' he has a Son and a Daughter, because it was Eatee Tail vested in the Donee by the Gift. Br. Tail, pl. 5. cites 9 H. 6. 22.—A Son's Daughter cannot take by Limitation, to the Heirs Female of the Body of the Father. For she must derive all by the Females; per Le Wright. 2 Vern. 439. Johnson v. Northey.

U n n 5. If
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Heir.

3. If one gives Land to B. and his Heirs Female, and B. has Issue a Son and a Daughter, and dies, the Daughter shall *not have the Land. Br. Done, &c. pl. 61. cites 37 H. 8.

S. pl. 392.

Which is the Case referred to; but the Point there, as to this Matter, is all along of a Gift to B. and the Heirs Female of his Body, unless in one place after the Repetition of those Words, (of his Body) the Gift is stated to be to a Man and his Heirs Female &c. which [&c.] seem to intend (of his Body). For a Gift to one and his Heirs Male, or to one and his Heirs Female, (without more Words) makes a Fee Simple, and therefore on such Limitation, the Daughter cannot take where there is a Son. But if the Words (of his Body) had been added, it would make a good Estate Tail. See Co. Litt. S. 22, 24, 31. And see 9 H. 6, 25. a. There Patron said, that tho’ the Gift be to one, and his Heirs Female tail and the Heirs of the Body of their Heirs begotten, yet the Daughter has no Estate Tail, (as he apprehends) because she can not have Fee Simple and Tail — 4. The last Edition of the Year Book is (Fee Simple & Tail). But the former Edition is (Fee Simple & Tail).

† S. P. by Patron 11 H. 6. 13. a. — Br. Tail. pl. 5. cites 9 H. 6. 25. per Patron, that it is not Tail, neither by Gift or Devise, because those Words, (Body of &c.) is wanting in the Preamble, and therefore the Words subsequent will not serve to make a Tail.

Br. Estates. pl. 69, cites 9 H. 6. 22. that the Daughter shall have the Land; For the she is not Heir, yet she is Heir Female; per Newton, to which Mr. J. agreed. — The Case put by Newton, 9 H. 6. 22. b. is of a Gift to one and the Heirs Female of his Body; tho’ in the Case, put by Martin there, fol. 25. a. those Words, (of the Body) are not mentioned, yet they seem to be understood. — And so is Br. None, pl. 1. which cites 37 H. 8. but says, that others were of a contrary Opinion, and took a Diversity where the Gift is to the Father himself, and where it is to the Heirs of his Body by Remainder. — See Clae. Prec. 401, &c. Brown v. Barkham.

(G. 5) Limitation. Who shall take by the Word (Heir). In Respect of the Nature of Estates.

1. WHERE Land in Gavelkind is given to one for Life, Remainder to the Right Heirs of J. S. who has Issue 4 Sons, and dies, and afterwards the Tenant for Life dies, the Eldest Son shall have the Land; For he is Right Heir at Common Law, and this is a Name of Purchase which shall be ordered by the Common Law; But e contra of Descents to Heirs in Gavelkind. Br. Disent. pl. 59. cites 37 & 38 H. 8.


2. A seised of Gavelkind in Fee, by Will, devised it to B. and M. his Wife, Remainder Proximo Heredit Mlsculo de Corporejus feis legitime procreatiss in perpetuum. Afterwards A. and M. have three Sons and die. Whether the Eldest Son should have the Whole Remainder, or in Common with his Brothers was demurred in Law in B. R. and was several Times argued. [But nothing said there as to the Opinion of the Courts, &c.] D. 133. b. pl. 5. Mich. 3 & 4 P. & M. Anon.

Nell. Abr. 396. pl. 1. cites it as adjudged. D. 179. — The Words (according to the Course of the Common Law) are void; For Customs which go with the Land, as this is, and Gavelkind, and such like Customs, which fix and order the Descents of Inheritance, can be altered only by Parliament; by Catlin, Dyer, Sanders, Whichdan, Browne, and Benlowe. Jenk. 220. pl. 70 — S. P. Per Wray Ch. J. 2 Le. 219. Patch. 16 Eliz. B. R. in Humphreton’s Case. — S. P. Per Cowper, C. Hill. 1716. Ch. Prec. 464. But if the Limitation had been to the Right Heirs of J. S. in Gavelkind, it would go to all the Sons. — 2 Vern. 732, 733. in Cafe of Newcomen v. Barkham.

4. A.
4. A. feised in Fee of Borough-English, devise it to B. his Son in Tail, and dies; B. dies feised leaving two Sons; Resolved, that the younger Son shall inherit as well to the Tail as to the Fee Simple. Nov. 106. Trin. 44 Eliz. C. B. Weeks v. Carvel.

5. So all the Issue shall inherit an Estate Tail in Gavelkind Land. Ibid. cites D. 176. [but it seems it should be 179] 26 H. 8. 5. 22 E. 4. 10 b.

6. A. feised of Copyhold Land in Fee of the Nature of Borough-English, surrenders it, according to the Custom, to the use of J. S. and his Heirs, who died before Admissance, leaving two Sons; It seems, that the youngest Son shall have the Land, because he is in by Defcent, or at least by Force of the first Surrender, and so in Nature of a Defcent. Per Glyn Ch. J. Hill. 1657. B. R. 2 Sid. 61.

was, that the Right would descend to the youngest according to the Custom — S. P. cited by Wylde in 26. Car. 2. B. R. as held that the youngest Son should have it. Vent. 261. in Cafe of Batemore v. Graves.

7. J. S. feised of Land in Borough-English, demised it to A. and his Heirs for the Life of B. — A. died leaving two Sons, C. and D. It was argued, that it should go to C. for that it is not a Defcent to him as Heir, but a special Limitation to prevent an Occupancy, and that he takes it as special Occupant and Purchaser, and therefore ought to be Heir at the Common Law; But it was answered, that he took it as Heir, and that in 10 Rep. in Gervasta's Cafe, such Estate is taken as a definable Freehold, and then it ought to descend to him as Heir by the Custom which runs with the Land, and guides the Defcent to the youngest Son; And of this Opinion was the Court, and gave Judgment accordingly.


8. If a Man has Lands at Common Law, and Lands in Gavelkind, and he devise his Lands at Common Law to his Heirs in Gavelkind; (So of Lands at Common Law, and Lands in Borough English;) In these Cases, if the Tcftator dies at the Word Heir or Heirs, it is certain the youngest Son in the one Cafe, or all the Sons in the other Cafe cannot take; because the eldest Son only is Heir; But now take all the Words together, and then it is most certainly a good devise to the youngest Son, who is Heir in Borough English in the one Cafe, and to all the Sons who are Heirs in Gavelkind in the other. Per Cowper C. Hill. 1716. Ch. Prec. 464. in Cafe of Brown v. Barkham.

(H) Where Jus Representationis is preferable to Jus Propinquitatiss, & Vice Verfa.

1. ONE has Issue two Sons, A. and B. and dies; B. has Issue two Sons, C. and D. and dies; C. the eldest Son has Issue and dies; A. purchaseth Land in Fee Simple, and dies without Issue; D. is his next Cousin, and yet shall not inherit, but the Issue of C. For he that is inheritable is accounted in Law next of Blood, and therefore here is understood a Division of Next, viz. next Jure Representationis & Jure Propinquitatiss. Legally in Course of Descents, he that has Jus Reprensionis is next of Blood inheritable, and the Issue of C. does represent the Person of C. and if C. had lived, he had been legally next of Blood; And whenever the Father, if he had lived, should have inherited, his lineal Issue by Right of Representation shall inherit before any other, tho' another be Jure Propinquitatiss nearer of Blood; And therefore Littleton intends his Cafe of Cousin of Blood immediately inheritable; so as this produces another Division of next Blood, viz. immediately inheritable as the Issue of C. and immediately inheritable as D. if the Issue of C. die without Issue; For the Issue of C. and all that live, be they never so remote, shall inherit
inhibit before D. or his Line, &c. And here attis a Diverity in Law, between next of blood ineritable by Descent, and next of Blood capable by Purchase; and therefore in the Case abovementioned, legacy for Life to A. the Remainder to his next of Blood in Fee; In this Case D. shall take the Remainder, because he is next of Blood, and capable by Purchase, tho' he be not legally next to take as Heir by Descent. Co. Litt. 10. b.

2. Some do hold upon the Words of Littleton, that if a Legacy for Life were made to the Son, the Remainder to his next of Blood, that the Father should take the Remainder by Purchase, and not the Uncle; For that Littleton says, the Father is next of Blood, and yet the Uncle is Heir: As if a Man has issue two Sons, and the eldest Son has issue a Son, and dies, a Remainder is limited to the next of Blood; The younger Son shall take it, yet the other is his Heir. Co. Litt. 10. b.

3. When the Right Heir claims by Purchase, he must be a complete right Heir in Judgment of Law. Co. Litt. 164. a.

4. It was found by special Verdict, that the Land was Borough-Englisht, and that the Cotvolution of the Manor was, that all Copyhold Tenements did, and ought to descend to the youngest Son and his Heirs; That A. had issue five Sons, B. C. D. E. and F. that E. died, living A. and having a Daughter J. and that after F.'s Death A. purchased the Land in Seisin, and sons admitted to hold according to the Cotvolution of the Manor, and after died feisl, and E. the fourth Son entered. The Question was, if f. the Daughter of F. has good Title as Representative of F. who, if he had lived, would have inherited as Heir to A. and it was adjudged for the Daughter. 6 Mod. 120. Hill. 2 Ann. B. R. Clement v. Scudamore.

(I) Bound, In what Cases.

Toth. 170. cites 14 Car. 1. S. C.

1. No Man shall charge his Heir but as part of himself, and so begin with himself; Therefore a Contract concerning his Land, which should otherwise go to the issue, shall not bind, because the Ancestor was not bound himself; Cro. C. 371. cites 31 E. 3. Grants 85. S. P. but otherwise by a Warranty in Law. Co. Litt. 379. a.

2. The Father covenants by Articles, &c. and afterwards conveys the Land to his Son; The Father dies, the Son is sued as Heir, and being ordered to perform his Father's Covenants, he refused, infinuting, that he is not chargeable with his Father's Covenants as Heir, the Lands being conveyed to him; nor asExecutor, having no Affid. This Court ordered him to seal the Covenant according to the said Articles, and thereby covenant to free the Premises from Leaves and Incumbrances, or stand committed. 1 Car. Chan. R. 18. Pool v. Pool.


See Vern. 69. 1. 
S. C. and 84. 
S. C. where it is said that 
Land Notting- 
ham's former 
Decrees were 
with the Ap- 
probation of 
Ld Ch. J 
North.

(I. 2) Bound by Aecuitiescence under a Will.

Toth. 150. cites 14 Car. 1. S. C.

1. Devised Lands to R. S. and T. and their Heirs for her sons 
Daughters, and their Children, and such of the Children as should be alive at the life; and then declares the Trust of all her Estate undevided of by her said Will, to be for her and her Heirs; The Trustees sell the Inheritance of the Lands, and distribute the Money among the Daughters, the Heir at Law being privy and not claiming; and after a Fine was levied 
and 5 Years paased. Upon a Difference between R. one of the Trus-
tees, and the Heir at Law, R. was awarded to pay the Heir at Law
201. and to give a general Release of all Actions Real and Personal, which
was done, but no Notice taken of the Breach of Trust aforesaid; Ten
Years afterwards R. purchased back the Lands to him and his Heirs, for a
full Value; The Heir at Law brings his Bill against R. after 31 Years
Poffeffion, to have an Execution of the Trust, and the Lands to be deeded
to him, suggetting, that the Words of the Will gave only an Estate for
Life to the Daughters, and that A. had not dispofed of the Fee, as by
a Deed executed to the fame Trustees he has Power to do; But Lord
North thought, after so long a Poffeffion, such a Diffidal should be pre-
formed, and the original Will being left, and in Dutch, he would suppoce
the Copy true ; and there being a Release and Fine, and the Heir privy,
he dismiffed the Bill, though after two Decrees by Nottingham C. Vern.
2. A younger Son brings a Bill, and signifies, that a Copyhold, which his
Father had deeded to Him by Will, was surrendered to the Life of his
Will; or however, that being for the Advancement of a Child, it ought
to be made good here. He made no Proof of any Surrender, nor that a
Court was called for that Purpofe, nor any Proof that any of the Court
Rolls were loft, (which was pretended) and he was well provided for,
without this Copyhold; and the elder Brother was in Poffeffion 20 Years,
by Covenant of the Plaintiff; so the Bill was dismiffed with Costs. Patch.
3. A. by Will gave Lands to J. S. and having, after his Will made,
purchased other Lands, he on his Death Bed deeded B. his Heir at Law,
not to hinder his Nephew J. S. from enjoying the new-purchased Lands,
though he had not by any Writing declared the Trust for J. S. and his
Heirs; B. sufers J. S. to enjoy it 11 Years, and then pretends he thought
the after-purchased Lands had passed by the Will; Lord Cowper decreed,
that this was out of the Statute of Frauds, and that B. letting J. S. enjoy
it fo long, was an Execution of the Trust, and to ouf the Statute; and
though no express Fraud was proved, yet the Poffeffion for 11 Years was a
strong Prefumption that he suffered it as an Execution of the Testator's

(K) Charged. By what Conveyance.

1. A Feoffment by the Heir in the Life of the Ancestor without Warranty is
no Bar after the Ancestor's Death. Per Brian and Catesby; ecno-
2. A Trust for Payment of Debts generally is good against an Heir,
though no Creditor be Party to the Deed, nor Debt expresfed in Particu-
ar, nor covenant in the Leafe to pay; But Lord Keeper faid, he
would not maintain it against a Purchafor. Hill. 26 & 27 Car. 2. 1 Chan.
Cafes. 249. Leech v. Leech.

(K. 2) Pleadings in Actions against him.

1. Deft against the Heir; the Defendant pleaded Riens per Decent,
the Plaintiff sued, Affets in the County of E. C. and S. and the Vifne
was of all three Counties; but per Norton, it he has Affets in any of
them it is Suficient. Br. Affets per Decent. pl. 24. cites 28 E. 3. and 27
E. 3. 78. But in such Case three feveral Juries were awarded. Fitzh.
Vifne. 9.
2. Deft against the Heir, he pleaded Riens per Decent; and per
Hank. if he had by Decent in Ancient Demefus, he shall be charged by
S. x x.
it of the Debt; Quære in Forma遣on, if the same Law. Note, that there is Franktenement, and Bâle Tenure in Ancient DemeÂneie. Br. Allots per Defent, pl. 11. cites 7 H. 4. 14.

3. In Debt against the Heir upon an Obligation of his Ancestor, he cannot plead a Release made to the Executor of his Ancestor, without forgiving the Release; for there is Privity between them; Per Fitzherbert. Br. Monitians, pl. 61. cites 14 H. 8. 4.

4. If a Man discharge himself and his Heirs in an Obligation, and dies, and Allots defend, and the Heir aliens the Allots, there he is discharged; but if he re-purchase the same Land, it shall be charged, for it is sufficient for the Plaintiff to say, upon Riens per Defent pleaded by the Defendant, that Allots defended to him in Fee Simple, of which he was seized at the Day of the Writ purchased; per Englefield and Brown, which was agreed; but at another Day Fitzherbert and Shelley denied this Case, therefore Quære; For an Action personal once extinct, is extinct for ever, as it seems. And also by the Re-purchase he is not in by Defent. Br. Allots per Defent, pl. 1. cites 26 H. 8. 1.

5. In Debt against the Heir upon a Bond of the Ancestor; he pleaded, that his Ancestor made 3. S. his Executor, who had Allots; that J. S. died, and Administration was granted to W. R. whereupon it was determined, and Judgment was given for the Plaintiff; for the Obligee may sue either the Heir or Executor at his Election. Bendil. 96. pl. 142. Hill. 3 Eliz.

* Quarrels v. Capell.

6. Debt lies against the Executor of the Heir, upon the Obligation of the Ancestor, without any Agreement in the Count, that Allots defended, which is intenable in Law, till the contrary be pleaded by the Defendant; Per Manwood. Mich. 17 & 18 Eliz. D. 344. b. in pl. 1. cites M. 5 Eliz. Lib. Int. 171.

S. C. cited
Pl. C. 441.

7. Debt was brought against the Executor of the Heir upon the Bond of the Ancestor, without any Agreement in the Count, that Allots defended to the Heir. This is intenable in Law till the contrary be pleaded by the Defendant. Mich. 17 & 18 Eliz. D. 344. b. pl. 1. cites Lib. Intrat. 10. 171.

And because the Action was in the Defent only it was held ill, tho' it was intenable to be for the Defendant's benefit, and cited in H. 8. b. nor was it cured by Verdict, and to the Court gave Judgment quod Quæres nil capiat per billam. Lea. 150. Goodhun b. 347. Button.

Pach. 16 Car. 2. B. R.—But Mich. 19 Car. 2. B. R. it was held that it was cured by Verdict by the 16 & 17 Car. 2. S. but would have been ill upon Demurrer. Sid. 342. Comber v. Watton.

8. The Writ against the Heir for a Debt of the Ancestor is in the Debet & Dedit; Per Dyer. 2 Le. 11. Hill. 29 Eliz. C. B. in Cafe of Hinde v. Lyon.

9. Debt against the Niece, as Cousin and Heir to the Uncle, who was the Obligor; the Defendant confessed the Declaration by Nient desire, but that nothing in Fee Simple is defended to her, but a Revission of a Moore in S. in the County of &c. post Mortem f. N. &c. The Plaintiff may pray special Judgment upon this Confession, viz. Quod Recuparet Debuitum & Dampus de predita Revisione levand' omit Accidit, and special Writ shall issue to extend the whole 30 Acres; And it seems that this was the Law before the Statute W. 2. 18. D. 373. b. Mich. 22 & 23 Eliz. pl. 14. Anon.

10. Judgment was had against the Heir upon the Bond of his Ancestor, but being named Son and Heir apparent in the Pleadings, whereas he was Heir in facto, the Judgment was reversed. Ow. 119. Pach. 35 El. B. R. Pendigase v. Audley.

11. Error upon a Judgment in Debt; For that in the Writ he was named Son and Heir apparent, and in the Declaration Son and Heir gener-
Heir.

An Obligor, to have. It was adjudged against the Plaintiff, because he declared against B. as Daughter and Heir of A. her Father, when she was Sistcr and Heir of her Brother who was last seised. 3 Mod. 256. Trin. 1 W. & M. B. R. cited per Eyre J. as the Case of Duke v. Spring.

Fees Simple in Possession (defended by mediately Defenots, may be declared against as immediate Heir of him, without mentioning the intermediate Defeots. Adjudged against the Opinion of Eyre J. Carth. 129.

Parch. 2 W. & M. B. R. Kellow v. Rowden. 5 Lev. 266. C. 6 Mod. 255. S. C. — Show. 244. Mich. 2 W. & M. S. C. — but if a medium Heir had been actually seised of the Fee Simple, the Declaration should have been special. Agreed Carth. 128 as was held in Jenkins Case. — Crowe 151, C. S. C. and held, that being a collateral Heir, he should be charged speciously.

17. In Debt upon a Bond of the Accestors brought against C. as Heir, he (being both Heir and Executor) pleaded in Abatement, that there was another Action pending against him and others as Executor. It was objected, that he could not charge one and the fame Perfon as Heir, and also as Executor at the fame Time; For by this means, he may have two Judgments at one and the fame Time for the fame Thing, and for which he has no Remedy by Aud. Querela; and of such Opinion was Pollexfen Ch. J. on the first Argument. But Powell J. contra; For being one and the fame Perfon, representing as well the Heir as the Executor, it is all one as if it were in diverse Persons. Rooksby J. then saying nothing. But afterwards Pollexfen being dead, Judgment was given by Powell and Rooksby that Defendant answer over. 3 Lev. 303. Parch. 2 W. & M. C. B. Haight v. Lanham.

In Debt on a Bond of the Accestors, Plaintiff need not shew How Here, &c. For the Plaintiff is a Stranger, and it would be hard to compel him to set forth another’s Pedigree. 1 Saik. 395. Denham v. Stephenon. — 6 Mod. 241. S. C. Mich. 3 Anne B. R.

19. 3 & 4 W. & M. 14. S. 6. Enacts that Where an Action of Debt upon a Specialty is brought against an Heir, he may plead Rights per Defent at the Time of the original Writ brought or Bullified, and the Plaintiff may reply, that he had Lands, &c. from his Heiror before the original Writ brought, &c. and if upon Issue joined theron, it be found for the Plaintiff, the Jury shall enquire of the Value of the Lands defeended, and thereupon Judgment shall be given, and Execution awarded to the Value of the Land ; but if Judgment be given against such Heir he by Confession, without confessing the Affeots defeended, or upon Denouncer, or nihil dici, it shall be for the Debt and Damages, without any Writ to enquire of the Lands.

In Debt against an Heir, who pleaded Rights per Defent on the Day of the Bill. The Plaintiff replied specialy by that the Objection was good, and that Defendant, after the Death of the Father, and before the Day of the Bill, &c viz. that a Day, which was a Day after the Death of the Obligor, had Lands by Defent from his Father in Fee Simple, Unde predicto (the Plaintiff,) de debito predito fatasficente potuit, viz. Apsal H. predict. & hoc patronus effe veritare unde petit judicium according to this Statute. It was objected that the Replecation was ill, because the Plaintiff had put the Value of the Lands in Issue by these Words, Unde &c. de debito predieto fatasficente potuit, which should have been omitted, because the Statute is express, that after the Issue tried, the Jury shall enquire of the Value, so that it is Matter of Inquest only ex Officio, and not to the Point of the Issue. And, that by this Statute, the Plaintiff is only to recover Pro tanta, with Respect to the Value of such dediti Affeots, and it is not to have a General Judgment against the Heir, as at Common Law upon a false Plea. But per Cap. upon Debate, this Replecation was held good, and that if Unde &c. de debito predieto satasficente potuit, had been left out, it might have been a good Cause of Objection. For the Statute gives no Occasion to alter any more of the Form of the Replecation common in such Cases, but only as to the Time concerning the Affeots by Defent; and the Conclusion, which before the Statute was to the Country, must now be with an Amendment only, that the Defendant may have an Opportunity to answer the new Matter alleg’d in the Replecation, and the Plaintiff had Judgment Carth. 533. Trin. 7 W. 5. B. R. Redshaw v. Helder. — 5 Mod. 122. S. C. but not laid there to be adjudged, tho’ Nefl. Abr. tit. Heir. (B) pl. 19 is to.

20. A. seised in Fee took to Baron J. S. they have Issue B. and C. and then A. the Issue died seised, and if. S. was Tenant by the Corte5, during whole Life, B. to whom the Reversion descended, entered into a Bond, and
Heir.

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died, leaving E. his Daughter and Heir; then E. died, and the Land de-
scribed to F. her Aunt, said the J. S. being still living. In Debr on
this Bond, the Count was against J. as Heir of E. the Daughter and Heir of B.
and adjudged for the Plaintiff, per tot. Cur. (Nevill being absent) Lutw.
507. Trin. 6 W. & M. C. B. Rooke v. Clealand.

(L) Pleadings in Actions, &c. by him.

See Finer (R.
2. A. M. may have Writ of Cofinage, he'is Cousin did not die seized;
For if he was seized the Day of his Death it suffices; because, so are the
Words of the Writ, and so is F. N. B. tit. Mordancellof quod nota. Br.
Cofinage, pl. 1. cites 40 E. 3. 38.

3. *Scire Facias upon a Fine was brought as Cousin and Heir, and did * In this
not show How Cousin, and therefore Judgment of the Writ, & non alloca-
cur; For in § Formedon it ought to be shown, but in Scire facias the one
and the other is sufficient. Br. Brief, pl. 47. cites 41 E. 3. 13.

Br. Cofinage, pl. 13. cites 2 H. 6. 2.—The Cofinage was shown in the Court only, and good; For it is a
Writ judicial; contra in Writ original, as Formedon, &c. Br. Brief, pl. 518. cites 8 H. 4. 22—
§ S. P. Br. Cofinage, pl. 13. cites 12 H. 4. 1—but see pl. 10. contra—In Scire facias upon Fine
by one as Cousin and Heir, the Plaintiff did not show How Cousin by Writ nor by Roll, and therefore the Writ
was abated by award after these joined, and in another Term: For the Writ is insufficient by Matter
§ S. P. And it was not amended; For it was in another Term. Br. Brief, pl. 249. cites 38 H. 6. 17.

In Avowry for Rent granted 12 E. 2. the Defendant shewed the Defendant to J. S. whose Heir he is, but
shew not How his Heir was. The Plaintiff demand'd generally; and the Court thought that he need not
shew in the Writ How Heir, but in the Declaration; and an Avowry is a Declaration. But they held,
that to shew How Heir is only Term, because not traversable, but that Heir or not Heir is only issuable;
and that therefore, upon a General Demurrer, this is holpen by the Statute 27 Edc. but the § not pleading
the Deed of the Rent here shewn in Court, or that he in Curia profeft is Matter of Subsistence not
aided by the Statute. No. 383. pl. 1243. Heard v. Baskervill.—And it is there said, that in
Error in B. R. it was adjudged that such Exception was not good. Cites Sir Henry Wallow's Cafe.—

4. Intrusion of Ward, where the Plaintiff made Title to the Ward as
Heir to his Father, who held of him in in Chivalry; the Defendant said
that the Land was given to the Father and Mother, and to the Heirs of their
two Bodies, and the Writ survived, Judgment of the Writ, which does not
make him Heir to the Mother, & non allocatur. For this Writ is in
the Personalty, otherwise it is in Writ of Ward, which is real, and therefore
the Defendant was compelled to answer. Br. Brief, pl. 507. cites 43 E. 3. 4.

5. In Scire facias to execute a Fine the Plaintiff demanded as Cousin and
Heir, and shewed the Cousinage out of the Writ, and not within, as in
Formedon, and Exception was taken to the Writ, & non Allocatur;
wherefore he convys'd as Son to J. the Son of E. and the Tenant said, that
E. had no such Son as J. and good, without giving other Mother; contrary
if he had said that J. was not the Son of E. For in the one Case he af-
irms such Perfon to be, and in the other not, and the other said that
such Son J. was born and begotten at D. in another County, and the
Vifne was of both Counties. Br. Sci. ta. pl. 67. cites 8 H. 4. 22.

6. Scire Facias against a Person upon a Recovery in Cofpinage against the
Predecessor by the Father and Mother of the Plaintiff, & he brought this
Action as Heir of his Mother. Caund, prays judgment of the Writ, for
he should make himself' Heir to both. But per Pulth, not, but only to
the Mother who survived; and per Brown, it appears in the Record that
the Baron had nothing but in Justice Usuris, and therefore the Writ awarded

7. Scire facias by two, as Cousin's and Heirs of N. and J. viz. as Daugh-
ters of M. Son of the said N. and J. and Cousins and Heirs of the said N.
Inherit. 8. In Scire facias of Land, as Cousin and Heir upon a Fine, or the like, if *Idem* dies be given, there it is not usual to enter the *Colinage*, but if the Party prays Execution, then it is used to enter the Colinage in such Form, *Es super hoc idem petens dict quod ipse est Confans, et heres, &c.* And *flow How Cousin, & petit Executionem*, and it was held good enough. Per Comber. Protonotary. Quod nota bene. *Br. Colinage*, pl. 12. cites 33 H. 6. 54. 9. In *Walt*, if the Defendant appears, and the Plaintiff conveys the Reversion as Cousin and Heir to the Lessor, he shall *flow How Cousin*; and *contra where the Defendant makes Default*, by which a Writ to enquire of Walt is awarded, Quod nota Diversitat. *Br. Titles*, pl. 56. cites 34 H. 6. 44. 10. In *Formedon*, the Tenant *would* one *J.* as Cousin and Heir, and *flowed How Cousin*; and per tot. Cur. he need not *flow How Cousin* in this Action. *Br. Voucher*, pl. 76. cites 15 E. 4. 4. 11. *Contra in Writ of Entry within the Degrees*: For he ought not to vouch out of the Line, therefore he shall *flow there How Cousin*. Ibid. 12. Error was allowed, because the Tenant in the former Record pleaded that his Father *was* bequeathed to him, and died so, and the Land described to him as *Son and Heir* of his said Father, and did not say that he was his *Son and Heir in Full*, and yet well, per Cur. For the usual Entry is not otherwise, and *to his used* that a Man may *justify as Servant, &c.* as *Bailiff* &c. or as *Executor of such a Testament, &c.* to do such Act, and it is used in pleading, that a Man was *bequeathed in his Demesne as of Fee*; and *not in his Demesne in Fee*; the same Law to say as Cousin and Heir, &c. and so no Error by the Opinion of the Court, and after twas adjudged no Error. *Br. Error*, pl. 143. cites 5 H. 7. 2. 13. In *Troppolf*; the Defendant said that his Father *was* bequeathed to him, and died so, and he entered as Heir, and gave Colour to the Plaintiff; there this Bar ought to be confessed, avoided or traversed, Quod nota. *Per Cur.* *Br. Barre*, pl. 2. cites 26 H. 8. 7. 14. *Where a Man claims as Heir in Fee Simple to any Man by Distinct, he must make himself Heir to him who was last feised actually of the Inheritance.* *Co. Litt.* 11. b. 15. If a Man claims as Cousin and Heir, he must *flow How*, but not *flow when he claims as Brother or Son and Heir.* *Per Dodderidge J. Gooßb.* 275. *Notowne*, pl. 389. *Per Eyre J.* *If one brings a *Formedon in Defender*, he must name every one to whom any Right did descend, or otherwise the Writ will abate.* *Per Eyre J.* 3 Mod. 256. *But in a Writ of Error to reverse a Fine as Cousin and Heir, and assigns Errors, and brings a Statute and affidavit. Errors, and is not in either of the said Writ How Cousin; it was resolved good upon Demurrer*; But the one is but a Complication to bear the Errors, and need not such Certainty; and the other is but a Writ founded thereupon, nor is it requisite that the Title be shewed therein, unless it be in a special Case. *Cro. J.* 160. *Paßch.* 5 Jac. B. R. Champennoor v. Godolphin.
16. In Debt for Rent by the Heir, reserved on a Lease made by the Father, the Plaintiff contends that it is Son and Heir of the Lessor, but does not allege, that he brings the Action as Heir; And upon Exception taken; Williams J. said, that he ought to have shewed in his Declaration how he came to the Recovery, and thereby to intitle himself to his Action, and adjudged for the Defendant. Bull. 48. Mich. 8 Jac. Smith v. Nufam.

17. Error to reverse a Fine taken by Commilson, and the Error alleged was, that the Cognisior died before the Return of the Writ of Covenant. But this Point was not argued, because Justice Allybon was of Opinion, that the Plaintiff in the Errors had not well intitled himself by the Writ; For it was brought by him Ut Confanguiuenus & Hores Scilicet filius, &c. but doth not shew how he was of Kindred. To this Objection Sir William Williams the Solicitor General replied, that if a Defect be from 20 Ancestors, 'tis not necessary to say that he was Son and Heir of such a one, who was Son and Heir of such a one, who was Son and Heir of such a one, and so to the twentieth Ancestor. Agreeable to this are all the Precedents in Forndons 'tis only said that jus descendit, Adjournat. 3 Mod. 152. Hill. 3 Jac. B. R. Price v. Davies.

18. In Pleading, if the Son will make himself Heir * to the Uncle, he *S.P. agreed must shew How, and make the Father a Medium; that is, that Inheritance descends to him, Ut Confanguiueno et Heredi; viz. Son of such a one, who is Brother and Heir to the Uncle. 12 Mod. 619. Hill. 13 W. 3: B. R. in Case of Blackborough v. Davis.

need never shew his Confangis; For he is immediate Heir. Ibid. per Hult.

19. And so in Case of Descent from the Grandfather, you must do it in like Manner by the Father, that it descends to him Ut Confanguiueno et Heredi, viz. as Son and Heir to the Father, who is Son and Heir to the Father. 12 Mod. 619. in Case of Blackborough v. Davis.

20. But Brother and Sister are in an immediate Degree to one another, and for that need not mention the Father in making Title to each other; and for this he quoted the great Case of Foster and Ramley in the Exchequer; Two Sons of an Alien, born in England, one of them dies, the other shall be his Heir, and making Title he need not mention the Father. 12 Mod. 619. in Case of Blackborough v. Davis.

(L. 2) Charged. Included, tho' not named.

1. If a Man leaves for Years by Deed with Warranty, and the Lessor is Br. Covenant. By a Stranger by Title, Action of Covenant lies against the Lessor, and against the Heir, if he has obliged the Heir to Warranty, and so that the Heir is not bound, if the Warranty does not express Heirs, per Litleton. Br. Defect, pl. 50. cites 32 H. 6. 32. See Covenant (1). The Warranty must name the Heirs expressively, and the Heirs must have Affets by Defect in Fee Simple. Br. Covenant. pl. 58. cites S. C.

2. And if a Man covenant by Indenture to build a House, and does not, and dies; Action of Covenant lies against the Executors, because the Testator broke his Covenant, but not against the Heir without Warranty; and so that the Executor may be bound without express Words of Executors; per Litleton. Br. Defect, pl. 50. cites 32 H. 6. 32. Br. Covenant. pl. 38. cites S. C. &c.


4. A. makes Feoffment in Fee to B. and binds himself only to Warrant without more; B. is impeached and ouceth A. who entret into the Warrant, and lofeth to as Judgment is given inu aight B. and also to recover in Value against A. who before Execution dies; per Cur. B. shall have Execution in Ralue against the Heir of A. 4 Le. 206. Mich. 21 Eliz. B. R. Anon.

(M) Where he shall be the first Taker.

I. If the King grants to me that my Heirs shall be quit of Toll, this is a good Grant for my Heirs, and yet I myself shall not take Advantage; per Danby. But Prifot dubitavit. Br. Parents, pl. 28. citas 38 H. 6. ro.

2. If Tenant for Life be of Land out of which a Rent is issuing in Fee, and the Tenant for Life purchase the same Rent by grant, this Grant is good to take Effect in the Heirs of the Tenant for Life, and yet he had Poultion in the whole Land at the Time of the Grant, &c. Perk. S. 81.

3. A man cannot at this Day grant Land in Tail, and Referve a Rent to his Heirs, and exclude the Grantor himself; For the Heir cannot take any Thing in the Life of the Ancestor, neither can the Heir take any Thing by Difcent, when the Ancestor himself is excluded. Co. Litt. 99. b.

4. If a man had granted Lands at the Common Law, to hold of his Heirs, these Words (to hold of his Heirs) are void, and he shall hold of the Grantor, as he held over; which he should have done if he had made no Reforuation at all. Co. Litt. 99. b.

5. If Covenant be by Indenture, that A's Son shall marry B's Daughter, for which B. gave to A. 150l. and for this A. Covenants with B. that if the Marriage shall not take Effect, that A. and his Heirs shall be seised of 1000 Acres in D. to the Use of B. and his Heirs until A. his Heirs or Executors repay the 150l. and after B. has Issue within Age and dies, and the Marriage did not take Effect, by which the Estate is executed in the Heir of B. by the Statute of Uses made Ann 27 H. 8. notwithstanding that B. was dead before the Refufl of the Life of the Marriage, for now the Use and Possifion is vested in the Heir of B. so that the Indentures and Covenants shall have Relation to the making of the Indenture; for these Indentures bind the Land with the Use, which Indentures were in the Life of B. But quere, if the Heir of B. shall be in Ward to the Lord? For he is Heir and yet Purchader as it seems. Br. Feoffments at Uses, pl. 39. cites 3 M. 1.

6. A. made a Grant to B. that if B. paid 1.5. 1. 6. after, B. should have an Annuity of 40s. to him and his Heirs; if B. dies before B. A's Heirs shall never have it; per Anderon Ch. J. Goldsb. 64. in pl. 2. Mich. 29 & 30 Eliz.


8. A in consideration of 150l. bargains and sells Black Acre by Indenture, introlled to B. and by the same Deed, in Consideration of the said 150l. and of Rent to be granted afterwards by B. Covenants, that if he sells any Part of his other Lands that B. shall have the first Offer for the Purchase of them, and if he Attempts to sell without such Offer to B. then A. and his Heirs will stand seised, for the same Considerations, to the Use of B. and his Heirs of all such Lands as he shall Attempt to alien without such Notice; B. dies, leaving M. his Heir; A. without Notice sells other Land to J. S. who had Notice of the Covenant; the Rent was not granted, yet the Justices agreed that the Consideration was good enough, tho' but one of the two Things be performed, that is the Payment of the Money; and secondly, that the Rent should have been granted in convenient Time which, not being done, is no Part of the Consideration. Thirdly, they doubted if the Heir of B. should take Benefit of the contingent Use. Mo. 547. Hill. 37 Eliz. Mills v. Parsons.

9. A
Heir.

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he shall have the Land in the Nature of a Defent. 2 Mod. 209. 1 Pach. 29 Car. 2. Arg. in Case of Southcott v. Stowell. — cites 2 Roll. Abr. 754. Parsons v. Willis.

9. A Deed of Bargain and Sale was involved after the Death of Bargainers and within the 6 Months. It was Resolved by the three Ch. J. on a Case out of the Court of Wards, that the Heir was to sue Livery; For they agreed, that this differed from all the Cases put in Shelly's Case of Recovery, Fine Executory, or Covenant to raise Ufes, as in Woods's Case there, and the like where the Estate was in the Heir, tho' Quasi Heir that never was in the Ancestor; For this upon the Involvement terries in Law, as between the Bargainer and Bargaineer ab initio, upon the Statute 27 H. 8. 10. of Ufes, which joins all the Estates to the Ufe into fạço, only the Statute of Involvement says, that in that Case it shall not vest, except the Deed be involuted; so that if it be involuted it vests, not by the Statute of Involvements, but by the Statute of Ufes, presently. Hob. 136. Pach. 15 Jac. Dimmock's Case. * S. C. cited 1 Roll. R. 253. Mich. 15 Jac. B. R. 155. b. Mich. 40 & 41 Eliz. B. R. in the Rector of Cheddingtons Cafe. — cites Pl. C. 345. a. * Bret v. Rigden.

10. If a Man devise Lands to one and to his Heirs, and after the Devife dies before the Devifor, the Devife is void; For the Will was alterable at the Pleasure of the Devifor, and the Heir cannot be Purchifor. 1 Rep. 429. b. Mich. 40 & 41 Eliz. B. R. in the Rector of Cheddingtons Cafe. — cites Pl. C. 345. a. * Bret v. Rigden.

If a Fexifor be made, and before Livery the Fexifor dies; or if Grantee of the Receipt dies before Administration, the Heir shall not take; For the Conveyance was not perfect. — but if a Man devifs to J. S. upon Contingent, and Devifor dies, and then J. S. dies before the Contingent happens, it feems that the Heir shall take; For the Will, which was the Conveyance, was perfect by the Death of the Devifor, and not to be altered by any; per Jones J. Jo. 59. per Jones J. or

11. Bond by A. to B. upon Condition to afford Land during his Life to B. and his Heirs; B. dies, living A. per Whittlock and Jones J. the Conveyance must be made to the Heir, but Doderidge and Hyde J. contra; but Judgment by the Consent of Hyde Ch. J. was given for the Plaintiff. Jo. 181. Trin. 4 Car. B. R. Eaton v. Butter. — cites * Shilts's Cafe, and the Rector of Cheddington's Cafe. — * 1 Rep. 103. a.

12. Upon Render by Fine to A. and his Heirs, if Conufee dies before Entry, the Heir of the Conufee may enter; For the Land is bound with the Fine. Jenk. 124. pl. 50. 249. pl. 40.

13. Upon Covenant to raise Ufes upon Grant or Agreement performed or to be performed, and Covenantee dies before Entry, or before fuch Performance; the Heir of the Covenantee, after fuch Performance, may enter; For the Land is bound with the Covenant. Jenk. 124. pl. 50.


14. In Cafe of an Exchange if one of the Exchangers enters and dies, and the other dies before Entry; now the Heir of him that had not entered may enter, and he shall be in by Deceife, tho' his Father never had any Thing in it. Jenk. 249. pl. 40.

15. Where the first Purchifor is incapable, none shall take that must derive their Title under him. Arg. 10 Mod. 116. Hill. 11 Ance C. B.

16. As a future Interfet in a Term will go to the Executor, fo a future Interett in an Estate of Inheritance, will by the fame Reafon defend to the Heir; per Jekyl Master of the Rolls. Mich. 5 Geo. 1. 10 Mod. 421. in Cafe of Marks v. Marks.

17. Before the Statute de Denis, the Donor had but a Polfiibity barrable after Issue at the Pleasure of the Donee, but yet this Polfiibity was de-

Heir.

Eondible to the Heir; per Jekyll Master of the Rolls. Mich. 5 Geo. 1. 10 Mod. 421. cites 2 Inst. 335.

18. The Heir shall be in by Descent where the Land might possibly have vested in the Ancestor. 10 Mod. 421. cites 1 Rep. 98. a. Shelly's Case.

(M. 2) Where the Heir shall take by a Grant made to his Ancestor, tho' his Ancestor could not take by it.

A Rent issuing out of Lands in Fee was granted to the Tenant by the Curtesy in Fee; it will not be taken as extinct, but the Rent will go to his Heirs, altho' he himself could not have it. Arg. Gothb. 128. cites 5 E. 3.

2. If Land be given for Life, Remainder to the Right Heirs of W. N. which W. N. is Attainted and dies; none shall have this Land; for he has no Heir by Reaon of the Attainder; and altho' it be a Name of Purchase yet none may take it but he who is Heir. Br. Descent, pl. 59. cites 37 & 38 H. 8.

3. A Man cannot, either by Conveyance at the Common Law, or by limitation of Uses, or Devise, make his right Heir a Purchasor; per Wylde J. who said he agreed alfo Gristwood's Case in D. 156. But where it operates by transmission of Possession, a Limitation to the Heirs of the Body of the Covenantor is void and no Use will arise. Tho' in Case of a Covenant to fraud seised (as the principal Case was) Nothing moves out of the Covenantor; he retains the Land and directs the Use and keeps sufficient in him to maintain this Use. There is a great Difference between a Conveyance at the Common Law, and a Conveyance to Uses; For at the Common Law the Heir cannot take where the Ancestor could not, but otherwise it is in Case of Uses, per Wylde J. Vent. 372. 373. Trin. 26 Car. 2. B. R. in Case of Pibus v. Mitford.—Cites 2 Roll. 754. and says, that so is 1 Rep. 99. a. Wood's Case cited in Shelly's Case.

4. Land was given to A. and B. so long as they lived jointly together, the Remainder to the right Heirs of him that dies first; A. dies, the Heir of A. shall have the Land by Descent, and yet the Remainder did not vest during the Heir's Life. There is a Difference when the Incapacity is in him, that is to take by Purchase, and when in him who is to take by Descent; For where the first Purchasor is incapable, there none shall take that must derive their Title under him; but where the Incapacity happens in Curfe of Descent, there the Estate will go over to him to whom it should go, if the Person made Incapable were really dead; per Sir Thomas Powis. Arg. 10 Mod. 116. Hill. 11 Anne C. B. in Case of Thornby and Fleetwood.

2. As, Tenant in Tail has Issue two Sons, and the Eldest is a Monk or an Alien, or abjures the Realm; in all these Cases the younger Brother shall inherit. Arg. 10 Mod. 116. cites Co. Litt. 132. Belknap's Case.

(M. 3) Incapable. Who shall take.

1. THERE is a Difference when the Incapacity is in him, that is to take by Purchase, and when in him who is to take by Descent; For where the first Purchasor is incapable, there none shall take that must derive their Title under him; but where the Incapacity happens in Curfe of Descent, there the Estate will go over to him to whom it should go, if the Person made Incapable were really dead; per Sir Thomas Powis. Arg. 10 Mod. 116. Hill. 11 Anne C. B. in Case of Thornby and Fleetwood.

2. As, Tenant in Tail has Issue two Sons, and the Eldest is a Monk or an Alien, or abjures the Realm; in all these Cases the younger Brother shall inherit. Arg. 10 Mod. 116. cites Co. Litt. 132. Belknap's Case.

(N) Take.
(N) Take. Where one may take by the Name of Heir in the Life of his Ancestor.

1. Fee simple to the use of his Wife for Life, and after to the use of the What is in
Hears of the Body of the Feeor (and his Wife without paying any
thing of the Fee Simple of the Use; the Baron and Feme have Issue and)
the Wife dies, and the Feeor makes Leaf for Years and dies; now his
Issue shall not avoid this Leaf, because a Man cannot have Heirs in his
Life, so that at the Time of the Death of the Wife there was none to
take by the Remainder, and therefore the Feeor had Fee, and the Leaf
good and shall bind the Heir. Dal. 23. pl. 8. 3 & 4 P. & M. per Brom-
ley and Porter.

decease; because he cannot be right Heir of the Body of his Father in the Life of his Father. D. 99.
a b pl. 64——S. C. cited Le. 102. pl. 133.

2. Tefator had Issue two Sons and a Daughter, and he devised his Lands
to the youngest Son in Tail, and for want of such Issue, then to the Heirs of the Body of the eldest Son; and if he die without Issue, then to the Daughter in Fee; the youngest Son died without Issue, and afterwards the eldest
Son likewise died, but left Issue. Adjudged that the Daughter should
have the Lands; because the Issue of the eldest Son could not take by
the Name of Heir in the Life time of his Father; and all the Court held
strongly that it is all one in Case of a Devise as of a Grant. 2 Le. 70.

3. A. a Coheirholder surrendered to J. for Life, and afterwards to the right
Hears of A. and then he made another Surrender of his Reversion to the Use of W. R. in Fee and died; J. S. and the right Heir of A. entered; and
Coke a Counsel argued that by the first Surrender nothing remained in
him, but the Use was referred to his right Heirs, and if he had not made
the second Surrender of the Reversion, his right Heir would have been
in by Purchase, and not by Defent; and the common Difference is, where
it is made to the Use of the Surrender himself for Life, and afterwards to
another in Tail, Remainder to the right Heirs of the Surrender; and where
the first Limitation is not to the Surrender for Life, &c. For in the first
Case his right Heir shall be in by Defent, and in the other by Purchase. 1 Le.

(O) Where 'tis a Word of Limitation or Purchase.

A Man cannot make his Heirs, or Heirs of his Body, Purchase un-
less he depart with the whole Fee Simple. Co. Litt. 22. b.

And an Estate for Life by Inheritance to the Conserver of a Fine to Ufe will prevent the Heir to take as a Purchaser. See Mo. 234. Fenwick
v. Mitford——So in a Covenant to stand feited. See 2 Lev. 75. Pybus v. Mitford.—For there was no Disposition of the old Estate during the Life of the Party, any therefore it still continued in him, and then the Remainder to his own right Heirs knit and consolidated with that old Use undisposed of for
Life, and consequently his right Heirs could not be Purchasers, and the old Life was continued to continue
for Life; because it might happen that all the Estates might determine during his Life, and then there
would be no Person to take the Freehold which he lived; for he could have no Heirs till after his Death, and he had
made no Disposition of the Use during his Life, and therefore the Ufe continued in him during his Life,
and that upon Determination of the intermediate Estates being united and consolidated with the Remainder
to his right Heirs made it one consolidated Fee in himself, and so his Heirs must take by Defent and not
be Purchasers; but where the entire Life was expressly limited out of him during his Life, so that by no Poss-
ibility the intermediate Estate can determine during his Life, there the Remainder to the right Heirs is
a good Remainder and they shall take by Purchase and not by Defent. Tr. 1712. Arg Ch. Prec. 341.
s also cites, as to this last Point, the Case * of Tipping v. Coln.——* Gart. 273. S. C. adjudged Hill.
Heir.


(O. 2) Advantage. Of what Things he shall take Advantage. Entry in General. And what Things may descend to him.

1. In Allife, a Man was dispossessed, and would not enter, but died, the Heir may enter. Br. Entre Cong. pl. 63. cites 27 All. 32.

2. So of an Alienation of the Tenant for Life in Fee, if he in Reversion dies, the Heir may enter; for Entry may descend; and where Descend is, or he who has Title of Entry is within Age, he may enter by Reason of the Nonage. Br. Entre Cong. pl. 63. cites 27 All. 32.

3. When an Entry is vested in the Father, it shall descend to the Son. Br. Entre Cong. pl. 85. cites 43 All. 45.


5. In Allife, if a Man be dispossessed and dies, his Heir within Age, and the Heir enters, he shall be in Ward, and shall have his Age; and none may enter upon him, no more than upon a dying feald, per Hull, which none denied, and it seems to be good Reason; for it avoids many Acts. Br. Entre Cong. pl. 22. cites 9 H. 4. 5.

6. If I effeoff A. upon Condition, that if my Heir pay to him 20s. after my Death, that then be may reenter, and after my Death, my Heir pays to him 20s. he may enter; per Skrene and Urfwick, Quod Brian concefs, and yet the Condition is not refereed to the Father, so cannot descend to the Son, therefore Quære. Br. Conditions, pl. 63. cites 15 E. 4. 13.

(O. 3) Entry. In what Case the Heir may enter, tho' the Ancestor was barred.

1. If a Man dispossesses his Father, and makes a Feoffment without Warranty, and the Father dies, the Heir cannot enter, and yet the Heir of the Heir may enter. But he who made the Feoffment cannot enter against his own Feoffment, tho' Right descends by the Death of his Father who was dispossessed; per Prior. Br. Entre Cong. pl. 47 cites 39 H. 6. 42.

2. Grandfather, Father and Son, the Father dispossessed the Grandfather, and made a Feoffment without Warranty, and died, and after the Grandfather died, the Son may enter. Br. Entre Cong. pl. 121. cites Littleton Discontinuance.
(P) In what Cases the Heir shall enter for Condition broken, &c. and what shall be said such a Condition.

1. A Man devis'd his Land to be sold by his Executor, and died, and A. tenant'd Money to the Executor, but not to the Value, and be refus'd to the Intent to sell more dair, and held the Land for two Years, and took the Profits to his own Use; the Heir entered, and well by Judgment; and per Monbray, the Executor must fell as soon as he can. Br. Entre Cong. pl. 124. cites 38 Aff. 3.

distributed for that Purpofe. Br. Conditions, pl. 215. cites S.C.—* Orig. (pist)

2. Land is devis'd to A. to find a Chaplain, but he does not find one; the Heir may re-enter. Br. Conditions, pl. 218. cites 49 Aff. 8.

3. A. was seiz'd in Fee of Land held in Socage, and by his last Will in Writing gave the Land in the Premises of it to his Wife for Term of her Life, upon Condition, that he should find B. his eldest Son at School, and educate him in Virtue & bona Moribus at her Coff, till his full Age of 21 Years; and after, in the End of the Will, he gave the Land, after the Death of his Wife, to his second Son in Tail, living the Fee Simple, and died; his Wife entered, and broke the Condition, and the said B. after his fall Age entered, and, living the Wife, brought Action of Trespafs; if his Entry was lawful or not, was the Question. Argued for the Heir. D. 126. b. 127. a. pl. 51. Hill. 2 & 3 P. & M. Warren v. Lee.

4. A. indebted to J. S. in 500 l. by Bond (in which neither Day of Payment nor Condition was expreft) devised Lands to B. and C. his Sons and Executors in Fee Simple, upon Condition that if they should not pay the said 500 l. to the said J. S. according to the Tenor of the said Obligation, then the Devises should be void, and that then as now, and now as then I give, &c. the Premises to D. Uncle of the said B. and C. to hold to him and his Heirs for ever, upon Condition that he shall pay the said 500 l. to J. S. as he hath willed his Executors to do. A. died, the 500 l. not paid by the Executors. D. the Uncle died, and then J. S. requested the Executors to pay the Money. The Question was, whether the Heir of D. the Uncle might enter and perform the Condition, or not? Quare. D. 128. pl. 59. Hill. 2 & 3 P. & M. Wilford v. Wilford.

5. The Heir may enter for Condition broke in the Life of his Father, if it was a Condition in Deed, but not for a Condition in Law. Mo. 52. Patch. 5 Eliz. in Eyre's Cafe.

6. A. enfeoff'd J. S. and J. N. and their Heirs by Indenture, and by another Indenture executed at the same Time, reciting the former Indenture, the said J. S. and J. N. granted, that immediately after J. S. and J. N. have enjoyed the same for 100 Years, the said A. his Heirs, &c. might re-enter as in their first Estate, notwithstanding the said Feoffment and Livery. Both Indentures were executed at the same Time; the 100 Years expired. It was resolved that the Heir of A. might enter, because it appears that the Intent of the Livery was fo, which Intent is the Ufe of the Feoffment, and this arises out of the Possession of the Feoffees immediately after the Enjoyment of the 100 Years, by means whereof, and of the Statute of 27 H. 8. the Heir may enter. Mo. 722. Mich. 33 & 34 Eliz. Boydell v. Walthall.

7. A. devised Land for Years to J. S. Reddend & Solvend' 20 s. Annation at Mich. to J. D. And for Non-Payment of that Sum the Heir entered, supposing that tho' Words made a Condition, and that the Condition was broken, and that he therefore might enter; and his Entry was adjudged lawful. Cro. E. 454. Mich. 37 & 38 Eliz. B. R. Fox v. Carlyle.
8. An Heir at Law sought to take Advantage upon Breach of a Condition, because Legacies were not paid according to the Will, but because there was an Intention to pay it, and an Agreement between the Sifters, it was decreed against the Heir. Toth. 176. cites 11 Car. Salmon v. Vaux.

(P. 2) Advantage. Of what the Heir shall take Advantage. Things done in the Life of the Ancestor. Forfeitures, &c.

1. The Heir may enter for an Alienation made to the Disenchantment of his Father in the Life of his Father, where the Father himself did not enter. Br. Entre Cong. pl. 8. cites 41 E. 3. 21.

2. The Heir shall never have the Ward fallen in the Time of the Ancestor, unless the Ancestor took a Writ of Right of Ward in his Life; for this is a real Action, which may descend, and the Ancestor was out of Possession. Br. Ravishment de Garde, pl. 12 cites 11 H. 4. 54.

3. In Ejecution Calodis, "twas said that the Heir cannot enter by a Clause of Re-entry for Rent, unless the Rent was due in the Time of the Heir; nevertheless it seems, if the Rent be due Tempore Patris, and be demanded of, so that he might re-enter, and died before Entry, that the Heir may enter; for the Entry is descended, and the Case was of a Restraint made upon a Feoffment in Fee referring Rent. Br. Entre Cong. pl. 24. cites 13 H. 4. 17.

4. A Copyholder committed a Forfeiture by suffering his Husband to be ruinous, and making a Lease for 10 Years. These were both admitted to be Causes of Forfeiture. Two Co-possessors were Lords of the Manor, and one died, by which the whole descends to the Survivor, and whether he could take Advantage of this Forfeiture was the Question? And per Powell J. At Common Law, the Heir was intituled to take Advantage of any Causes of Forfeiture in the Time of his Ancestor, but Wolff & Collavit. As to Waft he could not, because it is a personal Wrong, which dies with the Person; and as to Collavit he could not, because the Tenant by Statute has Liberty to have himself by Tender of Arrears, which are not due to the Heir, but to the Executors; but that in all other Causes, the Estate descends by the Act of Forfeiture, and tho' the Tenant holds in Possession, it is a Distress to the Lord if he will. But the other three held, that the continuing in of the Tenant after Forfeiture was an Diversin at the Election of the Lord; they held the making the Lease a Forfeiture, because 'twas a Breach of Trust, and that it was a personal Wrong as much as Waft, which cannot be transferred by Defeat, but must be took Advantage of by him who was wronged; and that the Estate of the Copyholder was not determin'd; because the Lord, by Acceptance of Rent, &c. might affirm it; and that as to the Election, it was a Thing entire, and therefore the surviving Sister could not make Election after the Death of her Sister. 1 Salk. 186. Trin. 10 W. 3. C. B. Eallecourt v. Wecks.

(Q) Actions by him, for what.

A ction lies for the Heir for defacing or destroying the Tomb or Monument of his Ancestor; for removing the Gravestone, or Coff Arms, or carrying them away, either the Heir or Executor may have an Action; Per Coke Ch. J. Goldb. 200. cites 6 E. 6.

(Q. 2.) Actions.
(Q. 2) **Actions.** What Actions the Heir shall have for Things done in Time of the Ancestor.

1. **If** a Farm is **out of Repair in the Life of the Ancestor,** and after the Heir brings an Action, he shall receive Damages for the whole Time; but the Heir ought not to allege a Breach in the Ancestor’s Time, because that belongs to the Executor; per Holt Ch. J. 11 Mod. 45. pl. 10.

(Q. 3) **Where the Heir shall be compelled to join in a Sale,**

1. **The Words of a Will were thus, viz.** My Will is, and I do hereby authorize that my Executors shall sell my Lands &c. called B. to any Person or Persons whatsoever, and their Heirs and Assigns for ever for the best Value, with convenient Speed as may be, and with the Money to pay all my just and due Debts. The Executor did not fell according to the Directions of the Will: The Court, on a Bill brought by the Creditors, decreed, with the Affidavit of the Judges, and reading of Precedents, that the Lands be sold, and that the Heir join in the Sale. Chan. Rep. 168. 1655. Amy v. Gower.

2. J. S. filed in Fee devised Lands to his Executors to sell and pay Debts. The Heir shall be compelled to join in the Sale; and the Lord Keeper said it was so ruled in Parliament. Chan. R. 262 Trin. 27 Car. 2. Fowl v. Green.

3. Lands were settled on Trustees to be sold for Payment of Debts. The Creditors brought their Bill to compel a Sale, and suggested that the Trustees pretended a Want of Power, and the Heir intimated that he had Securities with which the Land was chargeable, and the Widow pretended that the had a Jointure, prior to all other Incumbrances, but is willing to accept of 2000l. in lieu thereof, and that the Perfon, from whom the Estate was originally purchased, knowing that the Writings were casually burnt, refuses to execute a Release for the Satisfaction of a Purchaser. The Court decreed the Estate to be sold, and the contending Parties to join, that the Creditors may be satisfied (faving the Jointure of the Widow, or 2000l. in lieu thereof) and with the Money (after the Charges of Trustees deducted, and just Allowances made them) to satisfy the Debts in equal Proportions as far as the same will extend, the Trustees to be indemnified, and such Securities as the Creditors have for their respective Debts, to be delivered up to the Purchaser. Fin. Rep. 264. Trin. 28 Car. 2. Bennet v. Ingoldsby, Hampson & al.

4. A. filed in Fee, did by his latt Will appoint that his Debts should be paid out of his Estate, and devised one Moiety to his Wife, and the other Moiety to his eldest Son and his other Children, and declared that all his Estate both real and personal should be for the Uses aforesaid, and made the Plaintiff’s Executors. The Executors paid several Debts, but there not being sufficient for Payment of the Rest out of the personal Estate, the Court decreed an Account of the personal Estate, and that the Heir join in a Sale of the real Estate, and that the Purchaser hold against him, and all claiming under him. Fin. Rep. 415. Hill 31 Car. 2. Stubbs v. Stubbs.

5. Lands were settled on Trustees for railing Maintenance and Portions for Daughters; the Bill was to have a Sale, and that the Heir might join; tho’ the Estate in Fee was in the Trustees, yet decreed that the Heir should join; per Lords Commissioners. Palch 1689. 2 Vern. 99. Roll v. Roll.
6. A having only one Son and one Daughter, devised 500l. Portion to his Daughter, to be paid by his Executor at 21, out of his personal Estate, and Rents and Profits of his Lands, if not raised by that Time, then his Executor should find /ased, and receive and take the Rents, Issues and Profits of his Lands until the 500l. should be raised, and after Payment devised the Lands to his Son. The Daughter at 18 married J. S. the Plaintiff; she died before 21, leaving Issue a Daughter. The Husband, as Administrator to his Wife, brought a Bill to have the 500l. raised out of the Land; and the Lord Keeper decreed accordingly, and with Interest and Costs, and the Heir forthwith to join; altho' the Incumbrances were so great that the whole Inheritance would produce little more than the 500l. 2 Vern. 424. Paich. 1701. Jackson v. Farrand.

(Q. 4) Where the Heir shall be compelled to convey Land absolutely or conditionally in Pursuance of his Ancestor's Agreement.

1. THE Heir is not bound in Equity to assure Lands which his Father bargained and took Money for. Toth. 169. cites 1584. Welton v. Danvers.

2. A. being desirous to purchase an Estate of J. S. which was formerly sold out of his Family, employ'd B. as his Agent, to contract for and take up Money to pay for the Purchase thereof, which he did, and Articles were executed. B. paid Part of the Money, but not in the Manner agreed by the Articles, and for other Part unpaid B. was sued; and before any Conveyance made, the Vendor died, and like Wife B. but before B.'s Death he paid other Monies to the Heir of the Vendor, and died indebted very greatly. Upon an Offer by the Defendant, the Heir of the Vendor, that, upon Payment of the Residue of the Purchase Money, and Interest and Costs in the several Suits relating to this Dispute, and to be indemnified from the Heirs of B &c. and from all Costs he shall be put unto, until a perfect Release or Conveyance be procured from them, he would convey according to the original Articles with Warranty and Covenant therein contained, the same was decreed accordingly. Fin. Rep. 201. Hill. 27 Car. 2. Earl of Bath v. Sir Eliab Harvey.

(R) Favoured. In general.

1. If a Man who had Land by Defect, had Issue several Sons, he could not have given any of this Land to any of his younger Sons, without Consent of the Elder; and this was to the Intent, that the Father, who might have a greater Alléction for a Younger Son, should not disinherit an Elder. 6 Rep. 17. a. says, that it appears by Glanvil, who was Chief Justice in the Time of H. 2. in Lib. 7. cap. 1. fo. 44.

2. In B. R. a Man prayed Suits against the Heir, and the Tenants of one against whom he had recovered Damages in re-distribut, and was deny'd; For first he shall have Execution against the Executor, and if the Sheriff returns Nichill, he shall have Execution against the Heir; For the Land shall not be charged, but in Default of Chattels. Br. Executions. pl. 28. cites 7 H. 4. 31.

3. In a Cafe which carries the Land from the Heir, there ought to be a strong and serieux, and not a favourable ConStitution made to the Prejudice of the Heir. Vid. Lane. 57. in Cafe of Sweet v. Beale.
4. In a doubtful Case, the Heir at Law is to be preferred. Hill. 13 & 14. Cat. 2. 1 Chan. Cates. 7. in the Case of Goring v. Bickerstaff & al.

5. An Estate given by Implication in a Will, if it be to the disfavouring of the Heir at Law, is not good, if such Implication be only constructive, and possible but not a necessary Implication. Vaugh 262. 23. Cat. 2. C. B. Gardner v. Sheldon. St. 279. Arg. in Case of Saunders v. Rich. 

6. A devisé Land to his Daughter and her Heirs, but if B. his Son Ld. C. Mac- (and Heir) pay the Daughter 50. at Michaelmas, then B. to have the cheesfield sld, Land ; B. paid the Money, but not at the Day ; Decreed the Land to B. and his Heirs, tho' his Heirs were not mentioned in the Devise to him. Hill. 30 & 31. Cat. 2. 2 Chan. Cates. 1. Bland v. Middleton.

7. A devisé Lands to his Wife. The Son exhibits a Bill pretending the Devise to her void, because in the 25 Eliz. the Lands were entailed to his Great Grandfather, to whom he is Heir in Tail, and to discover the Devise in Tail. She was order'd to bring in the Writings, and the Devise fell out to be among them. It was inquired for the Wife, that unless the Heir would confirm her Estate, he ought not to be abyss'd by the Court ; For that the being Wife is a Confraturation to raise an Ule at Common Law; and affirmed that there were Precedents for her, and the rather, because * The Orir. his Father had Power to Dock or Bar the Entail. But Ld. Chancellor said, that tho' he would never help the Issue against a Purchaser, yet this is a Bounty, and in such Case, the Heir having a good Title shall be aided, and decreed the Devise to the Plaintiff. 2 Chan. Cates. 4. Mich. 32. Cat. 2. Anon.

8. If a Lease be made in Trust to pay Debts, and the Lessor dies, the Heir, paying the Debts, shall be relieved against the Lease; per Lord Chancellor. Hill. 1 Jac. 2. 2 Chan. Cates 172. in the Case of Bodin v. Vandeberg. 

B b b b

9. Where
9. Where Lands are vested to Trustees by Act of Parliament to be mortgaged for a particular Purpose, the Mortgagee must take Care that the Money be applied accordingly, and the Heir shall be no further charged. Trin. 1686. 2 Vern. 5. Cotterel and Holt v. Hampton and Bill.

10. Ld C. Jeffries said, he would do all he could to help a disinheritcd Heir, and the Executors shall be allowed nothing more than what they can prove to have been actually paid towards Satisfaction of Legacies of $50. and 100. given to him, and paid into his Father’s Hands, (who had afterwards given Bond to leave the Heir 6000. at his Death) and Ex Nuncie, as in Part of the Legacies, and shall pay the Residue with Interest. Mich. 1687. Vern. 482. in the Case of Cann v. Cann.

11. A. by his Will, gave several particular Legacies subject to particular Charges, and gave the Surplus to his Wife, the Personal Estate shall be applied in ease of the Real, against the Residuary Legatee. Patch. 1688. 2 Vern. 45. White v. White.

12. A makes his Wife Executrix ; she takes a second Husband; Decreed that he should be answerable for so much of the former Husband’s Personal Estate as the said pollesed, notwithstanding he took it as a Portion with the Widow; and this was in Favour of the Heir, there being no Creditors concerned in this Case, and his Bill was only to have the Personal Estate applied in Ease of the Real. Patch. 1688. 2 Vern. 61. Batchelor v. Bean.

13. Settlement was in Trust to pay Debts and Legacies; the Monies are raised, but unsatisfied by the Trustees; the Land is discharged, and the Trustees liable. Mich. 1689. In Dom. Proc. 1 Salk. 153. Anon.

14. If a Term be raised * for a particular Purpose, when that Purpose is satisfied, the Term shall be in Trust for the Heir. But he must have it as a Term, which must go in a Course of Administration, and not in a Course of Defect; and per Commissaries decreed for the Administrator of the Heir, and not to the Heir’s Heir. Patch. 1690. 2 Vern. 139. Levett v. Needham.

* As if Price joins with Baron in a Mortgage, he can Interfere to raise Money to buy a Place for the Baron, and Baron covenants with the Mortgagee to pay the Money, (4500.) and on Payment thereof, by a Proviso, the Term is to cease. The Mortgagee is afterwards assigned, and the Proviso is, that on Payment by them, or either of them, the Term to be assigned, as they, or either of them shall direct. The Baron soon after the Mortgage promised his Wife to apply the Profits of his Place to pay it off. Baron pays it off, and takes an Assignment in Trust for himself, and directs it to a second Heir—the Son and Heir of the Baron and first Wife brings a Bill to have the Mortgage assigned to him. Deny’d Relief in Chancery, but on Payment of the Principal Interest and Costs. But in Dom. Proc. decreed the Mortgage to be assigned to the Heir. Patch. 1702. 2 Vern. 457. E. Huntington v. Courties of Huntington.

15. A dies Intestate, leaving younger Children unprovided for, and a Mortgage on the Estate, with Covenant for Payment of the Money, and a Recognizance for farther Security. Whether the Mortgagee by his Covenant and Recognizance shall sweep away all the Personal Estate, and thereby leave the younger Children destitute? Hill. 1693. 2 Vern. R. 309. Mills v. Darrell.

16. Uncertain Words in a Will must never be carried so far, as by them to disinherit the Heir at Law, and tho’ there are Words, which of themselves would disinherit him, yet if they come in Company with other Words, which do render their natural Imprecation Jus fercile, they ought to be continued.
Heir.


17. Where a Term is limited for raising Portions for younger Children by Rents and Profits, the Heir may have the Portions raised by a Sale, tho' the younger Children oppose it, as well as they may infilt on a Sale, if they think fit; per Wright K. Pach. 1701. 2 Vern. 420. Warburton v. Warburton.

18. If the Statute of 11 H. 7. of Discontinuances be a Penal Statute, as the Statute of Gloucester is, the Heir shall not be aided or affisted in Equity; per Wright K. Hill. 1704. 2 Vern. 489. in Case of Clifton v. Jackson.

19. A. feided in Fee of a Reversion expectant on an Estate for Life, conveyed to Trustees, to sell for Payment of Debts in a Schedule, and the Surplus to go to his Heirs, Executors and Administrators. A's Heir was a Daughter, whom B. marry'd. B. and his Wife got a Conveyance from the Trustees to B. and his Heirs, and paid some of the Debts. The Wife died without Issue. The Intrest of the Debts was unpaid. The Wife's Heir brought a Bill, and decreed, that the Husband who received the Profits in Right of his Wife, ought thereout to have paid the Intrest, and not suffer the Debt to increafe, and the Defendant to account accordingly. Quare tamen. Mich. 1706. 2 Vern. 566. Brompton v. Alkis.

20. Heares Natus is rather to be favoured than Heeres factus. Pach. 1711. 2 Vern. 672. in Case of Minshill v. Ld Hobtin, but the Heares factus shall be allowed the same Advantage of a Decree, as the Heares Natus; and neither the one or the other shall be allowed to dispute the Justice or Validity of a Decree, or to make a new Defence. Ibid. And Pach. 1706. 2 Vern. 548. Clare v. Wordell.

21. A. and B. Aunt and niece, were Coparceners. B. being in an ill Health, and about to go Abroad for the Recovery thereof, conveyed her Money to A. and in Consideration thereof, A. gave Bond to B. for 400l. But B. on her going Abroad, left the Bond with A. Afterwards A. conveyed the Land to J. S. to the Use of J. S. his Executors and Administrators for 99 Years, if he or B. should so long live, Remainder to A. and her Heirs, and A. declared the Trust to be, that A. should receive the Rents and Profits for so many Years of the Term as he should live, Provided, that if A. her Executors, &c. should pay B. 400l. then the Term to be void. The same Day that the Deed was executed by A. to J. S. she made her Will, and devised to B. 400l. mentioning it to be the same Sum secured by the Bond, and likewise taken Notice of in A's Deed to J. S. and after by another Clause, A. devised the said Estate to the Defendant J. M. her Son and Heir, and the Heirs of his Body, after the Death of B. with Remainder over and died. The Question was, whether B. was to have this Estate for Life, by Virtue of the Devise to her for Life, by Implication, or whether that Claude meant only to continue it, as a Security to her for the 400l. and Interest. B. read one Witness, to prove that A. declared she should have the Estate for Life. It was infilled for J. M. the Defendant, that upon the Circumstances of this Case, it might reasonably be intended no other Estate than what B. had before by the Term; that as that was for Life, it was natural and reasonable not to give away the Estate 'till after her Death; that as the Term was redeemable, so might this Estate too, because it might be intended no other, and therefore no such necessary Implication of an absolute Estate for Life, as is allowed of in the Books of Law, to the Difhersion of the Heir. Ld Chancellor was of the same Opinion, and especially for this last Reason, that there was no necessary Implication, and therefore decreed B. her 400l. with Interest, and dismissed her Bill, as to the Account of Rents and Profits, but without
our Costs, because she had Colour to make such Demand. Chan. Prec. 381, 384. Pech. 1714. Bouet v. Mohun & al.

See Devise. Mandy v. Mandy.

22. The Heir at Law shall not be disinherited, if the Will can be satisfied by any other Construction. Arg. Trin. 2 & 3 Geo. 2. C. B. Gibb. 92. cites 1 Salk. 238. 5 Mod. 63. Cro. E. 190. Mo. 635. 735. 2 Le. 222. 3 Le. 78. 1 Roll R. 319, 320. 3 Buls. 98, 99. Hob. 285. Cart. 27, which he said prove only, that a Devise of the Profits will carry the Land, but not, that a Devise of the Rent will carry the Reversion.

See Devise.

(S) Interim Estate. In what Cases the Heir shall take it.

1. A Trust upon a Deed and Will was limited on a Condition precedent of having Issue Male; the Trustees can take nothing till the Condition be performed by Marriage, and Issue Male; and then, by the Rules of Law, 'till some of the Persons, to whom the Trust is limited, can take the Interim Trust of the Estate, it descends to the Heir at Law, and he is entitled to the Profits, 'till the Precedent Condition be performed, or become impossible; and if the Condition be performed, the Trusts take Effect; but if they be not performed, but become impossible, then the subsequent Trusts take Effect. Parl. Cases. 85. in Cale of Wood alias Cranmer v. the D. of Southampton.

2. A by Will devised Lands to Trustees and their Heirs, to the Use of them and their Heirs, in Trust for C. Son of B. (who was Heir at Law of A.) for Life, and after in Trust for the first, &c. Son of the Body of C. and the Heirs Male of the Body of every such Son. And for want of such Issue, then, for all and every other Son and Sons, respectively and successively for their Lives, &c. if any such Issue should be, and for want of such Issue then in Trust for the first and every other Son of D. with like Remainders to E. &c. and for want of such Issue, then in Trust for the first, &c. Son of J. with like Remainders to the Heirs Male of the Body of every such Son of the said J. and forDefault of such Issue, then in Trust for his own Right Heirs for ever; Provided that none &c. to whom the Estates are limited, shall be in actual Possession, &c. of the Rents, &c. until they shall respectively attain the Age of 21. And that in the mean Time the Trustees shall make such Allowance therout for Maintenance, &c. as they shall think sufficient, &c. And then he Wills, that the Overplus of such Rents and Profits do go to such Person as shall be invited unto, and come to the actual Possession of the Estate, &c. C. died in A's Lifetime, without Issue. Then A. died without altering his Will. B. had no other Son but C. and no other Remainderman was in Effet at A's death, but a Son of J. The Question (in the State of the Case, tho' nothing is reported as spoken to the Point by Counsel of either Side) was, What was to become of the Rents and Profits, in Case this be an Executory Devise, until the Birth of a Son to B. This was held at the Rolls to be an Executory Devise, and afterwards by Le C. Talbot. And his Lordship held, that till somebody is in Effet to take under the Executory Devise, the Rents and Profits must be looked upon as a Revenue undifposed of, and consequentiy must descend upon the Heir at Law; the Case being the same, where the whole legal Estate is given to the Trustees, and but part of the Trust disposed of, as in this Case, and where but part of the legal Estate is given away, and so the Reidue, undisposed of, descends upon the Heir. Cases in Chan. in Le Talbot's Time. 44. Mich. 1734. Hopkins v. Hopkins.

(S. 2) Marriage
(S. 2) Marriage Portion. Where it shall go to the Heir.

A portion was agreed to be laid out in land by the Father of the Feme, to be settled on the Husband and Wife, and the Heirs of their two bodies, the remainder to the Heirs of the Husband. The Father gave bond to pay it within 3 months after demand, and interest in the mean time. By deed of the same date between the Husband’s Father and the first, the Husband of the second, and the Wife’s Father of the third part, was agreed that the Wife’s latter should detain the portion till such purchase made. They have ill; the Wife dies, the Wife dies; no purchase made. The Husband received a part of the portion, and by his will devised the portion as part of his personal estate, and declared it should go to his executors, to pay his debts and legacies, and decreed the money to the executor. Note, the bond given for the laying out the portion was made payable to the Husband, his executors or administrators.

2. Lands are settled for raising daughters portions; one of the daughters marries and dies. The Husband takes administration, and assigns over the portion to his son. Lord Keeper thought there was a considerable difference between assignment by the party, and assignment by the administrator, where the administrator was a stronger, or had no right before, and no colour of right but merely by the administration. In this case, the administration was pro forma only; for he had a right to the money, as a portion or provision for his wife, and every man has not ready money to give his daughters, but their portions are to be provided for by this means, and therefore it’s reasonable to advance or promote the establishment of them, so that they might be disposable by the husband (who settles a jointure) as money itself may be. Trin. 22 Car. 2. 1 Chan. C. 169. Hurst v. Goddard.

3. On marriage of A. and B. A. and the Father of B. are to club 1500l. to purchase land to be settled on A. and B. for her jointure, and on the Heirs of their two bodies. A. dies, B. marries C. B. dies. The purchase was never made, so that C. laid claim to B’s moiety at least, being no direction to whose right heirs the remainder should go. Ed Chancellor decreed for the Heir of A. Patch. 1687. 2 Vern. 20. Knights v. Atkins and Peers.

(T) Where he shall have the surplus.

1. The surplusage of an estate after debts, legacies and portions Trin. 34 paid, was ordered not to go to the executor but the heir. 1651.

2. If a man settles an estate of inheritance, makes a lease, or devises an estate for years, for payment of debts; if the profits of the land, surmount the debt, all that remains shall go to the heir, tho’ not so expressed; and although it be in the case of an executor. Mich. 33 Car. 2. 2 Vent. 359. Anon.

3. A. devises his lands to his nephew to pay his debts, and makes his nephew his executor, but makes no disposition of the surplus, it was allowed in arguing this case, that, in a conveyance where no use is declared.
4. It was a Question, when Lands are given in Trust, and Money is raised by Sale of them, and there is an Overplus, whether that shall be a settling Ufe for the Heir at Law, or for the Trustee? See Brown v. North in Bridgman's Time; it was a Question again, and it was held the Trustee should have it; per Trevor Ch. J. 12 Mod. 596. Mich. 13 W. 3. B. R. in Cafe of Shaw v. Bull.—He said there had been Cafes both ways.

5. Per Cur. tho' Land is devis'd to Trustees and their Heirs to fall, and thereout to pay Legacies therein mentioned, and among the Rest a ESTATE to the Heir at Law of 100l. yet the Land shall not be turn'd into personal Estate * nor more than is necessary for payment of the Legacies, and the Heir shall have the Surplus. Päch. 1701. 2 Vern. R. 425. Randall v. Booke.

6. The Equity, that an Heir has to have the personal Estate applied in Exoneration of the real Estate, is only for the Sake of the real Estate descended to him, that it may be clear to the Family; so that when the Heir has parted with the real Estate, he has then no Right to the personal Estate, which before he might have demanded to have exonerated his real Estate in Cafe he had kept it. Mich. 1762: Ch. Prec. 206. Wood v. Fenwick.

7. A. devised Lands to Trustees and their Heirs to fall and dispose of the Monies as he by a Paper to be ligned by him should appoint, but if he left no such Paper, then to his four Nephews, and if any Appointees dyed before Sale and Payment, such Share to reftort to his Nephews. A. appointed accordingly several Sums to several Perfons, but not near the Value of the Land, the Surplus shall result as undispos'd of to the Heir at Law; per Cowper K. Hill. 1706. 2 Vern. 571. City of London v. Garway and al.

8. Devise was of real Estate to Executors to be hold for payment of Debts, and the Surplus, if any be, to be deemed personal Estate, and go to the Executors, to whom he gives 20l. a Piece; yet the Surplus deceed a Trust for the Heir, and affirm'd in Dom. Proc. Hill. 1709. 2 Vern. 645. Countes of Bristoll v. Hungerford.

9. A. devised Lands to two Strangers and their Heirs, in Trust to be hold by them or the Survivor of them for the left Price, and with the Money to pay his Debts, Legacies and Funerals so far as the same shall extend; and he gave 40l. to B. and 10l. to C. who were his Coutins and Co-heirs, and made the Devisees Executors (giving them nothing by way of Legacy) but gave 100l. to the Children of one of them; the Surplus proved to be 500l. and for the Devisees, was cited the Cafe of Trompton v. North, Chan. Cases 196.
(U) What the Executor must do in favour of the Heir.

1. The Heir's Land was liable to pay Debts, yet he shall be relieved against the Executors so far as the personal Estate will extend. 18 Car. 1. 1 Chan. R. 135. Smith v. Hopton.

2. Rent or Pension is in Arrear; Tenement dies, and leaves an Executor; tho' the Person of the Tenant was not chargeable with the Rent at Law, but only the Land by way of a Dintres; yet forasmuch as the Testator held the Land, and did not pay the Rent, it was said, that thereby the personal Estate of the Testator was augmented; and to the Matter of the Rolls decreed the Executor to pay the Arrears as far as he had Affets of the Testator's Estate. Chan. Cales 121. Hill. 20 & 21 Car. 2. Eaton College v. Beaufochamp and Riggs.

3. If Executor has Affets, he is compellable to redeem Mortgages for the Benefit of the Heir; so if the Heir be charged in Debt where the Executor has Affets, the Heir may compel the Executor in Equity to pay the Debt; but a Creditor may sue either of them, and shall have the Benefit of his Security; per Hale. Trin. 21 Car. 2. Hard. 512. in Cafe of Woolflan v. Atton.

4. Land was devis'd for payment of Debts and Legacies; the personal S. C. cited Estate shall be first applied. Hill. 28 & 29 Car. 2. 1 Chan. Cales 297. Ed. Grey v. Lady Gray.—See Payment.

5. Where the Heir is indebted by Mortgage made by his Father, or by Where other Means, as Heir to his Ancestor, the personal Estate in the Hands of Debts by the Executor shall be employed to pay that Debt; but if there are not S. C. cited Affets to pay other Creditors, or [answer any] other end of the Testator on [as to] his Legacies, the Heir shall not turn his Charge on the personal Estate; in this Case here was sufficient to pay the Debt by the Mortgage, &c. and the Legacy out of the personal Estate, and when both can be satis- fied, both shall be satisfied; and the Contrivance to make the personal Estate liable to the Legacy to go towards Satisfaction of the Mortgage looks like a Fraud and shall not prejudice the Legatee, but the shall have Re- compensation against, or upon the Mortgage, tho' originally not liable to her; and by Lord Chancellor. Mich 32 Car. 2. 2 Chan. Cales 5. Anon. 117. Trin. 34 Car. 2. Culpepper v. Alton. S. P. decreed accordingly.

Heir.

6. Lands Mortaged are devised to A. In this Case A. who is only a Heir under the Will appoints them to be sold for payment of the Mortgage Money, and after, in another Part of the same Will, devises a Mortgage to B. of the Mortgaged Premises; the personal Estate shall be applied to pay off the Mortgage in favour of the Devisees per Mr. Matter of the Rolls, and affirmed per Commissioner. Mich. 1699. 2 Vern. 112. Johnson v. Hilliopp.

7. A purchased an Equity of Redemption and died; this not being the Debt of the Ancantor shall not be paid out of the personal Estate for the Benefit of the Heir. Hill. 1681. Vern. 37. ut sup.—Ch. Prec. 458. Arg. S. P.


9. Bond given by one Parcer to pay to the other Parcer, his Executors or Administrators, an annual Sum during the Life of J. S. for Ovity of Partition shall go to the Executor and not to the Heir. Hill. 1682. Vern. 133. Hulbert v. Hart.


11. A. makes his Will and gives the Executor 201. Legacy, and his real Estate to C, paying his Debts and Legacies, and in Default of payment in three Months, the Legatees and Creditors to enter and hold till satisfied, and pays nothing of the Surplus of the personal Estate; per Commissioners, the personal Estate shall go in Eale of the Real. Hill. 1690. 2 Vern. 120. Meat v. Hide.

12. If Lands are devised for payment of Debts and Legacies and the residue of the personal Estate is given to the Executors, after Debts and Legacies paid, the personal Estate shall notwithstanding as far as it will go, be applied to payment of the Debts, &c. and the Land be charged no further than is necessary to make up the Residue. 2 Vern. 349. Anon. Paish. 32. Car. 2.

13. A. gives some Legacies, and after bequeaths the residue of his personal Estate to B. his Daughter and Heir, and devises his real Estate to her and her Heirs; but if she died under 21, to C.—B. dies at 16, and by Will gives all her personal Estate to J. S. C. is Heir at Law to A. and B. there being a Mortgage on the Estate, whether the personal Estate in the Hands of J. S. shall go to discharge the Mortgage in favour of C? Mich. 1704. 2 Vern. 469. Bishop v. Sharp.

14. A. in his Will mentions his having computed that the Surplus of his personal Estate, his Debts and Funerals being therefore first paid, would amount to 5800l. and to distribute the 5800l. into several pecuniary Legacies, and Wills, if the Surplus fell short, or exceeded, they should abate or benefit in Proportion; he devised to two others Lands in Mortgage for 1400l. Per Wright K. it being mentioned that he computed the Surplus would be 5800l. after Debts and Funerals paid, implies he intended his Debts of which
which the Debt by Mortgage is one, and decreed it to be paid out of the personal Estate. Hill 1704. 2 Vern. 477. Hawes v. Warner.

15. An express Deed shall not be defeated by applying the personal Estate to pay off a Mortgage, even for the sake of an Heir, until left of a Heres fa1tis; per Wright K. Hill 1704. 2 Vern. 477. Hawes v. Warner.

Ld C. Talbot, who said that this Point had been so far determined that it seems quite settled and clear.


16. A by Will subjecteth both his real and personal Estate to the payment of his Debts; Decreed that the Heir should pay the Debt by such a Time, or in Default thereof the real Estate to be sold, and Liberty given to the Heir to sue for the personal Estate. M.S. cites 23. Feb. 1705. Stydolph v. Langham.

17. A by Deed conveyed Lands to Trustees for payments of Debts, and afterwards by Will directed, that his Trustees should out of his trust Estate pay his Debts, Legacies and benefactors, and devised all his personal Estate, not otherwise disposed of, to B. should be made Executrix. Lord Wright, and now Lord Cowper, were both of Opinion, that the Deed being in the same Clauses in which she was named Executrix, and not find free and exempt from Debts, the trust therefore take it as Executrix, and be applied to the payment of Debts. Hill 1706. 2 Vern. 568. French v. Chichester.

18. If A. Mortgages Lands and Covenants to pay the Money and dies; 2 Wm's Be.

Rep. 597. S. P—2 Ch. R. 275 Eyre v. Halings covn—

After such Mortgage and no Covenants of and to the Mortgagors bequests his personal Estate among his Relations; yet it

shall be applied to discharge the Mortgage Trin 1696. Ch. Prec. 61. Meynell v. Howard.——So where such a Mortgage was made, and the Mortgagee afterwards raised a Term in other Lands for payment of his Debts, the Mortgage Money was held to be a Debt payable out of that Trust. Ch. Prec. 61. cites it as Sir Edward Moore's Case—I 56. Ch. Prec. 596. per Ld C. King. Ld Ch. J. Raymond, and the Master of the Rolls, in Case of Evelyn v. Evelyn.

19. A Mortgage in Fee was made redeemable at Michaelmas, or at any other Michaelmas after on 6 Months Notice, and no Covenant to pay the Money; the Mortgagor continued in Possession and paid the Interest and by Will devised his personal Estate to his Wife and Daughter; per Cowper C. the personal Estate is not liable to discharge the Mortgage in case of the Temp; here is no Covenant either expressed or implied. Mich. 1715. 2 Vern. 702. Howell v. Price.

20. If the A conceded for the Purchase of Lands and dies before the Conveyance, the Heir may compel the Executor to pay for it out of the personal Estate. Arg. 10 Mod. 528. cites it as the Opinion of Harcourt C. in the Case of Woodier and Greenhill.—Ch. Prec. 323. S. C. and P. Hill 1711.

21. If Vendor of Lands of Inheritance dies before all the purchase Money is paid, the Vendor may come against the Executor for the Money, tho' the Heir is to have the Benefit of the Purchase; per Ld C. King, Sel. Chan. Cafes in Lord King's Time 30. Trin. 11 Geo. 1. in Cafe of Coppin v. Coppin.

and the Vendor is Heir at Law, yet the Vendor will have the Residue of the purchase Money against the Executor, tho' it be so much for his Benefit; per Ld C. King Sel. Chan. Cafes in Lord King's Time 34. 30. Trin.
22. *Heres natus or Feltus may have the personal Estate applied in Exoneration of the Real; but not a Remainder-man*; For the first comes to discharge the Estate which descended to him, or was given him by the same Person who owned both real and personal Estate; but in the other the Remainder-man is a Stranger, and does not claim the Estate from the same Person who owned the personal Estate. Sel. Chan. Cales in *Ld King's Time*; 80. Mich. 1730. Evelyn v. Evelyn.

(U. 2) Heir and Executor. Remedy for the Heir against the Executor, &c. for Things belonging to the Heir.

1. If the Executor, after Tefator's Death, gets the Evidences, the Heir may enter into the Land and take the Charters out of his Possession. Br. Charres de terre, &c. pl. 49. cites 39 H. 6. 15, 16. per Markham.

(W) Heir a Parte Materna. Take in what Causes.

1. In Allife, Land was given to R. and J. his Sons, and to the Heirs of R. who had issue a Daughter C. and the Baron dy'd, and after C. died without Heir of the Part of the Father. It was held, that if the Daughter had purchased Land, and died without Issue, the Heir of the Part of the Father shall have the Land if there is any, if not, the Heir of the Part of the Mother. But as here it is descended to the Daughter by the Father, therefore the Heirs of the Part of the Mother shall not inherit, but the Land shall escheat. Note. Br. Difcent, pl. 15. cites 39 E. 3. 30.

2. If the Father purchased, and his eldest Son be attainted of Felony, and he dies, the Heir of the Part of the Mother shall not have the Land, but it shall escheat; for there is one of the Part of the Father who is corrupt. Contrary where there is none of the Part of the Father, per Perley. Br. Difcent, pl. 7. cites 49 Aff. 4.

3. If the Father *purchased Land*, the Heir of the Part of the Mother shall inherit, if there be none of the Part of the Father; *contrary of Land descended in the Line of the Father once*; For there, if the Heir, who enters by Defcent of the Part of the Father, dies without Heir of the Part of the Father, it shall *escheat*; note the Diverfity. Br. Difcent, pl. and 7. cites 49 E. 3. 11.

4. But where a Man *purchases and dies*, his Son enters and dies without Heir of the Part of the Father of his Name, yet the Heir of the Grandmother of the Part of the Father shall inherit; for he is an Heir of the Part of the Father, and the Counsins of the Mother of his Father shall be his Heirs of the Part of the Father, because his Father had a Mother as well as a Father. Br. Difcent, pl. 7. cites 12 E. 4.

5. If

See (S. 2) pl. 3.
5. If a Man had been seised of a Manor, as Heir on the Part of the Mother, and before the Statute of Quia emptores terrarum had made a Fiefment in Fee of Parcel, to hold of him by Rent and Service, albeit they be newly created, yet for that they are Parcel of the Manor, they shall, with the rest of the Manor, descend to the Heir of the Part of the Mother; quia multa transmutat cum Universitate quae per fe non transeunt. Co. Lit. 12. b. (q).

6. If a Man hath a Rent-Sack of the Part of his Mother, and the Tenant of the Land grants a Distress to him and his Heirs, and the Grantee dies, the Distress shall go with the Rent to the Heir of the Part of the Mother, as incident or appurtenant to the Rent; For now is the Rent-Sack become a Rent-Charge. Co. Lit. 12. b. 13. a.

7. If a Man has a Seigniory as Heir of the Part of his Mother, and the Tenancy of the same, it shall go the Heir of the Part of the Mother. Co. Lit. 13. a. (q).

8. If a Man gives Lands to a Man, to have and to hold to him and his Heirs on the Part of his Mother, yet the Heirs of the Part of the Father shall inherit; For no Man can institute a new kind of Inheritance not allowed by the Law, and the Words (of the Part of his Mother) are void. Co. Lit. 13. a.

9. A Man has Issue a Son, and dies, and the Wife dies also; Lands are letten for Life, the Remainder to the Wife; the Son dies without Issue, the Heirs of the Part of the Father shall inherit, and not the Heirs of the Part of the Mother; because it vested in the Son as Purchaser. Co. Lit. 13. a.

10. A has a Seigniory in Fee, and afterwards Land descends to him on the Part of the Mother; in that Case the Seigniory is not extinguished, but suspended; For if the Lord to whom the Land descends dies without Issue, the Seigniory shall go the Heir of the Part of the Father, and the Tenancy to the Heir on the Part of the Mother. Godb. 4. in C. B. Hill. 23 El. per Windham and Mead J.

11. There is a Difference between Advantages in Gross, and Advantages, which by the Grant are made appurtenant or incident to another Thing, As if Baron be seised of a House in Right of his Wife, and J. S. grants Esquires to Baron and his Heirs to burn in the House; this is appurtenant to the House, and shall descend to the Issue of the Baron and Feme. Mich. 6 Jac. 8. Rep. 54 in Syme's Cafe.

12. Where the same Estate is devised to the Heir of the Part of the Mother, which he would have taken by Defeunt, he is in by Defeunt, notwithstanding a Condition of Payment of 200l. was annexed on a Contingency, which never happen'd. 1 Salk. 241. Hill. 10 and 11 W. 3. C. B. Clerk v. Smith.

13. A seised in Fee as Heir of the Mother's Mother, devised the Land to Trustees to pay Annuities, &c. and the Refidue to A's right Heirs of his Mother's Side for ever. The Heir of the Mother's Mother's Side is intited to the Estate and Surplus of the Profits after the Annuities, &c. paid. 2 Wms's Rep. 135. Patch. 1723. Harris v. the Bishop of Lincoln.

(W. 2.) Heir
Heir.

(W. 2) Heir a Parte Materna. What shall be said a new Purchase, or such Alteration of Estate as to carry the Land, &c. to the Heirs of the Father.

S. P. Br. 1. A Man seised of Land by Defcent of the Part of the Mother, gives in Tail referring Rent, and dies without Issue, the Rent shall be to the Heir of the Part of the Father, and the Reversion to the Heir of the Part of the Mother; per Newton; to which it was said, that the contrary is Law; and therefore it seems that all shall go to the Heir of the Part of the Father, till it falls in Demesne, as in the Case above, nevertheless by severall, * all shall be to the Heir of the Part of the Mother.

or a Lease for Life referring a Rent, the Heir of the Part of the Mother shall have the Reversion; and the Rent also, as incident thereunto, shall pass with it.

2. Land, Parcel of a Manor, given by the Lord of the Manor, to hold, &c. who had it as Heir to his Mother; there if he dies without Issue, the Seigniory referred shall go with the Manor to the Heirs of the Mother, and not to the Heirs of the Father. Br. Defect, pl. 68.

3. A Man seised as Heir on the Part of his Mother makes a Feevment in Fee to the Use of him and his Heirs; the Ufe being a Thing in Trust and Confidence shall infue the Nature of the Land, and shall descend to the Heir on the Part of the Mother. Co. Lit. 13 a. (p)

4. If I convey Lands which I have on the Part of the Mother, or in Borough English to J. S. and his Heirs, without Confederation, the Use shall be void, and so the Land shall return again to me, and to my Heirs of the Mother, or in Borough-English as before; for the Law doth continue the Use of the same in State and Quality as the Land was. But if I do declare the Use to me and my Heirs, or, upon such Feevment, refer a Rent to me and my Heirs, it shall go to my Heirs at Common Law; for it is not within the Custom, but it is a new Thing divided from the Land itself. Trin. 4 and 5 P. & M. D. 162. and that is the Reason of another Difference 9 H. 7. 24. Shellie's Case, that Land by Defect falling upon one, shall be taken from him by a nearer Heir born. Hob. 31. in Case of Counten v. Clerk.

Ibid. 446. b. 5. Where a Fine of the Lands of the Wife was with Grant and Render to her and her Husband in Tail, Remainder to the right Heirs of the Wife; If they have Issue which dies without Issue, the Land shall go to the Heir of the Part of the Mother. Pl. C. 295. Carril v. Cuddington.

Grant and Render of Lands a Parte Materna has an Estate, and his Render makes it a new Purchase, so that now the Lands shall descendent to the Heir of the Father. Show 32. Patch 2 W. & M. Price v. Langford.

--- 1 Salk. 357. S. C

Fine with Grant and Render is tantamount to a Feevment and Re-feevment, and creates a new Estate. 1 Salk. 457. Patch. 2 W. & M. B. R. Price v. Langford.---Carth. 142. S. C by the Name of Ree v. Langford.---6 Mod. 45. in Case of Ford v. Lord Greep, but says his other-wife of other Fines.

In the Argument of the Case it was agreed by all, that if the Fine had been levied generally without any Render, or without any Uses declared, the resulting Use, which would have devolved on the Conunonor would have been the old Use in the same Quality as it was before. Carth. 142. Trin. 2 W. & M. B. R. Rice v. Langford.

S. if the Use of this Fine had been declared to the Conunor and his Heirs, the Quality of the Estate would not have been altered thereby, but the Lands would have descended in the same Manner as if no Fine had been levied, (viz.) if it was Ex parte Materna, then to the Heirs, ex parte Materna, and not to the Heirs ex parte Paterna, and so c. Convertio. Agreed. Carth. 141. in the Case of Rice v. Langford.

6. Baxor
6. Baron and Feme covenanted to levy a Fine of Lands defended to the Feme from the Mother, and declared the Ufes to the Conueyes and their Heirs, to make them Tenants to the Precede for suffering a Common Recovery, which by the same Deed was declared to be to the Ufe of the Baron for Life, and to the Feme for Life, and to the first, &c. Son of their two Bodies in Tail, Remainder to the Right Heirs of the Wife, with a Provision for the Wife to dispose of the Remainder in Fee as she should think fit. It was objected that this was not an immediate Conveyance, as a Feoffment to one in Fee, but that by this Conveyance, not only the legal Eatee but the Ufe allo paft to the Conueyes both in Law and Equity; fo that when a Recovery was suffered, this Ufe in Fee muff arise out of the Estate of the Conueyes; But it was held, that all made but one Conveyance, and that the Eatee moves originally from the Conuor, and that what he has not parted with is still in him, and therefore so much as is not declared upon the Recovery shall be still to the old Ufe. The Nature of the Common Recovery being but as an Instrument for raising of the Ufe. And, as to the Power referred to the Feme, th'o' it was objected that it had altered the Eatee, it being subjected and subservient to a new Power; Because the intent now disposed of it otherwise than the could do had it been only her Interest, yet it was held that this was only a new Qualification of the old Estate, and not an Alteration of it, until such new Qualification be executed. 7 Annae C. B. 11 Mod. 151. Abbot v. Burton.

and Proprietary of the Land. Gobbie 69. per Windham f—— If Conuor was Tenant in Tail, and declares to Ufe of the Feme and Recovery, it shall be to the Heirs a parte Materna; but if he was Tenant in Fee, to his other. Arg. 9 Mod. 179. Hill. 5 Geo. in Lord Derwentwater's Case.

7. Heir a parte Materna makes Feoffment on Condition, and dies without Issue; if the Heir of the Part of the Father enters, the Heir of the Part of the Mother shall out him; per Montague Ch. J. Pl. C. 57. in Case of Wimbilh v. Talbôys.

Heir of the Part of the Mother cannot take Advantage of a Condition annex'd to the same; because it is not Incident to the Reversion, nor can pass therewith.

8. A Man seised of Lands a parte Materna devises them for 16 Years to his Executors for Payment of his Debts, and after to J. S. who is the Heir a parte Materna. J. S. shall take by Descent, and not by Purchase. 3 Lev. 127. Trin. 35 Car. 2. C. B. Hedger v. Row.

9. A seised a parte Materna, makes a Feoffment of all to Ufes, viz. of black Acre to himself for Life, Remainder to his Wife for Life, Remainder to the Heirs of his Body on his Wife begotten, Remainder to his first Son, and of white Acre, to the Ufe of himself for 99 Years, if he shall go long live, Remainder to Trustees for his Life, Remainder to his Wife for Life, Remainder to his first and tenth Son in Tail, Remainder to A. and his Heirs—in both Cases the ancient Fee remains in A. nor was it ever out of him; and neither the Eatee for Life or Years are unger'd, but both are preferv'd by the mesne Remainders over. Mich. 6 W. & M. C. B. 8 Lev. 466. Godbold v. Freestone.—and whether the Ufe is by express Limitation, or imply'd by Law without express Limitation 'tis all one, and in both Cases the ancient Fee remains in the Donor. Ibid. 407.

16. Where a Man seised a parte Materna takes Estate to him for Years, Remainder to his Heirs; this is a new Eatee in him, and not the ancient Reversion; but 'tis otherwise, where he takes an Estate for Life, Remainder to his Heirs. Arg. Mich. 6 W. & M. C. B. 3 Lev. 456. cites Co. Litt. 13. 23. But adjudge that there is no Difference, and that in both Cases the Fee is the old Reversion, and shall go to the Heirs a parte Materna. 407. Godbold v. Freestone.
Heir.

II. A Fene purchased a Church Leafe to her and her Heirs for three Lives, and dies, leaving M. her Daughter an Infant. Two of the Lives die. The Guardian renews the Leafe, and then the Infant dies. "Twas insinuated that if the Infant had died before the Renewal, living the surviving Child que Vic, there had been no Question, but the Leafe had gone to the Heir of the Part of the Mother, and that so ought this new Leafe, being renewed out of the Profits of the old Leafe. But, per the Matter of the Rolls, and affirmed per Lord Harcourt. This new Leafe is a new Acquisition, and vested in the Daughter as a Purchaser, and shall go to the Heirs of the Part of the Father; his Renewal by the Arch Bishop being spontaneous and gratuitous, and not like a Copy hold; For there the Lord is only a Trustee for the Heir, and his Admittance of him, tho' it be original, yet is only in Virtue of the Trust reposed in him by Law for that Purpose, and decreed accordingly; by the Matter of the Rolls, and Lord Keeper coming into Court, being ask'd his Opinion, said he was of the same Opinion. Mich 1711. Ch. Prec. 319. Mason v. Day——G. Equ. R. 77.

S. C. Hill. 9 Ann. a

(W. 3) Heir a parte Materna. Of what the Heir a parte Materna shall take Advantage, or be bound by what.

*The Meane 1. I f there be Lord, * Fene Meane, and Tenant, and the Fene takes Baron, and has Issue a Son, and the Tenant releaves, or grants to the Baron, that neither he nor his Heirs shall be bound to Acquittal; and the Baron and Fene, who were bound to the Acquittal by their Seigniory, die, and the Tenant brings Writ of Meane against the Son, who pleads the Grant as Heir to his Father; this shall not serve, for he is to be bound as Heir to his Mother, and not as Heir to his Father. Quod nota. Br. Grants, pl. 147. cites 38 E. 3. 10. and cites Fitzh. tit. Meane 27. [but it should be pl. 24].

If the Heir of the Part of the Father, and not to the Heirs of the Part of the Mother; and therefore the Heir of the Part of the Mother was bound to the Acquittal. Co. Litt. 15. a. (s).

2. The Warranty shall descend upon the Heir of the Part of the Mother, if there be none of the Part of the Father, and therefore he shall be Heir to the Land in such Cafe also. Per Tanke. Br. Defendant, pl. 7. cites 12 E. 4.

Warranty is annexed, be implicated, and vouches, and Judgment is given against him, and for him to recover in Value, and he dies before Execution, the Heir of the Part of the Mother shall sue Execution to have in Value against the Voucher; For the Effect ought to purifie the Cafe, and the Recompence shall entitle the Losk. Co. Litt. 15. a. (q)

Heir-Loomes.
(A) Heir-Loomes.

1. NOTE, that Heir-Loomes, Chiefs or Principals, are those Things * S. P. Co. which have continually gone with the capital Msusage by Cafnon, Litt. 18. b. which is the best Thing of every Sort, as of * Beds, Tables, Pots, Pans and such like, of dead Chattlets movacable. Br. Decent, pl. 43. cites 1 H. 5. & Fitzc. Execution 180. from Heir to Heir cannot be deviied away, but such Devise will be void; For by the Death of such Devise, the Heir-Looms by ancient Custom are vested in the Heir, and the Law prefereth the Cafnon before the Devise. Co. Litt. 18. b. —And the Heir may have Action for them at the Common Law, and shall not sue for them in the Ecclefaical Court. Co. Litt. 18. b.

2. And the * ancient Crowns and Jewels of the Realm cannot be deviied * Co. Litt. by Testament; therefore are Heir-Loomes of the King as it seems. Br. 18. b. S. P. Decent, pl. 43. cites 1 H. 5. and Fitzc. Execution 180.

3. An Heir-Loom is called Principallium or Hereditarium. And it is due by Cafton, and not by the Common Law. Co. Litt. 18. b.

4. A Lady brought a Bill in the King's Bench against a Parfon Quare anom Tuanticum vocatam a Coat-armour & Pennous with the Arms of Sir Godb. 200.3 Hugh Wiche her Husband, and a Sword in the Chappell where he was buried; and the Parfon claimed them as Oblations, and therefore that they did belong to him; And there 'tis holden, that if one ufe to fit in the Chancel and hath there a Place, the Parfon can't claim his Carpet, Livery and Cafnon as Oblations; neither ought he to have the said Things; for that they were hanged there in Honour of the Deceased; and therefore by the fame Reason, the Grave-stone, Coat of Armor, Tomb, &c. are annexed to the Freehold of the Parfon, yet, in Regard the Church is free to all the Inhabitants for burying, the Parfon can't take them. And the Ch. J. faid, that the Lady might have a good Action during her Life, in the Cafe aforesaid, because he herfelf caufed the said Things to be set up there, and after her Death, the Heir to the deceased fhall also have his Action, because (as the Book faies) they were hanged there for the Honour of his Ancestor, and therefore they are in Nature of Heir-Loomes, which by the Common Law belong to the Heir, as being the principal of the Family. The like Law of a Grave-stone, Tomb, and the like. 12 Rep. 104. in Corven's Cafe.—cites it as 9 H. 4. 14. Dame Wiche's Cafe.

5. And this agrees with the Laws of other Nations, Bartho. Cauffaneus, fol. 13. Concl. 29. Aktion. dat. aluiquis arma in aliqua loco potia, delect five, &c. and in 21 Ed. 3. 48. in the Bihop of Carlisle's Cafe, it appeared, that the Ornaments of the Cheppel of a preceding Bihop do belong to the Succeding Bihop, and are merely in Succession, although other Chattlets, in Cafe of a fole Corporation, do belong to the Executors of the deceased Party, and fhall not go in Succession; fo in the other Cafes, Things erected in the Church for the Honour of the dead Perfon, fhall go to his Heirs, as Heir-loomes, as in manner of an Inheritance. 12 Rep. 105. in Corven's Cafe.

6. Trover by Plaintiff Administrator cum testamento annexo of the late Lord Petre againt the Wife of the first Executor for a Necklace of Pearl, faid to have been in the Family for many Generations, and worn as a personal Ornament by the Lady Petre for the Time being, or for Deviſu of ſuch, by Lady Dowager pro tempore; and to prove the Property, an ancient Inventorv made by the Defendant's Husband, being Executor of the Lord Petre now Intestate, being fou'd among the ancient Evidences of the Family, was allowed. For the mentioning this Necklace in it shews he did not claim it in his own Right, and none but a Mad-man will inventoy more Alllets than he has; and tho' if the Question were, whether
my Lord Petre were Proprietor, or not he himself could not, be Witnes; yet the Executor, by inventorying it, has charged himself with it as Affairs, and there it shall be taken as such; and per Holt Ch. J. the Wearing of a Pearl is a Conversion; and Goods in Grofs cannot be an Heir-loom, but they must be Things fixed to the Freehold, as old Benches, Tables, &c. Patch. 13 W. 3. B. R. 12 Mod. 519, 520. Lord Petre v. Henage.

(A) Herald.

1. The King may make a Herald by Patent, tho' he was not any Pursuivant before according to the Ordinance of Heraldso; For it is not of the Essence of a Herald. V. 5 Lac. B. per Curiam between Penion alias Chester and Redhead.

2. The Herald are Attendants upon the Court of Chivalry; of thefe Heralds there are three Kings, viz. Garter King of Arms, Clarenceux King of Arms of the South Part, Norroy King of Arms of the North Part, and six other Heralds. These English Heralds are Messengers of War and Peace, Skillful in Defents, Pedigrees, and Armories; they Marshell the Solemnities at Coronations; they manage Combats before the Confable and Marshell, and upon request they Solemnize the Funeralls of Noble, Honourable, Reverend, and Worthipful Personages; they were firft incorporated by King R. 3. and afterwards newly incorporated by King Philip and Queen Mary. 4 Inf. 125, 126.

3. Thefe Herald are discharged of Subsidies, Tolls, and other Charges of the Commonwealth, by Letters Patents of E. 6. Anno. 3. of his Reign. 4 Inf. 126.

4. The Words of the Patent are Crenamus Coronans & Nomen impominus de Garter Rex Heraldorum, and therefore in all Suits against him he is to be named by this Name, and for not being so named the Defendant was discharged of an Indicément. Cro. E. 224. Patch. 33 Eliz. B. R. Dethick's Cafe.

* See Forrest
(E) pl. 28.
Trefpafls (H)
— Words,
(Herbage.)

* Herbage.

(A) What Grantee may do.

1. He that hath Herbage of a Forest by Patent may have Trefpafls for the Grafs, but not for Trees or the Fruit of them; and he may take Beasts Damage Feallant, and have Quare Clausum frigis, and by fuch Grant may induct the Forest. D. 285. b. pl. 40. Trin. 11 Eliz. a Grantee
Hereditament. Heretick and Herefy.

2. Grantee of Herbage may inclose, and may have Action of * Trespass * Co. Lim. * Quare Clausum frigeat. Arg. Trin. 21 Jac. B. R. 2 Roll. R. 356. cites D. 4 b. (b)

285.—But tho' he that hath Herbage may inclose, yet he that hath responsible Herbage cannot. Ibid. Arg. cites Cro. R. 159.


Trin. 21 Jac. B. R. in Cafe of Lord Zouch v. Moor.

(B) Who shall have it.

1. A Leafe was made of a Manor with all Gardens, Orchards, Yards, &c. and with all the Profits of a Wood, excepting to Leffer 40 Acres, to take at his Pleasure; per Dyer, the Wood is not comprised within the Leafe, but the Leafe shall only have the Profits as Pawnage, Herbage, &c. 21 Eliz. in C. B. 4 Le. 8. Anon.

* Hereditament.

* See Words Hereditament.

(A) Hereditament. What is.

1. A Condition is without question an Hereditament. 3 Rep. 2. b. (l) Trin. 25 Eliz. in the Marquifs of Winchester’s Cafe.

2. Writ of Error is an Hereditament, but by the Common Law cannot be forfeited or echeat. 3 Rep. 2. in the Marq. of Winchester’s Cafe.

3. Ufeis were Hereditaments; For of this shall be Possifio fratris; but Condition or Ufe were not forfeitable at Common Law. 3 Rep. 2. b. (m) (n) in the Marq. of Winchester’s Cafe.

(A) Heretick and Herefy.

1. By the 1. Eliz. 1. which eredid the High Commission Court, having restrained the same from adjudging any Points to be Heretical, which have not been determined to be such, either by Scripture, or by some one of the four first General Councils, or by some other Council, by express Words of Scripture, or by the Parliament, with the Assault of the Convocation, it has been since generally held, that these Rules will be good Directions to Ecclesiatical Courts in Relation to Herefy. Hawk. Pl. C. 4. cap. 2. S. 2.

2. At this Day the Diocesan hath Jurisdiction of Herefy, and so it hath been put in Use in all Queen Elizabeth’s Reign; but without the Aid of the Act of 2 H. 4. 15. the Diocesan could imprison no Person accused of Herefy, but was to proceed against them by the Council of the Church, for the Bishop of every Diocets might convict any for Herefy before the Stat. 2 H. 4. as appears by the Preamble of it, but could not imprison, &c. and now, seeing that not only the said Act of 2 H. 4. but 25 H. 8. 14. are repealed, the Diocesan cannot imprison any Man accused of Herefy, but must proceed against him as he might have done before those Statutes by the Councils of the Church, as it appears by the said Act of 2 H. 4. 15. Likewise the supposed Stat. of 5 Rich. 2. 5. and the Statutes of 2 H. cap. 7. 25 H.
Heriot.

7. 25 H. 3. 14. 1 & 2 P. and M. 6. are all repealed, so as no Statute made against Hereticks stands now in Force, and at this Day no Person can be indicted or impeached for Heresy before any temporal Judge, or other that has temporal Jurisdiction, as upon perusal of the said Statute appears.

3. By 29 Car. 2. 9. the Writ de Herético Comburendo is taken away.

Yet by the Common Law an obfolute Heretick being Excommunicate is still liable to be imprison'd by force of the Writ de Excommunicatu capiendo, till he make Satisfaction to the Church. Hawk. Pl. C. 4. cap. 2. S. 11.

A. Serjeant Hawkins takes this Act under the Head of Heresy, I choose to fol low it so as to make a Guide, and confidering the great A pology of too many among us who set up for Persons of uncommon Parts and Learning, by publicly affenting the Tenets here in Prohibited, and who perhaps have very little other Title to either but thinking their Wit must be looked upon as extensive as their Profaneness, they, with the most daring impudence, ridicule all revealed Religion; it may not be an unfriendly Office to remember them of the Incapacities and Punishments Human Laws (which may more sensibly affect them at the Present) threaten them with, if by that Means they may be induced to act more Prudently at least in this Life, whatever their Notions are as to Another.

It is an Opinion repugnant to the orthodox Doctrine of the Christian Faith, absolutely maintained and persifled in by such as profess the Name of Christ. Godolph. Rep. 56. cap. 42. S. 4.

4. Stat. 9 and 10 W. 3. cap. 32. S. 1. If any Person having been educated in, or having made Profession of the Christian Religion within this Realm, shall by writing, printing, teaching, or advising speaking, deny any one of the Persons in the Holy Trinity to be God, or shall affirm or maintain that there are more Gods than one, or shall deny the Christian Religion to be true, or the Holy Scriptures of the Old and New Testament to be of divine Authority, and shall upon Indictment or Information be therefor visibly Convicted upon the Oath of two Witnesses, such Person shall for the first Offence be incapable to have or enjoy any Office or Employment Ecclesiatical, Civil, or Military, or Profit by them, and the Offices, Places and Employments, enjoyed by such Persons at their Conviction, shall be void; and being a second Time convicted of any of the aforesaid Crimes, shall be disabled to sue, prosecute, plead, or use any Action or Information in Law or Equity, or be Guardian of any Child, or Executor, or Administrator of any Person, or capable of any Legacy, or Deed of Gift, or to bear any Office, civil or military, or Benefice ecclesiastical, and shall suffer three Years imprisonment, from the Time of such Conviction, without Bail.

5. Among Protestants Heresy is taken to be a false Opinion repugnant to some Point of Doctrine clearly revealed in Scripture, and either absolutely essential to the Christian Faith, or at least of most high Importance. Hawk. Pl. C. 3. cap. 2. S. 1.

Heriot.

See (B)/(C) — * Fletz. 212. cap. 18.

says, that Praelatio Heretici magis fit de Gratia quam de Jure. The Action was brought by C. and the Court held clearly that he should not have it, because A. was not Tenant of C. who had the 1692

(A) [Payable to whom, and by whom.]

1. If A. be a Copyholder for Life of Land which ought by Custom to pay a Heriot, if he dies seised, and the Lord grants the Franchement of the Copyhold to B. for 99 Years, if B. the Copyholder to long live, the Remainder to A. for 1000 Years, and after A. assigns over his Lease for 1000 Years to C. and after A. makes F. his Executor and dies seised; in this Case C. the Assignee of the 1000 Years shall not have any Heriot; because at the Time of the Death of A. when the Heriot became due, he was not Lord, but had only a future Interest. P. 15 Car. 2. R. between Norris and Norris adjudged in
on a special Pecurt, this being a Dorskshire Case. Intratur illis. 11

Cari. 673. But the Court said that if any Heriot was to be paid
the Executor of A. or the Lord in Fee should have it.

clear that B. should have it, tho' Barkerly thought B. should have it and Jones Herriott, and they were
the only Judges in Court; and the Reason of the Doubt was, that to Infant that A. the Tenant for Life
died, c.qn Infant before the Elfsate of B. the grantee for 99 Years determined. Mar. 23. 24. S. C.

2. If by the Custome a Copyholder dying seised shall pay a Heriot
to the Lord, and after the Copyholder is deeied and dies during the
Dusement, per he shall pay a Heriot within the Custone; For he was
Tenant in Right notwithstanding the Dusement. In the said Case of
Norris and Norris, per Berkley.

(A. 2) The several Sorts.

1. Merely may be held by Heriot as well as the very Land. Br.
Heriot, pl. 1. cites 41 E. 3. 13.

2. Heriot after the Death of the Tenant for Life is Heriot Custone; For S. C. Br.
Heriot Service is after the Death of the Tenant in Fee Simple. Br. Heriot,
pl. 5. cites 21 H. 7. 13. & 15.

upon Leave for Lives or Years determinable upon Lives, if such Heriot be referred payable during the Term;
As if Leave be made for 99 Years determinable upon the Death of A. B. and C. referring Heriots upon
the Death of every of them; if A. dies living B. or C. a Heriot is due, and this is Heriot Service, be-
cause the Leave is not determined, but there is a Reversion, to which the Heriot service may be inci-

(A. 3) Payable. In what Cases, and what shall be paid
a Payment.

1. THe Lord demands a Heriot, and the Heriott delivers a Beast of his
own, to the Lord, in which be himself has a Property in his
own Right this amounts to a Gift. 10 Rep. 53. in Lampet's Case, cites
7 E. 3. 50. B. 1.

2. A. made a Lease to J. S. for 99 Years, if B. C. and D. shall so long
live, rendering an Heriot after the Death of each of them successively, as they
are all three named in the Deed. D. who was the last named died first, and if
an Heriot should be paid was the Queftion? it was urged that it should not;
because the Reversion is the Leitor's Creature, and therefore to be taken
strongly against him, and that the Heriet being referred it B. C. and D. 
die successively, the Lessor is contented to Treat to that Contingency;
but as to this Court the Point was not determined. 2 Mod. 93. Trin. 28 Car. 2. C. B.
Ingram v. Tothill.

3. Heriot Service referred upon a Leave must be referred payable during
the Term; but where a Tenant in Fee holds of his Lord by Heriot Ser-
vice, such Service is incident to the Tenure which is Ancient, and must
be supposed to be before the Statute of Quita Emptores Terrarum, &c. and
there are fitiable by the Lord either on or out of the Lands. 3 Salk. 332.
pl. 3. cites 2 Lutw. 1366.

(A. 4) Payable

1. IN Trespass a Custom was pleaded, that all the Tenants who hold of the Manor of D. at every Alienation shall make Surrender, and that the Lord shall have his best Baiff in Name of a Heriot; Strange said, at the Time of the Surrender the Property of the Baiff was not in him who surrendered, and the others e contra, and admitted a good Custom * to surrender the FrankTenement; quod nota. Br. Cultoms, pl. 2. cites 3 H. 6. 45.

2. In Replevin the Defendant avowed that J. S. held of him by Homage, Fealty, Rent, and that, at every Alienation of this Tenant, he and his Ancestors have used to have the best Baiff if the Alien does not give Notice to the Lord in the Life of the Alien; and that this Tenant aliened to the Plaintiff and died, and the Plaintiff did not give any Notice in the Life of the other; and the best Opinion was, that this is a good Preceptuion; For it may have lawful Commencement, as by Condition or Reversion at the making of the Tenure. Br. Precuptions, pl. 58. cites 8 H. 7. 10.

(B) Payable. By whom.

1. H. Erriot is not Payable on the Death of Tenant by the Custyf; per Frowvike Ch. J. Kelw. 84. b. Patch. 21 H. 7.

2. A Custom of a Manor was, that the Lord should have the best Baiff or Thing of every one dying within the Manor in the Name of a Heriot, which is found within the Manor, and to seize and retain them as his proper Goods; this was held not a good Custom; For between the Lord and a Stranger it cannot have a reasonable Beginning, tho' between the Lord and his Tenants it is otherwise; For it may be intended to begin with their Tenures by their Agreement, and so they had their Lands upon reasonable Fines; but between the Lord and a Stranger it is merely Extortuion.


3. If the Custom of the Manor be, that every Tenant at his decease shall pay his best Baiff for a Heriot; if a Feme folie, who is Tenant for Life of this Manor, takes Husband and dies, whether the Lord shall have a Heriot? this was a Case put by Coke Ch. J. to which Doderidge the King's Serjeant said he should not, because the Wife had no Goods. Mich. 7 Jac. C. B. 4 Le. 239. Anon.

So where the Feme was seised in Fee and died, and her Husband became Tenant by the Curtesy, Frowvike thought that a Heriot was due, but that the Time to demand it was not till after the Death of the Tenant by the Curtesy, but to this it was said, that the Heriot shall have Respect to the Goods of the Tenant and that the Tenant being a Feme Covert could not have Goods and so the Lord must lose his Heriot. Kelw. 84. a. b. 21 H. pl. S.

4. If a Copyholder sells off any Part of his Copyhold, and retains the Rent, the Heriot shall be multiplied afterwards, but the Heriot due on this Alienation shall be paid by the Alienor, because he continues Tenant; and upon every Alienation made by the Alienees afterwards, the Alienees shall pay it. Palm. 342. Hill. 20 Jac. B. R. Snagg v. Fox.

(C) Payable. To whom.

1. A Bishop seised of the Manor of S. leased 20 Acres, Part of the Manor to B. for the Life of C. D. and E. rendering 20s. Rent a Year. And also paying and delivering to the Bishop and his Successors,
Heriot. 297

two left Beasts, upon the Death of every one of the Calfy que Vies. After-
wards the Bishop leased all the Manor to W. R. rending the ancient Rent. D. died. W. R. feid two of the Cattle for a Heriot. It was held, that the Heriot, thus reserved, shall go with the Reversion, and tho' it should not go with the Reversion to the Letlee of the Manor, yet the Plaintiff (Succesor of the Bishop) shall not have the Heriots, and then tho' W. R. the Defendant had not good Title to the Heriots, yet if the Property of the Heriot do not appertain to the Plaintiff, he shall have a Traver and Conversion; For the Defendant had the first Possession, and (Hobert and Winch only pretends) the Defendant had Judgment, Nifi Causa. Winch. 46. 57. Mich. 2 Jac. Gloucester (Bishop) v. Wood.

(D) Payable. At what Time, and when the Property shall be said to vest.

1. A Vow for Heriot, and alleges Prescription, that his Ancesstor had been feid by the Hands of the Tenants &c. of all Tenements, &c. and that his Father was feid of a Heriot, after the Death of a then Tenant, &c. the Plaintiff, not confessing that the Tenement is HERITABLE, faid, That the Tenant and his Feue, and his Son purchased jointly, &c. and the Feue and Son survived, &c. and are yet living. Judgment, if Avowry, and good. And fo fee that Jointenants are only one and the fame Tenant in the Law, and therefore the Lord shall not have Heriot, till after the Death of the left of them. Br. Heriot. pl. 4. cites 24 E. 3. 72.

2. It hath been anciently faid, that the Heriot shall be paid before the Mortuary; wherein the Lord is preferred; For that the Tenure is of him. Co. Litt. 185. b.

3. If two Jointenants be of Land, holden by Heriot Service, and one dies, the other shall not pay Heriot Service; For there is no Change of the Tenant, but the Survivor continues Tenant of the Whole Land. Owen 152. Pach. 36 Eliz. Butler v. Archer.

4. A leafi to B. for 40 Years, and, during that Lease, made another Lease for 99 Years to commence after the Term of 40 Years, rending Rent from the Time that the second Leafe should commence, and then, in another Render, he referved three Capons, and then followed, And also yielding and paying at the Death of every Tenant 3l. in the Name of a Heriot. The second Lealee died before the End of the first Leafe. Keeling Ch. Ch. J. held, that a Heriot was due on the Death of the second Leafe, by the express Words, tho' he could have no Benefite during the first Term. But the other three Juftices contra, and that the Words, and also, &c. shew that the Heriot should not be payable but when the Rent should be payable; and adjudged accordingly by thofe three. Lev. 294. Trin. 22 Car. 2. B. R. Langan v. Carne.

The second Lealee was for 99 Years, if 3 Lives fo long live, and Judgment accordingly. Sid. 437. S. C. by the Name of Hangon v. Carne. The Words are Copullive, and wills, that both begin together, and here cannot be Rent during the Intermediate Terms, and both are of the fame Nature, viz. created by the Refervation, and consequently if this was due, Diftrefs would lie for the Rent too. Ibid. —adjudged accordingly. 2 Saund. 165. S. C. by Name of Langan v. Carne. —

Adjudged accordingly. Vent. 91. S. C. by Name of Lion v. Crew.

6. A Lease was made for 99 Years if A. or B. should so long live, referring a yearly Rent, and a Heriot or 40 s. in lieu thereof after the Death of either of them, provided that no Heriot shall be paid after the Death of A. living B. A. survived, but is since dead. The Question was, whether upon this Referralion, the Beall of any Perfon being on the Land might be disftrained for a Heriot? It was argued that it could not, because the Lease was determined by the Death of A. the Survivor, and that Heriot Service, as this is, is of the same Nature of all other Services referred upon Leases, viz. that it must be payable during the Term granted. But the Judges of B. R. being divided in Opinion, it was adjourned, into the Exchequer Chamber. Vid. 3 Mod. 230. Trin. 4 Jac. 2. B. R. Osborn v. Steward.


7. Immediately on the Death of the Tenant a Property is vested in the Lord, and that is the Reafon that he may feifie the Heriot. Arg. 3 Mod. 231. Trin. 4 Jac. 2. B. R. in Cafe of Osborn v. Steward, als. Sture.

8. If A. who is Copyholder of a Manor for his own, and the Lives of B. and C. having the Custum to grant for three Lives, and the Survivor, Habend' successiv. femn Nominantur in Charta & non Alter, and that the Lord is to have a Heriot on the Death of every Tenant dying feifie. A Question was started, if A. the Tenant in Posseffion, become a Bankrupt, and the Eifate affigned, and the Tenant in Posseffion die, what was to be done as to the Heriot? and Holt Ch. J. as to that, thought that the Affignee would have the Eifate determinable on the Death of the Copyholder, and then the Heriot would be due, and not by the Death of the Affignee; For fo it was originally, and cannot be altered by any Act of the Copyholder. But per Cur. this is a Supposial not in the Cafe, and therefore it was not determined. 1 Salk. 188. Hill. 13 W. 3. B. R. Smartle v. Penhallow.

(E) Remedy for them.

S. P. And for Heriot-Service ellign'd, he may disftrain. Br. Heriots. pl. 6. cites 27 Aff. 54.

1. Preffcription to disftrain for Heriot Custum, if it be ellign'd, is not good; For he may have an Action against whomsoever ellign'd it, and by this it seems, that he may have an Action of Detinue against him who detains it; For he has a Property in the Thing, and therefore, becaufe it is transitory, the Law adjudges Posseffion without Seifin, as of the Body of a Ward. Br. Heriots. pl. 9. cites 13 E. 3. and Fitzh. Preffcription 29.

2. Trefpafs of Beasts taken and carried away; the Defendant said, that J. held of him by Heriot of the best Beast when any Tenant died, and J. died Tenant, and had an Ox that was the best Beast, and it was ellign'd, and the Land defended to one G. and he died Tenant, and had a Horfe that was his best Beast, and was ellign'd, and becaufe he found the Beasts within the Land, he took them for the Heriot's ellign'd, &c. and adjudged a good Anfwer. Per Shadr, if Beasts are Manuring the Land, the Lord may take them for Heriot if it be ellign'd, and to it seems, that if the best Beast was there, then they may feifie it, and when it is ellign'd then disfstrain. Br. Heriots, pl. 6. cites 27 Aff. 24.

3. By:
3. By 13 Eliz. cap. 5. All fraudulent Deeds made to avoid Debts, if the Beafe
& Heriots, &c. are utterly void, and the Whole Value thereof to be forfeited.

4. For Heriot Service, if the Tenant will not render it, the Lord may
therefor, and put them in Pounds 'till he be satisfied his Heriot. Arg.
Pl. C. 95. b. in Cafe of Woodland v. Mantel and Redfolute.—cites

5. Heriot Service lies not in Render but in Prender, and the Lord is to The Differ
have the belt Beafe, and it is at his Election which he will take for the befe, and it is inconvenient to put him to distrain, when he may seize.
per Wray. Trin. 26 Eliz. B. R. and he said, it had been so adjudged.

6. Precedents were produced of Damages and Costs given in Avowries Per Popham

7. The Lords have Election to safe or distrain without Prefscription:
Goldsb 191:
tion one Way or other for Heriot Service; adjudged in B. R. in Error,
—And. 398. S. C. in C. B. —And therefore Popham said, that if one at this Day makes a
Gift in Faith, or a Lease, rendering annually his belt Beafe, the Leffer or Doner may seize which he
thinks to be the best. As if I give my belt Horse in my Stable, he may take him without my
Consent. Ibid.

and Hear, who made a Lease back to A. for 40 Years, it he should so long
live, to the Intent that Joyce, whom he intended to marry, should not
have her Dower during his Life. R. died poiff'd of an Ox, and B. took C. B. Tyre
for it a Heriot. The Jury found this, and the Statute of fraudulent Con-
yance, &c. and twas adjudged, that for as much as the Feoffment was
not found by the Jury to be fraudulent, the Court could not adjudge
it fraudulent, tho' the Jury had found Circumstances, and Inducements
to prove the Fraud. Arg. Bridg. 112. cites the Cafe of Tyer v. of Oxford's
Littleton.

9. In Litt. Rep. 33, 34 Pach. 2 Car. C. B. is an Argument of Da-
venport, that where there is a Distinguish Reservation of a belt Beafe, or
5\ for an Heriot at the Election of the Leffer, the Leffer cannot distrain
without first declaring his Election. But that tho' in this Cafe the Leff-
for himself might, yet, however the Bailiff cannot justify it for an arbitrary
'Thing in Avowry, without express Command, but nothing that I
observe was said by any of the Court, or by any besides Davenport.
Beare v. Hodges.

10. Either

D. 571. b. Where the Tenant makes a fraudulent Deed to deceive the Lords or Creditors, every Lord shall have the Value of the Beasts, tho' he should not have but one for his Heriot. 3 Lev. 554. Pach. 5 W. & M. C. B. in the Cafe of Sands v. Child. — cites D. 371. a. b. Manwood e. Contra. And that every Lord should have a several Action. Harper said, that all the Lords should join in one Action; but Reporter says, Quere hoc. — He shall only recover the Value of the best Beast. 2 Le. 3. 19 Eliz. C. B. in Cafe of Creswell v. Cook.

S. P. Br. Heriots. pl. 2. cites 38 E. 3. 7. — Ibid. pl. 7. cites 8 H. 7. 10. — Vid. 5 Mod. 231. Osborn v. Steward. — Agreed by all the Justices. Goldob. 95. pl. 15. — The Lord cannot seize for Heriot Service within his Fee, nor out of it; but if he distrain it must always be within his Fee. But for Heriot Custom, he may take it where he can find it, as well out of as within his Fee. Kelw. 82 a. pl. 2. — Bendl. 50. pl. 47. Pach. 37 H. S. — But for Heriot Custom he cannot distrain. Kelw. 16. 2 pl. 1. Pach. 37 H. S. Anon. — Because the Property is in the Lord immediately, but for Heriot Service he shall distrain and not seize, because the Property is not in him, and this is by the Tenure. Br. Heriots. pl. 5. cites 8 H. 7. 10. — For if the Tenure be to have the best Beast, he cannot seize it, but may distrain for it. Ibid. — And if the Tenure be that the Tenant aliens and does not give Notice to the Lord, that the Lord shall have the best Beast of the Tenant, in the Name of a Heriot, yet the Lord may distrain upon the Land for this Beast, tho' it runs upon the Alienor, who has nothing in the Land, and this by Reason that it is the Tenure of the Land, and therefore the Land is chargeable to the Diletted of it. Ibid.

See (G)

(F) Remedy for the Owner of Beasts wrongfully taken.

1. If a Beast is taken for a Heriot, where none is due, the Owner may have either Trifpoky or Trover. Cro. J. 50. Mich. 2 Jac. C. B. Bishop and Jordan v. Ed Montague.

(G) Pleadings.

M. 6 E. 3. 36. —
H. 38 E. 3. 7. b. —

1. In Replevin brought against an Abbot for a Horse wrongfully taken, the Abbot pro'ced'd that W. Father of the Plaintiff, whole Heir he is, held certain Tenements of him, by certain Tenure, and after the Death of the Tenant, to have the best Beast in the Name of a Heriot, and alleged Seifin in his Predecessor, and because this Horse was the best Beast at the Time of his Death, he took it as his own Beast in Name of a Heriot; and the Plaintiff said, that the Place where, &c. was out of his Fee, and there 'twas said, that it was no Plea, because he avowed as for his own Beast. For he may avow to take his own Beast, where he could find it, as well out of his Fee as within; by which the Plaintiff relinquish'd this Plea, and travers'd the Seifin of the Heriot; Prior, &c. And upon this the Iffue was joined. And thereupon they intend that this was Proof, that the Lord might well enough feifie the best Beast; For there the Abbot justified the taking of the Beast, and did not avow, the which he could not if he had not the Property in him. And there Out of his Fee was no Plea, which had been a good Plea, if he had avow'd and not claim'd the Beast as his own. Pl. C. 96. in Cafe of Woodland v. Mantell and Redfol. cites 6 E. 3.
2. A Man may make *Avowry for two Heriots after two Descent in one* and the same Avowry, when 'tis for one and the same Seigniory. Br. Avowry, pl. 138. cites 27 Aff. 24.

3. In Replevin, the Defendant *avow'd* for Heriot of one John, who died his Tenant heritable. Belknap. This name John we enilestone'd in *Fee, Abjourn hec, that be died seised of the Land*; Prift. Caund. he died our Tenant; Pritt. And it was awarded that the *Issue should be taken, whether he died his Tenant or not, and not whether he died seised of the Land*; For it was said, that it might be, that there is Lord, Meine, and Tenant, and that this John was Meine, and so fee that *Misnally may be held by Heriot as well as the very Land*. Br. Heriots, pl. 1. cites E. 3. 13.

4. In Trespafs the Defendant *prescribed* in him and his Ancestors Tenants of the Manor of D. *to have Heriot, Scilicet*, the best Beast that his Tenant has, when the Tenant surrenders his Land, &c. and that he surrendered such Land, and the Horfe now taken was his best Beast, &c. and the Plaintiff said, that the Property of the Horfe was not in the Tenant, who surrendered, at the Time of the Surrender; and so fee that for Heriot Custom, the Lord claims a Property in the Beast, and may seize it. Br. Heriots, pl. 8. cites 3 H. 6. 4t. 5.

5. In Replevin, the Defendant avow'd, because *all the Tenants for Life have used to pay a Heriot after their Death*, which is Repugnant and impertinent, to pay after their Death, and therefore ill Avowry; but if he had said that he and all those, whose ESTATE, &c. have had a Heriot after the Death, &c. of every Tenant for Life, tis a good Avowry, and 'tis Heriot Custom, and not Heriot Service, for this is after the Death of 'Tenant of Fee Simple'; Note the Diversity. Br. Avowry. pl. 81. cites 21 H. 7. 13.

6. In Trespafs, the Defendant justified the taking by a Custom within the Manor of B. &c. that the Lord of the Manor for the Time being holnut & haber conluevit the best Beast of every Tenant dying seised of any Metuage held of the said Manor, upon that Metuage after his Death, without paying *Pro Heriottio, or Nonnuse Heriottio*. This Plea was held not good for the Form. D. 199. b. pl. 57, 58. Patch. 3 Eliz. Parrot v. Mason.

7. And he pleaded another Custom, that if the best Beast be eloaignet before Seizure thereof, that then the Lord had used to seize the best Beast of any other Leasant and Couchant, upon the said Tenure, and thowed that the best Beast of the Tenant was eloaignet before Seizure, and therefore, &c. And this was held not a good Precription. D. 199. b. pl. 57, 58. Parrot v. Mason.—And S. P. cited there to have been adjudged. M. 3 & 4 Eliz. between Wilson and Veife—Ibid. 200. Marg. cites it as *Wilson v. Wife*, and that the S. P. was so adjudged. 18 Eliz. *Pyne v. Bennet.*

*The Rent of a Stranger for a Heriot is a good Custom; because the Diffirec is only a as a Pledge, and means to gain the Heriot. Mar. 164, 165.—S. C. cited 2 And. 143.—Dal. 61. pl. 17. S. P.*

This Case was agreed by Anderson. Ow. 125.—*S. C. adjudged, and the Pleasings. Bundl. 111.—Ma. 16. S. C. and says, that the like was adjudged. 1 Eliz. Rot. 249. in Trespafs by Henley v. Taylor.—*S. C. adjudged, and the Pleasings. Bundl. 502. pl. 294. by the Name of Lyne v. Bennet.*

8. In Replevin, Defendant made *Confidence as Bailiff &c. for a Heriot* due on the Death of J. S. Tenant of the Manor of D. and that the Heriot not being deliver'd, it distrain'd in the Place where, &c. as within the Fee. The Plaintiff pleaded in *Bar to the Avowry*, and takes the whole Tenure by Proclamation, and for Plea says, that J. S. had no Beasts at the Time of his Death, whereas a Heriot might or could be render'd. It was refolv'd, that the Cognizance was not good; For it ought to be certain, (viz.) for the best Beast, or two best Beasts, and not generally for one Heriot, and not *seizing what thing in certain*. And also that the Bar was *H h h h*.
Extinguishment.

1. "A Note of Evidence by the Lord of the Land, who ought to have made no mention of any deeds, but generally of one Heriot which

2. nor a Defendant whose

3. was given.

4. it was faulty.

5. that the D. died, and then C. died.

6. as D. was living, was held in the Land of Jack's Cattle.

7. Extinguishment, to the Plaintiff.

8. was found to be in such

9. the Plaintiff's Receipt, and not certain.

10. Heriot, and therefore awarded the Plaintiff's Receipt.
Himself.

2. If there be Lord and Tenant by Fealty and Heriot Service, and the Lord purchases Part of the Land, the Heriot Service is extinct, because it is entire. Co. Litt. 149. b.

There is a Difference between Heriot, Custom, and Heriot Service.

as to the Extinguishment thereof, by the Lord's purchasing Parcel of the Tenancy; For by such Means the Heriot Service is extinct; but if the Custom of the Manor be, that upon the Death of every Tenant of the Manor, dying feised of any Land held of the same Manor, the Lord shall have Heriot, tho' the Lord purchase Parcel of a Tenancy, yet he shall have a Heriot by the Custom of the Manor for the Residue; For he remains Tenant to the Lord, and the Custom extends to every Tenant. 3 Rep. 106. Trin. 7; for the fourth Resolution in Talbot's Cafe.——st. Chapman v. Peniston.——

s. Sealed. 205. S. C. that in such Cafe it is paid in Respect that he is Tenant, and Custom shall not be drowned by Unity of Tenancy and Seigniory.

Himself.

(A) What Things a Man may do to Himself.

1. A Man makes a Gift in Tail, Remainder to himself for Life, Remainder over in Fee, the second Remainder is good, nevertheless it seems to be otherwise of the first Remainder to himself. Br. Done, &c. pl. 35. cites 7 E. 3. 317. and Fitzh. tit. Formedom. 37.

2. A Town has Conunance of Pleas, and to levy Fines Coram Ballivs dicta Ville, and that always there have been two Bailiffs of the said Town, and that J. S. Conuice was one of the Bailiffs Coram quibus in the Time of the levying it, and jo Party and Judge, and the Error was allowed. D. 220. b. Marg. pl. 14. cites Hill. 12. R. 2. B. R. Rot. 33. The Town of Shrewsbury's Cafe.

3. If a Man gives Land by Fine to W. S. for his Life, the Remainder to himself in Tail, 'tis a void Remainder; For the Fee was never out of him. Br. Done, &c. pl. 32. cites 14 H. 4. 32.

4. A Justice, or other Person being cognizant in a Fine may not take Cognizance thereof himself; for if he do, the Fine thereupon levied is void. West. Symb. 17. cites 8 H. 6. 21.

5. If a Fine be levied to one of the Justices, he shall be named in the Coram, &c. and among the Justices by the Conunance now used, yet albeit he be named, (as I think) the Fine is good. Denh. R. of Fines.

4. 5.

6. A Recognition was made to Sir N. Bacon Lord Keeper of the Great Seal, and to two others, and this was acknowledged before Sir N. Bacon, Keeper of the Great Seal. 'Twas held, that this was void as to Sir N. Bacon, but good enough as to the other two. D. 220. b. pl. 14. Sir Nich. Bacon's Cafe.

as other Recognizances are, it would be good, unless it be specially aver'd that no one was present in Court but himself, to whom the Recognition was made. per Cur. D. 220. b. pl. 14. Marg. cites 35 Eliz. B. R. Holland v. Franklin.

7. Recognition to B. to the Life of the Judge, before whom it was acknowledged is good, and the other Justices agreed it to be so. D. 220. b. Marg. pl. 14. cites 41 & 42 Eliz. in the Argument of the Cafe of Eathir v. Rives.

8. A makes a Lease for Life, Remainder to himself for Years, Remainder over in Fee. This is void as to himself; but if it had been to his Executors it might be good, if he makes Executors and dies before the Leifce. D. 309. b. pl. 77. Patch. 14 Eliz.

9. Sheriff
Holding over.

A Sheriff cannot do an Act to himself, nisi plagiarism by the Cafe in Dyer. But he may, as was yielded by the other Side; for if he be demanded, he may summon the Tenant to the Precise. Skin. 119. Trin. 35 Car. 2. B. R. in Cafe of the King v. Pilkington Chute.

10. If a Recognizance be taken before one who has Power to take a Recognition, and he takes it to himself, and to another; this Recognition is void as to himself, and good as to the other. Jenk. 90. pl. 84.

11. A Man by Fraud may distress himself. Jenk. 46. pl. 88.

12. In what Cases a Man may have Aid of himself. See Aid of a common Person. (S) pl. 5. (Y) pl. 10, 11, 12, 20.—In what Cases he may vouch himself. See Voucher (D) pl. 1. (S) pl. 12, 13 &c.—Where one may be Tenant to himself. See Grants (G. a. 10) ——Where a Man may take by Livery made to himself. See Feoffment (C. a). ——In what Cases or How far one may do as Judge where himself is Party. See Judge (A) Conuance (H) (I) Amerceinent (C). —See other proper Titles.

(B) Acting under a double Capacity.

1. A Burges of a Corporation had laid out Money for the Use of the Corporation, and after, being Mayor, took the Head of the Corporation for it to him in his natural Capacity, and held void. 12 Mod. 619. Hill. 13 W. 3. in Cafe of City of London v. Wood.

2. A Bishop of a Dioces has two Capacities, one as Bishop, the other as T. S. But he cannot do an Act in one Capacity to enure to him in another Capacity; as he cannot make a Leafe for Years, as he is Bishop, to himself as he is J. S. nor vice Verfa. 12 Mod. 688. in Cafe of City of London v. Wood.

See Statutes
(A. a) Execution.

S. C. cited per Bridge- man Ch. J. Cart. 76. in Cafe of Thomas v. Mackworth.

S. P. 2 Inf. 680.

Holding over.

1. Ancls were devised to A. till 800l. rais'd. Resolved that if the Heir at Law, or he in Reversion, or Remainder, in Cafe of Leale or Limitation of a Life enters upon A. or on him to whom the Lands are devised or limited, and expels him, 'tis in the Election of him so expelled, either to bring his Action and recover the mean Profits which shall be accounted Parcel of the Sum, or he may re-enter and hold over till he shall levy the entire Sum, not accounting the Time of his Expedition. But otherwise, if the Expulsion was by a Stranger. 4 Rep. 82. Mich. 41 & 42 Eliz. Corbet's Cafe.

2. There is a Difference between an Elget and a Statute Merchant; For in an Elget he can't hold over; But upon a Statute Merchant he may, because the Extender is to have his Charges and Expenes over and above the Debt, which are not to be recovered upon the Elget. Arg. Mich. 1656. Hard. 80. cites 4 Rep. 67. b. Fullwood's Cafe.
Homine Replegiando.

(A) What it is, and How consider'd.

1. WHere one Man conveys away secretly or keeps in his Custody ano-
other Man against his Will; then upon Oath made thereof, and
a Petition to the Lord Chancellor, he will grant a Writ of Replegiari facias,
with an Alias and Pluries, upon which the Sheriff returns an Elongatus,
and thereupon issues out a Capias in Witternham, made by the P'lsayer, and
when he is thenupon taken, the Sheriff cannot take Bail for him: But
the Court, where the Writ is returnable, may, if they think fit, grant an
Habeus Corpus to the Sheriff to bring him into a Court and bail him, or
else remand him. 2 L. P. R. 23.

2. * An Elongatus was return'd; and thereupon a Capias in Witternham *It was argu-
ifued, which can be directed but into one County at once. The Defendant,
to defeat the Procesf, removes into another County, and the Court upon Mo-
tion granted a Tugstaff; For this Action is partly criminal. Cumb. 28.

(B) Lies in what Cases, and by whom it may be
brought.

1. A T Common Law, if Sheriff had arrest'd any Man by the King's
Writ, the Prisoner could not be delivered but by a Homine Reple-
giatan. 2 Sand. 60. Hill. 21 & 22 Car. 2. in Cafe of Potern v. Hanfon.
2. As the Law enables a Man to sue this Writ by Friends, it will of
Consequence enable them to make an Attorney for him. 12 Mod. 430. Mich.
12 W. 3. in Cafe of More v. Wats.

3. A Question was, whether the Plaintiff, being an Infant, should profes-
cure by Attorney or Prochein Amy? Ad quod non fit responsum. 12 Mod.
439, 431. in Cafe of More v. Watts.

4. A Homine Repligando cannot be brought either by the Wife herself, G. Em. R.
or by her Prochein Amy against her Husband; and the Nature and Pro-
ceedings in the Writ shew it to be so. Pach. 1718. Ch. Prec. 492. At-
wood v. Atwood.

(C) Proceedings, Pleadings and Returns; and in what
Cases the Party shall be bailed; and of the Difference
between this Writ and a Common Replevin.

1. U pon an Information for spirits away a Youth to Jamaica, the 2 Show. 221;
Defendant was found guilty, and the next Term fined 500 l. to 522. S. C.
and to lie in Prison till paid. The Defendant got a Promise of Pardon
as the Reporter,
Homine Replegiando.

and ancient as to the Fine, whereupon the Court directed the Father to bring a Homine Replegiando, and thereupon an Elongatus was returned, and the Defendant charged in Prition with it, who got a Letter from the Treasury, signifying the King's Inclination to pardon the Fine, if the Judges of B. R. could advise that the Pardon might discharge the Impripronment. They met, but thought it not reasonable to bail the Prisoner upon the Withernam, but proposed that he should bring 1000l. into Court, and then would give him his Liberty; but on not producing the Child in fix Months the 1000l. to be forfeited. It was objected, that if an Elongatus ought returned be conclusive, so as Defendant cannot traverse it, he has no Remedy, but was answered, first, that Defendant may bring an Action in the Court for the false Return, and if found for him in that Action, he may be bailed in this. 2. Should the Sheriff die before the Issue tried, or the Actions brought, then the King may issue out a Countisum to inquire the Truth of the Return, which Inquisition taken by Virtue of such Commission may be traversed by the Defendant in the Homine Replegiando, and if the Issue upon that Travers be found for him, he shall be bailed, and the Capias in * Witherham is no Execution. But unless Defendant will confess the taking and having the Truth in Custody, he cannot be bailed, as appears by several Cases there cited. Raym. 474. Mich. 34 Car. 2. B. R. Delagny's Cafe.

2. Upon an Homine Replegiando issed, and an Elongation returned by the Sheriff, he, against whom the Writ ised, coming upon Process, cannot plead till be bring in the Body. Skin. 61. 76. Mich. 34 Car. 2. B. R. Ld Grey's Cafe.

3. The Elongation is a Contumty, for which the Court will commit till the Body be brought in, and the Sheriff's Return of the Elongation a sufficient Foundation, and not transferable, but if the Party will give Deliverance, the Court may let him a Munprize. Skin. 62. 76. Ld Grey's Cafe.

4. An Homine Replegiando was brought against the Defendants, for the Wife of the Plaintiff, and Elongat. was returned; the Defendants before the Return appear and Plea with the Pilzer of non coeperint, but, upon a Mistake, a Capias in Withernam was awarded; upon which the Court was moved for a Superfederat, which was awarded; for the Party might appear at the Return of the Repregiare, and plead at supers, and then no Withernam ought to be awarded, and the Return of the Elongat shall not prejudice; for the Sheriff cannot return Non capris, because this would be against the Supposi of the Writ, but he ought to return the Body, or such Matter, which conflies with the Writ; but the Party is at Liberty to Traverfe the Supposi of the Writ, and try the Matter. Skin. 337. Patch. 5 W. & M. B. R. Du Bardele and Reydel & Ux.

5. A. brought from the Indies a Man Mufter, having the perfect Shape of a Child growing out of his Breast (as an Excrecence) all but the Head, and shew'd him for Profit. This Man turn'd Christian, and was baptized, and detained from A. who brought a Homine Repregiando.
Homine Replegiando.

The Sheriff returned, that he had reprieved the Body, but does not say, the Body in which A. claimed Property; whereupon he was ordered to amend his Return, and then the Court of C. B. bailed him. 3 Mod. 125. Hill. 2 & 3 Jac. 2. Sir Tho. Grantham's Case.

5. Where an Elongavit is returned, and the Defendants offer to appear and plead Non Gubernat, it shall be the Withernam, because the End and Intent of the Writ is only to bring in the Defendants to appear and plead; and this the other Side agreed to; and only praved, that the Defendants might have Deliverance before it was granted. Holt, there is * no Difference between a Replevin and a Homine Replegando: For as the Sheriff can return nothing but an Elongavit, where he cannot find the Thing to be reprieved, in one Case, so neither can he in the other. 12 Mod. 36. Patch. 5 W. 6. & M. De la Bafile v. Reignald & Ux.

6. Habeas Corpus was returned, That W. was in Cofody by Capias in Withernam. The Case was, that upon a Homine Replegiando, the Sheriff returned an Inquisition, finding that the Party was Elongavit, whereupon a Withernam if said returnable Otah. Martini, which was not yet come; but the Defendant was taken upon it. It was objected, that he could not be bailed upon the Withernam; For that it was an * Execution, and he had no Day in Court, and the Plaintiff could have a new Withernam. That which seemed to be the Sense of the Chief Justice, to which the reit agreed, was, (among other Things) that after Elongata returned, and Withernam also awarded, the Defendant is not concluded to plead Non capitis to the Action, because he cannot satisfy the Return, and that upon pleading Non capitis he shall be bailed. And they * dislied the Case in Raym. 474 [See Sup. Delegny's Case, and the Lu Graft's Case, [Supra]] but affirmed the Case in the Register 79. a. and cited Kelw. 71. a. F. N. B. 74, adding this farther Reason, that hereby the Supposal of the Writ is denied, and balanced, and the Matter stands indifferent, according to the Rule of Bailing laid down by Ld Coke, upon Welth. 1. cap. 15. The Court held, that there might be a new Withernam; For the Bail must be in a Sum certain with Condition, that he appear de Die in Diem, and if Judgment be against him, that he render his Body in Withernam, if either the Rends be advertised accordingly be render the Party, and permit him to go at large; and therefore if he be rendered again, he is in Custody as before. And the Court held, that before the Withernam returned the Defendant cannot be bailed. 2 Salk. 581. Mich. 12 W. 3. B. R. Moor v. Watts. 6 Mod. 423. to 421. S. C. ——The Plaintiff's Counsel being that by the Opinion of the Court, the Defendant could not be bailed, unless he pleaded Non capitis could not deliver a Declaration. But the Chief Justice said, that the Return-Day of all Returnable-Writs is a Day to both Parties to appear, and tho' the Writ be returned not served, the Defendant may appear to prevent any Ill Consequent: And tho' the Plaintiff be absent, he may make an Attorney. And hereupon the Plaintiff was called and Notficiated: For otherwise the Defendant might lose his Liberty for ever by such Contrainance. Ibid. 582, 583. —A Pluries Replegiando gives a Day to Court 12 Mod. 427. S. C. ——See Super Turter v. Deligny. —— 12 Mod. 425. —— 12 Mod. 429. —— 12 Mod. 426.

8. The Writ being against three, whereof one only was brought in, it was doubted, by the Plaintiff how to declare; to which it was anfwered that they must do as if it were in Appeal, viz. declare against him that appeared, and continue Proceeds against the others. And Holt said, it would be a Question, whether the Plaintiff should not be put to find Pledges. 12 Mod. 431. More v. Watts.

9. If
9. If the Defendant comes before Elongata returned, and enters on Appearance, and afterwards an Elongata be returned, there ought to be no Withernam; and if one be, it ought to be superseded, upon pleading Non Cepit, without any Bail; per Holt Ch. J. 12 Mod. 425. Mich. 12 W. 3. in Cafe of More v. Watts.

10. If after an Elongata returned, he comes in gratis, and pleads Non Cepit, he shall not be put to find Bail, (the Reason seems to be, because the Withernam is elopp'd or suspended) but if he comes in *Caffedly, upon a Capias in Withernam, he must give Bail, and cannot be admitted to that till he call for a Declaration, and plead Non Cepit. 2 Salk. 583. Mich. 12 W. 3. B. R. Moor v. Watts.

11. The Defendant pleaded in Abatement, want of Addition in the Pluries, as to Place, Vill or Hamlet. The Plaintiff demurred; Holt Ch. J. at first, inclined strongly, that the Plea was good, and would disaffirm this from other Writs of Replevin; For here, he said, the Proces of Outlawry illies immediately upon the Pluries Homine Replegiando, which he affirmed to be a Withernam in itself; But in Common Replevin, the Proces of Outlawry is not upon the Pluries Replegiari, but upon the Capias in Withernam, which illies upon the Sheriffs Return of Averia Elongata upon the Pluries; and upon the Sheriff's Special Return of the Capias in Withernam, that is, upon his Return of Nulla Bona on the Withernam, a Capias shall go against the Perfon, and so to Outlawry, But by Powel J. There is no Difference; For in both Cases, the Proces of Outlawry is upon the Withernam, and not upon the Original Writ; For in a Homine Replegiando, there shall go no Withernam till Return of the Homine Replegiando. And as the first Withernam in Common Replevin, must be De Averia, so the first in a Homine Replegiando shall be of the Perfon. And at another Day the Whole Court awarded a Respondea Outler; For Proces of Outlawry lies in a Homine Replegiando, yet there ought not to be any Addition. For the Pluries, on which we held Plea here, is not the Original in Replevin; but the Original Writ of Replevin is it, which Writ is Vicontiel, so if the Replevin be removed by Recordare, tho' upon Withernam thereon there will lie Proces of Outlawry, yet there is no Addition according to the Statute. So that it is not the Original and therefore out of the Statute. 2. There being no Addition to the first Replevin, the Pluries, (which indeed is the Original to us) must have none; because it must not vary from the first Writ. And Powel said, that there never is an Addition to a Writ that is Vicontiel. 6 Mod. 84. Mich. 2 Annae. B. R. Ld Banbury v. Wood.

[An] Honour.

(A) [An] * Honour. What [it is.]

† An Honour in itself comprehends divers Manors and Lands, and some are in Demaine, and some in Service. 14 P.

4 9.

* Sir Henry Spelman in his Glossary 200. Verbo Honour says, this Word passed over into Eng. land with the Normans. And tho' in an ancient Inquisition, it is said, that Wigod of Wallingford, held the Honour of Wallingford in the Time of King Harold, as if that Appellation had been received under the English-Saxons, yet he favs he does not find it otherwise than used in after Times, as in this Place.—T. S. P. and many Knightly Fees, Regalia, &c. and it was anciently called here Beneficium, or
(An) Honour.

or Fefts of per'ons, and was always held of the King in Capite. Spelm. Gloss. 300. Verbo, Honor.

The Honour consists of many Manors, yet all the Manors are distinguished, and have several Co-plyholders. And there is for all the Manors, but one Court, yet they are, Quaf, several and distinct Courts. And it was usual in the Time of the Abbeyes, that they kept but one Court for many Manors. Cro. C. 36. Trin. to Car. B. R. Seagoode v. Hone.

2. When the King grants an Honour with the Appurtenances, it is more high than if a Manor were granted with the Appurtenances; For to an Honour, by Common Intendment, appertain Franchises, and by Reason of those Liberties and Franchises, it is called an Honour. In Irnucre in the Time of E. 3. Roll. 151. per Scoope. For a Manor and Honour are not of one Condition.

3. An Honour ought to consist of Lands, Liberties, and Franchises.

1 Buls. 197. Pach. to Jac. the King v. Levett.

(B) How it commences.

1. If I am seid of a Manor, and I enfeof * divers persons, of divers Parcels severally in Tail. To hold of me, by certain Services, by Name of Honour. This makes the Honour. 14 H. 4. 64.

2. A Forest may be Appendant to an Honour. 26 Affl. pl. 60. Jenk. 29. pl. 55.


Manors, Lands, &c. thereto perpetually annexed, was created and enacted by 53 H. 8. cap. 37. to be called an Honour.—And the like of the Manor of Groffon, by 53 H. 8. cap. 38.

4. At this Day the Earl of Arundel only hath his Earldom by Prescription, the Beginning of which is Time out of Mind, not within the Memory of any one; so that his Earldom is the most ancient in the Realm. 1 Buls. 196. the King v. Levett.

5. The King granted to a Subject a great Manor, called an Honour, and palms it by the Name of an Honour; and well. Jenk. 277. pl. 99.

(C) Grants of an Honour. What passes thereby, and How, &c.

1. If the King grants Land, Parcel of an Honour, reserving Rents, and after grants the Honour, the Rent shall pass to the Grantee; because the Rent was Parcel of the Honour, it arising by Reservation out of the Land Parcel of the Honour. Arg. Mo. 161. cites 26 Affl. l. 60.

2. The King has a Forest belonging to the Honour of Pickering, and the Forest passes by Grant of the Honour. Arg. 2 Roll. R. 151. cites 26 Affl. pl. 16. 60.

Cuiu pertinentis. But then it passes only as a Chase. —* Jenk 213. pl 65.

3. If the King has Lands held of an Honour and other Land, and gives all, Tenen’d in Saxage, the Land of the Honour shall be held of the Honour, not in Capite, and the other Land in Capite. Arg. Mo. 258. Mich. 26 & 27 Elitz.
(A) Honours.


See Avowry (X).

Hors de fon Fee.

(A) Who shall have such Plea.

1. M ortdainesfor of Meadow and Rent; the Defendant, as to the Rent, pleaded Hors de fon Fee; Judgment if without Specialty, &c. & non allocatur; because he was Tenant of the Rent; and so fee, that none shall have this Plea but he who is Tenant of the Land, out of which, &c. Br. Hors, &c. pl. 7. cites 12 Aff. 38.

Br. Affid. pl. 195. cites 8. C.

2. So, in Affid of Rent-charge, the Defendant pleaded Hors de fon Fee, Judgment if without Specialty fown, &c. and he was forced to take the Tenancy of the Demefne upon himself before that he could have the Plea; Quod nota, that none shall plead it but Tenant of the Freehold. Br. Hors, &c. pl. 8. cites 14 Aff. 14.

3. 'Tis said in Baliff's Recordar, that a Stranger to the Avowry, as the Prayee in Aid &c. shall not plead any Plea but Hors de fon Fee, or a Thing which tantamounts; Quod nota; and therefore note, that he may well plead Hors de fon Fee; and herewith agrees M. 14 H. 8. to 5. and that there where there is Lord, Meine, and Tenant, and the Lord distrains the Tenant Paravile, he may plead a Release made to the Meine; because this amounts to this Plea, Hors de fon Fee. Br. Hors, &c. pl. 14. cites 2 H. 6. 1.

4. He who holds in Frankalmoigne cannot plead against the Lord, who is Donor, That the Land is out of his Fee, by the bett Opinion; For if the Tenant be disftrained by the Lord Paramount, he shall have Writ of Meine; and if the Foundation be disfolved, the Lord shall have the Escheat, & contra formam Collationis, and therefore there is a Tenure and a Fee, but he cannot distrain. Br. Hors, &c. pl. 17. cites 7 E. 4. 11.

See Avowry (Y).

(B) In what Actions.

1. F ormedon of Rent; the Tenant would R. to Warranty; the Demandant said, that his Demand is Rent-service, Judgment; and the Tenant said, that the Land is Hors de fon Fee; &c and non allocatur, but he was compell'd to say, that it is not Rent-service, and fo to Iffue; Quere the Reason, whether because Hors de fon Fee is but Argument in this Case, or because the Writ comprehends Title in itself? For, by Finch, if the Rent was recovered against the Father of the Tenant by Default, yet the Tenement, as to the Rent, is Hors de fon Fee, and yet he ought to demand it as Rent-service; and it seems clearly, that if the Rent be within his Fee, or out of it, yet if this Rent was given in Test, and the Land...
Land charged of it, Hors de fon Fee cannot be any Plea; because the Title is good, tho' the Land be out of his Fee; For it is good if it be Rent-charg or Rent-reef. Br. Hors, &c. pl. 2. cites 44 E. 3. 19.

2. It was hid Arguedo in Formedon, that in Writ of Entry in the Quietus, in Nature of Affixe of a Rent, Hors de fon Fee is a good Plea, because this Writ does not comprehend Title; For it is of his own Possession; but otherwise it is in * Formedon of a Rent; there, Hors de fon Fee is not Plea, for the Gift in the Writ is a Title; but in Writ of Entry, in the Quietus of Seisin of his Father of a Rent, Hors de fon Fee is a good Plea; For the Demandant claims Title by his Father. Br. Hors, &c. pl. 18. cites 12 H. 7. 30.

Finch ordered him to answer, quod notis; and so fee it that it is + no Plea. Br. Hors, &c. pl. 5. cites 45 E. 14. — S. P. Br. Hors, &c. pl. 10. cites 8 E. 4. 6. — Hors de fon Fee is no Plea in Formedon in Defender or Remainder. Br. Hors, &c. pl. 9. cites 5 E. 4. 80.

3. In Replication; a Man seised of a Manor gave is in Tail, reserving the Reversion, and after disheartened a Tenant for Rent and Services; he [the Tenant] seised the Gift in Tail, and that the Dowes had issued alives, and so Hors de fon Fee, and the Hloe was allowed. But by * it is said, the Reporter it is ill; For he has Fee there in Reversion, and therefore that in Right ought to have concluded, And so Not held of him; For he * cannot disclaim nor plead Hors de fon Fee. Br. Hors, &c. pl. 4. cites 11 H. 4. 10.

be may disclaim, nevertheless it is said at this Day, that this is not Lac. Ibid. pl. 15. cites 34 E. 4. 2. — He shall plead Hors de fon Fee, or something which is tantamount. Br. Arwory. pl. 5. cites 5 H. 6. 35. — S. C. cites and says, that 2 H. 6. 1. and many Cases afterwards were against that of 5 E. 4. 2. and that a Man might plead Hors de fon Fee at Brooke held; As if there be Lord and Tenant, holding by Fealty and Rent, and he [the Tenant] makes a Lease for Years, and the Lord Assigns the Custell of the Leafe, the Tenant hath paid the Rent, and done Fealty, there if the Leafe allege that the Leafe was seised of the Tenancy in his Demise as of Fee, and held it of the Lord by Servits, &c. of which Services the Lord was seised by the Lands of his Leifor, as by his true Tenant, who lead the Lands to the Plaintiff, and the Lord, to charge him, I am unjustly accursed upon him, and hath nothing in the Tenancy, it is well enough; cites 4 Rep. Case of Arwories; and Arg. says, that the Reaon given in 3 E. 4. 2. about Disclaimers, will not hold now; For that Courte is quite altered, and is taken away by 14 H. 8. 19. which Enacts, that Assignes shall be made by the Lord upon the Land, without name his Tenant. 2 Mod, 105, 104. Tit. 28 Car. 2. in Case of Sherrard v. Smith.—49 Rep. 20. 3.

4. In Writ of Entry of Rent in Nature of Affixe, Hors de fon Fee was admitted for a good Anwer in this Action; and the Reason seems to be, because this Action does not comprise in it any Title, as Formedon, or such like. For there, as it appears elsewhere, Hors de fon Fee is no Plea. Br. Hors, &c. pl. 1. cites 35 H. 6. 40.

5. In Writ of Entry for diff("on made by the Defendant, of a Rent to 5 E 4 long the Predicessor of an Abbot Plaintiff, the Defendant took the Tenancy and pleaded as Tenant, and pleaded Hors de fon Fee; Judgment if without Title shown, &c. and per Car. the Plea is a * good Plea in this Action; For the Seisin nor Diffuson of the Predicessor is no Title; For it may be that the Predicessor was deceased, and then the Successor is not in by the Predicessor, as the Heir is in by the Ancellor; For the Successor is in by the Holograf, and continued the first Tort, therefore it is no Plea any more here than in Affixe. Br. Hors, &c. pl. 9. cites 5 E. 4. 80.

6. But in * Affixe of * Mortdauncer, Avel, Cause, and Writ of Entry for diff"on by the Hei, for di"on done to his Ancellor, there this is no Plea; for those Writs comprehend Title in these Cases; & And in Writ of intra-"on brought by an Abbot, this is no Plea; for there is sufficient Title; And in Case in vitia, and Writ of ingress free affinss capitans by an Abbot, Hors de fon fee is no Plea; quod nota. Br. Hors, &c. pl. 9. cites 5 E. 4. 80.
Hors de fon Fee.

coffe, the Tenant pleaded Hors de fon fee, which was admitted a good Plea, and yet the Witte comprehended Title, in a Manner; quære inde; for it is only a Praying that certain Points may be inquired, and the Plaintiff demurred if he should prove other Title, and it was adjoined, and at the Day the Defendant would have given satisfaction, and was not suffered; because it was adjoined upon a Point certain.

Ibid. pl. 16. cites 14 Alf. 1; Orig. (mes.) Orig. (mes.) Orig. (mes.)

*Br. Avowry pl. 52. cites 8 H. 6. 16. 6. P.

Br. Trefpaß, pl. 77. cites 6. C. — Not held of him is a good Plea in this Action, and in Trefpaß. pl. 76. cites 5; H. 6. 25. — The Year Book is (ought to shew of whom it is held, and so &c.)


10. In Caffavit, Hors de fon fee is no Plea, but he shall say, That he does not hold of him, or such like; quod nota. Br. Hors, &c. pl. 12. cites 10 E. 4. 1.

In Trefpaß, Quære Naturam exigere, and that he is, by a good Plea in Caffavit of Rent, Br. Avowry, pl. 76. cites 5; H. 6. 25.

11. If a Stranger claims a Seigniory, and disclaims and avows for the Service, the Tenant may plead, That the Tenancy is Extra Feodum &c. of him, (that is) out of the Seigniory, or not held of him who claims it; but he cannot plead Extra Feodum, &c. unless he takes the Tenancy (that is) the State of the Land upon him. Co. Lit. 1. b.

C âmased of the Lord of the Manor, of which the Plaintiff held by Fealty and Rent, and for non-payment, thereof he took them Nomine Distriptiones. The Plaintiff replied, That the Laws in quo is Extra, Anno b. 1291, that it is Extra Feodum; Defendant demurred specially, because the Plaintiff, pleading Hors de fon fee, should have taken the Tenancy upon him, and cited 9 Rep. Burnell's Case, 22 H. 6. 2, 3 Kelw. 73. 14 Alf. pl. 12. 11 Inf. 1 b. where this is given as a Rule by my Lord Coke. It was agreed by the Counsel for the Plaintiff, that in all Cases of Afffe Hors de fon Fee is no Plea without taking the Tenancy upon him; but otherwise in Trefpaß, in which never was any such Thing objected; For what Tenancy, can the Plaintiff take upon him? he cannot say, that he is Tenens liberii Tenementi; For this is a bare Action of Trefpaß, in which, tho' the Pleading is not so formal, yet it will do no hurt; For had it been Extra Feodum, without the Trefpaß, it had been good enough, and of that Opinion was the Court in the following Term, and Judgment for the Plaintiff (Abente Scrogges) And the Chief Justice said, that the Rule laid down 1 Inf. 1 b. viz. that there is no pleading Hors de fon fee without taking the Tenancy upon him, to be intended of Cases in Afffe, and that are all the Cases he there cites for Proof of that Opinion, and therefore is so to be understood; but this is an Action of Trefpaß brought upon the Particular, and not upon the Title. 2 Mod. 163, 164. Trin. 29 Car. 2. C. B. Sheppard v. Smith.

(C) Pleadable. In what Cases. And Hors. And what may be replied.

P Rior of Spalding holds of the King's Grantee certain Land in B. in Frankalmoign, and the Lord Diitrains for Services, and the Tenant brings Replevin, and he avows; the Tenant cannot plead Hors de fon fee, and if the Tenant in Frankalmoign makes Feoffment, there the Feoffee shall hold of the Donor, per Littleton. Br. Patents, pl. 61. cites 7 E. 4. 11.

2 If one plead Hors de fon fee, the other shall not shew a Tenure, &c. he shall not plead, but Deinse fon fee, prift, &c. Heath's Max. 82. cites 10 Ed. 4. 10.

3. If the Assessant gives in Evidence Seisin of Rent without a Fealty, this is not sufficient. Heath's Max. 82. cites 27 H. 8. 22.

(D) Pleading.
(D) Pleading it contrary to the supposal of the Writ.

1. In Avowry 'tis held that where the taking is supposed in 12 Acres and not in any Acres certain, and the Defendant avows generally, the Plaintiff cannot say to one Acre Hors de son fee, and to 11 Not held of him; because the taking is not suppos'd in any Acre certain. Br. Avowry, pl. 76. cites 37 H. 6. 25.

2. And if the taking be suppos'd in an Acre certain, and the Defendant avows, because this Acre and 11 others are held of him, there the Plaintiff cannot say Hors de son fee generally to the Whole; For this shall refer only to the Acre where the taking is alleged, and therefore shall plead Specially. Br. Avowry, pl. 76. cites 37 H. 6. 25.

3. But if the Taking is suppos'd in 12 Acres, and the Defendant Avows, and the Plaintiff says Hors de son fee, it shall have Relation to the Whole; because no Acre certain is limited, quod nota diversity. Br. Avowry, pl. 76. cites 37 H. 6. 25.

(A) Hospitals.

1. Stat. 2 Hen. 5. cap. 1. Enacts that as to Hospitals which be of the Patronage and Foundation of the King, the Ordinaries, by Virtue of the King's Commissions, shall inquire of the Manner and Foundation of the said Hospitals, and of the Governance and Estate of the same, and of all other Matters requisite, and the Inquisitions thereof taken shall certify in the Chancery. And as to other Hospitals, the Ordinaries shall inquire of the Manner of the Foundation, Estate and Governance of the same, and of all other Matters requisite, and upon that make Correction and Reformation after the Laws of Holy Church.

2. 21 H. 8. cap. 13. S. 7. Enacts that Matters of Hospitals, &c. having Lands of 800 Marks yearly Value or under may Use and Occupy so much thereof for the Maintenance of their Houses, as they or any of their Predecessors have done within 100 Years last past, notwithstanding this Act.

3. Stat. 14 Eliz. cap. 14. Enacts that all Gifts, Devises, and Assurances, to be made of Lands and Tenements, by Will or otherwise, for Relief of the Poor in any Hospital now being, and employed to the Relief of the Poor, shall be as good in Law according to the meaning of such Donor, as if the Corporation were rightly named; any misnaming of the Corporation notwithstanding, facing to all Persons, other than such Donor, all right, &c.

4. By 31 Eliz. cap. 6. S. 2. If any Person, who shall have the Election or Nomination of any Person to have Room or Place in an Hospital, shall have or take any Money, Reward, or Profit, directly or indirectly, or Promises of Money, Reward, or Profit, then such Room and Place shall be void, and another be preferred to the Place by those who have Authority to Elect.

5. 35 Eliz. cap. 7. S. 27. Impowers Persons to give or devise Lands to the Use of the Poor.
Hospitals.

6. 39 Eliz. cap. 5. S. 1. * Every Person † seiz'd of an Inheritance in Fee Simple shall have Power during 20 Years by 2 Deeds enrolled in Chancery to Erect, Found, and Establish one or more Hospitals, Monuments de Dicte, aiding Places, as well for the Sustentation and Relief of the Maintain'd, Poor, Needy, or impotent People, as to let the Poor to work, to have a Continuance for ever, and from Time to Time to place such Heads and Members, and such Numbers of Poor therein as the Founder, his Heirs or Assigns shall think fit.

And the said Hospitals or Houses ** so founded, †† shall be Incorporated and have perpetual Succession and be called by such Name as the Founder, his Heirs, Executors, or Assigns shall appoint, and †† shall have Power to purchase, take and hold as well Goods and Chattels, as Manors, Lands, Tenements, and Hereditaments being Freehold, so as the same exceed not 200 l. per Ann. above Reprizes to any one such Hosp. &c. and be not held of the Crown in Chief, or by Knight's-Service without Licence, or Writ of ad quod damnum, the Statue of Mortmain, or any other Law notwithstanding. And such Hospit. &c. and the Person incorporated, †† shall have Power to sue and be sued, and †‡ shall have one Common Seal to be appointed by the Founder, and †† shall be directed, and visitted, placed or displaced, by such Person as the Founder shall appoint, according to such Rules and Statutes as shall be Established by the said Founder, in writing under his Hand and Seal, not being repugnant to the Laws of this Realm. And it †† shall be lawful for the Founder, his Heirs and Assigns, upon the Death or Removal of the Head, or any Member of such Corporation, to place others in their Room successively for Simple, absolute, or perpetual

dotal or

qualified; and must be Freehold. 2 Inft. 722.

† Made perpetual by 21 Jac. I. cap. 1—But by 9 Geo. 2. cap. 36. 1. No Manners, Lands, Adven- tures, or other Hereditaments, nor any Alms, or other personal Estate to be laid out in Lands, &c. shall be given to any Bodies Politic or corporate, or any sway or charge in Trust for charitable Uses, unless such Gifts (other than Stocks in the Publick Funds) be made by Deed indented, in Presence of two Witnesses, twelve Kalender Months before the Death of such Donor, and be enrolled in Chancery within six Kalender Months after Execution; and unless such Stocks be transferred for Kalender Months before the Death of such Donor, and unless the same be made to take Effect in Possession immediately from the making, and be without Power of Revocation.

S. 2. Nothing herein relating to the Sealing and Delivery of any Deed, twelve Kalender Months before the Death of the Grantee, or to the transfer of Stock five Kalender Months before the Death of the Granate, shall extend to any purchase for a full and valuable Consideration.

S. 3. All Gifts of Lands, &c. or of any Charge affecting Lands, or of any Stock or personal Estate to be laid out in Lands, &c. for charitable Uses, which shall be made in any other Manner, † shall be void.

S. 4. This Act shall not make void Dispositions of any Lands to either of the Universities, or the Colleges or Housers within either of them, or to the Colleges of Eaton, Winchelsea or Wellsminster, for the better support of the Scholars after the Foundations.

† If done any other way than by Deed enrolled in Chancery, it will not be good; but such Deed may be enrolled at any Time as well after as within 6 Months, nor need it by Indenture, but if by Deed Poll is sufficient; and may be in Paper, but must be enrolled in Parlement. 2 Inft. 723, 725.

§ So that the Founder cannot Erect &c. any of these for Years, Lives, or any other limited Time, but for ever. 2 Inft. 724.

** Viz. by Deed enrolled in Chancery. 2 Inft. 727.

†† This is added by Reason that the Hospital &c. is not properly Incorporated but the Person therein placed are to be Incorporated; so as the Person to be incorporated by this Act must be placed there and named when the Founder gives them their Name of Incorporation; For the Parliament Incorporates them, and the Founder gives them only their Name. 2 Inft. 723.

†‡ They must be of the clear yearly Value of 10l. and not exceeding 200l. but if upwards of 10l. a Year and under 200l. they are capable of taking so much more as will make up such Deficiency without any Licence of Mortmain; and if the same shall afterwards happen to increase in its yearly Value beyond 200l. a Year yet the same will continue good. And as to Goods and Chattels (Real or Personal) they may take of what Value forever. 2 Inft. 722.

S. 2. No Leaves to be of above 21 Years.—The Right of all Persons except the Founders, their Heirs and Successors, is barred. —Ten Pounds per Ann. laid to each Hospital.—Lands not to be Allocated from the Hospital.

7. 43 Eliz. cap. 2. S. 14, 15. Directs how Hospitals shall be releasable by Quarter Sessions.

Houle,
House.

(A) How far it is Privileged against Entry, or in what Cases an Entry is lawful by Common Persons.

1. If 2 Men are fighting in a House a Stranger may enter to part them, because 'tis in Preparation of the Peace. Kelw. 46. b. Mich. 18 H. 7.
2. An Abbots was Owner of a House, and upon a Leave of Land reserves Rent payable there; the Abby is dissolved and is in the King's Hands; the Tenant may justify Entry to pay the Rent there; For he has Interlent in the House, as to this Purpote, by the Affent and Reservation of the Owner, and the Statute of Dililution reserves all Rights, and it seems the Patente of the Lands might come to the House also (which was granted by Patent to another) to receive the Rent; For his Interlent is like to that of the Lilefe. Pl. C. 71. Hill. 4 & 5. E. 6. Kidwelly's Cafe.
3. A Man cannot justify entry into another's House to demand a Debt, and a Servant's Licence to enter is to no Purpote; but Gawdy J. conceived, if it had been averred, that the Matter was within the House, the Plea had been good. Cro. E. 876. Patch. 44 Eliz. B. R. * Holdtringhaw v. Ragg.

entry, because no Place being appointed for Payment, the Obligor is bound to seek the Obligee and find him where he can. Pl. C. 71. Kidwelly's Cafe.

6. One takes a Distress of Goods, but favours no Cause why he took it, and he put it into a close Pound, viz. a House; the Owner breaks the House where the Goods were, and took them away, and it was held lawful in this Cafe of tortious taking; For such it was for any Thing that did appear; per Hendon and Vernon J. Clayt. 64. Anon.
7. Let a Man's Possession be rightfull or wrongful a forcible Entry on the House, tho' with a lawful Pretense, is a Riot. 2 Show. 149. Hill. 32 & 33 Car. 2. B. R. the King v. Stroude.
8. If a Man convicted of Murder has Goods in a Tenant's House; tho' in the Cafe of the King an Entry for a forfeiture may be with Force, yet if the King grants bona fide, to another, the Grantor cannot enter by Force; For 'tis a personal Prerogative and not Communicable, but he ought to bring Treaver. 2 Show. 150. the King v. Stroude.

(B) In what Cases it may be broken to enter. By Of

ficers, &c.

1. If A. wounds B. so that he is in danger of Death, and A. flies, and upon this Hue and Cry is made and A. retreats into the House of 3. S. the Pursuers may lawfully break the House, if it be defended against them with Force. 5 Rep. 91 b. (h) cites 7 E. 3. 16. and observes that this proves that Request ought to be made.

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House.

3 Rep. 92. a. 2. In Bill of Trepass it was not denied by the Plaintiff, but that the Sheriff by Capias awarded upon an Indictment of * Trepass, may break the House to serve the Arrest. Br. Trepass, pl. 243. cites 27 Atl. 35.

If he breaks the House, when he can enter, without breaking it, viz. upon Request made or by opening the Door without breaking it, he is a Trepassor. — Or upon Indictment for any Crime whatsoever. 2 Hawk Pl. C. 86. Cap. 14. S. 5.

3. In Case of Felony, or * Sufpicion of Felony, the King's Officer may break the House to take the Felon; because it is for the Good of the Commons Wealth to take Felons, and because in every Felony the King has Interest; and where the King has Interest, the Writ of it fell is a Newt, or a Probable omits, proper aliquam Libertatem, and the Liberty or Privilege of a House shall not hold against the King. 5 Rep. 92. (c) cites 9 E. 4. 9.


7. A. and B. were Joint-Executors of a House. A. was bound in a Statute to J. S. and did. J. S. sued Extent. The Sheriff return'd him dead. J. S. sued another Writ to extend all the Lands which he had been to acknowledge the Statute, or after, and all Goods which he had at his Death.

Whereupon the Sheriff and Jury came to the House, the Door being open (there being Goods of A. there) and offering to enter B. but the Door against them. It was resolved, 1st. That every Man's House is as his Castle, as well to defend him against Injuries as for his Repose. 2. Upon Recovery in any real Action, or Ejectment, the Sheriff may break the House and deliver Seisin, &c. to the Plaintiff, the Writ being Habere facias Seisimam or Pleitiomentam; and after Judgment it is not the House of the Defendant in Right and Judgment of the Law. 3. In all Cases, where the King is Party, the Sheriff (if no Door be open) may break the Party's House to take him, or to execute other Proceses of the King, if he cannot otherwise enter, but he ought first to signify the Cause of his coming, and request the Door to be opened, and this appears by the Statute Westm. 17. 17, which is only in Allmurance of the Common Law; and without Default in the Suit of the King, the Law will not suffer an House to be broken. 4. In all Cases, when the Door is open, the Sheriff may enter and make Execution at the Suit of any Subject, either of Body or Goods; but otherwise where the Door is shut, there he cannot break it to execute Proceses at the Suit of a Subject. 5. Tho' a House is a Castle for the Owner himself, and his Family and his own Goods, &c. yet 'tis no Protection for a Stranger flying thither, or the Goods of such an one, to prevent lawful Execution; and therefore in such Case, after Request to enter, and Denial, the Sheriff may break the House. 5 Rep. 91. a. to 93. a. Mich. 2 Ja. B. R. Semaine's Cafe als. Semaine v. Gregham.

No 665. S. C. Cro. E. 92. S. Yelv. 28. S. C. — As where the Sheriff has Cap. against one to find Sureties De fe bene gerven- de, he may break the House to ar- rrest the Party. Agreed by all the Justices of El. B. and of Ser- joint's Inn. Fleetstreet. Mo. 626. pl. 87. Trim. 42 Eliz. A. Nonon. — If a Confidible or other Officer has a Warrant to levy Money ad- juted by force of Peace and King's Statutes, according to a Penalty in an Act w. Parliament, he may, upon Demand and Refusal, break the House to execute the Warrant; For the King being entitled to the Part of every Forkiture by such Act, the Law has given him such Prerogative for the Recovery of his Duty. 2 Ja. 233, 234. Trim 35 Car. 2. Resolutions of the Judges upon the 22 Car. 2. 1. of Conventicles.
8. A Bailiff having Process against B. who lay in the House of J. S. knocked at the Door, whereupon the Wife of J. S. came and open'd the Door a little to see who was there, and presently he with others rush'd in with drawn Swords upon her whether she would or no, and broke open the Chamber Door where B. lay. It was held in the Star Chamber by Hobart Ch. J. and the Ld Ch. B. that the first Entry was unlawful; For the opening the Door was occasion'd by them by Craft, and because they used great Violence in that and the adjoining House, and hurt several Persons, they were fined 220l. a Piece. Hob. 62. Park and Percival v. Evans.

9. The Bailiffs can't break open a House to make Execution, yet if they enter, the Door being open, and afterwards the Defendant impurs them there, the Sheriff may justify breaking open the Door to free his Bailiffs.


seems to be S. C.——But if the Sheriff be in one Room, he may break open another Room upon Refusal to let him in: Per Doderidge and Houghton. Palm. 54. S. C.——But where the Sheriff made use of a sham Cap Utag, in order to break open the House, had it been shut, and to serve a Lattin, but finding the Door open, he enter'd with six Bailiffs, and he and two of the Bailiffs with Swords drawn ran up to the Chamber, where the Man and his Wife were in Bed, and the Doors lock'd, and knocking a little without telling who they were, or for what Reason they came, broke open the Door, and took him, and a Bond for his Appearance to the Lattin, &c. the Sheriff was fined for the unnecessary Outrage and Turmoil of this Affray, and for not furnishing that he was Sheriff, that the Door might have been opened without Violence; and the Creditor was also fined for using the King's Process and Prerogative in that sham Manner, and by such indirect Means deceiving the Plaintiff of his Liberty of Defence of his House against his private Debt. Hob. 265. Patch. 17 Jac. in the Star Chamber. Waterhouse v. Saltmarsh.


11. If Bailiff touch'd the Defendant, and then he had retreated into 6 Mod. 17, his House, this being an Affray, Bailiff might have pursued and broke open the House, or might have had an Attachment or a Reasous against him. 1 Salk. 79. Trin. 3 Anne B. R. in Case of Genner v. Sparkes.

12. If a Person authorized to arrest another who is shelter'd in a House, is denied quietly to enter into it, in order to take him; it seems generally to be agreed, that he may justify the breaking open the Doors upon a Copy of the King's Bench or Chancery, to compel a Man to find Security for the Peace or good Behaviour, or even upon a Warrant from a Justice of the Peace for such Purpose. 2 Hawk. Pl. C. 86. Cap. 14. S. 2, 3.

13. So where a forcibly Entry or Detainer is either found by Inquisition before Justices of Peace, or appears upon their View. Ibid. S. 6.

14. So where one known to have committed Trespass is pursued either with or without a Warrant, by a Conitable or private Person. Ibid. S. 7.

15. So where an Affray is made in a House in the View or Hearing of a Conitable; or where those who have made an Affray in his Presence fly to a House, and are immediately pursu'd by him, and he is not suffered to enter in order to suppress the Affray in the first Cafe, or to apprehend the Affraiers in either Cafe. 2 Hawk. Pl. C. 87. Cap. 14. S. 3.

16. But it hath been resolved, That where Justices of Peace are, by Virtue of a Statute, authorized to require Persons to come before them, to take certain Oaths prescribed by such Statute, the Officer cannot lawfully break open the Doors of the Persons who shall be named in any Warrant made in Pursuance of such Statute, in order to be brought before the Justices to take such Oaths; because such Warrant is not grounded on a precedent Of-fence; neither does it appear, that the Party either is or will be guilty of any. Ibid. S. 11.

M m m m (C) Sealing
See Mader and Servant


A. the Owner of a Shoe, left it in the Shop to a Steamer, and J.S. Hote it out of the Shop. The Judges were 20 of the Jury, fhall be excluded from the Benefit of the Clergy.

Serjeant Hawkins fays, that this Statute is defective in neither mentioning Perfon entailed, nor Accessories, and that it is not help'd by the 3 & 4 W, & M. 9, because it is fubsequent to it. 2 Hawk. Pl. C. 350. cap. 33. S. 68.

* 4 & 5 P. & M. 4, 11, Command, Hire or Confeil to do Robbery in a Dwelling-Houfe.

2. 12 Anne cap. 7. Enafts that Every Perfon who fhall feloniously steal any Money, Goods or Chattels, Wares or Merchandifes of the Value of 40 s. or more, being in a dwelling Houfe, or Out-Houfe thereunto belonging, altho' fuch Houfe or Out-Houfe be not actually broken by fuch Offender, and altho' the Owner of fuch Goods, or any other Perfon or Perfons be not in fuch Houfe or Out-Houfe, Or fhall affift or aid any Perfon or Perfons to commit any fuch Offence, being thereof convicted or attained by Verdict or Confefion, or being indicted thereof, fhall ftand mute or shall not diréctly answer in the Indictment, or fhall Peremptorily challenge the Number of 20 returned to be of the Jury, fhall be absolutely debarred of and from the Benefit of the Clergy.

Provided that nothing in this All fhall extend to Apprentices under the Age of 15 Years, who fhall rob their Masters as afofai'd.

See (E) pl. 1.

(D) What paffes by Name of a Houfe.

1. A Grant was made Per nomen Meflaugium five Tenementi; per Dyer Ch. J. neither the Garden nor Land do pafs by this Grant; For this Word (Meflaugium,) nothing paffes but the Houfe and the Circuit of the Houfe; a Garden is a Thing distinct; For in a Precipe quod reddat, the the Writ fhall say De uno Meflaugio & uno Gar.lino, which proves them to be severall. Quod alii Jutitiiarum concefleurunt, and by this Word Tene- mumentum, as 'tis here put, no Land paffes, because this is but the Name of the Houfe; For the Deed is five Tenementum, but if it was Et Tenem mentum, it would be otherwife. Brown J. was of a contrary Opinion, but Welton J. faid, that this paffes by the Name of the Meflaugio with an Av erment that they have been occupied together. Mo. 24. pl. 82. Patch. 3 El. Anon.—Dal. 26. pl. 5.

(E) What
(E) What is Parcel of it.

1. Executor's can't take a Furnace set up by the Tenant, nor Board is fixed to the House as Ceilings, or Tiefours of Board fixed to the House, or any Thing fixed to the Land with Morter or Stone, or Tables dormant which are set into the Ground. Kclw. 88. pl. 3. Hill. 22 H.

2. A House will pass in a Lease or Feoffment by Name of all his Lands in D. because the Words of a Grant are to be taken most strongly against a Grantor; but 'tis otherwise in a Will. 2 And. 123. Patch. 41 Eliz. Heydon's Case.

but that Lands will not pass by the Word House. Mo. 359. Ewer v. Heydon.

3. Hand-mill, Brewing-lead (suppose a Cooler) and Wofing-fatt were objected to be Things always fixed to the House, and to go to the Heir, and not to the Executor, as 29 H. 7. 3. Sed non Allocatur, because the Executor having declared that he was pollefs'd of them, as De bonis suis propriis, it shall be intended that they were severed from the freehold and fo lying by, and especially nothing appearing to the contrary by the Defendant's Plea. Cro. J. 129. Mich. 4 Jac. B. R. in the Case of Wood v. Smith.

4. The *Cartelage is Parcel of the House, and doth pass with the same; and the Farmer or Tenant can't take away the Porseament from the Cartelage; because 'tis Parcel of the same. Per Coke Ch. J. 2 Bull. 113. Trin. 11 Jac. B. R. in Cafe of St John v. Pyott.

* S. P. And shall pass without laying any claiming cum Per- tinentitis, as a Stable or Barn.

Here, but they doubted of a Garden being a Place of Pleasure. But the Garden being included with the House and Cartelage by a Brickwall, adjudged it passed. Cro. E. 89. Hill. 30 Eliz. B. R. Garden v. Tuck.

5. Shelves are Parcel of the House not to be taken away; per Coke Ch. J. 2 Bull. 113. Trin. 11 Jac. B. R. in Cafe of St John v. Pyott.

And shall be intended to be fixed, and Judgment affirmed in B. R. Cro. J. 530. Pyott v. St John.

6. A Miller takes a Mill-sow out of the Mill to pick it, that it may grind the better, tho' it be actually sever'd from the Mill, yet it remains Parcel of the Mill, as it if had been lying on the other Stone, and by Denmile or Conveyance of the Mill shall pass with it. 11 Rep. 50. b. Mich. 12 Jac. in Lyford's Case.——Cites 14. H. 8. 25. b. Withow's Cafe.

—Br. Ditrefes. 23.

7. Doors, Windows, Arrows and Keys, tho' they are distinct Things, yet shall pass with the House. 11 Rep. 59. b. in Liliard's Case.

8. The Eggot Stock is Part of a Man's House, and therefore_Asion lies for setting the Stack on Fire, by which Damages ensue. per Holt Ch. J. Comb. 459. Mich. 9 W. 3. B. R. in Case of Turbervil v. Stamp.

9. Tho' Printers and Glaziers generally speaking are Part of the personal Estate, yet if it put up instead of Wainfcott, or where else Wainfcott would have been put up, they shall go to the Heir; the House ought not to come to the Heir main'd and diffigur'd; Per Wright K. Trin. 1705. 2 Vern. 508. Cave v. Cave.

10. Wainfcott put up with Scraves shall remain with the Freehold; per Wright K. 2 Vern. 508. Cave v. Cave.——cites 4 Rep. 64. a. Herbert's Cafe.


(F) Where
(F) Where there are several Owners of several Parts.

6 Mod. 312. 1. If a Man has the Upper-Rooms in a House, and another has the Foundation and Lower-Rooms, and the Upper-Rooms are out of Repair, the Owner of the Lower-Rooms shall have an Action against him that has the Upper-Rooms; and so it shall be vice versa for not Repairing of the Foundation. Kelw. 98. b. pl. 4. Patch. 23 H. 7.

2. A. has the Upper-Chamber in Fee, and B. the Lower Part of the House in Fee. A. pull'd down his.—Per the Justices he may build it up again, if he does it within convenient Time. Twas said, it had been a Question, if a Man might have a Freehold in an Upper-Chamber? Godb. 44. Mich. 28 & 29 Eliz. C. B. Marsh v. Palford.

3. The Plaintiff shews by his Bill that his House and the Defendant's are joining together, and supported by one main Wall, standing partly upon the Freehold of either of the said Parties, and the Plaintiff having also an Entry, Garret and other necessary Rooms standing upon the Kitchin of the Defendant; he, the Defendant, went about to pull down the said Wall, and thereby to overthrow the said Garret; the Defendant made Title to some of the Upper-Rooms, and hath pulled down Part of the Walls; an Injunction is awarded to stay the Defendant, to pull down any more of the Wall, or any Part of the said House, whereby the said Upper-Rooms may be overthrown, or impaired until the Matter be heard. Cary's Rep. 128, 129. cites 22 Eliz. Bull. v. Field.

(G) Division of Houses.

1. One House, originally entire and undivinit, may become several and distinct, by dividing it into distinct Partitions, and allotting them distinct Avenues, so as the several Inhabitants have no Communication one with another. And in that Case, if the Owner lives in one of the separate Apartments himself, and an Inhabitant of another separate Apartment goes away, that Tenement which he occupied is not now an empty Tenement, but the Possession of it devolves upon the Owner, and that with the Tenement in his Possession before, make one entire Tenement now, for which he is rateable to the Parish; But if there be two several Tenements originally, and they become inhabited by several Families, who make but one Avenue for both, and use it promiscuously, yet in respect of the Original Severality, they continue severally ratable; per Holt Ch J. 6 Mod. 214. Trin. 3 Anna. E. R. Tracy v. Talbott.

(H) Disputes
House of Correction.

H) Disputes between Neighbours. Where Houses are contiguous.


2. Case for stopping a Gutter, thro' which Water descended to, &c. The Declaration was, that he was possessor of a House and Yard, and that he and all, &c. Counsel excepted to it, because he lays himself but in Possession of &c. and alleges not a Setlin in Fee (as he ought to do) in the Person in whom he prescribes; But he granted that it would have been good if he had laid a Possession of the Gutter, but this he does not neither, so that it comes within neither of the Rules. Judgment was said 'till moved of the other Side. 2 Show. 81. Mich. 31 Car. 2. B. R. Pepyn v. Butlin. 6 Med. 314. S. C. Mich. 3 Ann. B. R. S. C.

3. If A. has 2 Houses, and the House of Office of the one is contiguous to the Cellar of the other, but defended by a Wall, and he sells this House with the House of Office, the Vender must repair the Wall; so if he keeps this and sells the other, he himself must repair the Wall of the House of Office; For he whose Durt it is, must keep it, that it may not trespass; per Holt Ch. J. 1 Salk. 361. Tenant v. Goldwin.

4. If the Plaintiff make a new Cellar under Defendant's old Privy, or in a vacant Place of Ground which lay next the old Privy before; in such Case, the Plaintiff must defend himself; per Holt Ch. J. 1 Salk. 361. in Case of Tenant v. Goldwin.

5. If A. has a House and Cellar contiguous to it, and one Wall serves for both, and he sells the Cellar. Who shall repair the Wall? per Holt Ch. J. 6 Mod. 313. in Case of Tenant v. Goldwin.

6. If the House of one is likely to fall to the Prejudice of another Man's House, a Writ De Dono reparando will lie; and it is no Matter, whether it be an ancient House, or a new one: But if the one was an old Ruinous House, and a new House be built near, it will not lie; because the Word Debtor in the Writ would exclude him, and the Word Solicet in the Writ may be left out. 6 Mod. 312. Mich. 3 Ann. B. R. in Case of Tenant v. Goldwin.

Annoyance to another Man's; per Holt Ch. J. Psich. 1702. 11 Mod S. Anon.

House of Correction.

(A) Erected How, and for what Purposes.

1. 39 Eliz. E nacted that the Justices of Peace of any County, &c. as- See: Jac. cap. 4. * See: Jac. cap. 4. Inf. stimated at any Quarter-Seleions of the Peace, or the Major Part of them, may make Order for the Erecting of one or more Houses of Correction, and may make Orders for the doing thereof, and for providing a Stack and Things necessary, and for Punishment of Offenders, as they shall think fit, from Time to Time.

cap. 4. in the first Branch, explained to be wandering or idle Persons, and by many other Penalties of that Act to be idle or disorderly Persons, and especially by the Branch, whereby the Authority of the

N n n
House of Correction.

Justices to commit to the House of Correction is warranted, all idle or disorderly Persons may be committed by them to the House of Correction and Workhouse. And it was resolved by all the Judges of England, for Instruction of the Justices of Peace for the due Execution of this Act, that 'idle-bred Persons, that are wanderers abroad out of the Parish, refusing to work at such Wages as are taxed or commonly given in those Parts, are, notwithstanding, not to be sent to the Place of their birth or last Dwelling by the Space of a Year, but to the House of Correction, upon Confession had of both the Statutes of the Poor and Rogues. But if they have any lawful Means to live by, then they are not to be sent to the House of Correction, tho' they are able-bodied, and refuse to work. 2 Inf. 750.

But by the Statute of 7 Jac. enacted long after the Revolution of the Judges, that the have lawful Means to live by, yet if they are idle or disorderly Persons, the Justices of Peace have power to commit them; and this is a general Power without excepting any Person. And their Maimies may be more safely upon the Statute of 7 Jac. Quia Otiis non-inordinata Persone, or Quia Otiis Persone, or Quia inordinate Persone, according to the Words of this Act, (which in S. 3. are in the Disjunctive) than upon the 39 Eliz. 2 Inf. 750.

See Hopsi. (A) and the Notes there.

* Many of the former Laws made for Punishment of Rogues, Vagabonds, and Sturdy Beggars, were repealed by 1 E. 6. 3, and all the Rest were 59 Eliz. 5.

2 Inf. 728. Upon a Question, whether Justices of Peace could cause a House of Correction to be erected in a County which had one already, it was objected, that this Power of the Justices was by the 39 Eliz. cap. 4. which Statute is expired. But per Holt Ch. I. The 39 Eliz. is continued by 3 Car. 1. and all Acts continued by 7 Car. 1. are likewise continued till it be otherwise ordained, and this stands upon the same Foot, which is no otherwise continued. 1 Salk. 362. Patch. 1 Ann. b. R. The Cafe of the Hundred of Black Heath. And Justices of Peace may by 39 Eliz. 4. increase the Number of Work-Houses if necessary, but it must be at the Charge of the whole County; because the House of Correction must be for the whole County, and cannot be erected for a particular Precinct, unless in Boroughs and Corporations; and Holt Ch. I. held, that this could not be done by any Authority at Common Law, because it was no Charge at Common Law. Where the Common Law creates a Charge upon any Precinct, as to repair Bridges, Ways, Churches, &c. the Common Law gives them the Method of answering that Charge; otherwise where no Charge is by Law laid upon them, as in this Case; therefore a Majority cannot bind the Rest, but all must agree; which Powell and Gould Justices agreed. 1 Salk. 762. 763. Patch. 1 Ann. b. R. the Hundred of Black Heath's Cafe. 39 Eliz. used only the Word (Erected) but that included the two other Words of this Act (Built and Provided.) For if they caused a House already built, to be provided or purchased, and converted the same to a House of Correction, this is an Erection, within the Statute of 39 Eliz. Because as to the House of Correction it was newly erected. 2 Inf. 750. So that this Act enables the Doing it without Licence or Offence of any former Law; and there may be incorporated by the Statute 39 Eliz. cap. 4. and it is not only a House of Correction, but of Life Keeping and setting on Work.

2 Inf. 750.

(B) Supported. How.

1. 39 Eliz. Directed that all Fines and Forfeitures by that Act (except such as are thereby otherwise disposed of) shall be employed for Reparation of the Houses of Correction, and Stock and Store there of, or for the Use of the Poor of the Parish, as the Justices of Peace shall think fit.

The Lord Chancellor or Lord Keeper, may from Time to Time grant Commissions, to enquire by Oath of Persons, as by Witnesses and Examination, of Monies collected for Maintenance of Houses of Correction, &c. which Money shall
House of Correction.

shall be collected or employed for Erecting or Maintenance thereof. That Act is continued by 3 Car. 1. 3 & c. 7. Ca. 1. c. 4.

2. 7 Jac. cap. 4. S. 6. The Justices at their Sessions may appoint a yearly Allowance to the Matter of the House of Correction, to be paid Quarterly beforehand by the Treasurer appointed by 43 Eliz. 2. the Master giving Security for Continuance and Performance of the Service, which if the Treasurer shall not do, the Master may levy it, as the Treasurer might have done.

(C) Governor, appointed How. His Power and Duty.

1. 7 Jac. Enables the Justices of Peace in their Sessions to elect cap. 4. S. 4. and appoint one or more Persons to be Governor or Master of the House of Correction, who shall have Power to set Rogues, Vagabonds, and idle and disorderly Persons to Work and Labour, being able; and to punish them, by putting Letters or Givers on them, and by moderate Whipping of them; which Persons shall not be chargeable to the County, but shall have such Allowance as they receive by their Labour.

3. 9. If the Governor shall not every Quarter-Sessions, yield a true and just Account to the Justices of all Persons committed to their Care; or if the Persons committed be troublesome to the Country, by going abroad, or shall escape away, before they be thoroughly delivered, the Justices may in Sessions, set down such Fines and Penalties on the Matter, as they shall think fit, which shall be paid to the Treasurer.

2. 'Twas moved to qualify an Order of Sessions for removing the Keeper of the House of Correction, it being to discharge him for divers and sundry Crimes, not specifying what Crimes in particular; and 'twas said, that Place is not at the Will of the Justices, neither by the Common Law, nor by the Statute; per Car. the Justices have Power to turn him out for Misbehaviour, but not arbitrarily; they ought to have specified the Cause in their Order; and 'twas therefore qual'd. 11 Mod. 165. Hill. 1707: B. R. the Q. v. Apiley.

(D) What * Offenders may be sent thither.

1. 7 Jac. E Nables that the Justices of Peace, shall commit to the House of Correction every levish Woman, who shall have any Ballard, which may be chargeable to the Parish, there to be punished, and set on Work for one Year; and for such second Offence, then to commit as aforesaid, and there to remain 'till the put in good Surties for her Good Behaviour not to offend so again.

but by that of the 15 Eliz. 4. 2 Inf. 132. * A had a Ballard, but she was not questioned for it, no Proceeding being had against her upon the Statute of 18 E. 5. She had afterwards a second Ballard. Jones J. at Shrewsbury Affies, 10 Mar. 7 Car. was of Opinion, that she should not be punished upon this Statute of 7 Jac. 4. as for her second Offence, unless she had been before questioned for her first, but that this second Offence shall now be deem'd her first Offence, and to be punish'd accordingly.

2 Bills 341, 349.

S. 8. Persons able to Labour, running away and leaving their Children to the Charge of the Parish, shall be deem'd and punish'd as incorrigible Rogues. And such as threaten to do so, the same being proved by two Witnesses upon Oath, before two Justices of P. of the same Division, shall be by the same Justices sent to the House of Correction to be punish'd as Sturdy Rogues, (unless they put in Surties to discharge the Parish,) and not to be delivered, but at the Meeting (by the said Act directed) or at the Quarter-Sessions.

Huntred.
Hundred.

(A) Hundred. [What is.]

1. A hundred and a Wapentake are all one. Polycron. 49. b.

2. Selden in his Notes upon Forrescuse, cap. 24. fol. 25. 17 E. 2. Attaint. 69. In an Attaint a Challenge was taken, because no Knight was returned, and the Sheriff there laid, that there are not any Knights in the Wapentake, where the Land lies. 2 E. 1. Rot. Fluminum Hembrana. 2. A Wapentake in the Beginning is called a hundred in the End.

3. Hundred is to have Jurisdiction or Power to administer Justice in 100 Vills or of 100 Men or of 100 Parishes. Br. Court Baron. pl. 8. cites 8 H. 7. 3. per Rede.

4. Every Ward in London is as an Hundred in a County, and every Parish in London as a Vill in an Hundred. 9 Rep. 66. b.

5. Hundreds were either Parcel of the Counties, and there the Sheriff did constitute Bailiffs, (viz. tho' Hundreds which were anciently Parcel of the Farm of the Sheriffs, that the Statute 2 E. 3. cap. 12. speaks of) or else they were such as were granted out, which the Lord of the Hundred sometimes held at Farm, and sometimes in Fee called Hundreds in Fee, Liberties of Hundreds, Franchises of Hundreds. per Hale Ch. B. Vent. 45. Hill 22 & 23 Car. 2. in Cale of Atkins v Clare.

6. In King Alfred's Time, the Kingdom was in Grofs, and then divided into Counties and Hundreds, and all Persons then came within one Hundred or other; and then the King's Relations had the Government of them, and therefore they were called Confangaine, and so are the Earls, Lord-Lieutenants, &c. at this Day; and then when the Office became troublesome, there were ordained Vicecomites, which Name remains to this Day, and the others continue to be called Confangaine, but have no Power in the County, having only the honorary Name of Earls or Countes of such or such a County, &c. And for the better Government of these Counties the Vicecomites had two Courts; but out of those the King granted petty Lects and Courts Baron; but the Turn of the Sheriff had yet a superintendant Power, they being derived out of the Sheriff's Turn, as in Byer 13. And then afterwards the King granted away some Hundreds in Fee-Simple, and some Franchises, and the last excluded the King utterly, but the Hundreds granted in Fee were not wholly exempt. — On this arose some Confusion, and the Parliament hereon took Notice, that the Execution of Justice was by this much interrupted, and therefore came the Statute of 9 Edw. 2. That Sheriffs should be sufficient Persons, and have Lands in the County, and so be able to answer both the King and Country, and that Bailiffs and Farmers of Hundreds should be sufficient Men. And at this Time Hundreds were grantable for Years.

—Then came the Statute of 2 Ed. 3. cap. 4 & 5. That Sheriffs should continue but for one Year. But this took not away the whole Inconvenience; for the Crown still granted away Bailiwicks and Hundreds, for Lives, at Rents on such excessive dear Rates, that made them endeavour to make up their Money by unlawful Means; and therefore came the Statute of 2 Ed. 3. 12. and 14 Ed. 3. 9. — By the first it was enacted, That all Hundreds and Wapentakes granted by the King should
Hundred.

A Hundred was called a Wapentake; because the Inhabitants of the Towns of the Hundred delivered a Weapon at the Coming in of the Lord. Polykurticon. 49. b. Selben in his Notes upon Fortescue, cap. 24, fol. 25.

2. A Leet may be Parcel of a Hundred by Prescription. 8 H. 7. 1. See (D)

(B) Whom Person may have it of common Right.

1. Of Common Right, every Hundred belongs to the King in Right of the Crown. 11 H. 4. 89. b.

(C) Who may have it by other Means.

1. A Common Person may have it by Grant immediately from the King. 11 H. 4. 89. b.

2. A Common Person may have it by Prescription in him and his Ancestors. 11 H. 4. 89. b.

3. A Common Person may have it by Grant of J., who had it by Prescription in him and his Ancestors. 11 H. 4. 89. b. Selcet, the actual Possession, and Anerce, and do other such Things.

4. A Common Person may have it by Difference, and Anerce, and do other Things as Lord. 11 H. 4. 89. b. 13 H. 4. 9. b.

5. 2 C. 1. Rot. Finitum Hembrana. 2. The Wapentake of Worksworth and Ellenbury granted to Farm 19. e.


7. 9 C. 1. Finitum Hembrana 11. The Bedelry of the Hundred of Laskale led to Farne Quam diu bene, &c. Fideliter se ha-buerit.

O o o o (D) How
(D) How. [And what is a Parcel.]

A Man may have a Hundred as appurtenant to a Manor. 14 Do. 4. 89. b.

An Hundred 1 may be Parcel of a Manor. Br. Court Baron, pl. 23, cites it as admitted 27 H. 6. 2.—It may as well be Parcel of a Castle, as it may be of a Manor. 4 Rep. 88. b. cites 8 H. 7. 1.

A Hundred can't be demaned by Metes and Bounds; For 'tis but a Jurisdiction, and is intire. Arg. Sti. 101. Batsh. 24 Car. in Case of Thyn v. Thyn.

(E) Exempt from the Sheriff in what Cases; and Pleadings.

1. 2 E. 3. 12. Enacts that Hundreds and Wapentakes shall be again adjoined to the Counties, and shall never hereafter be given or severed therefrom.

2. 14 E. 3. 9. Enacts that All Wapentakes and Hundreds which be severed from the Counties, shall be rejoined to them again. The Sheriff's also shall hold the same in their own Hands, and put in such Bailiffs and Hundreds (having Lands in the Bailiwicks and Hundreds) for whom they shall answer.

3. If the King makes a Man Bailiff of a Sheriff of a Hundred, it is void; For otherwise the Sheriff should have a Bailiff against his Will, and yet he would be subject to answer Escapes suffered by the Bailiff. And it seems that all Grants made of late Times of such Liberties, are void by the 14 E. 3. 9. Per Coke. Hill. 12 Jac. B. R. Roll. R. 119. in Case of Vill of Darby v. Foxley.

4. In an Action on the Case against the Under-Sheriff of G. the Jury found a Special Verdict to this Effect; viz. That King E. 3. Anno 17. of his Reign, granted to the Abbot, &c. of C. certain Hundreds, &c. with Returna Brevium, &c. tanquam pertin' &c. which the Abbot, &c. enjoyed till the Dissolution, when it all came to the Crown, and that 6 E. 6. the same was granted with tot tellit &c. Libertates, &c. Ratione vel Pretexu Hundred' predidit, Vortate vel Color aliqvis Dom., Chart. Proripositionis, &c. &c. under whom the Plaintiff claimed, and that the Defendant entered into the said Hundreds where &c. and executed several Writs, &c. Two of the Judges were of Opinion that this Grant was void, because by 2 E. 3. 12. it was ordained, that from thenceforth Hundreds should not be severed from the Counties, and by 14 E. 3. 9. thence which were separated from the Counties should be rejoined to the Counties. But Hale Ch. B. was of the contrary Opinion, and held, that the Grant to the Abbot &c. of Returna Brevium, by Reason of the Words (tanquam pertin') was good to annex it to the Hundred; that this coming by Dissolution to the King, remained in the Crown unextinguished, and was not re-annexed to the County, but preserved by the Stat of 32 H. 8. in the same State it was before; that the Grant to K. of tot. tellit, &c. Ratione vel pretexu Hundred' &c. was good; for the Ratione vel Pretexu Hundred, &c. governs all, and is more large than tot, &c. that this Liberty was effectually revived, the Grant leaping over to the Sein which the Abbot had, and to became again conjoined, and that there was no need of special Words to revive it, the tot, &c. being sufficient; though there had been an All...
of Redemption, as in Pagar and Darcey's Case; or if the Thing was poorly Personed, as in the Abbot of Waltham's Case, such General Words would not revive and pats the same, because of the Ratio privata, which intervenes; that the Verdict was deficient in not finding, as it ought, the most effectual Statute in Aid of this Case, which is 1 E. 6. 8. which enacts, That all Letters Patents, &c. of any Honours, &c. Liberties, &c. should be good, &c. notwithstanding Misnaming, Misreceiving or Non-recital of, &c. Lastly, That the Stat. 2 E. 3. 12 and 14 E. 3. 9. extend only to those Hundreds that were Parcel of the Sheriff's Farm, and not to those which were divided; nor are they to be understood of Hundreds, where a Return Brevis is granted; For in that Case, the Sheriff is not at any Inconvenience; For the Grantee must do all, and be liable to Escapes, &c. And therefore Judgment was given for the Plaintiff Hill.

22 & 23 Car. 2. in Scacc. 1 Vent 399. Sir Robert Atkins v. Clare.

5. Grant of a Hundred, and the Offices and Profits thereto belonging, with the Execution of all Writs within the same for 21 Years, by Letters Patents does not exclude the Sheriff from executing Writs, but the Grant is void. 2 Show. 98. Pauch. 32 Car. 2. B. R. Cade v. Ireland.

6. The Question was, whether after the Statute of 2 E. 3. 12. 14 E. 3. 9. the King might have Hundreds for Life or Years, or fever them from the Counties, which were not out of the Crown in Fee at the Time of those Statutes? And the Court after great Deliberation were of Opinion, that by those Acts, Hundreds are annexed to the Counties, and that Letters Patents of them afterwards have been, and are void; wheretoe they gave Judgment for the Plaintiff against Ireland the Patente, according to the Opinion of Coke. 1 Roll. R. 119. 4 Init. 257. and according to a Resolution of the Exchequer, 19 June 1675, in the Case of the same Ireland and Buckbury. 41 Skin. Pauch. 34 Car. 2. B. R. Cole v. Ireland.

Raym. 56x S. C. says: The Statute of 2 E. 3. 12. extends only to such Hundreds as were let to Farm, by the then King, and ordered 14 E. 3. 9. to be relative to the other. Up on Con traction of both Acts, all Hundreds which were not granted in Fee by the Crown before, were joined to the Office of the Sheriff, and not such Hundreds only as were granted by King E 3. Pauch 54 Car. 24 B. R. 2 Jo. 193. Cole v. Ireland.

7. Quo Warranto, to shew Caufe why he executed the Office of a Bailiff of the Hundred of B. The Defendant pleaded, That the Hundred, the Office of Bailiff, and the Hundred Court, were ancient; and that the Return Writs was an ancient Liberty, and Franchise; that K. Ch. 1. was faied of the said Franchise in lone Coronæ in Fee, and granted the same to one North, Habeat the said Hundred to him and his Heirs, which by several meane Assignments came to the Defendant, and so justified to have Return Brevis. Upon Demurrer, it was argued that this Claim was not good; For it is a Question, whether the Hundred Court can now be separated from the County Court; it hath been derivative from it formerly, when Sheriffs let their Hundreds to farm, and those Farmers put in Bailiffs er rant to the great Oppression of the People, which was the Occasion of the Statute of E. 3. whereby the Hundreds were united to the Counties, except such as were granted in Fee by that King, or his Ancestors, which was usually done to Abbiot, whose Polciions by the Diffoluiion of Abbiots were afterwards merged in the Crown, and cannot be re-granted since the Statute; so neither has the Defendant prescribed to have this Office; For the setting forth, that 'tis an ancient Office is not a Presumption, but only a bare Avernum of its Antiquity, but if he had prescribed be could not have done it by a Quo Elate to have Return Brevis, because they are Matter of Record, and fo Judgment was given against the Defendant. Pauch. 4 Jac. 2. B. R. 3 Mod. 199. the King v. Kingmiiil.

8. A Hundred, when 'tis granted out to a Subject exempt from the County with a Hundred Court, is then a Liberty, else it is not, but the Sheriff is to execute Writs there; if he direct a Warrant 'tis his Execution, unless he faith Cui Executio brevis pertinet. Per Holt Ch. J. Cumb. 493 Mich. 9 W. 3. B. R. Hicks v. Woodison.

Hunting.
See Game

(A) Justification of Trespass.

A man may follow his hawk or his hound in pursuit of the game into another man's ground, being found in his own. cites 30 E. 3. 10.

And he kills the pheasant in another man's ground; he may follow his hawk, and take the pheasant, and is not to be punished, but only for his entry into the other man's ground; per Doderidge. 2 Bulst. 61. cites 12 H. 8. 10.

* Br. Tresps, pl. 110. cites 56 E. 3. 10. Contra, per Knivet, where the pheasant flies into another's warren, and he kills him there, his entry and carrying him away is tortious. You can't justify your entry when your hawk has killed a pheasant in another man's land, and so for hares and coys in the freehold of another. But tho' the law permits and allows such entries as aforesaid, yet the law requires that such things shall be done in an ordinary and usual manner. Brownl. 224. Patch. 11 Jac. in cause of Geuff v. Minne.

Brownl. 224. 2. A man can't justify the entry into another's land to find venison, and if he find a badger in his own land, and he earths in another man's, he cannot justify the digging out the badger, because he may get him out by other means. 2 Bulst. 62. Patch. 11 Jac. B. R. Gedge v. Minns.

The common law warrants the hunting such venereal beasts in another man's land, but it must be in an ordinary and usual manner. (viz. by hunting) Cro. J. 321. S. C.

4. A man started a fox in his own land, and his hounds pursuied him into another man's land; and it was held, that he may hunt and pursue him into any man's land, because he is a movable creature to the commonwealth; and to be adjudged in the time of Popham ch. J. Poph. 163. Patch. 2 Car. B. R. in cause of Millen v. Fandry.

5. A deer comes into my land, I drive her out with my dogs, and the dogs follow the deer into the park and keep her there, and the owner of the parks kills the dogs, and justifiable. 3 Lev. 28. Mich. 33 Car. 2. C. B. Barington v. Turner.

6. By Stat. 5 W. & M. 23. If an inferior tradesman do hunt, &c. the owner of the soil may bring trespass, and shall recover his damages and full costs; tho' by a former statute, he should have no more costs than damages in that cause. Per Rookby. J. Cumb. 421. Hill. 9 W. 3. B. R. Bennet v. Talbois.

On this statute: 'tis sufficient to lay in the declaration, that the plaintiff hunted, without concluding, contra 1 Forman statues; for that should come in evidence, per Holt ch. J. Carth. 382. Trin. 8 W. 7. B. R. Bennet v. Talbois; as Talbot—See Game (A)—And it need not be laid, that defendant killed any game. Carth. 424. Shadow v. Painter.


(B) Property
(B) Property gain'd by Hunting.

1. If a Forester follow a Buck which is chased out of the Park or Forest, tho' he that hunts him kills him in his own Ground, yet the Forester or Keeper may enter into his Ground and retake the Deer for the Property and Possession which he hath in it by the Pursuit. Arg. Godb. 123. cites 12 H. 8.

2. If A. starts a Hare in my Closets, and kills her there, 'tis my Hare; but if A. hunts her into B's Closets, and kills her there, then 'tis the Hunter's. 2 Salk. 556. Mich. 9 W. 3. B. R. in Cafe of Sutton v. Moody.

H. 8. to—See Godb. 123; Arg.—Per Powell J. 11 Mod. 75.—But if A. starts a Hare in his own Closets, and hunts her into B's, and kills her there, yet the original Property is still in A. and the Courting is a Continuance of the Property; per Powell J. 11 Mod. 75.

(A) Hypothecation,

1. By the Common Law, by which Properties are to be tried, the Master of the Ship could not impawn the Ship; For (he has) no Property either General or Special; nor is such Power given to him by the constituting him Master; but the Defendant's Counsel said, that by the implication an Civil Law, the Master may in Cafe of Necessity, and when he has no other Means to provide Necessaries for her. And Hobart J. held clearly, that the Admiral Law is, that if the Ship be in Danger at Sea, or wants Necessaries, so as the Voyage may be defeated, the Master, in such Cafe of Necessity, may impawn for Money &c. to relieve such Extremities; by impawning the Money so; For he is trusted with the Ship and Voyage, and so may reasonably be thought to have that Power implicitly given him, rather than fee the whole loot. Hob. 11, 12. Bridgman's Cafe.

Jutin v. Ballam—Note 106, that the Master may hypothecate either Ship or Goods; For he is intrusted with both, and represents the Traders as well as the Owners of the Ship. Ibid.
* Mollov. 229. S. P.—† Mollov 235. says, that in this Cafe, the Common Law has thought the Laws of Oleron reasonable.—† So tho' the Money be not so impawn'd. See Inf. No. 95. Scarborough v. Lyrius.

2. A. being in a Ship on the Sea, B. who was in it, and was reputed an Lat. 242. Agent and Factor, borrows 100 l. of A. upon Bottomage (that is when the Money is paid on the Keel of the Ship, and the Ship oblig'd to the Payment of it, and if it be not paid at the Time, &c. that he that lends the Money shall have the Ship) and 'twas allow'd to be a good and necessary Custum by all; and 'twas agreed, that if the Master, Factor, Purser, or he that is reputed Owner of the Ship, borrows Money in such a Manner for the Necessaries of a Ship, that binds the Owner of the Ship, although the Money be not so employed, and the Owner has his Remedy against him that he so put in Truit. And 'tis not a good Allegation to have a Prohibition, to say that the Property was not in him that took such Bottomage. Nov. 95. Scarborough v. Lyrius.

PPP

3. He
Hypothecation.

* The Custos and Advice of his Mariners is necessary when he hypothecates the Vessel or Furniture. But when the Ship is well engaged, the is for ever obliged, and the Owners are concluded thereby till Redemption; tho' such Obligation must be in Foreign Parts, where the Calumny attending the Ship is universal; and the Master cannot, in every Case of Necessity, impawn the Vessel or Furniture. Treat. of Trade and Commerce. 166. cites Leg. Ocron cap. 12. Molloy 202.—And into whole Hands forever the Ship may come, it will still be liable; and the same of Goods; per Powell J. 6 Mod. 13: in Case of Trantor v. Shipin.

Hob. 12 in Bridgman's Cae. * He may in some Cases sell the Ship, as in Case of Famiuers, Est. Junc. 166. s. 16.—Upon a Question referred to Lt-Ch. B Hale, whether the Master of a Ship of a Foreign Kingdom may, without the Owners, in Case of ins. Daler fell the Ship and Tackling but'd and torn, and no Probability of paying any Part, as well in Respect of the Tempest at of the Barbarity of the Inhabitants, who took away whatever was cast upon the Ships; and Lt Hale's Opinion was, that in this Case, the Master could not without the Owners sell the Ship. Sid. 475. Patch, 22 Car. 2. Tremenhere v. Trelfillian.


Put if the Mariners no Way contri- But if the Vessel happens to be wrecked or lost away, and the Mariners by their great Pains and Care recover some of the Rains and Lading, the Master in this Case may pledge the same, and dispose of the Product thereof amongst his disaffected Mariners, in order to the carrying them to their own Country. But if there be any considerable Part of the Lading preferred, he ought not to dissimil the Mariners 'til Advice from the Freightors; Ibd. 236.

1. Treat. of Trade, &c. 107. cites Leg. Ocron cap. 5.

7. If a Vessel be freighted at the Merchant's own Charge, and put to Sea, and the enters into a Harbour, and is there Wind-bound, and the Master delay'd in his Voyage till he wants Necessaries, he is not only to write Home, but may pawn the Ship or Lading at his Pleasure, rather than lose the whole Voyage; And if he cannot pawn the Lading, he may sell so much as is necessary. Ibd.

3. A Ship was taken by an Enemy, and, there being no Hopes of re-taking, was rafion'd by the Master; and the Question was, whether this was good or not, to charge the Owners, &c. 2. The Court said, it seemed reasonable, that the Master, compounding for Goods under their Circumstances, should be satisfied by the Owners, &c. and it is so in the Case of Pirates, a Foe, in Case of Lawful Enemies. But the Merits of the Cause not being before them, this Point was not adjudged. 6 Mod. 13. Mich. 2 Ann B. R. Trantor v. Watton.

And where the Libel in the Admiralty was a gainst the Ship and the Party, the Court said they would send a Prohibition as to the Party, unless Quatenus it is necessary to make his Party towards Condemnation of the Ship. And so it was done. 6 Mod. 79. S. C. by Name of Johnson v. Sheppen.
Identitate Nominis.

16. If Money be laid out in repairing a Ship in the River Thames, or in fitting new Rigging or Apparel of her; this is no Charge on the Ship, but Reftort must be for Payment to the Owner; and in Case of a Suit in the Admiralty to condemn the Ship for Non-Payment, a Prohibition will be granted. And it was so decreed by the Master of the Rolls, and seem'd admitted by the Counsel on both Sides. 2 Wms's Rep. 367. Trin. 7126. Watkinson v. Bernardifton.

Ship, or to new rig or repair her, this for Necessity and Improvement of Trade, is a Lien and in such Case the Master by the Maritime Law is allowed to hypothecate the Ship.

Identitate Nominis.

(A) Lies. In what Cases, How and when.

1. 37. E. 3. 2. Enafts that If the Lands, Goods or Chattels of any Person Outlaw'd for Want of a good Declaration of his Surname shall happen to be seifed by any of the King's Officers, he may have a Writ of Identitate Nominis to discharge them, as hath been used in Times past: And in such Case, the Officer shall take Security without Fee of the Party to answer to the King the Value of the Thing so seifed, if he cannot discharge them. And if the Officer be attainted of doing otherwise, he shall pay double Damages to the Party grieved, and be also grievously punished to the King.

2. An Exigent iued against J. N. upon an Indictment of Felony, and one J. N. came and said, that he was of the same Name, and prayed an Addition to be put in the Writ; & non Allocatur; For the Process is upon an Indictment which cannot be changed without the Favor, and if he be grieved, he shall have Identitate Nominis. Br. Idennt. Nom. pl. 2. cites 9 H. 4. 3.

3. 9. H. 6. 4. Enafts that A Writ of Identitate Nominis shall be maintainable by Executors as well as by the Testator himself, if he be living.

4. The Writ de Identitate Nominis lies, where a Man is suid in a personal Action, and upon the Capias or Exigent awarded another Man, who beareth the same Name, is arrested by Force of the Writ, then he who is so arrested shall sue forth this Writ of Identitate Nominis; and this Writ shall be directed sometines to the Escheator, if he or his Goods be arrested by him, or unto the Sheriff, if he be vexed or molested by him. F. N. B. 267. 5.

5. And so if a Man be disstrained by Process out of the Exchequer for to account &c. for another Person, who hath the same Name which he hath, then he shall sue that Writ to the Barons of the Exchequer and to the Treasurer. F. N. B. 268. 6.

6. Note, that it was agreed by the Court, that a Man shall never have an Identitate Nominis where there are two of the same Name of Baptism, but it always lies of Surnames. D. 5. b. pl. 4. Mich. 26 H. 8. Anon.

7. A Bill was exhibited against R. H. Supervisor of the last Will of T. C. and one R. H. was serv'd with Process, who was no Supervisor of the said C's. Will, and alleged that the said R. H. who was the Supervisor, was dead; the Court ordered the Defendant to put in his Allegation upon Oath by way of Answer, and then desire Judgment, whether he shall be compelled
Identitate Nominis.

compelled to Answer the said Bill or not; and therein pray his Costs for his wrongful Vexation, which shall be thereupon allowed to him. Cary's Rep. 87, cites 19 Eliz. Harrison v. Haule.

Crott. J. 625.
8. Execution illud out for Damages recovered against the Bailiff of A. the Name of J. S. of D. and there was J. S. the Father and J. S. the Son, and the Father being dead the Son sued this Writ, and prayed to have a Superfedeas, and Warburton J. demanded of Brownlow if he had any Precedent to award a Superfedeas in such Cafe, who answered No; wherefore he and Hutton J. being only present, said they would advise. Winch. 6.


(B) Necessary. Or where he may be relieved by Plea.

1. It was in a Manner agreed, that where Trepasses is brought against J. S. and another of the same Name comes before Outlawry, and Proceses determined, ready to answer, and the Plaintiff lays, that he is not the fame Perfon; there Proceses shall go against the Defendant with Addition, for safeguard of him who appears; but if he comes after Outlawry, or Proceses determined, there is no other Remedy but an Identitate Nominis. Br. Idemt. Nom. pl. 3. cites 14 H. 4. 27.

2. Note, that where there are three of the Name of J. S. Youmans in D. Capias illebus against one, and the Sheriff arrests another of them, he has no Remedy but by Writ of Identitate Nominis. Br. Idemt. Nom. pl. 6. cites long 5 E. 4. 51.

3. In Writ of detinue against J. C. Son and Heir of J. C. one J. C. is Outlaw'd, who in Truth is the Son of W. C. and is taken by Capias Uttag, he shall lay by Plea upon the Capias, That he is the Son of W. C. and not the Son of J. C. and shall not be put to his Identitate Nominis; per Littleton Arg. and Danby conceipt. Br. Idemt. Nom. pl. 9. cites 10 E. 4. 12.

4. In Debt, the Defendant pleaded Outlawry in the Plaintiff by Name of J. S. of S. Gentleman, the Plaintiff said that there is an J. S. of S. the Elder and an J. S. of the Younger in the fame County, and the Elder was Outlaw'd, and he is the Younger, and demanded Judgment if he shall not be answered, and it was held no Plea contrary to this Matter of Record, and he was put to his Identitate Nominis, because the Plea was but dilatory, otherwise it should have been if he had pleaded it in Bar; note the diversity. Br. Idemt. Nom. pl. 7. cites 21 E. 4. 15.

(C) Where
Where Plaintiff may show the Diversity of Names.

Debt against J. H. of C and one came of the Name, and prayed that the Plaintiff count against him, and the Attorney said that he who appeared was another of the same Name, and was J. H. the Elder, and he who was implored by this Writ was J. H. the Younger, and he who appeared said that he was the Younger, to which the Attorney said that he who was implored was J. H. of South C. and he who appeared was J. H. of North C. and because (South) was not in the Writ therefore it was awarded that the Plaintiff should take nothing by his Writ. Br. Idempt. Nom. pl. 10. cites 39 E. 3. 5.

Debt by J. S. the Defendant pleaded Outlawry against him, Judgment if he shall be answered, the Plaintiff shall not say that he is another Person of the same Name, but shall be put to Identitate Nominis; but he may say that he who is Outlaw'd is J. S. of S. as appears in the Record, and the Plaintiff is J. S of D. and was there dwelling at the Time of the Suit taken, in which the Outlawry is had, and not at S. at the Time of the Suit aforesaid, nor ever alter; but he shall not say that there is no such Vill as S. but is put to his Writ of Error. Br. Idempt. Nom. pl. 5. cites 21 H. 7. 13.

One by the Name of J. S. of Dale was bound in a Recognizance in C. B. and comes another by Proces bearing the same Name, and lays that he was reliant at Sale, and never at Dale abique hoc, that he was Party to the Recognizance; the Court held clearly that he might choose to take his Traverse abique hoc, that he was the same Person that was bound, or abique hoc, that he was Party, &c. Kelw. 89. pl. 22. H. 7.

Memorandum, That the ancient Precedents in H. 4. Time are, that a Man shall not have * Sci. fa. on a Writ of Identitate Nominis, but the Opinion of all the Justices at this Day is, that he ought to have Sci. fa. against the Party, &c. Kelw. 89. pl. 22. H. 7.

Jew.

Called the Statute of the Pillory, directis, among other Things, that the Jury therein mentioned shall inquire if any buy Flage of Jews and then sell it to Christians.

A Jew had his Trial per Medietatem Lingue, viz. Iudaorum, and they were sworn on the five Books of Moses held in their Arms (Braches) and by the Name of the God of Israel who is Merciful. D. 144. pl. 59. Marg. cites 9 E. 1.

Called the Statute of Merchants is directed to extend to all except Jews.
Jews.

S. P. Co Litt. 31, b. 32, and says, the Reatengiven in the Record is thus, Quis vero contra juxta iuris est, quod ipsa detem petat vel habeat de Tenemento quod fuit ex quo in conversione fuit noluit cum eo adherere & cum eo converti.

* This Statute is in E. 1. 1. 1. but says Nothing of Jews. But see sup. p. 3.

Jews are excepted in the Statute of *Alien Burnel, from having any Benefit; per Hutton J. Winch. 84.

2 Show. 367. Arg.

6. The marrying a Jew, either by a Christian Man, or a Christian Woman was Anciently reckoned Felony, and the Party offending to be burnt alive. 3 Inft. 89. and cites Fleta. lib. 1. cap. 35. that such as Contract with Jews or Jeweffes in terris vivi confociantur, &c. Ibid.

7. A Plaintiff had leave given by the Court to alter the Vifne from London to Middlefex, because all the Sittings in London were on a Saturday, and his Witness was a Jew and would not appear that Day. 2 Mod. 271. Mich. 29. Car. 2. C. B. in Cafe of Barker v. Warren.

8. A Jew brought an Alienation and the Defendant pleaded that the Plaintiff is a Jew, and that all Jews are perpetual Enemies Regis & Religionis, Judgment Si Aetio. But per Car. a Jew may recover as well as a Vilein and the Plea is but in Dilability so long as the King shall prohibit them to Trade, and Judgment for the Plaintiff. L. P. R. 4, cites Mich. 36 Car. 2. B. R.

9. A Jew was ordered to swear his Affeure upon the Pentateuch, and that the Plaintiff's Clerk should be present to see him Sworn. Mich. 1694. Vern. R. 263. Anon.

10. The Jews are here by an imply'd Licence, but on a Proclamation of Banishment is like a Determination of Letters of safe Conduitt to an alien Enemy, that was here by Virtue of such Letters before, &c. Arg. 2 Show. 371. in Cafe of the East India Company v. Sands.

11. 1. Ann. Stat. 1. cap. 30. If any Jews Parent, in order to the Compelling his Protestant Child to change his Religion, shall refuse to allow such Child a fitting Maintenance, suitable to the Ability of such Parent, and the Age and Education of such Child; upon complaint, it shall be lawful for the Lord Chancellor to make such Order for the Maintenance of such Protestant Child, as he shall think fit.

12. A Jew's Daughter turned Protestant; the Jews died leaving several Legacies in Charities and his personal Estate to his Executor but Nothing to his Daughter; the Petitioned the Lord C. Parker for a Maintenance upon the Statute of Q. Anne; it was Objected that she was 45 Years old, and the Care of her Education over. 2dly, that she is married, and not now to be called a Child, but to be provided for by her Husband. 3dly, that the Parent is dead, and so cannot be said to have refused, and therefore the Power given by the Act at an END. But Ed C. Parker said that he inclin'd strongly to think this Case to be within the Act for several Reasons there mentioned by him, and that possibly the Charities given by the Will may be under some secret Trust for the Child if she should turn Jew, and therefore directed that the Matter inquire into it. Wma's Rep. 524. Hill. 1718. Vincent v. Fernandez.

13. in Geo. 1. c. 4. Whenever any Jew shall present himself to take the Oath of Abjuration, in presence of this Act the Words (upon the true Faith of a Christian) shall be omitted out of the said Oath, in Administering it to such Persons; and the taking the said Oath by Persons professing the Jewish Religion, without the said Words, in like manner as Jews are admitted to give Evidence in Courts of Justice, shall be deemed a sufficient taking of the Abjuration-Oath.

Imparlance.
Imparlance.

(A) *Imparlance. And what shall be said to be such, and in what Cases; and and at what Time it may be.

1. THE Defendant may impair if the Plaintiff amend his Declaration; or otherwife if he accepts of Coits. For by such Amendment it shall be accounted as a new Declaration; but if the Defendant accepts of Coits for such Amendment, it is intened that he is Satisfied for what he is prejudiced by the Amendment, and therefore it is Reason he should plead to the Declaration so amended and not impair. 2 L. P. R. 34, 35. cites Mich. 22 Car. B. R.

2. If the Plaintiff declares, but proceeds no further for 3 Terms, Defendant may impair. 2 L. P. R. 35. cites Hill. 23 Car.

3. If the Case have proceeded to issue and Defendant amends his Plea, he shall pay the Plaintiff Coits; but the Court will not grant an Imparlance; per Roll, Ch. J. 1655. For after issue joined, and Warning given for a Trial upon that issue, it is too late to impair. 2 L. P. R. 35.

4. The Court would not grant the Defendant an Imparlance, tho' he was sued upon a Bond of 28 Years old, and could not see the Bond; but bid him pray Oyer of it, and plead; For the Antiquity of the Bond is no Cause of Imparlance. 2. L. P. R. 35, 36. Patch. 1656. Johnfon's Cafe.

5. Where the Plaintiff files out a Special Original, the Defendant shall not impair, but must plead as soon as the Rules are out; Because, where the Writ is general, the Cause of Action appears in the Declaration, which the Law allows the Defendant convenient Time to consider of, and advice upon; But when the Defendant is taken upon a Special Capias, there the Declaration is mentioned in the Writ itself; and the Defendant sees what the Cause of Action is, and may take a Copy of it, and prepare his Answer ready against the Term by the Times that the Rules are out. 2 L. P. R. 35.

6. *Imparlance is only to enable the Party the better to inform himself of the Cause or Action, in Order to his Defence. 2 Show. 310. Trin. 35 Car. 2. B. R. Anon. 

* It is, when one is to answer to the Action of another, he defereth some Time to advise what he shall answer; and it is nothing but a Continuance of the Cause, till another Day. 2 L. P. R. 34. G. Hill. of C B. 35. says, that this Libertas interroqueri, seems to arise from a Notion of Religion, mentioned in 5. St. Matt. 25. Agree with thee Adversaries quickly whilst thou art in his Way with him.

7. A second Imparlance was moved for in a Quo Warranto, and said to have been granted, in the Cafe of the City of London, but the Court denied it; For Atty said, that by the Courfe of the Court, they have to have but the common Imparlance. And the Court said, that being Ex Gratia, they may grant or deny it as they please. Comb. 12. Hill. 1 & 2 Jac. 2. Anon.

8. O. 19
8. One pleaded a Foreign Plea after Imparlance, which could not be; but it was objected, not to be after Imparlance, because there was no Entry of defendant qui & injurius; But per Car. that is not necessary to an Imparlance. 12 Mod. 597. Mich. 11 W. 3. Lenox v. Boddington.

9. Imparlances are allowed in general Actions of Trespass, but not in a special Clausum fregit. 3 Salk. 186. Hill. 9 Will. 3. Ellis v. Thomas.

10. No Imparlance is allowed in an Hontut Replegiando, or in Afflic, unless upon good Cause shewn. Because it is Feltimium Remedium. 3 Salk. 186. Anon.

(B) Imparlance. The several Sorts, and how granted.

*Special, as 1. After the Declaration, and before the Defendant can be compelled to plead, many Times there is an Imparlance; which is a longer and further Day given by the Court, and usually 'till the first Day of the next Term upon a Petition made by the Tenant or Defendant, whereby he craveth Respite. And this feemeth to be * special or † general. Reg. Plac. 54, 55."

G. Hist. of C. B. 148.

---* Because the Court is to judge whether it be necessary to plead such a Plea as requires longer time to consider of than ordinary; and should it be otherwise, the Defendant might, upon such Prettences, delay the Plaintiff without Cause. L. P. R. 57; cites Hill. 22 Car. 1. B. R.

3. One came to the Prothonotary for an Imparlance generally, and having got it entered thus, *Satis fiui omnium exceptionibus et advantagistum ad jurisdictionem, &c. and after would plead to the Jurisdiction of the Court. And per Powell J. there are two Sorts of Imparlances, the one general, after which one cannot plead in Abatement at all; and the other special, with a *Satis fiui omnium exceptionibus tam ad breve quam ad narr. after which one may plead in Abatement of the Writ and Count; and this Sort of special Imparlance may be granted by the Prothonotary. There is another Sort of an Imparlance more special, with a *Satis fiui omnium exceptionibus & advantagistum quam enunciat, which cannot be granted without Leave of the Court, and is discretionari; and after which, one may plead to the Jurisdiction of the Court. And Respond. Ousler was awarded, and it was order'd to be entered, for Reason on the Roll specially, that it was obtained without Leave of Court. 12 Mod. 529. Trim. 15 W. 3. Anon. in C. B.
Imparlance.

(C) What may be pleaded after Imparlance.

1. In *N* Writ brought against *J. N.* of *F.* in *S.* he shall not say after Imparlance, that he was of *F.* extra *S.* and not of *F.* in *S.* in proper Person, nor by Attorney; for it is contrary to the Record. Br. Brief. pl. 415. cites 32 H. 6. 28, 29.

2. In *In Debt against* *J. N.* Executor of such a one, and he impares, he shall not say after, that he is administrator and not Executor, to the Writ; but he shall say Ne uniques Executor, Ne uniques administrif as Executor, in Barr. Br. Brief. pl. 36. cites 35 H. 6. 38.

3. In *Debt against* *J. N.* Son and Heir of *W. N.* he shall not say after Imparlance, that he is not Heir. Br. ibid.

4. *And in Praecipe* brought by one as Heir, the *Tenant* after Imparlance, shall not allege Bajantly to the Writ; contrary in *Bar.* Br. ibid.

5. *Debt* upon *Obligation*, the *Defendant* impared he shall not have *Oyer* of the Obligation, nor Condition at the next Day, by Reason of the Imparlance, wherefore the Defendant by Policy, alleged Variance, Suidet, that the Obligation was *Tenant*, and the *Writ Maltsman*, and well; For the Obligation remains always in Court, and therefore he may plead *Variance* after Imparlance, and in another Term; contra of *Testament* this shall be but once known, and by this Means the Plaintiff showed the Obligation again, and then the Defendant saw it, and pleaded the Condition performed, which cannot be without seeing it, and so Policy to see it. Br. *Oyer* de *Records.* pl. 16. cites 38 H. 6. 2.

6. In *Replevin against* *A. B.* and *C.* who impared; and at the Day, *A.* and *B.* said, there was no such *C.* in *verum Naturam*, Judgment of the Writ; & nonAllocatur; For it is after Imparlance, contrary before Imparlance; *quod nota.* Br. Brief. pl. 464. cites 4 H. 7. 17.

7. In *Praecipe quod redditac* of the *Mensor of D.* in *D.* the *Tenant* impard; and after, at another Day, came and pleaded, that no such *Vill* as *D.* within the same County. And the Opinion of the Court was, that he shall have the *Plea.* For it goes in *Bar.* as here; contra, if he was named *J.* *S.* of *D.* and impares, he shall not say to the Writ, that no such *Vill* as *D.* &c. Br. *Mithofner.* pl. 57. cites 13 H. 7. 17.

8. *If a Man* is implead in *Debt upon an Obligation*, and the *Defendant* impares, and does not pray that the *Condition* be entered of *Record*, yet in another Term, or at another Day, the *Defendant* may plead this well; per all the Juitices; *quod nota.* Br. *Barre.* pl. 54. cites 21 H. 7. 50.

9. *After a general Imparlance*, one may plead *Joinsantry, Non-joinsantry,* *Tenure, Ower-Dele* and *Netket-Dele,* and the like, whereof he is if the Name of the Plaintiff was not set down at his Appearance, as is the Book of 9 Ed. 4. 36. But *Mithofner* and the like, after a general Appearance, and Imparlance, he shall be concluded of, as are the Books; and therefore the Way in that *Cafe* is to appear in this Manner, viz, *J. S.* *qui implicatur per nonnum* *f. D.* *communis & habet dian, vel petit incontiam interlegam, vel petit pistivism, Suidet ejus omnibus Advantageus,* &c. *Health's Max. 20.*

*Shall not base any Advantage of the Variance after,* by Reason of the Imparlance. Br. *Varience.* pl. 37. cites 38 E. 3. 1. 2. — Br. *Continuance.* pl. 19. cites S. C.— *St.* *In Debt by Exemptee sais plea'd Testament* as he ought, the Defendant made Defence and impared, he shall not say in another Term that there is a *Varience,* Suidet, that the Plaintiff in the *Testament* is named *J. C.* *Chaplain* of the *Church of All Saints of C.* and in the *Pro Dit* he is named *J. C.* *Chaplain* *&c.* *For the Plaintiff shall not be compel'd to flew the Testament,* R. & T. but
Imparlance.

but once; to of Deed of Remainder in Formston; contrary of an Obligation; For this shall remain always in Court, and then it is apparent. Br. Varience, pl. 44. cites 19 H. 6. 5. — * Orig. (taunt.)

After Imparlance by Attorney, to the Name of J. Prior of St. Peter, he now his Matter shall not lay after, that he is of St. Peter and Paul; For this does not stand with, &c. For all is Parcel of his Name; (Actus, of ere D. and cetera B. For this is Addition, and so Parcel of his Name, and so Attorney may plead that after which stands with, &c. but not that which is contrary. Br. Attorney, pl. 12. cites 35 H. 6. 5. — Br. Milnor. pl. cites S. C.

10. That the Demandant is an Alley, may be pleaded in Bar after Imparlance, as well as to the Writ before Imparlance. Jenk. 130. pl. 64. + S. P. But after Imparlance, Outlawry may be pleaded in the Plaintiff in a * Perjury Action after Imparlance, because this goes in Bar; For Debt by Obligation is forfeited to the King by Outlawry in the * Obligation, contrary of Debt upon a Contract or Trust; but Outlawry in Inhabitability of the Peron, ought to be pleaded before Imparlance. Br. Nambity, pl. 56. cites 16 H. 6. 4. & 4. For the Debt and Goods belong to the King, and not to the Plaintiff who fuses; * to slaveries in * Jurisdiction, of Batteries, &c. &c. &c.; — For uncertain Damages only are to be recovered, and perhaps they will not be recovered. Jenk. 130. pl. 64. — * Orig. (Obligation.) — After Imparlance, the Defendant pleaded Outlawry in the Plaintiff, and it was agreed by the whole Court to be no Plead. 2 Roll. R. 59. Hill. 16 Jac. B. R. Baron v. Hayne.

In Deed the Defendant impailed to another Term, java * Nunus or * Nunos * Imparlance in the Plaintiff, and at the Day he cauf Superfedeas of the Chancery of the Plaintiff, fed non allocatur, by Reason of the Imparlance, which affirmed the Jurisdiction of the Court; quod nota by award. Br. Privilege, pl. 15. cites 22 H. 6. 7. — * G. Hill. C. B. cites S. C. But is misprint, viz. 21 for 2, but says, that the true Reason of that Resolution seems to be, that by this Imparlance, he has confined himself to take Advantage only of the Defeat (Defet) in the Writ and Court; but had he obtained from the Court a general-special Imparlance, viz. * Salis omnis & omnibus * Adsumat & * Exceptione, he might then have pleaded his Privilege; For that is not to oufe the Court of their Jurisdiction, but he is a Privilege which each * Act in Debt or Goods carried over; For the Debt and Goods belong to the King, and not to the Plaintiff who fuses, * to slaveries in * Jurisdiction, of Batteries, &c. &c. &c.; — For uncertain Damages only are to be recovered, and perhaps they will not be recovered. Jenk. 131. pl. 67.

ten * Breve quam ad * Narrationem, and at the Day he cauf Superfedeas of the Chancery of the Plaintiff, fed non allocatur, by Reason of the Imparlance, which affirmed the Jurisdiction of the Court; quod nota by award. Br. Privilege, pl. 15. cites 22 H. 6. 7. — * G. Hill. C. B. cites S. C. But is misprint, viz. 21 for 2, but says, that the true Reason of that Resolution seems to be, that by this Imparlance, he has confined himself to take Advantage only of the Defeat (Defet) in the Writ and Court; but had he obtained from the Court a general-special Imparlance, viz. * Salis omnis & omnibus * Adsumat & * Exceptione, he might then have pleaded his Privilege; For that is not to oufe the Court of their Jurisdiction, but he is a Privilege which each * Act in Debt or Goods carried over; For the Debt and Goods belong to the King, and not to the Plaintiff who fuses, * to slaveries in * Jurisdiction, of Batteries, &c. &c. &c.; — For uncertain Damages only are to be recovered, and perhaps they will not be recovered. Jenk. 131. pl. 67.

12. A Clerk of the Hamper, who is making his Account in the Executurer is fixed there by A. a Judge; the Defendant impairs; this Imparlance shall deprive, in this Suit, the Clerk of the Hamper of his Privilege as an Officer in the Court of Chancery; But if he had not impared, he should had his Privilege, because he was attending his Account; For he ought to perfect his Account. Jenk. 131. pl. 67.

13. In a Suit against an Exector, if he pleads that he had administered, and travares the Exeutorship, 'tis ill; being only in abatement, and not pleasurable after a general Imparlance. 2. L. P. R. 35.

14. Debt on Bond of 100 l. After Imparlance, the Defendant pleaded to the Jurisdiction, that none of the Privy Chamber ought to be fixed in any other Court, at the Suit of any Perfon, without special Licence of the Lord Chamberlain of the Household, and that he is one of the Privy Chamber. The Plaintiff demurred, and a Rondopness Officer awarded; For such Plea cannot be pleaded after Imparlance, and the Plea is ill; and the Court feared to be ollended with the said Plea. Raym. 34. Mich. 13 Car. 2. B. R. Barrington v. Venables.

17. If
Imparlance.

15. If a Defendant pleads to the Jurisdiction of the Court, he must do it infiniter on his Appearance; for if he imparls, he gains the Jurisdiction of the Court by craving Leave of the Court for Time to plead in; and the Court shall never be ousted of its Jurisdiction after Imparlance, unless it be the Plea of *Ancient Demeye, which may be pleaded after Imparlance, because the Lord might reverse his Judgment by Writ of Certiorari, which it grants, and it goes in Bar of the Action it fell, (viz.) in that Court. G. Hilt. C. B. 148.


16. If the Defendant in a Plea of Lanii would have Oyer of the Dead, submits the he must demand it before Imparlance; for by imparling, he undertakes to defend the Land mentioned in the Plaintiff's Count, and it would be absurd in him to demand what he does not know. G. Hilt. C. B. 148.

17. All Pleas in Abatement, (unless to the Jurisdiction and Privilege) may be pleaded after special Imparlance; but Privilege can be only pleaded after a general Imparlance; because it is neither an Objection to the Writ, nor Count. G. Hilt. C. B. 149.

18. In Indebitatus Assumpsit Tender was pleaded after Imparlance, and held to be ill. Lutw. 233, 239. Morris v. Coles.

19. The Question was, whether Tant timps Prifè was a good Plea. G. Hilt. C. after a general Imparlance? It was objected, that the Defendant after Imparlance should not plead any thing contrary to the Matter in the Declaration, to which he imparld, as batardy to an Action brought by an Heir, &c. But the Court was of Opinion, that the Plea was not good; for petit licentiam interroginandi is no more in English than for the Defendant to say, I will take Time and resolve what to do, which is contrary to the being always ready. 2 Mod. 62. Mich. 27 Car. 2. C. B. Anon.

20. Sci. Pa. tefted 12 Feb. by an Administrator against the Defendant as Tertean, who imparted generally, and after demanded Oyer of the Letters of Administration, which bore Date 26 March following; The Defendant pleaded this in Abatement; the Plaintiff demurred, because he cannot plead in Abatement after a general Imparlance. But per Cur. it appearing now upon the Record, that the Plaintiff brought his Action before he had Caule of Action, they sought Ex Officio to abate the Writ, and so they did; tho' he could not have Sci. Pa. tefted after 12 Feb. till the Easier-Term in B. R. notwithstanding, in Truth, it might be fixed out, after the Administration granted in the Vacation, otherwise where the Suit is by Original out of Chancery, where the Court is always open. 2 Lev. 177. Trin. 29 Car. 2. Harker v. Moreland.

Quære tamen, for the Oyer may be after general Imparlance. Ibid.

21. On
21. On a Plea to the Jurisdiction on special Privileges' tis usual to grant a special Imparlance as in the Common Cafe of Connuance, &c. for Oxford, &c. but they cannot impair generally. Cumb. 69. Trin. 3 Jac. 2. B. R. Anon.

22. Whether Receipt may be pleaded in Disability of the Person of the Plaintiff after an Imparlance? See 8 Mod. 43. Paflch. 7 Geo. Colvin u. Fletcher debated. And afterwards this being a Plea in Abatement, Judgment was given for the Plaintiff Nisi; and at the Day it was urged to let aside the Rule, that there were several Precedents of such Pleas in Raft. Ent. But per Cur. if there are, it must be of Pleas pleaded after the last Continuance; and afterwards the Rule was made absolute. 8 Mod. 58. 11 Geo. Colvin v. Fletcher.

(D) To what Time Imparlance may be.

1. WHEN a Declaration upon a CepiCorpus is delivered against the Defendant in Hilary or Trinity Term, wherein the Writ is returnable, (if it be by Bill) or within the next Term following, the Defendant may, by the Rules of the Court, impart to the next Term after the Term wherein such Declaration is delivered. 2 L. P. R. 36.

2. Where the Defendant's Cafe requires a special Plea, and the Matter which is to be pleaded is difficult, the Court will, upon a Motion, grant the Defendant longer Time to put in his Plea than otherwise by the Rules of the Court he ought to have. 2 L. P. R. 36. cites Hill. 27 Car. 1. B.R. from the Defendent, which doth belong unto him, and whereby he is to make his Defence, and is disabled by the Retaining thereof to plead for his own Advatage, the Court will grant an Imparlance to the Defendant until the Plaintiff deliver it unto him, or bring it into Court, and also a convenient Time after, till he can draw up his Plea; For the Law gives every Defendant convenient Time to make his own Defence; and in this Cafe, if the Plaintiff be delayed, it shall be adjudged his own Fault. 2 L. P. R. 57. cites Hill. 22 Car. 1. B.R.

3. Whether a Person, bound by Recognizance to appear the first Day of the Term, on entering Appearance after, may impart till the next Term? 12 Mod. 362. the King v. Fitzgerald.

4. A. bound by Recognizance to appear and answer to an Information, appear'd and pray'd an Imparlance; the Attorney General said, an Imparlance is not to be denied, but asked how long he shall be allowed? and per Cur. an Imparlance is a reasonable Time to adjudge, and there have been from one Return Day to another, but now they are always from one Term to another in the Crown Office. But by Holt Ch. J. it seems reasonable that the Defendant should have the same Time on such Appearance as if he had stood out and come in upon Appearance or Capias, viz. the same Time that the length of the Process would take up and no more; For when he had come in upon that he must plead Infanler. 1 Salk. 397. Mich. 3 Anne B. R. the Queen v. Rawlins.

Imparlance.

After Imparlance it is too late for the Chancellor of Cambridge to claim Connuance. 10 Mod. 125. B. R. Cambridge University's Cafe.

[Text continued on the following page]
Implication.

(E) Done. What may be done after Imparlance.  

1. If Trespass, the Plaintiff counted and left a Space for the Place, and the Defendant imparked, the Plaintiff after this cannot amend his Count, and therefore it was awarded that the Plaintiff take Nothing by his Writ. Br. Count, pl. 12. cites 20 H. 6. 18.

2. In Debt upon a single Bill, the Defendant after Imparlance pleaded Payment of Part after the last Continuance, & petit quod Billa essetur, &c. the Plaintiff denied the Payment, and the Defendant demurred; it was Resolved by Roll. Ch. J. (only in Court) that tho' it be pleaded after Imparlance and issue rendered upon it, yet it is not peremptory upon a Demurrer; but that if after Imparlance the Defendant pleads a Plea in Abatement which is waived by the Imparlance, the Plaintiff may not demur but move the Court that he be may be compelled to plead in Chief; but if Demurrer be joined upon it, 'tis not peremptory to the Defendant tho' the Demurrer be adjourned to another Term; and a Refpondeas Outter was awarded. Allen. 65. Trin. 24 Car. B. R. Beaton v. Forrest.

Implication.

(A) Of Implications in General.  

1. Every Act that does ensue to another Act by Implication ought to be such as of necessity ought to ensue to the other Act, which cannot be taken to be otherwise. Arg. Bridg. 55. Trin. 12 Jac. But when the Act of the Party may be without any such Implication and the Matter to be implied, it is quite contrary. Bridg. 82. Ibid.


4. An Estate by Implication was never thought of in a Deed, nor in a Will but in Cafe of Necessity. 4 Mod. 156. Mich. 4 W. & M. B. R. Davis v. Speed.


6. An express Estate for Life cannot be enlarged by Implication, but by express Words it may; per Wright K. and 2 Ch. J. and 1 J. Mich. 1703. 2 Vern. 449. Bamfield v. Popham.

SSFFS

7. It
Imprisonment.

7. It is a general Rule that where an Estate is to be raised by Imprisonment it must be a necessary and inevitable Implication, and such as that the Words can have no other Connotation whatsoever. Arg. Cases in Chan. in Lord Talbot’s Time, 9. Mich. 1733. in Case of Lord Glenorchy v. Bofville.

(A) What Act or Thing shall be an * Imprisonment.

1. If every Case where a Man is arrested by Force and against his Will, be it in the High Street or elsewhere, tho’ he be not imprisoned in a House, yet this is an Imprisonment. 22 As. 55, per Thorpe.

Dr. Faux’s Imprisonment, pl. 2. cites S.C.

2. If a Man carries away the Wife of another Man with the Affent of the Feme but without the Affent of the Baron, this is not an Imprisonment, because it was with her Will. 14 B. 6. 2. b.

(B) What Persons may Imprison. [Persons not Officers.]

1. If the Matter imprisons a Man juelly in a House, and locks the Door, and delivers the Key to the Servant to keep, the Servant may well justify it; otherwise if it be not a lawful Imprisonment.

22 E. 4. 43.

2. The Baron brought Action of False Imprisonment for imprisoning his Wife, the Defendant said, that he declared [* to the Feme that her Husband was taken and imprisoned] for a Scot, and he looked Wild and Lunatick, whereupon the Defendant to avoid Mischief, took her and put her into his House for an Hour, which is the same Imprisonment; but Fauk’s held this no Plea; For a Jury cannot try his Conceit or mind, but he ought to have sworn in Faix, that she was Wild, and that he supposed she would have killed herself, or do other Mischief, as to burn an House; by which the Defendant pleaded accordingly, and the other said, De jure Tort demene in Abique tali causa, &c. Br. Faux. Imprisonment, pl. 28. cites 22 E. 4. 45.

3. If a Man sees two Fighting, he may lawfully part them, and put one into his House till the Fray be over. Ibid.

4. Contr. where he sees two Quarrelling; For perhaps they will not Fight. Ibid.

5. But where a Man is Mad, and another doubts that he will do Mischief he may keep him as above. Ibid.

See Trefhea (Q.)

(C) By whom the Imprisonment shall be said to be made.

1. If the Matter imprisons a Man * in a House and locks the Door, and delivers the Key to the Servant and compands him to keep him Safe, and he does accordingly; this is an Imprisonment by the Servant as well as by the Matter, he having Notice that the Man was
3. Imprisonment shall excuse Appearance to make a continual Claim, and shall avoid a Defent if he is imprisoned at the Time; per Williams J. Bull. 170. 1 Tri. 9 Jac. in an Anon. Cafe.

(E) Unlawful in respect of the Place where.

1. 31 Car. 2. cap. 2. Enacts that No Subject shall be sent Prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or to any Place beyond the Seas, within or without his Majesty's Dominions. And any one so imprisoned shall have an Action of false Imprisonment against the Person by whom he shall be so committed, detained, imprisoned, sent Prisoner, or transported; and against all Persons that shall frame, contrive, write, seal, or counterfeit any Warrant or Writing for such Commitment, Detainer, Imprisonment or Transportation, or shall advise, aiding or assisting in the same, the Plaintiff shall recover triple Cols besides Damages; which Damages shall not be less than 500l. And the said Offenders shall be disabled to bear any Office of Trust and incur a Pre- sumable, and be incapable of a Pardon.

Not to extend to Persons convicted to be transported, nor to Persons convicted of Felony and praying Transportation.

Provided that Persons having committed any Offence in Scotland, Ireland, or the Plantations, may be sent thither to receive their Trials as before.

(F) What
Improper Words.

In a case where the Plaintiff is bringing an action against the Defendant, it is necessary that the action be properly brought and properly conducted. The action should be brought in the proper form and the Plaintiff should be able to prove that the Defendant is responsible for the action.

1. The Law takes Words of Substance and not Words of Form. And when the Plaintiff appears, it will carry all. The Plaintiff must prove that the Defendant is responsible for the action.

In the case of In re Browning, in In re Browning, it was held that the Plaintiff must prove that the Defendant is responsible for the action.

2. The action may be brought in the County Court, but it must be properly brought and properly conducted. The Plaintiff must prove that the Defendant is responsible for the action.

In the case of Re In re Browning, it was held that the action must be properly brought and properly conducted.

3. The action may be brought in the High Court, but it must be properly brought and properly conducted. The Plaintiff must prove that the Defendant is responsible for the action.

In the case of Re In re Browning, it was held that the action must be properly brought and properly conducted.

4. The action may be brought in the Court of Queen's Bench, but it must be properly brought and properly conducted. The Plaintiff must prove that the Defendant is responsible for the action.

In the case of Re In re Browning, it was held that the action must be properly brought and properly conducted.
(A) Inception.

1. THe same Person is Patron and Incumbent, and he devises the next Avoidance, it was objected, that by his Death the Church is void, and then the Presentation is a Cose en Action, and not grantable, and the Devise takes not Effect till after the Death of Devisor, and therefore void, but held a good Devise, because it has Inception in his Life: Roll. R. 214. Trin. 13 Jac. B. R. in Case of Harris v. Aulten.—3 Bull. 42. S. P.

2. The Condition of a Lease was that if he alien to any Person during his Life, the Lessor might enter. Lessor devises it to B. this does not take Effect in his Life, but has Inception in his Life. Roll. R. 214. cites D. 45. b.—3 Bull. 43. S. C. cited.

3. Lease to A. for Life, Remainder to the right Heir of A. this is a good Remainder to vest upon the Death of A. for the Inception in his Life. Roll. R. 215. cites 7 H. 4.

4. Institution gives Inception to a Lay Fee, so that if a Caveat be entered'd S. C. cited Arg. Vent. 559. in Case of Robinson v. Woolley.

Incidents.

(A) Incidents to Grants and Exceptions.

See Grants (Z)

1. If a Man seised of Land in Fee, leaves it for Life or Years (excepting all Timber Trees) and after the Lessor has an Intention to sell the Trees excepted. The Law gives to him and such as will buy them Power, as Incident to the Exception, to come upon the Land of the Lessor to shew the Trees, and the Buyers to view them; For without this they cannot view them. Rolfe's 11 Rep. 52. Lidford's Case.

2. Licence to lay Pipes of Lead in another's Land to convey Water to S. P. by my Closet; I may enter and dig the Ground to amend the said Pipes, tho' it be not expressly granted; For it is incident to such Grant. Br. Incidents, pl. 5. cites 9 E. 4. 35.


3. One Liberty cannot be incident to another Liberty. Br. Incidents, pl. 18. cites 12 H. 7. 16.

4. The Law gives to every Tenant for Life, as Incident to his Estate without Provision of the Party, three Kinds of Easements, viz. Halid-loote, which is two-fold, viz. for Building and Burning. Plough-loote, that is Easover for ploughing; and Hay-loote, and that is Easover for fencing and inclosing; and these must be reasonable, and Lessor may take them upon the Land demised without any Alignment, unless restrained by special Covenants. And the fame of Tenant for Years. Co. Litt. 41. b.
Incidents.

5. If Licence be given to a Duke to hunt in a Park; the Law for Conveniency gives such Attendants as are requisite to the Dignity of his Estate.


7. At Nili Prius coram Holt The Question upon Evidence was, whether every House in the Market round, had so many Feet of Ground toward the Market belonging to it. Per Holt Ch. J. If the Aff. for building of London orders a Man to build his House contiguous to his Neigh-bour’s Soil, it, of necessierty Consequence, gives you all Easements over your Neighbour’s Soil, as Lights, Passage, &c. without which you cannot use your House; but thereby gives you no Interiety in the Soil. And in this Cafe, a Houfe-keeper who pretended the like Interiety before his Door, tho’ he derived his Title under another Person, was denied to be a Witness. 12 Mod. 372. Patch. 12 W. 3. Farmers of Newgate Market v. Dean and Chapter of St Pauls.

8. If a Man, either by Grant or Prescription, has a Right to a Wreck thrown on another’s Land, of necessierty Consequence he has a Right to a Way over the fame Land to take it; and the very Possiety of the Wreck is in him before Seilure. 6 Mod. 149. Patch. 3 Anne R. R. Anon.

9. Quando aliquis aliquid concedit concessere videtur et id, quae quoque ipsa esse non potest. See Maximis.

(B) Incidents inseparable.

1. T Enchant in Fee Simple may give the Charters to another, and to sever them from the Land, and he may keep them from the Heir. 10 P. 6. 20. b.

2. If the King grants to another the Office of the Clerk of the County-Court, or Shire-Clerk of the County of S. with all Fees, &c. for Life; This is void against the Sheriff of S. when he is made Sheriff; because the County-Court, and the Entering of all Proceedings in it are incident to the Office of Sheriff, and this is the Court of the Sheriff, tho’ the Suitors are Judges; For great Inconvenience would ensue if the Office of the Clerk of it may be granted to another. Because the Sheriff is the immediate Office to the Court, and ought to answer for the Records of the Court if they are invezzed. And therefore a Clerk cannot be made who shall have the Entry and Custody of the Rolls of the Court, and yet the Sheriff shall answer for them, and therefore the Office of Clerk is inseparable from the Sheriff. 4 Rep. 33. Mitton’s Cafe.

3. The Custody of the Gaols of Counties is inseparable from the Sheriff, and therefore if the King grants the Custody of such Gaol to another, it is void; Because the Sheriff is the immediate Office of the King’s Courts, and shall answer for Eclipses, and shall be subject to Amencements, if he has not the Body in Court upon Proceeds to him directed; and therefore it is Reason, that he shall put in such Keepers of Gaols for whom he will answer. 4 Rep. Mitton. 34. cites 39 & 40 Eliz. Mich. Resolved per all the Judges of England.

4. A Court Baron is an Incident to a Manor, and cannot be severed from the Manor by Grant or Surrender. Dobart’s Reports 150. Adjudged between Brown and Goldsmith.

See Conditions (A. a)

See Gaol (B)

Br. Incidents pl. 54. cites 19. H. S.
Br. Grant, pl. 91. cites 1 E.

4. 10. — Fin. Law. 5. b. S. P.— A. Eadet of a Manor leased it to B. and after bargains and sells the Manor.
Incidents.

Manor to C.—B. covenants that the Affirmity of the Reversion shall hold the Court, Proviso that B. shall have the Rents of the Copyholders and Freeholders. It was moved, That by this Exception, the Court Baron is not excepted nor severed from the Manor, nor destroyed; For if it is incident to the Manor, and this Covenant between the Lefsee and C. amounts to a Grant of the Court to C., but it was held by the Court, that it was a void Covenant; for tho' C. has Authority to hold the Courts, yet it must be in Lefsee's Name. Le. 118, 119. Trin. 30. Eliz. B. R. Wheeler v. Tewgood.


C.—Br. Reservations, pl. 32. cites S. C.—Br. Tenure, pl. 28. cites S. C.—Br. Incidents, pl. 19, cites S. C.—Ibid. pl. 5.—cites Dr. and St. Lib, 2. cap. 9. Fol. 7. 5: that if a Man holds by Fealty and Rent, the Lord may grant over the Fealty relieving the Rent; For it is "Severally in Sequey,"—Contra of Severality refers with the Reversion upon a Gift in Tail, there Grant of the Fealty is void: For it is incident to the Reversion, and cannot be severed. Quad. Nota.

6. If Tenant holds by Homage, Fealty and Rent, and another recovers but where the Rent against him by Default, yet the Homage and Fealty remain to the Lord, and he may distrain for the Fealty. Br. Incidents, pl. 5. cites 44 E. 3. 19. 20.

by Default, the Fealty is gone. And the Reason seems to be, that in the one Cafe the Fealty is incident to the Homage, which Homage is not incident to the Rent Service, and in the other Cafe the Fealty is incident to the Rent Service, and therefore by the Recovery of the one the other is gone. Br. Incidents, pl. 5. cites 44 E. 3. 19. 20.—Of Incidents, there are two Sorts, separable and inseparable, as Rents incident to Reversions &c. which may be severed; inseparable, as Fealty to a Reversion or Tenure; For as all Lands or Tenements in England are held of some Lord or other, and either mediately or immediately of the King; so to every Tenure at the least Fealty is an inseparable Incident to long as the Tenure remains; and all other Services except Fealty are separable. Co. Litt. 95. a. S. 152.—And upon a Lease for Life or Years without referring any Rent Fealty is due to the Lessor. Litt. S. 152.—Because there is a Tenure, and Fealty is incident to all Manner of Tenures. Co. Litt. 93. a.—Except Frank-almaigne. Co. Litt. 23. a.

7. Where the King is Founder of a House of Religion, Corodie is incident; contrary where a common Person is Founder; but yet the Corody above may be released as was said in Time of H. 4. For the Releasement pleased was not contradicted. Br. Incidents, pl. 21. cites 17 H. 4. 51. and Patch. 8 H. 7. 2.

granted the Patronage without mentioning the Corody, yet the Corody passed; and if the King had referred it, the Referration had been void; and so it was awarded, and therefore seems incident. Br. Incidents, pl. 23. cites 26 Aff. 53.—Br. Patents, pl. 34. cites S. C. per all the Justices.

8. "Disfrays" is incident to Rent, and cannot be released. Br. Incidents, pl. 20. cites 7 E. 4. 11.

9. So of a Releasement of Fealty to one that holds by Homage. Br. Incidents, pl. 20. cites 7 E. 4. 11.

Homage is incident to Fealty. Ibid. pl. 16. cites 8 H. 7. 54. per Vavilor. Ibid. pl. 27. cites 21 E. 3. 52.

10. A Court of Pie-peddlers is incident to a Fair. Br. Incidents, pl. Bid. pl. 34. cites 19 H. 8. S. P. and they cannot grant, the one without the other.

11. Foundership is incident inseparable, so that if the Founder of a College, &c. would grant his Foundership to the King by Deed enrolled, it is void; For it is inseparable to the Blood. 11 Rep. 77. a. in Magdalen Colledge's Case, says that it was to be held in Time of H. 8.

12. Incidents to an Esquire Tail are 1st. To be dispojrible of Wifely. 2dly. S.P.C. Rep. That the Wife shall be ended, 3dly. That the Husband shall be Tenant in the Court, 4thly. That Tenant in Tail may suffer a Common Recovery. And therefore if a Man makes a Gift in Tail upon Condition to refrain him of any of these Incidents, the Condition is repugnant and void in Law. Co. Litt. 224. a.

13. If
Incongruent. Inconsistent.

12. If Eestovers are granted to be burnt in a certain House there he that has the House, by whatever Title he has it, shall have the Eestovers; For the one is an insepiable Incident to the other. Fin Law. 5. a. Max. 15.

13. A Man grants Service of Castle-gard, and retains the Castle; it is void. Fin. Law. 5. b.

15. Justice Seat is incident inseparable to a Forst. Palm. 93. Hill. 17

Jac. B. R. in Bridges's Cafe.

Incongruent.

(A) Incongruent. What Things shall be said such.

1. LEET cannot be belonging to a Church, because it is Incongruent; per Coke Ch. J. 2 Brownl. 200. in Cafe of Rowles v. Mason.-- cites 10E. 3. 5.

2. Tibes cannot be Appurtenant to a Manor, because Incongruent, and a Spiritual Thing shall not be pertinent to a Temporal, and fo e converfo.

2 Brownl. 200. ut fup.

3. Tarbary cannot be to Land, but must be to a House. 2 Brownl. 200. ut fup.

4. Tenant of a Manor in Edw. 2. Time prescribed to have Free Bail and Bear, but held not good, because Incongruent; otherwife in Cafe of the Lord of the Manor. 2 Brownl. 200. ut fup.

5. Cultom to present Common in the Lett is Incongruent and fo not good; For 'tis not proper to the Court. 2 Brownl. 200. ut fup.

Inconsistent.

(A) What shall be said to be so.

If a Man be Forer by Patent, and after is made Justice of the same Forst, the first Patent is void. Br. Office and Off. pl. 47. cites 29 H. 8. by fveral.

2. So where a Parfon is made a Bishop, the Parfonage is void; For he cannot be Ordinary of himfelf nor Punifh himfelf. Ibid.

3. But a Man may be Steward of a Forst by one Patent, and Justice of the same Forst by another Patent and both good; For both are Judicial, and Justices of the Forst may make a Steward of the Forst. Ibid.

4. Quere, if a Man may be Keeper of the Forst and Justice of the Forst, it fems that he fhall not; Because the killing of the Deer by the Keeper &c. is a Forfeiture of his Office; For it fhall be adjudged by the Justice of the Forst, and he cannot Judge himfelf. Ibid.

One may be Judge and Officer in different Refts, as in

Re-diflffn the Sheriff is Judge and Officer. And alfo, where there are feveral Judges, part of the Judges as where there are a Mayor and Bailiff, the Bailiff may be Officers too by Cuftom. Cro. C. 153.


6. The
Incroachment.


8. Two Fees immediately expelling one on another cannot subtit in the same Person. 1 Salk. 338. Hill. 5 W. & M. Simonis v. Cudmore.

Incroachment.

(A) Incroachment of Land.

1. WHERE Land is incroached out of a Manor, the Incroachment does not make it to be no Parcel of the Manor, but in Right it belongs to the Manor; per Doderidge J. and Lee Ch. J. Godb. 411. Trin. 21 Jac. B. R. Summer’s Cafe.

2. Deed by Lord of the Leet against the Heir for an Incroachment on the Highway by the Ancestor, continued by the Heir, and for which the Ancestor was indicted in the Leet, and on which Indictment an Order was made to reform the Incroachment by such a Day, upon the pain of 40s. and for not reforming thereof this Action is brought for the 40s. and declares as before, and held good without alleging Notice of the Order. For being within the Jurisdiction of the Leet he ought to take Notice at his Peril. See Conditions (B, d) pl. 6. Mich. 11 Car. B. R. between Lee and Boothby.

3. The Court seemed to incline, that an Action of Deed will not lye by a Lord of a Manor against his Copyhold Tenant for a Pain assailed by the Homer for an Incroachment on the Walk. Carth. 183. Mich. 2 W. & M. B. R. Cudmore v. Honeywood. —— He ought to take his Remedy by way of Action and not to have it presented as a Nuance. Arg. Ibid.

(B) Incroachment of Rent or Services. What shall be said to be such, and in what Cases binding.

1. Incroachment of Rent by the Hands of a Director shall not bind him that has Right. 6 Rep. 58. Hill. 4 Jac. C. B. in Brediman’s Cafe.

2. Incroachment by the Donor on the Donee, or of the Lessee on the Lessor, shall not bind them in Acover, as it shall between Lord and Tenant; because when the Donor or Lessor, or their Heir, avows, he must shew the original Reservation, by which will appear how much was reserved; but if Lord and Tenant be, and the Tenant makes Gift, in Tail or Leaves for Life, the Remainder in Fee, Incroachment of the Lord on Donee or Lessee shall bind them; For the Lord need not shew the beginning of the Seigniory; per Coke. 10 Rep. 108. Mich. 10 Jac. in Lofield’s Cafe. —Cites 8 Rep. 65. a. Sir William Foster’s Cafe. —And 20 E. 3. Acover 131. 5 E. 4. a. F. N. B. 11.

U u u u

(C) Incroachment.
Incroachment.

See Avowry

(A) a.


2. If an Incroachment be made upon a Tenant in Tail, or for Life, or any other, who cannot maintain a Writ of 

3. Affr of 10. Rent, the Plaintiff acertained the Court that it was Rent Service, the Defendant said that J. S. whole Litate the Plaintiff hath in the Lordship, by the Deed, which be flowed, enjoyn'd W. N. whole Litate he hath in the Tenancy, to hold by 6d. for all Services, Judgment, if for more Rent, the Affr ought to be; and a good Plea; And 'tis said else WHERE that Incroachment may be avoided by Deed, as here, or by Coercion of Dixtifs. Br. Encroachment, pl. 4. cites 28 Aft. 33.

4. If a Man holds by 28. and the Lord incroaches 6s. the Tenant shall not avoid this without Deed; quere if by * Coercion of Dixtifs; by which he said that he held the two Houles by 6s. and the Remain of Fealty, Judgment of the Avowry, and the other that he held of him as in the Avowry, &c. Br. Avowry, pl. 49. cites 5 H. 5. 4.

5. In Reffous if the Lord incroaches 4th of his Tenant, who holds of him by 2d. only, he shall not avoid this Incroachment in Avowry, whether he has thereof Deed or not, but if he has Deed, he shall have * Contra formam Fessiments, and if he has not Deed he shall have the 4 Ne injtve vexes, but he may aid it by Reffous and plead Specialty in Writ of Reffous, and he may do the like in Affr; per Danby Ch. J. and Choke J. quiet nota. But it seems to be Reaon upon a Deed to avoid it by Plea in Avowry, to avoid Circuity of Action. Br. Cont. Form. Feoff. pl. 1. cites 5 E. 4. 87.

by Homage, Fealty and Rent by Deed, and afterwards Feoffor disclaims for Suit or other Services, in such Case the Feoffor or his Heir shall have this Writ, and it may be directed to the Lord himself or his Bailiffs and is a Prohibition of it self. F. N. B. 162. (E) 165. (A)—But if a Feoffor be made before Time of Memory, one shall not have this Writ, but a Ne injtve vexes. For such a Feoffor is not pleasable. Ibid in the Notes there (b) cites 12 H. 4. 24.—But none butt he Feoffor, or his Heirs who are Prioues to the Deed, shall have this Writ of Contra formam &c. but if the [first] Feoffor makes a Feoffment over to hold of the Chief Lord, &c. the [second] Feoffor shall not have this Writ, because not Party or Privy to the Deed, but he shall relinqu the Lord by that Deed to claim other Services than mentioned in the Deed. F. N. B. 165. (C) But the Notes there (a) for that the Contrary has been adjudged, viz. that where the Feoffor of the [first] Feoffor to whom the Deed was made, brought the Writ against the Grantor of him who made the Deed, he was adjudged to answer, and that Wilby said, it had been often so adjudged: cites 4 E. 3. 50. and 5 E. 4. 5. per Thirn a Feoffor, &c. and see 10 B. 5. 25. accordingly by Tremulis. Ibid—The F. N. B. ibid (1) says, that this Writ lies only against the Feoffor and his Heirs, and cites 10 E. 3. 25; and 7 E. 5. 8.—3 A Stranger may releat the Feoffor, or his Heirs by the Deed of Feoffment, notwithstanding the Seifin. F. N. B. 165 (C) in the Notes there.
Incroachment.

there (c) cites 6 E. 3. 19. 8 E. 3. 67. 4 E. 2. Avowry 202. see Contra. 2 E. 2. Avowry 401. Seeboe. 22 E. 2. 18. altho the Feoffment was made to a Stranger to the Tenancy, he shall not be a Stranger in the Scipony after Seisin by Deed of Confirmation before Time of Memory. 11 E. 3. Avowry 100. nor by Deed of Feoffment. 10 E. 3. 25. He shall not forego judge the Tenant. 7 E. 3. 8. see Contra per Kirt. The Party shall by the Lord by Confirmation of his Grantor, to hold by Jehowa's Services. 25 E. 3. 94. 95. per Contra 62. 28 E. 3. 127. Saff. 2. 28 E. 3. ibid. 322. P. N. B. 163. (C) in the Notes there (c) cites the above Cases—If the Lord confirms the Exeat of the Tenant to hold by Jehowa Services, & the Tenant shall have this Writ if he be dispossessed for more Services than are specified in the Deed of Confirmation. F. N. B. 163. (C) cites Mich. 16 E. 3. Avowry 245. 39 E. 3. 15. per Seon, &c.

3. Pl. C. 94 b—Ne injuice vexes lies where the Lord bus of late Time got Seisin of more Rent, by the Tenant's paying it voluntarily without Coerston of Dispears. And if the Lord disreigns the Tenant for this Surplusage, the Tenant cannot avoid the Lord in Avowry, because of the Seisin the Lord had by his own Agreement; but he may have this Writ directed to the Lord, which is in his self a Prohibition not to dispossess his Tenant, to do other Services than of Right he ought; and it is in its Nature a Writ of Right and shall be Patent; and this Clause En nit lexera. Vicewares &c. shall be in the Writ; and the Proces is Prohibition, At traction and Dispears; and this Writ is founded on Statute of Magna Charta cap. 10. F. N. B. 10. (C) (D) (E)—But 2 Inf. 21. cites several ancient Books to shew, that this Writ is not founded on the Statute, but was the ancient Law of England, and long before this Statute.—If the Lord recovers more on an Alton tried, the Tenant shall not have this Writ, per Knivet, Quere. 59. E. 5. 18. and see accordingly. 58 E. 5. F. Drott. 72. and by 8 Green he Tenant shall have a Ne injuice vexes, tho the Lord recovers the Rent by Affise, which he bad released, but the Deed thereof is produced in Evidence; or where the Affise was taken on the Seisin and Disseisin, F. N. B. 10. (C) in Notes (a) cites 7 H. 8. 7.—(f) This seems a Mistake and that it should be (Hals), and there is no such Name as Green there in the Year Books.

The Affise shall not avoid Seisin of Rent had of his Feofor by Incroachment, nor shall he have a Writ of Ne injuice vexes F. N. B. 11. (C) cites Mich. 18 E. 2—And the Notes there (a) cites 52 E. 3. F. Avowry 255, or rather 255. accordant, and that therefore, on special Matter thence, he may traverse, that he takes by the Feofment, and the Tenant, by whose Hands the Seisin was, shall not avoid thi on the Avowry, cites 18 E. 3. P. Avowry 237—Nor shall a Man have this Writ against the Grantor of the Seignory, F. N. B. 11. (C) cites Patch. 10 E. 5.

6. In Replevin it was held by all the Judges, that if a Man holds 4 Rep. 11 b. Land of his Lord by 25. per Ann. and the Lord gets 35. per Ann. the S. C. cited in Devill's Case. Incroachment or Seisin of Surplusage of the Services shall not bind the Te- nant in Affise of Rent, nor in a Writ of Recover, nor in Cessar; For in 5. P. Br. these Actions the Tenant shall be tried, and not the Seisin, quod not. Affise, pl. And per Brian J. in Replevin the Seisin is traversable and not the Tenure; For 4 Incroachment, or Surplus of Services shall hold in Replevin, and there the Seisin shall be answered, and not the Tenure. Br. Encroachments, pl. 1. cites 12 E. 4. 7.

7. And if the Lord by Dispears makes the Tenant pay him more than is due, such Seisin is by Coerston. Br. Encroachments, pl. 1. cites 12 E. 4. 7. Cafe the Ten- nant, upon the Lord's disreigning for the Rent due, and the Rent incroached, may tender what is due of Right, and make Refuse of the Lord will not accept it, and shall not be driven to a Ne injuice vexes, or Contra formal Feoffment as his Case lies; but it shall be avoided in Alton brought by the Lord for the Refuse, or in Trefass brought by himself for the Dispears for the Sum incroached, and not due of Right. 4 Rep. 11 b. in Devill's Cafe.

8. Avowry, because A. held of him by Fealty 12d. Rent and Suit of Court, the Rent payable at 4 Days in the Year, and alleged Seisin by the Hands of the said A. Que Estare the Plaintiff has, and for the Rent of 4 Days and Fealty be avoided; the Plaintiff said that he be held of the Avowry by Fealty and 12d. payable at one Day, of which the Defendant was Seised, Abisse be that he be held of him by the 12d. payable at 4 Days, and as to the Fealty be tendered to him at such a Place, and be refused; and it was agreed, per tot. Cur. that the obtaining of the Rent at 4 Days, which should be paid at one Day only, was no Incroachment; because they agree in the Sum, whereof he has alleged Seisin in the Avowry. Br. Avowry, pl. 199. cites 21 E. 4. 84.

9. The Lord incroacheth Services of another Nature and avows for it; the Tenure shall be traversed and not the Seisin; other wise if he incroach more of the same Nature; as where he holdeth by 12d. to incroach 23 & there the Seisin shall be traversed, for the Quality of the Tenure is traversable,
Incumbrances.

(A) What are Incumbrances.

1. Grant by Copy is an Incumbrance. Savil. 75. 26 Eliz. Lovell v. Lutterell.

2. A Term is devised to A. for Life, in Case she lives sole, and after to B. The Inheritance is in J. S. A purchases the Inheritance of J. S. who covenants with A. to discharge the Tenement of all former Charges, and afterwards A. marries. Upon this B. enters. A. sues J. S. upon the Covenant and adjudged that it lies; For that this possibility to have the Refund of the Term upon A's Marriage, is a former Charge; For the Will was before the Covenant, and the Possibility shall awake and have Relation before the Marriage, Ow. 7. Trin. 28 Eliz. C. B. Haverington's Cafe, als. Hamington v. Rider.

3. Tenant in Tail of a Rent purchases the Land out of which the Rent issues, and makes a Feoffment, and covenants that the Land at the Time is discharged of all former Charges; tho' this Charge is not in Esse, but is in suspence, as 'tis said 3 H. 7. 12. yet if the Tenant in Tail die, his Issue may die in this Rent, and then is the Covenant broke; For now it shall be accounted a former Charge before the Feoffment. Ow. 7. in the Cafe of Haverington als. Hamington v. Rider.

4. Covenant that Land shall be discharged of Incumbrances does not extend to such Things as are of common Right; For they are by Law exempted, as Tenure; but 7. Eliz. 'twas adjudged, that if any claim Common by Prescription by Eigne Title and recovers, 'tis a Breach of such Covenant. Arg. 2 Roll. R. 287. Hill. 29 Jac. B. R. in Cafe of Swinerton v. Butler.

5. A Rentuer is no Incumbrance; For it is an ancient Right. Arg. Godd 3:7. Paffh. 21 Jac.

6. A Preniso that Leafer for Years shall not charge or incumber the Land restrains him not from making a Lease of it, as was laid by Holt. Skin. 150. Mich. 35 Car. 2. B. R. in the Exchequer.

(B) Equity. Decreed to be discharged.

1. Where there were Articles, and in them a Covenant to covenant in the Conveyance, that the Lands were free from Incumbrances. Lat Cowper said, This is not a Covenant that the Lands are free, but only that in the Conveyance he would covenant fo. But in Cafe of such
Incumbrances.

such a Covenant, if any Incumbrance is discovered between the Executing the Articles, and sealing the Conveyance, or Deed of Settlement, whereof the Party had no Notice, that Incumbrance shall be discharged, even before the Sealing the Deed of Settlement, both as the Concealment is a Fraud, and because it would be needful to enter into a Covenant, which before entering into, is already known to be broke; but against all other Incumbrances discovered afterwards there is the Party’s Covenant only. G. Equ. R. 6. Trin. 7 Anne. Vane v. Ld Bernard.

(C) Bought in by subsequent Mortgagees or Incumbrancers. How far protected.

1. Mortgaged Lands to B. The Mortgage was forfeited; Redemption was decreed, but the Mortgagor, after the Foreclosure and before the Decree performed, had entered into several Bonds, and a Statute, which were bought in by B. on which Bonds and Statute B. extended the Land; per Cur. the Judges recovered on the said Bonds ought not to attach the said mortgaged Premonitory, they being after the Decree, and discharged them and the Extents thereon to be set aside. 1656. Ch. Rep. 174. Welden v. Pullifon.

2. The Plaintiff, for a Valuable Consideration, had a Security for 60l. a Year for Lives, and so was a Purchaser for a Valuable Consideration, and the Lands were afterwards Mortgaged to the Defendant, who being informed of the Purchase, and that it was before him in Time, he took Alignments of three Recognizances prior to the Plaintiff’s Title, two of which were for Money, and the other for Counter Security, upon which he extended all the Lands charged. The Plaintiff prays a Discovery of the Nature of these Dormant Incumbrances, and for what Cause contrived, and what was actually received and paid upon them, or by Perception of Profits since the Extent. The Defendant pleaded his Mortgage, and, subsequent to that, his Purchafe of the other Incumbrances to corroborate his Security, and that therefore he ought not to make any Discovery. But the Court conceived, the Defendant ought to answer, because the Plaintiff has a Prior Security, tho’ both were Purchasers. But Baron Turner said, that if the Prior Incumbrance, that was taken in, had been a Fee Simple upon a forfeited Mortgage, then the second Mortgagee or Purchafor should not have a Discovery, because then the Whole Estate was absolutely in the first, and consequently the second could have no Interest in it. But here the first Incumbrances were only Charges upon the Land, the Cognizances having no Interest in it. The Defendant’s Counsel produced two Orders of Chancery, whereby they alleged that the Court had ruled it otherwise in the Point in question. But the Court ordered ut supra notwithstanding. Mich. 12 Car. 2. Hard. 173. Hacket and Bedell v. Wakefield.

3. S. seised in Fee, granted a Rent-Charge to H. and afterwards mortgaged the Premises to C. who bought in a Judgment precedent to the Rent-Charge; there C. having no Notice of the Rent Charge when he lent his Money. H. could have no Remedy in Equity against the Judgment, unless he would pay both the Mortgage and the Judgment. Chan. Cales. 149. Mich. 21 Car. 2. Higgen v. Syddal, Calamy & al.


S. C. cited by the Matter of the Rolls, who said that it is to be observed in that Case, that the Judgment Creditor, who was the first Incumbrancer, could at Law extend but a Moity and out of the remaining Moity S. might discharge for the whole Rent; but that it seems, if the first Incumbrance had been a Statute Stake, and the third Mortgagee had bought it in, he should have had the whole Land, until at Law the Counter by Statute vacated, and that could only be on Payment of the Penalty. For Equity would not, in such Case, give any Affirmance against a third Mortgagee, without Notice until
Incumbrances.

until he was paid both Mortgage and Statute, and so took a Difference between a third Mortgagee, buying in a Statute, being the first Incumbrance, and a Statute Creditor &c. being a third Incumbrance buying in a first Mortgage. 2 Wms's Rep. 285. Mich. 1728, in Case of Bruce v. the Dutchess of Marlborough.

'tho' the Rule of Equity has been so settled, it is not however without great Appearance of Justice; per the Master of the Rolls. Mich. 1728. and said, that all it seems Reasonable, that each Mortgagee should be paid according to his Priority, and 'tis hard to leave a second Mortgagee without Remedy, who might know when he lent the Money, that the Land was of sufficient Value to pay the first Mortgage and all his own, and that to be defeated of a just Debt, by a Matter later arise is a great Severity, being only a Controversy between the first Mortgagee and the third; But that this was being settled upon solemn Debate in the Case of * Aprill 2. L. & C. 3 Ven. 317: but that there is no Reason to carry it further. 2 Wms's Rep. 492. Mich. 1728. in Case of Bruce v. the Dutchess of Marlborough.—Patch. 22 Car. 2. 1 Chan. Cases 166. March & al. v. Lee. S. P. 3 Ch. Rep. 62. March v. Lee—Trin. 1693. 2 Vern. 139.—* S. C. cited by the Master of the Rolls. Mich. 1728. 2 Wms's Rep. 494. in Case of Bruce v. the Dutchess of Marlborough.

5. Whether a Statute bought in by a Mortgagor ought to be used as to Lands not in his Mortgage? Patch. 22 Car. 2. 1 Chan. Cases 166. * March v. Lee.

Vent. 357.

S. C.—Patch. 1671. 3 Ch. Rep. 67. per Ld Keeper Bridgman. Two Justices against two, that it shall.

Hill. 27. 28

6. A Mortgagee buying in a Prior Security of the Lands in his Mortgage and other Lands shall not hold all against a middle Mortgagee of all those Lands till all due to him on both Securities be satisfied; per Wild and Twifiden. But it was resolved and ruled otherwise. Quære tamen. Patch. 23 Car. 2. 1 Chan. Cases 202. Bovey v. Skipwith.


7. A third Mortgagee buying in a first Incumbrance, shall hold against the second Mortgagee till both are satisfied. Patch. 23 Car. 2. 1 Chan. Cases 201. Bovey v. Skipwith.

8. Mortgagee subsequent to a Jointure got an Affirmance of a satisfied Statute precedent to the Jointure, and extended it on the Lands mortgaged. On a Bill by the Jointref, to set aside the Extent, the Statute being satisfied, the Master of the Rolls decreed, that upon the Plaintiff's paying the Mortgage Money with Interest, the Defendants should assign all their Securities to her; but would not set aside the Extent without Payment thereof. 2 Vern. 30. Mich. 1687. Stanton v. Sadler and Buhl.


Patch 2. Car. 2. Fin. R. 406. Shermer v. Robbins. Cox & al.—In all such Cases it must be intended that the Puisne Mortgagee, when he lent the Money, had no Notice of the second Mortgage Statute or Judgment. For that is the sole Equity. And therefore where a Creditor by Recognizance who bought in a first Mortgage did not deny Notice in his Answer, tho' such Notice was not charged in the Bill, (which was brought by some Incumbrancers for a Sale, and upon Bill and Answer there was first a Decree to flate the several Incumbrances, and then a Repart, and upon that a further Decree for the Master to flate the Value of the Land mortgaged to each of the Mortgagees) yet after all these Proceedings for a Puisne Judgment &c. Creditor to infit upon his having had no notice, and offering to be examined upon Interrogatories it is not sufficient; but this denying of Notice ought to appear on the Pleadings, whereupon the Parties might go to issue, and have an Opportunity of proving Notice; per the Matter of the Rolls. Mich. 1728. 2 Wms's Rep. 499. Bruce v. the Dutchess of Marlborough.

10. A having mortgaged Lands to B. became a Bankrupt, and after a Commissary taken out, and an Affirmance made by the Commissarions, he made a second Mortgage to C. who knew nothing of the Bankruptcy, and took an Affirmance of the Prior Mortgage to Trusteess. Ld Rawlinson held, that C. might
Incumbrances.

C. might protect himself, by his having taken in the Prior Mortgage, and cited many Cases of innocent Purchasers having been allowed to defend themselves in Equity in the like Manner. But Ld Trevor and Hutchins Contra; and held, that he was not in the Cafe of an innocent Purchaser, and that when the Commiss considered he was bound to take Notice. And Ld Hutchins said, that the Cafe turned upon this, that A. the Bankrupt, at the Time of C’s Mortgage had no Estate or Interest in him, either in Law or Equity; All was devested and gone by the Act of Parliament, to which all Persons are Premised to be Parties, and are bound by it, and the Act gives the Commiss the Power to perform Conditions; And in this Cafe the Mortgage was not forfeited, but if it had, the Commissioners should have had the Equity of Redemption; and took a Difference between a Man’s devesting himself by his own Act of his Estate, and where it was taken out of him by Act of Parliament, which concludes every Body. 2 Vern. 156 to 161. Trin. 1690. Hitchcock v. Sedgwick.

11. A Mortgagee for further Consideration relieves the Equity of Redemption to the Mortgagee, and after mortgages to a third Person. Such second Mortgagee may protect himself by an old Statute; cited Trin. 1690. per Ld Rawlinson. 2 Vern. 160.

12. A third Mortgagee bought in an old satisfied Incumbrance, and brought his Bill to compel the Defendant, the second Mortgagee, to redeem or foreclose. He need not prove payment of the Consideration Money, but the producing the Deed and Acquittance is sufficient. Mich. 1692. 2 Vern. 279. Ld. Ch. J. Holt v. Mill & al.

13. Where a third Mortgagee without Notice buys in a First in another’s Name, he may make *of his Trustees Names at Law, either to defend or recover, and may have an Action at Law against them to enjoin. Patch. 1701. Ch. Prec. 159. in Cafe of Blake v. Sir Edward Hungerford.

14. If a third Mortgagee takes only an Agreement of first Mortgagee to convey to him, the second Mortgagee cannot afterwards compel the first to align to him. Because such Agreement was no more than they might have done without any Agreement. Patch. 1701. Ch. Prec. 160. in Cafe of Blake v. Hungerford.

15. A Prize Incumbrancer, after the Bill brought, and after the first Decree made, and in Truth after the Report, gets Assignment of an old Judgment or Mortgage, but was denied any Advantage by it; For he must come in accordance to the Time of his own Incumbrance. 2 Vern. 525. Mich. 1705. E. Britol & al. Creditors of Sir Wm. Baille v. Hungerford & al.

16. A third Mortgagee bought in the First Mortgage, pending a Bill by the second, having thus got the Law of his Side, and equal Equity, shall thereby squeeze out the second Mortgage, and that Ld J. Hale called this a Plank or Tabula in Nostragio gained by the third Mortgagee. 2 Wm’s Rep. 491. Mich. 1728. Bracel v. Dutchel of Marlborough.

17. A. mortgaged to B, and then assigned the Equity of Redemption to C. afterwards D. obtained a Judgment against A. and B. The Mortgagee assigns to D. his Mortgage, and then C. tenders the Money due on the first Mortgage to D. who had Notice of the Assignment of the Equity of Redemption upon his purching in his first Mortgage, and it was objected, that D. having the legal Estate in him by the Assignment of the forfeited Mortgage, and C. having only an equitable Interest, not supported by the legal Estate, if C. would have Equity, he ought to do Equity, by paying off both Monies to D. But it was anwered and resolved by the Court, that C. should redeem, paying only the Money due on the Mortgage, and not what was due on the Judgment; because the Equity of Redemption was never bound by the Judgment; For the Judgment was not conflitute, fo as to become a real Lien upon the Estate, at the Time when this Equity was assigned; and therefore the Judgment could never charge or affect it, and consequently C. purchased an Estate not bound by the Judgment, and by Consequence the Judgment Creditor, by purching in the Prior Mortgagor,
Incumbrances.


18. Where a Puifine Incumbrancer buys in a Prior Mortgage, in order to unite the fames, and there was a Mortgage Prior to that which was bought in, fo as he has not got the legal Estate, there he can make no Advantage of his Mortgage; per the Matter of the Rolls. Mich. 1728. 2 Wm's Rep. 495. Brace v. the Dutchefs of Marlborough.

19. So where the legal Estate vested in a Trustee. Ibid. 496.

20. In all Cases where the legal Estate is standing out, the several Incumbrances must be paid according to their Priority in Point of Time; Qui Prior el't in tempore Potior et in Jure. Ibid. 496.

21. A Copyholder in Fee mortgaged to B. who is admitted by J. S. Steward of the Manor. Then A. makes a second Mortgage to C. who is admitted by J. S. and afterwards A. mortgaged to J. S. the Steward, who buys in A. But per King C. decreed that J. S. should not postpone C. because of the Notice he must necessarily have of the Mefine Mortgage to C. by his being Steward of the Manor, when C. was admitted. Hill. 3 Geo. 2. 113. Lethers x. Bence.

(D) Bought in by Creditors. How far protected.


2. A. mortgaged Lands to B. for 60l. and was also indebted to C. on a Bond to 60l. B. assigned to C. Per Cur. Infinacum as the Estate so vested in C. is a Chattel Leaf, and fo liable to Debts, and C. having an Assign- ment of the Mortgage, and his Debt on Bond being a just Debt, A. ought not to be let into the Redemption, but on payment of the Principal, and Intereft Money due on the said Bond, as well as the Mortgage Money; and fo decreed. 1 Jac. 2. 2 Ch. Rep. 360. Hallify v. Kirtland.

3. A first Mortgage was paid off, but no Reconveyance, then there was a Judgment Creditor, and afterwards was a second Mortgage; the second Mortgagee brought a Bill against the first Mortgagee, the Mortgagor and Judgment Creditor to have a Reconveyance from the first Mortgagee, he being satisfied, which he own'd by Answer, and afterwards pendente lite assigned the Mortgage to the Judgment Creditor; Per Jeffries Ch. 'tis jufifiable, unlefs the Plaintiff will redeem, and pay off the Debt by Judgment, and therefore dismissed the Bill. Trin. 1688. 2 Vern. 91. Turner v. Richmond.

A Creditor by Statute, Judgment, or Recon- the fames shall not by buiring in a Mortgage take it to his Judgment, &c. and thereby gain a Preference to an after Mortgage, For such is no Purchafeor, nor has any Right to the Land, neither in Re nor ad Rem; nor does he lend his Money upon the immediate View or Contemplation of the Cognitor's real Estate; per the Matter of the Rolls. Mich. 1728. 2 Wm's Rep. 491. Brace v. the Dutchefs of Marlborough.

(E) Bought
(E) Bought in by Purchasors or Strangers: How far protected.

1. **Notice to Purchasor of a second Mortgage** before Affirmation of the first Mortgage to him, but after the Purchase Money paid, is too late, and second Mortgagee's Bill dismissed. 14 Car. 2. N. Ch. R. 64. Meynell v. Garroway.

2. If a Purchasor of Land incurred with two Statutes, purchaseth in a 1 Chan. Cases precedent Statute, having no Notice of the second Statute before he was dipp'd in the Purchase, he shall defend himself by the first Statute (whether the same were paid off or no) if he can at Law do it, Equity shall not hurt him; per Ed Keeper. Mich. 27 Car. 2. 2 Chan. Cases 258. Anon. Dawson.——-Ed Rawlinson. 2 Vern. 150. cites 21 Car. 2. Elden in. Catamp S. P. and May 1674. Templett v. Rawland. S. P. and said there were many Cases of that Kind.

3. A devised Lands to Trustees to pay Debts and Legacies out of the Rents and Profits. By this they may sell the Land it fell.—J. S. purchas'd (of the Heir as it seems) and had Notice of the Will. B. Son of A. devised Land to be sold for Payment of Debts, the whole Estate being incumbered; the Trustees sold certain Part of the Lands for 600/. and the Trustees assigned to him several of the Incumberances bought off with his own Money, and allowed good, tho' the Estate was not wholly freely thereby. Mich. 26 Car. 2. 2 Chan. Cases 205. Lingon v. Foley.

4. A. seizes of Lands in Fee confess'd a Judgment, and afterwards made a Jointure on his Wife. Then B. bought in the Judgment, and purchased a Lease of A. A. died. Decreed that B. shall hold over by the Lease, since the Profits taken after the Extent were enough to satisfy the Judgment according to the true Value, nor shall hold over by the Extent after the extended Value to protect his Lease, tho' in Truth, he did purchase the Lease for a valuable Consideration, tho' *also* he had taken a Lease first, and for a valuable Consideration, and without Notice of the Jointure, and then had bought in and extended the Judgment, he might protect his Lease thereof. But A. and B. when the Extent is laid on, and in a Way of Satisfaction by the true Value, than't the Debt on the Jointreets. The Extent it leems was return'd and filed; but B. entered not but by a Lease subsequent. Chan. Cases 247. Hill. 26 & 27 Car. 2. Jacob v. Thatcher.

5. A. purchases Land charged with a Judgment, of which he had Notice; afterwards A. bought in several Mortgages for Years, and some of them subsequent to the Plaintiff's Judgment to protect his Purchase. Decreed that the Plaintiff paying off those Mortgages that were precedent to his Judgment shou'd redeem, and the Mortgage be assigned to him to satisfy his Debt and Charges; especially since the Purchasor, in this Case, had sufficient in his Hands to satisfy the same. Trim. 30 Car. 2. Fin. R. 366. Bacon v. Alby, Cattle & al. *Quere if it should not be (the had be taken a Lease first &c.)

6. Chancery never proteets Purchasors of prior Incumberances, but only where they have been concern'd with the Land before for a valuable Consideration, and came innocently into the Purchafe. Hill. 31 Car. 2. Fin. R. 459. Shermer v. Robins, Cox & al. So that if such Purchasors forsook Mortgages come in without Notice, if after the Incumberance they purchase in a precedent Incumberance, it shall protect his Estate against any such Purchasor in was after Notice of the second Mortgage. Trim. 32 Car. 2. 2 Vern 539. Sir H. Finch cited the Gale of Primate v. Jackson, and other Cases so resolved in Canc.

7. No Purchasor shall be further or longer protected by an Incumberance bought in, than till such Time only as he has received so much of the Profits as would satisfy that Security, and then the same shall be avoided by 

**Y y y**

per Ed Rawlinson. Trim. 1692, 2 Vern.
8. A Statute bought in before a Pursuance is as good as if bought in after to protect a Pursuance, and such a Pursuance shall account only according to the extended Value, and not according to the real Value of the Estate. Paflh. 1682. Vern. 52. Earl of Huntington v. Greenhill.

9. A Pursuance came into a Man's Study, and there laid Hands on a Statute that would have fallen on his Pursuance, and put it into his Pocket; in that Case he having thereby obtained an Advantage in Law, tho' so unfairly, and by so ill a Practice, the Court would not take that Advantage from him. Cited per Ld Chancellor. Paflh. 1682. Vern. 52. Sir Jo. Pagg's Cafe.

10. Pursuance of Lands in the Rebellion under the Parliament's Title was in an old Statute; after the Restoration Equity would not relieve against him; per Ld Rawlinfon. 2 Vern. 162. Tr. 1692. cites it as the Case of Taylor v. Tabor.

11. A Man articles to sell to J. S. and afterwards articles to sell to J. D., who actually pays the Money, and has a Conveyance. J. S. afterwards aligns the Benefit of his Articles to W. R. who gets in an old Statute, he was permitted to defend himself by it; per Ld Rawlinfon. 2 Vern. 161. Tr. 1692. in Cafe of Hitchcock v. Sedgwick.

12. A Pursuance can't protect himself by taking a Conveyance from a Trustee after he had Notice of the Trust; For fo he becomes a Trustee himself, and must not, to get a Plank to save himself, be guilty of a Breach of Trust. Tr. 1692. 2 Vern. 271. Sanders v. Dechow.

13. Tho' Tenant for Life of Land subject to a Mortgage is intitled to redeem on Payment of a third Part, and tho' if he confesses a Statute, such Statute is a Charge on that Equity, yet this may be defeated by a subsequent Incumbrance without Notice; but then such Pursuance must not be a Pursuance of a bare Equity only. For then the first will prevail, but if he purchases in such Equity (to redeem on Payment of a third Part) and the legal Estalk together (as by paying off the Mortgage), and taking an Assignment, he will have the Proteftion of the legal Estalk. Paflh. 1701. Chan. Prec. 160. Blake v. Hungerford.

(F) Bought in. Redeemable by Pursuances or Creditors on what Terms.

And tho' an 1. WHere there were some special Circumstances in the Cafe, an Heir was allow'd the whole Money due on the Incumbrance he bought in, tho' he paid less for it. Paflh. 1682. Vern. 49. Darcy v. Hall.

2. If the Heir buys in an Incumbrance on an Estate charged with Portions, he shall be allowed no more than what he really pays for it, unless he bought it in to protect an Incumbrance to which himself is intitled. Ibid.

3. If an Heir or any other buys in an Incumbrance, he can't allow'd as against a Pursuance any more than he really paid for such an Incumbrance. Trin. 1687. Vern. 464. Long v. Clopton.

4. Mortgagee
In Custodia.

(A) In Custodia Legis.


2. Cattle impounded are in Custodia Legis, and the Party that disreined them Damage feant has not any Interest in them, nor Authority to deliver them. Cro. E. 813. Patch. 43 Eliz. B. R. Pilkington v. Hatlings and Meacocks.

3. After Judgment executed, the Goods, &c. are in Custodia Legis, and not liable to Exchequer Proceeds or Committal of Bankruptcy. Comb. 123. Trin. 1 W. & M. B. R. Leechmere v. Thoroughgood.

(B) In Custodia Marechalli, &c. who, what and how.

1. B. C. has Action against one who was outlawed, and went and came by Mainprize, and prayed that he answer to it infantly, for that he is in Ward here; per Cur. he is not in Ward of the Court, because he appears by Mainprize, and not in Ward, by which it is at his Election, if he will answer or not, and contra, if he had been in Ward, he shall answer or shall be condemned, by which he was not compell'd to answer, but was put to his Election. Br. Responder, pl. 30. cites 39 H. 6. 27.

2. Error is not well assigned, that there was no Bail filed, unless added that the Defendant was not in Custodia. Vent. 233. Hill. 24 & 25 Car. 2. B. R. Anon.

3. A Person is not in Custody of the Sheriffs of London, till he is brought into the Counter, and before he be in the Custody of the Serjeants. Per Holt. A Man is not regularly in Custody at the Suit of another, till a Writ is delivered to the Sheriff, and arrested. 11 Mod. 69. Hill. 4 Anne B. R. Jackson v. Humphrys.

4. If the Sheriff of Northumberland has a Man in Custody in N. and the Sheriff is himself here in Town, and a Writ is delivered to him here in Town against that Person, he is in his Custody immediately upon the Writ; otherwise, if the Man was out of the Country at the Delivery of the Writ, as in Case the Sheriff was bringing him to Westminster on a Habebus Corpus. 1 Salk. 274. Trin. 5 Anne B. R. Jackson v. Humphrys.

5. Person
5. Persons were indicted of Murder, but before their Discharge, the Sheriff produced a Writ of Appeal, which was delivered to him, and the Court held, that the Prisoners were in Custody by delivering of the Writ to the Sheriff. 11 Mod. 252. Mich. 8 Ann. B. R. the Queen v. Tooly, Arch and Lawton.

(C) Of delivering Declarations to Persons In Custodia.

1. Declarations on the Bye against one in Custodia, ought to be deliver'd in Term Time; per Roll Ch. 1. Sti. 321. Hill. 1651. B. R. Anon.

2. When a Man is In Custodia Mareschalli, any Man may declare against him in a Personal Action; and if he be bai'd out, he is still In Custodia to this Purpofe, viz. as to Declarations brought in against him that Term; For the Bail are as it were delegated by the Court to have him in Prifon. Vent 253. Hill. 24 and 25 Car. 2. Anon. cites Hob. 264.

3. Defendant committed by the Court for a Contempt can't be charg'd with an Action without Leave of the Court; but on Motion, they generally give Leave as they did in this Cafe. 2 Show. 88. Hill. 31 & 32 Car. 2. B. R. the King v. Dean & al.

He can't declare against one as In Custodia, that is committed for a Mifdeemeanor.

Sti. 536. Mich. 1652 Maurice's Cause —— If a Person be in Execution for a Fine, 'tis a Contempt for any to charge him with a Civil Action without Leave of the Court, but the Court will hardly discharge the Action, tho' they will punish the Contempt. Per Cur. 6 Mod. 38. Mich. 2 Ann. B. R. Anon.

But the not delivering a Declaration within three Terms to one in Custody, or entering Judgment, is irrecoverable in B. R. but otherwise in C. B. if Defendant continues still in Custody; per Eyre Ch. J. 1726.

4. Tho' by the Course of the Court, if the Defendant is in Prison two whole Terms and no Declaration is put in, he may get a Rule to be discharged, yet if the Declaration be deliver'd afterwards and Judgment thereupon, 'tis a good Judgment, and the Bail will be liable in such Cafe. 2 Vent. 143. Hill. 1 & 2 W. & M. C. B. Dod v. Dowson.

But if Privilege had been exercis'd as to the fift Action it would have been warded as to the second also. 1 Salk. 1. per Holt Ch. J. Mich. 8. W. 3. B. R. Duncomb v. Church.

5. Where a Person is here in actual Custody, he is liable to all Actions; but if he be here only upon Bail, he may plead his Privilege; For the Sheriff cannot take Notice of his Privilege so that he must give Bail. 1 Salk. 1. per Holt Ch. J. Mich. 8. W. 3. B. R. Duncomb v. Church.

But if he be in Execution you shall not charge him till acknowledged; per Cur. 12 Mod. 73. Trin. 7 W. & M. Anon.

6. If a Man be in Custody of the Marshall on a Reddictif fe, you may charge him on the Reddictif in Execution with the Marshall, without making the Marshall acknowledge him in Court to be in his Custody; per Cur. 12 Mod. 73. Trin. 7 W. & M. Anon.

7. Declaration delivered against one in Custody, he shall have the whole Term to plead in Abatement. 2 Salk. 515. Mich. 8 W. 3. B. R. Anon.

8. 8 & 9 W. 3. 26. For the more easy and quick obtaining Judgment against a Prisoner in the Fleet, it shall be lawful for any Person, having Cause of Action against such Prisoner, after filing or entering a Declaration with proper Officer, to deliver a Copy thereof to such Defendant in any personal Action, or to the Turnkey or Porter of the said Fleet Prison, and after a Rule given to plead, to be put in 8 Days at most after delivery of such Copy, and Affidavit made thereof before one of the Judges of the Common Pleas or Exchequer, to find Judgment against such Defendant as if he had actually been charg'd at the Bar of the Common Pleas or Exchequer with such Action.

9. If
In Custodia.

9. If after Judgment a Prisoner is not charged in Execution within two Terms he shall have a Superfeded as well since the 4 & 5 W. & M. 21. as before. Carth. 469. Mich. 10 W. 3. B. R. Holland v. Serjeant.

10. A. is in Execution at the Suit of B. and charged with Action at Suit of C. who obtains Judgment, he ought to charge him in Execution by Commitment, and not by Ca. Sa. but he may have Fi. Fa. But Quære, if after he has charged him by Commitment, he may have Fi. Fa. he continuing so in Execution. By the Statute, if one in Execution by Ca. Sa. escape, the Plaintiff may sue Fi. Fa. 12 Mod. 313. Mich. 11 W. 3. Anon.

11. One arrested by Process of this Court, for want of Bail goes to Custody of Marshal, and after by Hab. Corp. gets himself turned over to the Fleet; sure the Plaintiff shall not thereby lose the Benefit of declaring against him in Custody of Marshal; but if he removes himself in that Case out of Custody of Sheriff into the Fleet, so that he never was in Custody of Marshal quære if there may be a Difference, tho' even there it will be dangerous to suffer such Removal to the prejudice of the first Plaintiff's Action; per Holt Ch. J. 12 Mod. 360. Mich. 13 W. 3. Anon.

12. Note, before the late Act of Parliament, one in Prison of the Fleet could not be declared against without bringing him by Hab. Corpus into Court; but the Course here was to leave Declaration with the Turnkey. 12 Mod. 561.

13. If one is in Custodia Marefchalli, to charge him with Action or Execution you must (in Term time) file a Bill against him and deliver a Declaration to the Turnkey; upon this he shall lie two Terms before he shall be discharged, even on Common Bail; but if it be in Vacation, the Plaintiff must go to the Marshal's Book in the Office, and make an Entry, quod remaneat in Custodi ad Sect. J. S. but then he must be in actual Custody, and not at Liberty, because then he may be arrested; per Cur. Salk. 213. Mich. 3 Anne B. R. Tillden v. Pallfriman. 345. S. C. and P. but the Prisoner had no Notice; On flowing thereof and Affidavit a Judgment by Nil dicit against him was discharged, and Plaintiff order'd to accept a Plea. Sti. 386. Trin. 1635. B. R.

14. If Marshal owns one to be in bis Custody who is not, that shall conclude himself but no Body else, and shall subject him to an Escape. 6 Mod. 254. Mich. 3 Anne B. R. Tillden v. Pallfriman.

15. If Marshal suffer one to be in and out at Times, and during such Time he is charged by a Remanet &c. tho' he were actually out of Prison at that Time, yet if' he returned in again, that shall be quai a Continuance of the first Imprisonment. 6 Mod. 254. Tillden v. Pallfriman.

16. You cannot declare against a Man in Custodia any where but in B. R. but a Process must go to the Officer to bring him to the Bar. 11 Mod. 69. Hill. 4 Anne B. R. Jackson v. Humphrys.

17. 'Twas held by the Court that 'tis not sufficient to deliver a Copy of a Declaration to the Turnkey or Gaoler where the Defendant is in Custody, unless the Declaration is first filed in the Office, and a Judgment for that Reason was set aside. Hill. 10 Geo. 1. 8 Mod. 226. Anon.

(D) In whose Custody the Prisoner shall be said to be.

1. If who comes to London by Writ of Corpus cum Caufa brought by Officer of London, is Prisoner to the Officer who brought him, till he be thereof dimitted, and not Prisoner to the Bank; so that if another Action should be against him in Banko, he shall not be compelled to answer to it. Br. Imprisonment, pl. 99. cites 9 H. 6. 54.

2. If a Man be imprisoned in Newgate in London for Safety of the Peace by Precept of Middlesex, he shall not be stayed by any Plaintiff taken against him in London; For tho' Newgate be in London, yet it is the Prison as well as in the Middlesex. Br. Plaintiff pl. 24. cites 10 F. 2. 5. Privilege pl. for 44 cites S C.
for the County of Middlesex as for the City of London, and in this Case he is Prisoner there for Middlesex, and not for the City of London, and therefore shall not Answer to the Plain in London. Br. Imprisonment, pl. 104. cites 16 E. 4. 6.

3. A Prisoner, who comes from the Tower of London to B. R. to answer for Treason, shall be in Custody Marechalli, edentct Curia, and not in Custody of the Lieutenant of the Tower of London, and when he departs he shall be sent again to the Lieutenant of the Tower. Br. Imprisonment, pl. 96. cites 1 H. 7. 23.

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(A) * Indictment, Extortion, [and Misdemeanors.]

1. M. 14 E. 3. B. R. Rot. 38. Richardus Bernard Clericus Thome de Bolton sinitus Taxatoris & Collectoris 15. sent fincum per se Harcas pro quo quod recept Denarios per Pondus Magnunm, per quo lucrat in qualibet libra 20s. 6d. & ultra, & pro Extortionibus.

2. Cr. 36 E. 3. B. R. Rot. 27. Presentatur quod Philipp. Dece Capellanus collegit ad Pontem vocatum Ferbrig 201. quas expendit circa dictum pontem; sed berras ad dictum pontem confixit & concludes quod nullus tranire potuit sine fine libi facing, &e. Defendens factur, et is fined.

3. If the Apprentice of J. S. gets a Woman with Child, and thereupon secretly departs, and after J. S. procures some Justice of Peace to make a Warrant to the Constable to take him, and to bring him before them or others to answer this Offence, and after a Stranger, well knowing of this Warrant, harbours and comforts the Apprentice in locis ignotis, by which the Constable cannot take him, yet this is not any Offence punishable by the Common Law, insomuch as the Warrant was not to apprehend him for Felony or Treason, and therefore the harbouring and Comforting not punishable. P. 15 Lea. B. R. Vaughan's Case, in Deit of Error per toto Curiam.

4. But in this Case if the Stranger, knowing of the Warrant, advices and incites the Apprentice to absent himself so that the Constable shall not take him, and he harbours and comforts him to this Purpose, This is an Offence punishable by the Common Law by Fine and Imprisonment: because he persuades him to avoid and to hinder the Course of Justice, tho' the Warrant was not for Felony or Treason. P. 15 Lea. B. R. Vaughan's Case per Curiam, propter Doberidge (but Dico well of it.)

5. The Mayor of L. was indicted for Extortion, for that he had received 24 s. of one A. for giving of Judgment in an Action of Debt. 1 Le. 295. Hill. 27 Eliz. B. R. the Mayor of Lynn's Case.

6. A Conmiillary of the Archbishops of Canterbury, B. Regiller, and C. Apparitor, were Indicted of Extortion, that they colore Officiorum fue-
run had Maltofe accepted and received 11s. 6d. for Assoluction of one D. who was Escommunicated, where they ought to have recorved but 2s. 6d. and Exception was taken to this Indictment, because that all their Offences are put together, viz. colore Officeum Jussum, whereas the particular Offence of every Offender ought to be specially set down, but here they are con- founded; which fee by the Statute of 25 Ed. 3. 9. That Ordinaries shall not be impeached by such general Indictments, unless they say, and put in certain, in what Things, and of What, and in what Matter the said Ordinaries have committed Extortion; but that Exception was not allowed, because of that the Party grieved cannot have Notice; for they took in Grofs, and afterwards parted it betwixt them; another Exception was, because it is not fixed what is their Due Fee, and that was conceived to be a good Cause of Exception; and if no Fee be due, the same ought to appear in the Indictment. And afterwards the Opinion of the Court was, that they should be discharged. 3 Le. 268. Mich. 33 Eliz. B. R. Lake's Cale.


8. A, a Sheriff's Bailiff was indicted for Extortion by two several Indictments; in the one, that he had received 20s. from one extorsive colore Officiis ini; and in the other, that he, extorsive took 6s. 8d. Cro. Car. 432. Hill. 11 Car. B. R. Brundlen's Cale.

of S. was indicted for Extortion, viz. that Colere Officii he had taken 90s., and was found Guilty; and after the Indictment was removed hither and Exceptions taken to it; because the Cause for which he took the 90s. is not expresed in the Indictment; For it is illible; but the Court held the Indictment good; For 4to Colere Officii, and perhaps he went to one of the Hundred, and said that he ought to loose so much as Bailiff, &c. the which Matter could not have been otherwise expresed. But if it had been upon Demurrer, perhaps it should be otherwise. Sid. 91. Mich. 14 Car. 2 B. R. the King v. Cover.

9. A Miller was indicted for taking too great Toll. 5 Mod. 13. Mich. 6 W. & M. the King v. Wadsworth.

10. Indictment was for Extortion against an Officer for taking Money for not carrying his Prisoner to a Spurning-house. 12 Mod. 255. Mich. 15 W.

3. the King v. Beechcroft.

11. Indictment against several for intending to defraud A. of his Money by threatening to send him to Newgate by colour of a Warrant, and to indi- ced him of Perjury, unless he would give them Money and a Note, which he did thro' their Threats; and tho' Exception was taken, because it was neither averred, that there was no Warrant, nor that he was not Guilty of Per- jury, nor that any Money was actually paid; yet the Court held, that it was Ollence inditablc, and over-ruled the Exceptions; and by Holt Ch. J. every Extortion is an actual Trespa, and an Action of Trespa will lie against a Man for frightening another out of his Money. If a Man will make Use of a Proceeds of Law to terrify another out of this Money, it is such a Trespa for which an Indictment will lie; and Judgment for the Queen. Mich. 1707. B. R. 11 Mod. 137. the Queen v. Woodward & al.

12. A. was indicted at the Common Law for several Misdemeanors ag- aint the Peace of the King, and which were to the great Scandal of Christianity, viz. because he beawed his naked Body in a Balcony in Covent Garden to a great Multitude of People, and there did such Things, and spoke such Words, &c. (tewing some Particulars of his Misbehaviour,) and this Indictment was openly read to him in Court; and after he had been continued by Recognizance from Trin. Term to the end of Mich. Term, the Court demanded him to have his Trial for it at the Bar; but he, having admitted, submitted himself to the Court, and confessed the Indictment, wherefore the Court considered what Judgment to give, and because he was a Gentleman of a very Ancient Family, and his Estate im- cucrated (not intending his Ruin, but to reform him,) they fined him only 2000 Marks, and that he should be imprisoned for a Week without Bail, and be
Indictment.


13. If what was a Misdemeanor at Common Law be made Felony by Statute, as for buying Stolen Goods knowing them to be Stolen before the Acts making it Felony, yet after the Acts which make it Felony, it is not punishable as a Misdemeanor, and must therefore now be indicted for Felony. 12 Mod. 634. Hill. 15 W. 3. the King v. Crofte.

14. A. settled an Account with B. by which he was indebted to B. in such a Sum; A. signed the Account, and afterwards got it into his Hands and tore it, and was indicted for it. 6 Mod. 175. Pach. 3 Anne B. R. the Queen v. Crisp.

(B) Contempts to Courts.

1. If a Man comes before the Justices Itinerant, and there the Bishop of London says, that he is Excommunicated, and so publicly denounced him, upon which A. before the Justices iteram Sigillam Officii Curie Cantuariensis signatam in plena Curia Regis (hudeb) pourrexit capitalis Clerico Justiciariorium predicatorum Iegendam, ad iamam & ilatum fuum clarificandum; the which Letter the Bishop ilatum de Manu praediti capitalis Clerici cepit & aportavit against the Will of the said Clerk, the Clerk several Times requested him to deliver it to him again. The Bishop may be indicted for this Contempt to the Court. Liber Parliamentorum. 21 E. 1. 14. h. between Penteleon and the Bishop of London; this Offence was punished in Parliament.

See(I)pl. 3.

(C) Concerning [Things done, or spoke in Court to] Judges. What shall be said an Offence punishable.


2. A. came to the Court of C. B. (Justice Hutton and Justice Crawley then being there, giving Rules and Orders) and said, I accuse Mr. Justice Hutton of High Treason; for which he was committed to the Custody of the Warden of the Fleet by Justice Crawley; and after by the Direction of the King, he was indicted in B. R. and Convicted and Fined 5000l. to the King. And Justice Hutton preferred his Bill against him there, and recovered 10000l. Damages. Hurt. 135. Mich. 14 Car. Hanfon's Cale.

3. A. said to the Justices in their Quarter Sessions, I can't have Justice here, I will have Justice elsewhere; For which Contempt the Justices of the said Sessions indicted him, fined him 3l. and committed him to Prison for default of Payment; all which Matter was returned upon Hebeans Corpus, and the Return being filed, it was prayed that he should be discharged; but several of the Justices were of Opinion, that it was a Contempt, for which, upon Indictment, he may be fined, as here he is, for which Fine he is now in Execution, and therefore shall not be Discharged nor Baile. But Twifden J. doubted, if the Words before were a Contempt; For tho' it is a Contempt to accuse them of Injustice, yet it is not to Appeal, and these Words are spoke by way of Appeal, which is lawful for every Subject to do; Ideo quære. 2 Sid. 144. Pach. 15 Car. 2. B. R. the King v. Mayo.

4. A. being brought by Warrant before the Justices of Peace at their Sessions said, this is no Justice of Peace's Business; you shall not try this Matter;
Indictment.

Matter; have a Care what you do; I have Blood in me, if I had you in another Place. The Court inclined, that the Words are not indictable as laid in this Indictment; because they did not carry any necessary Intendment of a Challenge or Intent to break the Peace, especially when it appears in this very Indictment, that the Defendant was a Wheelwright and so not likely to Challenge or be Challenged. 10 Mod. 186. Mich. 12 Anna. B. R. the Queen v. Nun.

(D) [By going Armed.] Touching Contempts to Courts
[by Threatening, or * Striking there.]

* fuit Vagrans armatus de Platis, in contemptum Domini Re
gis & atractitious, Qui dicit quod minus; fuit per homines ignotos de
Vita sua & in lavationem dice rise allotted super Corpus Suum
quoddam Par de Platis & non in Contemptum Cure. Et hoc per
Juratum compertum eft. Deo Quiescat, ida tamen quod inventat
securitatem de bono Genti fui. Et inbene Homicipores.

keeping of a Prisoner committed to him by the Court of B. R.
im Jurata capta finit coram Domini Regis quod videm Extremisstitionem
de Litus, &c. inter Actum de Legh quiestetin & Willemia
Wanghain defendantem de Placeto Transflexitam quibus Rich
ardus de Caftell a fini tempore qui Juratores Inquitatam, sicut
ad Iuram Coram Jurisdictt. ad Vereuntiam Jutmare ascendit
bistas Jutiaribus minus fecurit & ipso profecti sunt ad Portam Palatii
Dominii Regis Westmonastic & ibdem inulutum fecurit & ipso
vulneraverunt & male tractaverunt, &c. Et dictus Richardus in Chri
tianum dixit qui non eft Copybathis ebat fini factur prcmilla
& inulitute gratic Cure. Judicium redditum quod Manum fumit ex
tran amanit & amputetur & Committitur Turni London ibdem moraturu
rums dam vivetur. Sed Exercito pro Amputatione Manus respeti

his Judgment was Imprisonment for Life; * Forfeiture of all his Lands, Goods, and Chattels, and Am
putation of his Right Hand at the Standard in Cheaps; and Execution was done accordingly. D. 183.
rather at the same Title and Plea in Brut. or in Brooke.) But Dalton makes a Quere, what Law
there is for the Forfeiture of his Lands, but there is, that the Forfeiture of his Lands may be for his Life.—Jenn. 42. pl. 81. cites S. C. in D. 183. b. and says, the Forfeiture of the Inheritance of the
Lands, and that the Offender must be Imprisoned and Convic ted before this Punishment can be inflicted;
and that it is the Case of Striking before the King's Justice of £60 or £200. — His who makes an
Affair in the Presence of the Justice and those who refuse him with drawn Weapons shall be dismem ered
3. 41 All. 25. a Man Struck a Juror at Westminster who passed against
him and was indicted and arraigned at the Suit of the King and
acquitted, and the Judgment was that he should go to the Tower of
London, and there remain in Prison all his Life, and that his Right
Hand should be cut off, and his Land &c. should be forfeited into the Hands
of the King, and the King answered the Indictment; and after the
King gave the Lands to another, supposing that they were forfeited;
and after the King * by his Charter pardoned him who struck the Juror
by such Words (reciting how he was convicted, and also all the Judgment
as above) Pardondavisudes Peraones predictam Amputationem &
quicquid ad nos pertinent, in hac parte; and upon this the Deft of him
laid a Scire facias out of the Charter against him, to whom the
Laud was given, why he should not be restored to the Land, and
the Defendant pleaded that this Deft does not lie upon a Charter,
not being warranted of Record; and because the Defendant would
not lay any other Thing, Execution was awarded by Judgment.

4. Indictment for drawing a Sword in Aula Westm. Sedentibus Curis,
and had Judgment of perpetual Forfeiture and 100l. Fine; Note on the
Evidence it appeared to be on the Steirs ascending the Court of Wards,
and so out of the View of the Courts; But per Popham, if the Indictment
had been (as it ought to have been and as we have Precedents in 1 E. 4)
viz. Coram Domina Regina; the Judgment should have been Augmentation
of his Right Hand, Forfeiture of all his Lands and Chattels, and perpetual

5. One was indicted of Assault and Battery in the Palace of Westminister,
near the Hall there, all the Courts Judicially sitting, &c. in Contempt of
the King and Disturbance of the Laws to be Ministrd to the People, &c.
He was found Guilty; but because the Indictment was not that he did it
in the Presence of the Justices, or of the King, all the Judges agreed that
Judgment should not be of the cutting off his Hand; but being done in
the Palace near the Hall Door, he was awarded to be imprisoned during
the King's Pleasure, to pay 100l. Fine, and to be bound with Sureties for
his good Behaviour; and Jones and Barkley J. were for adjudging him
to make his Submissi in the three Courts, but Richardson Ch. J. and
Crook J. were against it, and Crooke conceived 500l. to be Fine sufficient.

6. B. was indicted for striking one H. in Westminister Hall near the side
Bar of C. B. sitting the Courts, and in a former Term it was moved that he
should be bailed; and it was said per Cur. that inasmuch as the Judgment
is so great, that his Hand shall be cut off, &c. those who are Bail for him
shall be Body for Body, and not in any Sum certain, and so it was done;
and this Term he was tried at the Bar here by a Jury of Middlesex, and
Witneses who gave Evidence for B. were admitted to be sworn as well as
H. and others who gave Evidence for the King, and tho' B. offered Evidence
that H. had offered to compound with him, and to take to much Money,
yet the Court would not allow it as Matter to invalidate the Testi-
mony of H. because they said it should be intended that this was a Com-
pelion for the Battery, and not for this Prosecution, which was not in his
Power to Compound; and after the Jury found B. Guilty, upon which he
was committed till he had Judgment, but B. obtained the Pardon of the
King. Sid. 211. Trin. 16 Car. 2. B. R. the King v. Bockman.

(E) Conspirators.
Indictment. See Conspira
cacy.

(E) Conspirators.

1. See 32 E. 1, Statute of Conspirators, who shall be adjudged Con-
spirators.

2. If two Confederate together, each of them to maintain the other,
whether their Matter be true or false, tho' they do not put any Thing
in Utter, yet they may be indicted of it; For this Confederacy is
prohibited by the Law. 27 Misc. fol. 139. b. adjudged.

6 Mord. 157, 186.—To Charge one falsely with Forcirtation is a Conspira-
y and a Confederacy falsely
to charge with a Thing that is a Crime by any Law is indictable. 3 Salk. 174 Queen v. Bell.

3. So if Men confederate by Oath in such Banner as before, they
may (a forsworn) be indicted of it. 27 Misc. fol. 139. b. 34. tho' nothing
be put in Utter.

4. If a Man makes a false Affidavit against another in B. R.
Chancery, &c. tho' no Action lies against him upon the Statute, yet
he may be indicted for it at the Common Law. Mich. 11 Ja. B. R.
pet Toke; For such false Affidavits procure Damage and Ruination
of the Party divers ways.

5. If a Man swears, or procureth another to swear, before a After
in Chancery, to have the good Behaviour of J. S. certain Articles to be
true of his own Knowledge, where he does not know it to be true, tho'
be true for the Matter; yet this is a false Oath punishable at the Com-
mon Law, tho' it be not within the Statute. Mich. 20 Ja. B. R.
adjudged per Curiam Whiteley v. Oakley.

6. Stat. 33 E. 1. Conspirators are such as bind themselves by Oath, or
other Alliance falsely and maliciously to illstitial, and falsely to move and maintain
Pleas, and such as cause Children within Age to appeal Men of Felony, and
retain Men to maintain their malicious Enterprises; and this extendeth as
well to the Takers as Givers, and also Executors and Bailiffs, who by their
power maintain Debts that concern not their Lords or themselves, but other
Parties.

Indictment, whereupon he is lawfully Acquitted, are properly Conspirators, but those a's
who barely confess to indict a Man falsely and Maliciously, whether they do any Act in Prosecution of such
Conspiracy or not. Hawk. Pl. C, 189. cap. 72. 8. 2.

7. Several were indicted for conspiring to charge a Man to be the Father
of a Befalid Child; the whole Court thought that Bare agreeing together
to charge a Man with a Crime falsely is indictable. Indeed if the Truth
had been, that there was a Woman with Child, and the Parish likely to
become Chargeable, and the Defendants, being Parish Officers, had not
to inquire and find out the Father to serve the Parish Bursipal, and should up-
on such an Occasion upon their Information charge such Person to be the
Father, and the Indictment had been for that, they must be Acquitted;
Judgment for the Queen. 6 Mord. 185. 187. Trin. 3 Anne B. R. the
Queen v. Bell & al.

(F) What shall be said an Offence punishable by the
Common Law.

1. If a Man impanelled and sworn upon the Grand Inquirt discovers
sto Strangers the Evidence given to him and the Reelude of the
Tutors for the King, this is an Offence punishable by Fine and
and Hill's Cafe admitted. And the Clerks of the Crown-Citie said
that it is usual. * 27 Misc. 63, arraigned as of Felony.

2. Inter

S. P. Lev.

62 Patch.

14 Car. 2. B.

R. the King

v. Kimberly

and May-

worth.

Br. Corone

pl. 115 cite

S. C. 27

Shard; some

Justi es hold

that to be

True.

Quære.
Indictment.

2. Inter Placita Corone Coram Jusliciariis Itinerantibus 50 E.
1. within the Hundred at Fivemoor in Cornwall, the Sheriff of Cornwall, Sutlece, Truphen is presented for Counselling a Prisoner to stand mute, &c.
2. Keeping a Gaming-house is an Offence indictable at Common Law, as a Nulity; per Cur. 15 Mod. 336. the King v. Dixon and Ux.

(G) What shall be said an Offence punishable.

1. If a Commission be granted to two and one executes it alone without the other and puts People to Fine; yet it is not any Cause of an Indictment, because it was Error of Judgment. 27 Att. 23. adjudged.
2. A Man cannot be indicted because by his Conspiracy all the Land of J. S. was extended upon an Elegant under the Name of a Moity, supposing him to have other Land, and also because it was extended very low; For the Extent was by the Oath of the 12. 27 Att. 23. adjudged.
3. A Person was indicted for opening a Letter sent by the Post; but quashed, for a Fault in the Caption. 12 Mod. 514. the King v. Ruffel.
4. For being a Common Scold, and Judgment that the should be ducked. 6 Mod. 178. Tin. 3 Anne the Queen v. Foxby.
5. One is indictable for setting up a Leet. Aft. Because it is an Usurpation upon the Queen, for which she may bring a Quo Warranto, where there may be two Judgments, the one for Seifur of the Franchise in her Hands, and the other for a Fine for the Usurpation. sedly, To keep a Leet to Summon the Subjects to make Presentments, and to Amerce is a Grievance to the People besides. 6 Mod. 183, 184. Tin. 7 Anne per Cur. Anon.

See Murder.

(H) For what Offence [a Man] may be indicted.

1. If two Men are common Hazerdors, and use with falfe Dice to receive the King's Subjects, and they join together, and with false Dice deceive J. S. of his Money at play with him; they may be indicted for it: For it is an Offence, and if they are Guilty, they may be adjudged to stand in the Pillory. 1st. 2 D. 4. Robert Bckingham and Martin Lefon Vantoney were indicted for such Offence, and the said Martin adjudged to stand in the Pillory in the Second, by three Days, and after in Southwark by three other Days.

See also the following:

- Fol. 78.
- * S. P. or for any other Way of cheating at Play or otherwise.
- For Cheating in a High Grade against the Common Wealth, as well as against the Party cheated. 3 L. P. R. 44. cites Hill 32 Car. B. R.
- A was indicted, for that he, falsly and per Conspiracionem is cheat B. of his Money, prevaled on him.
2. **See Mirror of Justices, vol. 18. One of the Articles inquisitorial in a Lect is of the Bakers and Daughters of ale Dice.**

3. **Mirror of Justices, 17. b. cap. 1. § 17. of Bound removed to common Use, (this is there put for one of the Articles inquisitorial in a Lect.)**


5. If a Collector of anything Pro Bono Publico does not employ it according, he may be indicted; Roll R. 2. per Coke Ch. J. cites 27 All which was of Monies collected to furnish Archers, and the Collector indicted for converting it to his own Use.

6. For an unnatural Assembly, and Entry into another's Close. 2 Le. 184. Mich. 32 Eliz. Alhpernon's Cafe.

7. An Indictment lies against one for afflicting and stopping of another in his passage in the Highways; Hill. 22 Car. B. R. For it is a Breach of the Publick Peace. 2 L. P. R. 44.

8. Every Indictment ought to be preferred against the Party for some Offence committed by him, either against the Common Law, or against some Statute; Trin. 23 Car. B. R. and not for every slight Misdemeanor. 2 L. P. R. 44.

9. An Indictment lies against one that makes a false Ottah in an Affidavit, or in an Affidavit made in a Cafe depending there, or in any other Court of Record. Trin. 23 Car. B. R. 2 L. P. R. 44.

10. One for counterfeiting a Protection in the Name of a Privy Councilor, (tho' only a Commoner, and not a Parliament Man) and selling it for 6 l. was indicted and found Guilty of Counterfeiting and Extortion, and fined 50l. and Imprisonment 'till paid. Sid. 142. Patch. 15 Car. 2. The King v. Deakin.

11. One was indicted for Kidnapping, and convicted and fined. Comb. 6. Bar then it must be an Indictment at Common Law; For being main-


13. One was indicted for erecting a Mountebank's Stage in Moorfields; and Holt Ch. J. said, the Grand Jury should present those that have Licences as well as those that have not. Comb. 304. Mich. 6 W. & M. The King, &c. v. Bradford.

14. One was indicted for lying with another Man's Wife. Comb. 337.

15. Indictment for a Chear done to J. S. by imposed upon him a Quan. S. C and theancy of Beer mix'd with Vinegar and Grounds of Coffee for Port Wine; One of the Defendants pretended to be a Broker, and the other a Portuguese Merchant, for the better carrying on the Chear; and per Holt Ch. J. S. was allowed to be a Witness to prove the Fact upon the Trial, for in such Cases of 118 l. Value. But the Indictment was quashed for the Defendant being called Vinum prætentum 6 Mod. 321. 322. Mich. 5 Annal.
16. J. S. was indicted for that he came to A. pretending B. sent him to receive 20l. and A. received it accordingly, whereas B. did not send him. And per Cur. it is not Indictable, unless the Defendant came with false Tokens; and said, that we are not to indict one Man for making a Pool of another. 1 Salk. 379. Trin. 2 Anne. B. R. the Queen v. Jones.

17. A. was indicted for that B. borrowed 5l. of him, and pawned Gold Rings to secure the Payment, and that at the Day A. tendered the Money, but the Defendant refused to deliver up the Rings; and it was quashed; cited 1 Salk. 379. in the Case above, as Bainsham's Cafe.


18. Whatever is a Breach of the Peace is indictable; as sending a Challenge; agreed per Cur. 6 Mod. 125. Hill. 2 Anne. B. R. in Case of the Queen v. Langley.

19. For Firing in one's Pond, and taking and carrying away so many Carps de Bonis & Catallis of the Prosecutor. 6 Mod. 183. Trin. 3 Anne. The Queen v. Steer.

20. An Indictment was, for cutting into a Wood, and cutting down 20 Ashes and 30 Oaks. Holt's Rep. 353. Trin. 6 Anne. The Queen v. Harris.

21. A Crime that shakes Religion, as Profaneness on the Stage, &c. is indictable; but writing an obscene Book, (as that intitled, The Fifteen Plagues of a Maidenhead) is not indictable, but punishable only in the Spiritual Court. 11 Mod. 142. Mich. 6 Anne. The Queen v. Rudd.


23. Several were indicted for a Conspiracy, in giving a Man Money to marry a poor helpless Woman, who was an Inhabitant in the Parish of B., and incapable of Marriage, on purpose to gain a Settlement for her in the Parish of A., where the Man was settled. But upon a Motion to quash the Indictment, Judgment was given for the Defendant, because it was not averred, that she was left legally settled in B., but only, that she was an Inhabitant there. 8 Mod. 320, 321. Mich. 11 Geo. 1725. The King v. Edwards & al.

24. There can be no Doubt, but that all capital Crimes whatsoever, and also all Kinds of inferior Crimes of a publick Nature, as Misprisions, and all other Contempts, all Disobediences of the Peace, all Oppressions, and all other Misdemeanors whatsoever, of a publickly evil Example against the Common Law, may be indicted; but no Injuries of a private Nature, unless they some Way concern the King. 2 Hawk. Pl. C. 210. cap. 25. S. 4.

(H. 2) For Non-lessee. In what Cafes.

1. He that has a Port is bound to repair it, otherwise he may be indicted; per Powell J. 2 Lutw. 1523. in Case of Wilks v. Kirby.

2. Overseer of the Poor was indicted for not obeying an Order of Sessions concerning the Settlement of a poor Man. Comb. 213. Trin. 5 W. & M. The King v. Pope.

3. An Indictment was against a Woman, for that the being duly required to Watch and Ward, she did not Watch and Ward; but quashed, because it did not say, nor provided one to Watch for her, which the Court might have done. Comb. 243. Hill. 5 W. & M. Anon.
H. 3 What Offences are Indictable by Statute.

1. A Felony made Felony by Statute is not indictable as a Misdemeanor.
2. If it seems to be a good general Ground, that wherever a Statute prohibits a Matter of a publick Grievance to the Liberties and Security of the Subject, or commands a Matter of a publick Convenience, as the Repairing of a Common Street of a Town, an Offender against such Statute is punishable, not only at the Suit of the Party aggrieved, but also by way of Indictment, for his contempt of the Statute, unless such Method of Proceeding do manifestly appear to be excluded by it. Yet if the Party offending have been fined to the King in the Action brought by the Party, as it is said, that he may in every Action for doing a Thing prohibited by Statute, it seems questionable whether he may afterwards be indicted because that would make him liable to a second Fine for the same Offence.
3. Also, if a Statute extend only to private Persons, or if it extend to all Persons in general, but chiefly concern Disputes of a private Nature, as those relating to Distresses made by Lords or their Tenants, it is said, that Offences against such Statute will hardly bear an Indictment.
4. Also, where a Statute makes a new Offence, which was no way prohibited by the Common Law, and appoints a particular Manner of Proceeding against the Offender, as by Commitment, or Action of Debt, or Information, &c. without mentioning an Indictment, it seems to be settled at this Day, that it will not maintain an Indictment, because the mentioning the other Methods of proceeding only, seems implied to exclude that of Indictment. Yet it hath been adjudged, that if such a Statute give a Recovery by Action of Debt, Bill, Plaint, or Information, or otherwise, it authorizes a Proceeding by way of Indictment.
5. Also, where a Statute adds a further Penalty to an Offence prohibited by the Common Law, there can be no Doubt, but that the Offender may still be indicted if the Professor think fit, at the Common Law.
(H. 4) Taken in what County. Where the Offence was done in several Counties.

1. A Man was Indicted in B. R. in Middlesex, inasmuch as he was in the County of Middlesex procured J. S. to kill T. B. by which he killed him at S. in the County of Berks, and it was not excepted to whether 'twas a good Indictment or not. Br. Indictment, pl. 52. cites 9 E. 4. 48.

2. A Man was arraigned upon Indictment of stealing Goods in the County of S. who said, that he was indicted of taking the same Goods in the County of M, at the same Time, and of this was acquitted, which was the fame Felony, and demanded Judgment of this &c. Per Frowike, this is a good Plea; For if Goods are stolen in one County, and carried into another County, be may be indicted in *every County, and shall have Judgment accordingly; and by the same Reason, if he be acquitted in one County, it shall serve in another County. But Hutley and Fairfax contra. But Brook says, the Law is with Frowike. And after Mordon pleaded the Plea supra, and proved Allowance, and to the Felony Not Guilty; and a good Plea, per all the Justices, tho' the one Matter be Matter in Law, and the other Matter in Fact, & Adjournatur. Br. Corone, pl. 139. cites 4 H. 7. 5.

3. Indictment that a Man struck another in the County of Middlesex, by which he was killed in London, is not good; For London cannot join with any. Br. Indictments, pl. 45. cites 6 H. 7. 10.

4. Indictment of * striking a Man in the County of Middlesex, by which he was killed in the County of Essex. And per Tremble and Hutley J. 'tis a good Indictment; For the striking is the Principal, and those who may take Notice of the Principal, may take Notice of the Accessory, which is the Death, tho' it be in another County; but per Fairfax J. contra; that they can't take Notice of an Act done in foreign Country. And Brook says, the Law seems to be with Fairfax. Br. Indictment, pl. 31. cites 7 H. 7. 8.

(H. 5) In what Cases. Where the Thing, in which the Offence consists, is only prepar'd or inchoate, or intended, but not executed.

1. Note per Shard, He who is taken depredando vel burgulando shall be hanged, tho' he puts nothing in Ure. Br. Corone, pl. 106. cites 27 Att. 25.

2. And said, that a Thief, who assaults a Man to have robbed him, shall be hanged, by Advice of all the Counsel except Stou. Quod quare; For at this Day a Man shall not be hanged without an Act done in Cafe of Felony; contra of Treadon. Ibid.

3. A Man was indicted in B. R. for giving of Liveryes, and for wearing of Liveryes; but nothing of the wearing of Liveryes is mentioned in the Indictment; per Keble, therefore the Indictment is not good: And per Wood, the giving of Liveryes is an Offence without the wearing. Br. Indictment, pl. 30. cites 6 H. 7. 12.

4. If
4. If a Man makes Money and does not utter it, it is not punishable; which was denied by all the Justices except two. Ibid.

5. It was touched that the Statute for laying Scrolls at the Door of a Man, is not Felony, by making of the Bills without of Laying them. Ibid.

6. Indictment against two for conspiring to indict J. S. for begetting a Bastard on M. one of the Defendants, to the Intent to extort Money from him. After Verdict, and Motion in Arrrest of Judgment, it was resolved that the Indictment lies for the mere Conspiracy, without Indictment or other Aet done. 1 Lev. 62. Parch. 14 Car. 2. B. R. the King v. Kinberry and North.——Cites 9 Rep. 36. b. the Poultier's Cafe.

7. A. and B. were indicted for a Misdemeanor, which was, that A. had challenged J. S. by Way of Duelling, and sent it by B. to J. S. B. knowing the Matter; A. and B. were found guilty by Verdict, and brought here to receive their Judgment; and the Court, after Advizement, gave Judgment that they should be fined 100l. each, and that they should be committed for a Month without Bail, and within that Time to make such publick Recantation of the Lid Action, as the Court should direct, and to be of the good Behaviour for seven Years; and at another Day, they made such publick Recantation, &c. Sid. 186. Parch. 16 Car. 2. B. K. the King v. Darey and Collins.

Parties never fight, yet both, he who sent and he who carried the Challenge are punishable, according to the Rule which is mentioned by my Lord Coke, Sunt du, ct idem pro . Parch. 8 W. 5. in Cafe of the King v. Cowper.

8. B. was indicted, for that he, intending to kill Sir H. G. Master of the Rolls, offered 100l. to one C. to do it; whereupon he was found guilty. And it was moved in Arrrest of Judgment, that this is a Matter not indictable, being only Matter of Intention, and that our Law does not punish the Intent; But the Court said, that tho' Voluntas reputabatur pro Facto, to so to punish it as Felony, yet this cannot be punished as a Misdemeanor; wherefore Judgment was given, that he should be fined 100 Marks, imprisoned for 3 Months without Bail, and be of the good Behaviour during his Life, and should acknowledge his Offence at the Chancery Bar. Sid. 230, 231. Mich. 16 Car. 2. the King v. Bacon.

9. Indictment against the Defendant setting forth, That there was a War with Lewis the French King; that during the Continuance of that War, the Defendant did hire a Boat for 20 Guineas, Fallo Maltriole & Prediatorie, to affhit the King's Enemies; that the Boat he hired was brought to the Shore, in order to embark him and others, where he was taken. This Matter was all found by Verdict. It was moved in Arrrest of Judgment, that this was not an Offence at Common Law; For then any Aet, which breathes an Intention to do an unlawful Thing, will be a Fault. But per Cur. the very Intention to commit Treason is regarded in Law; and any Preparation to affhit the King's Enemies is a Prejudice to the Publick, and therefore an Offence at Common Law. Our Actions are governed by Intentions, as qualified by them; so that in differer Cafe, the Intention makes the Aet more or less criminal; whereupon the Judgment was affirmed, and the Defendant fined 100 Marks, and committed till paid. 5 Mod. 256, 257, 258. Parch. 8 W. 3. the King v. Cowper.

(H. 6) Amounts to. What amounts to, or will serve for an Indictment.

1. N Ote, upon Indictment of Felony for stealing of the Goods of A. feloniously taken; Defendant pleaded not guilty, and the Jury found, that N. took the Goods from the said A. feloniously, out of whose Possession the
now Defendant took the Goods, but not feloniously; and 'twas agreed, that this Verdict shall not serve for Indictment against N. For the Jury is not compell'd to find who did the Felony, as the Jury before the Coroner upon View of the Body; For there, if they find the Defendant not guilty, they ensure who kild the Man, and if they say that W. did it, this shall serve for Indictment against him; quod nota, by the Justices, as Littleton saith. Br. Indictment, pl. 35. cites 13 E. 4. 3.

2. Note, per Montague, in Conspiracy, that if Felony be preferred in a Lect, and the Steward of the Lect presents it to the Justices at the next Sessions by Indenture, it shall serve for Indictment; and exonta, if he flew the Roll only, and does not certify it by Indenture, quod nemo deditix. Br. Indictment, pl. 1. cites 27 H. 8. 2.

3. The Caption of an Indictment was Presentat. exijit, quod separalia Indictamenta hic Schedule annexa sunt. It was objected, that they are not Indictments till found; For till then they are only Bills, and for this Caufe they were quaff'd. 1 Salk. 376. Trin. 12 W. 3. B. R. the King v. Brown.

(H. 7) Good or not. In Respect of the Indictors not being Probi & Legales.

* Lord Coke saith. Note the said Act
faith, that they were enacted 'd before themselves, so as the Court may take Notice thereof, as of any other Amicus Curiae; but the safest Way is for the Indictor upon his Arrangement, to plead the Special Matter given him by this Act to overthrow the Indictment, with such Averments as by Law are required, agreeable to Lord Brooke's Opinion, [See pl. 2.] and to plead over to the Felony, and to require Counsel learned for pleading thereof, which ought to be granted; and also to require a Copy of so much of the Indictment, as shall be necessary for framing his Plea, which ought also to be granted. 3 Inst. 24.

† In this Matter, this Act of 11 H. 4. hath made a new Law, viz. That any Indictment found against the Act shall be void; which Branch does not make void any Indictment or Prem论ent, that, in the Nature of an Indictment, found any Point contrary to the said Act, is made void by the said Act, so that this may draw in Quelsum all the Indictments found at the late Sessions. 12 Rep. 97, 98. Scarleth's Café.

3 Inst. 33. cites S. C. and that all the Indictments found by W. R. and the ref (tho' the rest were duly returned) were void by this Statute.

† This seems to be clearer Express. by Serjant Hawkins. 2 Hawk. 218. cap. 25 S. 25. That a Person arraigned upon an Indictment taken contrary to the Preamble of this Statute, may plead such Matter in Avoidance of the Indictment, and also plead over to the Felony. —See Sir William Witherpele's Café.

The Sheriff being about to return a Grand Indictment at the Sessions of Peace for the County of S. one W. R. was very importunate with the Sheriff to get himself return'd; but the Sheriff knowing the Malice of the Man, refused to do it. Whereupon he applied to, and prevail'd upon the Sheriff's Clerk to read him as one of the Panel, (tho' not returned therein) which he did, and W. R. was found accordingly. By Means of which, and the Testimony of this W. R. to the others of the Grand-Jury, many innocent Men were indicted upon penal Statutes, all which appear'd upon Examination. He was afterwards indicted upon this Statute; And it was resolve'd, 11 That the Justices of Affile have Power to punish this Offence by Virtue of their Commission of Oyer and Terminer. 2dly. That this Café was within the Statute, which is partly affirmative of the Common Law, and partly a new Law. 3dly. That the Statute of
Indictment:

This Act extends not only to Indictments of Treason and Felony, but of all other Offences and Defaults whatsoever, according to the Generality of the Words. 3 Inf. 55. says it was so resolved.

2. Note, that where a Man is indicted of Felony by Perjury, some of whom are indicted or outlawed of Felony, and others acquitted by Pardon; so that they are not Probi et Legales Homicides, there 'was awarded, that the Indictments by them presented should be void, and the Parties who were indicted should not be arraigned upon it; and note that this Matter ought to be pleaded by him who is arraigned upon this Indictment, before he pleads to the Felony. Br. Indictment, pl. 2. cites 11 H. 4. 41.

C. cited 2 Hawk Pl. C. 216. cap. 25. S. 17. And the Serjeant says, it seems to be the general Opinion, that this Resolution was rather grounded on the Stat 11 H. 4. 9, which was made on the same Term, as in which this Resolution was given, than on the Common Law; because it appears by the very same Year-Book, that when this Plea was first proposed, it was disallowed, from whence the Serjeant says, he supposes, it is collected, that the subsequent Resolution was founded on the Authority of the said Statute, which may be intended to have been made after the Plea was disallowed, and before the subsequent Resolution, by which it was adjudged good. Yet considering, that the said Resolution was given in Hillary Term, and that the Parliament which made the said Statute was not then sitting, and therefore it is not likely that the said Statute was made, and also, considering that the said Resolution was given by Advice of all the Judges, who seem to have been consulted about the Validity of the Plea abovementioned at the Common Law, and takes no Manner of Notice of any Statute, but only of the Law in General, it may defer a Question, Whether such Plea be not good at the Common Law?

3. A. was indicted before the Coroner of S. of Murder, and it was removed into B. R. where he prayed Counsel, who took several Exceptions upon this Statute to the Indictment, and put them in by Way of Plea. It.

That the Jury was returned by one who was neither Bailiff of a Liberty, nor taking the Oath. 2dly. That B. one of the Jury nominated himself to be returned, and divers others of the Jury were of his Denomination. 3dly. That two of the Jurors were outlaw'd in personal Actions, and thereupon prayed that the Indictment be quashed, and pleaded over to the Felony. It was held upon the Oath of three Justices, contra Jones, that the Statute 11 H. 4. did not extend to Inquisitions taken before the Coroner, but upon praying the Advice of all the other Justices and Barrons, they all thought that the Statute did extend to Inquisitions taken before the Coroner; but as to the Outlawry in personal Actions they doubted, and being afterwards indicted by Commination of Oyer and Terminer, and arraigned, he said that he ought not to be arraigned, because he had pleaded to the first Inquisition; but Curia contra, but to make the Matter clear they gave Rule that the first Inquisition be quashed, and then he pleaded Orenus, that one of the Jury was outlaw'd, but this was not admitted per Curiam. For supposing the Plea good, (which was not granted) yet he ought to have the Records of the Outlawry under Seal, upon his Plea pleaded, and therefore he pleaded Peril, and over to the Felony, Not Guilty. Jo. 158. Sir William Withilope's Chancery.

—2 Hawk Pl. C. 218. S. 24. says, it has been question'd, whether a Coroner's Inquest be within the Purview of this Act.

Ley, St. S. moved into B. R. where he prayed Counsel, who took several Exceptions upon this Statute to the Indictment, and put them in by Way of Plea. It.

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—2 Hawk Pl. C. 218. S. 24. says, it has been question'd, whether a Coroner's Inquest be within the Purview of this Act.

If a Person tried upon such Indictment takes no such Exception before Trial, it may be doubtful whether he may do it afterwards; unless it can be verified by the Records of the same Court, as by an Outlawry of one of the Indictors in such Court. 2 Hawk. Pl. C. 219. cap. 25. S. 26.
Indictment.

in their Discretion, reform any Panel returned before them, to inquire for the
King, &c. by putting to and taking out of the Panel what Names they please;
And if any Sheriff &c. shall not return the Panel so reformed, he shall forfeit
for each Offence 20l.

(H. 8) Good or not in Respect of the Place where,
or before whom taken, or where the Fact is alleged
to be done.

S. P. Br. Indictment, pl. 27. cites 6 H. 7. 2. And

was greatly
argued, whether
the Indict-
ment be
void or not.

—By Indict-
ment taken at the Great Court of J. B. with a Leet held such a Day, &c. It was presented, &c. it is not
good; For it does not appear at which Court he was presented; and if it was at the Court, and not at
the Leet, it is not good, and the same Law if it be At the County of Middlesex with the Sheriff's Tourn. Br.
Indictment, pl. 34. cites 19 E. 4 and 49 H. 6. 15. —— 8 P. Jenk. 124 pl. 51. —— So much Pref-
sentment at the County Court with the Sheriff's Tourn is also void for the same Reason. By the Judges

So of Indict-
ment, taken
before a Cor-
ner, &c. and
'tis not ex-
pressed of what County, &c. quod non contra dictur. Ibid.

For it shall
be intended
that the Fact
shall be had there. 2 L. P. R. 48. —— So the Parish in which the Fact was done, for which the Party is indicted, and the Place of the Defendant's Abode, ought to be named in the Indict-
ment, that the Party indicted may be the plainer described, and outlawed if he does not appear. 2 L.
P. R. 48.

An Indictment for a Conspiracy by several Journeymen Taylors of or in
the Town of Cambridge, to raise their Wages. The Fact was laid to be
done in the Town of Cambridge, and it did not appear in the Record in
what County Cambridge was. It was intimated, that this was a fatal Error in the Record, and not to be helped by naming the County in the Certificate to remove this Indictment, because that Write is only an Order of this Court; and that this being a criminal Case, it shall not be intended that Cam-
bridge is in the County of Cambridge. But it was answered, that the
Fact being laid in the Town of Cambridge, it shall be intended that the
Town is within the County of Cambridge. Besides the Jurisdictions of Peace
having Jurisdiction within the Town of Cambridge, it need not be alleged in
what County that Town lies; because, in order to support all inferior Ju-
risdiction, we will intend their Proceedings to be regular and good, if the
contrary does not appear. And the Indictment was confirmed by the whole Court. 8 Mod. 10. Mich. 7 Geo. the King v. Journeymen Tay-
lors of Cambridge.

Every Capti-
on must also
show where
the Indict-
ment was laid,
that it may
before mentioned; or if the Stroke be alleged at A. and the Death at B. and the Indictment conclude that the Defendant Sic Felonice murdravit the decean at A. the Indictment is void; so is it also if it lay not both a Place of the Stroke and Death; or if any Place so alleged be not such from whence a Visita may come; as to which it has been adjudged, that it a Fact be alleged in a Parish of London, with some other Addition, which sufficiently afcerains it, as in the Parish of St Laurence Jewry, it needs not shew the Ward. 2 Hawk. Pl. C. cap. 25. S. 85.

Seffions of the Peace holden for such a County at B. without dwelling in what County B. lies, otherwhate than by putting the County into the Margin, it is insufficient: But if an Impeach of Death be for forth as taken at B. before the Corner of the Liberty of B. it need not express that B. is within the Liberty of B. for it cannot but be intendeit. 2 Hawk. Pl. C. Abr. 256. S. 80.

(H. 9) Caption. Good or not, in Respect of the Manner of taking, and Authority of the Takers.

1. If CommiJission illufs contrary to Law, all Indictments taken by Virtue thereof are void, as CommiJion to take J. S. and to seize his Goods, where J. S. is not indicted nor other Proces made. Br. Indictments, pl. 38. cites 42. Aff. 5.

2. Writ of the Chancery issued to B. C. to enquire of all Chasemeries, *S.P. Br. In- Conspicacies, Confederacies, Ambodesters, &c. by which one was indicted of diversi of them; and because this Authority ought to be by CommiJion, and not by Writ, therefore, by all the Justices, all such Indictments were void. Br. Indictment, pl. 38. (bis) cites 42. Aff. 12.

what Laurence J. S. had done to W. N. who found that he had hole 25 Gallons of Wine Price 15 s. 4 d.

3. The Caption of an Indictment Ad magnam Curiam cum Leta tent. is insufficient; but if it be Ad magnam Curiam & ad Letam, or ad Vis. Francki Plag. cum Cur. Baron tent. perhaps it is sufficient; for since the Court-Baron has no Jurisdiction over criminal Matters, and the Caption, in these last Cases, is not expres that the Indictment was taken at it, as it is in the first Case, the Court will intend that it was taken at the Leet, which alone had Power to take it. 2 Hawk. Pl. C. Abr. 234. S. 76.

4. The not seuing in the Caption of an Indictment at a Leet, whether the Court were holden by Charter or Prescription, is help'd by the Multi- tude of Precedents. 2 Hawk. Pl. C. Abr. 235. S. 77.

5. Every Caption of an Indictment ought to seue that the Indictors were of the Precint, for which the Court was holden, and that they were 12 in Number, and that they found the Indictment on their Oaths. All Indictments have been quelled for an Omission of the Names of the Jurers; and others, for the Want of the Words Proborum & Legitiam Hominum; and others, for Want of Words Jurati. 1 & onerat. and others, for Want of the Words Ad tune ibi dixit before Jurat. & onerat. and several others of Want of the Words Ad inquirend pro Domino Regis & pro Capito Comitatus; yet of late Years Exceptions of this Kind have not been much favoured, especially if the Indictment were in a superior Court, and that which is omitted is in common Understanding implied in what is expressed. 2 Hawk. Pl. C. Abr. 235. S. 78.

6. Every Caption must seue a certain Day and Year when the Indictment was found, and must record it in the present Tenor; but if it describe the Court as holden Die Martis & Die Mercurii, or on such a Day, in such a Year of the King, without seuing what King; or if it shews the Day or Year in Figures, which are not Roman, it is insufficient; yet it need not add the Year of the Lord; and the Multitude of Precedents have made good the Use of extinct praefentat. instead of exitit, &c. 2 Hawk. Pl. C. Abr. 235. S. 79.

5 D

(H. 10) Good
(H. 10) Good or not. In respect of the Time when taken, and setting forth the Time of the Fact.

1. A Man was indicted of Trespaft, by the Name of J. N. of D. &c. of Trespaft done Die fefus proximo post Dierum Pentecostes, and it was assigned for Error, that the Day is not certain, for all the Week is Pentecost; Sed Non Allocatur, for the Day of Pentecost is the Lord's Day only. Br. Error. pl. 69. cites 7 H. 6. 39.

2. Three were indicted in the Tourn of the Sherif in the County of D. of Felony, that they three at two Villis, at two several Days, such a Year, on J. C. made an Assault, & Vi & Armis him beat, and a certain Gown to the Value, &c. then and there found, feloniously took, &c. and because it is uncertain, Seflicet, two Days and two Places, where one and the same Felony cannot be at two Places, therefore it was adjudged void. Br. Indictment, pl. 24. cites 2 H. 7. 7.

3. Indictment, &c. in the Feath of St. Thomas, it ought to express what St. Thomas according to the Kalendar. Br. Indictment. pl. 47. cites 3 H. 7. 5.

4. Error, because the Party alleged the Felony to be done 24 Aug. Anno 3 R. 3. where the King (H. 7) had wrote himself King two Days before it, and had Scire Facias, &c. therefore it seems to be Error. Br. Error. pl. 102. cites 21 H. 7. 34.

5. Indictment in the Time of one King shall serve in the Time of another King, Quod Nota, and the Offender shall be arraigned upon it. Br. Indictment, pl. 44. cites H. 1 E. 6.

6. If an Aff be made Felony by Statute, as Hunting, &c. and after a Man offender in it, and then the Aff is repealed by Statute, there the Hunting is dishonifiable; For the Law by which it should be punished is repealed. But where Trespafts is done upon Termor, and after the Term expires, the Trespafts is punifiable; For there the Interest expires; but not the Law. And to fee a Diversity where the Interest expires, and the Law remains, and where the Law is repealed, and does not remain. Br. Corone. pl. 202. cites 2 M. 1.

7. If an Action upon the Cause be brought against one for calling another Thief, and the Defendant doth justify the Words, and upon the Trial it be found for the Defendant, an Indictment may be forthwith framed against the Plaintiff to try him for the Felony; so it was done in Mich. 21 Car. in the Cafe of one Perry, who was after executed at Tyburn; Mich. 22 Car. B. R. For the Felony appears to the Court by the Verdict found for the Defendant. 2 L. P. R. 44.

8. It seems agreed, that no Indictment can be good, without precisely showing the Year and Day of all the Material Facts alleged in it; As if an Indictment of Death, laying the Assault at a certain Time, &c. do not repeat it in the Clause of the Stroke; or if it do not set forth the Time of the Death, as well as of the Stroke; or if any Indictment lay the Offence on an impossible Day, or on a Day that makes the Indictment repugnant to itself; or if it lay one and the same Offence at different Days.

2 Hawk. Pl. C. Abr. 215. S. 49.

* S. P. For it ought to be certain in Time as well as in other Matters. 2 L.P.R.42. cites Hill. 1649.

20 January B. R.
Indictment.

1. A Man may be indicted by the Common Law for saying to another, 'Your Religion is a new Religion, and Preaching is but Prating, and Prayer once a Day is more edifying,' for the Words are scandalous Words against the State of our Church, and against the Peace of the Realm, and tho' they are Spiritual Words, yet they draw a Temporal Consequence, Slander, the Disturbance of the Peace. Mich. 15 Jac. B. R. adjuged. Abwood's Cafe.

2. If a Man says, that the Laws of the Queen were not God's Laws, yet no Indictment lies for those Words; for it is true that they are not the Laws of God. 4 Eliz. B. R. adjuged. But otherwaise it had been, if he had said, that the Laws of the Queen are not agreeable to the Laws of God.

3. If a Man says, that a Sentence of Divorce, which was given by the High-Communion Court, was against the Law and the Conferences of the Commissiouns, this is an Offence punishable at the Common Law by Indictment, for a Slander of the Justice of the Realm. Cludford Hale's Cafe adjuged, cited per Coke. Mich. 13 Jac. B. R.

4. If a Man says to a Steward of a Court, in Time of the Court, you are forsworn; tho' it be a Contempt to the Court, for which he may be fined, yet he cannot be indicted for it. Mich. 10 Car. Such Indictment quashed, per Curiam. Lucas being Steward at the Debites in the County of Wilt.

5. Trin. 5 H. 3. B. R. Rot. 18. William Morton indicted for saying, that he could make a certain Powder, called Elixir, which Powder would make Gold and Silver, being put upon other Metal, Pardonatur.

6. If a Man says to a Justice of Peace, in Execution of his Office of Justice, being in his House, but not sitting on the Bench, certain scandalous Words, touching his Office of Justice of Peace, yet he may not be indicted for it. Trin. 11 Car. B. R. This was Master Hole's Cafe, who was so scandalized, and the Indictment quashed accordingly, and then said that it was Sir Sttefield's Cafe accordingly.

Indictment for saying of Sir Rowland Winn, who was Justice of Peace, these Words, (Sir Rowland Winn is a fool, an off-spring of a Coach, for making such a Warrant, and understands no more how to make a Warrant than a Stuck-head) and the Defendant, being found Guilty on the Trial, moved in Arrest of Judgment. Holt Ch. J. said, he knew no Cafe like this, but the Queen v. Darby. Indeed Words spoken in Disparagement of a Justice's Parts is a Breach of Good Behaviour, but not indictable; besides the Indictment does not set forth, that this was a legal Warrant; it ought to appear to the Court, what sort of a Warrant it was; for if it was a judicious Warrant, or of a Matter whereof he had no Conscience, it was lawful to say so. The Words perhaps may be true, and Justices of Peace are not beyond Censure; Powell agreed, and said, if the Words were not indictable, they were much less actionable; and Powis and Gould agreed. 11 Mod. 166, 167. The Queen v. Wrightson—cites 3 Keb. 492—2 Roll. Abr. 57—4 infra 181. And the Cafe of * Soley for abuser the Mayor of Salisbury—saying of a Justice of Peace, that he would judge in any Cause brought before him according to his Opinion, was held not indictable. Arg. 10 Mod. 187; cites Mich. 4 Ann. The Queen v. Soley—so that he deferred to be desired for making such a Non-Bill Order, was held not indictable. 10 Mod. 187; Arg. cites Hill. 1712. The Queen v. Lycafell. It seems this should be (Langley.)

7. If a Man says to one who is not an Officer of Justice, Thou art a Peler, thou art a Liar, and haft told my Lord lies, and I will make thee a poor Man, and thou art a drunken Knave; he cannot be indicted for those Words, because tho' the said Words are Sodomy and Prostitution for the Breach of the Peace, yet they do not tend immediately to the Breach of the Peace. Co. 6 Institutes 181.

8. An information upon the Statute of Liveries generally, without putting in certain any Statutes, is sufficient, tho' there are divers Statutes of another Subdivision.

1. For what Words it lies.

Vid. Good Behaviour. (B. 2)—see more Matter concerning Indictments of Peace, pl. 9 to 15. The Defendant was

indicted for saying, of Sir Rowland Winn, who was Justice of Peace, these Words, (Sir Rowland Winn is a Fool, an Off-spring of a Coach, for making such a Warrant, and understands no more how to make a Warrant than a Stick-head) and the Defendant, being found Guilty on the Trial, moved in Arrest of Judgment. Holt Ch. J. said, he knew no Cafe like this, but the Queen v. Darby. Indeed Words spoken in Disparagement of a Justice's Parts is a Breach of Good Behaviour, but not indictable; besides the Indictment does not set forth, that this was a legal Warrant; it ought to appear to the Court, what sort of a Warrant it was; for if it was a judicious Warrant, or of a Matter whereof he had no Conscience, it was lawful to say so. The Words perhaps may be true, and Justices of Peace are not beyond Censure; Powell agreed, and said, if the Words were not indictable, they were much less actionable; and Powis and Gould agreed. 11 Mod. 166, 167. The Queen v. Wrightson—cites 3 Keb. 492—2 Roll. Abr. 57—4 infra 181. And the Cafe of * Soley for abuser the Mayor of Salisbury—saying of a Justice of Peace, that he would judge in any Cause brought before him according to his Opinion, was held not indictable. Arg. 10 Mod. 187; cites Mich. 4 Ann. The Queen v. Soley—so that he deferred to be desired for making such a Non-Bill Order, was held not indictable. 10 Mod. 187; Arg. cites Hill. 1712. The Queen v. Lycafell. It seems this should be (Langley.)

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of Libelies; For the Best shall be taken for the King. 5 H. 7, 17. b. adjudged.

9. Indictment for saying, That none of the Justices of the Peace did understand the Statutes of Excise, except S. and truly be neither did well understand them, nor most of the Parliament Men who made them. But the Indictment was quashed. Arg. 5 Mod. 204. cites 21 Car. 2. The King v. Burlford.

10. One was indicted, for saying of a Justice of Peace, that he is a Buffet-head Fellow. Exception was taken, that the Words were not indictable. But per Cur. because it appears that they were spoken of him in the Execution of his Office, the Indictment is good. And per the Ch. J. all Actions for flandering a Justice in his Office may be turned into Indictments. Comb. 46. Pach. 3 Jac. 2. Anon.

Per Cur. we are not satisfied, the Words are such, as they may be indicted for; for what is it to the Government, that the Mayor, &c. are a Pack of Rogues, and the Defendant moving to submit to a small Fine, they fined him 6d. 12 Mod. 98. Trin. 8 W. 5. S. C. by Name of the King v. Granfield.

11. One was indicted for saying, the Mayor and Aldermen of H. are a Pack of as great Villains as any who vex upon the Highway, and we will take away their Charter. One Exception was taken (among others), that these Words are not indictable, being only Words of Heat, for which the Defendant ought to be bound to his Good Behaviour, but not indicted. 5 Mod. 203. Pach. 8 W. 3. The King v. Cranfield. — [No Reply appears to have been made, or Judgment given.]

12. One was indicted for saying of one Martin a Justice of Peace, I do not care what he had been doing seven years ago; and for the Justice, he is now turned out of Commission. But the Indictment was quashed. Comb. 414. Hill. 9 W. 3. The King v. Penny.

13. Indictment, for that the Defendant being before a Justice of Peace for a Matter, as it did appear, contumacious by him, he contemptuously, &c. spoke these Words, Your Worship speaks to me here, but you dare not do so in another Place; and it was quashed on Motion. 12 Mod. 414. The King v. Walden.

14. One said to the Mayor of Salisbury, You Mr. Mayor, I do not care a Pint for you. You Mr. Mayor, are a Rogue and a Rascal; After great Deliberation, the Court adjudged the Words not indictable; For it is not so much as said, that he was in Execution of his Office, or a Justice of Peace; but indeed, had they been in Writing, they had been punishable either by Action or Indictment. 6 Mod. 124, 125. Hill. 2 Anne B. R. The Queen v. Langley.

15. Indictment for saying, you are an informing Rogue, an informing Rascal, and an informing Villain, (knowing him to be a Justice of Peace.) It was moved to quash this Indictment; and per Cur. it was quashed, &c. the End of the Term; for Words said of a Justice of Peace, are not indictable, according to the late Resolutions between Queen and Wrightson, Pach. 7 Anne Reg. [ante in pl. 6.] fed Quere. For this Point is very unsettled, it depending much on what is called Diferentia.

16. On an Indictment for Words, it was objected that the Words were not actionable, and therefore not indictable. But per Cur. many Words are indictable that are not actionable, because contra bonos mores, and relating to the public peace; Otherwise where the private Interest of the Party is only concerned; per Cur. Comb. 66. Mich. 3 Jac. 2. B. R. in Cafe of the King v. Derby.

Words are actionable, and the Indictment was quashed. Comb. 13. Hill. 1 and 2 Jac. 2. The King v. Holt. [And therefore it seems are not indictable.]—Words, which directly tend to the Breach of the Peace, may be indictable; but otherwise, to encourage Indictments for Words, would make them as uncertain as Actions for Words are; per Holt Ch. J. 6 Mod. 125. in Cafe of the Queen v. Langley.

17. Indictment was for Words spoke to the Prejudice of a Market, and hindering the Town of Toll, viz. I have got a Judgment against the Town (of Burntelope) that we shall not pay for standing, and they are Fools that pay; But the Court quashed it, and said, that the Recorder of the Town ought to be fined for it, 1 Salk. 370. Trin. 5 W. & M. B. R. the King &c. v. Harwood.

(K) Incertainty in the Offence too general.

1. If a Man be indicted, because he is Delator bonorum Nominae & Famae, it is not good, without shewing some particular Matter. Mich. 14 Jac. B. R. Jones's Cafe adjudged, and the Indictment quashed.

2. So if one be indicted, that he is Delator, Vexator, & Oppressor multorum hominum, &c. it is good, without shewing any particular Matter. Mich. 14 Jac. B. R. Jones indicted and the Indictment quashed for this Cause aforesaid.

3. But if a Man be indicted, because he is Common Barretor, against the Form of the Statute, it is good, as was held per Pollyton in the said Cafe, and so is the Common Experience. Mich. 15 Jac. B. R. Boucher's Cafe adjudged; For the Statute has made it an Offence known.

4. An Indictment of a Man, that he is a Common Foresfalletor, without alleging any thing in certain is not good; Because it is too general. 22 Att. 45. adjudged. Sec 3 C. 2. Action upon the Statute. 26.

5. So an Indictment, that he is a Common Thief, without more, is not good. 29 Att. 45. 22 Att. 73. 3 C. 2. Action upon the Statute. 26. in this Cafe they ought to fend for the Indictors, and make them to shew it more certainly. Br. Indictment. pl. 12. cites 22. Att. 75. — pl. 19. cites 29. Att. 45. — Sid. 382.

6. So Indictment of Champercy is not good without more. 29 Att. 45.

7. So Indictment of Conspiracy is not good without more. 29 Att. 45.

8. So Indictment of Confederacy is not good without more. Contra 29 Att. 45. But Nuncet.

that an Indictment of Confederacy is good without more. But he says it seems that the one and the other, (viz. Common Foresfalletor, Thief, Champercy, Conspiracy and Confederacy) ought to comprehend Certainty.
9. An Indictment of a Man, that he is a Common Mifdear, is not good, because it is too general. 12. M. 73.

10. So an Indictment, that he is a Common Disturber of the King's Peace, ac diversas litteris & discordias tam inter vicinos suos quam inter diversos Ligeos & Subditos Domini Regis apud W. in Comitatu predicto injuicel excitavit mordit & procuravit in magnum diperitum & perturbationem vicinorum suorum predictorum & aliorum subditorum Domini Regis in Comitatu predicto, it is not good, because too general. 9. 6 Car. B. R. per Curiam; Indictment quashed in Pertain's Case.

11. If a Man be indicted for speaking diverse false and scandalous Words of J. S. Mayor of D. it is not good, because it is not alleged, what were the Words, by which it may appear to the Court, whether he may be indicted for them. 12. Jac. B. R. adjudged Bagy's Case.

12. If Indictment be, that J. S. was, and yet is, of ill Behaviour, it is not good, because it is too general without any Particular. Mich. 8 Car. B. R. Case's Case adjudged, and the Indictment quashed.


14. Exception was taken to an Indictment of Murder, because it was, that G. and two others did make an Assault on the Body of the Deceased, and that quidam Johannes in nubibus did wound him with a Gun, so that 'tis uncertain who did shoot, and what Gun was discharged, which ought to be certainly laid in the Indictment. And the Indictment was quashed. 3 Mod. 201, 202. Pach. 4 Jac. 2. B. R. the King v. Griffich.

15. Getting Money from the Wife, on pretence of having sold a Ship to her Husband, is a Thing of a private Nature. So that indicting such Person as Communis Deceptor is too general, without adding particular Instances. But if he had made use of false Tokens, it would be otherwise. 6 Mod. 311. Mich. 3 Anne. B. R. the Queen v. Hannon.

(L) Incertainty in the Person, that commits the Offence, too general.

1. If a Pretention be, that the King's Highway in such a Place is decay'd, in Default of the Inhabitants of such a Vill, it is good without naming any Person in certainty. 9. 8 Jac. 5 between Walker and Presture.

Note, that none is bound to answer in appeal of Felony, where the Plaintiff does not shew the Name of the Deceased; but to Indictment of Death Ignorati, a Man ought to answer. Br. Corone. pl. 65. cites 1 All. 7. But Brook says, this seems to be where it is found before the Coroner, Contra, if it be presented before the Justices of Peace, or of Oyer and Terminer. Ibid.

(M) Incertainty
(M) Incertainty in the [Persons or] Thing in which, or to which, [or whom] the Offence is committed.

1. If an Indictment be of a Steward of a Leet, for permitting divers Brewers and Bakers to Brew and sell contrary to theabove Redemption, inde capienda, it is not good; because it is not supposed what people he has suffered, nor of whom he hath taken Redemption, and to be certain. Contra 38 F. 17.

and therefore Gaund, dare not demur; but Brook saith that it seems to be ill. — 2 Hawk. Pl. C. 251. S. 73.

2. So if it be presented, that a Steward has disfrained diverse People without Cause, by Colour of his Office, it is not good; for the Uncertainty of the Persons by Name whom he has disfrained. Contra 38 F. 12.

3. An Indictment upon 8 H. 6. for Forcible Entry, that A. was selfed in Fee, quaque B. entered, and expelled C. Farmer of the aforesaid A. and differed A. it is good without showing what Estate the Tenant had; for it is insufficient to shew that he had that Possession. H. 41 Eliz. B. R. Chetwode's Case adjudged.


4. If a Man be indicted upon 8 H. 6. for Forcible Entry in unum Cotagium live Tenementum, it is not good for the Uncertainty. H. 41 & 4 Eliz. B. R. Ward and Harman's Case adjudged.

In an Indict. the Fact is never laid in the Disputsets, and therefore an Indictment on this Statute, for a Forcible Entry into Two Cestas of Alienor or Postille, was held void for the Uncertainty; So Mordecar, sec Mordecar can أساس, is not good; So of Forberasu and Forberasu cana sab; For the causant him to be beaten will not make the Defendant guilty of the Battery, it being only a Trespass. 5 Mod. 157, 158. Per Cur. Mich. 7 W. 3. in Case of the King v. Stocker. — All criminal Charges ought to be certain, so as the Defendant may make certain Answers to it; And where an Indictment was on the Statute for exercising Action for Misdemeanor, and he was held good, there the Act was not the Cause of the Indictment, but the exercising it; and therefore if it had been *for exercising the Act, or causing it to be exercised, the Indictment would be ill; for causing a Thing to be done may be by several Means. 8 Mod. 330. Mich. 11 Geo. in Case of the King v. Bereton. —* The Orig. is (to Exercise).


For a Message and a House are both the same. 2 L. P. R. 46.

6. If a Man be indicted for Forcible Entry into a Tenement, it is not good. Cr. 16 Ja. B. R. an Indictment quashed for it.

7. So Indictment for Entry into a Tenement cum Permissitiis, called Turnpenny in D. is not good. H. 10 Cr. B. R. Cottington's Case. Per Curiam the Indictment quashed.


9. If a Man be indicted for Entry with Force into a Mefiuogia in D. and ouiting of J. S. the Farmer of the Land for Years, and differing J. D. it is not good, without alleging the Franktenement to be in J. D. For it ought to be expressly alleged in him. H. 11 Ja. B. R. Disjudged. Lucas's Case.

10. If a Man be indicted, because he Cullwedivit Land with Force;
Indictment.

it is not good, without alleging an Entry by him. 5 B. R. Adjudged. Aston's Cafe.

11. If a Man be indicted, because he entered into Land, and Vi & Arms ejected a Copyholder, and detained it Vi & Arms, it is not good; because he doth not allege that he entered Vi & Arms, or entered peaceably, and detained with Force, according to the Words of the Statute of 3 H. 6. For the Statute of 21 Ja. does not alter the Form of the Indictment before used, but only gives Retitution in other Cases than before. Mich. 21 Car. I. Such Indictment quashed.

12. If a Man be indicted for erecting a Meeting for Habitation, without laying 4 Acres of Land to it, it is good, though it doth not say that he inhabits it, in as much as it is Contra Formam Statuti. Mich. 8 Car. B. R. Adjudged. Session's Cafe.

13. If four are indicted for erecting several Cottages Contra Formam Statuti, it is not good without shewing how many Cottages they erected. Mich. 11 Car. B. R. Such Indictment against Butler and others quashed.

14. If an Indictment be, that there was quedam pars aquae running from such a Place to such a Place, the Defendant had stopped it, it is not good; because Quedam pars aquae is utterly uncertain. Trin. 11 Car. B. R. Adjudged. Sorrell's Cafe.

15. If an Indictment be for keeping diversa tormenta Anglice Gunnis, carentia longitudine Secundum formam Statuti, it is not good; because he says, Diversa Tormenta, and does not shew what they are. B. 11 Car. B. R. Adjudged. Aston's Cafe.

The Defendant was convicted upon the 5 Ann 14, for that he unlacely had and kept in his Cachery a Gun, contrary to the Form of the Statute, being an Engine for killing of Game; But the Conviction being removed by Certiorari, the Court, after Argument, were of Opinion for the Defendant; For that a Gun is not particularly mentioned in the Act, the only Words that can reach this Case, are (other Engines for the killing of Game. Now those Words must mean such Engines, the having of which necessarily implies the using, or intending to use them to kill Game; or, which are in their own Nature peculiar to that Purpose, and no other; But a Gun is not properly such an Engine, being an useful Instrument, necessary for the Defence of one's House, and for Husbandmen in their Business; And it is not sufficient that it may possibly be used to a bad Purpose; Therefore the bare having a Gun in one's Cachery cannot be criminal, unless in the Conviction there be laid either an actual Use, or an Intention to use. And the Conviction was quashed. Trin. 11 & 12 Geo. 2. B. R. the King's Gardiner.

16. If a Man be indicted for stopping Quandam partem of the Kings Highway at Kennington, it is not good without alleging what Part he has stopped; as to say, so many Feet in Length, and so many in Breadth. P. 9 Car. B. R. Adjudged. Halley's Cafe.

There said to be quashed, for that the stopping was alleged to be at Kennington, but the Highway took from London to Kennington; and so Kennington is excluded. In the same Cafe, in another Indictment, the Stopping was alleged to be in ulta via Regia in K. but did not say, leading from such a Town to such a Town, nor any Foundaries, and adjudged that it need not, where the Stopping is alleged to be in a Highway; but it must where it is in another Common Way.

17. So if an Indictment be for stopping Quandam partem of the King's Highway, containing by Elimination so many Feet in Length and so many in Breadth, it is not good for the Uncertainty, in as much as it is laid (by Elimination) P. 9 Car. B. R. Adjudged. Halley's Cafe.

18. If a Man be indicted for putting a Lay-stall near the Highway in S. it is not good, without shewing from what Place to what Place the common Way leads. P. 15 Car. B. R. Halley's Cafe. The Indictment quashed, and laid to be a common Exception, and diverse Indictments quashed for this Cafe.

19. If
19. If A. be indicted for stopping a Way at D. leading from D. to S., it is not good; because he does not allege the Way to be in D. but from D. which excludes the Bill. 32 Car. Such Indictment qualified.

20. A. was indicted for feloniously stealing of a Piece of Linnen Cloth from J. S. Exception was taken to the Indictment, because it was that felonio ac turatius sit quondam pecunia Panini linii ejusdem f. S. Frcd. Draper, ad voluntatem, &c. and doth not say, de bonis &c. ejusdem f. S. as the common Form of the Precedents are, and therefore ill; For an Indictment ought to be certain to every Intent, without any Indictment to the contrary; And here it may be, that this Piece of Linnen was not the Goods and Chattels of J. S. at the time of the taking, but by him let out, or delivered or pledged to another. And the Court held this to be a material Exception, and therefore discharged the Indictment, and restored the Party to his Goods seized for that Cause. Cro. E. 499, 490, Mich. 38 & 39 Eliz. B. R. Long's Cause.

21. Indictment for taking Carps out of his Pond; Exception was taken, because it is not said what Number he took, which is ill in Indictments as well as in Actions; and Indictments ought to be more certain than Actions; or at least as certain, that the Defendant may know to what he is to answer. But Keeling and Windham over-ruled the Exception; In Actions Damages are to be recovered, not in Indictments; but the Party is to be fined at the Discretion of the Court, be it one Fift or more; But Twifden contra, Indictments ought to be as certain as Actions; Morton silent, and the other two ruled the Party to plead to the Indictment. 1 Lev. 203. Hill. 19 & 19 Car. 2. B. R. the King v. Wetwang.

22. Not only the Defendant, but regularly all other Persons also were mentioned in an Indictment, must be describ'd with convenient Certainty; C. 233. cap. 25. 5. 76; and therefore it seems to be generally agreed at this Day, that an Indictment for taking diverse Sums of Money of diverse Persons for such a Till, &c. without naming any in particular, is insufficient; Yet in Special Cases, for the Necessity of the Thing, an Indictment may be good without describing in certain the Persons mentioned in it; as where one is indicted for having knowingly received and harboured divers Thieves, to the Suors unknown, (and yet in such Case he cannot be punisht as an Accellary, without a greater Certainty) or where a Murder or Robbery is committed on a Person unknown, in which Case the Offender may be indicted for having killed or robbed Quendam ignotum, &c. or where an Abbey is robbed during a Vacancy, in which Case, to prevent a Failure of Justice, the Law will leign a Property, and allow an Indictment for stealing bono Ecclesiae; but if there be no such special Reason, the Party killed must be set forth in an Indictment of Murder; and the Person to whom the Property belonged, in an Indictment of Larceny. 2 Hawk. Pl. C. 231. cap. 25. 5. 73.

23. An Indictment, which doth not with sufficient Certainty set forth the Thing wherein the Offence was committed, is insufficient; as where one is indicted for having forged a Leafe of certain Lands, without naming the one certain Parcel; or for having stolen bona &c. J. S. without knowing any in particular; or for having trespass'd on two Cloves of Meadow or Pasture; or for having ingross'd magnam quantitatem Straminus & Feni, or diversos cumulos truciui, without knowing how much of each; or for having carried away duas centenas cafii, without adding Libras or Uncias, &c. 2 Hawk. Pl. C. 233. cap. 25. 5. 76. — See Forecastle (E)

24. It is said to be most proper in Indictments of Larceny and Trespasses on a living Thing, to shew to whom the Property of it belonged, by calling it the Ox, or Horse, &c. of J. S. without using the Words Bona &c. but there are many Precedents in Books of good Authority, wherein this Nicety is not observed; If the Thing be moveable, it is said to be most proper to shew its Worth by the Word Precentum, &c. and
Indictment.

and if it be immoveable, by the Word Valutin: Yet this Nicety seems not necessary; neither is it clear, that the Ward of the Thing stolen is required to be set forth in an Indictment of Larceny for any other Pur-
pole, than to shew that the Crime amounts to grand Larceny, and the bet-
ter to ascertain the Crime, in order for a Restitution, or in an Indict-
ment of Trepass for any other Purpole, than to aggravate the Crime. 2

25. One was indicted for selling Beer without paying the Duty, but did
not shew to whom, or at what Time it was to be paid, nor what Quantity
he held, and this was moved in Arrest of Judgment; and said, that a
Conviction upon such uncertain Indictment, cannot be pleaded to any
other for the same Offence, neither any tolerable Defence be made to
such an uncertain Charge; Besides, in criminal Cases the utmost Cer-
tainty is required, and therefore the Offence should have been set forth in
this Indictment so as a Conviction thereupon might have been a Bar to all
other Actions and Proceedings for the same Offence; and for this Reason
the Judgment was arrested. 8 Mod. 58. Mich. 8 Geo. the King v. Gibbs.

26. In an Indictment for defrauding the Prosecutor of a Promissory Note
for 500 l. one Count for forth, that Defendant did, by false Tokens, get
into his Possession a Promissory Note, &c. and the Defendant was found
guilty; But after Argument, and Time taken to consider, the Court
held the Indictment ill: That such a general Charge of defrauding by
false Tokens, without specifying the particular false Tokens, is not sufficient;
For all Indictments ought to be precise in charging the Offence according to
Cro. J. 20. And a general Charge is never allowed but in the single
Instance of Barretrry. Hill. 13 Geo. 2. B. R. the King v. Munoe.

(N) Uncertainty.

1. If a Man be indicted for Entry into certain Lands, and mowing
an Acre of Hay, it is good, though it is not proper, because
it is not Hay but Gras before mowing. 14 Ja. B. R. Per
Curiam.

2. So if the Indictment be for Entry, and mowing of an Acre of
Corn, it is good; though it had been more proper to lay, for mow-
ing of an Acre town with Corn. 14 Ja. B. R. Per Cur-
iam.

3. So it is if the Indictment be for Entry, and cutting so many
Loads of Wood, though it be not proper; For Arbor dum credite,

4. If A. be indicted upon 8 H. 6. for Entry into two Closes of Mea-
dow, or Pasture, it is not good for the Uncertainty. 8 Car. B.
R. Resolved, and the Indictment quashed. Spear’s Case.

5. If an Ironmonger be indicted for selling Iron by false Weights,
and Measures, this is repugnant to sell Iron by Measure, which can-
not be, and also to sell the same Thing by Weight. 8 Car. B.
R. Woodward’s Case resolved per Curiam in Arrest of Judgment,
upon an Indictment, Intrat, Trin. 8 Car.

6. If four Persons are indicted for using the Trade of a Plummer,
against the Statute of 5 Eliz. and the Indictment is, that they four &
corum uterque used the Trade, this is not good, because the using of
one cannot be the using of the other, and therefore not good. Patch.
16 Car. B. R. Brooke’s Case among others adjudged, and such In-
dictment quashed.

S. C. cited
Indictment.

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3 Mod. 180.—Vent. 522.—10 Mod. 336.—Two were jointly indicted for Blackamoors Words 

fiercely spoken by them; it was objected, that the Indictment was not good, because it was joint. But 

Roff Ch. f. add, That the Indictment was good enough tho’ it be joint, as it is in the Case of several 

Perjuries, and several Batteries, where a joint Indictment doth lie, altho’ it does not for several Felonies; 

and here the Indictment is upon one and the same Statute, and for one and the same Offence, and therefore 

the Judgment given upon it is also good, and it shall be taken Reddendo fuga lae fingeas, viz. the 

Words to each of them as they spoke them. Sti. 312. Hill. 1691. B. R. Cullodes v. Taxney and 

Norwood.

Ttwo may be jointly indicted for Extortiun; otherwise for Exercising a Trade, not having tored an Ap- 

prenticeship, &c. 50. 362. Pack. 5 Anne B. R. the Queen v. Atkins.—11 Mod. 79. S. C.

Two may be indicted for a Great, and for several other Offences. 5 Mod 181. Arg. Hill. 7 W. 3.; 

Indictment lies against Husband and Wife for keeping a Gaming-House; and the setting forth, that they 

&c. were kept, &c. is well; for it is such an Offence as may be committed by both jointly. 

And the Addition of (uterque corpus) is but a further specifying and corroborating the former Charge; 

For whoever says that both of them did keep, &c. does in Truth and Consequence say, that each of 

them did so; per Cur. 11 Mod. 356. Tum. 2 Geo. The King v. Dixon & Ux.

7. So it has been oftentimes resolved, that an Indictment against 

several, that they &c. were kept did not repair the Streets before 

their Houses, 16 not good. 

8. Indictment of the Death of a Man unknown is good, and the Name of 

Baptism was not shewn; per Cur. the Inquest shall mention his Name; 

but then it seems that the Indictment was taken before the Coroner; Con-

tra, upon other Indictments taken before the Justices of Peace, Oyer and 

Terminer, &c. Br. Indictment. pl. 10. cites 1 Aff. 7.

9. Indictment that J. N. feloniously stole 2 Sheep Cajusdam Perforce of the 

Price, &c. and a good Offence, and the Defendant arraigned upon it; 

quod nota. Br. Indictment. pl. 11. cites 1 Aff. 15.

10. A. B. and C. D. were presented for disfreming certain Persons without 

Cause by Colour of their Office, &c. to the Damage, &c. per Caud. 

this is uncertainty; for he does not declare what Perfons, nor what 

Vill, so no Vifne can be known; per Ingl. we intend Perfons of the 


11. A Man was indicted, setting forth, that Bonna predicti W. S. Felon- 

ics cepit, &c. where no W. S. was mentioned before, and because every 

Indictment ought to be certain, "twas held that the Indictment is not good. 

Br. Indictment. pl. 6. cites 9 E. 4. 1.

12. But Indictment, that Bona Cajusdam ignoti, is good, quod nota. 

S.P. For the 

Goods may 

be in one 

Country and 

— A Man was indicted Quare Fi &c. Amnis Goods of the Chappell of D. in Cajusdam Ignoti specifi-

cation invent. &c. he took and carried away; where a Chappell cannot have a Property. Per Lakin in 

time of Vacation of an Abbat, the Indictment shall be Goods of the House and Chappell, &c. Br. Indictment. 

pl. 12. cites 1 Aff. 15. — And if it was of a Parish, it shall be Goods of the Parishioners, &c. in 

Cajusdam of the Wardens, &c. Ibid.—And where vic of a Paroathy, it shall be Goods of the 

Brothers and Sisters, &c. quere. Ibid. — A Person was taken at Southampton, having a Silver Tankard, 

Value 10l. and giving no satisfactory Answer how he came by it, was committed, and being brought 

by Habeas Corpus to Newgate, he was indicted, and the Indictment was of the Goods of a Person un-

known. At the Trial, the Prosecutor offered in Evidence, that the Defendant was a Lode and disorderly 

Peron. Baron Gilbert said, that tho’ an Indictment might be good for stealing the Goods Cajusdam 

Ignotu, yet a Property must be proved in somebody at the Trial, otherwise it shall be presumed that 

the Property was in the Prisoner, by his pleading Not Guilty to the Indictment. For a Man shall not be 

found Guilty of Felony, and hanged upon Presumption. § Mod. 248. Pack. 16 Geo. Anon.


B. R. Ld. Cromwell's Cafe.

14. Two were indicted, Eo quod Felonice duos centenas Cafet cepit, & 

sportuerunt, [Exception was taken] because Centenas is uncertain, what 

Weight, viz. Pounds or Ounces, &c. as also because it was Cepit in the 

ingular Number; and it was ruled, that the Indictment was ill for both 


15. An Indictment is the King's Count, and ought to be certain for the 

Year, Day, Place and Fact. Jenk. 124. pl. 51. 

And in Cafe of Felony, it 

being against 

the Life 

of a Subject, it ought to be certain as to the Fact, which shall not be supplied either by Argument or 


156. In
16. An Indictment ought to be more certain than common Pleadings in Law need to be: Hill. 23 Car. B. R. Because they are more penal, and ought to be more precisely answered unto. 2 L. P. R. 42.

17. An Indictment must be certain, that the Party indicted may know how to plead to it or traverse, or else it is not good, but may be quashed; Hill. 21 Car. B. R. Because there can be no Trial upon it, by reason of it's uncertainty. 2 L. P. R. 43.

18. Error of a Judgment in an Indictment was, that the Defendant Sceleror received and harboured divers Thieves to the Jury not known, who had stole divers Goods, and committed divers Burglaries; Exception was taken, if, That it was too general, and amounted only to Common Receptor Felonum. 3dly, That it ought to be, that he knowing them to be Thieves, received them; For he may know the Perons and not know them to be Thieves. 3dly, That it ought to be Felonice receptum; because receiving and harbouring Felons, knowing them to be Felons is Felony. But non allocatur; For per Curiam, perhaps the Felons cannot be particularly known, any more than the Felonies and Burglaries: And an Houfe which harbours Felons is a Common Nuance. And to the second, Jones said that Scelder had been ruled good in one Smith's Case lately; and to the third, the King may, if he please take no Notice of the Felony, and make the Indictment in Treffals. And thereupon the Judgment was affirmed. 2 Lev. 208. Mich. 29 Car. 2. B. R. The King v. Thompson.

19. An Indictment filed Paflch. 19 W. 3. Rot. 42. was, that A. using the Trade of buying and selling Cattel apud B. in Com' M. did buy and expose to Sale bad Cattle, &c. and it was quashed for incertainty; For if it be understood that the using of Buying and Selling was at B. in Com' M. there is no Venue where the exquoting to Sale was; and if (B. in Com' M.) be applied to the Place of Sale, there is no Place laid where the using the Trade was; fo quacunque viva, it will be impossible to make it good; per Car. 12 Mod. 435. Mich. 12 W. 3. The King v. Purley.

20. An Indictment against two for scolding. It was objected, that it could not be good jointly, because the Scolding of the one cannot be the Scolding of the other; but by Hole Ch. J. they may find jointly, and therefore it is well; but it ought to be a Common Scold (which is a Nuance) that must be indicted, and not for once or twice only. Powell J. said, the Indictment may be taken as a several Indictment. However Holt said, they would not quash it, but let them demur to it. Holt's Rep. 332. Trin. 6 Annea. The Queen v. Hoskios & al.

21. Indictment was, for that M. being with Child de Illegitimo Factu begun by him, be (the Defendant) secreted her, so as fhe could not be found to give Evidence to the Parish against him. The Defendant demurred, because there cannot be an Illegitimus Foetus; and for that Reason the Defendant had Judgment; For every Foetus is legitimate 'till born; For the Parents may marry before the Child is born; and if so, then the Child is legitimate. 8 Mod. 336. Mich. 11 Geo. The King v. Chandler.
Indictment.

(O) Things of Form.

1. If Men are indicted for a Riot, and the Conclusion of the Indictment is contra pacem & contra formam diversorum Statutorum, but it is not contra Coronam & Dignitatem noffram, yet the Indictment is good. Mich. 15 Jac. B. R. adjudged in one Holbeck's Cafe.

2. If a Man be indicted upon the Statute of 8 H. 6, for Entry into certain Land contra Pacem Coronam & Dignitatem, and does not contra formam Statuti it is not good. Mich. 10 Jac. B. R. per Curiam.

3. If an Indictment be upon the Statute of Forgery, and the Conclusion is not Contra formam Statuti it is not good. Mich. 9 Car. B. R. Smith's Case such Indictment quash'd per Curiam.

4. If an Indictment be because he Rioted cum baculis, &c. guerrino nodo armatis in quoddam Claustrum vocatum S. intraverunt, and his Servitors and Sons, then and there in the same Meadow menaced, &c. This Indictment is good, tho' the Word (Illicite) be not in as usual before the Word (Rioted). For it is not necessary, inasmuch as the Act itself contained in the Indictment, appears to be apparently unlawful as the Vindicating. P. 5 Ja. B. R. per Curiam, Warbeck's Cafe.

The Words Contra Coronam & Dignitatem Regis are used in all the Precedents in Coke's Entries, establishing the Offence Contra Pacem, yet they are omitted in Raffal's Precedents; and it has been resolved, that an Indictment for a Riot is good without them; neither do I find the contrary any where adjudged. Hawk. Pl. C. Abr. 223. S. 59.

5. If a Man be indicted for Barretty Contra formam Statuti, and it is not Contra pacem it is not good. Zachary Peri Wide解决了, Vide 12 Mod. 51.

6. If an Indictment of Barretty be Contra formam Statuti, it is good, tho' there is not any Statute against Barretty directly but collateral, as for Good Behaviour, &c. Ch. 5 Car. B. R. per Curiam, Hill. 9 Car. B. R. Chapman's Case per Curiam in Brit of Error upon such Indictment.

conclude Contra formam diversorum Stat. per Car. 12 Mod. 99. Trin. 8 W. 3. the King v. Bray.

7. If an Indictment be Juratores pro Domino Rege, Saliciter, A. B. &c. and both not say Probi & legales Homines, it is not good. This is Common Experience; For several Indictments have been quash'd for this Cause.

8. But if the Sheriff returns an Indictment in this Manner, Juratores pro Domino Rege pro Comitatu praedito, &c. and then certifies the Indictment, in which is Juratores pro Domino Rege super Sacramentum suum, &c. and it is not Probi & legales Homines, whether this be good or not in this special Manner. Trin. 11 Car. B. R. in one Cornelio's Cafe. Dubitatatur, per Curiam and advised. Many Indictments in inferior Courts have been quash'd for want of the Words Probi & legales Homines, whether in the Caption of the Indictment, setting forth by what Persons it was found; but this is said to be an Exception to an Indictment found in B. R. or Grand Seuious or Custus Palatino, and has been often over-ruled as to Indictments in other Courts, because all Men shall be intreated to be honest till the Contrary appear. Hawk. Pl. C. 215. cap. 25. S. 16.

9. If
Indictment.

9. If an Indictment for a Common Nuisance, tho' it be in doing of a Thing, be not Vi & Armis, or contra pacem, yet it is good, because it may be in his own Soil. Mich. 15 Car. B. R. refused Wardall's Cafe.

10. If an Indictment be certified, and the Names of the Indictors not certified, it shall be quashed. Mich. 15 Ja. B. R. Words fret. Cafe. Indictment per Certain quah'd.

11. If an Indictment of Forcery contra fortrum Statuti has not in it contra pacem, it is not good. Mich. 14 Car. B. R. Perryman's Cafe adjudged in Writ of Error, and the Judgment given at the Assizes revert from this Court.

At the Common Law, the Words Vi & Armis were necessary in Indictments for Offences, which amount to an actual Difference of the Peace, as Reoffs and Assaults, &c. but it seems that they were never necessary where it would be absurd to use them, as in Indictments for Conspiraies, Slaughters, Burns, &c. and such like, or for Nuisances in the Defendant's own Grounds. However, certainly the Omission of them in such Indictments is no fault since this Statute. Yet since this Statute, Exceptions to Indictments of Treasons, and such like, for want of the Words Vi & Armis, where they have not been implied by other Words, as Reoffs manifest, &c. have sometimes prevailed, but have been often overruled; and it is not easy to determine how they ever could prevail since the said Statute, consistently with the manifest Purport of it. 2 Hawk. Pl. C. Abr. 241. S. 57.

13. Th' an Indictment of Battery has Vi & Armis in the Beginning of it, yet if those Words are not immediately before the Assault, it seems that it is ill; per Cur. Sir. 140. Patch. 15 Car. 2. pl. 15. Anon.

14. An Indictment founded only upon a Statute, ought to conclude contra fortran Statuti, or otherwise it is ill; and for the want of such Conclusion an Indictment was quah'd. Saund. 249. 250. Patch. 21 Car. 2. Faulkner's Cafe.

15. A. was indicted for selling Ale in black Pots not marked, and does not conclude contra fortran Statuti, and held to be good enough; for the Common Law appoints Just Measures, and the Statute adds this Circumstance, yet, the Crime being at Common Law, the Conclusion is as it ought to be. Vent. 13. Patch. 21 Car. 2. B. R. Burgen's Cafe.

16. Where a Statute prohibits a Thing without a Penalty, or makes a new Duty to an Officer, the Indictment need not conclude contra fortran Statuti. Comb. 205. Patch. 5 W. & M. the King, &c. v. Wiggot and Petry.

17. Indictment for preaching to 20 Persons not being Licensed, not concluding Contra fortran Statuti, was quah'd; for they might be the Defendant's own Family, to which the Statute does not extend. 1 Salk. 370. Trin. 5 W. & M. B. R. the King v. Clerk.

18. Indictment was per Jurator. presentat. existit, that the Defendant crefted a Cottle; & ulterius presentant quod continuas Contra fortran Statuti; and Judgment was for the King, but reversed on Writ of Error; for there is nothing to agree with presentant, and it is a new Indictment distinct from the first, the Matter whereof is no Offence at Common Law, and the Contra fortran necessarily refers to the ulterius presentant, and no more. 1 Salk. 371. Mich. 6 W. & M. B. R. the King v. Trobridge.

went to the whole Indictment, in which, tho' there were many Overt acts said, yet there was but one Treaty, but here are two distinct Offences.
19. One was indicted for entering into a Warren and hunting and killing Rabbits at Night; Exception was taken, that by Stat. 3 Jen. 1. cap. 13. the Offender forfeits a double Damages and Costs, half a Year's imprisonm. &c. and the Indictment not concluding contra formam Statut. the Punishment of the Statute cannot be indicted, and if Defendant be fined upon this Indictment he may be notwithstanding punished again according to the Statute, and so twice punished for the same Offence; fed non allocutur, For if one has two Remedies, the one by Statute and the other at Common Law, and takes one, he thereby determines his Election. 12 Mod. 446. Pach. 13 W. 3. Anon.

20. Indictment for a Riot concluded contra formam Statut. Exception was taken that it was a Common Law offence indefinable Independent of any Statute, and therefore the Conclusion ill. But per Holt Ch. J. tho' it be not made an Offence by any Statute, yet there are divers Statutes directing the Manner of punishing it, and that is Reason enough to make the Conclusion good. 12 Mod. 502. Pach. 13 W. 3. the King v.

21. As upon the Statute of Stabbing, the Thing was Felony before, but Clergy is sufficed by the Statute, and yet Indictment for that Sort of Felony concludes Contra formam Statut. tho' the Statute does not make the Offence, it being Felony before; on the other Hand for Indictment would be good without concluding upon the Statute in that Case, and so both ways are good. 12 Mod. 502. per Holt Ch. J. in Case of the King v.

22. So in Case of Barratry an Indictment may be concluded Contra formam Statut. or diversorum Statutorum or take no Notice of any Statute at all; For wherever there was an Offence at Common Law and a Statute makes a further Provision of Penalty, an Indictment for that Offence may conclude Contra formam Statut. or leave it out at Election; per Holt Ch. J. ibid.

Prosecution is grounded on a Foundation, which will not support it; but Quare, if the Law be not now otherwise taken, for in Page's Case it was adjudged, that on a Special Indictment on the Statute of Stabbing, the Defendant may be found Guilty of general Murther at Common Law; and the Words Contra formam Statut. rejected as suffic. &c. but a Judgment on a Statute shall never be given on an Indictment which doth not conclude Contra formam Statut. and therefore if the Fact indicted be an Offence prohibited only by Statute, and the Indictment conclude not Contra formam Statut. no Judgment can be given upon it; for though an Indictment, which is redundant, may be helped by rejecting what is suffic., yet an Indictment that is defective in a material Part can be no way supplied. It is true indeed, that Judgment on S. B. 6. 9. may be given on a Writ of Afflict of Novel Offences brought in the Common Law Form; but this depends on a reasonable Construction of the Statute, which being express that the Party may recover by such Writ, but giving no Notice One, may be well intended to give the Party a Remedy by a Writ brought in the old Form. 2 Hawk. P. C. Abr. 252. S. 15.—S. P. 12 Mod. 99. the King v. Bracy & al.

23. It is a general Rule that unless the Statute be recited, neither the Words Contra formam Statut. nor any Persiflage, Intendment or Conclusion, will make good an Indictment, which does not bring the Offence within all the material Words of the Statute; as if an Indictment of Rape omit the word Raput. or an Indictment of Perjury on 5 Eliz. 9. omit the words Voluntarie & Corrupte; or an Indictment for Breaking in a Church on 5 & 6 Ed. 6. 4. omit the Words to the Intent to Strike; or an Indictment for Forfeiture on 5 & 6 Ed. 6. 14. do not expressly allege that the Goods were then coming to the Market to be sold; or an Indictment on the same Statute for Ingraffing, do not allege that the Defendant ingrassed, &c. by buying, &c. or an Indictment for Treason in compassing the King's Death on 25 Ed. 3. have neither the words Comrades nor Imagine, &c. 2 Hawk. P. C. Abr. 229. S. 68.

24. If the Statute whereon an Indictment is founded be particularly recited, and the Substance of the Fact, and the Time, and Place, and Things, and Persons concerned be alleged with sufficient Certainty, and a Circumstance only omitted; the general Conclusion Contra formam Statut. seems to help such Omission. 2 Hawk. P. C. Abr. 251. S. 72.

25. If there be more than on Statute concerning the same Offence, the latter of which only continues the former, without making any Addition to it, or only Qualifies the Method of Proceeding upon it, without altering the Substance.
Indictment.

Substance of its Purview, it is safe to conclude an Indictment on it Contra formam Statutis; but where the same Offence is prohibited by several independent Statutes, or a new Penalty is added by a subsequent Statute to an Offence prohibited by a former, it is said to be further to conclude Contra formam Statutum than Contra formam Statutis; but in either Case to Avoid Exceptions of this Kind, it is advisable to conclude Contra formam Statutum, which shall be taken either for Statutis or Statutorum, as will best maintain the Indictment. 2 Hawk. Pl. C. Abr. 233. S. 74.

26. It was moved to quash an Indictment for not performing an Order of Justices of the Peace concerning a Bawdred Child, because it did not conclude Contra Pacen; but it was held, that it ought not to be, this being but for a Non-sealace. Vent. 108. Hill. 22 & 23 Car. B. R. Anon.

Indictment. Sed non Allocatur; because it was not for a Male-sealace, but a Non-sealace. Vent. 111. Hill. 22 & 23 Car. 2. Anon.

Inasmuch as all Offences which are punishable by a publick Prosecution, tend to the Disburthance of the quiet and peaceable Government of the King over his People, it seems a good general Rule that all Indictments and criminal Informations, ought to conclude Contra Pacem of the King or Kings, in whole Reign or Reigns the Offence was committed; indeed there are some Precedents without this Conclusion, but I find no Resolution to warrant them, except only where the Indictment is for a bare Non-sealace, as the not performing the Order of Justices of Peace. But it seems clear, that neither Informations entitle, nor Informations for an Intutluation, or other Wrong of a civil Nature done to the King's Lands, Goods, or Revenues, need this Conclusion. 2 Hawk. Pl. C. Abr. 222. S. 58.

27. A Man was indicted because he such a Day and Year at D. &c. took a Horse of J. N. and because it wanted Felonice it was adjudged Trelpafs, and not Felony notwithstanding this word (Stole) Br. Indictment, pl. 35. cites 18 E. 4. 10.

Psalm 57:4.

28. Exitis in Aetatis 16 Annorum &c. in an Indictment on the Statute of Recueynacy may be referred to the Time of Absence from Church and not to the Indictment. Mo. 606. Talbor's Cafe.

29. Where an Indictment is preferred for a Thing which is unlawful in it self, there if it concludes ad Commoni Nocentium it is sufficient; but if a Thing is lawful in itself, as the Erection of an Inn, but by reason of some Circumstance becomes unlawful, in such Cafe the particular Circumstance must be alleged, as if the same be erected in a dangerous Place, or that it harbores Thieves, &c. the same must be alleged. Psalm 367. Trin. 21 Jac. B. R. Anon.

30. If a Word be left out in an Indictment which is but only in Matter of Form, yet the Indictment is good, but if it be in Matter of Substance it is not good. Trin. 24 Car. B. R. For it is the Substance of Pleadings that is most regarded, tho' Formality be not to be neglected. 2 L. P. R. 42.

31. The Caption was Jurator, pro Domino Regis pro Corpore Conitutis ad iurisdictionem ad Legum; Exception was taken to it for the Uncertainty of the Inquiry, viz. inasmuch as it is (ad Legum); yet the Court held it well enough. Sid. 140. Pach. 15 Car. 2. pl. 15 Anon.

And Twil-\begin{flushleft}
den J. said that it had been wadjudged where the Indictment was (Sacerum) without any Dayo upon it. Ibid.
\end{flushleft}

32. Indictment was quashed, because it was R. R's with a Dath over the R's for Regii Regis. Sid. 140. pl. 15.

33. So because it was Pace Domini & Pace Regia, where it should be in Pace Regio only. Sid. 140. pl. 15. Anon.

34. Indictment taken at the general Suffren of the Peace in London, and quashed because 'tis not Sefflonem pacis Domini Regis. 1 Lev. 175. Trin. 17 Car. 2. the King v. Dedeny.

35. Indictment were both ways; but the Court said that where the Indictment is for a small Offence as here, they will quash it for this Omission and that they did in another Case the same Term, between the King and \begin{flushleft}Stuttland on an Indictment for Using a Trade not having been an Apprentice. S. P. Sid. 175. Hill. 15 & 16 Car. 2. B. R. Duhitauer. So where the Words were 'justitia ad Pacei consurrend, officio, but not ad Pacem Domini Regis; and had it said ad Pacem Publicum it would not have been sufficient. Vent. 23. Trin. 21 Car. 2. B R. Anon. S. C. Sid. 42. 2. and Tildwen J. said he knew one quash'd for want of (Nunc) Domini Regis non consurand, because it might be a former King. 36. Indict.
36. Indictment was quashed, because it was ad Sessio
num (in) Com. tent. By where

ad generalem Sessio num pactis Com. Guistat. prad. tent. apud Guild-bell &c. in Guild-bell, and it is not pro
Com. Guistat. prad. per Carum, it is supplied by the first Words, Sij. pactis Com. Guistat. prad. Sld.

37. Indictment upon 5 Eliz. cap. for Exercising a Trade in C. not ha-
ing been an Apprentice to it for 7 Years; Exception was taken, that
there wanted the Words, viz. * adhibit & sibidem jurat & juravit; for
which all the 3 Judges, Keeling being absent, conceived it ought to be

38. Indictment was quashed for this Fault, viz. Prefentatun. exfit for S. P. Sid.
Prefentatun. 1 Salk. 375. Mich. 3 W. & M. B. R. the King v. Franklin. 175. Hill.
5 & 16 Car.

39. It was moved to quash an Indictment taken before Justices of Peace,
for that it was only * Justicar, ad Pacem without Conferround. assignent. but
refused; For the Court said, tho' it were an old Exception, yet they did

40. R. was indicted for opening a Letter sent by the Post, and the
Caption was, that per * juratores jurat pro Domino Rege exiit individum, and
quashed for that. 12 Mod. 514. Pach. 13 W. 3. the King v. Ruffell.

41. Indictment was ordered to be quashed Niti Caua; For that it was
Prefentatun exfit Quae Bella est vera, instead of Quod Bella est vera;
and no Caua being shown that Indictment was quashed for that Fault. 8
Mod. 256. Trin. 10 Geo. the King v. Reeves.

42. The Words in contemptui Regis are sometimes us'd in Indictments
of inferior Crimes, and in Informations of Intrusion, and in Allions upon
Statutes, and sometimes omitted; but I find no Authority relating hereto,
except in the Year Book of 4 H. 6. wherein it seems to be admitted that
it is necessary in an Action on a Statute. 2 Hawk. Pl. C. Abr. 223. S. 69.

(O. 2) Mistaken Words, Names, Times, or Place; in what
Cafes it fhall abate the Indictment.

1. Excetion was taken to the Caption of an Indictment, that it was
presents per * juratores Eel. trat. Jurat. &c. overat. ad }{requeent. pro
Domina Regina (and) Corpore Com. instead of pro Corpore Com. which was
agreed per Cur. to be the right Way, but they held it well notwithstanding;
For it is good Senfe that they were charged to inquire for the Queen,
in behalf of the County. 6 Mod. 180. Trin. 3 Anne. B. R. the Queen v. Cofworth.

2. Indictment for that the Defendant with others at the Parish of S.
riontly Assembled et quodam cubilebus S. S. in the Mansion House of David
James, freget & intravit, and 30 Yards of Stuff took and carried away.
Upon the Evidence it appeared to be the dwelling House of David Jam-
son, and not of James; Parker Ch. J. held that this did not maintain the
Indictment; For Part is Local, and Part nor; the Cubileicm is Local,
but the taking and carrying away is not Local, whereas here all is put
2gether as one entire Fact, under one Description, and you cannot divide
them. 1 Salk. 385. Mich. 11 Anne the Queen v. Crangie.
(O. 3) Find. What the Jury must find, or what shall be a good Finding.

1. A. Was arraigned of the Death of a Man and acquitted, and the Jury was compelled to present who killed the Man, by which they indicted another; quod nota. * But at this Day it is not put in Use, but only where the Judgment is taken before the Coroner upon View of the Body, and not the Indictments taken before the Justices of Peace. Br. Corone, pl. 39. cites 21 E. 3. 17.

other Indictment which is not before the Coroner. Br. Corone, pl. 52. cites 11 H. 4. 93. and Trin. 10 R. 2.—Bid. pl. 52. cites 14 H. 7. 2. S. P. 23 to the Coroner Contra before the Sheriff or Justice of Peace. So it seems, where he is acquited at the Suit of the King.

(P) Judgment. No Damages to the Party grieved.

1. If a Man be indicted for a Tort done to J. S. and upon this Judgment is given against him to be Fined and Imprisoned, yet no Damages may be given to J. S. Hill. 14 Car. B. R. and 15 Car. B. R. between Powell and Shield a Prohibition granted to the Marchers of Wales to give Damages to the Party grieved upon a Criminal Bill.

(Q) Nuisance [and others Things.]

1. See Nuisance (B. a).

2. A Man may be presented, because certain Monies came to his Hands which were found by J. S. (For this concerns the Interest of the King and so not Private) 27 All. 16.

3. A Man may be inquired of such Things as are withdrawn from Houses which are of the Foundation of the King. 27 All. 20.

4. As a Man may be presented for withdrawing of certain Rent of a Prior and Covent, which is of the Foundation of the King. 27 All. 20.

5. But a Diftress to their Frank-tenement cannot be presented. 27 All. 20.

6. If a Man has a Way over the Land of J. S. and J. S. stops it, he cannot be indicted for it; For this concerns private Interest, and a Man cannot do a Thing Vi & Armis, & contra Pacem in his own Land, and therefore cannot be indicted of it as for a Trepass. Mich. 15 Ja. B. R.

7. So if a Man has a Gutter through the Land of J. S. and J. S. stops it, he cannot be indicted for it for the Cause aforesaid; But he who ought to have the Gutter, is put to his Action upon the Case. 9 Ja. B. R. Abjudged. Smith's Case.


9. A Pretention for inclosing of a Croft, in which the People of a Vill have Common, in a Nuisance of all the People of the same Vill, is not good; because it is private, of which All are lies. 27 All. 6. Abjudged.

10. A Pretention for laying Dung and other Ordure against the Wall of another Man, is not good; because it concerns private Interest. 12 H. 4. 8.

11. If a Man be indicted for disturbing of a Water Course running to the Mill of J. S. ad grave Damnum of the said J. S. & tenementium Jurorum, it is not good, without having, Omnia ligorum Domini Regis.
Indictment.

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gis. Tr. 15 Ja. B. R. William Hughes's Case. Such Indictment qualified.

11. If a Prenuent be for making a Nulance ad grave Damnum omnium ligeorum Domini Regis prope inhabitantium, it is not good; for it ought to be a Nulance to all the Lieges of the King. Dick. 15 Ja. B. R. Jarvis's Case. Adjudged. And the Indictment for Nulance to be a Way qualified accordingly.

the Nulance or Injury done is not done Ad commune Noceamentum, but Ad privatum; and therefore an Action upon the Case doth only lie for the Party that isdamnified by this Nulance or Injury. Hill. 22 Car. B. R. 11 Maj. 1651. For Indictments are to punifh publick Offences only, and those done against the publick Peace; and not to punifh private Trespasses, for which the Law gives particular Actions. 2 L. P. R. 44.

12. So if a Prenuent be for inclining of a Croft, in which the Good. People of a Vill have Common in a Nulance of all the People of the same Vill, it is not good; For the People of the Vill may have an Affile. 27 A. 6. Adjudged. Vill. 14 H. 4. B. R. Rot. 86. Adjudged. So if an Indictment be for Incroachement of so many Rodd of Land appertaining to the Borough of Launton ad Noceamentum of the Borough, * and of divers others, it is not good; because it is only for private Interest. Mich. 15 Ja. B. R. Per Curiam. Langdon's Case.

13. But if a Man be indicted for breaking and digginy of the Wall of the Church of Launton, ad Noceamentum Burgi Ligeorum Domini Regis, it is good; For this is not of private Interest, and though the Church be spiritual, yet the Offence is Temporal. Mich. 15 Ja. B. R. Kingdom's Case; This was moved, but not resolved.

14. If a Man be convicted of a Nulance done to the King's High-way, he shall be commanded by the Judgment to remove the Nulance at his own Costs. Tr. 22 E. 3. B. R. Rot. 15 § 23.

15. An Indictment for a Nulance doth lie against the Owner or Proprietor of a Skip that is sunk in a Haven or Port. 21 Car. B. R. For thereby the Trade of that Place, where the Haven or that Port is, and also Navigation, is hindered, which is prejudicial to the Commonwealth; for it is chiefly maintained by Navigation. 2 L. P. R. 43.

(R) Pleadings to the Indictment.

It was presented, that A. B. Justice of Oyer and Terminer, caused a certain Indictment to be entered upon the Roll of Felony, which was presented as Trespasses only; and he, being arraign'd of it, demurred upon the indictment, and by the Justices the Indictment is void; For this goes in Delesance of the 11th Record. Quod Nota. Br. Indictment, pl. 14; cites 27 Afl. 18.

2. Indictment of Felony done in D, where there was no such Vill in the same County; therefore the Justices would not arraign him, but let him to Mainprize, and awarded Capias against the Lord of the Leet and his Steward for taking of such Indictment. Br. Corone, pl. 193; cites 41 Afl. 30.

3. A Felon arraigned upon Indictment shall not be suffered to relinquish a general Pardon by Parliament, and to plead to the Felony. Br. Indictments, pl. 2; cites 11 H. 4: 41.

4. One was indicted of Trespasses by the Name of J. N. of D. The Defendant said, that in the County are D. Magna & D. para, abisse hoc that there is any D. in the same County without Addition; Prit. and by the Opinion of the Court it shall be reversed. It seems that the Party was One was indicted with a that there is any D. in the same County without Addition, and dis- outlawed upon the Indictment; for such Exception of the Vill is not good, tailed by Opinion in
Indictment.

If one be indicted for doing of any thing, which he is not by the Law to be indicted for, as for the violating of a Common, or some other Trepass for which an Action at the common Law is to be brought, or for calling a Man a Rogue or Thief, &c. such an Indictment is not good, but may be quashed. Pach. 24 Car. B. R. For Indictments are to be preferred for criminal, and not for civil Matters; and then likewise the Delinquent is liable to be twice punished for one Offence, which is against Magna Charta. 2 L. P. R. 42.

2. Where the Party indicted is outlawed upon the Indictment, the Court will not quash the Indictment, although it be erroneous, but will force the Party outlawed to bring his Writ of Error to reverse the Outlawry; For before the Outlawry reversed, the Party outlawed can have no Benefit of the Law. Mich. 24 Car. B. R. 2 L. P. R. 45.

3. If an Indictment be of two Things, one of which is indilixible, so that as to that Part the Indictment is ill; yet if it be good as to the other Part, it shall not be quashed. Per Dodderidge J. to which White-lock agreed. Lat. 173. Intratur. Trin. 2 Car. Willow's Cafe.

4. It was moved to quash an Indictment, because the Caption is dated 25 Jan. 18 Car. and the Cogitatoris was of Mich. Term left, and the Indict-ment is subsequent to the Cogitatoris; And the Court said, that the In-dictment was not removed, but remained in Pais. Note, if so, the Party is late, because the Clerk entered (mititur in Bacon) and so they cannot proceed in Pais. And no Perfon prayed new Cogitatoris. Sid. 317. Hill. 18 & 19 Car. 2. the King v. Buck.

5. Indictment

(S) Quashed. In what Cases, and for what Faults.
Indictment.

5. Indictment quailed because it was ad Generalem Sessio- 
meni Postis tent 
infra Burgum de Leicester, not being, said pro Burgo ; and 
two other In-
dictions quailed the same Term for the same Fault. 1 Lev. 304. Trin. 
22 Car. 2. the King v. Page.

It were not pro Burgo. Vent. 59. Trin. 22 Car. 2. Anon.

6. The Defendant was indicted for not attending at the Record being removed into this Court by Certriorari, he pleaded his Pardon, and had Judgments Quod eat inde fine Die ; But the Dean and Chapter of Westminster having seised his Goods as forfeited by that Conviction, (tho' he was out of the Court by that Judgment) he moved to quail the Indictment, because it was Per Sacramentum dodecin proba-
rum & legalium bonitum jurat & iuravit' presentat' exitit modo & fainja 
sejan Midd. if 'Juratores pro Domino Rege presentant, &c. That there 
was no Precedent to warrant such an Indictment ; for this may be the Precedent 
of another Jury, it being very incoherent to say, that it was 
prestated by the Oaths of 12 Men that the Jury do present. It ought to be 
præsentat' exitit quod, &c. and is the Form of this Court, as the Clerk 
of the Crown informed them; wherefore the Indictment was quailed. 3 
Mod. 201, 202. Patch. 4 Jac. 2. B. R. the King v. Griffith.

8. It was moved to quall two Indictments, which were Quod cum an 
Order was made, that the Parshipers should receive a Bajtard Child, 
In Contempt did refuse to receive it ; And because it was not positively said, 
that they should receive it, but only by Recital with a Quod cum, they were quailed. 1 
Salk. 371. Trin. 5 W. & M. B. R. the King v. Whitehead.

9. It was moved to quall an Indictment for selling low Wines in a 
Cellar, without giving Notice to the Exciseman, against the Stat. 3 & 4 
W. & M. because it is returned in English, and ought to be in Latin. Per the 
Ch. J. I cannot tell that ; no Writ of Error lies on it; the Remedy is by 
Appeal. 5 Mod. 12. Mich. 6 W. & M. the King v. Lammas.

10. A Miller was indicted for taking of excisoffe Toll ; it was moved to 
quall it, because it was not said jurat' nor iuravit', nor the Jurors named ; 
per Cur. it is against the Courfe of the Court to quall an Indictment for 
Exortion or Oppression ; we cannot do it, demur to it. 5 Mod. 13. Mich. 
6 W. & M. B. R. the King v. Wadsworth.

11. A Motion was made to quall an Indictment for selling low Wines in a 
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quall it, because it was not said jurat' nor iuravit', nor the Jurors named ; 
per Cur. it is against the Courfe of the Court to quall an Indictment for 
Exortion or Oppression ; we cannot do it, demur to it. 5 Mod. 13. Mich. 
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6 W. & M. B. R. the King v. Wadsworth.
(S. 2) Quashed on Motion, what Indictments.

1. Order by Justices of Peace made upon Conviction of Force upon the View may be quashed upon Motion. Sid. 156. Mich. 15 Car. B. R. the King v. Challoner.

2. The Court would not quash an Indictment of Manslaughter on Motion; For they said, it was not their Course to do so in this Cafe, but they ruled the Party to plead to it. 1 Vent. 110. Hill. 22 & 23 Car. 2. B. R. Sir Tho. Pettus's Cafe.

3. It was said by Sir Samuel Alitree, that Indictments for Perjury, Forgery, and Maintenance, were never quashed on Motion, but the Party is always put to plead to them; but as to riots, or other Offences of a publick Nature, the Court indeed is very tender of quashing them, yea, they do it daily, if they find it for a frivolous Matter. 12 Mod. 231. Mich. 10 W. 3. Anon.


5. Indictment was for Extortion against an Officer for taking Money for not carrying his Prisoner to a Spunging House, and the Court looked upon it to be so ill a Practice, that they would not hear a Motion to quash it. 12 Mod. 255. Mich. 10 W. 3. the King v. Beecher.
Indictment.

6. So of an Indictment for Disturbance in the Church. Sid. 54. says, it was so held. Mich. 15 Car. 2.

7. A was indicted for living with another Man's Wife, and moved to quash it as a Matter not indictable; but per Cur. we will not quash an Indictment for Matter of this Nature on Motion, but demur if you will. 12 Mod. 413. Trin. 12 W. 3. the King v. Sellinger.

(T) Quah'd, and Exceptions taken, at what Time.

1. One that is convicted upon an erroneous Indictment cannot move after his Conviction to have the Indictment quah'd, but must bring his Writ of Error to reverse the Judgment given against him upon the Indictment. Mich. 22 Car. B. R. For after Judgment it is too late; for an Indictment is quah'd for the insufficiency in it, or because no good Judgment can be given upon an erroneous Indictment; but if Judgment be given upon an erroneous Indictment, it is good, till it be reversed by a Writ of Error. 2 L. P. R. 43.

2. An Indictment may be quah'd, if it appear Vicious, after Issue joined; Per the Ch. J. Cymb. 21 Patch. 2 Jac. 2 B. R.

3. An Indictment was removed by Certiorari, and a Recognizance taken on the warranting it; on a Motion to quash the Indictment, the Court refused to hear it, because it appeared that the Recognizance was forfeited. Holt Ch. J. said, the Practice was, or ought now to be, altered by the late Act, before which the Defendant came soon enough at any time to quash, but should not be allowed to do it now, after his Recognizance forfeited by not carrying the Record down to the next Assizes to be tried; and for the same Reason the Court refused to let any Exception be taken, either to the Certiorari or Return. 1 Salk. 380. Mich. 2 Anne B. R. Anon.

4. One cannot move to quash an Indictment for a Fault in the Caption, the same Term it comes in. 6 Mod. 221. Mich. 3 Anne B. R. Queen v. Franklin.

(U) Quah'd for Part.

1. W. was indicted, that he being of ill Fame &c. was a Night-Walker, and further, that such a Day, &c. be frequented a Brothel House. The Indictment is good for the being a Night-Walker, W. being laid to be of ill Fame, &c. and tho' the other Part be ill, yet Indictment shall not be quah'd, and W. was find'd 408. Lat. 173. Trin. 2 Car. Willow's Cafe.

2. H. was indicted for riotously entering the Cloze of J. S. and cutting down and carrying off 20 Ashes and 50 Oaks ibidem crescentes, de Bonis & Cathallis of J. S. and his Wife; Per Cur. Judgment for the Queen, as to entering the Cloze, and the Indictment void as to the rest. For Trees growing cannot be called Bona & Cathallis. 11 Mod. 113. Patch. 6 Anne B. R. the Queen v. Harris.

(U. 2) Process
(U. 2) Proofs against Indictee.

(1) Dictment.

1. 13 Ed. 1. 13. Enacts thatSheriffs in their Towns, and in other Places where they have Power to enquire of Treasons, shall cause Inquests to be taken by twelve honest Men at least, who shall put their Seals to such Inquisitions; and if they shall imprison any that have not been indicted by such Inquests, the Parties imprisoned shall have their Action against the Sheriff's, and so of Bailiffs of Franchise.

2. 2 Ed. 3. 17. Enacts that Indictment in Sheriff's Towns or in Franchise, &c. shall be taken by Roll indented; whereof one Part shall remain with the Indictors, and the other with him that taketh the Inquest.

(U. 3) Indulgence to Persons indicted.

But in App. it is otherwise. In the Case of theKing v. Thomas, 2 Bals. 147. Ed. Ch. J. Coke observes, that the Jesuits have much flandered our Common Law, in the Case of Trials of Offenders for their Lives, in the Manner of their Trial, in regard that Council, and also Examination of Witnesses upon Oath, is had and admitted against a Delinquent, but a Delinquent to have no Counsel to speake for him, nor to have any Examination of Witnesses upon Oath against him. In Answer to this he says, "The Law of England is a Law of Mercy; The Indict, before whom the Trial is, is to look into the Indictment, and to see that the same be found, and good in Point of Law; the Judge ought to be for the King, and also for the Party, indifferent; it is far better for a Prifoner to have a Judge's Opinion for him, than many Counsellors at the Bar; the Judges are to have a special Care of the Indictment, and to see that the same be good in all Respect, and that Justice be done to the Party.

2. A Man, outlawd of Felony, was brought to the Bar, and demanded what he had to say why he ought not to die; He said, that at the Time of the Outlawry, he was in Prison in the Castle of Oxford, and did not fly in whose Custody, nor in what County Oxford is, nor did he ever his Plea, &c. therefore no Plea; and after it was said there, that the Judges by their Discretion may assign him Counsel to plead his Plea as the Order is in the Pleading of it; but because he was of ill Fame he had no Counsel. Br. Corone. pl. 127. cites 1 H. 7. 13.

3. One attainted of High Treason pleaded that he was drawn out of Sanctuary of C. and pray'd Counsel to plead it, and by all the Judges of both Benches, Counsel was assigned him, and Day given. Br. Corone. pl. 128. cites 1 H. 7. 22, 25. 25. Humphry Stafford's Cafe.

Gulity only, the Prisoner shall not have Counsel to plead it for him, or to say any Thing for him relating to the same, unless it be in Appeal, which is the Suit of the Party. For when he is put to answer to an Indictment of Treason or Felony, he ought to do it himself in Person, and then if his Answer be such as exceeds his cunning to plead it, he shall have Counsel assigned him, tho' against the King. For this Plea of Not Guiltie goes to the Fact, which himself knows left, and can therefore answer to it; and should his Counsel plead this Plea and defend it for him, they would perhaps be so covert in what they say, that it would be a long Time before the Truth would appear. Besides if the Party himself defends it, his Confidence may prick him to utter the Truth, or at least his Favour or Countenance may shew some Signs of it; but should that be otherwise, yet his Manner of speaking may be so undisguished that the Truth may be either discovered, than by the artificial speaking of Counsel; and these may be the Reasons of their not having Counsel as above.—S. 3. 127. cap. 62. And says, that in no Case the Party arraigned of Treason or Felony can pray Counsel learned generally, but must shew some Cautel. Because in the Case of Life, the Evidence to convict him should be so manifest, as it could not be contrarieth. And also, that the Court ought to see that the Indictment, Trial, and other Proceedings be good and sufficient in Law; For otherwise they should, by their erroneous Judgment, attain the Prisoner unjustly.—In Sir Allison Withipoll's Cafe, Gros. 147. Hil. 4. Cas. B. R. Counsel was denied to be allowed upon an Indictment of Murder, unless he shewed some Exception in Law; but upon shewing such, Counsel was allowed him.—Jo. 198. S. C.—Ley. 81. S. C.—2 Hawk. Pl. 420. cap. 59. S. P.—5 St. Pl. 151. cap. 67. cites S. C.
Indictment.

4. One was on his trial for an Indictment of Man slaughter, and brought a Writ of Error, and affixed for Error, that he was over the seas at the Time of the Offence, viz. at Utrecht, in Paribus transitibus. Hereupon Counsel was affixed him; Jones J. moved it, as doubtful, whether he might have Council upon his Trial, but all the other Justices held clearly that he should have it when the Trial is not upon the Fact in the Indictment, but upon Collateral Matter, (viz. of his being beyond Seas.) Cro. C. 365. Tin. 10 Car. B. R. Burgels's Case.—als. The King v. Burgels.

for the Trial of the Issue taken by the Attorney General. But the Court said, it is not necessary to align Counsel; For upon this Collateral Matter, any Person may be of Counsel with the Prisoner without Alignment. 2 Jo. 196. Mich. 35 Car. 2. B. R. The King v. Donough O'Carry.

5. One was indicted of High-Treason done before the King's Return, and excepted out of the general Pardon; and after the Indictment was read to him, he desired it might be read a second Time, which was done; and then defined that it might be read in Latin, which was denied; but he being never done; then he desired a Copy of it and Counsel, which was denied; but the Court said, if he takes any legal Exception, he shall have a Copy of so much thereof, as concerns the Exception, and Counsel to argue it. Lev. 68. Tin. 14 Car. 2. B. R. Sir Henry Vane's Case.

indicted for High-Treason, whereby any Corruption of Blood may be made to such Offenders, or their Heirs, or for Jeffreyson of such Treason, shall have a Copy of the Indictment, but not the Names of the Witnesses, different unto them five Days at least before they be tried, to enable them to advice with Counsel, their Attorneys or Agents requiring the same, and paying the Officer his Fees for writing thereof, not exceeding 5s. and every such Prisoner shall be admitted to make his Defence by Counsel, and to make any Proof that he can produce by lawful Witnesses upon Oath for his just Defence, and in Case any Person, so accused, shall desire Counsel, the Court, before whom such Person shall be tried, or some Judge of the Court, shall immediately upon Request assign such Counsel, not exceeding two, as the Person shall desire, to whom such Counsel shall have free Access at all reasonable Hours.

S. 12. Preamble, that neither this AB, nor any thing therein contained shall any Ways extend to any Impeachment or other Proceedings in Parliament in any kind whatsoever.

Nor by S. 13. To any Indictment of High-Treason, nor to any Proceedings thereupon, for counterfeiting the Majesties's Seal, his Great Seal, or Privy Seal, his Sign-manual, or Privy Signet.

6. The Statute of W. 2. cap. 31. which gives Bills of Exceptions, does not extend to any Case where Prisoners are indicted at the Suit of the King. Resolved. Sid. 85. Tin. 14 Car. 2. The King v. Sir H. Vane and Lambert.

7. Upon Indictments, the Court will never refuse to assign a Prisoner Counsel, to argue a doubtful Point of Law, happening to arise at or after his Trial, as where it shall appear questionable, whether the Facts proved, it true, fully amount to the Crime charged against him; or whether the Persons offered to be Evidence against him be legal Witnesses, in respect of such or such Exceptions against them; or whether certain Persons returned of his Jury can be lawful Jurors, in respect of certain Objections against them; or whether the Indictment or Proceeds, &c. be strictly legal. In all which Cases, the Prisoner must propose the Point, and if the Court think it will bear a Debate, they will assign him Counsel to argue it.


8. After a Prisoner has had a Counsel assigned him, the Court will not discharge such Counsel without the Prisoner's Consent, tho' they desire it, but will sometimes add others to them. 2 Hawk. Pl. C. 401. cap. 39. S. S. cites 2 Vol. State Trials. 711, 712.

3 K. (U. 4) Error

1. E Rror assigned, because the Plaintiff and J. S. were indicted of Conspiracy in Oyer and Terminer, &c. and in the Indictment no Year, Day nor Place were alleged where the Conspiracy was made; and it was that they imprisoned A. B. and C. D. till they made Fine, &c. which founded in Oppression, and not in Conspiracy; And this was awarded to be Conspiracy; and for Error, &c. And the Plaintiff in Error had made Fine to the King by this Conviction, yet upon this the Judgment was reversed. Quod nota, notwithstanding that they pleaded Not Guilty, and did not take Exception at the Time; for 'tis said, that 'tis the Office of the Court to see if the Matter shall serve in Things apparent or not; and yet 'twas alleged, that the other, with whom he confired, was dead, so that now he cannot be punished again for the Conspiracy, and that the King now shall lose his Fine, and yet Non Allocatur. Br. Error, pl. 87, cites 24 E. 3. 35. f 74.

2. Error no reverse a Judgment upon an Indictment, because the Award of the Venire was entered, Preceptum finit Vicecomit. &c. which is more like an History of the Record, than the Record itself; For it ought to be Precepturum &c. and so are the Precedents; and for this Cause it was reversed. Vent. 170. Mich. 23 Car. 2. B. R. the King v. Alway & Dixon.

3. Several were indicted for refusing to take the Oath of Allegiance contained in the Statute of 3 Jac. tended to them at the Sessions of the Peace. One appeared, and the Entry was Nihil dict. &c. idem remanuit Domi Rex rerum suarum inde latisset. And the others were convicted. They brought Error, and assigned, That in the Entry of the Nihil dict. it was Idem remanuit &c. whereas it ought to have been remanuit, and so the Record it fell must express. And it was held to be Error, per Cur. Vent. 171, 172. Mich. 23 Car. 2. B. R. the King v. Green & al.

4. The Court will not order a Writ of Error in a criminal Case, as for not coming to Church, to be sealed, till 'tis first signed and allowed by the Attorney General. And Lord Keeper took it, that a Writ of Error in a criminal Matter was ex Gratia Regis in all Cases, but where Provision is made for the same by the Statute, and is not due ex Debito Jusitiae or de Curia. But if there were real Error in the Case, and a Writ of Error was not sought for Delay, their Way was to * petition the King, and he would give Directions for inspecting the Proceedings, to see if there was real Error, or whether a Writ of Error was sought purely for Delay: And Mr Attorney said, that Crawley being indicted upon the Statute 3 Jac. no Error could avail him; and the Indictment could not be quashed, nor the Proceedings avoided, otherwise than by Conformity.


5. 7 W. 3. cap 3. 8. 9. Provides, that any Judgment given upon Indictment of High Treason, or upon Mispfison of such Treason, shall and may be liable to be reversed upon a Writ of Error, in the same Manner, and no other, than as if this Act had been made.

(W) Abated
(W) Abated by what. Misnomer or Addition, &c.

1. If a Man be arraigned upon Indictment, he shall not plead Misnomer, but plead, Not Guilty, and shall give in Evidence that he is named by the Name of Major General Thomas Gordon, and therefore not the same Person; but if he be the same Person, then no Matter for the Misnomer. But contra in Appeal; For those Misnomers is a good Plea, and if he be outlawed upon Misnomer, it seems to be Error. Br. Indictment, pl. 207. cites 1 H. 5. 5.

his Name was Alexander. It was adjudged by the Commissioners of the forfeited Estates in Scotland, that this was no Attainder of Alexander; and the Commissioners of the forfeited Estates in England, appealing to the House of Lords, who took the Opinion of the Judges, which was delivered by the Lord Ch. J. Pratt, viz. That the Attainder of Major General Thomas Gordon did not attain Alexander, and that if upon such Attainder he had been brought to the Bar of B. R. and had made this Matter appear, that Court could not have awarded Execution against him, the Lords affirmed the Decree. Wm's Rep. 612. 616. Hill. 1719. Grantham & al. Commissioners &c. of the forfeited Estates v. Alexander Gordon.

—S. P. in December following, in the House of Lords, the Attainder being by the Name of Patrick, whereas his Name was Alexander. Wm's Rep. 617. in a Note added by the Editor, cites it as the Case of Grantham & al. v. Fairquartar.

2. A Man was indicted of Felony the 4th of May Anno 21 H. 7. and A. B. was indicted for suffering him to escape the first Day of May, Anno 21. supra, and because it appears that it was before the Indictment, therefore he was discharged. But Brook says, it seems, that it appears that the Escape was before the Felony done. For the Defendant might have him in Ward for the Felony, and permit him to escape before he was indicted of it. Br. Corone, pl. 62. cites 21 H. 7. 34.

3. A. was indicted for striking in St. Paul's Church-Yard. He pleaded that he was by the Queen's Patent created Garter King of Arms, and demanded Judgment, because he was not so named, and because it was a Name Parcel of his Dignity and not of his Office only; For the Patent is Creamus Coronatus & Nomen imponimus de Garter Rex Heraldorum, therefore in all Suits against him he is to be named by this Name; and for this Cause he was discharged of the Indictment. Cro. E. 224. Pach. 33 Eliz. B. R. Dethick's Cafe.

(X) Non-Pros, entered. In what Cases.

1. The Record of the Outlawry of the Defendant, and all other Proceedings against him, be in B. R. yet by the Statute of 6 H. 8. 6. we may send them down to the Old Bailey; but we could not send them a Record of an Indictment before that Statute, and such Cases have been sometimes tried at Nisi Prius. And Holt quoted the Call of the Court, in my Lord Hale's Time, who was brought hither from the Old Bailey to reverse his Outlawry; and the Court were clear for sending him back, if the Prosector had not desired he should be tried here. And in all Cases whatsoever, where the Indictment happens to come hither, the it be not by Certiorari, we may, in our Discretion, send it back. And so it was ruled here; per Holt Ch. J. 12 Mod. 562. Mich. 13 W. 3. the King v. Young.

2. An Indictment was for Perjury; the Defendant entered into a Recognition to try it, and was desirous to carry it down to try, but the Prosector entered a Non Pros. Per Cur. It was an ancient but illegal Practice, that if an Indictment had lay in full for a long Time, to enter a Non Pros. upon it. But that ought not to be without Leave of the Attorney General, nor even at the Request of the Prosector; For it would be of intolerable
Indorsment.

tolerable Michiel, that it should be at the Discretion of the Prosecutor to make an End of the King's Suit, and also to get a Bill for an infamous Crime found of Record against one, and by such Entry of Non pro. deprive him of the Means of clearing himself by Trial. And for these Reasons the Court set it aside; and if the Indictment be virtuous, an Acquittal in it will be no Bar to a new one. 12 Mod. 648. Hill. 13 W. 3, the King v. Cranmer.

(Y) Tried How. Where there are several Indictments for the same Thing.

S. C. 6 Mod. 259, 260, by Name of Culliford's Cafe.

See Bills of Exchange— Faits (G)— Informations (F) pl. 11.

See for more Matter relating to several Divisions of Indictments under Forgery, Forcible Entry, and other proper Heads.

Indorsment.

(A) Indorsment. The Effect thereof, and Pleadings.

And by him 

Here 'tis written on the Back of an Obligation, (received 10l. in Part of Payment) it may be pleaded; per Browne. Quare. Br. Faits, pl. 32. cites 21 H. 6. 5.

Pate in Deeds Obligationis quad f., &c. Quare inde. Br. Pleadings, pl. 25. cites S. C.— And as to the Point of Payment as above, he shall plead that part, &c. that 10l. is paid, &c. Quare. Ibid.

2. And upon a Sheriff's Bond of 20l. indorsed thus, to save the Sherif harmless, he shall plead it as a Condition. Br. Pleadings, pl. 23. cites 21 H. 6. 57.

3. If a Man delivers a single Obligation to f. N, and after f. N, indorses a Condition upon it, this shall serve the Obliger to plead; per three Justices; quod nota. Br. Obligation, pl. 2. cites 26 H. 8. 9.

4. An Indictment of Forcible Entry was preferred to the Grand Jury, who return'd thus, (viz.) * as to the Entry with Force, Ignoramus; as to the Detainer with Force, Billa Vera. But this Indorsment not being fpy'd, but being taken by the Justices of the Peace for a full Indictment in both Points, they award Restitution; but upon certifying this Indictment in B. R. by Certiorari, and the Indorsment returned as above, they award Re-Restitution. It was moved that they ought not to regard the Indorsment; for the Court did not fend for that, but only for the Indictment;

* See Forcible Entry (K) pl. 4 & S.
Indemnity: and this Indemnity makes it to be no Indictment at all, and so the Clerk of the Peace has done more than he was commanded to do. But per Cur. the Indemnity is Parcel of the Indictment, and the Perfection of it, and the Court sent for the Indictment, Cum omnibus id tantum, and the Indemnity touches it principally; For it is the Life of it. And per Cur. after such finding, the Procurator ought to have preferred a new indictment for the Forecible Detainer only; for now, being made one intire Indictment, and the Jury finding only the last, it is no Indictment at all. Yelv. 99. the King v. Ford & al.

5. A Leave may be determin'd by Force of a Condition indorsed on the Backside thereof, if it be before the Entailing and Delivery, as well as by Force of a Condition within the Deed. Cro. J. 456. Mich. 15 Jac. B. R. Griffin v. Stanhope.

6. A devised Lands to Trustees for a Term of 60 Years, to pay Legacies, Remainder to B. his Daughter in Tail, &c. J.S. with Confent of Friends, married B. at 16. By Marriage Articles J.S. covenanted to pay the Legacies, being 1500l. within six Months after the Marriage. And B's Friends covenanted on her Behalf, that B. when of Age should settle her Estate on J.S. for Life, &c. and J.S. gave a Statute and also a Mortgage of his own Estate to secure Payment of the Legacies, and by Indemnity on the Mortgage the same was to be void, unless B.'s Estate was settled on J.S. Afterwards B. died an Infant, the Legacies not paid. It was held that the Indemnity on the Mortgage only was sufficient to discharge the Statute and Articles also, all being executed at one and the same Time, the same Witneces and Part of the same Agreement, and all to be looked upon as but one Conveyance. Hill. 1703. 2 Vern. 457. Lawrence v. Blatchford.

(A) Indemnity.

1. IN Replevin, the Defendant justified for Damage seyenat by a Lease made to him by B. and the Plaintiff pleaded a Bar which was not good, abique hoc, that B. leased; and per Cur. he ought to make a good Plea to induce the abique hoc, or further plead, and say Ne lefsera pas. Br. Pleadings, pl. 35. cites 9 E. 4. 5.

2. In every other Case, where the Defendant or Plaintiff pleads a Plea or Title, and traverses by an abique hoc, the Plea or Title, which induces the Traverle, ought to be good, quod nota, because it is no Plea to say, abique hoc, that be lefser, &c. without more; quod nota. Br. Ibid.

that one J. W. was seized in Fee of Land in D. and granted a Rent Charge during the Life of M. Wife of A. which A. died intestate, and M. was his Administrator, and the Defendant, as Serves, took a Deed of the said Land for the said Rent, by Command of M. and impounded them there, and traverses the taking in any other Place, it was held ill upon Demurrer; For the Indemnity is not sufficient Cause of Indemnity for taking the Deed; because this Rent was determined by the Death of A. by Reason there cannot be an Occupant of Rent, and M. is not Affiix of the taking of Administration. For none can make a Title to Rent to have it against the Tertinent, unless he be Party to the Deed, or conveys a sufficient Title under it. And so Judgment was for the Plaintiff. Cro. E. 921. 44 & 45 Eliz. B. R. Salter v. Butler.

So in false Imprisonment in London from the 10th to the 29th of September, Defendant justified that he was Mayor and Justice of Peace in the Mayor, and that a Robbery was done there, and the Plaintiff was imprisoned and brought before him, and because he said he insufficient, he detain'd him in his House, during the Time in the Declaration mentioned, to examine him and one J. S. who was not apprehensive concerning the said Robbery, and afterwards, upon the 29th of September, detain'd him over to the new Mayor, and traverse the Imprisonment in London; And adjudged upon Demurrer, that the Indemnity to the Traverle was not good; For a Justice of Peace cannot detain in Prifon a Perfon suspected, but during a convenient Time only, to examine him, which the Law intends to be three Days, and within that Time to take his Examination, and send him to Prifon, and ought not to detain him as long as he pleases, as here he did 12 Days, neither ought
Inducement.

be to detain him in Prison in his own House, but to commit him to the Common Gaol of the County; for otherwise, when the Justices come to deliver the Gaol, he is not in the Gaol, and may not be delivered, and so should lie longer than is reasonable. See the Statutes 5 H. 4. 10. 2 E. 4. 8. and here he took not any Examination, but delivered him over without, which was not lawful; and therefore adjudg'd for the Plaintiff. Cro. 6. 829. Pach. 45 Eliz. C. B. Scavage v. Tateham.

S. P. And so where it is the Foundation of the Plaintiff's Suit, he must allege it certainly and truly; otherwise where it is only Conveyance.

Co. Litt. 503. a. (m) In Debt for an Inducement, the Plaintiff declared that the Prisoner was committed, and escaped, and because he did not for普通 patet per Recordinum, the Defendant demurred generally, but adjudg'd for the Plaintiff, for the Gift of the Action was the Inducement, and the Commitment was only Inducement. And by G. Eyre J. The Matter here is grounded on the Fact, and not on the Matter of Record; for Nihil debet is a good Plea. And the Rule in Co. Litt. 503: Where the Difference is taken between Cases, where the Record is the very Foundation, and where Inducement, is a good Diversit. 2 Salk. 505. Mich. 6 W. & M. B. R. Wates v. Briggs—7 Mod. 8. S. C.—And by Holt Ch. J. In Debt for a Judgment it was laid, Quod non recipiatur &c. and the 'it did not for普通 patet per Recordinum, yet it was good, and so it has been held; For it was but Inducement, and yet it was agreed, that in such Case, the Defendant may plead Nulli teli Record. 5 Mod. 9. in S. C.—2 Salk. 505. in S. C.

At, in Information upon Inducement, only Conveyance pleaded a Defect in the Plaintiff. The Court held clearly, that a Defect is no Plea, nor any Title against the Queen. And they all held, that a Defect must be an Inducement to a Traverse, but not a Defect; so that a Traverse in this Case, being induced by the Defect, which is not traversable, is not good. See ibid. Norris's Cafe.

5. That which is alleged by Way of Conveyance, or Inducement to the Substance of the Matter, need not be fo certainly alleg'd as that which is the Substance itself. Co. Litt. 503. (k).

6. Where a Promise is but Inducement, to the bringing of an Action, it need not be set forth precisely; but otherwise, where it is the very Ground of the Action brought. Reg. Plac. 21. cites Stile's Praet. Reg. Pag. 30.

7. In Sci. Fa. upon a Recognizance of Bail or a Writ of Error of a Judgment in Debt given in C. B. conditioned, that if the Plaintiff be Non sui, the Writ of Error discontinued, or Judgment affirmed, then he should pay &c. Defendant prayed Oyer, and pleaded that the Plaintiff in Error did professe the Writ of Error, and assigned Errors, Et quaod Placitum super quasi predest. Breve de Errore ad locus pendet indeterminate &c. The Plaintiff replied, That the Judgment was affirmed, Ablque hoc quaod Placitum pendet Indeterminate &c. Defendant demurred, and adjudg'd for the Plaintiff in C. B. But upon Error brought in B. R. the Court held the Replication naught; because it makes that a Matter of Inducement, which should have been the Point in Issue; and also, because the Traverse puts a Matter in Issue to be tried by the Country; and was going to reverse the Judgment, but an Exception was started to the Writ of Error, for which it was quashed. 2 Salk. 529. Pach. 4 Anne B. R. Fanthaw v. Morrison.
(A) Infidels.


2. It seems to be agreed to be a good Exception to a Witness, that he is an Infidel. 2 Hawk. Pl. C. 434. cap. 46. S. 26. The Servant there says, that he takes this to be, that he believes neither the Old or New Testament to be the Word of God; on one of which our Laws require the Oath should be administered. Ibid.

Information.

(A) Antiquity thereof, &c. and how considered.

1. An Information hath not only somewhat in it of an Indictment to lay down the Offence, but hath the Nature of an Action also for the Party to demand his Due as in another Action, which is his Office to demand certain, and not the Court's to assign; and therefore, if he makes no Demand, or demands what appears not to be due, his Information is insufficient. Hob. 245. Trin. 16 Jac. Per Hobart Ch. J. in Cafe of Pie v. Weiley.

2. Information was brought by the Attorney General against several Persons, for a Riot in pulling down Fences &c. On a Demurrer to the Information, Sir Francis Winnington shewed Caius the last Term, viz. That the Defendants ought not to answer to the Information, but it ought in this Case to be by Preceptment of a Jury. Holt Ch. J. said, We cannot impeach the Justice of several of our Predecessors. Informations were frequent in the Time of the Lord Hale; but agreed, that Informations for Batteries, &c. are opprobrious; that the Star Chamber was an ancient Court at Common Law, and they proceeded by Information, and therefore if Holt's Rep. 562. S. C. —— But fee we may have; that the Statute of 32 H. 8. of Maintenance, suppofeth Informations to be as lawful as Actions by Bill or Plaint, and it was not a new Way of filing, &c. Dolben J. said, That Informations were before a Car. There is an Information mentioned in the Institutes to be against Plowden and others, in the Time of Queen Eliz. Holt Ch. J. said Obiter, that no Information could be qualified, Secus of an Indictment. In another Term, Eyres and Dolben held, that Informations are more ancient than 5 Car. and per Dolben, the Statute of 5 Eliz. mentions that Informations were more ancient. Holt Ch. J. Informations were at Common Law; for Mich. 1 W. there is no Statute that gives them. This Court can't take Indictments out of the Countey in which it sits; but this Court hath all the Lawful Power that the Star Chamber had, and therefore may punish Offences committed in other Counties, which for the greater Part would be unpunised, if Informations for them would not lie in this Court. Per Dolben J. there

Comb. 141.
Information.


(B) For what.

1. Upon the Statute of 2 E. 3. of Northampton, for going Armed, as walking about the Streets, and going to Church with a Gun terrifying the King's Subjects Contra Formanti Statutis. 3 Mod. 117. Mich. 2 Jac. 2. B. R. Sir John Knight's Cafe.

Comb. 38 S.
C. Holt Ch. J. said, that this Offence had been much greater and better laid at Common Law; but that tho' this Act be almost gone in Defunctuism, yet where the Crime shall appear to be Malo Anima, it will come within the Act, tho' now there be a general Conivance to Gentlemen to ride armed for their Security; but afterwards, he was found Not Guilty. Yet he was afterwards bound to the Good Behaviour. Ibid. 40.

2. Upon Complaint made to the Court of B. R. against an Officer of the Marthas of Wales, for Arresting a Juror sworn to inquire for the King at a Leet there held for the King, in Disturbance of the King's Court, and praying Aid of B. R. as the Fountain of all Courts Leet, by granting an Attachment upon Affidavit produced, it was denied; but had an Officer of B. R. done in like Manner, then this Court had had Ground to grant this Motion. But the Court advised him to file an Information against the Officer for this Disurbance to the Leet. Lat. 198. Anon.

3. An Information was moved for against the Defendant for Bribery at an Election of a new Mayor for a Corporation, and because, when he found he could not succeed in the Choice of the Defendant, the old Mayor withdrew himself on the Day of Election, so that a new Mayor could not be chosen, tho' the Common Council did all in their Power to proceed to an Election, by appearing on the Stairs in the Town Hall for that Purpose, but the Door was locked by the Defendant (the old Mayor) and a Book belonging to the Corporation was taken away; for that for want of choosing a Mayor on the Day of Election, the Corporation was dissolved; and a Rule was made to new Caufe why, &c. and afterwards in Hillary Term it appeared that there was Bribery on both Sides, fo Informations were filed against both Parties; and the Court agreed that Bribery was a sufficient Caufe to remove a Man from his Office, and was an Offence by which the very Constitution of the Government might be altered. 8 Mod. 186. Mich. 10 Geo. the King v. the Mayor of Tiverton.


6. In an Information for lending a Challenge to a Commissioner of the Land Tax, in order to deter others from executing the said Office pursuant to an Act of Parliament, &c. the Defendant demurred, and Judgment was given for him by reason the Statute was unfructed; for tho' this was an Offence punishable at Common Law, yet being tied up by a particular Relation to the Statute as done to a Commissioner created by that Statute, if there was no such Statute, there could be no such Commissioner, and consequently no Offence. Comb. 477. Patch. 10 W. 3. B. R. the King v. Dove.

7. Information for a Cheat by obtaining Judgment in Debt interdictly and by undue Practice against a Lady while Sol, but now the Wife of J. and whole
whole Lands are extended upon this Judgment; the Evidence was that P. one of the Defendants, who was a Shop-keeper in London, became acquainted with the Feme who was well born but had no Portion, and undertook to provide for her an Husband of a good Estate, and for this Purpose he went to L. who had an Estate, and informed him that the said Feme had 4000l. Portion, and also told the said Feme that L. had a greater Estate than in truth he had; and the Day before they were to be married, got the Feme to a Tavern, where he told her that for her better Provision after her Marriage in Cape the Baron would not maintain her well, she ought to Seal certain Papers, which as it seems were a Warrant of Attorney and Release of Errors, and thereupon he paid her about 100l. before Witnesses, and immediately had her into the next Room and took it away from her again. And upon Evidence given by the Feme of this Matter P. was found Guilty, and thereupon the Court let aside the said Judgment, and P. was committed and fined for pretending this to be a true Debt due to him without any Truth. Sid. 431. Mich. 21 Car. 2. B. R. the King v. Parris & al.

8. An Information was filed against one for cheating several by drawing them in to play with him for Money and putting false Dice upon them. 7 Mod. 40. Trin. 1 Anne B. R. Anon.

9. For Combination among several Button-makers not to sell under such a Price, and per Holt it is fit that all Confederacies by thofe of a Trade to raise their Rates be suppressed. 12 Mod. 243. Mich. 10 W. 3. Anon.

10. Information was against several for Conspiring to deputate the Farmers of the Exchequer, by agreeing among themselves not to make any Gallon-Beer for such a Time to be sold to the Poor, nor any Ale but of such a Price and to diffuse them to pay their Rent to the King, being 11800l. a Year. Lev. 125. Hill. 15 & 16 Car. 2. B. R. the King v. Sterling & al.

11. An Information was brought for conspiring to marry an Infant under 18 Son and Heir Apparent of R. M. Efj; to C. H. a Woman of ill Fame and no Fortune, and he married her accordingly; the Court said it was a great Crime and worthy to be punished, and that it should be if they could any way get at it; Adjournatur. Comb. 456. Mich. 9 W. 3. B. R. the King v. Thorp.

Maleficia against two for procuring a Gentleman's Son to marry a Woman of Infamous 7 Mod. 39. Trin. 1 Anne B. R. the Queen v. Blacket and Robinson.

12. A Coroner having sworn the Jury to inquire of the Death of one supposed to be a Felo de se, and finding the Evidence very strong took off none of the Inquest; and tho' it was said that this Coroner was a weak silly Man, yet Holt said there was no Reason why an Information should not be against him. 12 Mod. 493. Pach. 13 W. 3. the King v. Stukely.

13. An Information was granted against one for counterfeiting or pretending bishop's to be bewitched by a poor Woman who was thereupon indicted for Witchcraft and acquitted, and the Whole discovered to be a Cheat. 12 Mod. 556. Mich. 13 W. 3. B. R. Hathaway's Cafe.

14. Against a Dyer for Woeading his Cloth only to the third Stall (whereas the Cofyton of Dyers was to Woe it to the fourth Stall) and then marking it with the Company's Seal as if it had been Woeaded to the fourth Stall; he was found Guilty of Woeading it only to the third Stall, but not of fettling such Mark to it, for which Reason the Court was of Opinion no Judgment ought to be against the Defendant. Skin. 108. Pach. 35 Car. 2. the King v. Worrall.

15. For disturbing Riptote Clamoribus & Vociferationibus the Election of Bishops and Bishops of a Corporation; but Judgment was arrested upon the Pleadings. Holt's Rep. 353. Trin. 6 Anne. the Corporation of Bewdley's Cafe.

16. Information was upon Stat. 8 & 9 W. 3. cap. 19. S. 63. against K. late Receiver General of the Customs, that the Defendant in order to get great Gains to himself, did fraudulently and falsely Indorse 20 Eschequer Bills as if they had been received for Customs and paid them into the Eschequer the same Day, as if they had been truly Indorsed in Deceptionem & Defraudationem, dicit 5 M Domini
Information.

Domini Regis; Upon not Guilty pleaded, the Defendant was convicted; but for Faults in the Pleadings Judgment was arrested. 1 Salk. 375. Hill. 11 W. 3. B. R. the King v. Knight.

17. For Oppressively taking and Extorting several Sums of Money ex- 
hibition, and being arrested for a Fault in the Pleadings. Carth. 226. Patch. 4 W. & M. 3. S. P. and tho' upon a Con- 
stitution, the Majority be against him and make a 
Return in his Name; yet it shall be taken to be his, if he does not come and disavow it. 6 Mod. 152. 
Parch. 3 Anon. B. R. the Queen v. Chapman, late Mayor of Bath.

19. An Information was filed against a Gaoler for suffering one taken up 

20. An Information was filed against certain Persons for that they as En- 
emies, &c. to the Government hired a Boat during a War with France in order 
to go thither, intending to aid and affit the King's Enemies, tho' they did not actually go thither, but only intended it. Skin. 637. Patch. 8 W. 3. B. R. the King v. Cowper and al.

21. So for writing a Letter to amacker to moderate his Zeal, for that the 
King, meaning King James the 2d. would be soon restored, and that for 
ther Satisfication herein, he would soon hear that many Lords would re- 
pair to him to France, and what to do there he might guess. 12 Mod. 
511. Mich. 11 W. 3. the King v. Lawrence.

22. An Information was against a Justice of Peace for not convising Pers- 
s for being at a Conventicle; several Exceptions were taken, but the 
Court gave Judgment, because he refused to Administer an Oath which he 
was bound and required to do by the 22 Car. 2. 1. tho' not bound to convist 
them upon that Oath unless he see Reason. Skin. 56. Mich. 34. Car. 2. 
Smith v. Langham.

23. Upon a Motion to file an Information against a Justice of Peace for 
seizing the Prosecutor to the House of Correction without sufficient Cause; upon 
Rule to file Caufe, he showed that the Prosecutor's Matter com- 
plained to the Defendant that his Servant was fawney and gave his (the 
Matter's) Horses too much Corn; but the Court holding this not a sufficient 
Cause for seizing a Man to the House of Correction; Leave was given to 
file an Information. 8 Mod. 45. Parch. 7 Geo. the King v. Okey.

24. It was moved for leave to file an Information against a Justice of Peace being Mayor of S. for denying a Warrant to the Prosecutor who was 
beaten by T. S. as being for neglect of publick Justice; but a Rule being made to file Caufe, it was shown that the Mayor had several People then 
before him to be examined concerning a Riot which happened on that same 
Day, and it being late at Night he desired him to come the next Day, which is the Denial complained of, and thereupon the Rule was discharget; be- 
cause the Mayor had done what Justice he could; and the Prosecutor's Intent being to bring the Mayor into Dilgrace and inflame the Corporati- 
on against him, the Prosecutor was ordered to pay the Costs of the Motion. 8 Mod. 337. Mich. 11 Geo. the King v. Nicholls.

25. An Information was against one for killing a Nobleman's Dog, set- 
ting forth, that Lord S. was riding in the Vill of D. in Com. Middlesex, 
and that his Grey-hound being then and there following him the Defen- 
dant drew his Sword, and then and there killed the Dog. 12 Mod. 577. 
Parch. 12 W. 3. the King v. Chaloner.

26. An Information was filed against one for building of Locks on the River 
Thames to obstructing of Navigation. 12 Mod. 613. Hill. 13 W. 3. the 
King v. Clark.

27. An Information was filed against a Man who set up a Letter, and after run away without drawing it. 12 Mod. 495. Parch. 73 W. 3. Anon.

28. Fer
Information.

28. For taking and marrying a Daughter without consent of the Father, which is Offence at Common Law. Sid. 387. Lev. 257.

29. If the Mitregall of the King's Bench misbehave himsefl in his Office to the Prejudice of any, he is prejudiced by his Misdemevor may preter an Information against him in this Court. 2 L. P. R. 59. cites Hill.

30. An Information was moved for against a Mayor for taxing several Persons who lived out of the Corporation to contribute to the building a Bridge and other Charges within the Corporation; the Mayor shewed for Cause that tho' they lived not within the Corporation, yet they dwelt within the Liberties thereof, and were intitled to the like Privileges of those who lived within it, one whereof was to be Exempt from all Taxes in the County at large, so that it is reasonable that they should be contributory to the Charges within the Corporation when they had the Benefit of all the Privileges thereof, and that the Tax now in Question had been paid by such Out-Dwellers time out of Mind. But the Court directed that this Matter should be tried upon an Information, and that for two Reasons, the one because a single Person might not be able to Contest this Matter in an Action against the whole Corporation; and the other because if a Verdict should pass for or against such single Person, it would not end the Contest which might happen against the reit. 8 Mod. 114. Hill. 9 Geo. the King v. the Mayor of Tenterden.

31. A Clerk in Chancery was committed by the Lord Keeper for a very high Misdemeanor in finding Writs into the Country with false yellow Wax upon them without being sealed by the Great Seal as if they had been actually sealed, and this was said to be a Misdemeanor next to Counterfeiting the Seal; and he was bound in 1000l. himself and two more in 500l. each for his Appearance in order to an Information. 12 Mod. 355. Park. 12 W. 3. Hatcher's Cafe.

32. An Information was exhibited for selling an Ink-horn made of mixed base Metal for Sterling but without any Mark put to it, as for an Offence at Common Law; and the Court was of Opinion that if he fell such Metal, tho' but for a reasonable Price, yet it is an Offence and that no such Metal ought to be made, cited Arg. Skin. 109, as Pargeter's Cafe.

33. An Information was for not taking the Oaths, and acting as an Alderman after the Time laps'd for the taking them. Skin. 583. Trim. 7 W. 3. The King v. Haines.

34. On a Motion to file an Information against the Mayor and and Burgesses of M. upon an Affidavit of the Town Clerk of M. for admitting one H. not having taken the Oaths of Abjuration and Supremacy at the Time, to be a Capital Burgess of M. which was in 1714, Per Cur. If he took not the Oaths at the Time, he is not qualified to be a Burgess, and the Length of Time, wherein he continued to be so, will not obtruit the filing an Information against him, but then, after so long Time, there ought to be clear Proof of his wilful Refusal, or voluntary Neglect, to take the Oaths; but certainly an Information ought not to be granted on the Oath of the Town Clerk himself, because it is his Fault that H. did not take the Oaths, and it was likewise his Duty to discover the not taking them, which for so many Years together he had not done, and therefore that Length of Time shall gain a Prestimation in his Favours, especially as in this Cafe it is proved by other Affidavits, that he took all the Oaths he was believed to be requisite for him to take at the Time of his Election. And so the Information was not granted. 8 Mod. 55. Trim. 7 Geo. 1722. The King v. the Mayor and Burgesses of Malmesbury.

35. For neglecting and refusing to take upon him the Office of a Sheriff. The Defendant pleaded, that he was a Protestant Difflenter, and had not received the Sacrament within a Year, and pleaded the Statute of Toleration of Protestant Diffenters, and that he was exempt by that Statute.

See Guardian (D. a) the

King v. Twillington.

4. Mod. 269.

S. C. A Motion was made for an Informa-
Information.

36. Information was brought against a Popish Reusant, who conferred, and afterwards came not to Church. Skin. 114. Trin. 35 Car. 2. Anon.

37. Upon a Motion for an Information against the Overleers of the Poor, of the Parish of W. for removing a poor Person, till of the Small Pox, into another Parish, from W., where he was an Inhabitant, and the Sessions refusing to give Relief. The Chief Justice said, that where a Person is visited with Sickness, by the Act of God, he ought not to be removed from the Place where he is sick, to the farther endangering his Health, without an Order of two Justices; and if such Order is made by the Justices, knowing him to be sick, an Information shall go against them; whereupon a Rule was made to them. Afterwards, upon swearing Caufe, they denied the Fact alleged, and moved, that the Rule might be discharged; For that this Woman, who was really settled in that Parish to which she was removed, would, upon the Trial of this Information; be Evidence against the Parish of W., and gain a Settlement there. But the Court was of Opinion, that the Fact being controverted, and carrying such Barbarity with it, 'tis requisite it should be tried upon an Information, and then the Jury would be proper Judges of the Truth. 8 Mod. 326. Mich. 11 Geo. the King v. Edwards.

38. Upon a Suggestion to the Court, that Reusous is made to the Sheriff, Coroner, &c. the Court will award Proces against the Reusor; Per Nottingham Attorney General, Arderne Ch. B. and Laison did not deny it. And it was agreed clearly by the Reporter, that upon Suggestion thereof, they will award Proces. Quere, if this be in the Exchequer only, or in all Courts of Record? Br. Surm. pl. 3. cit. 39 H. 6. 41.

39. An Information was filed against an Enign of the Guard, for Reusuing one arrested in the Park by the Ld. Ch. Justice's Warrant. 12 Mod. 256. Jourdan's Caffe.

40. Information for a scandalous Narrative licenied by the Defendant, Speaker of the House of Commons, being Dangerfield's Narrative, refuting on a Nobleman, (the E. of Peterborough); the Defendant pleaded, that he did it by Order of the House of Commons, and demanded Judgment if this Court will take Conunance of it. The Art. Gen. demurred, and afterwards the Defendant pleaded the common Plea, Quod non vult contende cum Domino Rege, and was fined 1000l. Comb. 18. Pach. 2 Jac. 2. B. R. the King v. Williams.

41. For scandalous Words of a Justice of Peace, concerning his Office, and the Exercice of it; For it glances on the Government and Defendant, was fin'd 100l. Carch. 14 K. v. Darby.

42. It was moved for Leave to file an Information against a School- boy at Winchester School, about 15 Years old, for assaulting, beating and challenging one Eyres a Clergyman, who was then the second Master of that School, for no other Caufe, but reproving the Defendant for something done at School. And a Rule was made to them. 8 Mod. 259. Prin. 10 Geo. the King v. Sir Cha. Holloway.

43. In an Information for Sporting away a Child, and carrying him to Justice. Pemberton Ch. J. declar'd the Law to be against him, it not being lawful to take a Child under Age, tho' he pretend to have no Friends, &c. and carry him away; For that the Parish might have bound him out, and he may have a Matter; and if not, he ought to be bound by a Justice of Peace, and for a reasonable Time. Skin. 47. Pach. 34 Car. 2. the King v. Willmote.

44. An
Information.


45. An Information was moved for against one, for Building a Wharf contrary to a private Act of Parliament for making a River Navigable; the Court said, that tho' it was not an Act of Io publick a Nature, as that they ought ex Officio to take notice of it, yet because it was for the Publick Good, and the Matter (complained of) directly against it, they gave leave to file an Information; but they held, that an Information will not be for the Violation of a Private Statute. 12 Mod. 398. 12 W. 3. Anon.

46. Leave was given to file an Information against the Defendant, by whom the Plaintiff's Wife was inveigled away, and who procured Merchants and Tradesmen to fill Goods to her, in order to saddle the Husband with the Debt, he agreeing with the Sellers, to deliver the Goods back again. 12 Mod. 454. 12 W. 3. Pocock v. Thornicroft.

47. A Will was proved in a Convivial Part, and taken away by one in order to cheat Legatees, (as he thought). And per Holt Ch. J. the Probat is Authority enough for the Legatees to go upon, tho' the Will be lost, and the Offence need not go unpunished; for they may have Indictment or Information. 12 Mod. 325. Mich. 11 W. 3. ... v. Deer.

48. An Information was brought upon 35 H. 8. 17. for converting Wood-land into Arable and Pasture: Exception was taken, because 'twas not shewn in the Information, that the Land was set apart and used for Wood-land, according to the Words of the Statute; but it was not allowed, it being said Bofcos, &c. and said, that for Cutting down Timber, growing Sparrows, and turning it into Arable, no Information lies on this Statute; but the Court would not quaff it, it being an Information. Skin. 32. The King v. Lt Staffdord.

49. Leave was moved for to file an Information against the Defendant for thee Words spoke of a Justice of Peace, viz. He is an old Rogue for sending his Warrant for me. Holt Ch. J. said, that he deliver'd to be bound to his good Behaviour, tho' it be not proper for that Justice to do it, but rather to get one of his Brothers to do it for him; and leave was denied, the Court deferring them to go by way of Indictment if they would. 12 Mod. 614. 12 W. 3. The King v. Lee.

50. Writing a scandalous, procuring Letter to a Person that was in Debt, and gone into the King's Bench Prifon. Raym. 221. Mich. 22 Car. 2. King v. Sanders.

(C) In what Cases.

1. If a Man be Bailiff of the King by Parl, so that he cannot be compelled to Account, yet if Information be given thereof in the Exchequer, he shall Account; per Vavifor. And so fey, that where the King has no Record to aid him, he shall be aided very often by Information. Br. Prerogative. pl. 94. cites 15 H. 7. 17.

2. That Information would serve instead of Office, see Br. Surnisc. pl. 30. the latter Part.

3. An Information was brought in the Exchequer for an Intrusion into the Lands of the King, and cutting 1500 Oaks, &c. The Defendant plead Not Guilty. The Witnesses swore that the Land was a great Wood of Parcel of the King's Possession, and N. and others had cut down 1500 Oaks, every one worth 2s. Upon which N. was found Guilty to the Value of 1500l. Afterwards N. brought his Bill of Perjury in the Star Chamber against the Witnesses, alleging the Land not to be the King's, that they cut down no Trees, and that any there was not of that Value. This Matter being referred out of the Star-Chamber to the 2 Chief Judges, they resolved, that the now Defendants ought not to answer to

Vid. Actions, Quit tam (A) &c.

S. C. but not exactly S. P. is in 3 Inf. 164. by Name of 1 Rowland a. Eliza. 

5 N the
Information.


* On a Motion to file an Information in Nature of a Quo Warranto against the Mayor, &c. of H. to Proceed by what Authority they admitted Persons to be Freemen of the Corporation who did not live within the Borough, the Motion was pretended to be on the Behalf of the Freemen, who by this Means were incroached upon. And an Information was granted, because it was a Question of Right, and there was no other way to try it, nor to redress the Parties concerned. In a Quo Warranto, the Judgment is to fet the Franchise into the King’s Hands; but in an Information as here, it is to oust the Defendant of the particular Franchise. 1 Salk. 574. Hill. 10 W. 3. B. R. the King v. the Mayor, &c. of Hertford. —But afterwards a Motion was made to set aside the Proceeds, because no Remedy was given according to this Act; and this being to try a Right, the Question was, whether it was within the Words of the Statute, Trepasses, Batteries, and other Misdemeanors, which are frivolous Wrangling Matters of an inferior Nature. But per Car. this Utterance here pretended, was a Misdemeanor, and the Information might be as vexatious in this Cafe, as in Trepass or Battery; that this is a remedial Law to prevent Petition, and must be construed accordingly. And therefore the Proceeds was ordered to be set aside, but the Information Flood. 1 Salk. 576. Patch. 12 W. 3. S. C.—Carth. 525. Mich. 11 W. 3. B. R. S. C.

6. A Mandamus was granted to the Surgeon’s Company to choose Officers, who made a Return under their Common Seal, and a Rule being moved for, and granted to file an Information against some particular Persons for that Return, Holt Ch. J. said, the Court must proceed by way of Information; For being a Matter concerning publick Government, no particular Person is so concerned in Interest as to maintain an Action, and the Information must be granted against particular Persons, tho’ the Return be under their Common Seal; For there is no other Way to try their Right, and if it be found for the King, there must be a Peremptory Mandamus. Perhaps we shall fet a small Fine. 1 Salk. 374. Trin. 11 W. 3. B. R. The Cafe of the Surgeon’s Company.

(D) At what Time; and before whom.

The Party griev’d is not restrained to a Year after the Offence committed, but that Restraint did only extend to *common Informers. 5 Le. 257. Mich. 52 & 33 Eliz. in Scacc. Broughton v. Prince.

1. An Informer must commence his Suit within a Year after the Offence done, otherwise he shall not have a Moiety of the Penalty. And if he has put in his Information, tho’ the Party is not served with Proceeds to answer it, yet the same appropriates the Penalty to him. Godb. 158. pl. 216. Mich. 6 Jac. B. R. Anon.

2. No Information by Common Informer can be brought before Justices of the Peace, Justices of Assize, or Justices of Oyer and Terminer. Jo. 193. Mich. 4 Car. B. R.


4. When
Information.

4. When an Informer hath attached his Action in a Court, another Informer cannot inform for the same Thing. Sci. 417. Pach. 1654. B. R. Cro. E. 525. S. P. debeat. Green v. Edwards. 5 Rep. 58 b. The former Information is a good Bar if it be bona fide, and if it be not bona fide, the Plaintiff may have the Fraud. Nov. 118. Chiefman v. Wright.—If there be 2 Informations in the same Day for the same Offence, the Court can give Judgment for neither. Hob. 123, Pec v. Cook.—If he should plead that another Information was exhibited in the same Term, he should plead that this Information was exhibited to bring in the Term, and that at another Day before in the same Term, the other Information was exhibited. 2 Lev. 141. Trin. 27; Car. 2. B. R. Hutchinson v. Thomas.

(E) Proceedings in general.

1. Thou' an Information be faulty in the Body of it, yet the Court will not quash it on Motion, but the Defendant may demur to it for its insufficiency. 2 L. P. R. 59. cites Pach. 1650. B. R. 24 May. But it is otherwise in an Indictment. The Difference seems to be, because Informations use to be preferred for greater Offences, and more pernicious to the Common-wealth than Indictments usually are.

2. Note, that it was laid by Keeling J. for Law, and agreed by the Court, that if any Information be exhibited by the Attorney General, or the Master of the Crown Office, the Court will quash it upon Motion, if there be cause; for this is Ex Officio; But otherwise it is of an Information exhibited by other common Persons; for this shall not be quash'd by Motion, by reason in this Cafe there shall be Costs. Sid. 152. Trin. 13 Car. 2. B. R. Fountain's Cafe.

3. It was laid by Serjeant Mainard that after Evidence given in an Information the King's Counsel may, without the Party's Consent, withdraw a Juror and try it over again. Vent. 28. Pach. 21 Car. 2. B. R. Anon.

4. An Information being upon an Ancient Statute of continued Use, and general Good; tho' the Time of making the Statute be mistaken, yet the Information was held to be good. Skin. 111. Trin. 35 Car. 2. B. R. Anon.

5. If a Man be bound by Recognizance to appear the first Day of the Term, and is charged upon his Appearance with an Information; in Cafe the Information be laid in Middlesex, the Party has Time to plead during all that Term, so that it cannot come to Trial in the Term; but in Cafe it be laid in any other County, the Party shall have Time to plead till the next Term; For he is as much concerned to defend himself in those Cafes as in any civil Action; and since the Law allows him Counsel, the Law allows him Time likewife to consult with them. 2 Salk. 514. Mich. 1 W. & M. B. R. Anon.

6. 4 W. & M. cap. 18. S. 3. Enacts, that the Clerk of the Crown in the Court of King's Bench shall not without express Order given in open Court file any Information for any Trespass or Mismannesse, or issue any Process thereupon, before he shall have taken a Recognizance from the Person procuring such Information with the Place of his Abode, Title or Profession to be entered, to the Person against whom such Information is to be exhibited, in the Penalty of 20l. that he will equally Prosecute such Information, and abide, and offer such Orders as the Court shall direct, which Recognizance the Clerk of the Crown, and also every Justice of Peace (where the Cause of such Information shall arise) are imposed to take; and the Clerk of the Crown shall make an Entry thereof upon Record, and shall file a Memorandum thereof in his Office; and in Cafe any Person against whom any Information shall be exhibited shall appear and plead to issue, and the Prosector shall not be at his own Costs within one Year after issue joined proceed to the same to be tried, or if upon such Trial a Verdict pass for the Defendant, or in Cafe the Information procure a Noli prosequi, the Court is authorized to award to the Defendant his Costs, unles the Judge before whom such Information shall be tried shall
Information.

that the Party in Cause of Acquittal or Nonliabe-Civil. and in Cause the Informer shall not, within three Months after the Costs taxed and demand made, pay to the Defendant the said Costs, the Defendant shall have the Benefit of the said Recognizance.

8. Nothing in this Act shall extend to any other Informations than such as are exhibited in the Name of their Majesty's Coroner or Attorney in the Court of King's Bench, commonly called the Master of the Crown Office.

7. If a Man be Outlawed by Proceeds in Information, and comes in and reverses the Outlawry, he must plead Infamty to the Information. 1 Salk. 371. Mich. 7 W. 3 B. R. The King v. Hill.

9. If Rule be for filing Information, and Non-pros. be thereupon for Non-appearance of the Defendant, a New one cannot be without a new Rule; for the first was executed; and hence the Court gave a new Rule, upon Payment of Costs. 12 Mod. 319. Mich. 11 W. 3. The King v. Warburton.

10. In the Case of the Information against the Town of Hertford, after it was filed at another Day the Court was moved to stop it, if there were not security for Costs according to the late Act of Parliament. Holt Ch. J. said he doubted it was too late after the Information filed, especially by Motion, but perhaps they may plead it. 12 Mod. 325. Mich. 11 W. 3 B. Anon.

11. Information against a Corporation; the first Proces out of the Crown Office was a Venire facias in Nature of a Summons, which was made returnable in Easter Term Anno 11 W. 3 upon which a Diffringas issued returnable Craft. Trim. and upon that Return a second Diffringas was made returnable in 15 Days in the same Trinity Term, and upon the Return thereof a third Diffringas was made return in that Term, and returnable in this present Mich. Term Anno 11 W. 3. And now it was moved in behalf of the Corporation that those two last Diffringas might be discharged for Irregularity; for that the Proces in such Cases are to be returnable de Termino in Terminum, and not quicker; but that in Trinity Term there issued two Diffringas, which ought not to be. This Matter being referred to Sir Samuel Altray, the Master of the Crown Office, he reported that the Proceedings were regular, and that no more than 15 Days is required to between the Teile and Return of such Proces; but it was ill-influenced for the Corporation, that there were above 40 Precedents in the Office in such Informations against Corporations where the Proces was made de Termino in Terminum; but Holt Ch. J. answered, that Crown Office Work was like Church Work, very flow in its progress, it being usual for the Clerks to make all such Proces out together, and of the same Teile and Return from Term to Term; but no Law requires that it should be so. Whereupon the Procurators moved for a special Rule to treat the Issues upon these Proces, but no such Rule was made, but the Juroirs were left to be treated in due Time, according to the Course of the Court. Carts. 593. Mich. 11 W. 3. B. R. The King v. Hertford (Town.)

12. In a Motion for an Information against A. An Affidavit in a Motion against another cannot be read; because the Swearer cannot be prosecuted for it, if it be false. 11 Mod. 141. Mich. 6 Anno, the Queen v. the Mayor of Hertford.
Information.

13. It seems to have been the general Practice not to make an Order for an Information without first making a Rule upon the Person complained of to swear Caufe to the Contrary; which Rule is never granted but upon Motion made in open Court, and grounded upon Affidavit of some Misleamor, which, if true, either implies some Enormity or dangerous Tendency, or other fuch like Circumstances [as] seem proper for the most publick Prosecution; and if the Person upon whom such a Rule is made, having been personally served with it, do not, at the Day given for that purpose, give the Court good Satisfaction by Affidavit, that there is no reasonable Caufe for the Prosecution, the Court generally grants the Information, and sometimes, upon special Circumstances, will grant it against chofe, who cannot be personally served with fuch Rule, as if they purposely abfent themselves, &c. 2 Hawk. Pl. C. 212. cap. 26. S. 8.—But upon fweeping a reasonable Caufe, as that he was acquitted on an Indictment before for the fame Caufe, or that it is intended to try a civil Right, as the Title to the Land, &c. not yet determined, or that the Complaint is trifling, vexatious, or oppreffive, the Court will not grant the Information unlefs there are fome extraordinary Circumstances, which are left to the Discretion of the Court. Ibid. S. 9.

(F) Pleadings.

1. Information was made by a Searcher for Shipping 2000l. in Greates to carry beyond Sea, contrary to the Statute of 2 H. 4. The Information was given, without fweeping to whom they belonged; Quod nota; and they were forfeited without fuing Execution by Sci. 1a. for the Reafon aforesaid, and this by Proclamation in the Exchequer; and the Exchequer shall have the third Part for the King by the faid Statute of 2 H. 4. 5. Br. Surmi", pl. 30. cites E. 4. 4.

2. Information in the Exchequer, for that the Defendant bought Wool of W. N. againft the Statute &c. where he is not Draper, nor did he make Caftlb or Yarn thereof; it is no Plea, that he did not buy of W. N. but fhall fay, That he did not buy Mode & Forma, &c. For if he bought of W. N. or of J. S. it is no Matter, nor Traverfable, but the buying againft the Statute. Br. Traverfe per &c. pl. 377. cites 33 H. 8.

3. Information in the Exchequer, if the Defendant pleads a Plea, and transfers a material Point in the Information, upon which they are at Issue, there the King cannot waive this Issue as he may in other Cafes, where the King alone is Party without an Informer as above; per the King's Attorney and others. Br. Traverfe per &c. pl. 369. cites 38 H. 8.

4. An Information was for uttering Flieb 30 Days forbidden, Unde petit adversamentum Cur. & good fatisfactiæ 5l. for every Offence Unde ipse petit Meditation. After Verdict against the Defendant upon Not Guilty pleaded, it was moved, that there was a Statute which gives 5l. for an Offence but then it divides, it is another to the King, another to the Informer, and the other to the Poor; and the Court took Time to advife; but Hobart Ch. J. was of Opinion, that it was Inufficient, becaufe an Information hath fome thing of the Nature of an Action, and here is a Demand of what appears not to be due. Hob. 245. Trin. 16 Jac. Pie v. Westley.

5. Information was for Importing 20 Pounds of Tobacco of foreign Growth in a Vessel not belonging to any of this Nation, but it is not said that the Goods imported belonged to them, as the Act runs, but concluded generally, Contra Foram Statuti; after Verdict it was moved in Arrest of Judgment, that the most material Part of the Act is omitted, viz. (to them belonging); for if the Goods imported do not belong to the People of this Nation, but to a Stranger, then they are not forfeited within that Claufe of the late Act; and the words Contra foram Statuti will not aid Substantial Defects, as this is; and of this Opinion was the Court, it being the most material Part of the Act which creates the Offence, and therefore ought to
Information.

be punctually pursued; and Judgment was arrested; but the Court would advise whether the Judgment should be, that the Party eat and die, without the Aid of the Attorney General. Hard. 20, 21. Mich. 1655.

in Scacc. Rook's Cafe. — als. the King v. Rook.

6. Information for Importing 32 Bags of Spices, &c. being the Growth of Asia, Africa, or America, from Holland beyond the Sea, not being the Place where such Goods were first or most usually Shipped for Transportation, Contra
formam Statuti (being the Act for Navigation), the Defendant pleaded that he did not import them Contra formam Statuti; it was found for the Plaintiff, and moved in Arrest of Judgment, that it was not alleged that those Commodities were not of the Growth of Holland; but it was answered, that that is supplied by the Verdict; For if they were, the Verdict ought not to be for the Plaintiff, and the Information alleging them to be of the Growth of Asia, Africa, or America, and imported from Holland, implies that Holland is not within any of those Parts; especially it being laid Contra formam Statuti; et adjournatur; but afterwards they held the Exception good, and Judgment was arrested upon it. Hard. 217. Mich. 13 Car. 2. in Scacc. Pitcher v. Jones.

7. In Information of Perjury in giving Evidence in B. R. and Verdict for the King; it was moved in Arrest of Judgment, because the Information was Manuscrchndum quod T. F. Miles dat Curiae hic intelligi & informavit dummi us ad Hilaris in Rettine contractus fe (viz) that D. brought his Action; and recites the whole Record and Trial, and that Defendant falsim professisset sacramentum at this Trial; and he moved that this is not Protere that Defendant took a false Oath, but that contractum fe (viz) he took a false Oath, where he ought to have said after the Recital, thus, Eut Utensius dat Curiae hic intelligi that the Defendant took a false Oath at that Trial; but after Consideration the Court gave Judgment against the Defendant, because the late Precedents are so; and now after Verdict it shall be taken a distinct Sentence between the Recital and the Et quod. And by Windham, the Record recited being in this Court, the Judges take Notice how far the Record, recited extends and what that is which is politically reheard; and Judgment was given accordingly. Raym. 34. Mich. 13 Car. 2. B. R. the King v. Read.

8. Information was against several for a Confederacy and Conspiracy to take away the Gallow Trade, by which the Poor are supplied, and to cause them to Mutiny against the Farmers of Excite; and it further recited, that where the Excise is settled upon the King by Parliament, and Part of his Revenue, the Defendants have by Combination and Confederacy endeavoured to depauperate the Farmers of it; upon no Guilty pleaded, the Defendants were found Guilty of the Conspiracy to depauperate the Farmers, but of Nothing more. It was moved to quash the Information; 1st. Because it was not faiid Vi & Avari; but this was over-ruled; For Confederacies and Conspiracies are not properly with Force, but secret and occult without open Power; and several Informations are in the Exchequer without those Words. 2dly. That the Defendants are not Guilty of any Offence; For they are acquitted of all but the impoverishing the Farmers, and this is no Crime to depauperate another to enrich ones self, and such general Charge cannot be any Offence as appears 20 Aff. 45. Stamt. 95. (1) but after several Debates the Court adjudged the Verdict good, upon which Judgment shall be given for the King; For the Verdict relates to the Information, and the Information recites that the Excise is Parcel of the King's Revenue; and tho' there cannot be a Conspiracy without some overt Act of several, yet they all agreed that the Confederacy here is an Act punishable, for which Judgment shall be given for the King; and after they were Fined in 2000 Marks, viz. one in 500 and the other in 100 each. Sid. 174. Hill. 15 & 16 Car. 2. the King v. Starling and 15 others.

2 Hawk. Pl. C. 261. cap. 26. S. 4 cited. S. C. and fays, it must be confest that this is the most reasonable Confession that asks how it can be intended that it could be contained in the Record of the Trial that such an Oath was taken at it, or that it was Lev 126. S. C. and fays that Hide, 'Twifden and Keeley held that the bare Conspiracy in this Case to diminish the King's Revenue without Act done is inadmissible and cites 27 Aff. 44, 45. Aff. 26. But Windham J. fays that if there was no more than Conspiracy without any Act done it had not been punishable, but this is more, viz. a Confederacy and Conspiracy by Affembling themselves for this Purpose, and he cited 43 E. 5. 19.

9. A
9. An Information against a Ferryman for Extortion was, That he extorted * from diverse of the King's Subjects unknown to the Attorney General, paying that very dves Summs of Money, exceeding the ancient Rate, &c. The Court held that this was too General and Uncertain, And by Holt Ch. J. in every such Information a single Offence ought to be laid and ascertained; because every Extortion from every particular Person is a separate and distinct Offence, and therefore they ought not to be accumulated under a general Charge; For each Offence requires a separate and distinct Punishment according to the Quantity of the Offence, and unless it be truly and certainly laid, the Court cannot proportion the Fine or Punishment; and Judgment was arrested. Carth. 226. Patch. 4 W. & M. B. R. the King v. Roberts.

10. But Holt Ch. J. said, it is true, that all Informations of the Exchequer are general, as in Case above, but the Reason is, because they are for certain Penalties. Ibid. 227.

11. Information upon the Statute 8 & 9 W. 3. cap. 19. S. 63. was, That Exchequer Bills were falsified according to the Form of the Statute, and that the Defendant extorted upon Receiver generalis &c. did fraudulently and falsely indorse 20 Bills at the Custom House. Quasi repositio efficit pro Cythamis, &c. and Did pay them into the Exchequer, as if they had been truly indorsed, in Deceptionem & fraudulentem dixit Domini Regis. Defendant was convicted; and this being moved in Arrest of Judgment Holt Ch. J. delivered the Opinion of the Court, 11. That Nuper Receiver does not import that he was Officer at the Time of indorsing and paying, and if he warrsken only a private Person, as he must be taken to be, the Indorsement would hurt no Body but himself, it not being let out, that there were any Contractors for them. 2dly. The word (Indorse) is not sufficient; the Words of the Act are, that be who pays the same into &c. shall put his Name to the said Bill, and write the Day of the Month, &c. and the Information should have been, that the Defendant set such a Person's Name on the Back of the Bill, Ubi rerum there was no such Person, or Ubi rerum no such Person ordered him to put his Name to the Bill; For Indorsavit imports a Writing on the Back of a Thing, but not putting his Name upon it, as petit Auditor Indorsamenti, and adding the words Quasi repositio efficit pro Cythamis is no Explanation but by Argument only; and Argumentative Informations are ought for that very Cause; For all Charges ought to be set certainly out in Pleadings, nor will the laying it falsa indorsavit in Deceptionem Regis, and the Jury's finding it so, help it, here being no Charge, and it is not enough to say, that the King is cheated, but he must appear to be so, as well as be said to be so, 3dly. The saying Indorsavit, quasi repositio efficit pro Cythamis is ill; and it should have been, that the Defendant made a false Indorsement, continuens &c. Here is a Falsity but nothingcharged that is Criminal; For that Falsity could not hurt, nor tend to hurt, any but himself; and Judgment was arrested. 1 Salk. 377. Hill. 11 W. 3. B. R. the King v. Knight.

12. In Information for a Riot it is not necessary to say, that they Assembled with an Intent to commit a Riot; For to say that they Assembled Riotum & Rcntum & committed an unlawful Act is sufficient; For that is a Riot. 11 Mod. 117. Trin. 6 Anne B. R. in Case of the Queen v. Soley.


[For more of Informations, see Actions, and under the several Proper Titles.]

Inhabitants.
Inhabitants.

(A) Who shall be said to be Inhabitants.

2 Inft. 702. explains the word (Inhabitants) thus, viz. if a Man dwells
in an House in a foreign Shire, Riding, City, or Town corporate, yet if he hath Lands or Tenements in his own Possession and Manurance in the Country, Riding, City, or Town corporate, where the decayed Bridge is, he is an Inhabitant, both where his Person dwelleth, and where he hath Lands or Tenements in his own Possession, within this Statute. Note, Habitation dicitur ab habendo, qui quis propriis minibus, & jumentibus posset, & habeat, ibi habitate dicitur. 2 Inft. 702.

If a Man dwelleth in a foreign Shire, Riding, City, or Town corporate, and keepeth a House and Servants in another Shire, Riding, City, or Town corporate, he is an Inhabitant in each Shire, Riding, City, or Town corporate within this Statute. Ibid.

Ex v. termini, every Person that dwelleth in any Shire, Riding, City, or Town corporate, though to both but a personal Reference, yet is he said in Law to be an Inhabitant, or a Dweller there, as Servants, &c. but this Statute extendeth not to them, but to such as be Householders, and this is gathered by the Words of the fourth Branch of this Act, that giveth the district, viz. and to deprive every such Inhabitant, &c., in his Lands, Goods, and Chattels, and besides, it were in a Manner inequitable and impollable to Tax, by the next Branch of this Act, every Inhabitant, being no Householder. Ibid. 702.

Every Corporation and Body politicall residing in any Counties, Riding, City, or Town corporate, or having Lands, or Tenements in any Shire, Riding, City, or Town corporate, quo Propriis Minibus & Simplicibus possessit, & Laberint, are said to be Inhabitants within the Purview of the Statute. Ibid.

An Infant, that hath House or Lands by Deed or Purchase, is liable to this publick Charge, and is the Husband of a Feme Covert. Ibid.

(B) What they may do or claim as such, and How.

1. Nhabitants of a Vill, without any Custom, may make Ordinances and By-Laws for Reparation of the Church, or of a Highway, or any such Thing as is for publick Good generally, and in such Cafe the Major Part shall bind all others without any Custom. 5 Rep. 63. Mich. 32 & 33 Eliz. B. R. in the Chamberlain of London's Cafe.—— cites 44 E. 3. 19.

Potters, &c. there, without Custom, they cannot make By-Laws, and if there bea Custom, yet the Major Part shall not bind the rest, unless there be a Custom to warrant it. 4 Rep. 62. in the Chamberlain of London's Cafe.—3 Ed. 2. tit. Allic 413.—5 Rep. 67. b. in Cafe of Jeffry v. Kenheley.

See Prescriptions (U.) But if it be for their own private Profit, as for the well ordering of their Commons of Pasture, &c., there, without Custom, they cannot make By-Laws, and if there bea Custom, yet the Major Part shall not bind the rest, unless there be a Custom to warrant it. 4 Rep. 62. in the Chamberlain of London's Cafe.——3 Ed. 2. tit. Allic 413.—5 Rep. 67. b. in Cafe of Jeffry v. Kenheley.

S. C. shortly argued, but no Judgment.
Inhibition.

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* Easement as in a Way or Cauley to Church, &c. so in Matters of dis:
chure as to be discharged of Toll or Tithes, or in modo Decimands, &c.
but not to have Interest; For that must be by Perions enabled who are al-
ways to have Continuance; For should such Prescription be, then if any of
the Inhabitants depart from their ancient Houfes, and such Houfe continues
empty, the Inheritance of the Common should be suspended, which can-
not be; nor can such Common be † released; For tho' one Inhabitant
should release, a Succeeding one might claim it, which is against the
Rules of Law, that an Inheritance in a Profit should not be [capable of
being] discharged; and by such Prescription a Maid-servant of Child,
who resides in the Houfe, is said to be an Inhabitant, and to have the be-
nefit of Common, which would be inconvenient; and resolved by all, that
such a Custom alleged ‡ by way of Usage (not otherwise) is not good; and
Judgment for the Plaintiff. Cro. 1. 152. Hill. 4 Jac. B. R. Smith v. Gat-
wood.

contra. Cro. E. 180. Foxall v. Venties.—They can prescribe in neither Cafe but in matter of Eas-
ment as a Way to the Church, or common Fountains, &c. they ought to allege Custom per Anderson
† They cannot prescribe for an Interest; because they cannot Release it. Arg Gibb. 299. Trin. 5 Geo.
‡ cites S. C.—But a Prescription may be against an Inhabitant for Matter of Charge. Arg. 2 Bals.
195. cites 8 E. 5. 57.

3. Inhabitants have not Capacity to take an Inheritance, as in 15 E. 4. S. P. Jenk.
to have * Common: 12 Rep. 120. Patch. 12. Jac. in Dungannon's Cafe.

4. A Grant was made some Hundred Years ago of Land to Trustees
and their Heirs, that as many Inhabitants of D. as were able to buy 3
Cows might turn them to Common in the said Lands from such a Time to
such a Time; Decreed that if this had been by Prescriptions, or Usage;
none but Inhabitants of ancient Ufages could be intitled to it; but here
'tis other wise appointed by the Grant, and every Inhabitant that has 3
Cows may put them to Grafs in thefe Lands as in the original Grant.
Mich. 10 Geo. 9 Mod. 65. Wright v. Hobert.

5. The Inhabitants of an Hundred have a Capacity to sue for Costs of a
Non sui upon the Stat. of Winton, and by the 23 H. S. 15. Gibb. 290.
Trin. 5 Geo. 2. C. B. the Inhabitants of Laurefs Hundred v. 

Inhibition.

(A) The Force thereof.

1. And M. his Feme brought Writ of Dower against J. S. of the
 Dowment of B. late Baron of the fame M. who said, that the
 he was Ne unques acqugle, &c. wherefore it was lent to the Bishop of N. to
 certify, and now he certifies, that he could do nothing by Reason of an In-

5
Injunction, which came to him out of the Archdeacon, which is not sufficient for the Bishop; for he ought not to surcease the Commandment of the King for any Injunction; Wherefore it was prayed that the Bishop be amened, and a Writ to make the Archbishop to come for the Disturbance which he has made. But the Court denied it; for they would not allow his Return to be sufficient; therefore bid them sue a Sicut Alias to the Bishop of N. &c. 39 E. 3. 25. a. 2. If the King receives his Prosimount to a Church, and has a Writ to the Bishop, &c. to remove the other's Incumbent, for which the Incumbent files an Appeal in the Archbishop's Court, &c. by Reason whereof the Archbishop sends a Prohibition, that he do not admit the King's Clerk pending the Appeal, &c. then the King shall have a Writ directed unto the Archbishop, and his Officers, to take off his Injunction, and that they do nothing, nor suffer any Thing to be done by others, in Derogation of the Crown, or of the King's Right; and shall have another Writ against the Incumbent, that he follow not such Appeals, Prohibitions, or other Processes or Impediments. And also the King may have an Attachment directed unto the Sheriff against such Incumbent, if he go on there after such Prohibition directed unto him. F. N. B. 43. (A). 3. An Inhibition is either Hominis or Juris; tis ne Visitationem facias, et ejus Jurisdictionem Ecclesiasticam Contentione; vel Voluntarium habas. Thus when an Archbishop visits, he inhibits the Bishop; when a Bishop visits, he inhibits the Archdeacon; and the Reason is to prevent Scandal and Distraction; and this continues till the Relaxation of the Inhibition, which is not till the last Parish is visited, and then it is entered Nulla Parochia restituta sit. For he may hear of no Parishes till he come to the very last Parish. 3 Salk. 207. cites P. 13 Car. Lannu v. Dodson. 4. Now after such an Inhibition upon a Metropolitical Visitation, if a Lapce happens, the Bishop cannot institute, because his Power is suspended, and therefore the Archbishop is to institute; for it is not only penal in the Bishop to do, but the Inhibition itself is void, because it is an Act of Jurisdiction from which he was suspended. 3 Salk. 207. p. 2. 5. But it may be a Question, in the Case of a Collation, whether, if a Lapce happen, the Bishop may collate? because it is a kind of Title; but the better Opinion is, he cannot; because it is not by Way of Interest, but by Way of Process for the Curé, and to supply the Negligence of the Patron; this appears because the Patron may present at any Time after a Lapce, and before Collation. 3 Salk. 202. pl. 3.

(A) Grantable; In what Cases, to stop Proceedings.

1. Mo. 820. pl. 110. says Nota, that the Lord Chancellor shewed him a Note of his own Collection, out of the Bundle of Corpora cum Causis in Chancery of 20 H. 8. by which it appeared, that an Injunction issued at the Suit of Hendy v. Owen and Wells, not to proceed upon an Inhibition of Forceable Entry of Land in Surry, and because they broke the Injunction, S. P. cited pro Violatione Injunctionis, upon which a Fine ought to be assessed for the King.

9 Injunction is either to pay a Suit in some other Court, as in a Court of Law, Court of Admiralty, an Ecclesiastical Court, or a Court of Equity. Or it is for Possession of Land; or to reaffirm one from doing a sudden Way, or Damage to the Freehold or Inheritance of another, by selling Timber, plowing Meadow, &c. It sometimes precedes, and in other Times it is subsequent, to the Degree P. R. C. 196.—Curs. Canc. 442. S. P. 2. The
Injunction.

2. The Attorney for the Defendant at the Common Law is in open Court enjoined, that neither he, nor any other by his Means, do further proceed in an Action of Trespass commenced against the Plaintiff, and depending on the Common Law, nor call for Judgment, until further Order shall be therein taken by the Lord Keeper. Cary's Rep. 56. cites 1 Eliz. Fol. 212. Sedgewick v. Redman.


4. The Defendant first exhibited her Bill in this Court for Land conveyed to her in Jointure, and Evidences of the same Land; and after Answere, and Replication put into this Court, made Diftresses, therefore an Injunction is granted. Cary's Rep. 68. cites 2 Eliz. Fol. 173. Kidmore v. Agnes Harrison.


6. The Plaintiff had Judgment in B. R. against the Defendant upon a Bond of 200 l. and another Judgment for 300 l. upon an Action of Debt of Arrearages of Account in B. R. and ordered they may proceed with Execution upon the Bond of 200 l. and also to take Execution of 300 l. Parcel of the 300 l. Provided always, and it is ordered, the Plaintiff shall not in any wife proceed, nor take Execution of the 200 l. Refused of the 300 l. recovered upon the Account, without special Licence of the Court. Cary's Rep. 72. cites 2 Eliz. 233. Brook and Ux v. Apprice.

7. The Plaintiff desired to be relieved against an Obligation of 100 l. which had an intricate and insensible Condition put in Suit, for that the Plaintiff being desired by the Defendant to Seal a Release of Time to be advised thereof, which the Defendant would not yield unto, but put the Bond in Suit, tho' no Ways damnedified; and now the Plaintiff is ready to seal the Release; therefore an Injunction is granted. Cary's Rep. 111. cites 21 & 22 Eliz. Rowles v. Rowles.


9. A special Certiorari [filled] to remove a Cause out of London; the Plaintiff proves the Surnames of his Bill; the Defendant brought Suit in the King's Bench for the same Cause; and therefore was stayed by Injunction. Cary's Rep. 118. cites 21 & 22 Eliz. Child v. Turner.

10. An Injunction was granted to stay Suit upon an Action brought P. R. 216. for Perjury, before the Cause in Question here heard; And concerning S P a Promise to make a Leaf out from the Corporation. Toth. 173. cites 22 Eliz. Miller v. Society of Girdlers.

11. An Injunction was granted against the Issue in Tilt to stay the Reversion of a Fine levied by himself, and (I think) his Father also. Toth. 179. cites 40 Eliz. Arundell v. Arundell.

12. 'Tha
Injunction.

12. Though the Court will not proceed against a Member who has Privilege of Parliament; yet if a Parliament-Man sues at Law, and a Bill is brought here to be relieved against that Action, the Court will make an Order to stay Proceedings at Law till Answer or further Order. Vern. 329. Trin. 1 Jac. 2. Anon.


14. A third Person interested, but no Party to the Bill, prosecutes a Suit at Law for the Matter in Question; he was ordered to be made a Party to that Bill, and Suits to stay in the mean Time. Toth. 236. cites Trin. 16 Jac. Aiten v. Cheney.


16. An Action was brought at Law by an Administratrix to her late Husband, upon a single Bill for the Payment of Money due to him; The Defendant in that Action exhibits his Bill, fuggesting, that in Truth the Husband was not dead, but concealed himself; and pending this Suit, the Administratrix got Judgment at Law; But the Court granted an Injunction, and directed an Issue at Law to try if the Husband was Dead or not. 16 Car. 2. N. Ch. R. 93. Scott v. Keyner.

17. On Motion for an Injunction to stay Proceedings on a Bond upon offer to give Judgment with Release of Errors, North K. answered, he did not think that it was beneficial an Offer as it might be looked upon, because the Plaintiff may bring his Writ of Error, and put Defendant to plead his Release, and so delay Time as long as if no Release of Errors had been given; But on the Plaintiff's offering to be bound by Order to bring no Writ of Error, an Injunction was awarded. Hill. 1682. Vern. 120. Anon.

18. In a Cause on the Latin Side, on a Motion that the Defendant might stand committed for not vacating his Letters Patents of Repriifsals, it was moved, that they might be at Liberty to bring a Writ of Error in B. R. and cited Dyer, &c. But the Lord Keeper said, all those Books were founded only on the single Opinion of my Lord Dyer, and that he thought the Jurisdiction of Chancery, even of the Latin Side, not subject to, nor to be controlled by, the King's Bench; and that he would join all such Writs of Error. Vern. 131. Hill. 1682. the King v. Cary.

Supplied the Sum to be paid Anno 14. and by the Suit the Feoffee was ousted, and he sued Writ of Error in B. R. it was awarded that he should be received to the Suit; for it says, that if upon Suits in Chancery, according to the Order of the Common Law, there is Error, that it shall be reformed by Error in B. R. because it is the most high Court. — The Cafe in Dyer is 315. a. pl. 100. Trin. 14 Eliz, and was a Scire Facias brought in Chancery to have Execution of a Recognisance there made; And the Defendant pleaded a Defense made and delivered to him by the Plaintiff after the Recognizance; but the Deed bore Date a Month before the Recognizance, &c. And for this Cause the Defendant was not received to the Plea, but Execution awarded to the Plaintiff, because the Defendant brought Writ of Error in B. R. where the Judgment was reversed; and so no a Judgment given in the Chancery, which is before the King himself, reversed in B. R. which is also before the King himself, and not in Parliament. —— 4 Infl. So. (c).

19. Chancery will grant an Injunction to stay an Action at Law against one for executing the Proceedings of this Court, though it is sued irregularly. For it ought to be punished in this Court, and can only be examined and determined here, whether regular or not; for at Law, supposing the Commission of Rebellion sued irregularly, they will not allow that as a Justification; and therefore the Injunction was granted; and it was referred to a Muiter to examine whether the Commission of Rebellion was sued regularly or not; and in Case he found it irregular, to tax the Defendant his Costs. Mich. 1684. Per North K. Vern. 269. Baily v. Deve- teux.

20. A.
Injunction.

20. A. and B. dined at F.'s House, and after Dinner fell into Play, and won of F. in ready Money 900 l. which B. carried away with him. When they began to play A. and B. had but 8 Guineas between them; F. being somewhat intoxicated with Wine, brought down a Bag of Guineas of about 1500 l. and B. won that also and had it in Possession, but as he was going with it out of the House, F. and his Servants seized upon it and took it from him. B. brought an Action against F. for taking from him in a forcible Manner this Bag of Guineas; upon which F. exhibited his Bill, charging many Circumstances of Fraud and Circumvention, which B. in his Answer denied; it was moved for an Injunction, which the Court granted till the hearing the Cause. Vern. 499. Mich. 1687. Sir Batil Firebrace v. Brett.

21. If a Mortgagor brings a Bill here to redeem, it is at Law accounted a Breach of Covenant for quiet Enjoyment; but if an Action of Covenant be in such Cause brought, this Court will grant an Injunction. Per Cur. P. R. C. 211.

22. The Lord of a Manor brings Ejectments against his customary Tenants, upon Pretence of Forfeiture: The Tenants (or some of them) bring a Bill here, praying they may have a what Breaches of the Custom he designs to influx upon at the Trial, upon the general Illwill in Ejectment Firms: He being in Contempt, the Court without entering into the Merits ordered an Injunction. P. R. C. 216.

23. This Process is said to have been heretofore very frequently granted to stay Suits upon the Statute of 2 Ed. 6. cap. 13. for treble Damages for not setting out Tribes; (because as the Book supposes,) it is in nature of a Penalty; and the Party fen to the Ecclesiastical Court. P. R. C. 216.

24. If a privileged Person in this Court is sued elsewhere at Law, he may stay the Suit by Injunction; for he should be sued in the Petty-Bag Office, and not elsewhere. P. R. C. 216.

25. The Plaintiff went over the Defendant's Ground unto his House to serve him with a Subpoena of this Court, for which the Defendant brought an Action at Law, Where Damnum & Clamnum fregit; and upon Motion here, the Action of Trespass was stayed by Injunction. P. R. C. 217.

(A. 2) Grantable, in what Cases, to stop Execution or to stay * West, &c.

1. An Injunction is granted to discharge an Execution by Execut taken by the Defendant out of this Court, for that he being served with a Subpoena did not appear. Cary's Rep. 58. cites 1 Eliz. 274. Hobby v. Kemp.

2. The Under-Sheriff of M. brought into this Court the Body of the Plaintiff, by Command of the Lord Keeper, in Execution upon a Writ of Extent of 300 l. together with the said Writ, at the Suit of J. S. and by Order of the Court he was taken from the Sheriffs Office and delivered upon Execution to the Warden of the Fleet for the 300 l. and because the Defendants shewed no good Cause to the contrary upon a Day given them, therefore it was ordered, that upon Recognizance by the Plaintiff and good Sureties, to stand to the Order of the Court, or else to yield his Body Prisoner to the Fleet in Execution, and there to remain until the Defendant be satisfied, he the Plaintiff shall have Liberty to go at large; and that the Defendant shall not sue for any Manner of Execution by Force of the said Execution. Cary's Rep. 71. cites 3 Eliz. Rolle v. Laffels, &c. al.

3. An Order was made to pay the Money in the Sheriffs Hands, and to be redelivered out of the Defendant's Hands. Toth. 236. cites 16 Jac. Lipton v. Harman.

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This
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Injunction.

4. This Process is sometimes granted to stay Execution, where
judg-
ments are entered by Affent of Parties for Security of Money borrowed. R. C. 215.

5. Marsh Grounds were stayed from Plowing. Toch. 179. cites Hill 8

6. An Injunction was granted against a Jointress, [tho' by the Settlement
she was] Tenant in Right after Possibility, &c. to stay Waifs; and
the Court held, that she being a Jointress within the 11 H. 7. ought to be
restrained from aliening, and so granted Injunction against wrongful

(A. 3) Grantable, in what Cases, to quiet Possession.

1. Acknowledged a Statute to B. for 1601. and B. agreed by Indentu-
tures, that, if A. failed in Payment, the 1601. should be levied in
certain Lands only. B. after Default fined Execution of those certain Lands, and
also of other Lands; Sir N. Bacon granted an Injunction as to the other
Lands that A. should quietly enjoy the same: Cary's Rep. 52. cites 1 El.
Pulvertaft v. Pulvertaft.

2. The Court being credibly informed, that the Plaintiff was in peace-
able Possession at the Time of the Bill exhibited, and three Years before, an
Newport.

3. The Plaintiff sheweth by his Bill, that the Parfongage of Thelkely
was held by Force, whereby the Plaintiff could not be indited; where-
upon a Writ of De Vi laica renovanda was awarded out of this Court, and
thereby the Plaintiff put in Possession by the Sheriff: nevertheless the De-
defendant kept the Possession of the Parsonage House; and for that the
Plaintiff is bound to pay his First-Fruits to the Queen's Majesty, there-
fore an Injunction is brought against him. Cary's Rep. 72. cites 3 Eliz.

4. The Plaintiff made Title to the Lands by a Lease Parol made by
the Defendant unto him, whereupon he did sow the Ground with Corn,
and the Defendant entered upon him; therefore the Plaintiff had an

5. An Injunction was moved for to stop the Sale of English Bibles printed
beyond Sea, and to quiet the King's Patents in their Possession, and
in Respect of the State, which the Chancery was urged to be a Court of
But Lord Keeper faid, he did not apprehend the Chancery to be in the
least a Court of State; neither could he grant an Injunction, but only
where a Man has a plain Right to be quieted in it; And the Patent for
Law Books had been adjudged good in the Houfe of Lords, yet that is
not the fame Cafe with this, tho' near it. His Lordship directed a Trial
at Law, and the King's Patents to be Plaintiff's, and Defendants to ad-
mit that they have sold 12 Bibles; and when the Trial is over, to come

6. There
Injunction.

6. There being Disputes between several Persons to whom the Profits of a Fair belong'd, and one of them having recovered in two several Actions, the both the Verdicts were set aside as gained unduly, and certified by the Judges to be contrary to their Direction; a Bill was brought against the Recoveror by two of the several other Claimants to quiet them in their Possession; but to this the Defendant (the Recoveror) objected that the Bill was not proper, the Right not being settled by Law, the Verdicts given having been set aside, Lord Keeper said, he took such a Bill to be very proper, being a Bill of Peace, and in such Case, the Court ought to interpose, and prevent Multiplicity of Suits. But in this Case, the Bill praying only special Relief, viz. That they might be quieted in their Possession, and not having prayed Relief of a perpetual Injunction, he thought the Bill not proper for a Decree, and directed the Plaintiffs to amend in that Particular. Vern. 266. Mich. 1684. New-Elme Hospital v. Andover.

7. A Leaf was made for seven Years: The now Defendant had Judgment in Ejectment against the Complainant by Reason of the Statute of Frauds; for the Leaf was only put into Writing by one present, without Order of the Parties; the Complainant prayed Relief here, and with Affidavits produced some Acquittances or Receipts for the Rent, which say, According to an Agreement with the Defendant. The Court said, there might be Equity in the Matter; For the Receipts are Evidence of an Agreement, and this Court will not interpret the Statute of Frauds fo rigorously as the Courts of Law; And however, it was hard to turn a Tenant out &c. and tho' the Defendant had sworn the Agreement was to continue but for the Life of the Plaintiff's Husband, now dead, and that the Rent was to be paid in Corn, which was cheap; yet the Court ordered the Injunction to stand, the Cause to be speeded, the Plaintiff in the mean while to pay the Rent, and repair according to the Agreement. P. R. C. 229, 210.

(A. 4) Grantable, in what Cases in general.

I. Injunction to Debtors to a Tefator's Estate not to pay any Money to a pretended Executor, till his Title to the Executorship is settled in the Spiritual Court. Chan. Cases 75. Pach. 18 Car. 2. Smallpiece v. Anguish.

2. Upon a Motion in B. R. for an Attachment against an Attorney, for getting one in a very vile Manner turn'd out of Possession, a Rule was made that the Attorney and all his Accomplices attend. It was then moved, to have it Part of the Rule, that they should not move for an Injunction in Chancery in the mean Time, because that would hinder the further Inquiry of this Practice; But the Court said, they could not do that; For that would be to fend an Injunction into Chancery; but said, when the Court (of B. R.) has a Hank over a Man, and comes to the Court for a Favour, they often refuse to grant it him, unless be content not to go into Chancery; and if, after such Consent, he goes thither, they will fend an Attachment against him for a Contempt. And Holt Ch. J. said, that purely Chancery will not grant an Injunction in a criminal Matter, under Examination of B. R. but if they should, this Court would break it, and prevent any that would proceed in Contempt of it; and that he thought, that a Copy of the Affidavit upon which the Rule was made in B. R. and an Out of their being a true Copy, ought to be Ground sufficient to stay the Chancery from granting an Injunction. 6 Mod. 16. Mich. 2 Anne B. R. Holdentaffa v. Saunders.

3. An Injunction was granted against Ringing a Church Bell at five o'clock in the Morning, the Parish having receiv'd a Compensation for the Forbearance according to an Agreement made at a publick Veity, and Articles

Curf. Cancl. 446. S. P.
Injunction.

cles executed by the Parson, Church-Wardens, Overseers, and other Inhabitants, and the Parties contracting with them. An Injunction was first granted by Ld C. Macclesfield, to stay the ringing the Bell till Hearing, and afterwards by Lords Commissioners Raymond and Gilbert was made absolute for the Time contracted for. 2 Wms's Rep. 266. Hill. 1724. Dr. Martin and Lady Howard v. Nutkin.

4. Where by the Answer it appears to be Matter of Account that is in Question, and the Demand is very uncertain, the Court will commonly grant or continue an Injunction. P. R. C. 201.

5. Money levied on a Fi. Fa. was in the Secondary's Hands: The Complainant prays an Injunction till Answer. The Court granted it, and said Injunctions had been granted where the Money was not secured, as here it was; and that this was the easiest (with Respect to the now Defendant) that ever was granted. P. R. C. 206.

6. Sometimes pending the Suit, the Court will order a Party the Possession, or that the Rents, not already paid, be stay'd in the Tenant's Hands till Hearing; and sometimes it will order both. P. R. C. 215, 216.

7. Other Times, it will order a Receiver, who shall take the Rents and Profits, and pay them into Court, or account for them when the Court shall require; and he to enter into such Recognizance as the Court directs, to secure his doing so. P. R. C. 216.

(A. 5.) At what Time it may be granted.

1. A N Injunction was to stay Proceedings after a Judgment; the Defendant, taking out Execution notwithstanding, is in Contempt. Toth. 178. cites Trin. 6 Car. Bilhop of Hereford v. Carpenter.

2. Where a Cause abated by the Death of the Lady Gerard, and the Defendant was her Executor, who being served with a Copy of a Bill of Revivor, and my Lord Keeper's Letter, would not appear, being in Privilege; Upon Motion an Injunction was granted, tho' the Cause was not revised. Abr. Equ. Cafes 285. Trin. 1700. Duke of Hamilton v. the Earl of Macclesfield.

It is the settled Rule of the Court, that on a Demurrer one cannot move for an Injunction; * because, till the Demurrer be argued, it is not certain that the Cause is in Court. Select Chn. Cafes in Ld King's Time. Trin. 11 Geo. 1. Anon.—* S. P. till when no Order ought to be made; so that it was even doubted, whether it could in such Case be granted for any Special Cause. P. R. C. 201.

3. And the Case of Armstrong v. Jackson was cited, where before a Demurrer determined, the Plaintiff had an Injunction on Motion. Abr. Equ. Cafes 285.

4. Where the Lord Warton had an Injunction to quiet him in the Possession of the Mines in Question, and upon hearing of the Cause, an Issue was directed to try, whether the Mines in Question were within the Plaintiff's or Defendant's Manor; the Issue was tried at Bar, and found for the Plaintiff; then the Plaintiff died, and a Bill of Revivor was brought, and before the Time for Anwering was out, or the Cause revived, the Plaintiffs moved for an Injunction to stay the Lord Wharton's working the Mines, having Affidavits, that since the Verdict against him, he had trebled the Number of Workmen, and between that and Candelmas would work out the Mines; and an Injunction was granted, tho' the Cause was not revised. Mich. 1702. Abr. Equ. Cafes 285. Robinson v. Ld Wharton.
Injunction.  429

(B) How, and on what Suggelions and Terms granted or obtained.

1. Herefore, in Case of obstinate Disobedience in the Breach of a Decree, an Injunction used to be granted Subpoena of a Sum. And upon Affidavit, or other sufficient Proof of persisting in Contempt, Fines were used to be pronounced, or set by the Lord Chancellor in open Court, and to be enforced down into the Hamper by special Order. P. R. C. 215.

But I do not find this Court has been used of late. Ibid.

2. It is commonly by Writ founded on an Order of this Court; but may be by Word of Mouth, when the Party to be inhibited is actually present in Court. P. R. C. 197.

revived, dissolved, or stay'd upon private Petition. Ibid. cites Toth. 35.

3. Injunctions for Possession, or for Stay of Suits after Verdicts, are to be presented to the Lord Chancellor together with the Orders, whereupon they go forth, that his Lordship may take Consideration of them before they go. P. R. C. 197. cites Toch. 35. and it is obtained upon Matter suggested in the Bill; As that the Complainant is not able, for some Reasons therein, to make his Defence in the other Court, tho' he hath a good Discharge here in Equity; or that the other Party has a Penalty on him, which he proceeds for at Law, and threatens to make the Complainant pay; or that the other Court has not Jurisdiction of the Cause, but is cognizable here; or that the other Court refuses him some rightful Advantages, or does Injustice to him in the Proceedings, or has not Power to do him Right. Et Similis. P. R. C. 197, 198.

4. Where it is prayed to stay Proceedings, 'tis commonly upon some Matter suggested in the Bill; As that the Complainant is not able, for some Reasons therein, to make his Defence in the other Court, tho' he hath a good Discharge here in Equity; or that the other Party has a Penalty on him, which he proceeds for at Law, and threatens to make the Complainant pay; or that the other Court has not Jurisdiction of the Cause, but is cognizable here; or that the other Court refuses him some rightful Advantages, or does Injustice to him in the Proceedings, or has not Power to do him Right. Et Similis. P. R. C. 197, 198.

5. If it be granted before Answer, 'tis commonly till Answer and further Order. P. R. C. 198.

6. Where it is to be obtained by Motion for Matter in the Answer, the Counsel must put the Cause in Writing to the Court. But I think the Practice is not so now. P. R. C. 202.

7. Where there is a Verdict at Law, and the Defendant exhibits his Bill for Relief here; the Money must be deposited here before an Injunction will be granted; except in some Causes where special Matter of Equity appears by the Defendant's Answer, or some former Decree, or such like. P. R. C. 202.

Injunction, the Court, (tho' the Defendant had Bail at Law) would not grant it on other Terms, than that the Complainant should bring into Court the Money received at Law; because the Complainant was going beyond Sea. P. R. C. 203.——Car. Cane. 441.

8. No Injunction for Stay of Suit of Law, shall be granted, revived, Car. Cane. dissolved, or stay'd upon a Petition; nor any Injunction of any other Nature pass by Order upon Petition, without Notice, and a Copy of the Petition first had by, or given to, the other Side, and the Petition filed with the Register, and the Order entered. P. R. C. 203.

5 R, Where
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But if the Defendant be in Contempt, the Court will grant it without bringing any Money into Court, tho' there have been Proceedings at Law. P. R. C. 204. cites Toth. 37 —— So if Matter be confessed sufficient for a Total Relief, &c. the Court will do the same. Ibid. —— Curs. Canc. 444, 445.

10. An Affidavit is not ordinarily to be made Use of against an Answer. P. R. C. 204. cites Toth. 37.

11. Administrator of a Sailor orders A. to receive Money due to the Sailor. He does, and puts it into a Goldsmith's Hands. A Will appears, of which and probate, the Executor gives A. notice before the Money was paid the Administrator, &c. He refuses to pay the Money to the Executor; the Executor sues him at Law. He brings his Bill. The Executor swears notice as aforesaid. The Court ordered the Money to be brought into Court, or the Injunction to be dissolved. P. R. C. 205, 206.

12. Judgment at Law on a Bail Bond. A Bill here and Injunction. The Defendant swears 8l. due for Work done. The Money was ordered to be brought into Court, &c. tho' the Court inclined to have continued the Injunction without that, seeing there was a Judgment at Law. But in regard, it was so small a Sum, it was ordered to be brought in. P. R. C. 206.

13. If Money be recovered at Law, and the Defendant brings his Bill to be relieved here, on Condition to pay the Money and Costs recovered at Law, into Court here, subject to order on hearing, this Court will commonly order an Injunction, and will in the mean while stay Execution, and give some Time for paying in the Money; with this further, that the Defendant here be at Liberty to affirm his Judgment, if a Writ of Error be pending; or if there be none, the Complainant to give a Release of Errors. P. R. C. 207, 208.

14. The Defendant here had Judgment at Law. The Complainant brought a Writ of Error, and then brings his Bill here, and has an Injunction. The Defendant being in no Contempt, but having taken a Dedimus, prays here to affirm his Judgment. It was granted him; but he to proceed no further till further Order. P. R. C. 208.

15. Legates sue in the Ecclesiastical Court, that the Executors might, (as the Book supposes) prove the Will, and pay their Legacies. The Executors exhibit a Bill here to prove the Will, it being of Lands as well as personal Estate, and to stay Proceedings in the Ecclesiastical Court, and offered by their Bill, (as the Book supposes) to pay the Legates if there should be Affairs. This Court ordered an Injunction, and that it should continue, the Executors giving Security here to perform the Will, and speeding the Cause. P. R. C. 208.

16. Exceptions alone are not a sufficient Cause for granting an Injunction, because they are often put in for Delay; but there must be a Report also of the Answerer's Insufficiency; per Cur. P. R. C. 208.

17. An Injunction to stay Writ must be had upon a Bill filed to that Purpose. P. R. C. 212.
(C) To what Court or Place, &c. Injunction lies.


2. *A special matter suits to remove a cause out of London,* the Plaintiff proves the Surmises of his Bill, the Defendant begins a Suit in the King's Bench for the same Cause; therefore stayed by Injunction. Cary's Rep. 118. cites 21 & 22 Eliz. Cliffe v. Turner.

3. An Injunction was granted to stay Proceedings in the Spiritual Court. Toth. 178. cites 30 Eliz.

4. An Injunction was granted to establish Possession, and to stay Suits in the Court of Wards, and an Attachment awarded for serving an Order of the Court of Wards, to stay Suit here. Toth. 179. cites 33 Eliz. Smith v. Snottsull.


7. The Defendant files in the Ecclesiastical Court for a Partition due to his Wife, this Court ordered an Injunction to stay Proceedings there, till he shall make a Competent Jointure. Toth. 179. cites 14 Car. Tanfield v. Davenport.


9. Suits in the Court of Chancery in the Petty-Bagg by Scire Facias or Privilege, are not to be stay'd by Injunction, but by Order. P. R. C. 202.

(D) Perpetual Injunctions. In what Cases.


2. An *issue was directed out of Chancery, to try whether a Will or no.* P. R. C. 215. Will, and found against the Will, and then a perpetual Injunction was a—If a *Title* awarded against the Defendant not to prove the Will (tho' it was of a Personal Estate only) in the Prerogative Court. Hill. 18 & 19 Car. 2.


3. A perpetual Injunction was granted to stay Proceedings in the Ecclesiastical Courts, and in the Delegates for Aliquity, and the Husband not to disturb the Wife in her Person, or meddle with any Goods the shall acquire during the Separation, or which the shall use for her Conveniency. Hill. 25 Car. 2. Fin. 73. Turner and Warwick v. Boteler.

4. Where a Bill is taken pro Confesso by reason of the Defendant's Contempt in standing out all Process; if the Bill prays an Injunction to quiet a Possession, or to stay the Defendant's Proceedings at Law, the Court will decree a perpetual one. P. R. C. 197.

5. A perpetual Injunction ought not to go against an Heir at Law to bind his Inheritance without a Trial at Law, in Cæse the Matter be doubtful. MS. Tab. cites 23 Jan. 1705. Wilton v. Story.

6. After five Verdicts for the Plaintiff at Law against the Defendant there, the Plaintiff brought a Bill for a perpetual Injunction, but denied, cites 20 unless there was Fraud or Traut, or some Accident fell out to give the Court S. C. tho'
Injunction.

Injunction. per Ld Wright. Trin. 1766. Ch. Prec. 261. E. of

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reet of a voluntary

Bath v. Sherwin.

Convoyance

against an Heir at Law.—A perpetual Injunction to quiet Possession is only to be granted, where there has been a long unintermitted Possession laid in Cour. P. R. C. 215.—But it is sometimes granted upon a

Decree where there have been several Trials at Law. P. R. C. 244.—Curs. Canc. 451. S. P.

A said Lands to B. his Brother and the same were many Years enjoy'd under the Purchaser. Upon A's Death W. the son of A. set up on the Estate created about 200 Years since, and got into Possession. B. brought an

Exjunction, and a Verdict was for W. upon producing an old Injunction finding the Intail, but there was no Deed produced creating the Intail. Upon a Bill by B it was decreed by Ld Cowper, that no True, Term, Mortgage, or Lease should be set up; but that W. the Defendant should make Title under the Estate only; upon such Trial it was again found for W. But the Judge certifying against the

Verdict, a third Trial (after two Verdicts for W.) was held at the Bar of the Exchequer, and another after in B. R. in both of which, the Verdict was for B. whereupon B. prays a perpetual Injunction and Costs. Ld. C. Parker observed, that B. in this Case had no Reason to complain of the endlessness of Trials in Exchequers, the two first having been found against him, but that the two Trials at Bar, by Direction of the Court, being for him, his Lordship said, he did not see what the Court had been doing, if it should not grant a perpetual Injunction; and that the Cafe in it's Nature is such, as not to be intitled to any Favour, in respect of the Purchaser, the long Enjoyment, and the endeavouring to de-

fend it by such an old Entail, and that if there was not the clearest Point imaginable of such an Entail (as possibly there was not) the Jury was in the Right not to find it. Wms's Rep. 651. Mich. 1720.

Leighton v. Leighton.—Wms's Rep. 674. Says, this Decree was affirmed in the House of Lords with 40l. Costs, March 1720.—Sel. Ch. Cais. in Ld K's Time 15; reports it to be said, that since the Cafe of Sherman & G. of Bath, it has been taken, that after three Trials had, a per-

petual Injunction has been allowed. Parcl. 11 Geo. 1. in Cafe of Dalton v. Dalton.

(E) The Force of an Injunction, and Extent and Effect thereof, and what shall be said a Breach.

1. In Trefpafs, the Verdict passed for the Plaintiff to the Damage of 20l. and the Chancellor awarded an Injunction to the Plaintiff, that he should not proceed to Judgment, by which the Plaintiff was long delayed, and after the Justices gave Judgment, they would not give Damages for Vexation in the Chancery by this Injunction; Quod Nota. Br. Damages. pl. 130. cites 22 E. 4. 37.

I do not ob-

serve in the Year-Book

any fact,

but

only

that the

Chancellor,
pages 16 b. asks one of the Counsel, by way of Answer to what he was intitled upon, Whether, if an Injunction be made to a Man, that he shall not sue J. S. and A, dies, his Executor may sue J. S. quod nota; For this extends but to the Peron only, and not to the Heir or Executor, if it be not expressed, and yet it feems, that 'tis hard * that it must be expressed; Quod nota,

Br. Confinence, &c. pl. r. cites 27 H. 8. 16.

The Defendant is enjoined in open Court, upon pain of 200l. not to proceed any further in an Action upon Cafe by him commenced in the

King's Bench, against the Plaintiff, nor to procure the Jury to be flown in the lititio, but only to Record their Appearance 'till to morrow, at which

time further Order shall be taken by the Court. Cary's Rep. 53, 54.

cites 1 Eliz. fol. 88.

2. If an Injunction be granted against A. that he shall not sue J. S. and A. dies, his Executor may sue J. S. quod nota; For this extends but to the Peron only, and not to the Heir or Executor, if it be not expressed, and yet it feems, that 'tis hard * that it must be expressed; Quod nota,

Where an

Injunction is disobeyed, upon Oath thereof, Pro- temt is to

be taken in the Contem-

nor, as in other Cafes, 'till he yield Obedience: Nor is he to be heard in the Principal Cafe, 'till he has yielded Obedience thereto. Curs. Canc. 452.

3. The Defendant is enjoined in open Court, upon pain of 200l. not to proceed any further in an Action upon Cafe by him commenced in the

King's Bench, against the Plaintiff, nor to procure the Jury to be flown in the lititio, but only to Record their Appearance 'till to morrow, at which

time further Order shall be taken by the Court. Cary's Rep. 53, 54.

cites 1 Eliz. fol. 88.

4. In a Suit between two for a Close an Injunction was awarded for the Plaintiff's quiet Enjoyment of the said Close, with the Appartenances, until &c. The Defendant put his Cattel into the Close, and thereupon an Attachment filed to answer the Contempt. He said, that he put in his Close for Title of Common. This was ruled to be no Breach of the Injunction, because
because the Common was not in Question in the Bill, but only the Title of the Close, and therefore the Defendant was discharged of the Contempt, and the Words (with the Appurtenances) include not the Common to be taken in the said Close. 96. Hill. 8 Jac. in the Exchequer. Bent's Cafe.

5. Defendant obtained Judgment in Ejection against the now Plaintiff, and had Execution awarded, but the Under-Sheriff refused to execute it. The Under-Sheriff was ordered to attend in B. R. and an Attachment granted for Non Attendance. Afterwards the Defendant in Ejection brings a Bill in this Court, and the Plaintiff in Ejection praying a Declarator, an Injunction was granted of Course; This Injunction was allowed to extend to the Under-Sheriff, who had refused to execute the Writ, and was in Contempt to B. R. before the Bill filed, for not executing the Habere Facias Poffeffionem on the Judgment, and Non Attendance upon Summons, and for which an Attachment was issued against him. Mich. 1681. Vern. 25. Emerson's Cafe.

6. The Plaintiff had Judgment in Ejection, but was hung up by Injunction, to that the Term expired. Upon Motion to enlarge the Term, Hoft Ch. J. said, they could not alter Records, and said, he had no Mind to build a new Clock-Houfe. 1 Salk. 257. Palch. 12 W. 3. B. R. Anon.

8. An Injunction does not prevent an Entry to intitle the Parry to recover the Mefne Profits at Law; per ld Keeper. Mich. 1705. 2 Vern. 519. in Cafe of Tilley v. Bridger.

9. Where an Injunction is obtained with Respect to a Suit at Law, which is at Issue, or wherein a Declaration is delivered, it commonly gives Leave to go to Trial, but stays Execution. P. R. C. 201.

10. If Goods are taken, or Money levied, or paid in Execution, and in the Sheriff's Hands, it will stay them there. P. R. C. 202.

11. Where Money was levied, and in the Attorney's Hands, who would have retained it for Money's owing him by his Client; yet the Money being in Diffirue, in this Court, between the Parties at Law, the Court ordered him to bring it in here. P. R. C. 202.

12. An Injunction upon an Attachment or Declarator, or upon Defendant's praying Time, does not extend to stay Proceedings in the Spiritual Court, as it does to stay Proceedings at Law; so that when Proceedings in the Spiritual Court are to be stayed, it is to be moved specially. Wm's Rep. 301. Mich. 1175. Anon.—And the Reporter makes a Figure, whether it be the same with Regard to Proceedings in the Court of Admiralty. Ibid. 5 S (F) Dissolved
Injunction

(F) Dissolved, or made absolute. In what Cases, and How.

1. Where there is an Appearance of Equity with the Complainant, or that his Cause seems very hard, the Court will not easily dissolve the Injunction. P. R. C. 209.

2. Where an Injunction is granted before Answer, then if after Answer come in the Council for the Defendant allege, That the Defendant has answered and denied the whole Equity of the Plaintiff’s Bill, (his Contempt, if any, being cleared, and his Appearance entered) and also produce a Certificate from the Six-Clerk, that the Answer has been filed 14 Days at least; the Court will, on such Counsel’s Motion, order the Injunction to stand dissolved at a short Day, Nilo Caufa, &c. Or perhaps without such Certificate. P. R. C. 199.

3. If there be two Defendants, the Court will not ordinarily dissolve the Injunction till both have answered. P. R. C. 200.

4. An Injunction is never dissolved without Motion on the adverse Part. P. R. C. 200.

When the Defendant granted by Motion, it must be dissolved by Motion. P. R. C. 205.

5. The Defendant, after having Leave for a Dedimus to take his Answer, is bound to take Notice of an Order for an Injunction, tho’ he be not served with the Writ. P. R. C. 200.

Plea, &c. in the Country, the Order sometimes was, That the Plaintiff’s Six Clerk, or under-Clerk, without Motion, draw a Docket, and Injunction of Course, and subscribe his Name to the Doctype, and in the Writ, in usual Form, the Cause of granting the Injunction; both which, so prepared, were to be preferred to be signed; and if the Injunction dissolved forth in any other Manner, it was void. P. R. C. 200.—But of Late such Injunction is moved for, (as are all others) and is granted of Course, till coming in of the Answer, and further Order. P. R. C. 200.—Curt. Canc. 442.

But in such Cases, or upon coming in of a Motion, the Court will not dissolve it absolutely on the first Motion, (tho’ there be an Affidavit of Notice) but only Nifi, &c. P. R. C. 200.—Curt. Canc. 445.

6. Upon a Plea or Demurrers being allowed, the Injunction, that was granted till Answer, will commonly be dissolved on Motion. P. R. C. 200.

7. Where upon the Face of the Answer, there appeared a strong Presumption in Equity for the Complainant, the Court continued the Injunction to stay Trial at Law. P. R. C. 201.

8. Where it is granted on the Merits of the Cause, or upon special Proceedings there for a long Time is delay his Suit. P. R. C. 202.

Injunction.

9. The Court would not continue an Injunction upon a Bill to be Return'd against the Penalty of a Bond profecuted at Law, except either the Money swore by Anfwer due thereon was brought into Court, or the Plaintiff gave Judgment at Law, and a Releafe of Errors. And if he had not been thought of sufficient Ability, the Court would have suffered the Plaintiff at Law to have proceeded there so far as the Return of a second Scribe facias, to make the Bail liable. P. R. C. 203.

10. A. was bound by Obligation to B. for Payment of 100l. and was Indicted to him 100l. more for Rent. An Action was brought at Law on 447. the Bond, and Judgment had on the Bail-Bond. The Complainants pray to be relieved against the Bond, Judgment, &c. and has an Injunction. The Defendant, by Anfwer, owns the 100l. on the Bond satisfied; the Court order'd the Defendant at Law should give a Releafe of Errors, and the Injunction to stand as to that, but to be dissolved as to the Rent. P. R. C. 206.

11. The Bill alleges, that the Plaintiff is Indicted to the Defendant 5 1/2l. and the Defendant 5 1/2l. to him; that the Defendant is a Prisoner in the 447. Fleet, sues at Law, has an interlocutory Judgment, and will not pay or allow what he owes. The Plaintiff prays an Account, &c. and has an Injunction: The Defendant, by his Anfwer, says, he returned the Money due to the Plaintiff, to him at London in December laft. The Plaintiff produced the Bond, by which it appeared the Money was not payable till April next. The Court order'd, that upon the Complainant's giving a final Judgment at Law, for 20l. the Sum demanded there, and a Releafe of Errors in Four Days, the Injunction stand. P. R. C. 207.

12. Where an Injunction is already granted, it will be continued on Ex. But if a Receptions. And where Exceptions came in but the Night before the Motion, the Court has refused to dissolve the Injunction. P. R. C. 269.

13. Where there were Cross-Bills, the Court said, if after the fift Bill Curf Cane. is answer'd, the Plaintiff in the fift do not answer the fcond Bill in eight 448. Days, the Injunction should be dissolved on Petition. P. R. C. 209.

14. The Court ordered Money fowen due on an Award to be brought in. Curf Cane. to Court, or the Injunction to be dissolved; For by the Award 'tis be. 449. 447. come Res Judicata. P. R. C. 209.


16. If an Injunction is dissolved, yet if there be Caufe, it may be Curf Cane. revived on Motion. P. R. C. 210.

17. The Defendant's Plea being allowed, he moved to dissolve the Plaintiff's Injunction. The Court said, when the Plea is allowed, there is ordinarily an End of the Injunction, but not always. The Defendant had pleaded only what the Plaintiff had contefted and set forth, viz. an Awards; and tho' the Defendant and Referees have denied all Practice, and sworn that the Plaintiff was heard, and the Award was duly obtained; yet it was said, Practice an unfair Proceedings are often found in Awards. The Counsel for the Defendants said, the other Side ought to shew some Equity contested or allowed in the Anfwer. But was anfwer'd by the Court, that tho' Awards are favour'd here, because they tend to settle Peace among Parties, & although there be Notice of this Motion, yet an Injunction is not to be absolutely dissolved upon this Allowance of the Plea, but only Nif; because there may be some Equity shewn to continue it. The Court however, ordered the Money awarded to be brought into Court.
Court by the first Seal, or the Injunction to stand dissolved without fur-
ther Motion, and the Plaintiff, to enter up his Judgment, (having at Law a
Verdict,) and tax his Costs, which were also to be brought in, but to
stay Execution, the Court seemed willing to forbear entering Judg-
ment. P. R. C. 211, 212.
18. The Court does not at the last Seal after Term ordinarily dissolve
Injunctions. P. R. C. 217.
19. It was order'd, that the Injunction formerly granted against the
Defendant for stay of his Action in the King's Bench be dissolved, and
the Defendant to be at Liberty to take Judgment upon his Action of Debt
of 500 l. Provided, if the Plaintiff do bring into Court on Monday next
223 l. then Execution for the Rests to be suspended, until this Court take o-
Hales.
20. Injunction to stay selling of Timber was dissolved, because the Set-
tlement was without Impeachment of Waft. 15 Car. 2. 1 Chan. Rep. 242;
Minshill v. Minshill.

(G) Of the Service of an Injunction.

1. An Injunction out of Chancery, after three Verdicts, to stay the Plain-
tiff from having his Judgment. This Injunction was served upon
the Plaintiff. His Attorney or Council not being served, may move
for Judgment and have it. Patch. 10 Jac. B. R. Bull. 182. Ellis v. Parke,
Solicitor, &c. Or such of them as can be found, or as the Case may require. P. R. C. 197.—But leaving it
with the Attorney or Solicitor's Clerk or Servant is good Service. P. R. C. 197.—Curf. Can.
452. S. P.

Carf. Conc. 452. S. P.—

Service of an
Injunction without flowing the Writ, but only delivering a Copy, and denying to let the Defendant
compare the Writ and Copy, shall bind the Defendant to Obedience, notwithstanding there was irre-

Inns [and Inn-Keepers.]

(A) Who may erect an Inn.

Erecting a
Common Inn
is lawful for
any one that
will, and is
not ad Com-
mune Noc-
umentum, un-
less it be al-
leged, that
it is an unfit
Place, or

1. A Ban may erect an Inn without any Licence of the King, be-
cause it is not any Franchise, but only a Trade, as an Al-
house. For it is but a Great Alehouse, or any other Trade. In the
Parliament of the 18 Th. upon the Patent of Sir Giles Monpeish of
Inns, this was so Resolved by the Lower House of Parliament, and
then Dr. Noy argued it and said, that an Alehouse is under the
Correction of the Leer, therefore the Inn under the Correction of
the Eire, but there is not any Record by which it may appear, that
any Claim was of it in Eire. Therefore it is not a Franchise.
that by Reason the greater Number of Inns in the same Place, it is Barrenome, or that it Labours Times, and other ill Report, per Cur. Palm. 574. Trin. 21 Jac. B. R. Anon.—And such Allegations may be traversed, and if it be found to be true, as to the Harbouring Ill Persons, or as to the Inn-keeper being of ill Fame, that the Inn shall be suppressed as to his keeping it, yet it being an Inn another may keep it. But 106. The Resolution of the Judges concerning Inns, June 19. 22 Jac.

2. Objection. In the Time of King John, there is a Record. Nay said, that he had seen a Grant in the Time of King John to a Tenant in Durham, (where this was) Hospitari terram, and he understands that this was a Licence to gueß but his Land, viz. to lease it in Parcels to several Farmers. Palm. 568. Trin. 21 Jac. B. R.

3. Answer. This Word (Hospitare) there intends divide; For at this Day, this Word Hospitare in the North, signifies divide into Parcels.

4. Objection. Inn-keeper is compellable to entertain Strangers, and to answer Goods stolen, &c.

5. Answer. So it is of a Carrier and Ferryman, and yet it is not any Franchise.

6. In Eire there is an Inn seïled for entertaining Men, who abuse those in Forests. Sir Edward Coke to the same Intent. Among Capitula Inserit, there is an Article about the Beginning, De his qui cemperunt Dona ab his qui Hospitari fune Extranecus contra asfiam tacam, which is for the Abuse of the Inn. There is not any Record but of late Time, by which it may appear that the King ever gave any Licences to Inn-keepers. By which it appears, that there needs not any. For if there were any, they ought of necessity to be of Record. Tr. 26 Jac. B. R. Sherwood of Bath was indicted for the Inn there of 3 Tunnis, and reversed in Wit of Error, per Curtiam, and Resolved that he cannot be indicted for it. Tr. 21 Jac. B. R. other Indictment from Bath quashed, per Curtiam, for the Cause aforesaid.

7. In the Statute which is called Articuli & Sacramenta Miniitorum Regis in Iterne Jucditoriorum. There is such Clause De inde praepetur quod nullum Conducatur Hospitium, (this Word Conducatur, is translated by Rackall, Hired) sed venientibus gratis concedatur.

8. If a Man has had an Inn by Prescription, Time whereas? He may enlarge it upon the same Land which has been always used with the Inn, as he may enlarge the Rooms upon the Curtelage or Yard, or may make new Rooms upon them, or may convert the ancient Stables into Rooms for Men, and make the Stables further upon the Yard or Curtelage, and shall have the same Privilege in them as he had in the ancient Inn. For otherwise it would be inconvenient. For now the Citizen is to make handsome and large Rooms, and more Lights than were anciently, otherwise he will not have any Guests, and there is greater Restort now than anciently. Hitch. 16 Jac. B. R. Resolved per totan Curtiam, upon Evidence at the Bar in Duo Warranto against Harding for the Bulls in Farnham.

9. But a Man who has an ancient Inn by Prescription can not enlarge the Rooms upon any Land adjoining, which was not anciently appertaining to the Inn; For if he do, he shall not have the Privilege of an Inn in it. Hitch. 16 Jac. B. R. adjudged per totan Curtiam, upon Evidence at the Bar in a Duo Warranto, against Harding for the Bulls in Farnham.
(E) What Power the Inn-keeper has to retain.

2 Roll. R. 2
459 S. C.—
3 Buls. 169.
6 Jac. 14

Inns

And Inn-keepers may detain the Person of his Guest, who eats, 'till Payment. Show. 260. Trin. 5 W. 3 & M. per Eyres J. in Case of Newton v. Trig. But some Question was, if he might retain Saddles, Bridle and Cloths as well as Horse. 3 Buls. 289. Pach. 13. Jac. B. R. Stirt v. Drungold.

2. If a Man takes the Horse of a Stranger, and rides upon it to an Inn where his Horse has Eat, then the Horse may remain the Host till he be satisfied for the Eating, and Counsel without Question. My Reports. Roll. 14. Ja.

3 Buls. 269.

S. C. cited.
Arg. 3 Buls. 270. as reconciled. Mich.
6 Jac. B. R.

8 Rep. 147. Where Hostler takes an Horse as an Agreement, he cannot after fell the Horse, tho' he has eat twice as much as he is worth. But where he takes him in of Custom, he may after reasonable Appraifement fell him when he has eat his Value. Yeve. 66, 67. Trin. 3. Jac. B. R. The Cafe of an Hostler.

6. But by the Custom of London, the Inn-keeper may fell such horse, and it is a good Custom. P. 7 Fa. B. between Walbrooke and Griffin, per Curiam. Contra Trin. 3. Jac. B. R. per Popham.

In Action on the Cafe against an Hostler for an Horse, the Defendant pleaded a general Custum throughout the Realm, that if one puts a Horse to Livery to an Hostler, and the Horse remains there so long that his Meat amount to the Value of the Horse, then the Hostler may call in to him four of his neighbours and appraise the Horse, and value also his Meat, and if they think that the Meat amounts to the Value of the Horse, or more, the Hostler may detain the Horse as his own; and pleaded that in cases, &c. upon which the Plaintiff demurred in Law, and Argument for the Plaintiff becain there is no such general Custum within the Realm, but only in London and Exeter. Mo. 876. Pach. 6. Jac. Wabrooke v. Griffin. But says nothing of detaining the Horse as his own, but is only of selling him. The every Inn-keeper may detain a Horse till he is paid for his Meat, yet he cannot sell, for that is good only by Custum of London. Note, it was so said. Vent. 71. Pach. 22. Car. 2. B. R. Anon.

The Custum of London, to stop and sell Horses for their Meat, is only that the same Horse may be sold for his own keeping, and not for the Keeping of other Horses, tho' of the same Owner. Buls. 257. Mofie v. Townend.

7. But if a Man takes my Horse and puts it in an Inn in London, and there leave it 'till he has eat his Value, the Inn-keeper cannot sell this Horse by the Custum of London for the Hostler, that then any Man may take away the Property of the Horse of another Man. P. 7 Fa. B. adjudged between Walbrooke and Griffin.
Inns [and Inn-keepers.]

8. In Trespass for taking his Horse in C. the Defendant pleaded, that he was an Inn-keeper in St. M. and the Plaintiff came to his House and agreed with him to pay 2s. a Week for his Lodging, and 6d. for a Night and Day for his Horse, and that if the Plaintiff paid not the same and more, he would retain the Horse till paid, and then, if he would be paid, and for Non-payment be detained the Horse till the Plaintiff took him at St. M., and ride to C. and he took the Horse from him, as he lawfully might. Chamberlain J. thought, the Defendant the Inn-keeper had no Property in the Horse, and therefore could not re-take him. Ley Ch. J. thought he had a Property by the Agreement, and therefore the re-taking justifiable, and that, by the Non-payment, the Defendant had both Custody, Possession and Property, whereas before such Default, he had only the Custody. And Chamberlain J. admitted, that the Justification would be good, had the Defendant had a Property in the Horse, which he thought he had not. But If the was afterwards taken upon the Agreement. 2 Roll. 438. Trin. 21 Jac. B. R. Rolle v. Bramtice.

does not make fresh Suit he cannot re-take him, but take a new Diftress; and so, if the Horse detained for the Provengier, be taken by the Party or a Stranger, the Inn-keeper ought to do the like. Ibid. — Nels. Abr. 42. pl 14. S. C. but misprinted, the Word (not) being omitted, and nothing laid of the Fresh Suit, and mentions it as (Per Curiam.)

9. A. had an Horse in an Inn, but ordered the Inn-keeper to give him no more Food; For he would not be responsible for it. Holt Ch. J. before whom this Caufe came at Guild-Hall, inclin'd at first, that this was a Distress, and that the Horse, (tho' it might be retained by the Inn-keeper) is in Nature of a Distress; and it being in the Custody of the Innkeeper in his Inn, this is a Pound Covert, and the Horse ought to be found and maintained at the Peril of the Inn-keeper. But after Mutata Opinion, he directed, that this was not a Distress; For then any Innkeeper might be deceived, and it is the leniency of the Security of an Inn-keeper, who may detain, and by the Custom of London fell the Horse for his keeping. Skin. 648. Trin. 8 W. 3. Gilbert v. Berkeley.

10. By the Custom of the Realm, if a Man lies in an Inn one Night, the Inn-keeper may detain his Horse till he is paid the Expences; but if he gives him Credit for that Time, and lets him go, he has waived the Benefit of that Custom by his own Consent to the Departure, and shall never afterwards detain the Horse for that Expence, but must rely upon his other Agreement, and tho' he may detain the Horse for one Night's Expences, yet he cannot for the Expences of several Nights, but in the Case of one Night he cannot fell the Horse and pay himself, for that would be a Conversion, and he is not to be his own Carver. 8 Mod. 172. Trin. 9 Geo. B. R. Jones v. Thurloe.

(® C) Taverns.

I Ο the Statute De Pitoribus & Braciatoribus, which see in Magna Charta. 24. cap. 5. is contained as follows, Alititia vini secundum Alititam Domini Regis obvertetur, Seilicet, Sextertium ad 12. d. & si Tabernarui illum Alitiat exellentir, per Majorem & Ballivos Olitla claudantur, & non permittant Vinum vendere, donee Licentiam a Domino Rege obtinuerint.

(D) Inn-
(D) Inn-keepers subject to what Regulation, or Punishment.

If an Inn do not the Place of an Alehouse, this shall be within the Statute of Alehouses: per Yelverton J. 1 Buls. 100. Pach. o Jac. B. R. Anon ——


The Statutes for Alehouses include all (excluding only Beasts in Fairs) not to keep an Inn and an Alehouse; but to be suppressed so as to keep an Inn only for Relief of Travellers, to which the Whole Court agreed, per Fenner J. 1 Buls. 199. Anon.

2. 21 Jac. 1. cap. 21. S. 2. Enacts that no Innholder shall make Horse-breard, but Bakers shall make it, and the Affise shall be kept, and the Weight reasonable. And the Innholders shall sell their Horse-breard, and their Hay, Oats, Beans, Peafe, Prevender, and all Utensils for Man and Beast for reasonable Gain without taking any Thing for Letter.

S. 3. It shall be lawful for every Innkeeper dwelling in any Village, being a Traveller, or (and no City or Market-town, or any common Baker is dwelling) to make Horse-breard of due Affise.

S. 4. If the Inn-keepers shall offend against this Act, the Justices of Affise, of Oyer and Terminer, of the Peace, Sheriffs in their Counties, and Stewards in their Lots, shall have Power to inquire, hear and determine the said Offences, and the Innholders for the first Offence shall be fined, and for the second Offence imprisoned one Month, and the third Time he shall stand upon the Pillory; and if he offend after Judgment of the Pillory, he shall be sentenced as a common Offender.

3. If an Inn-keeper takes down his Sign and keeps an Hostelry, an Action lies against him if he denies to lodge a Traveller for his Money. But if he takes down his Sign, and gives over keeping an Inn, then he is discharged from giving lodging. Godb. 346. in pl. 440. Trin. 21 Jac. B. R. Anon.

* It still remains a Common Inn that the Sign be gone, and is liable to Strangers. Pals. 574. Anon.

Skin 291. S. P. in S C. 3 Mod. 329. Mich. 2 W. & M. B. R. in Cafe. & M. B. R. by Name of Luton v. Bigg —— An Inn is the same with an Alehouse, and therefore several Statutes which are made to prevent Tipling, and which appoint at what Price Ale should be sold, have been adjudged to extend to Inn-keepers. Per Cur. 3 Mod. 329. ut sup.

Proclamation was made in Court for the County of Middlesex for the Rates and Prices of Hoftlers. Raym. 162. Mich. 19 Car. 2. B R.

6. If
Inns [and Inn-Kepers.]

6. If Inn-keepers set unreasonable Rates, they are indictable for Extortion, per Eyres J. Show 269. Trim. 3 W. & M. in Cafe of Newton v. Trigg.


8. It seems to be agreed, that the Keeper of an Inn may by the Common Law, be indicted and fined, as being guilty of a common Nuisance, if he usually harbours Thieves, or fuller frequent Disorder in his House, or set up a new Inn in a Place where there is no manner of Need of one, to the Hindrance of other ancient and well governed Inns, or keep it in a Place wholly unfit for such a Purpose in respect of its Situation. Hawk. Pl. C. 225. cap. 78. S. 1.

9. 2 Geo. 2. cap. 28. S. 11. Enacts, that no Licence shall be granted to keep a common Inn, &c. but at a general Meeting of the Justices sitting in the Division where the Person dwells, and that all Licences granted to the contrary shall be void.

S. 12. Provided, that nothing in this Act shall alter the Method of granting Licences for keeping of common Inns, &c. in any City or Town Corporates.

(E) Pleadings and Evidence.

J. S. Was indicted upon the Statutes of 13 R. 2. and * 4 H. 4. for that the common Price of Oats, in B. S. and other Places, between the 1 March 15 fac. and the 1 March 17 fac. was not above the Rate of 20 d. a Bushel, and the Defendant, exults communis Stabularius, sold to divers Subjects of our Lord the King, within his Dwelling House in H. 200 Bushels for 25. 8. d. the Bushel, contra formam Statut. &c. Exception was taken. 1. for want of Addition, but the Court said, that when he appears and does not take Exceptions, but pleads to Issue, and it is found against him, he admits it, and has lost the Advantage. 2. That it was Quod Commune Pretium in Mercatis, &c. was not Ulta 20 d. the Bushel, which is uncertain, and the Price ought to be shown precisely. For he is to forfeit by the Statute of 4 H. 4. for every Bushel sold above the common Market Price the Quadruple Value. Sed non allocatur. 3. That it was Quod Commune Pretium pro qualibet Modio Avenariun non fiuit alta, &c. where it should be pro Modio, or pro aliquo Modio, and not pro qualibet Modio; sed non allocatur. 4. Because it was Quod S. exults communis Stabularius sed, &c. which infers, that he was a common Holder at the Time of the Indictment, and not at the Offence done, and that it ought to be certain and not by Intendment. Sed non allocatur. 5. That it was, That be sold within his Mansio House, and does not stay within his Inn. Sed non allocatur. For it shall be intended all one. 6. Because it was, That be sold diversis Subditis Dominis Regis, and does not stay Hopitibus, nor to be expended for Provender, it being otherwife no Offence within this Statute [of 4 H. 4.] Sed non allocatur. 7. Because it is not seen when he bought or sold them, which might be many Years before, and Judgment was given for the King. Cro. J. 669. Hill. 18 fac. B. R. Johnson's Case.—Ab. the King v. Johnson.
Innuendo.

2. If Inns are an Annoyance and inconvenient for the Inhabitants, the same ought to appear particularly, otherwise 'tis a Thing lawful to erect an Inn. And for Want of the Words Ad Nocentum, the Indictment was quashed. Godb. 345. pl. 440. Trin. 21 Jac. B. R. Anon.

3. If it be alleged that the Innkeeper harbours Thieves, or is of ill Fame, the Defendant may traverse the same. Hutt. 100. June 19. 22 Jac. at Serjeant's Inn in Fleetstreet. The Resolutions of the Judges.

4. In Trever and Conversion, Denial to deliver is no Conversion, nor Evidence of a Conversion, unless the Plaintiff tender in particular what the Horse has eat out, and the Jury is to judge if sufficient. Per Ld North. 2 Show. 161. Anon.

See Actions. (1 b)(K b).

(A) Innuendo.

2 Salk. 513. 1. Innuendo can't supply the Incertainty of that which is uncertain of itself; had not the Innuendo been put in, per Holt Ch. J. Cumb. 460. Mich. 9 W. 3. B. R. the King v. Greep.

3. For a bare and naked Innuendo signifies nothing, unless the Words themselves import the same, or that there be some certain Fact to which it may be apply'd, or from whence it may be inferred, that the Man meant the Thing, without the Help of an Innuendo. Per Holt. 12 Mod. 141. Mich. 9 W. 5. S. C. by Name of the King v. Griebe.——3 Mod. 35. the King v. Roswell.

2. Innuendo can't reduce to a particular, that which before would bear a more large Construction. Per Holt. Cumb. 460. the King v. Greep.

3. In every Innuendo, there must be some Thing precedent to include it, some Thing whereby it may be apply'd, that the Man meant so as the Innuendo would have him. Per Holt Cumb. 460. the King v. Greep.—Cites Hob. 6. Miles v. Jacob.—4 Rep. 17.

4. Innuendo may serve for an Explanation, where there is precedent Matter, but never for a new Charge; It may apply what is already express'd, but cannot add or enlarge the Importance of it. 2 Salk 513. Mich. 9 W. 3. B. R. the King v. Greep.

* Inrolnient
* Inrolment.

(A) Inrolment of 4 Deeds, &c. and How.

1. 34 & 35 H. 8. cap. 22. E Nacte, That all Recoveries, Deeds inrolled, and Releases to be taken and acknowledged before the Mayors, Recorders or other head Officers, as well as of the City of London, as of any other City, Borough, or Town Corporate, having Power to receive the same according to the Customs of the said Cities, &c. shall be of like Force, as they were before the making of the Act 32 H. 8. cap. 28.

2. If a Deed be inrolled according to the Statute 27 H. 8. cap. 10, it must be in Parchment for the Strength and Continuance thereof, and not in Paper, and so it was resolved in Parliament by the Judges, in Anno 25 Eliz. Co. Lit. 35. b. 36. a.

3. No Deed &c. can be inrolled, unless duly and lawfully acknowledged. Co. Litt. 225. b.

4. An Indenture of Bargain and Sale was inrolled in Chancery, exemplified under Seal, and at the End was a Memorandum, viz. That the Plea was inrolled, but no Time mention'd when the same was done, but Plaintiff offered to prove by Circumstantial, that it was inrolled within the six Months; upon which great Debates arose, but a Clerk being sent by the Court of B. R. to the Inrolment Office to know their Usage and Custom, as to inserting the Time of the Inrolment, he certified the Court upon his Oath, that they inform'd him, that before the 16 Eliz. at which Time the Inrolment Office was erected, they did not use to insert the Time, but they use to do otherwise now. 2 Rool. R. 119, 120. Mich. 17 Jac. R. Worfeley v. Filisker.

5. The Court made a Rule, That all Deeds should be acknowledged on the Plea Side in this Court, and not on the Crown Side, and that the Acknowledgement should be in open Court. 1 Salk. 389. Mich. 11 W 3: B. R. Lady Anderdon's Cafe.

6. Baron and Feeme came to acknowledge a Deed by them both in Court, and the Court ordered an Acknowledgement only for one of them to be entered, viz. The Husband. 6 Mod. 263. Mich. 3 Anne B. R. Anon.

B. For
(C) Inrolment. Necessary, in what Cases.

1. **The King** may have Chattels and Choises in Action, which do not touch Franken tement without Deed inroll'd, but not *Frank-tenement*, nor Things which touch Franken tement. **Br. Faits enrol**, pl. 6. cites 21 H. 7. 19.

2. Nor can the King be in eff' d by Deed or otherwise, unless it be by Deed inroll'd: For he shall not have Livery, but it shall pass by the Livery of the Deed of Record. **Br. Faits enrol**, pl. 12. cites 7 E. 4. 16.

If Land be conveyed in a Deed for Mo-ney only, the Deed must be inroll'd, else the Land will not pass by the Deed.

But if Land be convey'd in Consideration of Money paid, and also in Consideration of natural Life and Affection to a Wife, Child, or Relation, there it is not necessary to inroll the Deed, but the Lands will pass, tho' the Deed be not inroll'd; for in the former Case, it is a mere Deed of Bargain and Sale, which paseth nothing without Inrolment; but in the latter Case, the Land will pass by Way of Use. 2 L. P. R. 69.
Inrolment.

(D) When. And where the Want thereof, or Mistakes therein will be aided.

1. The Plaintiff purchased Lands of the Defendant Anno. 2 Eliz. and had a Recognizance then acknowledged unto him for performing Covenants of the Bargain and Sale, and put one in Trust to get both the Indenture and Covenance inrolled, and paid him for the same; and now being evicted out of the Possession of the Lands, came to take out a Sci. Pa. upon the Recognizance, but finds it not enrolled; and therefore desires the same might now be enrolled. It is ordered, that a Subpœna be awarded against the Defendant, to shew Cause why it should not; and Mr. Solicitor, who is present at the Motion, is to give Notice to some of his Clients who have purchased (as he alleged) Parcel of the Lands, to shew Cause why it shall not be enrolled. Cary's Rep. 138, 139. cites 22 Eliz. Sidenham v. Harrison.

2. Conuse of a Recognizance, acknowledged before a Master in Chancery, died before the Inrolment. It was the Opinion of all the Justices of C. B. That the Recognizance may be enrolled at the Request of the Executors. Le 154, pl. 283. Mich. 30 Eliz. C. B. Hallton's Case.

3. An Inrolment of a Deed remains good, notwithstanding Omissions by the Negligence of the Clerk in Writing or Examining, where the Omissions are in Matters and Words of Surplusage, and not in that which is of any Substance in the Deed; as where the Deed was (for other good Causes) the Word (Good) was omitted in the Inrolment. Poph. 21. Sir Francis Englefield's Case.

4. In the Inrolment of a Deed the Clerk mistook the Date, and dated it the Month preceding the Date of the Deed; this does not make the Inrolment void; per Ld Keeper Egerton; For it is clearly the Misprision of the Clerk, who having the Deed before him mistook the Date, writing one Month for another. Mo. 676. Hill. 45 Eliz. in Canc. Gerard v. the Dean of Rochester and Sands.

(E) The Intent, Force and Effect of an Inrolment in Common Law, or for Safe Custody only, &c.

1. Erroneous Inrolment is not void, but avoidable by Error, as in Cafe of a Deed acknowledged to be inrolled by Baron and Feme, and therefore Quære of Inrolment by Infant; for he shall have Audita Quæra to avoid his Statute Merchant. Br. Faits enrol, pl. 3. cites 21 Eliz. 43.

2. One may avoid a Deed inrolled by confessing and avoiding it; But he cannot deny it. Br. Faits enrol, pl. 2. per Thinn and Hank. cites 12 H. 4.12. Not being passed by the Deed, or that he had nothing in the Land at the Time. Br. Faits, pl. 2. cites 9 H. 6. 62. —— Hill. 9 H. 6. 60. a. pl. 8.

3. Inrolment of a Deed is to no other Purpose, but that the Party shall deny it afterwards; but if he wants the Deed to plead it, and alleges no false or other Quære of a Party, he shall not plead the Inrolment; For he ought to shew the Deed itself's Presence and Being. Quod tota Curta concussit. Br. Faits enrol, pl. 4. See Conveyances. — Dates.

4. Durefs
Inrollment.

4. Dares't may be pleaded against a Deed inrolled. Br. Faits enrol, pl. 17, cites 16 H. 7. 5.

5. Feme Covert or Infant makes a Deed, and at full Age, or Discoverure inrolls it, yet they may afterwards avoid the Deed; because it stands with the Deed; per Brison; but Keble contrary clearly; yet after Release or Fine a Man may say, that the Parties had nothing in the Land at the Time, &c. and this was the Opinion of the Court, Quod nota. Br. Faits enrol, pl. 17, cites 16 H. 7. 5.

6. A Deed enrolled in London is as Strong as a Fine. Densh. R. of Fines 3.

7. And if it be by Conunance by Baron and Feme, there the Feme shall be examined, and Seive fa. shall file there if it be executory, the fame Law in Winchester of Deeds inrolled, and so in divers other Vills. Densh. R. of Fines 3.

8. 34 & 35 H. 8. 22. Makes Recoveries and Deeds inrolled &c. in Corporate Towns by Feme Coverts to be of the fame Force as they were before. 32 H. 8.

9. The Inrollment of a Deed doth not make it to be a Record, but it thereby becomes a Deed recorded, and it shall Operate by Virtue of the Statute of Inrollments; For there is a Difference between Matter of Record, and a Thing recorded to be kept in Memory; For a Record is the Entry in Parchment of judicial Matters controverted in Court of Record, and whereof the Court takes Notice: But an Inrollment of a Deed is a private All of the Parties concerned, of which the Court takes no Cognizance at the Time of the doing it altho’ the Court give way to it. 2 L. P. R. 69. cites Mich. 22 Car. 1. B. R.

10. The Inrollment of a Deed, if it be acknowledged by the Grantor, is a sufficient Proof of the Deed of it fell upon a Trial; For every Deed before it is inrolled is to be acknowledged to be the Deed of the Party before a Matter of the Court of Chancery, (if inrolled in Chancery) or before a Judge of the Court where it is inrolled; and this is the Officer’s Warrant for the Inrolling of it. 2 L. P. R. 69.

(F) Of Deeds, allowed in what Cases extraordinary.

Delivered a Deed of B. to J. S. who tore it in Sport without Malice and by Misfortune and Chance; both A. who delivered the Deed and J. S. who tore it were imprisoned, and the Deed was inrolled immediately. Br. Faits, pl. 88. cites 3 E. 3.

(G) Pleadings.

1. Deed inrolled ought to be thrown, and not the Inrollment, and therefore if the Deed be lost all is lost. Br. Monstraas, pl. 137. cites 19 H. 6. 6.

2. After Feoffment by Deed inrolled, he may say Nothing passed. Br. Faits enrol, pl. 17, cites 16 H. 7. 5.

3. Assumption of Prime deliberatum ought not to be received against a Deed inrolled; For by the same Reason it might be averted Nunquam deliberatum, and so upon the Matter Non est factum. 3 L. 176. Mich. 29 Eliz. C. B. Holland v. Bonis als. Bains.
Infolvent. Instant.

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the Infolvent is reputed to be of the Record, yet 'tis not Record created by any judicial Act; For 'tis not like to a Recognizance, and in all Recognizances Null tis Record is the Pia. The Sealing and Delivery is the Force of such Deeds, as Deeds of Bargain and Sale, &c. and not the Infolvent; but in Cases of Recognizances there they take their Force and Effect by Infolvent and the Consonance only, and not by the Delivery, and therefore the Time of Delivery may well enough be denied which is but Matter of Fact, but the Consonance before the Judge is Matter of Record, and by that the Debt is Created. But Bonds, and Indentures, and Deeds, take their Force by the Delivery, so there is a perfect Act before the Consonance is taken, and before any Infolvent, and Judgment was given accordingly.

4. Against a Deed introlled a Man may plead Infancy, tho' none can plead Non eft Fallium; Per Manwood Ch. B. 2 Le. 65. Patch. 31 Eliz. in Sir Wm. Pelham's Café.

5. The Plaintiff was allowed to plead the Exemplification of a Deed introlled without shewing it. Torh. 153. cites 1590. Fether v. Hawkes and Smith.

6. The Acknowledgement (of a Term for Years, or a Bond) is Evidence of as high a Nature as a Recognizance to make it an Estoppel, and to prevent the pleading Non eft factum, tho' the bare Infolvent is not Evidence; per Holt Ch. J. Comb. 248. in Cafe of Smart v. Williams.

[See more of Infolvements relating to Bargain and Sale at Title Bargain and Sale; and as to other Matters see the several Proper Titles as Decease, &c.]

(A) Infolvent.

1. TILL of late the Chancery would not put out an Infolvent Trustee; for that he was introlled by the Donor; per Eyres J. Comb. 185. Mich. 3 W. & M. B. R. in Cafe of Hill v. Mills.

2. An Infolvent Perfon made Executor cannot be put out by the Ordinary; For he is introlled by the Teftator. Comb. 185. in Cafe of Hill v. Mills.

See Poor.
—Privates.
—Security.
Trust.

Instanl.

(A) What it is and in what Cases allowable.


2. Every Infolvent has the end of the one Time and the beginning of the other. Pl. C. 253. b. Mich. 4 & 5 Eliz. in Cafe of Dame Hales v. Petite. b.

3. Two Informations upon a Penal Law were exhibited at the same Time, and for the same Thing; adjudged that he shall answer neither. Mo. 854. Mich. 14 Jac. Pye v. Cook.

4. 5.
Instant.


See Postscript (R).—Grant (G. 2.)

An Instant is

Priority of Time is respected of Things done together. Fin. Law 18. a. Max. 111.

As where

2. So of Things which happen in an Instant. Fin. Law. 18. a. Max. 112. Misdemeanor of Land held in Chivalry defended to the Tenant of the Land, tho' the Misdemeanor is at the same Instant extant, yet the Tenant should pay Relief if he be of full Age, or should be in Ward if he were within Age. Ibid. cites H. 7. 12.

So Land given to A. Remainder to the right Heirs of B. this is a good Remainder, tho' he cannot have a right Heir during his Life; but it suffices that the Remainder vests at the same Instant that the particular Estate determines. Ibid. cites H. 4. 6.

So of Exchange of Land to have Rent-change out of the same Land is good, tho' it be in an Instant (so that the Rent shall be merged in the Land); For the Law accounts the Exchange of the Land to be first executed. Ibid. cites 9. E. 4. 6.

As where

3. Things which relate to Time long before are as if they were done at the same Time. Fin. Law. 18. a. Max. 113.

Heir, she shall be in immediate by the Baron, so that if the Baron was a Disfessor, and the Heir in by Defeant, yet Disfessor may enter upon the Freehold French Edition in Svo. and there it is 92. b. but in Co. Litt. is pag. 240. b. S. 592.

So if Goods are taken out of the Possession of an Executor who refuses, and Administration is granted to F. & C. In this Case J. S. may have an Action of Trespass and suppose that they were taken out of his Possession; For he shall be said Administrator from the Time of the Teller's Death. Ibid. cites 56. H. 6. 7.


5. The fame Perfon being Patron and Patron dies; the Heir and not the Executor shall present; for all is done in an Instant, the Defent to Heir, and the Falling of the Assistance to the Executor; And where 2 Titles concur in an Instant the eldest Right shall be preferred, as in Case of Jointenants, if one devises his Part, the Title of the Disfessor, and the Survivor happen in an Instant, the Title of the Survivor being the Elder shall be preferred. 5 Lev. 47. Mich. 33 Car. 2. C. B. Holt v. Bishop of Winton & al.

Intendment.
Intendment.

(A) Intendment of Law. What it is, and the Force thereof.

1. Intendment of Law is the Understanding or Intelligence of the Law; and regularly all Judges ought to adjudge according to the common Intendment of Law. Co. Litt. 78. b.

2. By Intendment of Law every Parson, or Rector of a Church is supposed to be Resident on his Benefice, unless the Contrary be proved. Co. Litt. 78. b.

3. One Part of a Manor by common Intendment, shall not be of another Nature than the Rest. Co. Litt. 78. b.

4. Of common Intendment a Will shall not be supposed to be made by Collusion. Co. Litt. 78. b.

5. The Law presumes that every one will act for his own Advantage; and therefore Credits the Party, in whatsoever is to his own Prejudice. Final. Law 10. Max. 53.

As if Tenant in Pracipe quod reddat had pleaded, it be so.

Villain to J. S. and holds in Villenage, the Wit should abate, and Demandant should have had no further Answer to it, tho' it had been false; because by the Plea he had bound and subjected his Blood to perpetual Bondage, which the Law presumes he would not have done, had it not been true. Pl. C. 6. b. In Maxwell's Cafe.


8. There are many Maxims reducible to this Head: As, Sapere Proadcastum pro Sententia.——Judicia in Curia Regis reddit a pro Veritate accipitur, & Judicia sunt quem juris dicta.——De Fide & Officio Judicis non accipitum Quisquis. And many others.

See Grant (P.)—Fines (O. 6.)—Indictment (M. 20. 12.)—in the Notes.——Trial.

(B) Allowable in what Cases. And what may be intended.

1. THE Intent shall not be construed in Trespass; contrary in Felony, per Rede Ch. J. Br. Trespasses, pl. 213. cites 21 H. 7. 27.

Per Rede Ch. J. Br. Trespasses, pl. 213. cites 21 H. 7. 27.—By where a Tyler drops a Stone, which kills a Man, not knowing it. Per Rede Ch. J. Br. Trespasses, pl. 213. cites 21 H. 7. 27.—Put in these Cases, if they Lamme or Hurt a Man, Trespasses les; for there the Intent is not to be construed Per Rede Ch. J. Br. Trespasses, pl. 213. cites 21 H. 7. 27.


3. Covet shan't be intended or presum'd in Law, unless it be expressly averred. Arg. Bridgm. 112.——Cites the Cafe of Tyrer v. Littleton.

4. A Man shall not lose his Goods by Intendment. See Utlawry (A) pl. 2.

5. When one Word may have a double Intendment, one according to the Law, and another against the Law, that Intendment shall be taken which is according to the Law, and this by a reasonable Intendment. 3 Bulle. 306. Mich. 1 Car. B. R.—Yelv. 50. Game v. Harvey.

5 Y

Intent
Intent.

(A) In what Cases the Construction shall be directed by it.


2. The Intent shall be destroyed where it does not agree with the Law. Pl. C. 162. b. Throgmorton v. Tracy.

3. In every Agreement the Intent is the chief Thing that is to be considered, and if by the Act of God, or other Means not arising from the Party himself, the Agreement cannot be performed according to the Words, yet the Party shall perform it Cy-pres the Intent as he may. Arg. Pl. C. 290. Trin. 7 Eliz. in Cafe of Chapman v. Dalton.


5. Uses and Devises are construed according to the Intent of the Parties. Arg. 1 Rep. 101. (g.) Paich. 21 Eliz. in Shelly's Cafe.


7. A *Fine to Consecife of a Statute* by the Conسور to the use of a Stran-ger it is not an Extinguishment of the Execution; for it is faved by the 27 H. 8. 10. of Uses which faves all elder Rights, &c. which the Feoffees then had or after may have. D. 349. pl. 15.

8. Grant of the Bailiwick of a Manor for Years to Leslee for Years of the Manor shall not be construed a Surrender of the Leafe; because it was not the Intent of the Parties. Cro. J. 175. Trin. 5 Jac. B. R. Gibbon v. Searle.


1. If, to whom the Deed is made, has Election given him by the Law to ufe it in the fame Senfe, and to the fame Purpose to which he fays that it was made. Arg. Pl. C. 156. b. Paich. 3 M. 1. in Cafe of Throgmorton v. Tracy.

Intent.


(C) Intention favoured in Equity.

1. The Intention of a Man is not always to be presumed in Equity, as if a Man sells a Term in Trust for one and his Heirs, yet it shall go to the Executor; Per Lord North. Patch. 1683, Vern. 164. in Cafe of D. of Norfolk v. Howard.

2. On a Treaty of Marriage the Man and Woman having each of them Copyholds of Inheritance, they mutually surrender the same to the Use of them two and the Survivor, and the Man dies before Marriage. On his Death, which was about 30 Years since, the Woman entered and enjoyed the Copyhold ever since; it was intimated to be a Trust for the Husband and his Heirs till the Marriage; and Jeffries C. decreed a Re-surrender, and an Account of the Profits from the Death of the Man. Hill. 1686. Vern. 432. Hammond v. Hicks.

3. All Deeds are but in Nature of Contracts and the Intent of the Party reduced into Writing, and the Intention is to be chiefly regarded. In an Act of Parliament the Intention appearing in the Preamble shall control the Letter of the Law; and from the Regard that the Law itself gives to the Intention of the Party, it is, that where there is Fine by Render there shall be no Decree, and to a Rent or Recognizance shall not be extinguished by levying a Fine to the Party. Per Matter of the Rolls. Patch. 1688. Vern. 58. in Cafe of Baden v. E. of Pembroke.

(D) Punished. In what Cases an Intent, without any Act done or completed, shall be punished.

1. If one delivers Money to distribute among the Jurors for his Servant, Jenk 101. it is Maintenance, though he who received it did not distribute it. Br. Maintenance. pl. 52. cites 31 H. 6. 9.

being found upon Hints joined, the Plaintiff had Judgment, and it was affirmed in Error. And Jenkins lays, The * Defendant's Eye was evil.—* D. 95. b. pl. 53. and pl. 59. cites 59. All that an Act

punished, though he does not maintain in Fact, is punishable.

2. Upon the Statute prohibiting the shipping Wool, &c. to transport to any Place over Sea besides Calais, and giving the Mayor of the Staple an Action, &c. the Chief Baron said to the Jury, that if the Wool (then in Dispute) were shipped to be sent into Flanders, and not to Calais, yet de Facto they shall be forfeited, though they were not carried out of the Haven, and that the seizing them was lawful; and directed the Jurors to enquire of the Intent at the time of the Shipping of the Wool, and not what happened after. 37 H. 6. 12 b.

prior to the shipping, the Goods were discharged—S. C. cited D. 95. b. and adds, 'Though by Licence they are driven into the Port of Calais, yet they shall be punished for the Intent.

3. In Decies tantum it is supposed that the Defendant took Money pro Vindice deduce, and also that he gave Verdict against the Plaintiff. The giving the Verdict only is traversed; this is not material; For if he takes Money to this Intent, it is sufficient. D. 95. b. pl. 39.

4. A.
Intent.

4. A. in order to turn one P. out of Possession of an House, caused a
Lease to be made by J. S. (a stranger who had nothing in the Land) to B.
for Years; and afterwards A. caused B. to bring an Action against C.,
who by A.'s Procurement answered to the Action, and A. paid the Fees to
the Attorneys both of Plaintiff and Defendant, as A. hinted to B., and as was
also declared by B. and sent a Copy of the Declaration to C. For which Fal-
lity, being plain to the Court, and for Contempt in refusing to answer to
the Interrogatories the Court were in Opinion to send him to the Fleet.
It was inferred that this was no Folly because it was not executed or
performed, but refuted only in Intention; But it was refuted, that In-
tent is material in Treasons and Transportation of Wares, though no Act be
executed. Manwood Ch. B. held, that in this Case is more than an Intent.
Though there be not any Folly to the Party, yet this is an Abuse to the
Court, viz. Practice to play all Parts, and to abuse the Officers, which
Clench affirmed, and they laid, that this Matter is punishable and to be
punished severely; so he was awarded to be committed to the Fleet and
Fined, but as for the Pillory they would advise. Sav. 31. pl. 73. Mich.
24 & 25 Eliz. White's Cave.

This is Misprinted, and should be 5 & 6 E. 6. An Action was brought
upon this Statute, and found against the Defendant; but it being moved in Arrêt of Judgment, that the Statute
was mis-received, being mentioned to be 6 E. 6. instead of 5 & 6 E. 6. and also that the Plea made a Jen-
fail, it being Quod non recepit; whereas the Statute says nothing of the Receipt, but forbids the Loan
for Usury to be had or taken for, though it be not rendered. But the Reporter says it seems well enough,
and that when Defendant traversed the Surprufage, viz. the Receipt of Interest and so much over, this
is Negativa præsages, and implies Confession, that the Plaintiff lent and delivered the Money for Usury;
and then the Office of the Court is to give Judgment upon this Confession; But no Judgment was gi-
ven, though it was long depending. D. 95. a. pl. 36 to pl. 39. Mich. 1 Ma. Whitton v. Maurice Ma-
rine.

6. The Common Law does not restrain any Man from going beyond Sea
unless restrained by the King's Writ of Ne exeat Regnum, or by the King's
Proclamation. The Writ of Ne exeat Regnum mentions, that the Party
prohibited intends to prejudice the Kingdom. These Writs and Proclama-
tions are necessary for such Restraint; for the Common Law allows not
the Intent to be illusory. Jenk. 88. pl. 70.

This is to be understood where any Act is done or Word spoken, or an Endeavour used to commit Treason, although the
Effect doth not follow; But Imagination in Treason without Act or Word is not punishable nor ever was. Jenk. 88. pl. 70.

Three Persons were arraigned for Misprefion of Treason in counterfeiting and coinage Rex-dollars,
Gilders, and Silvers; and upon Evidence the Jury found that they had mingled much base Metal with the
Silvers and conveyed it over Sea, and uttered it there, and they were found guilty and pardoned. D. 296.
Marr. pl. 25 (but it is misprinted and should be 21) cites Pach. 4 Car. 1 R. the King v. Plum,
Maff, and Greffham.

See more as to Intent or Intention at Devise, Grant, Averment, and the several other Proper Heads.
Inter alia.

(A) Pleadings.

1. Patent of Exemption from the Collection of Tents was pleaded by the Abbots, Quod alius inter Recorda viz. De Termino Pauchae inter alius continetur quod Dominus Rex, &c. rebranching the Words of the Patent and the Witte of Allowance, et quod ViHo, et intellicet Placito, et Pro- cessuit praefexit, &c. (and did not shew any Matter of Pleas or Proces against him) and a Judgment, quod ibidem Abbos De Compoto praefisto ab eo existen- erga Dominum Regem esonerenat, &c. Prætextu &c. and so be has pleaded a judgment, and does not shew upon what Matter the Judgment was: For he says, De Compoto praefisto, and does not shew any Account or Proces against him to account, and because he pleaded by Rehearsal, or by the Words Quod continetur &c. or quod patet &c. and did not aver it by Matter in Fact, nor plead it by Matter in Fact, therefore, per judici- um, the Plea was disallowed, and the Abbots charged of the Collection. pro hac Vice; For Patent or Record shall be pleaded by Rehearsal, but by Matter in Fact; And he ought to have said, that the King by his Letters Patents granted to him &c. and that Proces was made against him to account, and that upon this his Patent was allow'd &c. and then con- clude, Prout patet in such Record &c. Br. Pleadings, pl. 110. cites 21 E. 4. 44.

be a Record. — Ibid. 145. b. cites S.C. — So where A. made a Leave for Years by Indenture to B. and therein B. covenant to pay annually at two Feasts, 7L Rent, at a Place of the Land, and that in Cafe the Rent, or any Part thereof, should be Arrear and unpaid, it should be void, and Lesfor might lawfully enter. The Rent was not paid at the Time. A. without making any Entry, made a Leave of the Predecessors to C. B. brought an Action of Trespass against C. who pleaded the said Leave to B. And that further, in the said Indenture of Leave made to B. it is contained, that if the Rent &c. be Arrear &c. the Leave should be void &c. and it might re-enter; and showed that the Rent was Ar- rear &c. This was held ill Pleading, it being only by Way of Recital, and is no specific Affirmation that B. had covenant that the Leave should be void, but only that the Indenture says so, whereas B. ought to have said, that it should be voided. Ibid. 145. b. Hill. 2 Ma. 1. Browning v. Bilton.

— But if the Indenture had been executed De Febo in Verbaum, then it had been sufficient to have pleaded as here; For by the Involment it would have appear'd to the Justices judicially, and then the saying that it is contained in the Indenture is a putting of them in Remembrance of a Thing apparent to them in the Record. But as it is here, it is not good. Ibid. 145. b. per Bromley J.

2. Sci. fa. to execute a Fine of 200 Acres of Land; Sulvandyd said, that pending this Suit Parties J. B. had brought a Formenon of 100 of the Acres of Land Inter alia, and had recovered, and had Execution, and prayed that the Writ should abate of this Parcel; and * no Plea, because he pleaded Inter alia; For a Recovery shall be pleaded certain to every Intent, and the said Words (Inter alia) are not certain to any Intent; For he ought to have said, That he brought Formenon of 200 Acres, and recover'd, and had Execution, of which these 100 Acres which are now in Demand are Parcel. Br. Pleadings, pl. 115. cites 22 E. 4. 8.


— S. C. cited by Monta- nue Ch. J. and said, that every Reco- very is intire, and therefore to say, that Inter alia he recovered &c. is not good, but must plead certainly. But where an Act of Parliament is general, and has several Branches (in the 21 H. 6.) one to refrain one thing, another to refrain another &c. so that Branches (the) contained in one Chapter make several Acts of Parliament, and concern several Matters, in such a Case, where one Branch only concerns the Party, it is sufficient for him to recite that only, and there Inter alia traducta fort is, good Pleading, For the Recital of this Branch only, is a Recital of an entire and several Act of Parliament. But otherwise it is of a Recovery, because all contained in the Recital is only one Recovery, and therefore the whole ought to be recited, and fo a Diverfit. Pl. C 65. a. b. Mich. 2 E. 6. in Case of Dive v. Maringyham. — S. P. As to pleading an Act of Parliament 2 Sd. 86. Per Glyn Ch. J. Tri. 1618.

— Orig. is (100) and to it is in all the Editions, and therefore misprinted.
Inter alia.

3. And by him, in Trespass the Defendant said, that the Place is 100 Acres of Land, of which J. S. was seised in Fee Inter alia, and sojoyned him thereof Inter alia, [tis no Plea] but shall say at supra; and after, Su-lyard amended his Plea accordingly. Brooke makes a Quare, if it may not be permitted in a Feoffment, tho' is not good upon Plea of Recovery. Br. Ibid.

4. In Avowry for Rent it was pleaded, that a Fine was levied Inter alia of the Rent to the Use of a Stranger, and also a Recovery. The Plaintiff, in Bar to the Avowry, pleaded Nient Comprize in the Fine or Recovery. The Avowant demurred; it was argued that the Avowant was not good, because it was double, it being Nient Comprize in the Fine or Recovery, and it was held not good: Then it was urged, that it was not good, because the Plea was, that the Fine was levied Inter alia of the Rent, but ought to have recited all the Record, it being intire, and cited 22 E. 4. 8. But per Cur. contra, because the Course is not fo. And Coke Ch. J. saith, it was well pleaded; For should he be compelled to recite all that is mention'd in the Fine, it might, perchance, make a long Plea, and nothing to the Purpose. And he likewise held it good, tho' not said, Per Nomen. Roll. R. 72. Mich. 12 Jac. B. R. Parvis v. Yeaton.

5. In an Affirmation the Plaintiff declar'd, that the Defendant, in Consideration of a Marriage &c. Inter alia promised to pay so much; After Verdict for the Plaintiff, Judgment was given against him, because he ought to set forth the whole Promise, which is intire. All. 5. Mich. 22 Car. B. R. Powell v. Waterhouse.

6. A. by his Will made B. and C. Executors, and appointed that they should dispose of his Goods according to a Schedule thereto annex'd, and died. B. and C. then'd the Will, without the Schedule, to the Spiritual Court, who refused to grant Administration to them, unless they would give Bond to perform the Decree of that Court, as to the Surplus of the Goods after Debts paid. They gave such Bond. And the Spiritual Court decreed them to pay to 15 of 's Relations 1500.; and other Monies to others. Afterwards, the Money not being paid, the Relations brought an Action upon the Cafe, and declared, That, whereas among other Things, it was decreed, without mentioning those other Things, or the Obligation, which was the Foundation of the whole; and this being mov'd in Arrest of Judgment, it was anwer'd, and reluct'd, That this being an Action upon the Cafe, it is not requisite to declare specially; For the Non Performance is the Cause of Action, and not the special Performance. 2 Sid. 85. Trin. 1658. Chambers v. Cooker.

7. And it was held, that an Arbitrature as well as a Decree may be pleaded Inter alia. And the same Law of a Feoffment upon Condition; For the Condition remains to be shown in the Replication, as in the principal Cafe, to be shewn in Defeasance, but it is otherwise of a Condition precedent. Ibid.

8. The old Way of pleading a Record, was to begin at the Original, and not to omit so much as any Contumacy, Summons or Severance; But if there are divers Matters in a Record, it is sufficient to plead any of them Inter alia. Per Holt Ch. Ch. J. Comb. 253. Pachen 6 W. & M. B. R. Gold v. Burkett.

of Precedents would make a Law, but seem'd to approve of the Exception; for he said, that in Arrowsy, it would be ill to lay he demised such Land inter alia. 12 Mod. 319. Mich. 11 W. 3. Orby v. Pullen.—The Cafes in the Margin were cited.

Interest.

(A) What is an Interest.

1. Interest is bound to pay to B. 2% per Ann. during 20 Years, towards the Education of his Son. Per Mfonon, Thofe Words, (towards the Education of his Son) are idle Words, and the Payment shall endure if the Son die. Quere. Dal 116. pl. 7. 16 Eliz.

2. One, that takes Land to Halves to Sow, has no Interest; For 'tis only a Bargain. Goldsb. 78. Hill. 30 Eliz. Hare's Cafe.

3. An Award, concerning a Lease for Years of Land, was that one of them should have the Land. 'Twas agreed that this is a good Gift of the Interest of the Term, and cites 12 Anti. 25. if it the Award were that he should permit and suffer the other to enjoy the Term, this does not give the Interest in it. Cro. E. 223. Patch. 33 Eliz. B. R. Truth v. Ewer.


5. Lease to three for their Lives, with a Covenant that the Land shall remain to the Survivor of them for 99 Years; by this the Survivor has a good Interest. Brownl. 136. Patch. 4 Jac. Clerk v. Sydenham.

6. If the Lease incur, and then the Ordinary dies, the King shall present, and not the Executors of the Ordinary; For 'tis rather an Administration than an Interest. Hobb. 154. Mich. 10 Jac. in Colt and Glover's Cafe. Hobb. cites F. N. B. 34. (G) 25 E. 3. 24. Dy. 87. is doubtful whether to the King or to the Metropolitan.

7. The Lord Mountjoy, feized of the Manor of Canford in Fee, did by Deed indented and intolled bargain and fell the fame to Brown in Fee, in which Indenture this Clause was contained, Provided always, and the said Brown did covenant and grant to and with the said Lord Mountjoy, his Heirs and Affigns, that the Lord Mountjoy his Heirs and Affigns might dig for Ore in the Lands (which were great Waits) Parcel of the said Manor, and to dig There also for the making of Allen. Resolved, That this did amount to a Grant of an Interest, and Inheritance to the Lord Mountjoy, to dig &c. Co. Litt. 164. b.

8. At Guild hall: In Ejection for a Metlingage in London, it was objected against the Title of the Plaintiff, that this was a Metlingage above 40 l. per Ann. Rent, and that the Canton of the City is, that there ought to be Warning given for the Space of half a Year, where the Metlingage is of such a Rent, and by the Space of a Quarter of a Year, where it is under such

See Effarce.
—Devife.
—Licencé.
—Truf. 455

Godsb. 17.
Lord Mountjoy v. Lord Huntingdon

Salk. 292. cites Patch. 15 Car. B. R.
Lunce v. Dodin.
such a Rent; The Question was, if this Custom gave the Party an Interest; or only intituled him to an Action, if he be ousted within the Time, as in the common Cases of Leases for Years, or at Will, with Agreement for a Quarter's Warning; tho' Holt Ch. J. said, that he had heard that North Ch. J. had ruled upon Evidence, that the Custom gave an Interest; and tho' it was objected, that if it did not give an Interest, it was not of any Benefit to a Citizen, who ought to have a reasonable Time to remove his Effects; yet the Ch. J. inclined contra, and it was referred for his Consideration. Skin. 649. Trin. 8 W. 3. B. R. Tyley v. Seed.


10. Tenant for Years without Impeachment of Waste has only a bare Power without an Interest. Per Holt Ch. J. 1 Salk. 368. Mich. 2 Ann. in Poole's Case.

11. Licence to use Ground or Yard gives an Interest in it, so that the Licence is not revocable, but it amounts to a Lease at Will; and this seemed to be the Opinion of the Court, and that thereby had such a Possession, as not to be turned out by a Revocation, but by an Ejectment. 11 Mod. 42. Patch. 1705. B. R.; Anon.

12. A Mortgage is an Interest in Land, and on Non Payment, the Estate is absolute in Law, and his Interest is good in Equity to intitle him to receive and enjoy the Profits till Redemption, or Satisfaction, and, on a Foreclosure, has the absolute Estate both in Law and Equity. Per Pratt Ch. J. 9 Mod. 196. Roper v. Ratcliffe.

See Devise—

Exeaeutor

Devise—

Portions—

Remainder.

Per Popham. Yelw. 8°. In Case of Clerk v. Siddenden—


1. If A. makes a Lease to B. for Life, and after his Death to the Executors and Assigns of B. this is an Interest in B. to dispose of it. But if it had been limited to B. for Life, and afterwards to the Executors and Assigns of C. this is a bare Power in C. and his Executors; because they are not Parties or Privies to the first Interest. Brownl. 136. Patch. 4 Jac. Clerk v. Sydenham.

2. A. devised a Term to his Wife for six Years, and made her Executrix, and that after the six Years ended, then John my Son, if he come Home, shall have the Benefit of the said Leafe, during the Residence of the said Term, And if John does not come home, then William my Son shall have &c. till John my Son do come Home. The Wife claims as Legatee. William makes his Will, and devises the Leafe to J. S. and dies. The six Years expire, John being not come Home; this was Held a good Devise by William, and that 't was not a Possibility in William, but an Interest in the Term after the six Years expired. Cro. J. 509. Mich. 10 Jac. B. R. Sheriff v. Wrotham.

(B) What an Interest, and what a Possibility.

(D) Interest
(C) Interest Money. Allocaible in what Cases, other than Legacies, Mortgages and Portions:

1. Where an Estate is devised for payment of Debts, Chancery will not allow Interest for Book-Debts. 1670. 2 Ch. R. 64. Dolman v. Prisman.

2. Where Lands are charged with Payment of a Sum in Grefs, they are also chargeable in Equity with payment of Interest for such Sum. Hill. 29 Car. 2. Fin. R. 286. Shippon v. Tyrrell.

3. Interest is recovered by way of Damages, where Damages are recovered Rationem Detentionis debiti; but not where Damages only are recovered. For Interest is not recovered Occasionally Dampnorum; per Powell J. 2 Salk. 623. Hill. 10 W. 3. B.R. Sweatland v. Squire.

4. A Bill was to foreclose an Infant, and an Account was decreed. Interest 10 The Mufters report 2600 l. due; a subsequent Order being to compute by Principal, from the Time of Stating the Account, MS.


A Master’s Report, computing Interest due on a Mortgage, makes that Interest Principal, and to carry Interest; For a Report is as a Judgment of the Court, and appoints a Day for the Payment, carrying on Interest to that Day; and the Party’s Disobedience to the Court, in not complying with the Time of Payment, ought to subject him to Interest; per Ld. C. Parker. Wins’s Rep. 653. Trin. 1728. Brown v. Barkham.

But if the Mortgagor pays an Account whereby he occurs so much due for Interest. Ld C. Parker questioned whether this will make the Interest Principal, because of itself it flows from Intention or Agreement for that purpose. Wins’s Rep. 653. Trin. 1720. in Case of Brown v. Barkham.

5. Lands by Deed or Will subjected to the Payment of Debts; if there be a Bond Debts, and the Interest has outrun the Penalty, it can’t carry Interest beyond the Penalty; For the Design of the Settlement was not to increase the Debt beyond what is due, but to give a further Security: However if Device or Trustee neglects to pay in a reasonable Time, shall after such neglect pay Interest beyond the Penalty; per Ld. C. Cowper 1707. 1 Salk. 154. Anon.

6. A Term was vested in Trustees for Payment of all Debts he should owe at his Death, without paying one Debt before another. There were owing Debts by Bond, and by Simple Contract. Ld. C. Harcourt declared, that by this Trust Term, the Simple Contract Debts became as Debts due by Mortgage, and consequently should carry Interest, as well as the Debts secured by Bond. Wins’s Rep. 228, 229. Trin. 1713. Car v. Burlington (Counterparts.)

7. Where by a General and National Calamity, nothing is allowed out of Lands which are aligned for payment of Interest, it ought not to run on during the Time of such Calamity. MS. Tab. cites 25 June, 1715. Baill v. Achton.

6 A 8. A
8. A Recognizance was entered into to pay 100 l. a Year Annuity to a third Person. The Annuity was in Arrear several Years. Decreed per Ld. Cowper, that, the Recognizance being in Nature of a Bond, the Arrears were a Debt secured thereby, and to must carry Interest from the Time they became respecitively due. Mich. 3 Geo. 1. G. Equ. R. 142. Legate v. Shewell.


10. By Marriage Articles the Lady's Father was to pay several Sums at several Times for discharging the Husband's Incumbrances; he advances Money to the Son in Law, and maintains the Wife and Child for two Years; such Money, and allowance for Maintenance, shall be added to the Foot of the Account, and not carry Interest. MS. Tab. cites 1721. Kirwin v. Blake.

11. Where Excessive Rates are allowed for Work in respect of slow Payment, there should be no Interest allowed; For Interest is only allowed to supply the want of prompt Payment. MS. Tab. cites 27 Feb. 1723. Dutches of Marlborough v. Strong.

12. An Annuity of 25 l. a Year was devised by A. to J.S. out of A's Personal Estate, payable Quarterly, and the same being 3 Years in Arrear, it was inferred that it should carry Interest. But the Court said, that this is only done where there are great Arrears, but it is not usual to compute Interest for so small a Sum. Trin. 1723: at the Rolls. 2 Wms's Rep. 163. Batten v. Earnley.

The Arrears of Annuity, or Rent, or Charge, are never decreed to be paid with Interest, but where the Sum is certain and fixed, and also where there is either a Clause of Entry, or Nothing done, or some Penalty upon the Grantor, which he must undergo if the Grantee sued at Law, and which would oblige him to come into this Court for Relief, which the Court will not grant but upon equal Terms, and those can be no other, but decrees the Arrears with Interest. Per Ld. C. Talbot. Cales in Chan. in Ld. Talbot's Time. 2. Mich. 1755. in Cale of Lady Ferrers v. Ld. Ferrers.

13. Money due to Testatrix was out at Interest, and the Executor laid out considerable Sums of his own Money, in payment of her Debts, before any came to his Hands (out of the Estate) as he suggested. Ld. C. King decreed him his Money, and all Just Allowances; But it being inferred that he should have Interest for the Money so laid out, his Lordship said, if Interest be a Just Allowance, the Maitre will allow it; but if not, [and he allows it] except to his Report. Tho' he said, he would not say, that in no Case the Executor should have Interest allowed, yet he should be extremely cautious of doing it for Money expended, before he receives it out of the Estate, the Consequence whereof he very well saw. But the Maitre informing the Court, that he never allowed Interest, unless a particular Order was for that Purpose, the Court referred the Consideration of Interest and Costs till after the Maitre's Report. Sel. Ch. Cafes in Ld. King's Time. 50. Mich. 1725. Macarte v. Gibbon.


16. Interest was allowed upon Demands due by Covenant, tho' objected that they were not liquidated, and only found in Damages. MS. Tab. tit. Interest cites 28 Apr. 1729. Parker v. Harvey.

17. Devise for Life of a Church Lease for 21 Years Remainder over renewed the Lease at the Expiration of 10 Years, and paid 36 l. for a Fine, and a Guinea for the Lease. Ld. C. King denied to allow Interest for the Fine, because she was to have her Life in the renewed Lease, by Virtue of the Will, and tho' she might not perhaps outlive the first Year, yet she had her Chance for it, and so denied Interest, but allowed the Charges of the Renewal. 2 Wms's Rep. 456, 459. Patch. 1725. Addis v. Clement.
Interfet.

18. M. a Widow, by Settlement and Will of her late Husband, was intiated to a Jofinture of 1000 l. a Year, but was kept out of Possijjon by the Hear as Law, (a Son of her Husband by a former Venter) and therefore inflected upon the Arrears and Interfet from her Husband's Death. But Ld. C. Talbot faid, that Interfet for the Rents and Profits of an Eftate was never decreed yet, the Sum being entirely uncertain. And tho' it may be faid that the Lady is intiated to an Eftate of 1000 l. a Year, yet that is not sufficiently certain, being only the Perception of the Profits of an Eftate, which are not to be paid at any one certain Time, but only as the Tenants of the Land bring them in, some at one Time, and some at another. Cafes in Chan. in Ld. Talbot's Time. 2. Mich. 1735. Lady Ferrers v. Ld. Ferrers.

(D) In Cafes where Interfet shall be allowed, from what Time the Allowance shall be.

1. WHERE a Defendant inflicted on 820 l. to be due to him, but upon the Mafter's Report only 801. appeared due, the Court ordered Interfet for the 801. from the Time of confirming the Report, and not before; because 'till then it was not any liquidated Sum. Wms's Rep. 376, 377. Trin. 1717. Att. Gen. at the Relation of Hillington Overfeers v. the Brewers Company.


2. A. having no Child, defided to M. his Wife, (with whom he had no Portion, but had the Expeftation of a Real Eftate) 500 l. a Year out of all his Eftate, (which was very great) for her Life, and made her Executrix, and Reufiduary Legatee; and fubjeft to the 500 l. a Year, devised his real Eftate to R. L. Afterwards there was an Agreement between M. and R. L. that on M's renouncing the Executrixhip and delivering over the Perfonal Eftate to R. L. he would indemnify her, and pay her 540 l. a Year (instead of 500 l. a Year) free from Taxes, half yearly. The Arrears of the 540 l. a Year, were by the Mafter reported to be 820 l. and Ld. C. Cowper decreed Interfet from the very Day of Payment. Upon an Appeal to Ld. C. Parker, it was among other Things infifted, that according to the Rule of the Court, in Cena of an Annuity, tho' granted for a Jointure, the Interfet fhould becomputed only from the Day when the Subfequent Payment after the Arrear incurred became due. But Ld. C. Parker faid, that Interfet is a Thing pretty much in the Difcretion of the Court, and that since Ld. C. Cowper, that Great Matter of Equity, who heard the Merits, appointed payment from the very Day it became due, and since it appears to be the Widow's Bread, the Decree shall stand; and faid, that he did not approve of the Diversity, that the Interfet should be carried on from the Half Year after the Default of Payment, and asked if the Payment were yearly, whether it fhould carry Interfet but from a Year after the Expiration of the Year, when what became due, was all the Widow had to live upon? Wms's Rep. 541 to 544. Trin. 1719. Linton v. Linton.

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(E) Upon

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(E) Upon Interest, and * in what Cases it shall exceed the + Penalty.

1. If one by Deed or Will, subjects his Lands to the Payment of his Debts, and [amongst the Rest] there is a Debt due by Bond, and the Interest has out-run the Penalty, it shall not carry Interest beyond the Penalty. For the Design of the Settlement was not to increase the Debt beyond what is due but to give a farther Security. But if Debtor or Trustee neglects to pay in a reasonable Time, he shall after such Neglect pay Interest beyond the Penalty; per Lord C. Cower. 1 Salk. 154. Trin. Vac. 1707. Anon.

2. Equity will never carry Interest beyond the Penalty where there has been no Demand for many Years. MS. Tab. cites 29 Apr. 1721. Galway v. Ruffel.


4. So where a Bond is only a Collateral Security, Interest may be carried beyond the Penalty. MS. Tab. cites 1721. Kerwin v. Blake.

(F) How much; Where the Debt was contracted in a Foreign Country.

1. The Plaintiff, being a Merchant, had Sugars due to him in Nevis on a Bond with Interest at 10l. per Cent. being the Common Interest of the Country; he intrusted one J. S. his Agent there, to receive those Sugars, and to return them hither. J. S. received the Sugars, but never returns them, but dies, leaving the Defendant his Executor, against whom the Plaintiff brought his Bill; and the it was urged that J. S. being an Attorney, should be excused from Interest, or at most should only pay the Interest this Country allows; yet it was held that the Defendant should pay 10l. per Cent. Interest, and that J. S's being only an Agent or Attorney, did not execute him, because he had misbehaved himself. Trin. 1704. Abr. Equ. Cases. 289. Ellis v. Loyd.

2. J. S. contracted a Debt in Ireland, for which he gave a Bond, and coming into England he was arrested here for the Debt; and having brought a Bill for Relief, he intimated among other Things, that he should not be obliged to pay Irish Interest, the Money being now to be paid here; but the Court held, that he must pay Irish Interest, and that in all Cases Interest must be paid according to the Law of the Country where the Debt was contracted, and not according to that where the Debt is sued for; but held it reasonable as the Money was now to be paid here, that the Plaintiff should have an Allowance for the Return of it out of Ireland. Trin. 1702. Abr. Equ. Cases 289. The Earl of Dungannon v. Hacket.

And several Precedents were cited to this Purpose, as the Case of Lane v. Nichol in which Turkish Interest was allowed on a Contract made there, tho' both Parties had been long in England. Abr. Equ. Cases. 289. in Case of Earl of Dungannon v Hacket. — So Indian Interest was allowed on a Contract made there between Karvep and the East India Company. Abr. Equ. Cases. 289. — And a Case on the Earl of Donegall's Will, who, living in England, devised a Rent-Charge out of his Estate in Ireland; and it was held, that it should be according to the English Value, the Will being made here. Abr. Equ. Cases. 289.

3. A Ship and Cargo of J. S. were bought by the East India Company's Agent in the Indies, of the Commander who had no Power to sell, and this was done by the Treachery of the one, and indirect Practices of the other, and seemingly without the Privy of the Company, tho' for their
Use upon an Issue directed, the Value of both was found to be 3600l.
and Interest being infulted upon for the Plaintiff, and that it should be
Indian Interest, it was objected, that the Value being uncertain, it could
carry Interest only from the Time of the Value ascertained by the Jury; and
that the Plaintiff had rested 13 Years upon his own Bill, and li the
allowing Indian Interest, would make him Gainer by his own Delay. But
Ld. C. Cowper thought the taking a Man's Goods, which he was trading
with a much stronger Cafe, than having Money by Lean, or even de-
taining Money from him wrongfully, the Trading being in order to turn
it into Money and directed that the Maffer fee what the Interest of
Money was in the Indies during those Years, and what the Charge of re-
turning Money thence to England, and to allow Indian Interest deducting

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Interrogatories.

(A) What they are; and exhibited by whom.

1. A R E Questions exhibited in Writing to be ask'd Witnesscs, Part-
ies, or Contemnor to be examined. P. R. C. 217.
2. Are exhibited by the Party or directed by the Court, to be propofed, Cart. Canc.
and asked the Witnesscs examined in the Cafe, touching the Matters there-
of, or fome incident therein. P. R. C. 219.
3. They are either directed on the Part of him who produces the Wit-
nesses, or counter Interrogatories on the Behalf of the adverse Party. P. 242.
R. C. 219, 220.
4. Ordinarily, both Plaintiff and Defendant may exhibit direct and S.P. for when
counter Interrogatories. P. R. C. 220.

it is necessary as well to consider what the other fide may examine unto, as what we ourselves have to
prove; that if counter Interrogatories may be exhibited if there be Occafion. Cart. Canc. 242.

(B) Examined on Interrogatories; in what Cases, and at
what Time, on Contempts, &c.

1. This Court in regard the examining the Defendant on Interrogato-
ries is omitted out of the Decree would not now order it. 29
2. The Defendant is sometimes ordered to be examined on Interrogato-
ories to discover Fraud and Prefumptions, or a Contempt, or both. P. R. C. 217.
3. If a Party deny the Contempt, he is commonly by Order examined
before a Maffer on Interrogatories settled by him, who shall certify if the
Contempt be proved or no. P. R. C. 218.
4. A Person in Contempt appeared on an Attachment, and offered to be
examined on Interrogatories; the Court ordered them to be hardened and
filed in 4 Days, (tho' the common Time allowed is 8) or the Party to
be discharged. P. R. C. 219.
5. One who is by the Rule of the Court to be examined upon Interro-
gatories in the Crown-Office, ought to attend the Maffer of the Office,
who is to examine him within 4 Days after the Interrogatories are put in for
him. Note, upon

6 B
Interrogatories.

(C) Examined on Interrogatories How. On Contempts, &c:

1. C Counfel was ordered to have not a Copy, but a Sight of the Interrogatories, to which the Defendant was to be examined. Chan. Cales 66. Palech. 17 Car. 2. Gower v. Baltinglas.

2. A Man is charged with a Contempt; upon Interrogatories he cleared himself on his Oath, the other Party can proceed no further in this Matter, but shall take his Remedy by Action if he will. Comb. 63. Mich. 3. Jac. 2. B. R. Anon.

3. On Affidavit of Extortion, tho’ the Court of the Court be to take a Recognizance to answer Interrogatories, yet in Case of great Oppression, the Court may commit the Party, and he must answer in Vinculis; per Holt Ch. J. Comb. 448. Trim. 9. W. 3. B. R. Anon.

(D) Examined on new Interrogatories. In what Cales:


2. Defendant may be examined in Court upon new Interrogatories, if it be a joint Commision. Toth. 176. cites 13 Car. Lewis v. Owen.

3. When the Party has a Commisioner present, he can never examine new Interrogatories by Commision as to the Merits; but a Commision was ordered on Suggestion of Alteration and Interlineation of Exhibits after a former Commision; For this has happened since, and has not happened to by the Commisioner, not being then in Being. Chan. Cales 273. Hill. 27 & 28 Car. 2. Richardson v. Louther.

4. A Defendant, having answered the first Interrogatories imperfectly, was ordered to be examined on New ones, which being exhibited, he answered only the former; upon Motion the Court ordered him to pay Costs, to be taxed by a Master, as not having Obeyed the Order of Court, but given the Plaintiff a needless Expenue. P. R. C. 218.

5. A Defendant ordered to be examined to an Account is examined short; the Plaintiff prays, that the Interrogatories may be amended, which the Court denied. P. R. C. 218.

6. When Witnesses are examined in Court upon a Schedule of Interrogatories, there shall be no new Interrogatories put in to examine the same Witnesses. P. R. C. 221.

7. If either Party have a Commision de Novo after he hath examined on a former, he must examine on the same Interrogatories, as were exhibited by him.
Interrogatories.

Interrogatories for proving particular Points are
upon a Reference to a

Matter, shall be directed by the Matter, and shall be to such Points only. P. R. C. 221.—Curs. Canc. 245.

9. Where Interrogatories are exhibited in the Examiner's Office and Witnesses examined thereon, either Party may, without Application to the Court, or Order for that Purpose, exhibit one or more Interrogatories, or a new Set of Interrogatories for further Examination of the same, or other Witnesses. Ch. Prec. 386. Pach. 1714. Andrews v. Brown. But where a Commissioner is appointed to hear Examination of Witnesses there no new Interrogatories, or Set of Interrogatories, can be exhibited without Motion and Order of Court; Agreed both by Court and Bar. Ch. Prec. 386. Andrews v. Brown. — Abr. Equ. Cases 253. S. C.

10. Witnesses were examined, and Publication passed, but the Depositions were suppressed, because the Interrogatories were leading. Afterwards a new Set of Interrogatories were allowed to be settled before a Master, for the Witnesses to be re-examined. Trin. 1718. Ch. Prec. 493. Spence v. Allen.

(E) How they must be; and in what Cases set aside, or not read.

1. THEY must be drawn, or perused and signed by Counsel; else they are to stand suppressed. P. R. C. 220.

2. They must be engraved on Parchment. P. R. C. 220.

3. Interrogatories must be Short, Pertinent, and to the Points necessary. P. R. C. 220.

4. They must be exhibited before any Witness be examined on either side. P. R. C. 220.

Examined thereby. Curs. Canc. 242.—If the Witnesses be examined before an Examiner of the Court, the Interrogatories must be produced before, and left with them: If in the Country on a Commission, the Interrogatories must be either annexed to the Commission at the signing thereof, or by Consent of Parties (which now seems, generally to be intended) they may be exhibited before the Commissioners on opening the Commission. P. R. C. 220.—Curs. Canc. 242.

5. Christian Name was not taken in the Title of the Interrogatories; per Car. the Depositions cannot be read, nor can the Title be amended, the most of the Witnesses since their Examination were gone to Sea. Pach. 1702. 2 Vern. R. 435. White v. Taylor.

6. If an Interrogatory is leading it is good cause to suppress the Deposition. See 2 Vern. 472. Mich. 1704. in the Case of Callow v. Mime. 22 Niles Ord. Ch. 216 S.P.

So the sending a Deposition ready drawn to a Witness, or if brought by the Witnesses in writing, and delivered so to the Examiner or Commissioners, is a sufficient Cause to suppress a Deposition. 2 Vern. 472. in Case of Callow v. Mime. These are accounted leading Words, Did you not do, or for, such as a Thing, &c. and so are all such as are too particular, or seem to point more to one side of the Question than the other. P. R. C. 220.—Curs. Canc. 242.

(F) Demurrer
(F) Demurrer to Interrogatories, for what Causes.


2. A Witness cannot demurr because a Question asked him is not pertinent to the Matter in Issue; for it did not concern the Witness to examine what was the Point in Issue; per North K. Patch. 1683. Vern. 165. Alston v. Alston.

3. In Case of a Prosecution of a Contempt for Breach of an Order of Court, or otherwise grounded upon an Affidavit, the Interrogatories shall not be extended to any other Matter than what is contained in the said Affidavit or Order; and if any other be exhibited, the Party to be examined, may for that Reason demurr to them, or refuse to answer them. P. R. C. 219.

4. If impertinent Interrogatories be put to a Person who is ordered to answer Interrogatories, his way is to Demurr to them; for there is no way but to answer, or demurr. And there ought not to be an Interrogatory leading the Party to a Penalty. 12 Mod. 499. Patch. 13 W. 3. the King v. Raw.

(G) Punishment for refusal to be examined thereon.

Sec. (D) pl. 4.

AFTER a Party is brought in upon a Contempt, and is ordered to be examined on Interrogatories, if he refuses, he will be committed upon a Plea of Contempt, and is ordered to be examined, and departs without being examined, and without Licence. P. R. C. 219 — Car. Cofi. 94. cites Ord. Chan. 158. — And if he shall, upon his Examination, or by Proof, be found in Contempt, and thereupon committed, he shall clear such his Contempt, and pay the Prosecutor his Costs before he be discharged of his Imprisonment. Car. Cap. 95. cites Ord. Chan. 70. — And the he be cleared of his said Contempt, yet he shall have no Costs in respect of his Disobedience, in not submitting to be examined without the Prosecutor's Trouble and Charges in moving the Court as aforesaid. Ibid.

Intestate.

(A) Intestate. Who.

Intestate.

1. THERE are divers kinds of Intestates, one that makes no Will, another that makes a Will and Executors, and the Executors refuse, in this Case the Deceased dies Quasi Intestate; and this is within the Statute of W. 2. cap. 19. 2 Inst. 397.

And if he, to whom the Ordinary grants Administration after refusal of the Executor, in Action against him pleads that the Deceased made Executors, so to Administer As he was, that he died intestate; the Plaintiff may sue the Special Matter to maintain his Write. Br. Administrator, pl. 32. cites 4 H. 7. 15.

2. If A, by Will appoints that the Executors of J. S. shall be his Executors, and he dies, living J. S. there till the Death of J. S. this is a Dying Intestate of A. For in the mean time A has no Executor. Pl. C. 281. b. by Dyer and Wallis. Patch. 7 Eliz. in Case of Greystokes v. Fox. The
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the Year he dies intestate, and therefore for this time the Ordinary has Power to commit Administration, and it shall never be disproved; Per Dyer and Walsh. Pl. C. 281. b. in Case of Greysbrooke v. Fox. — And if Executor proves the Testament, and dies intestate, there, from the Death of such Executor dying intestate, the first Testator died intestate, and for that Reason the Ordinary may grant Administration, Per Dyer and Welton. Ibid. 281. b. 282. a.

3. Where the Strictness of the Civil Law is observed, there a Man cannot die partly testate and partly intestate; tho' here in England, where that ceromontial Strictness is not observed, but all Immunities enjoy'd, being not obliged to any other Observance in making Testaments than what is Jure Gentium, a Man may severally ways die partly testate and partly intestate. 1 Godolph. Orp. Leg. cap. 19. S. 4.

4. Error was assigned that one pleaded (cum Testamento annuo qui obiit intestatus,) which is absurd and repugnant; Per Cur. it is well, for though one make a Will, yet if he make no Executor he is intestate. Comb. 20. Pauch. 2 Jac. 2. B. R. Anon.

Inventory.

(A) What it is, and the Original.

1. An Inventory is a Description or Repertory orderly made of the Goods and Chattels of a Person deceased, valued and appraised by four indifferent and credible Persons, or more, experienced in such Affairs, and of the Neighbourhood to the Deceased: Which Inventory every Executor or Administrator ought to exhibit to the Ordinary at such Times as he shall appoint. This Inventory proceedeth from the Civil Law; for whereat by the ancient Law of the Romans the Heir was obliged to answer all the Testator's Debts, whereby Inheritances or Heritages did often become to many Persons rather prejudicial, than profitable or advantageous, the Emperor Julianian, the more to encourage Persons to a stait, and take upon them this charitable Office, ordained, that if the Heir would first make and exhibit a just and true Inventory of all the Testator's Substance coming to his Hands, he should then be no further charged, than to the Value of the Inventory. Godolph. Orph. Leg. 159. S. 1.

(B) Necessary; in what Cases; and the Punishment of not making it.

1. 21 H. 8. THE Executors, or such Persons to whom Administration is committed, taking to them two at least, to whom two other Persons being next of Kin to the Person dying, and in their Absence two other benefit Persons, shall make a true Inventory of all the Goods, 2003. to be as well moveable as not moveable, that were of the Person deceased; and the same shall cause to be indented, whereof the one Part shall be by the Executors or Administrators, upon Oath to be taken before the Bishop, &c. delivered into the keeping of the Bishop, &c. and the other Part to remain with the Executors or Administrators, and no Bishop, &c. shall refuse to take any such Executor, leaving every
S. 8. Provides, That this Act shall not prejudice any Ordinary, or other Person, having or hereafter to have Authority for Probate of Testaments, but that they may convene before them Executors to prove or refuse the Testament, &c. and to bring in Inventories, &c.

2. The Executor had need be cautious that he do not intermeddle with, or administer the Testament's Goods, until he hath made an Inventory: For although the Act of an Executor is said to hold in Law before the proving of the Will, and the making of an Inventory; yet for intermeddling with the Testament's Goods, as Executor, before he hath made an Inventory, or caused the same to be made, though not exhibited, he was according to Law punishable; unless it were for doing such Things as could not conveniently be deferred till the Inventory were made, as concerning Things relating to the Funerals, or disposing of such Things as Concerned securitate or possession, and such like. Besides, if he make not an Inventory, and yet administer, he may be compelled to discharge out of his own Purses more Debts and Legacies than perchance the Testator's Goods and Chattels did amount to. Godolph. Orph. Leg. cap. 20. S. 5.

3. Where the Defendant did not exhibit an Inventory, the Court charged the whole Legacy on him after 20 Years, though he pretended he had no Affairs. Toth. 183. cites 15 Car. Hewet v. Baker.

4. 22 Car. 2. cap. 10. S. 1. Enacts, that all Ordinaries and Ecclesiastical Judges, having Power to commit Administration, shall, upon their granting Administration of Testator's Goods, take Bonds with Sureties, two or more in the Name of the Ordinary, conditioned (among other Things therein expressed) to make orcause to be made a true and perfect Inventory of all and singular the Goods, Chattels, and Credits of the said Deceased, which have or shall come to the Hands, Possession, or Knowledge of him, the said A. B. (the Administrator) or into the Hands and Possession of any other for him; and the same so made to exhibit or cause to be exhibited into the Registry of &c. or before the Day of &c. next ensuing.

5. The Executor had not an Inventory; wherefore it was said, they ought to intend Affairs. 12 Med. 340. Mich. 11 W. 3. Anon. (C)
Inventory.

(C) Of what Things; And how.

1. An Inventory exhibited by Administrator, shall not after him to plead a Bar. 215. Deed of Gift of the same Goods, in a Suit against him in the Spiritual Court by one of the next of Kin to account, and Prohibition granted accordingly.—But for Debts and Things in Action which cannot pass by the Gift, for them he shall account. Koll. R. 123. Hill. 12 Jac. B. R. James v. James.

2. A makes Executor, and devises after Debts and Legacies paid, Reflected bonorum to f. 3.—The Party does not inventory all the Goods, or undervalues them which he does put in; Before all the Debts paid, J. S. may sue the Executor in the Court of Requeuls, to make him shew the very Value of the Goods there. Patch. 1 Car. B. R. Palm. 460. Anon.

3. M. was poossed of divers Leaffes and conveyed them in Truth, and Godolph. after married J. S. and with Part of the Truth-money bought Jewels, and died. J. S. took Letters of Administration of the Goods of the Wife, and the Ecclesiastical Court, would make him accountable for the Jewels and Money and to put them into an Inventory, But the Court held that he should not put them into the Inventory; because the Property is absolutely in the Husband, and he has them not as Administrator; but Things in Action he shall have as Administrator, and shall be accountable for them. Mar. 44. Trin. 15 Car. B. R. Sir John St. John’s Cafe.


5. If an Inventory be produced where there is one Particular of good and bad Debts, the Defendant shall be chargd with the whole, because he doth not distinguish them, unless he can discharge any Part of it by special Evidence. Per Holt. Cumb. 342. Trin. 7 W. 3. B. R. Anon.

6. Executive put in a second Inventory somewhat different from the former and would offer that, fed non allocatur, no more than one shall produce his own Answer in Chancery as Evidence for himself; but a Chancery may charge him with which Inventory he pleases. Cumb. 342. Trin. 7 W. 3. Anon.

7. The same shall be indented, whereof one Part shall be, by the said Executive upon his Oath for the Truth thereof, left in the Registry of the Court, the other Part to remain with himself. In which Inventory, the the Testators Goods and Chattels are particularly to be valued and appraised, at their true and just Value. Godolph. Orph. Leg. 151. S. 3.

8. Generally all the Goods and Chattels, whereof the Testator died rightly possessed, (some certain Things for special Reasons and legal Reservations only excepted) ought to be put into the Inventory; and therefore Leaffes are not exempted: Alfo Corn growing on the Ground, is to be put into the Inventory, because it belongs to the Executive: But not Grains or Trees to growing, which belong to the Heir; nor Glasses Windows, nor Weildsfoot; nor Tables Domanant, nor Mangers, nor any thing affixed any way to the Freholds, nor the Box or Ochf, containing the Evidence of the Land; nor Doors, Locks, or Keys, nor Fishes in the Pond, nor Deeds in Dove Houses, situate in Lands belonging to the Heir, nor Bona Paraphernalia, that is, the Wives convenient Apparel, suitable to her Degree; for as they are not to be put into the Inventory of her Husband’s Goods, so neither are they liable to the Payment of his Debts, but the Wives Jewels, Chains, and Borders, and other rich Ornaments of her Person, are to be put into the Inventory of her deceased Husband’s Goods. Likewife all Hogfield Stuff.
Inventory.

Stuff is to be put into the Inventory; under which Word are comprised Tables, Stools, Forms, Chairs, Carpets, Hangings, Beds, Bedding, Linen, Bacon with Ewers, Candlesticks, with all Sorts of Dung-flick Vessels, whether of Earth, Wood, Glafs, Pras, or Pewter, yea, Apparel, Books, Weapons, Tools, Cattle of all Kind, Vitals, Corn and Grain of all Sorts, Wains, Carts, Plowage, Coaches, (though no Houshold-stuff,) also Plate and Jewels; and generally all things not affixed to the Freehold, but coming to the Executor, and not descending to the Heir, are to be inventoried; but such Things as are affixed to, and so become Part and Parcel of the Free-hold, and all Things that descend to the Heir, and come not to the Executor, are to be exempted out of the Inventory.


9. Also Debts due to the Testator are to be put into the Inventory; but Monies raised upon lands given by the Testator for the Payment of Debts or Legacies are not to be inferred into the Inventory. Godolph. Orph. Leg. 152. S. 4.

(D) Considered How; and the Effect thereof when exhibited.

A. L. L. such Goods and Chattels as are contained in the Inventory, are presumed to have belonged to the Testator, and now to the Executor, and no more. Therefore if a Creditor or Legatee affirm that the Testator had at his Death more Goods than are appraised in the Inventory, he must prove the same; for such an Inventory by the Civil Law cannot be disproved, unless the Number of the Witnesses be twice as many in Number as they which do prove it; and if the Executors or Administrators do make a true Inventory, they shall not be charged further with any Debts than the Goods of the Testator or Intestate will extend. Godolph. Orph. Leg. 151. S. 3.

2. The Testator's Widow exhibited an Inventory of his Goods in the Prerogative Court. Legatee complained that several Goods, of which the Testator died possessed, (naming them,) were omitted, and demanded an Account what became of them. The Defendant pleaded, That they were disposed of by the Testator in his Life-time, and by his Leave, and upon this Plea the Spiritual Court gave Colts, it being a Confession of more Affairs than in the Inventory; Defendant moved for a Prohibition, suggesting that the Court proceeded to falsify an Inventory, which they had no Power to do; because by exhibiting thereof, their Power was determined. And the Court were of Opinion, that at the Suit of the Creditor they could not, but at the Suit of a Legatee they might. 3 Mod. 168. Trin. 9 Geo. 1. Hinton v. Parker.
Joint and Several.

(A) Joint Acts as Contracts, &c. Where several join, and all are not capable, whose Act it shall be said to be.

1. Debt against the Provost and Scholars of a College in Cambridge, because T. M. late Provost, Predecessor of the Defendant, and the Scholars, by F. their Servant, bought two Bells of the Plaintiff for 40l. here at London where the Action is brought, which came to the Use and Profit of the College aforesaid, and after T. M. was removed from the Provostship, and the Defendant was Elected and made Provost, and the Defendant being often requested did not pay; and by some Justices the Buying of the Provost, and the Contract cannot be good, nor by the Abbot and Convent, Dean and Chapter, Baron and Feme; For it is only the Buying of the Dean, Provost, Abbot, or Baron, and the others shall be only as dead Persons in the Law; but by some Justices the Contract is good and shall be intended the Bargain only of the Provost, and the Name of the Scholars is only Surplusage; for the Contract of the Provost and the coming to the Use of the College is the Effect of the Matter. Br. Corporations. pl. 53. cites 5 E. 4. 70.

(B) Joint and several. What Things may be done Jointly and Severally.

1. Joint Acts, or Joint Authorities, as of the Justices of Assize, or Two Justices the 4 Coroners, or the 2 Sheriffs in London, and such like, ought are appointed to hear and determine a Matter; if one dies, all the Power is gone because it was joint. But it is otherwise in B. R. and C. B. and in Ireland and Wales; the Power of one Judge is not given joint to the others; but the Words are Constitutionis te mun in justiciarum, &c. Therefore Offices Judicial do not determine by the Death of one, tho' there are many Judges, nor Ministerial Ones, Pro Commodo Publico; But otherwise it is of Powers concerning Private Interests. Jenk. 40. pl. 76.

2. An Interest cannot be granted jointly and severally; as if a Man grants Proximam Advocationem, or makes a Lease for Years, to two jointly and severally, those Words (severally) are void, and they are Jointenants. 5 Rep. 19. Mich. 29 & 30 Eliz. Slingsby's Case.

And tho' the Governors are with them and either of them, yet they must join in Action. Ibid. 18. b.—S. C. cited Sand. 155. Trin. 29 Car. 2. in Case of Ecclesdon v. Cliffton—So of a Bond to two & a Third; they are void. Words. Jenk. 263. pl. 63. But grant of Advoctions to two to present A. is good. Jenk. 263. pl. 63.

3. A Power or Authority may be Joint and Several. 5 Rep. 19. Slingsby's Case. 6 D

2. When it appears by the Count, that the several Covenants have, or are to have, several Interests or Estates, there when the Covenant is made with the Covenants, & cain qui-libet eorum, those Words make the Covenant several, in respect of their several Interests. 5 Rep. 19. Mich. 29 & 30 Eliz. Slingsby's Case.

3. There is a great Difference between a Power given to two, and an Interest given to two; a Lease for Years is made to two, & qui-libet eorum, this is a joint Lease, and the Words (Cuilibet eorum) are void; this is to maintain Quiet and avoid Contention. So of an Obligation made to two & Cuilibet eorum, or a Grant of the next Avoidance to two & Cuilibet eorum. But a Power to Sell, Let, or make Livery to two & cuilibet eorum is good; For there is no Profit. Cupido divitiarum est caufa belli. Jenk. 262, 263, pl. 63.

4. And a Grant of the next Avoidance to two & cuilibet eorum to present A. to the said Church is good. For the Convenlion is avoided by restraining both to present A. Jenk. 263. pl. 63.

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*Jointenants.*

(A) What Things they may do, the one to the other.

† If Two Jointenants for Life are, of whom one is a Feme Cover, and the Baron and Feme levy a Fine to B. the other Jointenant, by which they grant the Land & torem & quies ubent in it, &c. to B. for the Life of the Feme with Warrant, and after B. dies during the Life of the Wife. There shall be no Occupancy, but Lettir may enter into the Whole, because this Fine, tho' it was intended as a Grant, yet it shall enure as a Release, because one Jointenant cannot eschoff his Companion, and therefore can not grant to his Companion. Mich. 22 Ja. B. R. adjudged upon a Special Verdict between Usurfe and Seawen.

Cited per Doderidge. 2 Roll R. 598. 444. 472. 455. 8 C. —Cox. J. 696. Mich. 22 Ja. B. R. C. —If there are three Jointenants, and one grants, sells, borrows, inherits, sells more, and confers, to one of the others, all his Right, Title, Interests, Claim, Demand, and Estate of and to the Lands held in Jointure, This is sufficient to pass the Partnary; and tho' the Jury found Quod Conscific, yet the Court will adjudge Quod Relesxat. 2 Saund. 96. Palf. 22 Car. 2. Cheffier v. Willan. —Raym. 187. S. C. —Sud. 452. S. C. —Vent. 78. S. C. But it must be pleaded. Quod Relesxat.

2. One Jointenant cannot enchoff his Companion, because this passes by way of *Livery*, and every of them is titled per My & per Tut. 22 P. 6. 42. b. 43. Perkin, S. 193. 197.

But such Feoffment will enure by way of *Conformation*, Confirmation, pl. 11. cites 22 H. 6. 42. 43. — *And one cannot make Livery to the other. See Partition (D) pl. 5.—Jointenants can only pass the Estate by Release, and not by Feoffment properly speaking; for they are in by the first Feodal Contracts, and therefore a second Feoffment cannot give any other or further Title or Interest. Because every Person...
Jointenants.

son shall be supposed to be in by the Elder and most worthy Title, which is the Prior Feoffment, and therefore the second Feoffment is impertinent. Treat. of Ten. 68.

3. If a Grant be to A. and B. and to the Heirs of A. — B. who is Jointenant with A. cannot surrender his Estate to A. because he is settled. Per my & per taut with A. and A. with him. 22 B. 6. 51.

4. If there are two Jointenants, and one Confirms the Estate of the other, he has nothing but a Joint Estate as he had before. But if there are such Words in the Deed of Confirmation, To have and to hold to him and his Heirs, all the Tenements, whereof mention is made in the Confirmation, then he has an Estate sole in the Tenements. Co. Litt. S. 523.

5. One Jointenant cannot make a Lease to his Companion, because they have Joint Possession. Arg. Ow. 102. cites to E. 4. 3. Popham Ch. J. Contra, but Fenner J. doubted. but only saying to the other, that I will not occupy it, this is no Affent that his Companion shall have all, nor is anything given by this to his Companion. Cro. E. 314. Hill. 56 Eliz. B. R. Gannes v. Fortman. —— Ow. 102. S. C. by the Name of James v. Fortman.

6. Rent Charge granted by one to his Companion, whether it be void, or whether on the Death of the Grantor, the Grantee surviving shall not have, or on the Death of the Grantee, the Heir of the Grantee shall not have it of the Grantee surviving. Vid. Kelw. 128. b. pl. 95. Here Jointenant made a Lease to Hill to the other; in Cafe of a Coprrenee's good. Arg. Trim. 21 Jac. B. R. 2 Roll R. 443. 475.

7. A. B. and C. 3 Jointenants give their Lands to D. a Stranger in Title, Remainder to A. in Tail; per Mead. J. The Remainder is void. 4 Le. 187.

8. If A. and B. are Jointenants, and A. makes a Lease for Life of his, to B. are Jointenants of a Teem, and A. grants his Moiety to C. and grants the Reversion to B. the same is good. 4 Le. 187.

9. A. and B. Jointenants for 100 Years, B. takes a Lease of A. for 15 Years, to begin, &c. 22 Le. 159. 21 Eliz. B. R. in Pleadtall's Cafe.

If there be 2 Jointenants of a Rent, the one may release to the other; but if the Rent be behind, now the one cannot release his Interest in the Arrearages to the other; per Walmally Serjeant. Le. 167. Mich. 30 & 31 Eliz. C. B. in Cafe of Brokesby v. Wickham & al.

sold; After the selling the one cannot release to the other, nor can it be surrendered. D. 235. Marg. pl. 29. cites Brokesby's Cafe. —— Because no Interest is in him to whom the Rente is made. D. 285. Marg. pl. 29. cites the Cafe of Lincoln v. Brookesby. —— Cro. E. 172. Hill. 52 Eliz. B. R. S. C. — If one Jointenant for Life, releases to the other, the Rente is now only Estate for her own Life, and yet the other's Life has Continuance to answer Incumbrances, &c. 6 Rep.; S. Patch. 3 Jac. C. B. Ld. Abercaveny's Cafe.

(B) Of what Estates, Things, or Actions, there may be a Right of Survivorship.

1. A Jointenants of a Rent Service or a Rent Charge are, the Survivor shall recover all the Arrearages incurred in the Life of his Companion. * 33 D. 6. 20. b. adjudged. 15 E. 3. All. 19.
or unequal in the Law of Jointure, each having an equal Chance to survive, and the Duration of all Lives being uncertain, if either Party has an ill Opinion of his own Life, he may sever the Jointure by Deed; so that Survivorship can be no Hardship, where either Side may at Pleasure prevent it. 2 Wms's Rep. 526, Trin. 1729, by the Matter of the Rolls in Case of Gray v. Willis.

*Br. Jointants. pl. 10, cites S. C. and Fitzh., Affile 13, and it shall be recovered by Affile or Anwery.—So if the Survivor be dissolved, per Choke and Littleton. Ibid. pl. 3, cites S. C.—Br. Affile pl. 7, cites S. C.

—If a Rent be granted to A. and B. and the Rent is behind, the Survivor shall now show in his own Name for the Whole, and yet it was in Arrear in the Life of the other. Arg. Bux. 156. Trin. 9 Jac.

Vid. Survivor.

2. If an Office of Trust be granted to two for their Lives, no Survivor shall be of it, but by the Death of the one, the Grant is void as to the other. Co. 11. 3. b. Auditor Cure's Cafe. (But Niere.)

* Orig (un.)

3. The Statute of 32 & 33 H. 8. Ordains, that there shall be two Auditors in * the Office in [the Court of] Wards; and one Grant is to two of the Office for their Lives. By the Death of one, that the Grant is void. Co. 11. 3. b. Cure's Cafe.

4. But if the Grant be to two Conjunctum & Divinitum and the Survivor, the Survivor shall have his Part. Co. 17. 4.

5. If A. and B. recover by Affile of Mordaneitor Land and Damages, and before Execution of the Damages B. dies, A. shall not have Execution of all the Damages by Survivor, but only of a Society, because the Damages are real, being in lieu of the Profits of the Land, and therefore shall not survice. 14 C. 3. Execution. 75. adjudged.


For this is not real in its original.

7. If a Recognizance or Statute be acknowledged to A. and B. and B. dies, A. shall have Execution of the Whole by Survivor. 14 C.


8. If A. and B. recover by Affile of Mordancitor Land and Damages, and have Execution of the Damages by Elegit of the Society of the Land, and after B. dies, A. shall have all by Survivor, till all the Damages levied. For this is by their joint Execution one joint Term, which shall Survive. 14 C. 3. Execution 75.

9. In Sure implead against Baron and Feme, the Plaintiff recovered by folje orffth, the Baron died, and the Feme brought Attaint for the Damages levied of the Goods of the Baron, and yet the Feme by the Attaint was restored to the Damages lost, and to the Adwowsion, and recovered other Damages by the Attaint, because if the first Damages had not been levied of the Goods of the Baron, they should be levied of the Goods of the Feme, who was Party to the Judgment; and therefore the Attaint served as well for Damages as for the Principal. Br. Jointants. pl. 46. cites 46 Att. 8.

10. As the Survivorship takes place among Jointants, so it takes Place among those who have Joint Eftate, or Possession, with another, of a Chattel real or personal; as if a Lease of Lands be made to several for Term of Years, the Survivor of the Leases shall have the Tenements to himself intire during the Term. Co. Litt. S. 291.

Hereby it is manifest that Survivorship holds place regularly as well between Jointants of Goods and Chattels in Possession or in Right, as between Jointants of Inheritance or Freehold. Co. Litt 182. 2.
Jointenants.

13. In the same Manner it is of Debts and Duties, as it an obligation be made to several for a Debt, the Survivor shall have the whole Debt or Duty. — And so it is of other Covenants and Contraffts, &c. Co. Litt. S. 282.

14. If the Wares, Merchandise, Debts, or Duties which joint-merchants have as Joint-merchants or Partners shall not Survive, but shall go to the Executors of the Deceased, and this is per Legem Mercatorum, which is Part of the Laws of this Realm for the Advancement or Continuance of Commerce and Trade, which is pro Bono Publico; For the Rule is that jus accrescend s inter Mercatores pro Beneficio Commodi et unum non est.

Co. Litt. 182. a.

15. If Lands be given to two, and the Heirs of one of them, this is good Jointure, and the one hath Frank-tenance, and the other hath Fee Simple, and if he who hath the Fee die, he that has the Frank-tenance shall have the Entirety by the Survivorship for his Life. Co. Litt. S. 285.

then begotten; the one hath Frank-tenance, and the other Fee-tail, &c. So that they are Jointenants for Life, and the Fee Simple or Estate Tail is in one of them; and because 'tis by one and the same Conveyance they are Jointenants, and the Fee Simple is not executed to all Perfections. Co. Litt. 184. a.

16. If Lands are let to two for their Lives Ex corum alterius distinctus Vivent,

and one of them grants his Part to a Stranger, whereby the Jointure is deceased and dies; there shall be no Survivor, but the Leifor shall enter into the Moiety and the Survivor shall have no Advantage of these words, (ex corum alterius distinctus Vivent) for two Causes; For that the Jointure is deceased, and because those Words are no more than the Common Law would have implied without them. Co. Litt. 191. a.

As there are also Jointenants by other Conveyances than Littleton here mentions, as by Fine, Recovery, Bargain and Sale, Relcosse, Confirmation, &c. so there are divers other Limitations than Littleton here speaks of; as if a Rent-charge of 10l. be granted to A. and B. to have and to hold to them two, viz. to A. until he be married and to B. until he be advanced to a Benefice, they are jointenants in the mean Time notwithstanding the several Limitations; and if A. die before Marriage the Rent shall survive, but if A. had married the Rent should have ceased for a Moiety & cee converso, on the other side. Co. Litt. 180. b.

17. If two Jointenants be in Fee, and the one lets his Part to another for the Life of the Leifor, and the Leifor dies; so say, that his Part shall survive to his Companion, for by his Death the Lease was determined, and others hold the Contrary, and their Reason is, that at the Time of his Death the Jointure was deceased; For so long as he lived the Leif continued; secondly, That notwithstanding the Act of any one of the Jointenants there must be equal Benefit of Survivor as to the Freehold; but if the other Jointenant had first died, there had been no Benefit of Survivor to the Leifor without Question. Co. Litt. 193. a.

18. Lands were given to A. in Tail, Remainder to the right Heirs of B. who had Issue two Daughters M. and N. and dyed; A. dyed without Issue, M. and N. dyed; a Formedon must not be brought by the Heirs of both, but by the Heir of the Survivor; because they have that Remainder as Purchasers. 3 Le. 14. Mich. 8 Eliz. C. B. Stowell v. the Earl of Hartford.

20. Two Jointenants, one makes Indemnity in Fee in Condition and dies, the other shall not take Benefit of the Condition; per Wray Ch. J. 2 Le. 218. Patch. 16 Eliz. B. R. in Humphreton's Case.

21. A. and B. Jointenants; A.'s Bargains and Sales to the Land and dies before Issue of the Deed; the Land shall not survive to B. because the after Inrolment makes the Use to pass from the Sealing and delivery of the Indenture. Arg. 2 And. 161.

22. A. brought Trespass against B. for taking his Cattle; B. pleaded that A. was possessed of the Cattle jointly with another not named in the Writ, and demanded Judgment of the Writ; A. replies that the other was dead at the Time of the Aktion brought, B. demurs; Co. R ruled a Reconditae Ouster. Stu. 122. Patch. 24 Car. B. R. Seoble v. Toyle.

6 E

23. Two
Jointenants.

23. Two Jointenants of a Copyhold, one surrender'd and dies before Administration, Survivor shall be prevented by Admittance afterwards. 3 Lev. 386. Hill. 5 W. & M. C. B. in Cafe of Benfon v. Scot.——Cites Co. Litt. 59. b.


24. A. and B. are Jointenants of the Trust of a Term; A. dies, the Executor of A. got an Alignment from the surviving Trustee; yet B. shall have the Whole by Survivorship; For per Ld Cowper a Trust of a Term must go as the Term at Law would have gone by the like Limitations. Patch. 1706. 2 Vern. R. 356. Alton & al. v. Smallman & al.

(C) What Things may survive [Charge.]

1. If Baron and Feme alien by Fine with Warranty and the Feme dies the Warranty survives upon the Baron during his Life. 22 E. 3. 1. Cittit.

2. If two make a Joint Warranty and one dies, the Survivor shall not be charged of all, but the Heir and the other shall be charged jointly; because this is a real Charge and no Survivor. 3 Rep. 14. Sir Wm. Herbert's Cafe. 17 E. 3. 41. b. adjudged 21 E. 3. 50. Contra 17 E. 3. 8. b.

3. So if two bind themselves in a Recognizance, there shall not be any Survivor of it; because this charges the Land. 3 Rep. 14. Sir Wm. Herbert's Cafe. 29 E. 3. 39. 29 Ass. 37. adjudged.

4. So it seems if a Joint Judgment be against two upon a Joint Obligation there shall not be any Survivor. But Niente.

5. If two are bound in a Recognizance, and one dies, and the other has nothing whereof to levy the Debt, the Execution may be tried against the Heir of him that is dead to have Execution of the Land to him descended in Fec. 5 E. 3. 35. Execution 100.

6. If two bind themselves in an Obligation jointly, of this there shall be a Survivor; For Survivor shall be charged of all, because it is personal. 3 Rep. 14. b. Sir Wm. Herbert's Cafe.

7. If a recover Damages in an Affile against B. and C. and after B. dies; A. shall not have Execution against C. only, but against C. and the Heir, and Tenants of B. 19 E. 3. Execution 81. B. being returned dead in a Scrit. 54. was not compelled to answer till the Heir and Tenants of B. were wanted.

8. If a Man makes two his Bailiffs and the one dies, the other shall answer the whole Account clearly; per Thorp and Finch Justices, quo d nona negat. Br. Jointenants, pl. 50. cites * 41 E. 3. 3. — Ibid. cites 15 E. 3: Fitzh. Brief 672. agreeing herewith.

9. If
Jointenants.

9. If there be two Jointenants of a Term and one is condemned in Debt, or Damages and dies, and the other Survives, the Term is discharged of the Execution; per Chauterell. Br. Charge, pl. 12, cites 7 H. 6. 1.

10. Debt upon a Contract against B. who abated the Writ, because the Controvert was made by B. and C. who was alive, not named, &c. and after C. died, and another Action was brought against B. only; so fee that Charge may survive. Br. Jointenants, pl. 21, cites 9 E. 4. 24.

11. If a Lease be made to two rendering Rent with Words that it be in Acre, and demanded of them both, &c. And the one dies, and it is demanded of the other who survives, and he does not pay it, this is a good Demand, and he may re-enter. Br. Jointenants, pl. 62, cites P. 33 H. 8.

12. If two Jointenants are seised of an Estate in Fee Simple, and the one grants a Rent-charge by Deed to another out of that which he belongeth, &c. in this Cafe during the Life of the Grantor the Rent-charge is effectual; but after his decease the Grant of the Rent-charge is void as to * charging the Land; For he who hath the Land by Survivorship shall hold all the Land discharged, and the Reason is because the Survivor claims and hath the Land by the Survivorship; and hath not, nor can claim any Thing by different from his Companion, &c. But otherwise it is of Parceners. Co. Litt. S. 286.

Arg. 2 Rolls. 236.—But if one the Jointenants grants a Rent-charge out of his Part, and after Releases to his Companion and dies, he shall hold the Land charged; For that he is out of the Reason and Caufe set down by Littleton; because he claims not by Survivor in as much as the Release preserved the same. Co. Litt. 18, a. —6 Rep. 78. Lord Aberganey's Cafe.—Show. 57. Patch 4 W. & M. cites S. C. that he shall never avoid the Grant, because he comes to the Estate by his own Act, vis. Acceptance of the release, and not per Jus Accesendi. —So if A. and B. be Jointenants in Fee, and A. charges his Part and then Releases to B. and his Heirs and dies; it is agreed by all that the Charge is good for ever; because in that Cafe B. cannot be said to be in from the first Feather, for he has a Joint Compulsion at the Time of the Release made, and several Writs of Precipice must be brought against them; and albeit the Release of one Jointenant to the Regard of the Jointenants makes no Degree in Supposition of Law, neither is there any several Estate between them, but the Estate of him that Releases, as it were extinguished and drowned in their Estate and Possession, so as one Precipice lies against them, yet shall they hold the Land charged. Co. Litt. 185, a. (w) —Show. 57. 4 Le. 155, cites 53 H. 6. 4 & 5.

13. If two Jointenants be of a Term and the one of them grants to J. S. that if he pay to him 10l. before Michaelmas, then he shall have his Term; and if the Grantor dies before the Day, J. S. pays the Sum to his Executors at the Day, yet he shall not have the Term, but the Survivor shall hold Place; For it was but in the Nature of a Communication. Co. Litt. 184, b. 78, a.

It should have bound the Survivor. Co. Litt. 185, a. —S. P. Arg. Bridgm. 45.

14. If there be two Jointenants Infants, and one makes a Lease for &c. But if one Years and dies, the other shall avoid it; For the Lease is utterly void of which every Stranger may take Advantage; but of Acts voidable 'tis otherwise; per Wray Ch. J. —2 Le. 218. Patch. 16 Eliz. B. R. in Humphreton's Cafe.

not avoid it because 'tis a voidable Act only; per Wray Ch. J. —2 Le. 218. in Humphreton's Cafe.

15. Where the Lands of several are charged with a Debt, it shall not be wholly on the Survivor; As if a Recognition is acknowledged by several, the Lands of all are thereby become chargeable and Execution shall be equally made, and if one dies, a Sci. Fa. must be brought against his Heir and Tertenants; for they being all in Equally Jure the Charge survives. 4 Mod. 315.

If Judgment in Debt be against any two, and after one dies, Execution in the Personality may be against the Survivor; But if he takes Execution in the Realty it shall not be against the Survivor only, but against him and the Heir of the other. Lev. 57. Patch. 13. Cin. 2. Smart v. Edson. —Raym. 26.

Editor v. Smart. S. C. (D) Of
Jointenants.

(D) Of what Things there shall be a Survivor [to his Advantage.]

1. If two Jointenants are divided, and after one dies, the Survivor shall have all. For the Right continues joint. 21 C. 3. 50. b.

But if one only alien in Fee and dies, the Survivor cannot enter by Reaion of the Infancy of his Companion; for by his Feoffment the Jointure was severed to long as the Feoffment continues in Force, to the Heir of Feoffor shall have Dan fuit infratextum, or shall enter into the Moiety. 8 Rep. 45. Hill. 45 Eliz. Whittingham's Case.

2. If two Infants [Jointenants] alien in Fee, and after one dies, the Survivor shall have the whole; For notwithstanding the Feoffment, the Jointency is not severed for the Possibility of defeating it by Dan fuit infratextum. 21 C. 3. 50a. b. Adjudged.

3. If Baron and Feme and a third Person purchase Land in Fee, and Baron aliens all and dies, and then the Feme dies, all shall survive to the third Person; For the Jointency was not severed by the Alteration of the Baron; For the Feme and third Person might join in a Write of Right after the Death of the Baron. 35 At. 15. adjudged. 31 V. 6. Entre Contraele 54.

So where a Man feaved his Manor for 10 Years to two, and they made a Bailiff, and after the one made his Executors and died, the other brought Writ of Account by the Survivor, and well as it seems; for as the Term shall survive, to the Alien and Arrears all survive. Br. Jointenants, pl. 22. cites 39 E. 3. 19.—* S. P. by the Master of the Rolls. 2 Wm's Rep. 529. Trin. 1739. in Case of Cray v. Willis.—But if a Lease be made to A. during the Life of two, without faying, and during the Life of the longest Liver, the Estate determines not on the Death of one. 5 Rep. 9. Per Popham Ch. J. and tot. Cur. in the Case supra. — S. C. cited by Coke Ch. J. 5 Buls. 191, and says that there is a Difference between a mere collateral Limitation, and where the same is mixed with an Interest.

5. But if a Bond be to pay during the Life of two Strangers, the Payment ceases on Death of one; Per tot. Cur. and grounded themselves upon the Distinction in Brudenell's Case, between where the Cefty que vies have an Interest, and the Cases of collateral Limitations. 1 Mod. 187. Slater v. Carew.

6. But in some Cases an Interest will not survive, as if an Office were granted to two and one dies, unless there are Words of Survivorship in the Grant. 1 Mod. 187. 26 Car. 2. C. B. in Cafe of Slater v. Carew.

(E) What shall be said, a Severance of the Jointure.

1. If a Feme Covert and J. S. are Jointenants for Life of a Copyhold, and J. S. surrenders his Moiety to the Baron and Feme, this is a Severance of the Jointure; so that he is Tenant in common with his Witc. Adjudged, my Reports. 14 In. Lane v. Daniel.
Jontenants.

2. If two Jontenants in Free of a Copyhold are, and one surrenders his Moiety into the hands of the Lord to the Use of his last Will, and by his last Will devises it to the other, this is a good Deed; because the Surrender the Jonture was severed between them. Co. Litt. 39. b.

3. So if two Jontenants in Fee of a Copyhold are, and one surrenders his Part out of Court into the hands of the Lord, to the Use of his last Will, and after by his last Will devises it to a Stranger in Fee and dies, and after the next Court the Surrender is presented by the Succeeder and Presentment the Jonture was severed, and the Devise ought to be headetained to the Howey of the Land; For now by Relation the State of the Land was bound by the Surrender. Tithe. 2 B 3 Ph. & H. 6. Contable's Case. cites Co. Litt. 59. b.


4. If A. and B. are Jontenants in Fee of Land held of a common Perfon, and A. is attaint of Felony and executed, yet this is not any Severance of the Jonture. For this notwithstanding, the Land shall go by Survivor to B, till the Lord enters for the Forfeiture, Tithe. 11 Car. 2 R. per Cited. between Harris and Wardell, upon the Attainment of the Lord Castlehaven.

5. But in the said Case, though the Lord does not enter in the Life of A, who was attaint, by which the Land comes by Survivor to B, yet the Lord may enter after for a Forfeiture into the Howey of A, for this was bound by the Attendant, and the Forfeiture relates to the Felony committed by Relation, when the Lord enters, comes in Paramount the Title of B, and so prevents the Survivor and makes an Alteration of the Estate before the Death of A. by way of Relation. Tithe. 11 Car. 2 R. Adjudged upon a special Verdict between Harris and Wardell. In quir. Hill. 10 Car. Rot. 542. The Lord Castlehaven was the Perfon attainted, who was attainted of a Rape.

6. If one Jontenant in Fee be attaint of Felony, and after the other dies in the Life of him who is attaint, his Part shall survive to him who is attaint; held per Brampton in the said Case of Harris and Wardell. But he held, that the Lord shall not have this Part by his Attendant if he be pardoned afterwards. But Barkley feared, that he shall forfeit by his Attendant all the Land which should come to him during his Attainment, and therefore that the Lord shall have this Howey also.

7. If two Jontenants of a Reversion in Fee are, and one grants his Reversion, and before Attornment, the other dies, his Part shall survive to him who made the Grant; because the Jonture was not severed till Attornment had; per Brampton in the said Case. And though an Attornment comes after, yet he shall have it by Survivor, and it shall not be devestced after by Attornment.

8. In Affile; Land was demised to two for Life, and to the longest Liver of them; they made Partition, and one died; the Leisior entered; the Leisior ousted him, thinking by these Words (the longest Liver of them) that the Survivor should have the whole; and the Leisior brought Affile and recovered; For these Words (the longest Liver &c.) is the Common Law, and by the Partition the Jonture is severed for ever. Quod Nota. Br. Jontenants. pl. 28. cites 50 E. 3. 8.

9. If a Man makes Land to two for 20 Years, and confirms the Estate of one for Life; Quire if by this the Jonture be severed. Br. Jontenants, pl. 57. cites 32 Ex. 3. and Finch. Quod juris estmam. 5.

JO. 58. Lord Stirling's Case 8 R. Adjudged by Coke, Jones and Berkley, A. B. Benyon v. Brampton.
Jointenants.

Br. Partition, pl. 4. cites S. C. —

* Orig. ii (Denlt). —

10. In Allife, it was found by Verdict, that two Brothers purchased a Mill jointly to them and their Heirs, and there was a Poft in the Mill, and it was agreed for Reparation of it that a Mark should be made in the Poft, and that one repair the one Part to the Poft, and the other repair the other Part to the Poft for ever, and that their Intent was, that this should be a Severance between them and their Heirs, and one died, and the Survivor outed his Heir, and he brought Allife and recovered by Award; for this is a good Severance of the Jointure. Br. Jointenants, pl. 37. cites 47 El. 3. 22.

11. Where a Man and a Villein purchase jointly, and the Lord of the Villein enters into the Moity of his Villein, or if this Moity be recovered, the Jointure is severed and the Warranty alfo. Br. Jointenants, pl. 9. cites 48 El. 3. 17.

12. If a Difference infected Baron and Feme, and the Difference re-enters, and the Baron enters claiming to him and his Feme, the Feme by this is not made Tenant, by Reason that the Jointure before was defeated by the Entry of the Difference, and the Entry of the Baron again is not lawful, and so nothing follows again in the Feme. Br. Jointenancy, pl. 28. cites 14 H. 6. 26.

13. If two Femes are Jointenants and take Hours, and the Baron gives all and does, and one Feme recovers one Moity by Cui in Vito, and the other Feme recovers the other Moity, they shall hold severally; Per Patton, Newton, and Afcue Justices. Quere; for by the Reporter, where Land is given to two and the Heirs of one who live by Default, and one recovers the one Moity by Writ of Error, and the other recovers the other Moity by Quod est defecrat, they shall hold jointly scut Prius. Br. Jointenants, pl. 43. cites 19 H. 6. 45.

S. C. cited 6 Rep. a. 15. Patch. 27. Eliz. B. B in Martin's Café; where Coke says Nota, that though some Books are, that Judgment shall be given in Severality in the Cafe of Jointenants, as 10 El. 3. 40. & 10 Affl. pl. 17. yet it seems to him that it will be hard in Law to maintain the Judgment; For 1. The Plaintiff in Allife ought to recover according to his Plaint, and this is of nothing in Severality. 2. He ought to recover in the Allife by View of the Recognitors, and they had not View of any Thing in Severality. 3. This will be to the Prejudice of the Plaintiff, as well for the Survivor as for Warranty, &c, and with this agrees 28 Affl. 35, where the Case was adjudged, not upon any Opinion at the Allises, but upon Adjournment in Bank, and there adjudged that the Plaintiff recover generally, though the Plaintiff himself prayed that the Judgment should be, that he hold in Severality; for the Prayer of the Party does not alter the Judgment of the Law in such Case.

But if the one releases to all the others, they are in by the first Feeor, and not by him who released, and the Survivor shall hold; Per Littleton and Waingf. Br. Jointenants, pl. 2. cites 33 H. 6. 45.

14. If three Jointenants are, and the one releases to one of the others in Fee, he is in as Purchaor of this Part by the Release, and of this the Jointure is determined, and the Survivorship is gone. Per Littleton and Waingf. Note the Diversity, for it was not denied; And per Littleton, where the one charges, and after releases to all the others, they shall hold charged imperpetuum. But per Joce, they shall not hold charged imperpetuum, unless he who releases survives. Br. Jointenants, pl. 2. cites 53 H. 6. 45.

So if the Leaffor had referred to an annual Rent upon the Lease, the Leaffor only should have had the Rent, &c. which is a Proof that the Reverfion is only in him, and that the other hath nothing in the Reverfion, &c. Co. Litt. S. 502. — Allse if the Tenant for Life was imprisoned, and made Default after Default, the Leaffor only shall be received for this to defend his Right, and his Companions in this Case in no Manner shall be received, the which proves the Reverfion of the Moity to be only in the Leaffor: And so by Consequence if the Leaffor dies living the Leaffor for Life, the Reverfion shall defend to the Heir of the Leaffor, and shall not come to the other Jointenant by the Survivor. But in this Case, if the Jointenant who hath the Franktenement hath喜好 and dies, living the Leaffor and Leaffee, then it femeth that the fame Issue shall have this Moity in Demesne, and in Fee by Default; because a Franktenement cannot by Nature of Jointure be annexed to a Reverfion, &c. And it is certain, that he who died was lefled of the Moity in his Demesne as of Fee, and none shall have any Jointure in his Franktenement, therefore this shall defend to his Issue, &c. Set quere. Co Litt. S. 502.

15. If there be two Jointenants in Fee, and the one of them lettech that which to him belonged for his Life, by such Lease the Franktenement is severed from the Jointure; and by the fame Reason the Reverfion which is depending upon the same Franktenement is severed from the Jointure. Co. Litt. S. 502.
Jointenants.

16. If two Jointenants are of a Lease for 21 Years, and the one of them lets his Part for part of the Term, the Jointure is severed, and Survivor holds no Place; for a Term for a small Number of Years is as high an Interest as for many more Years, and so it was revolved. Hill. 18 Eliz. R. C. B. Co. Litt. 192. a.

17. If two Jointenants be and one makes a Lease for Life, this is a Severance of the Jointure, and several Annuities shall be made upon them; otherwise of Coparceners. Co. Litt. 192. a.

to commence after her Death; this is a Severance of the Jointenancy, and the Lease of her Moteity will be good against the Survivor. 2 Vern. 523. Mich. 1694 Clerk v. Clerk and Lady Turner.


20. Four Jointenants of an Advowson; if one grants over his Interest it is good, and the Survivor shall not hold Place; per Anderfon Ch. J. and Windham; and Rodes J. did not gainay it, and Periam was abient; but Fenner spoke against it, because it is an entire Thing, but Anderfon clearly to the Contrary. Hill. 50 Eliz. Goldsb. 81. Kemp v. Bishop of Winchester.

21. When the Recession comes to the Freehold the Jointure is destroyed; but where the Freehold comes to him in Reception and to another it is other- wise. Cro. E. 470. (bis) Patch. 58 Eliz. B. R. Child v. Wescot.

22. If the Recession descends to one Jointenant for Life, or one Jointenant for Life purchases the Recession, the Jointure is severed and the El- tate for Life is drowned. Cro. E. 743. Hill. 42 Eliz. C. B. Taylor v. Seyer.


25. Two Jointenants in Fee accept a Fine to the Heirs of one of them; yet they continue Jointenants in Fee as they were before. Vent. 257. Patch. 26 Car. 2. B. R. Anon.


27. Two Jointenants of an Advowson agreevament inter se thencethor to be feilid in Common and not jointly, and that one should have one Moteity and the other the other, and should present by turns, first A. and then B. which they afterwards did accordingly; per Car. this (tho’ by Deed of Covemant) is a good Partition of the Inheritance of this Advowlen; For by this Agreement a separate Interest is vested in A. and B. to present by turns, and, being executd on both sides, the Inheritance is thereby severed. Cattl. 557. Mich. 11 W. 3. B. R. Bishop of Salisbury v. Phillips.

28. If one Jointenant leveys a Fine of the Whole, this amounts to no fower of his Companion but ‘tis a Severance of the Jointenye, tho’ he be in- of the old Ufe again, and tho’ after the Fine he has the same old Eftate, yet he has it in another Manner; For the Fine being fur Cognizance & Droit come ecco, &c. presupposes a Fecovment. 6 Mod. 45. Mich. 2 Anna B. R. Ford v. Lord Grey.


(F) W.L
See (C)

1. If two Jointenants are, and one acknowledges a Statute or Recognition or Judgment, and dies before Execution, the Survivor shall hold it discharged. 6 Rep. 79. Lord Abercromby’s Case.

2. But if the Statute Recognition or Judgment be extended, or executed in the Life of him who acknowledged it, and after he dies, the Survivor shall hold it charged; for this is in Nature of a Lease. 6 Rep. Lord Abury. implied.

3. If two Jointenants for Life are, and one leaves his Moiety for Years and dies, the Survivor shall hold this Charged with the Lease. D. 13. 184. b, adjuged without Question, between *Daniel and Waddington.

Fol. 89.

4. If two Jointenants for Life are, and one leaves his Moiety to another for certain Years to commence after his Death, this is a good Lease to charge his Companion after his Death; for this is a present Interest in the Lease, tho’ it be to commence in Estate in future. *Darwen v. Barton. 3 Rep. B. R.

Anderon and Penman held, that this Lease shall bind his Companion as well as a Lease made to commence immediately, or at a Day after, if it takes Effect in Possession in the Life of the Leensor; but the other three held otherwise, and that the Cases are not like; For in the Commencement it appears that it is not possible for this Lease to take Effect in the Life of the Leensor, nor can it by any means undo the Leessor survives; and therefore the Lease shall be void; and it was said, that the Reason why a Lease in Possession by one Jointenant shall bind his Companion if he survive it, because as to the Possession the Jointure is vested, tho’ as to the Franktenement it is not, see — D. 187. Marp. pl. 5. [but misplaced against pl. 6.] cites Trin. 22. Eliz. Harding v. Clarke, (that seems to be S. C.) S. P. adjudged before all the Judges of Serjeant’s Inn to be good, but the Opinion of 7 Judges against 4. — Mo. 595. S. C. but states it as of Jointenants in Fee, and that it was adjudged a good Lease to bind the Survivor. — And ibid. lays the like Point was resolv’d in the Dutchy Chamber, and decreed there by the Advice of Clench and Walmsley J. and Brograves Attorney of the Dutchy in the Case of Sharpey v. Hardenham. — S. P. resolv’d and agreed per tot. Cur. Cro. J. 91. Mich. 3. 184. B. R. in Case of Whitney v. Barton. — And ibid. cites it as resolv’d before in Case of Harby v. Barton.

5. If two Jointenants for Life are, and one grants his Moiety to J. S. to have for certain Years to commence after the Death of his Companion, and the other Moiety to the Said J. S. by the same Deed to have from the Death of the Leessor for certain Years and dies, the Survivor shall hold the Land discharged of any Lease, notwithstanding this Grant; For the Lease of his own Moiety (which he might have leas’d) is not to commence till after the Death of his Companion, and he had not any Power to lease the other Moiety, which was the Moiety of the Companion, and so all void. D. 2. 184. b, adjuged between Whitlock and Huntwell.

S. P. and the Moiety of the Company is only a Possibility and not grantable, and it was agreed that if one Jointenant conveyed to bind the Moiety of his Companion, the Covenant is void, tho’ he should survive. No. 72. Trin. 2. 184. Whitlock v. Hertwell — Cro. J. 91. Mich. 3. 184. B. R. by the Name of Whitlock v. Portun, and finds it, that the other Jointenant survived the Leesor, and that it was resolv’d that the Leesor was not good for any Part; but that by the first Words it was a good Lease by the Leesor of her own Part, had the happened to have survived her Companion, which she did not; and therefore adjudged for the Plaintiff.
Jointenants.

6. If a Feme Covert and J. S. are Jointenants for Life, and Baron and Feme by Indenture leave the Moiety of the Feme for certain Years renouncing Kent, and after the Feme dies, the Survivor shall not avoid this Lease; because it was and is the Lease of the Feme Prima facie, till she has disaggreed to it, and only allowable, and the Survivor is not Privy to her to avoid it; For the Lease was an actual Severance during the Years. Adjudged. 14 Ta. my Reports Smallman b. Aghbrrow.

Lease made by her until she after the Covert, or one who claims in Privity by her, avoids it by Entry, whereas the Jointenant is Paramount the Feme, by Surviving her, and not under her. Co. C. 417.

7. Where a Man and his Lands are chargeable to execution in any way, yet if he and another are Jointenants, and the Party who is charged dies before Execution made of the Moiety of his Lands, and the other survives, the Survivor shall hold it discharged. Br. Charge, pl. 61.

due to the A. King, and purchas Jointly, the Receiver dies, and A. survives; he shall not be charged; but where the Baron and Feme purchased a Lease for 42 Years, and the Baron received ut lapsus, and died, the Feme was charged by it; for it is a Chattel; and it is not a Money.

3r. Execut • pl. 148. cites 50 Aff. s, that where the Receiver of Money

8. If two Jointenants in Fee are, and one of them within Age makes a Feeffoint in Fee of his Moiety, and dies, the Survivor shall not enter for the Infancy of his Companion; for by his Feeffoint the Jointure was never so long as the Feeffoint remained in Force; but if both are within Age and make a Feeffoint in Fee, one joint Right remains in them, and therefore if one dies the Right will survive as from the first feoffor, and the Survivor may enter into all. 8 Rep. 43. a. Hill. 45 Eliz. in the Star Chamber in Whittingham's Cafe.

9. If one Jointenant grant Vestryan Terra, or Herbagium Terra for Years and dies, this shall bind the Survivor; For such a Leifice has Right in the Land. Co. Litt. 186 b.

This Difference was approved by

Doddridge and Haughton. J. Roll. R. 442. in Cafe of

Annuities and

Aghbrrow.

If his two Jointenants be of a Woman, and the one grants

the several Piscifie. Co. Litt. 186 b.—But if one grants a Common of Paffure, or of Turbery, or of Etcovers, or a Cordicite, &c. out of his Part, or a Way over the Land, this shall not bind the Survivor; For 'tis a Maxim in Law that fejus accrescidus prefiderat omnibus, and there is another Maxim, that

Alius Rei prefiderat fere accresci. Co. Litt. 185 a.

(G) Tenants in Common. In what Cases.

1. If a Man leaves for Life the Remainder to the Right Heirs of J. S. and J. D. who are alive at the Time, the Heirs shall take the Remainder in Common; because this may vest in one before it vests in the other, and cannot vest in both at one Time. 18 C. 8. 28.

2. If a Man leases in Fee of a House, devises it to his Wife for Life, the Reversion to his two Sons equally and to the Heirs and dies the two Sons shall have it in Common. Tr. 41 Eliz. B. R. adjudged. See 30 H. 8. S. 133. See 28 H. 8. 28. S. 158.

3. So if he devises to his two Daughters and to the Heirs of their two Bodies begotten by equal Portions equally to be divided and dies and these words (equally to be divided) makes them Tenants in Common, tho' they never make Partition in Facto; For his Intent appears that it shall be divided, and by Consequence that there shall be no Survivor. Refused 3 Rep. 39. B. Ratclif's Cafe, and said that it had been so adjudged several Times before.

6 G

See (K)—Preliminent (G)

1. 5 Rep. 8. a. P. in Jus- tice Winds- ham's Cafe. cites 24 B. 5. 29. a. Devises to S. Equallory to their Heirs.


3. Norbury 5. 28. a. un- t. 5. C. B. For- ston the survivor hold Place it would be against the Wil
Jointenants.

Will of the Devisee: per Harvy. — But it was said that if the Words had been (equally to be divided by J. S.) it had been clearly a Joint tenancy. — See pl. 3.

4. If A. devise certain Land to his three Sons, Infants, T.W. and R. and their Heirs for ever, and there further follows this Clause, and my Will is that the said Lands be equally unto my said three Sons by the Oversight, Order, and Direction of C. D. and E. or any two of them, so as that Part to be assigned and appointed to T., my Son shall be of the said Lands which my Son is to be Occurant and nearest adjoining to the Heritage wherein I now dwell; this is an Estate in Common and not a Joint Estate, tho' the actual Division hereof by Heirs and Bounds be left * to the said three Persons named to this Purpose. — 5. 17 Car. S. R. adjudged upon a special Verdict, between Dearcase and Abbot, Rot.

St. 211.

A Man feized in Fee of Land, and having two Daughters A. and B. and C. his Son, devise it to the said two Daughters equally to be divided between them, * to have and to hold to them and to the Survivor of them, and to the Heirs of the Body of the Survivor of them, for and until there shall be paid unto each of my said Daughters the full and whole Sum of 150l. at one entire Payment; and upon this Condition, that upon the Payment of the said Money, this my Will and Devise of my said Lands, unto my said Daughters, and to either of them, and the Heirs of the Body of the Survivor of them as aforesaid, shall be utterly void, and of none Effect. Upon this Devise the said Daughters are Jointtenants, and not Tenants in Common; For tho' if a Devise be made to two equally to be divided between them, they shall be Jointtenants, because in a Will the Intent of the Devisee shall be interpreted to be so, yet 'tis not so in Case of a Grant or Feeominjon, but in a Will this is a Tenancy in Common by Construction, and not by express Words, but only by Collection of the Intent of the Devisee. But if the other Words of the Will shew his Intent more strong to be, that he intended a Joint tenancy, this shall be interpreted for the other Words are Sufficient to them and the Survivor of them and to the Heirs of the Body of the Survivor of them, which implies strongly that he intended a Joint tenancy, or otherwise the Survivor cannot have it, and * [so also do] the other Words, that they and the Survivor shall have it until the several Portions shall be paid; but if they are Tenants in Common, then they are but Tenants for Life, and the Survivor is to have the Estate in the whole, and then by the Death of one, her Estate is determined before her Portion paid, and no Remedy for it; but if it be a joint Estate, then they are Jointtenants for Life, and the Survivor shall have the Estate in the whole, in Trust for the Portion of the Daughter, who is dead; and it appears by the last Words, viz., the Condition, that it is not intended that the Estate shall end till the Portions paid. — 16. 560. adjudged upon a special Verdict upon Nailer Forbes's Will of Devon a Reader of the Middle Temple, between * Farje and Weeks. — Intrat. Or. 1649.

St. 91.

Jointenants.

4, Le 19. pl. 41. Patch 14. Eliz. C. B in the Case of Dyer and Weldon in this Court held by Dyer and Weldon jointenants. — * Fol. 92. it was made (between them) to be divided by my Executors, &c. that they are Jointenants until the Division be made.

5. A Man seizes in Fee of Land, and having two Daughters A. and B. and C. his Son, devise it to the said two Daughters equally to be divided between them, * to have and to hold to them and to the Survivor of them, and to the Heirs of the Body of the Survivor of them, for and until there shall be paid unto each of my said Daughters the full and whole Sum of 150l. at one entire Payment; and upon this Condition, that upon the Payment of the said Money, this my Will and Devise of my said Lands, unto my said Daughters, and to either of them, and the Heirs of the Body of the Survivor of them as aforesaid, shall be utterly void, and of none Effect. Upon this Devise the said Daughters are Jointenants, and not Tenants in Common; For tho' if a Devise be made to two equally to be divided between them, they shall be Jointenants, because in a Will the Intent of the Devisee shall be interpreted to be so, yet 'tis not so in Case of a Grant or Feeominjon, but in a Will this is a Tenancy in Common by Construction, and not by express Words, but only by Collection of the Intent of the Devisee. But if the other Words of the Will shew his Intent more strong to be, that he intended a Joint tenancy, this shall be interpreted for the other Words are Sufficient to them and the Survivor of them and to the Heirs of the Body of the Survivor of them, which implies strongly that he intended a Joint tenancy, or otherwise the Survivor cannot have it, and * [so also do] the other Words, that they and the Survivor shall have it until the several Portions shall be paid; but if they are Tenants in Common, then they are but Tenants for Life, and the Survivor is to have the Estate in the whole, and then by the Death of one, her Estate is determined before her Portion paid, and no Remedy for it; but if it be a joint Estate, then they are Jointenants for Life, and the Survivor shall have the Estate in the whole, in Trust for the Portion of the Daughter, who is dead; and it appears by the last Words, viz., the Condition, that it is not intended that the Estate shall end till the Portions paid. — 16. 560. adjudged upon a special Verdict upon Nailer Forbes's Will of Devon a Reader of the Middle Temple, between * Farje and Weeks. — Intrat. Or. 1649.

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Jointenants.

6. Where a Gift is made to N. in Tail the Remainder to the right Heirs of P. and Q. who are dead at the Time of the Gift made, there the Remainder is in Jointure, and Survivor shall hold Place. Br. Jointenants, pl. 12. cites 38 Elz. 3. 26.

7. If two have Goods jointly, and the one is condemned in Debt or Damages, and dies, yet the other shall have all by the Survivor, and Execution shall not be made of the Moiety; per Chaucer. Br. Jointenants, pl. 38. cites 7 H. 6. 2.

8. By Grant of the Tenant for Life to him in Reversion and to two others, there the Jointure shall not hold Place for the third Part, because this ensues by Way of Surrender of his Part. Br. Jointenants, pl. 14. cites 7 H. 6. 2. & 4.

9. If three Coparceners are, and they make Partition, and the one grants 20s. Rent to the other two for Equality of Partition, this Rent shall be of the Nature of Coparcenary, so that if one of the Grantors dies, the others shall not have the whole Rent by the Survivor, but the Moiety of the Rent shall descend to the Heir; per Frowick and Vavifor. Br. Jointenants, pl. 69. cites 15 H. 7. 14.

10. Devise of Gavelkind to all his Sons. They are now Jointenants, and Survivor takes all. For they are in by the Devise. Le. 113. Pach. 30 Eliz. C. B. Bear's Cafe.

11. A. devised in Fee had Issue two Daughters B. and C.—B. had Issue D. E. and F. A. devised to D. E. and F. and C. the Rents of &c. To hold by equal Parts to D. E. and F. one Moiety, and to C. the other. And if either die during the Term, then for the Benefit of the Survivor &c. Adjudged a Tenancy in Common. 3 Mod. 299. Pach. 4 Jac. 2. B. R. Anon.

12. Devise of Lands to three Sons severally, of several Parcels. And if in the Cafe they live to 21, to them and their Heirs. They are several Tenants till 21, and Gran- Bliflet v. Cranwel, & al.—Cites 2 Le. 68, 69. Brian v. Cofins.

13. where the Devise was to A. and B. and their Heirs for ever, and the longer Liver of them, to be equally divided between them after his Wife's Death, it was said, that all the Words may be taken to stand together, viz. That they should be Jointenants during the Life of the Feme, and Tenants in Common after her Death. But Devise to three Sons and their Heirs respectively, is a Tenancy in Common. 3 Lev. 3. 3 in Cafe of Bliflet v. Cranwel—Cites Cro. E. 443. Litch v. Dodd, and Sty. 434. Torrell v. Frampton.

—but the Word in Cro. E. 443. is (equally) and not (respectively).

(G. 2) Who shall be said Tenants in Common or Several Tenants.

1. If a Feme be endowed of the third Part of a Mill, there the Heir and the Feme are several Tenants, and not Tenants in Common; For the Hall have each Toll Dith put in certain. Br. several Tenancy, pl. 28. cites 23 H. 3. Fitzh. Alife. 435.

2. Land is given to two Barons and their Femes in Tail by Fine in Reversion, who have Issue and die, and after the Tenant for Life dies, and the one Issue, and a Stranger enters, and the other Issue brought Suit. fa. against the Stranger of the Moiety, and well; For the other Issue is in by Title, and so the Stranger is a several Tenant in Law of the Moiety; Quod non, by Abatement. Br. several Tenancy, pl. 21. cites 24 E. 3. 29. 60.

3. In See. Fa. if the Land descends to two Daughters, and the one takes Baron and has Issue, the Feme dies, the Baron is Tenant by the Curtesy of the Moiety, and grants his Estate to W. N. Wilby and Cor. said that there are
Jointenants.

not several Tenants, but Tenants in Common, and therefore the Writ brought as against several Tenants shall abate. Quaere, for 'tis said there, that it is dubious; for, per Skipt, the Tenant by the Cartesly, and he who has his Estate, is in as the Coparcener was, and against two Coparceners lies one Writ only. Br. several Tenancy, pl. 22. cites 24 E. 3. 29.

4. Where a Fine was levied of a Manor by four, and the Conveyee rendered the fourth Part against the Kist to one, and another fourth Part to another, and so of the other two Parts; by this they are several Tenants of the Franktenement, and yet the Potfeffion is in Common. Br. several Tenancy, pl. 27. cites 44 Aff. 11. and 45 E. 3. 12. acc.

(H) Tenants in Common. Survivor of Action.

Tenants in Common being Plaintiffs, may join in Several Actions, and the Survivor of them shall have the Action in Trepsafs De Clauso Faite; in this Case the Action survives. But not so of Goods, for they go severally; neither the Goods survive nor the Action for them. Jenk. 35. pl. 68.

2. Where Baron and Feme left in Square impedit, and the Baron died, the Feme had the Attaint, and not the Executors of the Baron, notwithstanding that it was aver'd, that the Damages were paid of the Goods of the first Baron; Quod nota. Br. Jointenants, pl. 7. cites 46 E. 3. Fol. 23.

3. If a Rent be granted to two, and the Rent is Arrear, the Survivor shall now appear in his own Name for the whole, and yet it was Arrear in the Life of the other. Arg. Bull. 136.

(I) Tenant by the Cartesly of what Estate.

See Cartesly.

1. If Land be given to two Sisters and the Heirs of their Bodies, by which they have a Joint Estate for Life, with Several Titles, and one takes Baron, who has Issue by her, and after the dies. The Baron shall not be Tenant by the Cartesly; For the Jointure was not founded by the having of Issue. Contra 17 E. 3. 51.

2. A. has Issue a Daughter, and devised his Lands to Executors for Payment of his Debts, and till his Debts are paid, and makes his Executors, and dies. The Daughter marries and dies; the Debts are paid by Executors; the Husband shall be Tenant by the Cartesly. 8 Rep. 96. Trin. 7 Jac. in Manningham's Café.

See (G)—Devise at the Division of [Devise to the Heir at Law.]

(K) Jointenants or Tenants in Common. By what Words. [By Devise.]

1. If a Man by his Will devises his Land in E. which he values at 100l. per Ann. to his Executors and their Heirs in Fee, upon Confidence and Trufl, and to the Intent that they and the Survivor of them and
Jointenants.

and their Heirs stand seised of 100 Marks of it, to the Use of R. &c. and of 20/ per Annuity to the Use of T. and of 25 Marks of it to the Use of J. and in the End of the Will is a Clause that the Executors shall be seised to the Uses aforesaid, and shall make Partition and Division of the Land according to the Manner aforesaid. The said R. C. and J. are immediately Tenants in Common of the Land before any Division by the Executors, in as much as there was a certain Valuation made. 

2. If A. in one Part of his Will devise his Lands to B. in Fee, and in another Part of his Will devise the same to C. in Fee. They are Jointenants.

3. Devise to his younger Sons A. B. and C. in Tail, equally to be divided The Devise was to A. B. and C. Jointly to be next Heirs; Per Dyer and Wefton J. They are Tenants in Common and they held, that the Words (equally to be divided) is not intended of a Division in Fact and Possession, but of the Interest and Title; For if a Man brings a Precipe, quiet redadat de parte Maneriæ D. in seven Parts to be divided, it is not intended divided in Possession, but divided in Interest and Title. But if one of the Brothers dies without Issue, the two Survivors have his Part by Purchase, and are Jointenants.

4. A Devise to two equally, and to the Heirs of their Bodies, makes a Tenancy in Common.

5. A Devise to two and their Heirs equally, is a Tenancy in Common; But a Devise of Land to two equally and their Heirs, is a Jointenancy.

6. Lands are devised to two Men, and to a Child En Voiture so more the Child shall take by the Devise, but whether in Common, or in Jointure, Dyer Ch. 1. doubled. 

7. A. having two Daughters, (his Heirs) devises his Land to them in Fee. Per Car. they shall hold by the Devise, because he gives another Estates to them than defended; For by the Defect each of them had a distinct Moleity, but by the Devise they are both Jointenants, and the Survivor shall have all. 

8. If a Man had Land in Borough English, and Guildable Lands, and devised all his Lands to his two Sons, and dies, both of them shall take jointly, and the younger than't have a distinct Moleity in the Borough- English, nor the Elder in the Guildable Land, but they are both Jointenants, per Penner. 

9. A. devises all his Lands to B. and after, in the same Will, devises Black Acre to C. They are Tenants in Common; but if he devises all his Lands to B. and after, in the same Will, devises all his Lands to C. By this they are Jointenants by Intention of Devisor. 

—S. P. per


—Houghton J. 3 Bull. 105.

—Mich. 24 &

—Cro. 17. 117. Pach. 9 Jac. —

—S. P. by Tanfield Ch. B. Lane 117. Pach. 9 Jac. —


10. Devise to five, their Heirs and Assigns, all of them to have Part and Part alike, and the one to have as much as the other. Adjudged that it is a Tenancy in Common. Hct. 29. Trin. 3. Car. C. B. James and Thoroughest v. Collins.

11. A Devise to two equally to be divided between them, and to the Survivor of them, makes a Tenancy, on the express Import of the left Words. Per Hale. Vent. 216. Trin. 24 Car. 2. B. K. in Case of King v. Melliong.

12. A Devise to A. and B. paying 25l. per Ann. out of the Rents to C. during his Life, viz. 12l. 10s. by each of them, is a Tenancy in Common; per Jellieries. C. Vem. 553. Mich. 1659. Kew. v. Rout.-

13. A devisd to B. his Daughter, and to C. D. and E. his Granddaughters by another Daughter deceased the Rents of S. for 30 Years, to hold by equal Parts, viz. B. to have the Moiety, and the three Granddaughters the other Moiety, and if either die before the 30 Years expired, then the said Term to be for the Benefit of the Survivor, and if they all die, then the same was devisd over to others. The Words of the Will flew them to be Tenants in Common; For equally to be divided runs to the Moieties. Adjudged and affirmed in Error. 3 Mod. 209. Patch. 4 Jac. 2. B. R. Anon.-

14. A Trunt by Devise was that the Profits should be equally divided between M. his Wife, and B. his Daughter during the Life of M. and after M's Death to the Life of B. in Tail, Remainder over; B. died without Issue, leaving M. This, by the Opinion of the Judges of C. B. to whom it was refer'd, is a Tenancy in Common between M. and B. So that M. has no Title to B's Moiety, either by Survivorship or Implication; nor does that Moiety either descend or refult to the Heir; but as to that Moiety during M's Life, it was an Interest undisposed of, and in Nature of a Tenancy Pur ater Vie, and consequently belong'd to the Administratrix of B. and decreed accordingly. 2 Vem. 450. Hill. 1701. Phillips v. Philips.

S. C. Wm's Rep. 54 to 41. Patch. 1761. Rates it that B. was left at Loss of Tofator, and therefore on it was infilled, that there were no plain and necessary Implication that M. should have for his Life. And the Reporter notes the different Opinions on this Case, viz. The Master of the Rolls held, that M. and B. were Jointants, and that all were Kerv. To M. Afterwards on Appeal, Lord Somers held, that M. and B. were Tenants in Common, and that, B's Estate determining by her Death, the Remainderman or Reversioner had a Right to that Moiety. Afterwards Lord Wright was of Opinion, that an Estate by Implication were to M. in B's Moiety after B's Death. But upon referring it to the Court of C. R. they conceiv'd that B. and M. were Tenants in Common, and that M. had an Estate Pur ater Vie, which, upon the Statute of Frauds (that takes away Occupancy) ought to go to B's Administratrix, viz. M. the Mother, and that B. had not an Estate Tail in the Trust; For that Mergers are odious in Equity, and never allowed unless for special Reasons.

S. C. 11 Mod. 168, 169 And Holt Ch. J. deliver'd the Opinion of the Court, that this was a Tenancies, because the Remainders gua'ded. The Moiety is contain-

15. A devised his Lands to his Nieces E. and J. equally to be divided between them during their Lives, and after the decease of them two, then to the Heirs of J. and dies. J. dies, living E. Adjudged that E. and J. were Jointants during Life, and the Fee to the Heirs of J. but E. to enjoy all for her Life. And Holt Ch. J. held, that by making it a Tenancy in Common, the Devise might be in Danger; For if E. had died first, what would become of that Moiety? For a contingent Remainder, which cannot take Effect when the particular Estate determines, is void. And afterwards it was adjudged a Jointancy. Holt's Rep. 370. Patch. 6 Ann. Tuckerman v. Jeffries.

S. Cited Tr. 11 Geo. Avg 3 Mod 158 in Case of Barker v. Fyles.
Jointenants.

16. A. Debt of £20,000, was bequeathed to five, Share and Share alike, equally to be divided between them, and if any of them die, then his Share goes to the Survivors or Survivor of them. Ld C. Cowper held this to be a plainly a Tenancy in Common, from the Words (Share and Share alike); And by the subsequent Words (if any of them die, his Share shall go to the Survivors &c.) they must be intended, if any of them die in the Life Cafe, and of the Tsettator, and to every Word of the Will have its Operation. And without that Clause, if any had died in Tsettator's Life, such Child's Part would have been a laps'd Legacy, and have gone to the Executor Cafe of as undisposed of by the Will. And that to understand it is thus, viz. Stringer and His heirs deceased at the Rolls Mich. 1707. Lord Cowper's Opinion be not adher'd to? Wms's Rep. 97. —The Word (Survivor) must signify something, and therefore it shall be construed, If any of them die before the Money received. MS. Tab. cites S. C. 16 Jan. 1707, and states the Debts bequeath'd to have been a dererene Debt.

17. A. devised several Leasehold Houses to B. for Life, and after B's Death to M, and her 3 Children equally amongst them. Decreed to be a Tenancy in Common, tho' no mention of any Division to be made. Ch. Prec. 491. Pach. 1718. Warner v. Hone.

18. A. devised Land to be held for payment of Debts, and the Surplus to be vested in Land and settled on B. and C. and the Survivors of them, and their Heirs, equally to be divided between them Share and Share alike.

B. died in A's Life-time; then A. died leaving J. S. his Heir at Law. The Question was, if this was a laps'd Device, and should go to the Heir at Law, or to C. the Surviving Device. This Cafe, coming before Ld. Commissioners Raymond, and Gilbert, was put off for Difficultly, and afterwards Ld. C. King held, that by the first Part of the Will, they were plainly Jointenants for Life, and the After Words importing a Tenancy in Common, they are Tenants in Common of the Inheritance, and so every Word of the Will takes Effect, and B. dying in the Life of A. thereby C. became intituled to the whole for Life, and the Inheritance being devised in Common, the one Moiety having laps'd by the Death of B. in A's Life, therefore C. shall take all for Life, and a Moiety of the Inheritance shall descend to A's Heir at Law, expectant on C's Death, and the other Moiety of the Fee to C's Heir. 2 Wms's Rep. 293. Pach. 1725. Barker v. Giles.

19. Devise to Trustees and their Heirs in Trust for B. for Life, Remainder to the Children of B. by her then Husband, in Trust, that they shall have the Profits thereof when they come of Age. The Children will take a Fee as Tenants in Common. Mich. 11 Geo. 1. 9 Mod. 104. Bate man v. Roach.

See Grant (14. 5.)

(L) Tenants in Common. In what Cases they shall be Jointenants, or Tenants in Common. [By Deed, &c.]

1. If a Man leaves for Life, the Remainder to the Right Heirs of J. S. and J. D. who are alive, Their Heirs shall take this Remainder in Common and not jointly; Because they cannot take it at one Time. But both by Intendment will not die at one Time.

2. If a Man gives to Baron and Feme, and J. and to the Heirs of the Body of J. the Remainder to him, and to the Right Heirs of the Baron and Feme, their Heirs shall take in Common for the Cause aforesaid.
Jointenants.

3. If a Man lease to A. the Remainder to him and to the Right Heirs of B. who is alive, they shall take the Remainder in Common; because they take the Estate at several Times. 38 E. 3. 25. b.

4. If M. by his Obligation acknowledges himself tender obligator, then a Tenant in Common with A. B. and C. D. Because the body Politick, having a several Capacity from the Body Natural, cannot take jointly with them, and the Solicitude to the Dean and Chapter does not alter the Cafe, but is void, being contrary to the Premises, which is a perfect * Lien of itself, and therefore after the Death of A. B. and C. D. the Dean and Chapter cannot bring Action of Debt upon this Obligation itself, but must join with the Executor of the Survivor of the said A. B. and C. D. For this is Joint between them. Mich. 9. Car. 2. R. between the Dean and Chapter of St. Peter's of York, and G. Power Defendant, adjudged upon a Demurrer, that such Action, brought by the Dean and Chapter only, is not well brought; but the Executor against him, I being of the Defendant's Council. Incurit. Tr. 3. Car. Rot. 350.

5. If a Man encloseth A. to the Use of him and B. they shall not be Tenants in Common but Jointenants; For both shall come in by the Statute. Tr. 7. Jn. Curae Wardorum solum Cafe in Curae Wardorum Dibustatu. But * Mich. 7. Jac. this was resolved by the 3 Judges, and the Attorney of the Wards accordingly. D. 5. B. R. adjudged per Curiam, between Loe and Lec.

6. Jointenants are, as if a Man be seised of certain Lands or Tenements, &c. and *encloseth two, three, four, or more, to have and to hold to them for Term of their Lives, or for Term of another's Life, by Force of which seisin or Lease they are seised, these are Jointenants. Co. Litt. 180. a. S. 277.

7. Also if two or three, &c. dispose another of any Lands or Tenements to their own Use, then the Disposers are Jointenants. But if they dispose another to the Use of one of them, then they are not Jointenants, but he to whose Use the Disposition is made, is sole Tenant, and the others have nothing in the Tenancy, but are called Coadjoiners to the Disposers, &c. Co. Litt. 180. b. S. 278.

8. Tenants in Common, are those which have Lands or Tenements in Fee Simple, Fee Tail, or for Life, &c. by several Titles, and none of them know of this his several, but ought by the Law to occupy these Lands or Tenements in Common, and pro indiviso to take the Profits in Common. Co. Litt. S. 292.

As if a Man *encloseth two Jointenants in Fee, and the 1 of them aliens that, which to him belongeth, to another in Fee, now the Alliance and other Jointenant are Tenants in Common; because they are in in such Tenements by several Titles; for the Alliance cometh to the Moiety by the Seisin of one of the Jointenants; and the other Jointenant hath the other Moiety by Force of the first Seisin made to him and to his Companion, &c. and so they are in by several Titles, that is to say by several Seisins. Co. Litt. S. 292.

So if two

9. Also if three Jointenants be, and one of them aliens that, which to him belongeth, to another Man in Fee, the Alliance is Tenant in Common with the other two Jointenants; but yet the other two Jointenants are seised of...
Jointenants.

of the two Parts, which remain, jointly, and of these two Parts, the Su-
vivor between them two holdeth Place. Co. Litt. S. 294.

10. Also if there be 2 Jointenants in Fee, and the one giveth his Part

Part, the to another in Tail, and the other giveth his Part to another in Tail, the Do-
other Parties nees are Tenants in Common, &c. Co. Litt. s. 295.

in that Case also the Leafees are Tenants in Common. Co. Litt. 189. b,

11. If a Feme be endowed of the third Part of a Mill, the Heir and the Feme are not Tenants in Common, but several Tenants for the Heir shall have two Toll Dishes, and the Feme the third Toll Dih in a Place by

itself; the Reason seems to be, because Dower shall be assigned by Metes and


435.

12. Fine of Render levied to him that is seised, and to another that is

not seised makes the Stranger to be Jointenant. Br. Fines. pl. 77. cites 22

Aff. 54.

13. Note a Diverfity, when the Estate of Inheritance is limited by one

Sez'tis when a Lease for

Lease, or for their

sentence, and the

Leases, and

for their

Heirs, and

Lease to two

for their

Lives, and

to the Les-

for grants the

Reversion to them two and the Heirs of their two Bodies. The Jointure is seco-

ler, and they are Tenants in common of the Possession. Co. Litt. 182. b.

14. If two Jointenants in Fee be, and they both join in a Lease to an

Abbot and a Secular Man for Term of their Lives, here the Reversion, that is dependant upon several Freeholds, is severed. Co. Litt. 191. b.

15. If Lands are given to two, to hold the one Moiety to one for Life, and the other Moiety to the other for Life. Co. Litt. 191. b. 192. a.

16. If a Man seised of Land enfeoffeth another of the Moiety, without

saying any thing of Allignment or Limitation thereof in severally at the

Time of the Footland, The Feoffee and Feoffor shall hold their Parts

17. Two Jointenants in Fee; one leaves his Part to another for his Life. The Tenant for Life and the other Jointenant are only Tenants in Common during the Life of the Lessor. Co. Litt. 191. b. S. 302.

18. If an Alien and a Subject purchase Lands in Fee, they are Jointenants, and the Survivorship shall hold Place, & Nullum tempus occurrit Regi upon an Office found. Co. Litt. 150. b.

19. As there are Jointenants by Difficin, so are there Jointenants by Abatement, Intromission, and Usurpation. Co. Litt. 181.

20. If I give a Horse to two Hambd the one Part to the one, and the other Part to the other, yet they are Jointenants of the Horse. Mo. 64. Trin. 6 Eliz.—So of a Wood; the Division will not alter the Joint Interest. Ut ante.

21. A Tenant for Life, B. Left for Years to begin after the Death of A.—B. dies. A. and the Administrator of B. joined in the Purchase of the Fee Simple of the Land demised; per Dyer, the Tenant for Life and the Administrator are Tenants in Common of the Fee. 4 Le. 37, 38. 6 Eliz. C. B.

22. Fine was levied to A. and B. to the Use of A. B. and C. They are all Jointenants, tho' A. and B. was in by the Fine at Common Law. Nov. 124. Watts v. Lee. says, it was adjudged accordingly in the Cafe of a Feoffment in 21 Eliz. ut ante. cites D. 25.

23. If two Tenants in Common enfeoff B. to their Use, they are Tenants in Common of this Ufe. But if they levied a Fine to B. to their Use, they are then Jointenants. Arg. Goldsby. 68. Mich. 29 & 30 Eliz.

24. A. left land to B. his Son and M. his Wife, & curvis Primogenito Prx Sucessici. By this Grant the Issue is to take jointly with B. and M. so that if they have no Issue at the Time, an after born Issue shall take nothing by the Grant. Cro. E. 121. Mich. 30 & 31 Eliz. B. R. Stevens v. Lawton.


26. Feoffment to his Daughter and two others to the Ufe of her and the Heirs of her Body, adjudged that she has Fee, and that she and the others are Tenants in Common. For Feoff to the Ufe of himself takes by the Livery and not by Limitation of the Ufe. D. 200. Marg. pl. 60. cites Hill. 43 Eliz. C. B. between Reading and Norris.

And Serjeant Harris vouch'd such Cafe to be held Fee Tail pro to- to, but it was afterward revers'd and adjudged Fee in B. R. ibid.—And this Cafe of Reading and Norris, being reported at a Reading in Lincoln's Inn Lent. 1652. Harleian Lecturer, took a Disputy between this Cafe and Samuel Cafe. For there all the Fee pass'd to the same Parties, and therefore Jointenants, but otherwise here for the Benefit of the Remainder. Ibid.

28. Lord of a Manor in Confeffion of 100l. paid by J. S. his Copy- holder of Inheritance by Indenture between him of the one Part and J. S. and R. S. Son of J. S. of the other Part incoffs, releaseth and confirns to J. S. Habendum to J. S. and R. S. and their Heirs, and Covenanteth that all Affurances should be to thofe Ufes, and Livery was made Secundum formam Chartae. Resolved, that tho' this Conveyance shall enure by way of Feoffment, and that J. S. only shall take by the Livery, yet either by Feoffment, or by Releafe, or Confirmation which may enure to an Ufe as well as a Feoffment, R. S. shall take together with J. S. by the Limitation of the Ufe in the Habendum as Jointenant of the Ufe, which being ex- ecuted by the Statute of 27 H. 8. of Ufes made them jointly feized of the Interest and Possession. Ley. 13. Trin. 7 Jac. Somers's Cafe.

29. If
Jointenants.

29. It's a *Difference be had to the Use of two, and one agrees at one time, and the other at another time, they shall be Jointenants. 13 Rep. 56. Mich. 7 Jac. in Samm's Cafe.

and therefore if a Grant be made by Deed to A. for Life, the Remainder to the right Heirs of B. and C. in For, and B. has Issue and dies, and afterwards C. has Issue and dies, and then A. dies; in this Case the Heirs of B. and C. are not Jointenants, because the Remainder be limited by one Grant or Fine and by joint Words, yet because by B's Death the Remainder as to one Moity vested in his Heir and by the Death of C. the other Moity vested in his Heir at several Times, they cannot be Jointenants. 15 Rep. 57, cites 24 E. 3. joinder in Action. —— Co. Litt. 188 a.

30. If a Tree grows in an Hedge which divides the Lands of A. and B. and by the Roots takes Nourishment in the Land of A. and also of B. they are Tenants in Common of this Tree, and so adjudged. 2 Roll. R. 255. Mich. 20 Jac. B. R. Anon.

31. A Deed of Trust to pay the Profits to three in equal manner till such an Age, and then to convey the Inheritance to them in like manner, this makes Tenancy in Common, as well as if it was in a Will. 1 Lev. 232. Hill. 18 & 19 Car. 2. in Canc. Bois v. Rowell.

32. A Feoffment was made to two and their Heirs equally to be divided; Holt Ch. J. Scrogs and Dolben were of Opinion that the Feoffee were Tenants in Common and not Jointenants, but Jones differed; cited per Gold J. Wm's Rep. 16. as Patch. 32 Car. 2. B. R. Smith v. Johnson. satisfied with it, and that afterwards the Rule for Judgment was discharged, and an Ulterior Consent was warranted and then the Party died; so no Judgment was given. Wm's Rep. 22. in Cafe of Fisher v. Wigg

33. In a Covenant to stand feoffed to the Use of A. for Life, and after to two, as to be equally divided, and to their Heirs and Assigns for ever. Per 178. Lowen Lord Keeper, the Inheritance is in Common as well as the Estate for Life; he said it had been held, that where the Words were (to two equally divided) that should be in Common, otherwise if the Words were (equally to be divided) but are since taken to be all one; may, a Devise to two equally will be in Common; here there shall not be such a Construction as to make one kind of Estate for Life, and another of the Inheritance, and Survivorship is not favoured in prejudice of the Heir. Patch. 35 Car. 2. 2 Vent. 365. Anon.

Abr. Equ. Caes 291. —— Equally to be divided makes Tenants in Common in a Will, not in a Deed. 1 Salk. 59. per Holt Ch. J. in Cafe of Ward v. Everard. —— Ibid. 591. 8 P. per Holt Ch. J. in Cafe of Surrender of a Copyhold, but adjudged e Contra, according to the Opinion of two other Judges, Fisher v. Wigg. —— A forenamed a Copyholder to his five Children, equally to be divided between them and their Respective Heirs for ever; adjudged per two Judges against Holt Ch. J. a Tenancy in Common. 12 Mod. 236. Fisher v. Wigg. —— Wm's Rep. 15. to 22. Hill. 1709. S. C. —— Abr. Equ. Caes 291. in the Margin of 4. 4 days that the same Cafe being cited Mich. 1750 in the Cafe of Stephen and Phillips it was laid by Counsel to be reversed according to my Lord Holt's Opinion; in which Cafe it was held by the Master of the Rolls, that there was a Difference between Words which create a Tenancy in Common in a Will, and in a Conveyance; For that tho' the Words (equally to be divided) in a Will create a Tenancy in Common; yet it is not by force of the Words themselves; but by the Intent of the Tofater, that there shall be no Survivorship.

34. If two joint Purchasers pay an equal Share of the purchase Money, this makes them Tenants in Common in Equity. Arg. Hill. 1685. Verit. R. 361. in the Cafe of Uther and Prime v. Ayleworth, &c.

an unequal Share makes them Partners, if the Share appears in the Deed itself and the Survivor shall be considered in Equity as a Trustee. Abr. Equ. Caes 290. Lake v. Gibbon.

35. Grant of 100 l. Rent to five Equally to be divided, to hold them, and their Assigns, viz. 20 l. to each for Life and the Life of the Survivor, and if any die his Share to be divided equally among the Survivors. The Grantees are Jointenants. 1 Salk. 395. Hill. 10 W. 3. Ward v. Everard.

by a third of 20 l. to the one and third to the other, makes it not a Tenancy in Common. 12 Mod. 225. Mich. 10 W. 3. in Cafe of Ward v. Everard.

36. There
Jointenants.

36. There is Diversity between a Grant to two and their Heirs, and to two and their respective Heirs, and a Grant to two and their Heirs respectively, since the Limitation must be to both their Heirs, or they cannot both take a Fee Simple and if the Fee enures to both their Heirs, it must be to both their Heirs respectively; per Holt Ch. J. which Turton and Gould J. agreed. Wins's Rep. 18 Hill. 1703. in Cafe of Fisher v. Wigg.

37. A conveys a Term to Trustees in Trust to permit him to take the Profits for his Life, and after his Death to permit B. and C. two of his Daughters their Executors and Administrators to take the Profits during the Reversion of the Term equally to be divided between them, they paying 100l. within two Years to each of his two other Daughters; per Master of the Rolls, this being a Trust of a personal Thing they are Tenants in Common, and it appears that the Father's Intention was to make them distinct Provisions, and the Payment of the 100l. to each of the other Daughters makes B. and C. Purchasers. Pach. 1701. Ch.Prec. 163. Hamel v. Hunt.

38. Two Mortgages Tenants in Common purchase the Equity of Redemption to them and their Heirs, they are Tenants in Common of the Inheritance, the Purchase being founded on the Mortgage. Abr. Equ. Cales 292. 11 Anne. Edwards v. Fallion.

39. There are but two ways of creating a Tenancy in Common by Conveyance, viz. either by limiting it to them expressly as Tenants in Common, or else by limiting a Moiety, or a Third, or other undivided Part to one, and the other Moiety &c. to another, &c. For if it be otherwise, tho' the Words (equally divided) be used, yet they signify only an equal Division, and Proportion of the Profits; per the Master of the Rolls. Mich. 1733. Abr. Equ. Cales 291. in a Note upon pl. 4.

40. A. had 3 Sons and 2 Daughters J. and M. and devised three fourths of his personal Estate to his three Sons equally, &c. and as to other Fourth he devised it to the Sons, in Trust only for his two Daughters, and by their Application to be put out at Interest in Name of his three Sons, and the Interest to be paid to his two Daughters respectively, during their natural Lives; and afterwards to their, or either of their Child or Children, and for Default of Issue, he devised it to his three Sons equally, &c. M. dies leaving a Son; J. died without Issue; the Master of the Rolls decreed the Moiety of M. to her Son, and the Moiety of J. to the three Sons (his Uncles). The Question upon a Re-hearing was, who should have the Moiety of J. it was admitted by the Council for the Sons, that M. and J. were Tenants in Common by means of the Word (Respectively) but it appeared that the subsequent Limitation being founded on the first Devise must receive the same Construction, as to the Children taking by Purchases; and that Tettator's Intent could not be fulfilled any other way than by making M. and J. take by immediate Devise, and that so the Cafe must be considered as a Devise of one Moiety to M. and her Issue, and the other to J. and her Issue, and for failure of Issue of either to go over to the Sons; and that other Construction would be contrary to the Nature of a Tenancy in Common; but Lord Chancellor held that tho' the Sons had the absolute Property in the three Fourths, yet M. and J. had not the absolute Property in the other Fourth, but only in the Interest which was to be paid to them respectively during their Lives, and that by this Word (Respectively) they are Tenants in Common; and that the next Limitation vests the whole Property in the Children, and they take as Purchasers according to Mort's Cales. 6 Rep. 16. a. and that he saw no Reason why they must take Respectively as well as their Mothers, there being no Words of Division in the Devise to them, but the Whole is to go over to either to their Child or Children; and that where-ever the Tettator intended a Tenancy in Common he expressed it, as by the Words (Respectively) in the Cafe of the Daughters, and the Words (equally to be divided) in Cafe of the Sons; and declared his Opinion that A's Intent was, that any Child of either M. or J. should take the Whole of this Fourth Part, and no Part to go over to the three Sons till Failure of such Issue; and so decreed for the Plaintiff. Sel. Cales in Chan. in Lord Talbot's Time. 27. Pach. 1734. Stephens v. Hide.
Jointenants.

(M) What Persons may be Jointenants, or Tenants in Common.

1. A Villicin and his Feme purchase jointly; the Lord enters; the Villicin dies; the Feme or her Heir collateral shall re- have the whole Land; for there are no Moieties between them. Br. Parliament pl. 43. cites 40 Ait. 7.

2. Where it is enacted by Parliament that all Estates made to J. N. shall be void, yet Estates made to J. N. and his Feme shall not be void if the Feme survives, but the Feme shall have the Whole; for there are no Moieties but of Estates before the Covertury, the Moiety of the Baron shall be void; per Fenius and Vavilior. Quære, because two Justices were against three. Br. Jointenants, pl. 67. cites 5 H. 7 30.

3. If Lands are given to two Men, and to the Heirs of their two Bodies begotten, theDonees have a joint Estate for their Lives; and if each of them hath issue and die, their issues shall hold in Common, &c. But if Lands be given to two Abbot, as to the Abbot of W. and to the Abbot of S. A. to hold to them and to their Successors, they have presently an Estate in Common, and not a joint Estate; for that every Abbot or other Sovereign of a House of Religion, before that he was made Abbot, or Sovereign, &c., was but a dead Person in Law, and when he is made an Abbot, he is a Man enforceable in Law only to purchase and have Lands, or Tenements, or other Things to the Use of his House, and not to his own proper Use, as another Secular Man may; and therefore at the beginning of their Purchase they are Tenants in Common; and if one of them die the Abbot that surviveth shall not have the whole by Survivor, but the Successor of the Abbot that is dead shall hold the Moiety in Common with the Abbot that surviveth &c. Co. Litt. S. 296.

4. If Lands are given to two Bishops to hold to them two and their Successors: albeit, the Bishops were not ever any dead Persons in Law, but always of Capacity to take, yet seeing they take the Purchase in their politic Capacity as Bishops, they are presently Tenants in Common; because they are feied on several Rights; For the one Bishop is seised in the Right of his own Bishoprick of the one Moiety, and the other is seised in the Right of his Bishoprick of the other Moiety, and so by several Titles, and in several Capacities, whereas Jointenants ought to have it in one and the same Right and Capacity, and by one and the same joint Title. Co. Litt. 189. b. 190. a.

5. So if Lands are given to two Parson and their Successors, or to any other such like Ecclesiastical Bodies Politick or Incorporate. Co. Litt. 190. a.

6. If Lands are given to an Abbot and a Secular Man to have and to hold to them, viz. the Abbot and his Successors, and to the Secular Man, to him and his Heirs, they have an Estate in Common. Co. Litt. 297.

7. If any Author or His Persons do not hold in Chattels real or personal; For if a Lease for Years is made, or a Ward granted to an Abbot and a secular Man, or to a Bishop and a secular Man, or if Goods are granted to them, they are jointenants; because they take not in their politic Capacity. Co. Litt. 190. a.
Jointenants.

7. If Lands are given to the King and a Subject, to have and to hold to them and their Heirs, yet they are Tenants in Common and not Jointenants, for the King is not feited in his Natural Capacity, but in his Royal and Politick Capacity, in Jure Coronae, which cannot stand in Jointure with the Seisin of the Subject in his natural Capacity. Co. Litt. 199. a.


(M. 2) Who are Jointenants notwithstanding the several and different Limitations.

1. If a Rentcharge of 10l. be granted to A. and B. to have and to hold to them two, viz. to A. until he be married, and to B. until he be advanced to a Benefice, they are Jointenants in the mean Time, notwithstanding the several Limitations; and if A. die before Marriage, the Rent shall Survive; but if A. be married, the Rent should have ceased for a Moiety, & dier covenants, on the other Side. Co. Litt. 180. b.

(M. 3) In what Cases one may be Tenant in Common with himself.

S. P. Fin. Law. 80. 88.
1. J. S. be Dean of P. I may give Land to him by Name of Dean, &c. and his Successors, and to J. S. Clerk and his Heirs, and there he takes as Dean, and also as a private Man, and is Tenant in Common with himself; per Pollard J. Br. Corporations, pl. 34. cites 14 H. 8. 2. 29.

2. So where the Dean and Chapter are Lords, and the Dean purchases the Tenancy to him and his Heirs, he is Tenant to himself, and he and his Chapter shall make Avowry upon himself, and those Cases were granted, because he takes of another's Gift, but all this does not prove that he may take of his own Gift. Br. ibid.

(N) Who are Jointenants, tho' the Estate vests at several Times.

D. 319 b. pl. 48. Hill.
1. If some Cases there may be Jointenants and yet the Estate may vest in them at several Times; as if a Man makes a Feoffment in Fee to the Use of himself, and of such Wife as he shall afterwards marry, for Tenure of their Lives, and after he takes Wife, they are Jointenants, and yet they come to their Estate at several Times. Co. Litt. 188. a.

2. If
Jointants.

2. If a Man makes a Feoffment in Fee to the Use of himself for Life, then to the Use of every one of his Issue Female and to the Heirs of their Bodies, then to the Issue of one Daughter at one Time, to a second Daughter at another Time, and of a third Daughter at another Time, so that this is to vest severally in them, and afterwards to all; they are here jointants, and yet they come at several Times; but the Reason of this is, because the Root was joint; per Coke Ch. J. says it has been so adjudged.

3. If Lands are demised for Life, the Remainder to the right Heirs of J. S. and J. N.—J. S. has Issue and dies, and after J. N. has Issue and dies; the Issue are not jointants, because the one Moiety vested at one Time, and the other Moiety vested at another Time. Co. Litt. 188. a.

4. If two jointants be of a Term, and the one of them grants to J. S. But if he had that if he pay to him 101. before Michaelmas then he shall have his Term, and the Grantor dies before the Day, and J. S. pays the Sum to his Executors at the Day, yet he shall not have the Term, but the Survivor shall hold Place; it should have bound the Survivor. Co. Litt. 183. a.

(O) What Things may stand in Jointure.

1. A Right of Action and a Right of Entry may stand in Jointure; For at Common Law, the Alienation of the Husband [of Feme Jointenant] was a Di&continuance to the Wife, of the one Moiety, and a different of the other; so as after the Death of the Husband, the Wife has a Right of Action to the one Moiety, and the other jointant a Right of Entry into the other; but they are jointants of the Right, because they may join in a Writ of Right. Co. Litt. 188. a. But a Right of Action or a bare Right of Entry cannot stand in Jointure with a Freehold, or Inheritance in Possession, and therefore if the Husband make Feoffment of the Moiety, this was a Di&continuance of that Moiety * and the other jointant remained in Possession of the Freehold and Inheritance of the other Moiety, which for the Time was a Severance of the Jointure, and fo are all the Books, which seemed to vary among themselves, clearly reconciled. Co. Litt. 188. a.—* Ibid. Marg. says that by the Stat. of 32 H. 8. 2. 'tis no Di&continuance at this Day.

2. If two jointants are of a Rent, and the one di&ises the Tenant of the Land, this is a Severance of the Jointure for a Time; for the Moiety of the Rent is suspended by the Unity of Possession, and therefore cannot stand in Jointure with the other Moiety in Possession. Co. Litt. 188. a.

3. If a Man devises Lands to two, to hold to the one for Life, and the other for Years, they are no jointants; for a State of Freehold cannot stand in Jointure with a Term for Years. Co. Litt. 188. a.


(P) Where two may have Joint Estates for their Lives, and yet the Inheritances several, or to one of them.

1. Jointants may have a Joint-Estate, and be jointants for their Lives, and yet have several Inheritances; as if Lands be given to two Men, and to the Heirs of their two Bodies begotten. In this Case
the Donees have a Joint-eftate for Term of their two Lives, and yet they have several Inheritances; For if one of the Donees hath Issue and die, the other which surviveth shall have the whole by the Survivor, for his Life, and if he which surviveth hath also Issue and die, then the Issue of the one shall have the one Moiety, and the Issue of the other shall have the other Moiety of the Land, and they shall hold the Land between them in Common, and they are not Jointenants, but are Tenants in Common.

And such Donees have a Joint-eftate for Term of their Lives, for that at the Beginning the Lands were given to them two, which Words, without more saying, make a Joint Eftate to them for Term of their Lives, and they shall have several Inheritances, in as much as they cannot have one Heir between them ingendered, as a Man and a Woman may have. The Law will that their Eftate and Inheritance be such as is reasonable, according to the Form and Effect of the Words of the Gift, and this is to the Heirs which the one shall beget of his Body by any of his Wives, &c. so by Necessity of Reafon they have several Inheritances.

Co. Litt. S. 283.

2. As it is said of Males, fo it is where it is given to two Females, and to the Heirs of their two Bodies ingendered.

Co. Litt. S. 283.

3. Note, albeit they have several Inheritances in Tail, and a particular Eftate for their Lives, yet the Inheritance does not execute, and fo break the Jointenancy; but they are Jointenants for Life, &c. in Common of the Inheritance in Tail.

Co. Litt. 182. S. 283.

4. If a Man gives Lands to two Men and one Woman, and the Heirs of their three Bodies beget in this Case they have several Inheritances; for albeit it may be said that the Woman may by Possibility marry both the Men one after another, yet first she cannot marry them both in Present, and the Law will never intend a Possibility upon a Possibility, as first to marry the one, and then to marry the other. Secondly, The Form of the Gift is To the Heirs of their three Bodies which is not possible, and therefore they shall have several Inheritances.

Co. Litt. 184. a.

5. So if a Gift in Tail be made to a Man and his Mother, or to a Man and his Sister, or to him and his Aunt, &c. in this and like Cases, albeit the Gift is made to a Man and a Woman, yet they have several Inheritances, because they cannot marry together, and are within the Rule and Reason of our Author.

Co. Litt. 184. a.

6. A devised Land to his two Daughters and their Issue, and in Default of such Issue to f. S. they have a Joint-Estate for Life and several Inheritances; and if one Daughter die without Issue, there shall not be Crofs's Reminders, but her Moiety shall go over to J. S. on the Death of the Daughters for want of such Issue, viz. Such respective Issue. Per Lord Keeper. Patch. 1706. 2 Vern. 545, 546. in Case of Cook v. Cook.

2. Vern. 545.

S. C. and the Decree was.

7. A Devis to two, and the Survivor of them and their Heirs equally to be divided, they shall be Tenants for Life, and Tenants in Common of the Inheritance; for otherwise the Word Survivor must be rejected, which the
Jointenants.

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the Testator never could intend. 9 Mod. 157, 160. Trin. 11 Geo. 1. Barker v. Eyles and Smith.

(Q) Inter se. What Acts of one shall bind, and conclude the other.

1. WHERE the one Jointenant charges, and after releases to all the others, they shall hold charged imperpetuum; per Littleton. But per Jocx, they shall not hold charged imperpetuum, unless he who re-leaves survives. Br. Jointenants, pl. 2. cites 33 H. 6. 4. 5.

2. If one Jointenant in Fee takes a Lease for Years of a Stranger by Deed indented and dies, the Survivor shall not be bound by the Conclusion; because he claims above it, and not under it. Co. Litt. 185. a.

3. If three Jointenants are dissized, and they arraign an Affiz, and of one of them releaves to the Diffieror all Actions personal, this shall barr him, but it shall not barr the other Plaintiffs; for, having a Regard to them, the Realty shall be preferred, &c. &c. majus trahitad fe minus dignum. Co. Litt. 285. a.

4. And in a Writ of Ward brought by two, the Release of the one shall not grieve the other, but shall enure to his Benefit; for he shall recover the whole Ward and hold his Companion out. Co. Litt. 265. a. But if two Jointenants in Fee are dissized by face, and one of the Differents releaves to one of the Differors all his Right, he shall not hold out his Companion; because the Release is but of the Motely without any Certainty. Co. Litt. 276. a.

5. If there be two Jointenants of a Ward, and one does Waif, both shall answer for it. Co. Litt. 54. a. But the Ward of one Jointenant is the Waif of the other also, as to the Place wofled, yet the treble Damages shall be recovered against him only that did the Waif. 3 Inst. 302.

6. Two Jointenants make a Lease for Life upon Condition, and one releaves the Condition; the Condition is gone. Per Mounson J. 4 Le. 29.

7. Two Jointenants are of a Term upon Condition, that they, nor either of them, shall alien any part of the Land without Assent of the Lessor; they make Partition, and one aliens his Part; this is a Forfeiture of the whole. Cro. E. 163. Mich. 51 & 32 Eliz. C. B. Goldrick's Case.

8. Every Act by one Jointenant for the Benefit of his Companion shall bind, but those Acts which prejudice his Companion in Effets shall not bind; as the Default of one, the Surrender of the one, &c. And therefore if the two Jointenants have the Benefit of a Condition to increase their Effets, and the one will attorn in a Quid Juris clamat without fav'ring it, it shall not hurt his Companion but himself only. But in the Matter of the Profits of the Land, the one may damnify the other, for there is Quafi a Privity between them, and it was his Folly to join with one who would prejudice him; as where one takes the entire Profits, the other had no Remedy; so where two Jointenants were of a Seigniory, and a Wardhip happened, if the one would dirtrein for the Services before Election of the Wardhip, it should bind his Companion. Cro. E. 803. Hill. 43 Eliz. B. R. in Cafe of Rud v. Tucker.

9. Two Jointenants of a Term by Indenture; one gives the Indenture to a Stranger and dies; all the entire Term survives to the other; yet he shall not have an Action for the Indenture. Nov. 36. Anon.

10. A. and B. two Jointenants of the Office of Fines for original Writs, committed the Cofolly of the Debt of the Office, and the Collection of the Profits to J. S. They both commence a Suit in Equity against J. S. for an Account of the Profits; B. releaves to J. S. all Actions and Accounts, whereupon A. exhibits his Bill against B. and J. S. furnishing that the Lid Re-6 L. cale
Jointenants.

Leaves was by Combination, and for a valuable Consideration in Money paid, &c. To this Bill J. S. pleaded the Release; and the Court held to good Plea, tho' the Bill seeks Relief against it, for there does not appear any particular Fraud or Combination in obtaining it; and a general Allegation of Combination is not sufficient; for there may be a lawful Combination, and Defendant is not obliged to answer but to unlawful Combination; And in this Case the Release is good in Law, and no Default in him, who obtained it for his own Advantage; Besides, it appears to have been obtained for a valuable Consideration, and so Equity ought not to set it aside; And if the Plaintiff has any Remedy in this Case, it must be against his Co-partner, and not against J. S. Harb. 168. Trin. 12 Car. 2. in Scacc. Griffith v. Manter and Vaughan.

11. If one Jointenant agrees to alien, and dies before it is done, it would be a strange Decree to compel the Survivor to perform the Agreement. Per Car. 2 Vern. R. 63. Patch. 1658. in Case of Muirgrave v. Dalwood.

12. The Attornment of one Jointenant is good; for both are Tenants of the whole Land, and the Services are due for the whole Land; and since the whole Services are due for both, either may confer for the whole; and the Dillets grows to be notorious on the Land for the whole. G. Treat. Ten. 83. S. 566.

(Q. 2) Bound by Forsiture of the other.

1. A. was bound to two in 20 I. and the one of the two was Feb de fe, which was found by Office; and per Chocke Justice, the whole Obligation is forfeited; contrary per Young, for by the Death it is vested in the other by the Survivor, and the Office which came after could not devest that which was vested before; quære. Br. Jointenants, pl. 34. cites 8 E. 4. 4.

2. In Debt by the King; A. was bound to two, the one was outlawed, the King got the Obligation and after granted it, the Duty, the Action, and the Execution, by Patent, to another, and that he should sue it in Name of the King. Per Port, the Action ought to be in the Name of these Obligees; for the Outlaw is alive; Newton said, that as one may by his Release discharge the entire Obligation, so may he forfeit it by Outlawry to the King, therefore ruled the Defendant to answer; and to see the Survivorship determined. Br. Jointenants, pl. 39. cites 19 H. 7. 47.

(R) How far bound by his own Acts, Grant, &c.

1. If there are two Jointenants, and one bargains and sells all the Land by Deed, the other dies, so as he has all by Survivor, and the Deed is after enrolled, yet the Mioetry only shall pass. Cro. J. 53. Arg. in Case of Bellingham v. Ahop. ———Cites 7. E. 6.

2. A Jointenant may make a Feoffment of the Entierty with Warranty; for he is feied per My & per Tont; and though it be a Difference of the Mioetry, yet the Feoffment is good, and the Warranty well annexed, and when they join in a Feoffment with Warranty, every one warrants the entire. Cro. E. 69. Trin. 41 Eliz. C. B. Piper v. Wider.

3. If there are 4 Jointenants, and they Covenant that Survivorship shall not hold, yet it shall hold. Arg. Skin. 7. Mich. 33 Car. 2. B. R. in Case of Kingdom v. Jones.

(R. 2)
Jointenants.

(R. 2) Bound; how far, by Charges of his Companion.

1. If there be two Jointenants, and one charges the Land, his Beasts S.P. Br. Dis.
shall be dissolved, but not the Beasts of the other Jointenant; but it trench pl. 68.
be who charges survives, the Charge is good for ever. Per Strangue. Br.
Charge, pl. 10. cites 5 H. 5. 8.

(S) Charges. Relation to what Time.

1. If two Jointenants are, and one charges the whole, and then the other disclaims, the Charge is good from the Beginning. Arg.
Goldsb. 3. pl. 11. Park. 28 Eliz.

2. If there are two Jointenants Copyholders in Fee, and one surrenders Co. Litt. 59.
to the Hands of two Tenants to the Use of his Will, and makes his Will of b. S. P.
that Land and dies, and the Surrender is presented, this shall bind the Survivor, for being presented it shall relate to the first time of the Surrender, Resolved and adjudged accordingly. Cro. J. 100. Mich. 3 Jac.

(T) Charge. By Devise by one. In what Case good.

1. If there be two Jointenants of Land in Fee Simple within a Borough where Lands and Tenements are devisable by Testament, and one of them devisest his Part, &c. and dieth, this Devise is void; for no Devise can take Effect till after the Death of the Devisor; and by his Death all the Land presently cometh to his Companion by the Survivor, and therefore such Devise is void. And the Survivor claims by the first Feoffor, and therefore in Judgment of Law his Title is Paramount the Title of the Devisee, and consequently the Devise void; and the Rule of Law is, that jus accrescendi preferuntur ultima voluntati, and in Consideration of the Law there is Priority of Time in an Instanl, &c. Co. Litt.
185. b.

Payment of Debts, the same was decreed in Chancery. Toth. 142. cites Mich.; Car. Mather v. Godbold.

2. Two Jointenants, one by Will gives his Part, and good in Equity. Toth. 183. cites 7 Car. Pettit v. Styward.
(U) Leases by one. In what Case shall bind the other.

Cited by Coke Ca. J. 5 Bult. 513 and took a Difference between the Tenement's Life, and the Leafe, and the Life of the Decease, the Leafe may enter and occupy the Moity let unto him, during the Term, &c. tho' the Leafe had not the Possession thereof in the Life of the Leifor, by Force of the fame Leafe, &c. And the Divinity between the Case of a Grant of a Rent Charge and this Case is this, for in the Grant of a Rent Charge by a Jointenant, &c. the Tenements remain always as they were before, without this, that any hath any Right to have any Parcel of the Tenements, but they themselves; and the Tenements are in the same Plight as they were before the Charge, &c. But where a Leafe is made by a Jointenant to another for Term of Years, &c. presently by Force of the Leafe the Leifor hath Right in the fame Land, viz. of all that which to the Leifor belongeth, and to have this by Force of the fame Leafe during his Term. Co. Litt. S. 289.

1. If two Jointenants be seised of certain Lands in Fee Simple, and the one leteth his Part to a Stranger for forty Years, and die before the Term beginneth, or within the Term, In this Case after his decease, the Leifee may enter and occupy the Moity let unto him, during the Term, &c. altho' the Leifee had never the Possession thereof in the Life of the Leifor, by Force of the fame Leafe, &c. And the Divinity between the Case of a Grant of a Rent Charge and this Case is this, for in the Grant of a Rent Charge by a Jointenant, &c. the Tenements remain always as they were before, without this, that any hath any Right to have any Parcel of the Tenements, but they themselves; and the Tenements are in the same Plight as they were before the Charge, &c. But where a Leafe is made by a Jointenant to another for Term of Years, &c. presently by Force of the Leafe the Leifor hath Right in the fame Land, viz. of all that which to the Leifor belongeth, and to have this by Force of the fame Leafe during his Term. Co. Litt. S. 289.

2. If two Jointenants be seised for Life, and one makes a Leafe to begin presently, or in future and dies, this Leafe shall bind the Survivor, as it has been adjudged. Co. Litt. 186. a. b.

3. Two Jointenants, one leases the Whole. The Leafe of the other Jointenant's Part is void, and the Leifor shall not be said Ditiefor of the Part of his Companion; per Frowike Ch. J. Kelw. 60. b. H. 20 H. 7.

4. If two Jointenants be of Lands, and a Leafe is made thus, viz. A Moiety only palles. Le. 15. Hod v. Chalm. Two Jointenants of a House, the one made a Leafe for Life by Name of all that his House, and made Livery; per Popham and Fenner the Whole palled, but Gawdy Contra. Cro. E. 615. Geo. v. Holford.

5. Baron and Feme Jointenants for 99 Years if they or any of them so long live, the Baron makes a Leafe for 70 Years to commence after his Death, and dies living the Feme; adjudged a good Leafe for 70 Years against the Feme. Mo. 395. cites it as the Case of Growve v. Lackrot.

6. A Leafe for Years made by one Jointenant for Life shall bind the Survivor; and so tis, if one Jointenant for Life makes a Leafe for Years to begin after his Death, tis good, per Coke Ch. J. who says, was Darbin and Barton's Cafe. 3 Buls. 273. in Cafe of Smallman v. Ligborow.

(W) Leases.
Jointenants.

(W) Leases. In what Cases they shall not bind himself.

1. And B. Jointenants; A. by Indenture covenants with C. that he shall enjoy the Moiety which she holds with her Sitter in Jointure for 60 Years, if B. shall live; and A. demises to C. the other Moiety from her own Death for 60 Years, if B. shall live. Adjudged the Lease void of both Moieties; The one because 'tis of her Moiety after the Decease of her Sittee if the herself so long should live. The other is of the Moiety of her Companion after her own Death, the which is only Possibility, and not grantable. Mo. 1776. Trin. 2 Jac. Whitlock v. Hartwell.

Lease of B's Moiety was void. — Cro. J. 91. S C. adjudged that it was good for A's Part, had she survived B. but A. died first.

2. If two Jointenants be for Life, and one leases the Whole; if the Leffer survives, it shall be good for all; per Dodgeridge J. 3 Buls. 132. Mich. 13 Jac.

(X) Lease by one or all. In what Cases it shall be said to be determined.

1. Jointenants for Life have each of them an Estate only for his own Life, but shall have all by Survivorthip. But if one is coffed of his Estate, it determines by his Death. 3 E. 6. 70. If they make Partition and one dies, Leafe shall enter, and has Estate per my & per Tout, pl. 13. Fare, and consequently when one has an Estate for his own Life, he cannot ingon's Cafe take Estate for the Life of his Companion also. Arg. 2 Roll. R. 472. cites 28 H. 8. 12.

2. A. and B. are Jointenants for Life; A. makes a Lease for 99 Years to Poprh. 96. S. commence after his Death, if B. shall so long live. B. surrenders to the C. Hayes. S. Scouen. S. C. — D. 172. pipes the Leafe was adjudged good.

Mo. 1553. S. C. Hill. 97. Eliz. Reports it adjudged a good Leafe. — Cro. J. 31. cites S. C. by the Name of Harby v. Barton. — [But neither of these Books makes any mention of the Surrender.] — And the Cafe in Nay seems to be the Cafe of Daniel v. Waddington reported Roll. R. 509. and in Cro. J. 1775, which are upon the Point of the Surrender, according to Nay, only that Cro J states the Surrender, as made by the tame Jointenant who made the Leafe, whereas the others state it as made by the other Jointenant.

3. Two Jointenants join in a Lease for Years to two, and afterwards they make Partition, and one dies; yet the Term continues for all. Nay. 158. in Cafe of Harby v. Lobby.

4. Two Jointenants for Life; one Leases for Years, if he and his Companion so long live. By the Death of the one the Leafe is determined. Roll. R. 310. Hill. 13 Jac. B. R. in the Cafe of Daniel v. Waddington.
(Y) Leafè. Rent. How and to whom it shall be payable on such Leafè not being made by all the Jointenants.

1. Two Jointenants are for Term of their two Lives, and the one of them makes a Leafè by Indenture for Years of his Majesty, Referving Rent to him and his Heirs; He who made the Leafè dies; It was held by the Court, that the Term continues, but Leafè shall hold it discharged of the Rent. Quære biens. D. 187. a pl. 5. Mich. 2 & 3 Eliz. cites S. C.—

3. S. P. per Coke Ch. J. 5 Buls. 173.—The other shall not have the Rent, because he claims by the first Estate, which is Paramount the Leafè and the Refervation. 1 Rep. 96. a. (c) in Shelley's Case.—
4. Because not privy to the Leafè; per Doderidge J. 5 Buls. 350.

(Z) Leafè. Rent. How and to whom payable, the Leafè being made by all.

1. If Two Jointenants make a Leafè for Life, Referving a Rent to one of them, the Rent shall enure to them both; because the Reversion remains in Jointure. Co. Litt. 192. a.

2. But if the Refervation be by Deed indented, then he only to whom it is referred shall have it. Co. Litt. 192. a.

3. If two Jointenants, the one for Life and the other in Fee, join in a Leafè for Life, or a Gift in Tail referring Rent, the Rent shall enure to both; For if the particular Estate determine, they shall be Jointenants in a Leafè again in Possession. Co. Litt. 214. a.

(A a.) Seised. How each shall be said seised.

1. Every Jointenant is seised of the Land, which he holdeth jointly, Per moi & per tant, and this is as much as to say, as he is seised by every Parcel, and by the Whole, &c. and this is true; for in every Parcel, and by every Parcel, and by all the Lands and Tenements he is jointly seised with his Companion. Co. Litt. S. 288.

2. A. and B. were joint Lessees of a Mill; A. grants his Estate and dies; and upon a Supposition, that all came to B. by Survivourship, B. Grants, Bargains and Sells the same to J. S. by the Name of Molendinum Suum generally, and all his Estates, Right, Title and Interest, and Covenants
Jointenants.

(6. a) To what Purposes each has Right but to a Moiety.

1. _Outen tener & nihil tener, viz. totum Conjun&nil per se separatis_ and albeit they are so leived, (as for Example, where there are two Jointenants in Fee) yet to diverse Purposes each of them has but a Right to a Moiety, as to enteoff, give, or demise, or to forfeit or lote by Default in a Pracipe. If my Vilein, and another purchase Lands to them two and their Heirs, I may enter into a Moiety. Co. Litt. 186. a.

2. Where all the Jointenants join in a Feoffment, each of them in Judgment of Law do give but his Part. Co. Litt. 186. a.

One Jointenant has one Moiety in Law, and the other the other Moiety, and therefore if two Jointenants make a Feoffment in Fee upon a Condition, and that for Breach thereof, one of them shall enter into the W hole; yet he shall enter but in a Moiety; because no more in Judgment of Law palled from him; and to this of a Gift in Tail, or a Leafe for Life, _&c._ Yet every Jointenant may Warrant the Whole; because a Man may Warrant more than palled from him. Co. Litt. 186. a.

3. If an Alien and a Subject purchase Land jointly, the King upon Office found, shall have but a Moiety. Co. Litt. 186. a.

4. If two Jointenants are of Chattels, the one can not give more than a Moiety; per Keble. Kelw. 23. a. b.

(C. a) Consider'd as one Person, in what Cases.

1. A Demand of Possession from a Lessee, after the Term expired, by one, is a Demand of both, and the Delivery to one is a Delivery to both. Cro. J. 476. Hingen v. Pain.

(D. a) Release by one to the other. How it shall enure or relate.

1. _WHAST by A. supposing that the Tenant held of his Leafe; the Tenant laid, that the Plaintiff and three others leived to him, &c. Judgment of the Writ; the Plaintiff laid, that the other three releastes to him all their Right, &c. and the Writ was awarded good; Quod Nota._ Br. Jointenants. pl. 79. cites 46 E. 3. 17.

2. In Allse; three Jointenants were of Land held of the King in Capite, and the one releasted to his two Companions, and pleaded Pardon of it, quod mirum! For where three Jointenants are, and the one releastes to the other two, there needs no Licence or Pardon; _For the two are in by the first Feoffor_, and not by him who releasted. Br. Alienations, pl. 4. cites 3 H. 4. 8. and the like agreed M. 37 H. 8.

3. But where the one releastes to one of the other two, there he who _&c._ and he takes the Release is in of the third Part by him; _Contra if he had releasted_
Jointenants.

Jointenants shall be held to all his Companions. Br. Alienations, pl. 4. cites 8 H. 4. 3.

—And with this agrees 33 H. 6. 4. and so it is used in the Exchequer, that this is no Alienation.

And as to the third Part, which he hath by Force of the Release, he holdeth that third Part with himself and his Companion in Common. Co. Litt. S. 304.—Such Releefe shall be in the Possess on the third Part, of which the Release is made &c. Perk. S. 84. cites 33 H. 8.—In this Case, this Release enures by Way of Miser Feoffment, and not by Way of Extinguishment; For then the Release should enure to his Companion alone. Co. Litt. 193. 2.

4. And if a Joint Estate be made to the Husband and Wife and to a third Person, and the third Person releases all his Right, which he hath, to the Husband, then hath the Husband the Moiety which the third had, and the Wife hath nothing of this. Co. Litt. S. 305.

And if the third Releafe to the Wife, not naming the Husband in the Releafe, then hath the Wife the Moiety which the third had &c. And the Husband hath nothing of this but in Right of his Wife; because in this Case, the Release shall enure to make an Estate to him, to whom the Release is made, of all that which belongeth to the Releafe. Co. Litt. S. 305.

5. If two Jointenants make a Leafe for Life, they may afterwards releas to each other without Atornment of Tenant for Life. For since both of them have the Reversion, the Tenant for Life is Tenant to them both, and consequentely there is no need of any Subsequent Content to create a new Tenancy; and paying the Rent, and doing the Services to one of them only, is a sufficient Notorietie that the whole Fee is in one only. G. Treat. Ten. 85.

(E. a) Release or Confirmation, by one Jointenant to Strangers. How it shall enure and relate.

1. Two Jointenants make Feoffment in Fee on Condition, that if they pay 20l. at Pentecost, then they may re-enter. Before the Day one of them releas to the Feoffee all his Right, Title and Demand. The other Jointenant pays at the Day, and the Feoffee receives it. Per Dyer, both have Interest in the Condition, and if one dies, the Condition survives, and so one can't dispence with it. Per Benloes, it seems also that by this Release he cannot dispence with Part of the Condition, because it is entire; quod Dier concilium. Per Brown, if a Man makes Feoffment on Condition, and has Issue two Daughters, and dies, one may dispence with the Condition. Quod Dier negavit and Brown e contra. Dal. 44. 33.

2. If two Jointenants be of 20 Acres, and the one makes a Feoffment of his Part in 18 Acres, the other can't releas his entire Part, but only in two Acres; Because the Jointee is severed from the Residue. Co. Litt. 193. 2.

3. If two Tenants in Common be of the Wardship of a Baby, and one ravishes the Ward, and the one Tenant in Common releas to the Rapiher, this shall go in Benefit of the other Tenant in Common, and he shall recover the whole, and this Release than't be any Bar to him. Co. Litt. 197. 2.

4. So if two Tenants in Common be of an Aducator, and they bring a Square impediment, and the one releas, yet the other shall have forth and recover the whole Pretention. Co. Litt. 197. 2.

5. Two Jointenants of a Ward, one releas to the Ward, and the other takes the Value of the Marriage; he who releas'd shall have Account, notwithstanding his Release to the Ward. No. 184. pl. 327. per Mead.

(F. a) Release
(F. a) Release by one to a Stranger. *How much shall pass.*

1. If two Jointenants or Tenants in Common are, and they are dissised, and after one of them releases all the Right that he hath in the Moiety, he shall be barred of his Right in all, and yet every Jointenant is liable per my & per tout. Co. R. on Fines, 7. cites 45 E. 3.

2. But if two Jointenants are of two Acres, and are dissised, and the one releases all his Rights which he hath in one Acre, this shall bar him but of the Moiety of this Acre only, and yet the Moiety of two Acres is one Acre. Co. R. on Fines, 7. cites 45 E. 3.

(G. a) Release to one, or to his Lessee; By Stranger. How it shall enure.

1. If some Cafe a Release shall enure by Way of Extinguishment, and As if a Man in such Cafe, such shall aid the Jointenant, to whom the Release was not made, as well as him to whom the Release was made. Co. Litt. S. 307.

For, if the Lessee releases by his Deed to one of the Feoffees, this Release shall enure to both the Feeoffees; For that the Feeoffees have an Estate by the Law, viz. by Feoffment, and not by Wrong done to any. Co. Litt. S. 307.—The Reason of this Diversity between the Diffeisseors and their Feeoffees is, that the Feeoffees, coming in by Title and Purchase, are intended in Law to have a Warranty (which is much esteemed) in Fee, and therefore, that the Warranty should be avoided, the Release shall enure to both the Feeoffees in favor of Purchasers, and to the Right and Benefit of every one saved Co. Litt. 192. b. And because, coming in by the legal Notoriety of a Feoffment, that Feoffment must be defeated by an Act of equal Notoriety before the Title can be altered, because the Feoffment must stand good as an Act that gives Warning to all Persons in whom the Freehold subsists, till by some Act of equal Notoriety it appears, that the Freehold is in another. And since the Freehold is not defeated in this Case, the Feoffment continues, and the Release enters to them both. G. Treat. Ten. 51.

2. If the Dissesseor makes a Lease for Life to A. and B. and the Release confirms the Estate of A.—B. shall take Advantage thereof; For the Estate of A. which was confirmed, was joint with B. and in this Case, the Dissesseor can’t enter into the Land, and defeat the Moiety of B. Co. Litt. 297. a. 297. b.

3. In some Cases a Release shall enure to put all the Right which the Releeefor hath in the Releeifor. As if a Man feied of certain Tenements is dissised by two, if the Dissesseor, by his Deed, releases all his Rights to one of the Dissesseors, then such Releeifor shall hold all the Tenements to himself alone, and shall out his Companion of every Occupation of this. For the two Dissesseors were in against the Law, and when one of them gets the Release of him which hath Right of Entry &c. this Right, in such Cafe, shall vell in him to whom the Release is made, and he is in like Plight, as if he which hath the Right had entered and intioled him &c. for he which before had an Estate by Wrong, viz. by Dissesseor &c. hath now by the Release a rightfull Estate. Co. Litt. S. 306.

Co. Litt. S. 472. a. S. b. Because the Dissesseor comes in by no lawful or established Actus Notoriety, which ought to be deleted before the manner of possessing can be altered; and therefore, that he possess’d as a Jointenant before the Release, he shall out his Companion, because he was possess’d of the whole before by wrong, and now being possess’d by Right, it follows, that the Possession of the other wrong Doer is no Possession at all. G. Treat. Ten. 52. 53.

4. So, where there are two Joint Abeters or Intromers, which come in merely by wrong. Co. Litt. 194. a.

6 N 5. But
Jointenants.

5. But if two Men do usurp by a wrongful Presentation to a Church, and
their Clerk is admitted, instituted, and indited, and the rightful Patron
relates to one of them. This shall enure to them both; because the Usur-
pers come not in merely by wrong, but their Clerk is in by Admission
and Institution, which are judicial Acts, and therefore an Usurpation shall
work a Remitter to one that has a former Right. Co. Lit. 194. a.

6. If there be two Diffeifors, and the Diffeifie relates to one of them,
he shall hold his Companion out of the land. Co. Lit. 522.

7. But if the Diffeifie confirm the Estate of the one without more saying
in the Deed, some lay that he shall not hold his Companion out, but shall
hold jointly with him, for that nothing was confirmed but his Estate
which was joint. Co. Lit. 522.

This makes no Alteration; for he confirms the Estate in the same manner
as it is. G. Treat. Ten. 72.

For by this he express'd
a Design of confirming the Possession
him alone,
so that the Confirmation goes to the Possession it self by the explanatory Words in the Habendum, and not to the Manner of Possessing; and such Habendum makes the Confirmation enure as a new Grant of such his Moiety. G. Treat. Ten. 72.

So if he relates to Ten-
ant for Life, this shall enure to them all; because the Release

9. If two Difieifors makes a Lease for Life, and the Diffeifie relates to one
of them, this shall enure to them both, and to the Benefit of Diffeifie
for Life also; for he cannot, by the Release, have the sole Possession and
Estate; because Part of the Estate is in another. Co. Lit. 275. a.

cannot alter the Fental Possession. G. Treat. Ten. 52.

10. If Lease in Tail be dissief'd by two, and relates to one of them, it
shall enure to both. But if the King's Tenant for Life be dissief'd by two,
and he relates to one of them, he shall out his Companion. Co. Lit. 276. a.

11. So if two Jointenants make a Lease for Life, and after dissiefe the
Tenant for Life, and he relates to one of them, he shall hold out his Com-
ppanion; for the Difieifie was but of an Estate for Life. Co. Lit. 276. a.

12. If two Jointenants in Fee be dissief'd by two, and one of the Dif-
ifeifie relates to one of the Difieifie all his Right, he shall not hold out
his Companion, because the Release is but of the Moiety without any

He cannot
hold him out of
the whole; for he has
not the whole
Right, and
so there can be no Act of Notorietie, whereby the Estate may appear to be in one Difieifie. G. Treat.
Ten. 54.

13. If a Man be dissief'd by two Women, and one of them takes Husband,
and the Diffeifie relates to the Husband, this shall enure to both the Difieifie;
because the Husband was no wrong Doer, but in a Manner in by
Title. Co. Lit. 276. a.

Because he
cannot make it Notorius
that the E-
state is in
him alone;
for he cannot
hold out his Companion during the Continuance of the Lease for Years. G. Treat. Ten. 55.

14. So it is (as it seems) if the Difieifie makes a Lease for Years, and the
Diffeifie relates to one of them, this shall enure to them both; for by
the Release he cannot have the sole Possession. And it appears by Lit-
tleton, that he must have the sole Possession, and hold his Companion out.
Co. Lit. 276. a.

15. But if the Mortgagie upon Condition, having broken the Condition, is
dissief'd by two, and the Mortgagier, having Title of Entry for the Condition
broken, relates to the one Difieifie; albeit they be in by wrong, yet the
Release shall enure to them both, for two Causes, first, for that they are
not wrong Doers to the Mortgagier, but to the Mortgagier; and by Lit-
tleton's Case it appears, that Wrong is done to him that made the Re-
lease.
Jointenants.

1. If two Jointenants in Fee are of an Acre of Land, and leave the Title by Force of a Condition, and Littleton's Case is of a Right. Co. Lit. 276. a.

16. If Tenant for Life be defeised by two, and be in Reversion and Tenant for Life join in a Release to one of the Disseisors, he shall hold his Company out, and yet it cannot enure by Way of Entry and Feoffment. But if they severally release their several Rights, their several Releases shall enure to both the Disseisors. Co. Lit. 276. a.

Because when the Poifeflion is Notoriety; Ir.s For reliefes may be obtained, from the both, but each of them is capable of a Release; and when one has obtained a Release, it makes his Poifeflion rightful; and his holding out his Company makes it immediately notorious, that the Estate is in him alone. G. TREAT. Ten. 53.

17. But if A. be Tenant for Life, the Remainder in Fcc to B. And A. is to B. th

18. If Land and two Jointenants are, and the Lord releases all his Right unto one, this is good, and shall enure unto them both; For one of them only doth not hold of him; and it shall be prejudicial to no Perfon that the Services shall be extinct by the Release, but unto the Releafe him.

19. Queen Mary, having a Rent of 20l. per Ann. issuing out of a Manor, of which a Man and his Wife were Jointenants seized in Fee, for and in a Confirmation of Money, and her Considerations given and paid by the Baron, by her Letters Patents did give and grant Remain, Release, and Remission, to the said Baron and his Heirs the said Rent of 20l. And after the Baron died, and the Feme survived. If the mutt pay the Rent to the Heir of the Baron, or not, quere? and the Point is if the Letters Patents should be taken in Law for a Release only, or may be used as a Grant at the Expense of the Baron, and his Heirs, and not for a Release or Extinguishment. And Dyer thought, the Patentee should have Election to use the Patent as to him seems best, and cited, 9 H. 6 in Quare Imp. And in the Case supra, the Baron by his former Will devised the Rent to another, which was a Declaration of his Intent and Election. And also in the Habent & Percepient. Redd. pred. pref. the Patentee, and to his Heirs and Assigns, the Intent of the Queen appeared to have the Rent continue if the Patentee would &c. D. 319. b. pl. 16. Mich. 14 & 15 Eliz. Anon.

(H. a.) Grant or Surrender to one. Enure how.

1. If two Jointenants in Fee are of an Acre of Land, and leave the Title Acre unto a Stranger for Life, and the Leife * granteth his Es-
Jointenants.

Grantee had but one Moiety of the Revulsion of the Land in Right, in so much as if he had granted the whole Revulsion to a Stranger, and the Leefee attorne, yet but a Moiety paffeth from him; and by the like Reason, the Grant of the Leefee fhall enure by Way of Surrender but of the Moiety &c. Perk. S. 80. cit.es 5 E. 3. 19.

2. But others think that this shall enure by Way of Surrender for the whole; because every of the Leefors is feived of the whole, and of the whole Revulsion; and the Grant of the Estate of the particular Tenant cannot take Effect by way of Grant without Livery of Seisin, and the Grantee cannot take Livery of Seisin of the fame Land, because he hath the Revulsion in Fee of the whole in him immediate to the fame particular Estate, and in his own Right. Perk. S. 82.

3. If Lord and two Jointenants are in Fee, and the Lord grants his Seignior to one of the Tenants, this Grant shall take Effect by way of Extinguishment for the whole &c. and if the Moiety be already enure it shall enure by way of Grant for the whole; and they fay, that otherwife the Leefee shall not have Liberty to part with his Estate to one of his Leefors &c. Perk. S. 83.

(I. a) In what Cases, and to what Purposes, such Inheritances shall be faid to be executed in the Life of the Parties.

1. Of ancient Time it has been faid, that when Lands have been given to two Women, and to the Heirs of their two Bodies begotten, (as Littleton puts the Cafe, S. 284.) that the Husband having Issue fhould be Tenant by Curtefy living the other Sister; For that as some hold, the Inheritance was executed, and that the Siflers were Tenants in Common in Poleffion, and consequently the Husband to be Tenant by Curtefy, which he could not be, if the Women had a Joint Eftate for Term of their Lives: And likewise it was faid, that the Issue of the one fould recover the Moiety in a Formedon, living the other Sifter. But Verba hae sunt, and Littleton, grounding himfelf upon good Authority in Law,

* Viz. That they are Joint

enure Tenants for Life and Tenants in Common of the Tail, and the Revulsion is feveral. Litt. S. 283.

2. If a Man makes a Lease for Life, and after grants the Revulsion to Tenant for Life and to a Stranger, and their Heirs; they are not Jointenants of the Revulsion; But the Revulsion is, by Act of Law, executed for the one Moiety in the Tenant for Life, and for the other Moiety he holds it still for Life, the Revulsion of that Moiety to the Grantee. Co. Litt. 182. b. (f.)

in Fee; the Jointure is ferved, and the Revulsion is executed for the one Moiety, and for the other Moiety there is Tenant for Life the Revulsion to the Grantee. Co. Litt. 182. b. (g).—2 Rep. 623, 61. Welthew’s Cafe.

3. If Leefee for Life grants his Eftate to him in the Revulsion, and to a Stranger, the Jointure is ferved, and the Revulsion executed for the one Moiety by Act of Law. Co. Litt. 182. b.

4. If a Man makes a Lease for Life, and grants the Revulsion to two in Fee, and the Leefee grants his Eftate to one of them; they are not Jointenants of the Revulsion; for there is an Execution of the Eftate for the one Moiety, and an Eftate for Life the Revulsion to the other of the other Moiety. Co. Litt. 183. a.

(K. a)
Jointenants.

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(K. a) Revive. Where after a Severance the Jointenancy may revive.

1. **Two Diffidors are, and the Diffidsee relapses to one of them upon Condition; now he to whom the Releafe is made shall hold his Companion out; but if afterwards the Condition be broken, they are Jointenants again.** Co. R. on Pines 6. cites 17 All.

2. The Baron and Feme and J. S. purchased jointly; the Baron aliened the whole and died, and after the Feme died; J. S. entered and was oulled; and brought Allife, and recovered the whole, because he and the Feme, by the Death of the Baron, were intituled to have a joint Writ of Right and revive the Jointure; and of the Alienation of the Baron Action of Cui in Vita is not given to J. S. and therefore he shall recover the whole. Quad. Nors. Br. Jointenants, pl. 29. cites 25 All. 15.

3. If two Jointenants, the one for Life, and the other in Fec. life by Default, the one shall have a Writ of Right, and the other a Quod ei deforet, and yet when they have severally recovered they shall be Jointenants again. Co. Litt. 188. a.

4. So it is if two Jointenants are dispossessed, and an Allife is brought, and the one is summoned and seised, and the other recover the Moiety; and after another Allife is brought, and he that recovers is summoned and seised, and the other recover, albeit they severally recover, yet they are Jointenants again. Co. Litt. 188. a.

5. But where the Diffidor seizes Baron and Feme, and the Diffidor re-enters, and the Baron re-enters claiming to him and his Feme, this vests nothing in the Feme, because the Jointenancy was defeated by the Re-enters of the Diffidor; and therefore he who enters by Wrong, (as the Baron here) cannot by his Claim vest any Thing in a Feme covert, in an Infant, nor in a Stranger to the Entry. Br. Entre. Cong. pl. 41. cites 14 H. 6. 25, 26. and 1 H. 6. 5. to the same Intent.

6. If two Femes are jointly seised, and they take Barons, and the Barons join in an Alienation and die, the Wives are Jointenants of the Right, and may join in a Writ of Right, and yet they may have several Writs of Cui in Vita at their Election; But when they have recovered in those several Writs, they shall be Jointenants again. Co. Litt. 185. a. But if the Barons had aliened severally, this had been a Severance of the Jointure for a Time. Co. Litt. 185. a.

(L. a) Survivorship. In what Cases.

THE Nature of Jointenancy is, that the Survivor alone shall have the entire Tenancy of such Estate, as if the Jointure had continued. Co. Litt. S. 280. —— Note, there is a natural Death and a civil Death, and Littleton is to be intended of both; and therefore if two Jointenants be, and one of them enters into Religion, the Survivor shall have the whole. Co. Litt. 181. b.

2. Note, that there shall never be any Survivor, unless the Thing be in Jointure at the Instant of the Death of him that first dies; for the Rule is, Nihil de re accipiet ei, qui nihil in re, quando jus accipierat, habet. Co. Litt. 188. (u.)

3. There may be Jointenants, tho' there be no equal Benefit of Survivor on both Sides; as if a Man lets Lands to A. and B. during the Life of A.—If B. die, A. shall have all by Survivor; but if A. die, B. shall have nothing. Co. Litt. 181. b.

4. If two lease Lands rending Rent, and that if it be in Arrear by two Months, and trenchly demanded by the first Lessors, they may re-enter,
Jointenants.

one dies, and the other who survives demands it, and it is not paid, he may re-enter. Br. Jointenants, pl. 62. cites P. 33 H. 8.

5. Father and Son Jointenants for 100 Years, the Son takes a Lease for 15 Years of his Father of the lands to begin &c. The same concludes the Son to claim the whole Term of Parcel of it by Survivor. 2 Le. 159. 21 Eliz. B. R. in Pleadal's Cafe.

(M. a) Survivorship destroyed; So as the Part of one dying, or all, shall go to the Reverfioner &c.

1. IN Allife; Land was demifed to two for Life, and the longest Liver of them; they made Partition, and one died; the Leftor entered, the Lefsee oulted him, thinking by thee Words (the longest Liver of them) that the Survivor should have the whole; and the Leflor brought Allife and recovered; for thee Words, (the longest Liver &c.) is the Common Law, and by the Partition the Junture is severed for ever. Quod Nota. Br. Jointenants, pl. 28. cites 30 E. 3. 8.

2. Two Jointenants for Life; one makes a Lease for 60 Years, if he and his Companion live so long, and afterwards he surrenders his Moiety, and takes back an Estate and dies. Adjudged, that the Lease is determined by the Death of him that made it; for it has no Continuance longer than the Junture continues. Cro. J. 377. Mich. 13 Jac. B. R. Daniel v. Waddington.

3. A. and B. Jointenants for Life; A. grants his Moiety by Fine by the Word Conveyed to B. Holand's to B. and his Heirs during the Life of A. and then A. dies. It was adjudged, that one Jointenant has not any ESTATE but for his own Life, but has only a Possibility of Survivor for the Part of his Companion, and when he grants over his Estate or makes Partition, upon his Death his Part shall reftor to the Reverfion, and the Possibility of Survivor gone, and the Grantee has only ESTATE for his Life. Jo. 55. Mich. 22 Jac. B. R. Eulace v. Scowen.

4. Upon a Severance of the Jointenants, the Estate does not continue during the Life of each Donee, but determines upon the Death of one for his Moiety; Per Matter of the Rolls. 2 Wm's. Rep. 672. Mich. 1734. in Cafe of Cowper v. Earl Cowper.

(N. a) Diversities between Jointenants, Tenants in Common, and Parceners; and what Acts they may do the one to the other.

1. THE essential Difference between Jointenants and Tenants in Common, is, that Jointenants have the Lands by one joint Title, and in one Right; Tenants in Common by several Titles, or by one Title, and several Rights; which is the Reason that Jointenants have one joint Freehold, and Tenants in Common have several Freeholds. Only this Property is common to them both, viz. That their Occupation is divided, and neither of them knows his Part in several. Co. Litt. 189. S. 292.

2. If two Jointenants are, one & cannot make a Possession to the other, for he cannot make Livery; the Reason is, because the other is Jealous; Per Moyle, to which Newton agreed clearly. Br. Jointenants, pl. 19. cites 22 H. 6. 42.

See (G) (K) (L) See Diffeisio &c.
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because the Freehold is Joint. — But Jointenants may Release. Ibid. — * S. P. for they are but one Tenant, and each is fified per my & per tunt. Br. Feoffment de terre. pl. 35. cites 10 E. 4. 5. — S. P. for they are in by the fift feudal Contract; and therefore a second Feoffment cannot give any other further Title or Notoriety, because every Person shall be fuppofed to be in by the Elder and moft worthy Title, which is the priour Feoffment; therefore the second Feoffment is incompetent. Nor is this any Injury to a Stranger's Practice, for he may bring it against them all, according to the Prior Feudal Contract; and if any of them difclaim, the reft must defend for the whole, or lose their Interell.

6. Treat. of Ten. 68.

But though one Jointenant cannot infief the other, yet he may make a Leafe to the other; for a Leafe is but a Contract. Per Poplin. Ch. J. but Penner J. doubted. Co. 102. Parch. 35. Eliz. in Cafe of James v. Portman.

3. But Tenant in Common may infief his Companion; for there is no Co. Litt. Privity. Br. Feoffment de terre. pl. 45. cites 10 E. 4. 3. 203. b. S. P. But * not

Release; because the Freehold is several. * S. P. Br. Feoffment de terre. pl. 45. cites 10 E. 4. 3. — By fuch Release the Moiety does not pass; For the other had not Poffeffion of the Frank-tenement of that Moiety at the Time of the Release. 10 E. 4. 5. Per Brian. — And if he makes Livery and Sejlion according to the former Charter, the Livery is void, and the Leafe is void. Co. R. on Fines, 7. cites 10 E. 4. 4. — They cannot release to each other, but they muft part their Estate by Feoffment; because this Estate being effublished by different Notarieties, each having paffed by different Liberis, they muft pafs to each other by a diFtringuifhing Livery, or elle it cannot be known in whom fuch Parts are, which formerly had paffed by a diFtringuifh Livery. G. Treat. of Ten. 68.

But if two Tenants in Common make Compoifition to pafs to the Advoicours, and after the one reliefs to the other, this is a good Release. Co. R. on Fines. 7. Marg. cites 39 E. 3. 7. and Br. Release, 77.

4. But Coparceners may both infief and Release; because their Sieflin, to Coparceners come into one Tenure, and defending from their Father; and therefore may Release privaty to each other, without any Notoriety by Feoffment, because they take by Reafon of the former Contract; and Defcent to them, which eftabliihes them in the Poffeffion, without a Noteriy. But the Coparceners do alfo tranfmit diftinct Estates to their Children, they may pafs fuch Estates by Feoffment; for they have, in re- fpect of the defending Line, diFtringuifh Estates, which they may pafs by a diFtringuifh Feoffment. G. Treat. of Ten. 67, 68.

 Tânents in Common. Of what.

1. There be Tenants in Common of Chattels real and personal; As if a Leave be made of certain Lands to two Men for twentieth Years, and when they are poffefs'd, the one grants his Part to another during the Term, then the Grantor and the other falh hold and occupy in Common. Co. Litt. S. 319.

2. If two have jointly the Wardship of the Body and Land of an Infant within Age, and the one of them grants to another his Part of the fame Ward, then the Grantee and the other which did not grant, shall have and hold this in Common. Co. Litt. S. 320.

3. If two Tenants in Common be of a Seigniory, and a Ward falls they are Tenants in Common of the Wardship, as well of the Body as Land; and fo it is if the Land is felfe'd or is to them they shall be Tenants in Common; And it is of Parencers. Co. Litt. 199.

4. If two have jointly by Gift, or by buying, an House or an Ox &c. and the one grants his Part of the fame Horfe or Ox to another; the Grantee and the other which did not grant shall have and poffefs fuch Chattels personal in Common; and in fuch Cafes, where diverfe Perfons have Chattels real and personal in Common and by diverfe Titles, if the one of them dies, the other who survifs shall not have this as Survivor, but the Executors of him who dies shall hold and occupy it with them that survifs, as their Teller did or ought to have done in his Life-time &c. because their Titles and Rights in this were severall &c. Co. Litt. 321.

(P. a)
(2.) Outlier. Where shall he be put an Outlier &c. by the Jointtenants.

What shall be put an Outlier &c. by the Jointtenants.

1. Our Tenant in Common enters into the entire Land, his Politian in Common, and the Small v. shall not be put an Outlier &c. by the Jointtenants.

2. Two Jointtenants are of a Jointure, and one of the other.

3. One Tenant in Common can't be a Defendant without an actual Outlier &c. by the Jointtenants.

4. If one Jointtenant leaves a Wife, it leaves the Joints, but does not amount to an Outlier &c. by the Jointtenants.

5. A died, having a Wife, a Son and a Daughter, the Widow entered upon the Estate, and was joined as Tenant in Common with her Son as Tenant in Common with her Daughter, and accordingly was declared for the ensuing in the and the Court held it was Land, and the Widow entered upon the Estate, and was joined as Tenant in Common with her Son as Tenant in Common with her Daughter, and accordingly was declared for the ensuing in the and the Court held it was

Hill.

Common

Hill.

A Son of one Jointtenant was due to the Widow, and the Widow entered upon the Estate, and was joined as Tenant in Common with her Son as Tenant in Common with her Daughter, and accordingly was declared for the ensuing in the and the Court held it was

Hill.
Jointenants.

(Q. a.) Where Judgment shall be to hold in Severely. See (E).  

1. In Affife, if one Jointenant owns the other, and he brings Affise and Br. Partition, recovers, the Judgment shall be that he recover the Moiety to hold in Severely, and this is a Severance of the Jointure for ever. Br. Jointenants, pl. 41. cites 10 Aff 17.  


cannot maintain this Action against his Companion, for he shall recover nothing but Damages for the Occupation which is to them in Common; but Fairfax and Prior said, that one Tenant in Common may maintain an Action of Forcible Entry upon the Statute of 8. H. 6. against his Companion, for the Words are Quod illum expulit et expellit, and one Tenant in Common can't hold his Companion out by the Law. Br. Tenants in Common &c. pl. 25. cites S. E. 4. 9. and 19.  


3. If there are two Jointenants or Tenants in Common of Lands, and F. N. E. 118. the one makes the other his Bailiff of his Moiety, he shall have an Action of Account against him as Bailiff. Co. Lit. 200. b. — S. P. Co. Lit. 156. a. — But the one Tenant in Common or Jointenant, without being made Bailiff, take the whole Profits, no Action of Account lies against him, for in an Action of Account, he must charge him either as Guardian, Bailiff or Receiver, which he can do in this Case, unless his Companion constitute him his Bailiff. And therefore, all those Books, which affirm that an Action of Account lies by one Tenant in Common or Jointenant against another must be intended, when the one makes the other his Bailiff; for otherwise, Never his Bailiff to render an Account is a good Plea. Co. Lit. 200. b.

4. 4 & 5 Anne. 16. S. 27. Gives Jointenants or Tenants in Common, an Action of Account against their Companions, on the Plaintiff.
Jointenants.

6 Mod. 352. 5. One Jointenant may have a Writ De Reparatione scienciae against the other. 1 Salk. 360. Mich. 3 Ann. B. R. in Cafe of Tenant v. Goldwin.

6. One Jointenant Tenant in Common or Parceener, cannot bring Action against the other; because the Possession of one, is the Possession of both; if he does, it is good Evidence upon Not Guilty. 1 Salk. 290. Trin. 7 Ann. B. R. Brown v. Hedges.

See (R. 3) Account (C).

(S. a) Actions or Remedy, in what Cases, by one against the other; and in what Cases Damages shall be recovered.

1. In Affile there were four Jointenants, and two disaffiled the other two, they brought Affile in Name of all four, quod disaffiled eos, and the Wit awarded good. Br. Affile, pl. 232. cites 23 Aff. 9.

But when two Jointenants are, and the one disaffiled the other, there disaffiled is false, and there Affile lies for the one of the Majesty against the other, and in Cafe supra, the others were commoned and fevered. Br. Ibíd.

2. In Affile, where Land deposite dependes to three Brothers, A. B. and C. and A. holds out B. there B. may have Affile of the third Part of 20 Acres of Land without C. for it may be that C. has his Part, and that A. alone disaffiled B. Br. Affile, pl. 25. cites 23 Aff. 12.

3. One Tenant in Common may abate that which the other builds, and he cannot have thereof an Action of Trefpaß. Br. Trefpaß, pl. 232. cites 12 Aff. 28.

4. Note, that one Tenant in Common shall not have an Action of Trefpaß of a Cafe broken against the other, but 'tis a good Plea that he and the Plaintiff are Tenants in Common, and shall show of whose Foot}nents specially, the Reason seems to be because 'tis of his own Parr, but if this had been pleaded in the Plaintiff with a Stranger, it would be otherwise as it seems, and so it appears there by the Opinion of Danby. Br. Tenants in Common &c. pl. 22. cites 32 H. 6. 13. and Fitzh. Fflice 91.
5. Tho' one Tenant in Common take the whole Profits, the other has no Remedy by Law against him. Co. Litt. 199. b. 

Trespass lies of Profits which arise from the Soil, or Chattels wipd &c. cites 47 El. 3. 22.—3 Br. Tenants in Common &c. pl. 6. cites 21 El. 3. 2, where one carries away all the Corn or Hay, but continues Trees out; For per Wilby, of Trees cut he shall have Writ of Wiffa pro indebito, but not of Profits carry'd away. Note the Divercity.—Br. Trespa, pl. 429. cites 21 El. 3. 9. S. P.—But if two Jointtenants, few the Land, and one carries away all the Corn, the other shall not have an Action of Trespass. Br. Trespa, pl. 65. cites 47 El. 3. 22.——See (R. a.) pl. 4.

6. A Tenant in Common may have an Action of * Trespass against his * Br. Trespass-Companion, in Cafe he deports the same Thing given them in the Tenancy in Common. Nov. 14. Mich. 3 Jac. B. R. in Cafe of Crofis v. Abboc.——See In-
cites 47 El. 3. 22. 4 E. 2. Trespa 233. 2 H. 4. 11.

7. One Tenant in Common may have against his Companion Actions If two have which concern Right and Interests, as of Ejecllion forms, Ejecllion de Eize in Common for 

Gard, quare ejcsit infra Terminum of a Chattel real upon an Expulsion or Term of 

Ejecllion; but not for having taking the Profits; For the Right is severally 

and the bare taking the Profits in Common. Co. Litt. 199. b. 

and the one 

and puts the other out of Possession and Occupation; he which is put out of 

Occupation shall have against 

the other a Writ of Ejecllion forms of the Moiety &c. Co. Litt. S. 522.

8. So a second Divercity is between Chattels Real, that are apportionable 

or severable, as Leave for Years, Wardships of Land, Interests of Te-

nants by Elegit, Stat. Merchant, Staple &c. of Lands and Tenements, 

and Chattels Real Entire, as Wardship of the Body of a Villein for Years 

For if one Tenant in Common take away the Ward or the Villein 

&c. the other has no Remedy by Action, but he may take them again. 

Co. Litt. 299. b. 200. a.

Where two 

hold the 

Wardship of 

Land or Tenements 

and Chattels Real Entire, as Wardship of the Body of a Villein for Years 

For if one Tenant in Common take away the Ward or the Villein 

&c. the other has no Remedy by Action, but he may take them again. 

Co. Litt. 299. b. 200. a.

9. A third Divercity is between Chattels Real and Chattels Personal; So of Chattels 

For if one Tenant in Common take all the Chattels personal, the other 

has no Remedy by Action, but he may take them again. Co. Litt. 200. a.

poffec'd of the Wardship of the Body of an Infant within Age; if the one taketh the Infant out of the Possession of the other, the other hath no Remedy by an Action by the Law, but to take the Infant out of the Possession of the other when he fes his Time. Co. Litt. S. 525.

10. If two be poffec'd of Chattels personal in Common by divers Titles, * If he fells 
as of an Horfe, an * Ox, or a Cow &c. if one takes the whole to him 

of out of the Possession of the other, the other hath no other Remedy; 

but to take this from him, who hath done to him the Wrong, to occupy 
in Common &c. when he can fee his Time &c. Co. Litt. S. 323.

47 El. 3. 22.—And Account lies if one fells all the Wood which they have, pro indiviso &c. br. But.

11. Two Jointtenants for Life, with the Fee to the Heirs of one; he that 
hath the Inheritance fhall not have Wei against the other. Ma. 328. cites 

21 El. 3.

12. If there are two Tenants in Common of a Wood, Turbery, Piscary, 
or the like, and one of them dyes,Wei against the Will of his Companion, 
his Companion shall have an Action of Wei; and he that did the Wait, be-
fore Judgment, has Eleclion either to take his first Part in Certainty by 

the Sheriff, and the Oath of Men &c. or that he grant, that from hence-
forth he fhall not do Wait, but according to his Portron &c. And if he make Choice of a certain Place, then the Place wait'd shall be affigned 

to
Jointenants.

Year, he cuts to him. But this extends not to Coparceners, because they were compellable to make Partition by the Common Law. And this, (as 'tis said) extends as well to Tenants in Common and Jointenants for Life as to an Estate of Inheritance. Co. Lit. 200 b.

But if by Pre-

scription, the one is to have the first Bead

happening, the other has no Remedy by Action, but to take happening as him again. Co. Lit. 200.

But if two Tenants in Common be of a Manor to which Wast and Stray belong, and a Stray happens, they are Tenants in Common; and if the one takes the Stray, the other has no Remedy by Action, but to take happening as him again. Co. Lit. 200.

So of a Park and one de-

fends all the

Lett. Co.

Lit. 200.

Br. Trespasses.
pl. 63. S. P.
cites 47. E. 5.
22.

13. If two Tenants in Common be of a Manor to which Wast and Stray belong, and a Stray happens, they are Tenants in Common; and if the one takes the Stray, the other has no Remedy by Action, but to take happening as him again. Co. Lit. 200.

If one Tenant in Common or Jointenant of a Dove-House, destroys the whole Flight of Doves. No Action of Wast lies upon the Statute W. 2. cap. 22. as some do hold. Co. Lit. 200.

15. But if two Tenants in Common of a Dove-House, and the one destroys the old Doves, whereby the Flight is wholly lost, the other Tenant in Common shall have an Action of Trespass, Quare Vi & Armis Columbarum le Pl. fregit & ducendas Columbus Pretti 405. interfect, per quod volutum Columbaris sui totaliter amisit; For the whole Flight is destroyed, and therefore he can't in Bar plead Tenancy in Common; For there can be no Tenancy in Common of a Thing destroy'd. Co. Lit. 200 a. b.

16. So if two Tenants in Common be of Land, and of Mete Stones, Pro Metis & Bundis, and the one takes them up and carries them away, the other shall have an Action of Trespass, Quare Vi & Armis against him in like Manner as he shall have for Deletion of Doves. Co. Lit. 200 b.

17. So if two Tenants in Common be of a Folding, and the one of them disturbs the other to erect Hurdles, he shall have an Action of Trespass Quare Vi & Armis, for this Disturbance. Co. Lit. 200 b.

18. If two Tenants in Common or Jointenants be of a House or Mill, and it fall in Decay, and the one is willing to repair the same, and the other will not, he that is willing shall have a Writ De Reparatione factienda, and the Writ says, Ad Reparationem et Susceptionem eisdem Domus tenentur, whereby it appears, that Owners are in that Case bound, Pro bono Publico, to maintain Houses and Mills which are for Habitation, and Use of Men. Co. Lit. 200 b.

19. If A. and B. are jointly seised of a River, and A. has a House adjoining, if B. corrupts the Water, A. shall have Action upon the Cafe; For B. is not Jointenant with A. in the Houde to which, &c. Br. Action for le Cafe. pl. 123. cites 13 H. 7. 26 per Brian Ch. J.

20. The Plaintiff in an Action upon the Cafe declared that he and F. are Tenants in Common, and have Common in the Land of the Defendant, and that the Defendant had made Trenches in it, by which the Cartel of the Plaintiff were in danger to perish, and the Iliue upon not Guilty is found for the Plaintiff, and now moved in Arrest of Judgment that the Declaration is naught, because Tenant in Common cannot have an Action in such a Cafe. And that was allowed by the Court for good Cause. Nov. 84. Haman v. Witchbow.

21. Cafe does not lie for one Tenant against the other for disposing of the Whole, nor as Littleton. S. 222. says, has the other any Remedy. 1 Lev. 29. Patch. 23 Car. B. R. Graves v. Sawyer.

22. A. and B. Jointenants of a Term; A. having the Lease in his Possession sells to C. his Interest in the said Term, and allo the Leased Indenture, as now C. is become Tenant in Common with B. In this Case Timer does not lie for B. against C. for the said Indenture, but C. may give this Matter in Evidence without pleading it. 2 Le. 220. Patch. 16 Eliz. B. R. Anon.

23. One
JOINTENANTS.

23. One Tenant in Common may disprove the other for Rent, where the other comes in under a Lease of that one. Cro. J. 611. Hill. I 18 Jac.


24. In a Partitione facienda by Tenant in Common against his Companion an Efrepement was granted for so much as the Plaintiff had criminated was held in Common, and not of more. But Bendlowes, cap. 5, fo. 4, feem'd, that an Efrepement does not lie between Tenants in Common. But in Mich. 6, J. twas ruled that the Effrepement should be granted, tho' Coke Ch. J. held with Bendlowes. But note, that in 5 Jac. 2. Trefpafs, an Efrepement was granted in a Partitione fac. becaus'tis a real Action, and no Damages to be recovered, and Brownlow he'd Precedents contrary to Bendlowes. Nov. 143. Bayly v. Knighton.

(T. a) Pleadings in Actions by one against the other. See (R. a) pl. 4, and the Notes.

1. Two Tenants in Common are without Partition, and [in an Action by one against the other] the Defendant said that the Plaintiff built Walls and incroached upon his severally, and he abated them in the Day time, without doing any thing against the Peace, and a good Answer. Br. Tenants in Common, &c. pl. 10. cites 12 Atf. 28.

2. Trefpafs of Trees cut and Corn notes'd, &c. the Defendant said, That the Trees cut, for the Soil where &c. is, to them in Common, and a good Plea prima facie; but he may have the Profit to the one alone, and therefore a good Plea to this; contrary to this. Br. Tenants in Common may have Trefpafs against his Companion; And to other Profits taken by the one; For of these he cannot have Wait pro indiviso against him. And so it seems that Trefpafs does not lie but of the Profits which are severed from the Land, and which are severable as Corn and Hay. Br. Trefpafs. pl. 116. cites 21 E. 3. 9.

3. Trefpafs by A. against B. who said, that he and W. purchased jointly for Term of their Lives, and W. granted his Estate to A. and, that they are Tenants in Common & pro indiviso, and for this Cause as to the Trees cut, he may have Judgment in A. and to the Corn carried away, he said, that he carried away only the Moity that belonged to him, Judgment in A. and as to the Trees cut he was barred, for he may have Wait pro indiviso, tho' they are but Tenants for Life; and as to the Corn the Plaintiff said that he carried away His Corn, over and above that which belonged to the Defendant's Part; Trial, and the other c contra. Br. Trefpafs. pl. 117. cites 21 E. 3. 29.

4. Trefpafs of a Clofe broken; the Defendant said, that A. was selfed in Fee, and had Issue the Feme of the Plaintiff, and the Feme of the Defendant, and died, the Daughters entered, and one married the Plaintiff, and the other the Defendant, and so the Baron and Feme Defendants held in Common with the Plaintiffs, Judgment in A. and so Note that they shall shew how they hold in Common. Br. Tenants in Common, &c. pl. 8. cites 15 E. 4. 2.

(U. a) Actions. By Jointenants or Tenants in Common.

Where they may or may join.

WHERE the Wrong is a Wrong to both, they ought to join other, wife where the Tort is particular. Lat. 153.

If one Tenant in Common has a particular
Lat. as where the Tenants in Common are of a House, to which Common is belong'd, and his Beasts are distrained or drove off the Common, he may have Action alone. Jo. 142 Trin. 2 Cin. S. C. Hamond v. White—Vid. 15 H. 7. 26. 35 H. 6. 12.

6 Q. 2. Tenants
Jointenants.

2. Tenants in Common shall join only in Personal Actions. 2 Sid. 2.

3. If three are Tenants in Common, and one disposes of Goods ad Common Bona Utilitas of the other Two; One of the Two may bring Account against the third, without joining the other with him; For perhaps the other would never join. Roll. R. 421. Mich. 14 Jac. B. R. Hackwell v. Eastman.

4. If two Tenants in Common join in a Lease for Life, rendering 10s. per Ann. and a Hawk, Pepper Corv., or the like which are entire, and are diffeiled of them, there they shall have several Assizes of the Rent, and one and the same Assize of the Hawk or Pepper Corv. Br. Joiner in Action, they were pl. 102. cites Libro Litt. tit. Tenants in Common.

So that in real Actions, and in Actions that are mixt, with the Personality, Tenants in Common shall join in Action, because there have several Freeholds, and claim in by several Titles, and therefore as they shall severally by others pleaded, so shall they severally plead others, in all real and mixt Actions, nolens it be in Case of Necessity for a Thing Entire. Co. Litt. 195. b.—Br. Tenants in Common, &c. pl. 5. cites 14 H. 4. 311—S. P. Lev. 109. Kitchen v. Boulby.—2 Mod. 61. Curtis v. Bourne.

5. If two Tenants in Common be, and they are diffesed, they must have two Assizes, and not one Assize; For each of them ought to have one Assize of his Moiety, &c. For the Tenants in Common were seised, &c. by several Titles. But otherwise it is of Jointenants; for if 20 Jointenants be, and they be diffesed, they shall have in all their Names but one Assize; because they have not but one joint Title. Co. Litt. S. 311.

6. If there be three Jointenants, and one relieves to one of his Companions all the Right that he hath, &c. and afterwards the other two be dillesed of the Intercity, &c. In this Case the two others shall have several Assizes, and in this Form, viz. they shall have in both their Names one Assize of the two Parts, &c. because they held their two Parts jointly, at the Time of the Difference. And as to the third Part, he to whom the Release was made ought to have of that an Assize in his own Name, because he (as to that third Part) is thereof Tenant in Common, &c. because he comes to that third Part by force of the Release, and not only by Force of the Jointure. Co. Litt. S. 312.


9. Tenants
A Water Course; because this Action is only in the Personality, and does not touch the Title, but only Possession, by which the Profits of the Land are diminished; otherwise in Affib of Nuisance for diverting, &c. — And counted that it exercised they were Tenants in Common; and held well brought; For it is but a Trifling upon the manner in which they may join. Nov. 135. Stone v. Bone-white.]

10. A. B. and C. were Freightors of a Ship, and the Voyage was stopped by the Application &c. of the East India Company, and a Profection in the Admiralty; A. alone brought an Action on the Case upon the Statute of R. 2. for this Profection in the Admiralty, and the Jury found Damages to 2000l. by lots of his Voyage, and he had Judgment in C. B. And upon Error brought in B. R. this Judgment was affirmed, that A. was Tenant in Common only with B. and C. of the Goods and Ship, and these being Personal Things, B. and C. ought to have joined, and of which Opinion was the whole Court. But Holt Ch. J. said, that this was in Abatement only, and nothing appears within the Record that shows the Plaintiff, and if it had been pleaded, he ought to have avowed, Quod tempore captiuns and of the Action brought the other Tenants in common, who ought to join were alive, For tho' they were alive Tempore Captiuns & Arrears, yet if it does not appear that they were alive at the Time of the Action brought, the Plaintiff alone might have the Action by Survivorship, and therefore the Judgment was affirmed. Skim. 561. Mich. 5 W. & M. B. R. Sands v. Child.

11. Tenants in Common may have several Writs of Cessavit; per Welton. Mo. 40. pl. 127, Trin. 4 Eliz. Anon.


13. If two Tenants in Common make a Lease of their Tenements to Br. Joinder another for Term of Years, rending to them certain Rent yearly, during the Term; if the Rent be behind, &c. the Tenants in Common shall pl. 104. S. P. have one Action of Debt against the Lessee, and not divers Actions; for the reason because the Action is in the Personality. Co. Litt. S. 316. pl. 25. — Show. 456. Blanchard v. Deer. 140. — Mod. 109. — If two Tenants in Common make a Lease for Years, rending Rent and ore des; Per ut. Car. the Executors and Survivors may join in Action for the Rent, or fever at their Pleasure. Godh. 282. pl. 404. Hill. 19 Jac. Anon. — But if the Lease had been made for Life, rending Rent, the Court was clear of Opinion, that they ought to sever in Action. Ibid. — One jointer cannot maintain an Action of Debt for Rent without his Companion. Carth. 229. Trin. 6 W. & M. R. in Cafe of Pallen v. Palmer. 393. — Salt. 264. Trin. 7 W. 3. Pallen v. E. Poc. they may either join or sever in Debt. — S. P. in Debt for Rent referred, tho' they are not joint Left for, but have each of them a separate and distinct Interest to a Motesy of the Reversion, as by a Devil of one Morter to the one, and of the other Morter to the other. Carth. 229. Mich. 5 W. & M. R. in Cafe of Midgely and Gilbert v. Lovelace. — S. if they came to it by several Grants. Stat. 157. Kitchin v. Compton. — But if they sever, they must not each demand such a certain Sum, which amounts to a Morter, but it must be de uma mediatae of the whole Rent, and therefore it they may join in Debt, they may also join in German; per Holt Ch. J. Carth. 229. Midgely and Gilbert v. Lovelace.

14. If two jointer have one Bailiff of their Motes, and one Assessors S. P. Br Ac- Auditors, and he Accounts and is found in Arrears, 'tis held that both may have one Action of Debt upon the Arrears of the Account. Br. Jointe- nants. pl. 36. cites 18 E. 4. 3.
Jointenants.

Act of both. Br. Debit. pl. 218. cites S. C.—For if two have one House in Common, and one falls, it, both may have Debt for the Sale, for this is the act of both, to which Littleton agreed. Quere, if the other did not agree to sell, if he shall join in the Action. Br. Jointenants, pl. 36. cites 18 E. 4. 5.

15. In Debt on 2 Ed. 6. three were Jointenants of Titcher, and grant their Parts for three Years to two Grantees. Ruled that all three, tho' Tenants in Common, should join in this Action, for it is a Perilous Action as Trespafs. And tho' the third had disclaimed in Chancery by his Answer, that altered nothing; but a Release by the third inroll'd in Chancery was admitted good Evidence. Clayt. 28. Greenwood's Cafe.

16. If there be two Tenants in Common of a Rectory for Years, and one is outlawed, yet the other, upon showing of the Matter, may have Debt for the Moiety. Sid. 49. Mich. 13 Car. 2. B. R. per Twidden J. in Cate of Cole v. Banbury. 

17. Two Tenants in Common shall join in a Dehine of Charters, and if the one be Nonfuit, the other shall recover. Co. Litt. 197. b.

18. Tenants in Common shall not join in an * Ejectment Prima, nor in an Eject ment de Garde, or a Quare Elicit infra terminum, &c. Because these Actions concern the Right of the Lands which are several. Co. Litt. 200.

Br. Jointenants in Action.

19. Tenants in Common may join in an Action upon the Statute of 3 R. 2. per Kingmil and Rede J. Quod Nota bene. Br. Tenants in Common, pl. 45. cites 21 H. 7. 32. S. C.—But Br. Jointenants in Action, pl. 89. Contra, per Check, Brian, Littleton, and Catesby, that they shall not join, cites 18 E. 4. 29.—But Brooke says, by 21 H. 7. 22. it is contra; for this is only an Action Trespafs to recover Damages.

Cro. J. 251. Nich. 7 Jac. B. R. Some v. Barwith. S. C.—Ketw. 114. pl. 49.—They ought to be joined, and cannot join, because it touches the Title which is several. Yelv. 161.—They may join in forging of false Deeds. Arg. Raym. 80. cites 8 H. 6. 6. 7.

21. Two Tenants in Common of a Manor brought a Parco Fratio and adjudged maintainable upon Demurrer, without showing how they became Tenants in Common, and one only might have had a Parco Fraeto. Mo. 452. Patch. 38 Eliz. Wentworth and Savil v. Rufel. 

22. Tenants in Common shall join in Quare Impedit of Advowson; for the Thing is intire, and none of them shall have Quare Impedit of the Moiety of the Advowson of a Church, not of the third or fourth Part, but shall join, and therefore they ought to agree in Prefentment. Br. Jointenants, pl. 103. cites 5 H. 7. 8.

23. Tenants in Common of a Seigniory shall join in a Writ of Right of Ward, and Raisnement of Ward for the Body; because it is entire. Co. Litt. 197. b.

24. In Trespafs of a Close broken, the Defendant said that the Plaintiff had nothing in the Close, but in Common with J. S. not named in the Writ.
Jointenants.

Writ, Judgment of the Writ, and a good Plea, and so fee that they ought to join. Br. Brief, pl. 64, cites 43 E. 3. 24.

25. Where a Man does Trespass upon the Land of two Tenants in Common, they shall join in Action; because it is an Action personal, and if the one dies the other shall have Trespass of the Whole; for in personal Actions they shall join in contra in real Actions. Br. Joinder in Action, pl. 35, cites 24 H. 6. 12.

Common brings Trespass alone, the Defendant must plead in Abatement, and the Jury’s finding the Jointenancy will not advantage the Defendant. Cro. E. 154. Pack. 39 Eliz. B. R. Dearing v. Moor.—But if Defendant plead Not Guilty, it shall be good, but then Plaintiff shall recover Damages in a personal Action only for a Moiety; per Hale Ch. J. Mod. 102. Mich. 25 Car. 2. B. R. Anon.—For the Plea in Abatement must be at the first; but where the Jointenancy or Tenancy in Common appeared by the Declaration and Conformity of the Plaintiff himself, Judgment was arrested. Lat. 152. Trin. 2 Car. Hammond v. White.

26. One Jointenant brings Trover against J. S. this is Pleadable in Abatement, but J. S. cannot take advantage of it in Evidence. 1 Salk. 296.


E. 3. 90, and Fitz, several Tenancy 12.

28. If there are Tenants in Common pro indiviso, and one commits Wof, the other two ought to join in Action of Wait against the third. F. N. B. 60 (S) cites Mich. 3 E. 2. Wait.

29. Tenant for Life and Reversion to two Coparceners did Wof, the one Parcour had ifine and died, the Tenant did Wof again, the other and the Niece joined in Wof, and this Matter was found, and they recovered the Place Waited, and treble Damages, viz. each recovered for the half Wait, and the other Damages only for the first Wait; and so fee that Damages survived. Br. Jointenants, pl. 48, cites 45 E. 3. 3.

30. Jointenants and Parceners may joint in Wof. Mo. 34. pl. 110.

Trin. 3 Eliz. Anon.

31. Reversion of a Leave for Years was granted, the one Moiety to A. By Brown, the other Moiety to B. Lefsee does Wait; In this Cafe they shall join in *Wof after the Leave determined, because only Damages are to be recover-
ed, as in Trespasses; but if the Term had continued, the Land in that Cafe being to be recovered, ’tis otherwife. Mo. 40. pl. 127. Trin. 4 Eliz. Anon. was Several at the Time of Action accrued. Ibid.—Mo. 54. pl. 110.—Mo. 588. Arg cited in Perrot’s Cafe.—2 Mod. 62. Mich. 25 Car. 2. C. B. Curtis v. Bourne.—Mo. 43. pl. 127. S. P. 3 Mod. 129. It lies not during the Term for one alone; For Damages, and the Place wait’d, are to be recovered by Moieties, or an third Part, &c. and ’tis inconvenient that a Moiety be recovered and delivered in Execution. Cro. E. 537. Mich. 56 & 37 Eliz. C. B. Hill v. Har.

32. If one Tenant in Common makes Leave of his Part, he shall have Wof, yet he shall declare on the Demise of the Moiety, but shall Affign the Wait in a Place certain, and shall have Damages with regard to his Moiety. Mo. 388. Mich. 36 & 37 Eliz. in Perrot’s Cafe.

Lat. 152.

33. They must join in Action for Plowing their Common. Jo. 142. Trin. S. C.


34. Two Femes jointly feilit take Barons; the Barons join in an Allege-
ation and die; the Wives are Jointenants of the Right, and may join in a Writ of Right, and yet they may have several Writs of Cut in Vita at their Election &c. So if two Jointenants, the one for Life and the other in Fee, lofe by Default, the one shall have a Writ of Right, and the other a Good et deforcent &c. Co. Litt. 138.

6 R (W. a) Actions,
(W. a) Actions. Distress and Avowry.

1. As is said of a third Part in Common, and B. of the other two

2. A Jointenant, without any Authority from his Companion, may distress for the whole Rent; but he must particularly avow in his own Right, and as Bailiff for the other; Per Cur. 12 Mod. 77. Trin. 7 W. 6. Anon. C. B. Kemp v. Cory.

See Actions.

(X. a) In what Actions Tenants in Common may, or must, be joined.

1. Several Precipices good Reddis, and not one joint Precipe shall be brought against Tenants in Common; for their Titles are several. Br. Tenants in Common &c. pl. 18. cites 3 E. 4. 9. per Chocke. shall have several Writs of Moeties.

(Y. a) Pleadings in Actions by or between Jointenants; and what shall be recovered.

1. In Trespafs of taking his Beasts it is no Plea to say, that the Tresoror of the Plaintiff denised to the Plaintiff and Defendant to distributive for his Soul, and the Plaintif took them, and the Defendant took them from him to distribute &c. without saying Altique hoc, that he took the Beasts of the Plaintiff, by which he said accordingly. Br. Traverse per &c. pl. 152. cites 30 Afl. 22.

2. In Affize of Rent against two Jointenants one may plead Ancient Demise, and the other may plead Hors de fou Fee, and so it admitted; for each has a Moetry to lose. Br. Jointenants, pl. 42. cites 8 H. 6. 11.

3. In Trespafs upon the Statute of 5 R. 2. the Defendant said that A. was Sefed, and had two Daughters, and died Sefed, and they entered as Heir, and after one Alieved her Part to J. S. and the other is now Plaintiff, and to the Plaintiff had nothing at the Day of the Wit purchased but in Common with J. S, who is alive and not named in the Wit, Judgment of the Wit, and Markham Ch. J. thought at first that the Plaintiff in his Replication ought to answer the Special Matter, but after, per Cur, because the Plea did not amount to more than that the Plaintiff held in Common &c. it's sufficient for the Plaintiff to say, that Sefed Aliffe hoc, that J. S. had any Thing, notwithstanding that the Defendant had the Special Matter how they are Tenants in Common; and they held clearly that tis a good Plea always for the Defendant to say, that the Defendant had working Lat in Com-

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12 Mod. 66
Anon. S. P.
— S. P. 2
Lat. 1211.
Ofmar v.
7 Car. B. R. Lamhead v. Leate and Rowell. — They must sewer in Avowry, because it is in the Reality.

See (U. a) pl. 15.
See (Y. a) pl. 3.
See (Y. a) pl. 52.

So where Jointenancy is pleaded by the Tenant with one A. of the Gift and Feoffment of B. by Deed, or without Deed, the other may say that for Tenant, Altique hoc, that
Jointants.

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were brought by three, of'entry into the Moiety of a Curved of Land; the Defendant pleaded Recovery in Writ of Dower against one of the Plaintiff's of the Third part of the said Moiety, and per Cur. it is a good Plea against the three Plaintiff's; for if one Leafes for Years, this is a good Plea against all, per Cur. Br. Joiner in Action, cit. 79. Eliz. 14. E. 4.

5. A. B. and C. Jointants in Fee; C. granted his Part to D. and afterwards A. B. and D. hired for Years, rendering Rent, and afterwards A. died, and they brought an Action of Debt for the Rent referred, and declared generally; and upon the Evidence, the special Matter appeared, that two Parts of the Rent did belong to B. and but the third Part to D. Per Cur. the Declaration ought to have been Special upon the whole Matters. For Prima facie it was conceived, that each of the Plaintiff's ought to have had the Moiety of the Rent, and that is a supposal of the Declaration. 2 Le. 112. pl. 148. Trin. 30 Eliz. Barefoot v. Latte.

6. Trespass for entering his House and Land; the Defendant pleaded it was the Freehold of J. B. and he entred as his Servant, and by her Commandment; and the Illie was, if it were her Freehold or not, and the Jury found it was the Freehold of the Plaintiff for two Parts, and the Frankentennet of the said J. B. for the third Part; and the Question was, if the Plaintiff should have Judgment upon this Verdict; and the Court held clearly he could not; for altho' the Illie is found against the Defendant, viz. that all was not the Freehold of J. B. yet it appearing a Tenancy in Common, so that the Plaintiff cannot maintain his Action, Judgment shall be given against him, and it was adjudged for the Defendant. Cro. E. 157. Mich. 31 & 32 Eliz. B. R. Benington v. Benington.

7. In Case of Jointants the Property is not in one but in both, yet if one declare against the other, unless he plead the Jointancy in Abatement, the Plaintiff shall recover. Arg. 3 Mod. 97. Hill. 1 Jac. 2. B. R. in Case of Upton v. Dawkin.

8. If one Tenant in Common bring a personal Action without his Fellow joining in the Suit, the Defendant ought to take Advantage of it in Abatement; but if he plead Not Guilty it shall be good, but then he shall recover Damages only* for a Moiety; Per Hale Ch. J. Mod. 192. pl. 9. Mich. 25 Car. 2. B. R. Anon.

which Defendant pleaded Not Guilty; upon this Plea the Plaintiff recovered Damages for two Parts of the Goods and shall not by Nonvuit; the Defendant might have pleaded this in Abatement of the Writ Ought to much; but having pleaded Not Guilty, they, tho' Jointants with another, shall recover Damages for their Parts, per Rainsford and Wilde at a Trial in Middlesex (Hale being sick) to the which Sir Wm Jones, Counsel for the Plaintiff, Heareraner submitted. 2 Lev. 115. Mich. 26 Car. 2. B. R. Nethorpe and Forrington v. Dorrington.

9. If two Tenants in Common Sever in Debt &c. they must not each of them make his Demand of such a certain Sum, which amounts to a Moiety; but the Demand must be De una Mediate of the whole Rent; Per Holt Ch. J. Carth. 259. Mich. 5 W. & M. B. R. in Case of Midgley and Gilbert v. Lovelace.

(Y. a. 2) Actions
Jointenants.

(Y. a. 2) In what Cases a joint Action by Tenants in Common, &c. shall survive.

1. \textit{Where two are dissized and the one dies} the Action and the Entry shall survive. Br. Jointenants, pl. 13, cites 21 E. 3. 50.


3. If two Tenants in Common are, and a Man does Trespass to them, and the one dies, the other shall have Action of Trespass by Survivor, and suppute the whole in all; the Reason seems to be in as much as they should join in Action. Br. Jointenants, pl. 24, cites 37 H. 6. 38.

S. P. for it is only an Action personal. Br. Jointenants, pl. 18, cites 22 H. 6. 12.

---Br. Tenants in Common, pl. 7, cites S. C. And in personal Actions they shall join; \textit{Contra in real Actions}; and therefore the personal Actions shall vest in the Survivor, and he shall have Action of the whole.---S. P. for of this Action they are Jointenants. Co. Litt. 198 a.---So if two Tenants in Common be of a Manor, and they make a Bailiff thereof, and one of them dies, the Survivor shall have an Action of Account; for the Action given to them for Arrears upon the Account was joint. Co. Litt. 198 a.---So is it if two Tenants in Common fow their Land, and one eats the Game with his Cattle, thi' they have the Corn in Common; yet the Action given to them for Trespass in the same is joint, and shall survive; for the Trespass and Damage done to them was joint. Co. Litt. 198 a.

---So note a Diversif of a Chattel in Possession, and a personal Cause in Action belonging to Tenant in Common. Co. Litt. 198 a.

4. Nota. Where Damages are to be recovered for a Wrong done to Tenants in Common, or Parceners, in a Personal Action, and one of them dies, the Survivor of them shall have the Action; For albeit, the Property or Estate be several between them; yet the personal Action is joint. Co. Litt. 198 a.

5. If two Tenants in Common be of an Advocate, and a Stranger suits, so as the Right is turn'd to an Action, and they bring a Writ of \textit{Quare Impedit}, which concerns the Realty, the six Months pas, and the one dies, the Writ shall not abate, but the Survivor shall recover, otherwise there should be no Remedy to redrefs this Wrong; And so it is of Coparceners. Co. Litt. 198 a.

(Y. a. 3) Actions and Pleadings by Survivor.

But in this Case he may plead the Action of both in Bar, Judgment for the Moiety of the other, and for the other Moiety, that the Demandant was of full Age; and so is the case that the one Infant shall not recover the Whole; quod nota; for if they hid * not been alive they should have several Writs of Damn futi infra etatem, as it seems, and then the Action shall not survive. Ibid.---

* So 'tis in the Original, but it seems as if (not) should be omitted.

2. In Aff'ce, Obligation is made to two and one dies, the other brings Damn futi infra Stetatem, supposing the Entry of the Tenant by him alone, it is no Plea that be entered by him and the other; for he cannot have other Writ. Br. Jointenants, pl. 13, cites 21 E. 3. 50.

3. If two Tenants in Common are, and Trespass is made upon the Land, and after one dies, the other shall not have Trespass of the Whole, but good etatem ingreditur eit; but otherwise it is of Common Writ of Trespass; per Privat. Br. Trespass, pl. 397. cites 37 H. 6. 38.

(Z. a.)
Jointenants.

(Z. a) Equity. Cases in Equity.

1. If two Coparceners, or Jointenants, join in a Squire Impediment, and the one will plead covenantly, he shall be compelled here to join with the other in Plea or Pretention. Cary's Rep. 20, 21.

2. C. and P. married two Sistors jointly possessed of a Lease for Years; the Wife of C. died; P. claimed the whole by Survivor; C. exhibited a Bill, styling that P. had in her Life-time severed the Jointure by some Act secretly. The Lord Keeper over-ruled, that the Defendant should not answer. Cary's Rep. 13. cites Mich. 39 & 40 Eliz.

3. A Tenant in Common of a Manor, (for long time occupied wholly by the other Tenant in Common,) who knows not the Quantity of the Manor, by reason the other has also sold Lands intermingled, had the Sight of the Court Rolls, and Writings of his Companion, concerning only the Quantity of the Manor, but not concerning the Sold Lands, nor his Title to the Manor, and the other was ordered also to shew the like on his Part. Cary's Rep. 22, 23. cites 1599. Capell v. Mynm.

4. Two Jointenants, the one takes the whole Profits; no Remedy is for the other, except it were done on Agreement or Privilege of Account. Cary's Rep. 29. cites 6 June, 1662. 44 Eliz.

5. Two Tenants in Common were of an Annuity, one got Possession of the Deed of Grant, so that the other could not avow. Decreed the Moiety to be paid the Plaintiff. Fin. R. 292. Patch. 29 Car. 2. Stokes v. Verrier.

6. In Case of Joint Farmers of Excesse, though there be no Covenant that their Parts should survive, yet in Equity they ought, by reason of the Joint Charge and Expenditures; but if there had been any Agreement that it should not survive, that might have altered the Case. Hill. 1681. Vern. 33. Hayes v. Kingdon.

7. If four Tenants in Common are of Land, and one or more flock the Land, and manage it, the rest shall have an Account of the Profits; but if a Lofs come, as if the Sheep &c. die, they shall bear a Part. Per Ld. North Skin. 238. Hill. 36 & 37 Car. 2. Anom. in Canc.

8. A. and B. are Jointenants by two several Leases, of two several Houses, and received the Rents during their Joint Lives. A. died and made M. his Wife Executrix; one of the Houses was taken in Execution, at the Suit of J. S. and sold by the Sheriff to J. S. Afterwards J. S. and M. for 240 l. assigned all their Interest to the Plaintiff. After A's Death, B. assigned one of the Leases to E. for 300 l. Debt; E. for 410 l. assigned to W. R. but W. R. denied that before his Purchase he had any Notice of the Plaintiff's Title, and confessed that the Lease of the other House was not assigned to him by any express Words, but conceived it did pass for that the Buildings were intermixed upon both Toits of Ground, and that one could not be enjoy'd without the other. The Matter of the Rolls diminished the Bill without Costs, and the rather because the Plaintiff did not bring his Bill till after the Defendant's Purchase, tho' the Plaintiff's Purchase was made two Years before. Vern. 360. Hill. 1635. Uther and Prime v. Aylaworth and Edmonds & al.

9. A. and B. had enjoyed a Church Leafe in Moieties under an Agreement against Survivorship. On the Iatt Renewal the Leafe was taken in both their Names, and no express Agreement against Survivorship. A. being Sick, by Deed assigned his Moiety to his Wife, and by his Will devited it to her. Per Car. The grant to the Wife is absolutely void, and the Will

See(Q) Griffith v. Manter. If Lands be severally given by one. Died in two Men; he who has the Deed shall be compelled here to shew it for Defence of the others Title. Cary's Rep. 21. cites 9 E. 4 & 41.
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10. If two or more make a Joint Purchase, and afterwards one of them lays out a considerable Sum in Money for Repairs or Improvements, and dies, this shall be a Lien on the Land, and a Right for the Representative of him who advanced it; and that in all other Cases of a joint Undertaking or Partnership, either in Trade, or any other Dealing, they were to be considered as Tenants in Common, or the Survivors as Trustees for those who were dead. Abr. Equ. Cases. 291. Trin. 1729. Lake v. Gibbon.

(A. b) Pleading the Plea of Jointenancy.

34 E. 1. Stat. 1. Orafemere as it changeth many Times in Affises of Novel 1. S. 2. 1. Difficult, that the Tenant doth except against the Plaintiff, that he holdeth the Tenements in Demand jointly with his Wife, not named in the Writ, and some time with a Stranger not named in the Writ, and precedent a Deed satisfying the same, and demandeth Judgment of the Writ,

In Affise the Defendant pleaded Jointenancy with a Stranger by Fine, not named in the Writ; Judgment of the Writ; the Plaintiff said, that Not comprised, Prifl. &c. & non allocatur, for the Statute swails, that where a Jointenancy by Deed is pleaded, the Plaintiff may say, that sole Tenant at the Day of the Writ purchased, which shall be a good Answer; but Jointenancy by Fine it is at the Common Law, and not revived by the Statute, nor by the Equity of it, Quod Nota, and * at the Common Law, where Jointenancy by Deed or Fine was pleaded, the Writ should abate immediately; and as to the Jointenye by Deed, Answer is given to the Plaintiff by this Statute, but not against him who pleads Jointenancy by Fine. Br. Jointenancy, pl. 52. cites 24 E. 5. 51. — But the Book seems to be misquoted. * — S.Piper per June. Ibid. pl. 26. cites 14 H. 6. 8. 25.

If a Man pleads Jointenancy without Deed in Affise, the Plaintiff may say, that sole Tenant the Day of the Writ purchased, which shall be enquired by Affise by Common Law, without making Proceeds by the Statute of Conjunctim Possession; for it seems, that the Writ was not abated by Jointenancy immediately by the Common Law, but where it was pleaded by Deed or Fine; Quod Nota ibid. Br. Affise, pl. 415. cites Mich. 12 E. 3. — In Affise; if the Tenant pleads Jointenancy by Deed with a Stranger to the Writ, there the Proceeds upon the Statute shall be by Writ, and not by Proceeds without Writ. Br. Jointenancy, pl. 42. cites 25 Aff. 14.

S. 5. At which Day, if both that are named Tenants do come in, and do justify the same Possession, they shall answer and maintain the Exception alleged by one of them, and further shall answer unto the Affise, as though the original Writ had been purchased against both of them jointly.

See Amencement (V. a. 2) — In Affise, if the Defendant pleads Jointenancy by Deed with a Stranger;
who comes by Proces and maintains the Exception which justify against them, let it be who join shall not be imprisom'd, but be who pleads it; for this Statute is, that they who allege &c. Br. Jointenancy, pl. 54. cites 16 All 18 — In Affide against J. N. he pleaded Jointenancy with his Feme, who came and maintained the Exception which justified against him, and yet the Feme was not imprisom'd, according to the Statute; For the Statute is, that they who allege, and which was the Baron: But Brooke lays, Quere if this be the Case, or both the Feme Content is not express'd in the statute, and then by Equity Imprisom'oment shall not extend to her nor to an Infant. Br. Jointenancy, pl. 69, cites 16 E. 3, and Fish. Peyne. 6. and Br. Imprisom'inent, pl. 31. cites S. C. but adds Quod Mirum. — Br. Imprisom'inent, pl. 46. cites 16 All. 34. sec. So where he pleaded it with his Feme and Son, he only was imprisom'd. Ibid. pl. 97. cites 32 All. 11. — Affide by H. against W. and others; W. said, that he held the Tenants jointly with his Feme, and A. his Son not named in the Writ; Judgment of the Writ; and found thereon a Deed, (as he ought if he will have Proces upon the Statute) the Plaintiff said, that the Tenant the Day of the Writ purchas'd, Prift. &c. and Proces was made upon the Statute, and the Baron and Feme came but not the Son; and it was demanded of the Feme, if she would maintain the Exception, she said she could; and upon this the Affide was charged, and said, that H. the Plaintiff inferred N. upon Condition. to be in Jai'br. W. his new Tenant, and his Son, upon Condition to find Escheat, and Vulture to the Father during the Life; and N. impos'd the said W. and his Feme, and their Son, in whom the Jointenancy is alleged contrary to the Condition, upon which H. the Father entered, and W. oufled him, and impos'd of Part M. nam'd in the Writ, and for Breach of the Condition the Entry is lawful, and by this the Jointenancy is defeated, by which the Plaintiff recover'd Seisin &c. and double Damages, and the Baron and Feme were sent to Prison; nevertheless, quare of the Imprisom'oment of the Feme, for the Statute says, only that he who possest the Exception shall not be imprisom'd, and not he who maintaineth it. Br. Jointenancy, pl. 58. cites 21 All. 28. — If Jointenancy by Deed was pleaded before the Statute, the Plaintiff might have confess'd and avoided it, as to say that he was seiz'd, and dispossess'd by a. who made a joint Eslate, and be re-enter'd, and was seiz'd again &c. or to say that he was seiz'd by F. S. within six months made the joint Estate, and he entered, and was seiz'd again &c. But now Jointenancy by Deed is gone by the Statute of Conjunction Statute, the Plaintiff may aver, that the Defendant was seiz'd Tenants the Day of the Writ, and shall have a Sine Facias against him with his Jointenancy with the Plaintiff is pleaded by Deed; and at the Day, if both maintain the Exception, and the Affide puts against them, they shall be imprisom'd for a Year, as well as who join'd in the Maintence of the Exception, as the Tenant who pleaded it; for at the Common Law, before this Statute, Jointenancy by Deed stand the Writ without Answer; and fee that by the Statute the Affide shall remain till the others come, or are warned to come, and the Exception shall be tried by the Affide, and by no other Inquest; and by this Statute double Damages are given, as well as Imprisom'iment; but Jointenancy pleaded in Affide is vitiated at the Common Law. Br. Jointenancy, pl. 64. cites 45 All. 6.

S. 7. And let the Judges be well advised, that from henceforth they do not allow an Exception alleged by the Bailiffs of any Such Tenants. S. 8. And if be that alleg'D the Exception defent himself at his Day, and the other that is named Jointenant do appear, although be that doth appear dich'op the same Deed, and say that he hath nothing in the foresaid Tenements, nevertheless the Affide shall pass against the Tenant that is absent by his Default. 

S. 9. And if it be found by Affide, that they were not jointly impos'd the Day of the Writ purchase'd, and likewise that the Tenant against whom the Writ was purchase'd, or another named in the Writ did dispossess the Plaintiff, then having regard to the Exception that was falsely and maliciously alleged against the Tenant, to the Hurt of the Party, and to the Difeisn that they made, the Party of the Plaintiff shall recover his Seisin, and such double Damages, and they that alleged the false Exception shall be the Punishment of the said.

S. 10. But if neither of the Tenants do come at the Day, then upon their Default the Affide shall pass against them. S. 11. And if it be found thereby, that the same Exception was falsely and truly alleged, and that they which alleged it were jointly seiz'd before the Plaintiff purchase'd his Writ against them, the Affide shall pass no further, but the Writ shall be abated.

S. 12. The same shall be observ'd if both or one only do appear, if it be found by Affide that the Exception of it was false alleged as before is said.

S. 13. In the same Order it is stablished and agreed, that in Affides of Mortdancer or Juris Utrum, at the first Day that the Parties appear in Cont,
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Court, if the Tenant allege the aforesaid Exception against the Demandant, forswearing the Deed thereof, and the Demandant will offer to over by the Affife or Jury, that at the Day of his Writ purchased, he that alleged the Exception was sole Tenant, from hence the same Proces and Manner of Proceeding shall be used in Affifes of Mortdancetur and Writs of Juris Utrum, as before is ordained in Affifes of Novel Dillellin, and like Punishment shall be inflicted upon the Offenders and those that be corraid.

S. 14. In other Writs whereby Tenements are demanded such Proces shall be made, that if at the first Day that the Parties appear in Court, the Tenant doth allege the aforesaid Exception of a joint Feoffment, and the Demandant will offer to over by the Country, that the Day of the Writ purchased, he that alleged the Exception was sole Tenant, then the same Proces and Manner of Proceeding shall be observed betwixt the Parties, until a Jury have passed between them thereafter.

S. 15. And if it be found by the Jury, that the same Exception was truly alleged, then the Writ of the Demandant shall abate.

S. 16. And if it be found by the Jury, that the same Exception was falsely alleged, and to the Hindrance of the Party, then the Demandant shall recover his Seisin of the Tenements in Demand, and the Tenant shall be punished by the Pain above limited in Affises of Novel Dillellin as to the Impofition, and as to the Damages, according to the Division of the Justices.

2. In Affife the Tenant pleaded Jointenancy of Parcel by Deed, and the Plaintiff acknowledged it, and prayed to have Affife of the rent, and had it; and herewith agrees 22 Aff. 6. And so see Jointenancy of Parcel, and Confiffion by the Plaintiff shall not abate the Writ of all, but for this Parcel only. Br. Jointenancy, pl. 59. cites 14 Aff. 8.

3. In Affife the Tenant pleaded Jointenancy by Deed with a Stranger; Judgment of the Writ; the Plaintiff said, that the Tenant pending the Writ made an Estate to W.N. and re-took to him and the other, and so sole Tenant the Day of the Writ, and yet the Writ shall abate; Quod Mirum. Br. Jointenancy, pl. 36. cites 18 Aff. 6.

4. Ward against four; one made Default at the grand Diffrefs, with Proclamations, and three appeared and pleaded Jointenancy with a Stranger of the Franktenement, and a good Plea, tho' Chattel only be in Demand; for this Writ lies against the Tenant of the Franktenement as it is there agreed. Quod Nota, and the Plea was, that the Ancestor of the Heir in his Life infeoffed those four, and the Stranger in Fee, and so they had nothing but jointly with the Stranger not named, Judgment of the Writ, and yet forth the Deed of the Jointure; and the Plaintiff said, that they were Tenants and Deforescers of the Ward, abfque hoc that the Stranger had any thing. Belk. You should say that they were Tenants of the Franktenement, abfque hoc that the other had any Thing. Quod Cur. conceffis; and the Plaintiff prayed Proces upon the Statute of Jointenancy pleaded by Deed, and could not have it, because the Jointenancy goes to the Writ only and not in Bar, and also a Chattel only is in Demand, and no Franktenement; Quod Nota. Per Cur. Br. Jointenancy, pl. 10. cites 49 E. 3. 27.

5. Entry in the Quibus; the Tenant pleaded Jointenancy with a Stranger of the Gift of B. Newton said, we ourselves were seized till by the Tenant himself defeffed, a long time before B. had any thing, Judgment, and the Jointenancy was pleaded without Deed, and all the Justices held this Plea good in Avoidance of the Jointure. Br. Jointenancy. pl. 26. cites 14 H. 6. 8. 25.

6. It seems that he alleged Permancy of the Profits in the Tenant, and that he brought his Action infra Annun. &c. For this Case is compared there to another Case, the same Year, fo. 3. where he aver'd the Permancy of the Profits, as above. Br. Jointenancy, pl. 26. cites 14 H. 6. 8. 25.

7. And it is agreed there, that in the Placing of jointenancy as above, be shall say which Estate continues &c. and per Henif. the Entry shall be of the other Part that sole Tenant as the Writ supposes, obfque hoc that the other any thing bad; Quod Paffion conceffis, and per tot. Cur. this is a good.
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8. In Quare Impedit, Jointenancy of the Part of the Defendant is no Plea; for the Suit is not upon the Right, but upon Disturbance, which is transferable in Effect, Per Cur. Nevertheless, contrary it seems of the Part of the Plaintiff. Br. Jointenancy, pl. 27. cites 14 H. 6. 24.

For more of Pleadings on the above Statute see the following Divisions.

(A. b. 2.) Abatement of Writ in Part, or in all, by the Plea of Jointenancy.

1. In Deed against two jointly, they pleaded Purparty and Detinue of Evidence, viz. each of them pleaded it by himself, and because they pleaded it in Bar, and did not plead it to the Writ, therefore good; Bar if it seems there, that where it is brought against two, where they are several Tenants by Partition or otherwise, if it be pleaded to the Writ, the Writ shall abate. Quare. Br. Several Tenancy, pl. 13. cites 21 E. 3. 8.

2. Scire Facias upon a Fine was jointly sued against two, and in Pleading it appeared, that the one is Tenant by the Curtesy, and the other is the Co-partner of the Estate of the Tenant by the Curtesy, and so several Tenants of Moieties; and yet the Writ shall not abate, but shall proceed over upon Aid-Prayer. Br. Several Tenancy, pl. 14. cites 21 E. 3. 14.

3. Scire Facias against W. and R. and three others; W. said, that he and one of the three held Parcel jointly &c. and the other was dead the Day of the Writ purchased, Judgment of the Writ; and R. said, that he held other Parcel in Security, Judgment of the Writ brought against them in Common, by which the Writ was abated. And Note, that several Tenancy of Parcel shall abate all the Writ. Br. Several Tenancy; pl. 12. cites 38 E. 3. 20.

4. Precipe quod reddat against two of 16 Acres, the one said that he was Tenant of 12 Acres, aliqua hoc that the other any thing had, and coached; and the other said, that he was Tenant of the rest in Security and coached; and by the best Opinion, the Demandant ought to maintain his Writ, though the Plaintiff does not coach to the Writ; and so it seems, that he who takes the several Tenancy, ought to coach or plead in Bar; and yet, if the Demandant suffers to the Voucher or Bar, and does not maintain his Writ, his Writ shall abate. Br. Several Tenancy; pl. 4. cites 41 E. 3. 20. And another such like Case the same Year, ib. 21. where upon several Vouchers upon several Tenancy the Demandant maintained his Writ. Ibid.

5. Scire Facias against two; the one came, and the other made Default upon Garnishment; and he who came said, that he held part in Severally, aliqua hoc that the other any thing had, and that the other held the rest in Severally, aliqua hoc that he any thing thereof had, Judgment of the Writ; and there it was awarded, that the one cannot plead several Tenancy to the Writ in absitio alterius, but where he appears and pleads with him; Quod Noto; therefore it seems, that he ought to have pleaded the several Tenancy, and pleaded over in Bar, and upon this the Plaintiff shall be compelled to maintain the Writ, which see elsewhere. Br. Several Tenancy, pl. 5. cites 42 E. 3. 8.

6. Scire Facias against three; the one pleaded sole Tenancy of Parcel, aliqua hoc that the other any thing had, and pleaded a Release of the Ancestor, of the sole Plaintiff with Warranty in Bar, and the other two took the entire Tenancy, and that the third had nothing, and pleaded other Bar; and so Note, that he who pleads sole Tenancy, or several Tenancy, shall plead...
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in Bar, and shall not conclude to the Writ; and yet see elsewhere, that upon this, the Plaintiff shall maintain his Writ. Br. Several Tenancy, pl. 7. cites 44 El. 3. 33.

7. If in Precipe quod reddat against two, the one makes Default, or appears and says nothing, and the other takes upon him the entire Tenancy, and pleads in Bar, the Demandant may answer to the Bar without maintaining the Writ; but if he confesses that the one has nothing, the Writ shall abate. Br. Several Tenancy, pl. 17. cites 8 H. 6. 13. Per June.

8. Jointenancy to Parcel shall not abate the Writ for all, but only for this Parcel; Per Jenny, quod non negatur; which appears to be Law very often. Br. Jointenancy, pl. 66. cites 44 El. 4. 33.

9. Note, per Fitzh. That in Precipe quod reddat against four, viz. three confessed the Action, and the fourth said, that he held jointly with two of the three, Adjudge boc, that the third any Thing had; in this Case, tho' the Demandant prayed Judgment against the three, he shall not have it; For several Tenancy goes in Abatement of all the Writ; Quod nota, & nullus negavit. And there the Processe shall be made against the Jury upon the Issue, and if it be found for the Demandant, he shall recover the Entirety, and if against him, all the Writ shall abate; quod Nota, that by several Tenancy all the Writ shall abate. Br. severa Tenancy, pl. 1. cites 27 H. 8. 30.

(B. b) In what Cases Jointenancy is no Plea.

1. Ass't against several, one pleaded to the Ass't, and another pleaded Jointenancy with him who pleaded to the Ass't, and with a Stranger not named in the Writ, and good, notwithstanding the Plea of the other; For in Actions Real and mixt, the Defender of the one shall not prejudice the other. Br. Jointenancy, pl. 60. cites 44 El. 16.

But where the Tenant pleaded Jointenancy by Deed of the Land put in Issue, and the Deed was of Tenements in B. and he did not aver that B. was a Hamlet of C. yet held good, per Cur. Because he said of Tenements in View. Br. Jointenancy, pl. 45. cites 26 El. 2.

2. Ass't in C. the Tenant pleaded Jointenancy by Deed of Land in B. and it is said there, that where the Deed varies from the Ass't in Name or in Quantity of Land, the Jointenancy is not to the Purpose, nevertheless if B. be a Hamlet of C. then 'tis well, as it seems. Br. Jointenancy, pl. 45. cites 24 El. 6.

3. Ass't of Rent against A. B. and C.—A. took the Tenancy, and pleaded Jointenancy of Parcel with E. and if &c. no Tort; And B. as Tenant to Parcel pleaded to the Ass't; And C. said, that he was Tenant of the other Parcel, and that E. was Tenant of the rest, and was not named in the Writ, Judgment of the Writ; and the Plaintiff said, that B. held the whole Land of him by the Rent in Plain, and that the others are not named but as Diff'isors; and the Ass't was taken, and said that A. who pleaded Jointenancy held of B. and B. over of the Plaintiff, and the Plaintiff displeased for the Rent of B. and A. made Rejoin, and that C. was jointenant with A. and yet the Plaintiff recovered by Judgment, because it is of Rent-Service; for in Ass't of Rent-Service, Jointenancy of the Rent is a good Plea by the Pernour of the Rent, but not of the Land; for if there is Pernour of the Rent, who is Tenant of it in Law, named in the Ass't, and Diff'isor, this suffices, and now the Meline was Pernour, and one of the Ter-tenants was Diff'isor, and therefore well; but in Ass't of Rent-charg'ge or Rent Seek, there Jointenancy of the Land is a good Plea always, for there all the Ter-tenants shall be named, but in Ass't of Rent-Service Pernour & Diff'isor suffices. Br. Jointenancy, pl. 62. cites 31 El. 31.

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4. In Aff'le of Rent the Tenant pleaded Jointenancy by Deed with his Feme of the Land whereas &c. and the Plaintiff pleaded Esoppel, that to this he shall not be admitted; because the Auctor of the Plaintiff, whose Heir &c. leased the Land to the Tenant by Deed intende of Term of Life, Judgment Si contra Faetum &c. and well, and was not compelled to take the Answer given by the Statute, that sole Tenant the Day of purchasing the Writ; and this by the Common Law as it seems; by which the Tenant confest'd and avoided the Conclusion, because his Lessee had but for Term of Life of the Lease of W. N. which W. N. enter'd by this second Lease made to his Disinheritance, and after incof'd the Tenant and his Feme in Fee before the Day of the Writ, and the Plaintiff maintained that the Lessee had Fee; quod nota. Br. Jointenancy, pl. 65. cites 45 Alb. 14.


6. In Replevin the Defendant aver'd for Rent-charge &c. and the Plaintiff said, that he had nothing in the Land charged but jointly with J. N. and prayed Aid him, of and was out of the Aid. For Jointenancy, in Avowry or Replevin is no Plea in this Case; because, whoever has the Land, the Avowry shall be as upon Land charged to his Disbres, and upon no Person certain, and therefore no Plea. Contrary, it seems in Avowry for a Tenure upon one, which ought to be upon two; note the Diversity. Br. Jointenancy, pl. 2. cites 2 H. 6. 7.

cites 7 E. 4. 27. — I'bld. pl. 67. cites S. C.

7. Action upon the Case for not making of the Wall, which he ought to repair by Reason of his Land in E. by which the Land of the Plaintiff was surrounded in Middlesex. Per Skrene, Jointenancy in the Plaintiff in the Land surrounded, or Jointenancy in the Defendant in the Land charged to the Reparation, is a good Plea, Quod non negatur. Br. Jointenancy, pl. 12. cites 7 H. 4. 8.

8. In Writ of Dower against Guardian, it is a good Plea to plead Jointenancy in the Land, as it is of Frankenemem ; per Belk. quod nota. Br. Jointenancy, pl. 10. cites 49 E. 3. 27.

9. In Dower it was laid, that where three Jointenants are, and their Land is feisd into the Hands of the King, that each by himself may sue for his Part out of the Hands of the King, and Jointenancy is no Plea. Br. Jointenancy, pl. 11. cites 2 H. 4. 23.

10. Entry for Disfiefu of certain Land; the Tenant said that the Land is Grotlich, of which A. was feisd in fee, and had Issue the Demendant and R. and died, who entered as Sons and Heirs, and so the Demendant has nothing but in Common with R. Judgment of the Writ; and a good Plea without averring the Life of R. For if he be dead, his Issue has Title to the Moteiry, and if he has no Issue, but the Demendant is Heir to him there the Demendant shall have severall Writs of Entry, the one of the one Moity, and the other of the other; quod nota. But if Jointenancy had been pleaded, it had been no Plea without averring the Life of the other; for there may be Survivor, and then Survivor is in by the first Feoffor. Brooke says, he wonders that the Writ had not been awarded good for the one Moity. Br. Brief, pl. 202. cites 24 E. 3. 25.

11. In Error; the Heir of him who left brought Writ of Error against the Heir of him who recovered; the Heir pleaded Jointenancy with J. N. and by the heft Opinion, it is no Plea; For the Action is not brought against him as Tertenant, but as Heir by Privity. Br. Jointenancy, pl. 54. cites 10 E. 4. 13.

12. And the same in Contra Femenm Collietuis; for this lies against the

Br. Petition, pl. 6. cites S. C. by all the Justices in Can Scacc.
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Abbot, tho' he be not Tenant, and after Scire Facias shall issue against the Tenant in both Cases. Br. Jointenancy, pl. 54. cites to E. 4. 13.

13. If a Fine is levied to two, and one does not enter, nor say any Thing, and the other enters and is impleaded, there, per Hank, he may plead Jointenancy with the other, notwithstanding that be alone counts of the Possession, and that the other never entered; For the Policeon by the Fine, and the Entry of the one, shall be adjudged in Law to be in both till the other disagrees by Matter of Record. And so fee that Disagreement to relinquish a Thing shall not be but by Matter of Record, but Agreement to take a Thing may be by Parol or Matter in Deed. Br. Jointenancy, pl. 57. cites 8 H. 4. 13.

14. Share impedit against three, who said that B. was seized of the Manor of B. to which the Advovery is Appendant, and injeft'd those three and J. N. who is alive not named, Judgment of the Writ; and a good Plea by Award, tho' the Disturbance be an As Peronall, and that the Jointenancy be contrary to the Nature of the Writ. Br. Jointenancy, pl. 19. cites 19 H. 6. 33.

15. In Replevin, the Defendant justified as Bailiff to W. N. because the Plaintiff held of his Master by Service to be Beadle &c. and that the Custom is, that the Tenants choose a Beadle of themselves, and if he depart, or shall not be sufficient, that the Tenants shall answer for him, and they shall be charged, and at such a Court they chose the Plaintiff, who relusted, and therefore he distrusted, and justified as Bailiff, and the Plaintiff pleaded Jointenancy in the same Land with J. N. Judgment of the Constable made upon him alone, and a good Plea. Br. Jointenancy, pl. 14. cites 14 H. 4. 2.

16. A brought Replevin against B. which B. avow'd upon M. a Stranger to the Avowry; there A. may plead Jointenancy the Day of the Writ pur chased with M. and that he is yet jointly seized with him; For tho' A. be a Stranger to the Avowry, he is Party to the Writ. Br. Jointenancy, pl. 55. cites 19 E. 4. 9.

17. Scire Facias against A. and B. as several Tenants, the one said that C. was seized &c. and had two Daughters, whereof one is named in the Writ, and the other marry'd N. and dy'd, and N. is Tenant by the Custody after the Death of his Wife, and left his Estate to A. and the said B. is the other Daughter, so they are Tenants in Common, and not several Tenants; Judgment of the Writ brought as against several Tenants; and per Wilby and Cur. the Writ shall abate. Br. Brief, pl. 202. cites 24 E. 3. 29.

18. Scire Facias upon Office, which found that W. died seized; J. S. came and pleaded Jointenancy by Feoffment of W. to him and his Penn, and Son, &c. non Allocatur; because the Defendant, by the Office, is supposed Abator; by which he pleaded the said Feoffment in Bar. Br. Jointenancy, pl. 46. cites 29 Aff. 50.

19. Jointenancy of the Franktenement is a good Plea in Scire Facias upon a Recognizance, and yet nothing shall be recovered but Chattel by Execution; per Belk. Br. Jointenancy, pl. 10. cites 49 E. 3. 27.

20. In Trepass of chafing in his Warren be shall not plead that the Plaintiff has nothing in the Land, in which he has the Warren, but jointly with J. N. who is alive not named in the Writ, judgment of the Writ; For he may have a joint Estate in the Land, and yet be sole Tenant of the Warren; quod nota ibidem; For a Man may have a Warren in his own Land. Br. Jointenancy, pl. 5. cites 36 H. 6. 55.

21. In Writ of Ward against J. the Defendant said, that he held jointly by Deed, which he shewed &c. and a good Plea. Br. Jointenancy, pl. 49. cites 37 Aff. 2.

(B. b. 2) Plead-
(B. b. 2) Pleading Jointenancy by Fine. Good or Not.

1. *In Affis,* the Tenant pleaded Jointenancy with his Son by Fine of Rent, and the Plaintiff *said* that the Tenant himself was seized at the Time of the Fine levied, before, and after, and this fine *has always continued,* abique hoc, that he who render'd ever had any Thing; and notwithstanding that this is a Fine executory, and not a Fine executed, yet this voids the Franktenament in the other as to a Stranger, as well as between them who were Parties to the Fine, so that the Jointenancy is not avoided, and therefore the Writ was abated by Award; it seems that the Possession of one is the Possession of both. Br. Jointenancy, pl. 61. cites 14 Affl. 54.

2. If Jointenancy by Fine be pleaded in Affis, the Writ shall abate without Answer; per Wiche, quod concedit, &c. per ipsum, the Plaintiff shall not lay Nient Compite; quod quare. Br. Jointenancy, pl. 64. cites 43 Affl. 6.

3. The Statute of 34. E. 1. *Stat. 1. extends not to Jointenancy by Fine,* but to Jointenancy by Deed only, to take the General Averment against the Deed, that the Tenant is sole seised, and extends not only to Affis, but to Writs of Dower, and other Real Writs of Precipe quod Reddat, but not to Writs of Ward, or the like. 2 Init. 524.

(C. b) *At what Time* Jointenancy may be pleaded, and where after a former like Plea by one Defendant.

1. *Affis* against J. and R. *pleaded to Fine, and R. pleaded Jointenancy with D. &c. and was received to it, notwithstanding that in the Frankten of Beverley in Affis of servile Force of the same Differia, he had abated the Writ by Jointenancy with one N. and this Writ was purchased by Joyners Accounts; For this Matter ought to be averred by Record, and this which was done in the Franchise, is not of Record here, by which the tenant the Plaintiff said, that the said R. had nothing but jointly with J. named in the Writ, who had pleaded to the Affis, &c. non Allocatur. Br. Jointenancy, pl. 51. cites 8 Affl. 9.

2. In Precipe quod Reddat the Tenant pleaded Jointenancy by Fine with one N. who is alive, Judgment of the Writ, and the Demandant said, that the Tenant had had the View, and after was signified upon the View, and after took a Day by Furse Partition, and yet he had the Plea and the Writ abated. Br. Jointenancy, pl. 16. cites 21 E. 3. 8.

3. In Attaint, if the first Action pasles for the Tenant, who was sole Tenant in the first Writ, and the other brings Attaint, the Tenant shall not plead Jointenancy in the Attaint with a Stranger to the first Writ; but if the Petit Jury pasles for the Demandant or Plaintiff, and the Tenant brings Attaint, there Jointenancy of the Part of the Defendant in the Attaint is a good Plea, and so the Writ awarded good, because he who pleads the Jointenancy for him for whom the petit Jury pasles, was sole Tenant in the first Action; quod nota, by Award. Quere of that Judgment. Br. Jointenancy, pl. 44. cites 26 Affl. 12.

4. *Affis in O,* the Tenant pleaded that the Tenements are in B., and not in O. and if &c. [then he pleaded further that] Jointenancy by Charter with N. Fifth fail'd, you have pleaded to the Affis, and have pleaded 6 C.
Mishomer of the Vill as sole Party, and so have lost the Advantage of the Jointenancy, quod Curia conceitit. Br. Jointenancy, pl. 47, cites 30 Ann. 1.

5. In Precipe quod Reddat, at the Grand Cape the Tenant came and pleaded Jointenancy with a Stranger, and also that he is ready to wage his Law of Non Summons. Finch said, that he ought to save the Default, and cannot plead Jointenancy now, and notwithstanding that he should wage his Law, and not speak of the Jointenancy, yet in a * new Action, he may have the View, and by Consequence he may plead Jointenancy, for this comes upon the View; therefore he ruled the Tenant to answer, quod nota. Br. Jointenancy, pl. 56. cites 42 Eliz. 3. 11.

Jointenancy or several Tenancy upon the Grande Cape. Br. Non Tenure, pl. 4. cites 55 H. 6. 24.

6. If Tenant in Formedon in Remainder demands what the Demandant has of the Remainder, and he *flows Deed, the Tenant shall not plead Jointenancy after this. Br. Jointenancie, pl. 7. cites 45 Eliz. 3. 2. per Finch.

7. In Scire facias the Tenant pleaded Jointenancy with J. N. by which the Writ abated, and he brought a new Writ by Journeys Accounts, and the two pleaded Jointenancy with the third, and the Plea was allowed, notwithstanding that the one pleaded Jointenancy before with the other, without speaking of the third, and because the Demandant could not deny it, the Writ was abated by Award; for tho' the one shall be stopped, the other shall not, and they two shall join in Plea for the Advantage of the one who was not Party to the Plea before. Br. Eltoppel, pl. 49. cites 45 Eliz. 3. 17.

Jointenancy may well be pleaded after Ley Gager; For this affirms him Tenant; per Hank, which was agreed. Br. Non Tenure, pl. 46. cites 7 H. 4. 8.

Br. Eltoppel, pl. 91. cites S. C. pl. 29. S. P. cites 41 E 3. 4. For tho' J. S. cannot, yet his Companion may, and he cannot alone; the Reason seems to be, because they should join all who ought to be joined together and not two without the third. Br. Jointenancy, pl. 23. cites 39 Eliz. 3. 56.—A is not stopped by the first Plea of J. S. and therefore for A's Advantage both J. S. and A shall have the Plea. Br. Eltoppel, pl. 195. cites S. C.

(D. b) Pleading Jointenancy. How.

Br. Brief, pl. 1. Trespass the Defendant said, that the Plaintiff had nothing unless in Common with J. N. Judgment of the Writ; and per Martin and Totam Cur. he ought to *flow how he holds in Common, by Alienation of Jointenants or of Coparceners, quod nota. Br. Tenants in Common, &c. pl. 1. cites 3 H. 6. 56.

Defendant who pleaded it in the Plaintiff.——Br. Tenants in Common, pl. 7. cites 22 H. 6. 12. that it is a good Plea without foreseeing * how they are Tenants in Common, otherwise it is if Jointenancy & pro indiviso ceased from the Part of the Defendant, and Plaintiff maintained that it was his several Soil, Abique hoc, that A. B. had any Thing, and so ad Patriam.——Br. Tenants in Common, &c. pl. 15. cites 15 Eliz. 4. 26. S. P.——Ibid. pl. 19. cites 7 Eliz. 4. 5. S. P.——Ibid. pl. 22. S. P. cites 52 H. 6. 13.——And of whole Gift or Fee. Br. Tenants in Common &c. pl. 17. cites 21 Eliz. 4. 8. 7.

2. Scire facias upon a Fine against W. and T. and W. said that he is Tenant of the Whole, Abique hoc; that T. any Thing had and pleaded over in Bar; and T. said that he had nothing but jointly with P. was named in the Writ of the Feeblest of H. Abique hoc, that B. had any Thing, Judgment of the Writ, Newton said, that W. and P. were Tenants, as the Writ sup-
Jointenants.

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posed, the Day of the Writ purchased, Prift. and the other e contra. Br. Maintenance de Brief, pl. 8. cites 7 H. 6. 34.

3. Entry in the Quibus, the Tenant pleaded Jointenancy with a Stranger not named &c. the Plaintiff may say that he himself was seized, till by the Defendant disaffessed, who made a Sufficient to Persons unknown and took the Profits; and by the best Opinion it is a good Plea, notwithstanding that the Statute does not speak but of Nontenure; For Jointenancy is taken by the Equity, for equal Mitchief. Br. Maintenance de Brief, pl. 40. cites 9 H. 6. 14.


of the W'de with a Stranger and the other the like to himself with another Stranger, he shall say Alike bee that the other had any Thing; note the pleading. Br. Jointenancy, pl. 17. cites 19 H. 6. 13.

5. In Cui in Vitate the Tenant said that the Day of the Writ purchased, be held jointly with J. of the Gift of W. which J. is alive and not named, Judgment of the Writ; Billing said that it may be, he held jointly the Day of the Writ and made Alienation, and retook to himself alone, therefore he ought to say that he was Jointenant of the Day of the Writ purchased, and always alter; & non allocatur, and the Plea awarded good; But of Nontenure he shall say, that he was not Tenant the Day of the Writ purchased nor ever after; Note the Difference. Br. Jointenancy, pl. 24. cites 26 H. 6. 16.

6. In Precipe against four if two make Defendants, and the other two plead Jointenancy with a Stranger Alike bee, that the other two any Thing has, it is sufficient for the Demandant to say that all are Tenants as the Writ supposes, without any Traverse that the Stranger any Thing has. Br. Traverse per &c. pl. 25. cites 34 H. 6. 16.

7. But where all the Tenants pleads Jointenancy with a Stranger, there S. P. Br. Maintenance de Brief, pl. 2. cites S. C. per Prior and M'oyle; For where the Tenants first have taken a Traverse, there is no need for the Demandant to take after Traverse; For one Traverse suffices to make the Issue. And it is said there that Ann 18 H. 6. it was held by Lord Richard Newton, that if in Precipe against two, the one pleads Jointenancy with a Stranger, Alike bee that the other had any Thing, and the other pleads the like Plea, or Nontenure, or any other Plea to the Writ, in this Case it is enough for the Demandant to maintain his Writ in pursuance, without traversing that the Stranger had any Thing; For he who pleaded Jointenancy had taken Traverse before, and therefore it suffices for the Demandant to Answer to it. Note the Diversity.

8. Where the Jointenancy of the Benefic of B. is pleaded, the Escheat but where it shall not be traversed; For they may be Jointenants by Divellin, or other Means; but the Demandant shall maintain that the Tenant as the Writ supposes, Alike bee that they held jointly, Prout &c. Br. Maintenance de Brief, pl. 33. cites 1 E. 4. 7. and Lib. Instr.

C their Ancefs, there the写作 Contrary is traversable, viz. the Defent, and not whether they held in Cohefion, but Brook says none of these last Cases. Ibid.

9. In Ravishment of Ward the Defendant said that 7. N. was seised And where a in fee and infessed the Deceased and W. S. and the Deceased died, and W. S. survived and infessed him; and per Needham, Choke, and Moll Justices as they say for that he need not Traverse Alike bee that the Deceased died seised in the Homage of the Plaintiff; for Writ and Count are only supposable; but Rowl Title, and such like, are Matters in Fact; and therefore, if it be alleged in Bat or Title, he ought to Traverse; Contra upon Writ or Count; note the Diversity. Br. Traverse per &c. pl. 213. cites 2 E. 4. 29, 29.

10. In without Tea-
Jointenants.

Br. Travers per &c. pl. 257. cites 10 E. 4. 16. 

10. In Affise or Praecipe quod reddat it is a good Plea for the Tenant that he holds jointly with J. S. who is alive not named in the Writ, Judgment of the Writ, or seised in Jure Uxoris, not named. Judgment of the Writ, without affirming feisam in Fact in them, and without traversing that he is sole Tenant, or seised in Jure proper; for the Writ is not but suppofoil, and he is to give him a better Writ; but a Title is Matter in Fact, therefore there ought to be alleged seisin in Fact, and Traverfe as above. Br. Brief, pl. 372. cites 10 E. 4. 17.

11. In Duma fait infra statuta of Alienation of his Father within Age it is no Pla that the Father and N. were jointly seised and infeoffed the Tenant, and the Father died, without Traverfe that the Father did not infeoff him solely. Br. Traverfe per &c. pl. 187. cites 6 H. 7. 5.

12. In Affise the Defendant pleaded that J. A. was seised in Fee and died seised, and the Land defended to the Defendant, and gave Colour, and the Plaintiff said that before J. A. any Thing had W. S. was seised in Fee and infeoffed the said J. A. and W. P. in Fee, and J. A. died and W. P. survived and infeoffed the Plaintiff, who was seised till seised by the Defendant, & hoc &c. and did not Traverfe the Defendant. For the dying seised is the Effect and traversable only, and not the Dicent; and the dying seised here is confessed and avoided by the Jointtenant; and the Defendant said that J. G. was seised and infeoffed the said J. A. in Fee who was seised and died seised, and all as in Bar Abique hoc, that the aforesaid J. A. at the Time of his Death held jointly with the aforesaid W. P. &c. and to fee the jointtenure put in Affise, and not if W. S. infeoffed them jointly or not. Br. Traverfe per &c. pl. 6. cites 27 H. 8. 22.

(E. b) Pleading Jointenancy how; Of whose Gift.

1. WARD; the Defendant pleaded Jointenancy in the Manor with J. N. not named, Judgment of the Writ; and per Cur. he ought to shew of what Effect, and so he did, that is to say, to them and their Heirs; Horton, you must shew of whose Gift; Hank said, Not unless upon Jointenancy by Deed, for if two different me, and I bring Affise against one, he may plead Jointenancy and yet shall not shew of whose Gift. Br. Jointenancy, pl. 15. cites 14 H. 4. 15.

2. In Affise it was agreed per Paiton and tot. Cur. that he who would plead Jointenancy shall pay, that he holds jointly with one such, &c. who is alive and not named, Judgment of the Writ, and shall not pay in Affise that he has nothing unless jointly &c. but he may pay so in Praecipe quod reddat; note the Difference; nevertheless fee lib. Intrat. And fee elsewhere that he ought to shew of whose Feoffment be is Jointenten, and fee all is one by the Book of Entries and no such Difference as above. Br. Jointenancy, pl. 3. cites 3 H. 6. 51.

3. In Quare impedit it was said by all the Justices, that is if a Man will plead Jointenancy in an Action Real brought against him, he ought to shew of whose Feoffment or Gift, for this is of his own Part; but where the Tenant pleads Jointenancy in the Demandant in the Thing, or Interdict demanded, there it is sufficient without shewing of whole Feoffment or Gift, the Demandant held. Br. Jointenancy, pl. 18. cites 19 H. 6. 32.
Jointenants.

4. So in Praecipe quod reddat, a Feme prayed to be referred for Default of her Baron named with her in the Praecipe quod reddat, the Defendant said that they were jointly seised before the Coverture which Estate continues &c. without shewing of whose Gift; because this is pleaded by the Defendant in the Feme and not in himself, as he who pleads Jointenancy in himself, or to S. he shall shew of whose Gift, because there he has Notice thereof, contra when this is pleaded by one in another. Br. Pleadings, pl. 136. cites 10 E. 4. 2.

5. In Quare impedit, if the Tenant in Action pleads Jointenancy of the Gift of W. N. with a Stranger, the Gift is not traversable, but the sole Tenancy; For if he be Jointenant of the Gift of W. N. or any other it is sufficient to abate the Writ; quod nota. Br. Traverfe per &c. pl. 352. cites 19 H. 6. 31. 32.

6. In Cui in Vita, he who pleads Nontenure ought to say, that he was not Tenant the Day of the Writ purchased, nor ever after; but of Jointenancy it is sufficient to say that he held jointly with J. N. not named, the Day of the Writ purchased of the Gift of N. Judgment of the Writ. Br. Nontenure, pl. 25. cites 37 H. 6. 16.

(F. b) Procesi upon the Statute against pleading Jointenancy in what Cases and How.

1. IN Affisse, it was said that where Jointenancy by Deed is pleaded to the Br. Affisse, pl. 128. cites S. Fecollatis, but where the Deed is deny'd and not where it is confessed and avoided, but the Statute wills that Procesi shall be made where the Defendant says that the Tenant was sole Tenant the Day of the Writ. Br. Jointenancy, pl. 39. cites 7 Aff. 20.

2. In Affisse the Tenant pleaded Bar for Part, and Jointenancy by Deed with a Stranger of the rent, and shewed the Deed &c. the Plaintiff said that sole Tenant, Prift. &c. and prayed Procesi secondum Statutum. And so the Sole Tenant &c. a good Replication; and after the Plaintiff had Affisse of the rent and confessed the Jointenancy, and the Writ did not abate, but only for this Parcel. Br. Jointenancy, pl. 37. cites 19 Aff. 14.

3. In Affisse a Man pleads Jointenancy by Deed, and Procesi is made by the Statute, and at the Day he alleges Jointenancy by Fine, & non Allocatur; and held that he, who pleads jointenancy, cannot plead Misneces of the Plaintiff also; for this is triable by the Affisse only, and the other is dilatory and shall stay Procesi upon the Statute. Br. Jointenancy, pl. 39. cites 22 Aff. 1.

4. In Affisse the Tenant pleaded Jointenancy with his Feme by Deed, the Plaintiff said that sole Tenant the Day of the Writ purchased, and that he * conveyed to another pending the Writ and retook to him and his Feme; and Thorp denied in this Case to grant Procesi upon the Statute, because the Jointenancy now is not denied but confessed and avoided; which was contrary to the Opinion of several, for the Affisse shall be if he was sole Tenant the Day of the Writ purchased or not, and then it is fully in Case of the Statute, and therefore ought to have Procesi upon the Statute. Br. Jointenancy, pl. 40. cites 25 Aff. 13.

5. IN Affisse the Tenant pleaded Jointenancy in him and J. N. not named by Deeds by Will incoying, and passed the Will; the Plaintiff said that sole Tenant, Prift by Affisse; the Defendant prayed Procesi upon the Statute, and could not have it, but the Affisse awarded. Br. Jointenancy, pl. 42. cites 27 Aff. 70.

6 X 6 A
6. A Man shall not have Proofs with Faction where Jointenancy is pleaded without Deed; For this is out of the Case of the Statute. Br. Jointenancy, pl. 58. cit. 9 H. 6. 1.

(G. b) Replication, good to the Plea of Jointenancy.

So to the Plea. 1. IN Affifes, if the Tenant pleads Jointenancy with N. not named &c. it is a good Replication, that the Plaintiff himself instituted the Tenant and N. within Age, and entered, and was seised till dissised by the Defendant. Br. Jointenancy, pl. 48. cit. 32 Aff. 4.

2. Praecipe quod reddat against two; one pleaded Nontenure, and the other pleaded Jointenancy with a Stranger without Deed, Abique hoc that the other any Thing had; and the Demandant said that they two were Tenants as is in the Writ suppos'd, Abique hoc that the Stranger any Thing had; Godred, you ought to have made two Replications, the one against him who pleaded Nontenure that he is Tenant, Frill, and against the others that they are Jointenants as the Writ supposes, Abique hoc that the Stranger had any Thing, and it was over-ruled by Patton, and that the first Replication was good against both, quod nota. Br. Jointenancy, pl. 58. cit. 9 H. 6. 1.

(H. b) Several Tenancy; good Plea in what Cases.

So in other Actions where no Land is demanded in certain, Note well the Diversity. Br. Several Tenancy, pl. 18. cit. 44 H. 8.—So Nuper oblit is no Plea, per Newton. Br. Several Tenancy, pl. 15. cit. 7 H. 6. 8.

2. Dower was brought of certain Land against two by several Præcipes. And so see that several Tenancy in Writ of Dower shall abate the Writ; Contra in Affises. Br. Several Tenancy. pl. 30. cit. H. 39 E. 3. 4.


4. Seire Facias against Baron and Feme upon Recovery against them; and the Baron came, and the Feme not. Cand. prayed Execution by Default of the Feme; and the Baron said, that the Feme had nothing, but he is sole Tenant of the Intentry and ready to answer; and by the Opinion of Finch clearly, the Baron may well have the Land; by which the Demandant passed over and the Baron pleaded in Bar. Br. Several Tenancy. pl. 8. cit. 45 E. 3. 5.

5. Seire Facias out of a Fine of Rent against several Tenants; the one said that he held a Hanfe Parcel of the Tenements, out of which the Rent in demand, &c. is supposed to be flowing, by itself, abisse hoc that the other any
Jointenants.

any thing bad, Judgment of the Writ; and that another held four Acres, Parcel of the Land out of which the Rent in Demand is supposed to be rising, &c. by itself, &c. Huls said, that the Writ is of a Rent Charge, Judgment, &c. And per tor. Car. be who pleads Several Tenancy shall plead over in Bar; Quod Nota. Br. Several Tenancy. pl. 11. cites 5 H. 5. 4.

6. He who pleads Several Tenancy, or Sole Tenancy, abiguæ hoc that the other named with him any thing Bad, shall not conclude to the Writ; but shall not over or plead in Bar; but the Demandant shall not answer to the Bar, nor to the Voucher, but shall maintain his Writ, that Tenant as the Writ supposes, Prit DRAWN Quod Nota. Br. Several Tenancy, pl. 16. cites 19 H. 6. 14.

and shall not conclude to the Writ. Ibid. pl. 19 cites 28 Aff. 25—S. P. Ibid. pl. 24 8. but it should be (10) E. 4. 8. accordingly.

(I. b) Pleadings of Sole Tenancy, and asen.

1. Præcipe quod reddat against four, the one disclaim'd, the second took the entire Tenancy abiguæ hoc that the others any thing had and owned, and the third took the entire Tenancy, likewise abiguæ hoc as above, and pleaded No dona pas; For it was in Formedon, and the fourth made Default by which Peter Cape was awarded against him, and the Presence of the others Recorded, and nothing was entered of the Issue; For it might be, that he who made Default is Tenant of the Whole, and shall have his Default and plead for the Whole afterwards, and therefore Idem dies was given to the others, and when the other who made Default has lost his Answer, the Issue of the others shall be entered; For if it shall be that the Demandant recover Seisin of the other Part now, then it may be tried after, whether any of them who have pleaded is Tenant of the Whole. Br. Several Tenancy, pl. 9. cites 46 E. 3. 15.

2. In Præcipe against two, one at the Grand Cape took the entire Tenancy, abiguæ hoc, that the other who made Default, any thing had and tender'd his Law, the Demandant maintained his Writ that Tenants as the Writ supposed Prit DRAWN Quod Nota. Br. Several Tenancy, pl. 19. cites 47 E. 3. 14.

3. The Demandant in Dower, counted of 350 Acres of Gavelkind Land; the Plaintiff as to 50 Acres pleased Jointenancy with J. S. but did not shew of whole Gift, &c. Demandant reply'd and Issue upon the Tenure, and as to the Jointenancy, the severed Sole Tenancy in the Tenant at the Time of the Writ purchased without traversing the Jointenancy alleged. The Tenant demurred, Vaughan Ch. J. delivered the Opinion of all the Judges, that the Plea of Sole-tenancy without Traversé is not good, For it might be, that the Tenant was both solely and jointly seised the same Day. But where the Replication is an Affirmative, so contrary to the Plea that both cannot be true, there no Traversé is necessary. 2 Jo. 6. in C. B. Cobham (Lady) v. Tomlinfo.

[See More as to Jointenants in General, under Summons and Se
erance, Petition, Damages, Judgment, and other pro
er Titles.]

Jointref:
Jointres and Jointure.

(A) Jointure. What is.

See Uses.

S. P. 4 Rep. 1. A Jointure (which in common Understanding extends as well to a sole Estate as to a joint Estate with her Husband) is a competent Livelihood of Freehold for the Wife of Lands or Tenements, &c. to take Estate presently in Possession, or Profit after decease of the Husband for the Life of the Wife at the least, if she herself be not the Cause of Determination or Forfeiture of it. Co. Litt. 36. b.

2. A Conveyance made by the Baron to himself and his Feme, and their Heirs in Fee Simple is a Benevolence and not a Jointure. Br. Dower, pl. 69. cites 6 E. 6. per the Jullices. Quod Nota.

3. So a Descent of Land by Baron to the Feme, by Will is a Benevolence and not a Jointure. Br. Dower, pl. 69. cites 6 E. 6.

4. Jointures are instead of Dower ad ultimum Ecclesiae & ex Alienfu Patris. And in those Cases of Endowment if the the Feme entered after the Death of her Baron she was concluded from claiming other Dower. Vid. Litt. S. 41. and 4 Rep. 1. b. (d) Sec. in Vernon's Cafe.

5. An Assurance was made to a Woman, to the Intent it should be for a Jointure, but it was not so expressed in the Deed ; Per Cur. it may be inferred that it was for a Jointure, and such Averment is not traversible. Ow. 33. Trin. 7 Eliz. Anon. cites the Cafe of the Queen v. Lady Beaumont.

6. Feeomment to the Use of a Stranger, Remainder to his Wife for a Jointure. Tho' the Stranger die before the Husband, yet this will not make a Jointure. 4 Rep. 2. b. Mich. 14 & 15 Eliz. in Vernon's Cafe.

—Hob. 151.

7. A Bargains and sells Land to J. S. and J. N. by Deed inrolled, and they fuller B. to recover against them by a Common Recovery, to the Use of A and his Wife, who was the Daughter of B. for her Jointure. Resolved that this was Affurance by A. himself for the Advancement of his Wife, Me. 718. 29 Eliz. Bridges's Cafe.

8. Estate Tall is limited by the Husband to himself, and for Default of Issue then to the Wife for her Life. Afterwards be dies without Issue, yet this no Jointure. For since it could not be said to be a Jointure at the Beginning whatsoever happens afterwards shall not make it to be a Jointure. Cro. J. 489. Trin. 16 Jac. B. R. Wood v. Shirley.

The Word Jointure in an Agreement implies, that the Husband shall have an Estate for Life, as well as the Wife. Hill. 20 & 21 Car. 2. Chan. Cases 125. More v. Grice.

See Interest, (D), pl. 2.

(B) Jointres Restrained or Favor'd. In what Cases.


But Jenkins is of Opinion, that such Leaf will continue no

2. Leave for 21 Years upon a Fine sur Constance de Droit Came ceo by Tenant in Tail Jointres without any Rent referred binds the Heir in Tail for such Leave is not an Alienation; for the Word Alienation, in Conditional Estates among Subjects, extends not to a Leaf for 21 Years
1. A. possessed of a Term for Years, purchased in Fee, and then makes a Jointure on his Wife and dies. The Wife for a Sum of Money relieves to A's Executors all her Rights to the Personal Estate of A. and afterwards the Inheritance is vested, 'till which Time the continued in Possession of the Land. Decreed, that the Wife's Right to the Term is not barred by the Release, and that the hold for so many Years as she lives; and if the Left be renew'd, she to pay proportionately to her Estate for Life, and afterwards to go to the Executors of A. Patch. 15 Car. 21. 1 Chan. Cafes. 46. Bawtry v. Ibion.

2. A. during a former Marriage with M. did by Deeds and Fines settle the Manors of D. and S. to the Use of himself for Life, Remainder to his first, &c. Sons in Tail. Afterwards M. died without Issue. And A. on a Treaty of Marriage with J. agreed with W. R. the Father of J. in Consideration of 1000l. to be paid by W. R. to settle 100l. a Year Jointure on her, of which D. was to be Part. A Bill was brought by J. for her Jointure, and to rest aside the Settlement as fraudulent. At the first Hearing there was no Proof of Payment of the 1000l. by W. R. but it was proved, that W. R. maintained A. and supplied him with Money for other Uses. It was intituled for J. that * Marriage was a good Consideration to make the Jointure of a Purchasor, and that it was her Father who was to pay the 1000l. and not the, and that that sise was clearly a Purchasor; and that giving Security for Purchase Money is Payment, and Ld. Chancellor inclining to this Opinion, that the was a Purchasor. And afterwards a Release appearing to have been given by A. and the Cause coming on again before Ld. Chancellor and Baron Turner, the Court declared the Marriage a good Consideration to make the Feme of a Purchasor; and upon the Release besides, it is clear that the was so; and that all voluntary Conveyances are prima Facie to be look'd upon as fraudulent against Purchasors, unless the Contrary appear; and decreed the Settlement by A. to be set aside as fraudulent. Chan. Cafes. 99. Hill. 19 & 20 Car. 2. Douglas v. Wade. Where the Husband in Consideration of Marriage agreed to settle certain Lands in Fee upon her for her Life, and after her Marriage he surrendered them by way of Mortgage for Money lost, and afterwards surrendered them to the Use of his Wife for Life, Remainder to his Daughter in Fee, and died, and the Mortgagee did not bring in his Surrender at the next Court, but the Wife brought in hers and was admitted; upon a Bill by the Mortgagee, the Court would not impeach the Wife's Estate, the being in pursuance to an Agreement precedent to the Plaintiff's Title; but as to the Daughter, whose Estate was purely voluntary, it was ordered, that unless she would pay the Plaintiff his Money, he should hold and enjoy the Preminmil against her. Chan. Cafes. 170. Tlln. 22 Car. 2. Martin and Scainore. — Show. Parl. Cafes 21. Whitfield v. Taylor.*

3. Articles to settle a Jointure, the Marriage takes Effect, but the Settlement not made; Decreed that the Articles be Executed. But the Lands being mortgaged to one that had notice of the Articles it was decreed that the Widow should Redeem and hold for her Life, and that her Executors should detain the Land 'till the Money was raised, that she had been out upon the Redemption. Mich. 30 Car. 2. 2 Vent. 343. Haymer v. Haymer. 4. A. Marriage Agreement reduced into Writing, but not sealed, was extremely rigid, so as the Baron and his Feme would thereby have more than the Wife's Father (who was indebted) and Mother, and two other Daughters unpreferred would have left among them all. The Marriage took Effect, but in the mean Time the young Man had made Addresses to another. And this Matter coming before the Court, the Ld. Chancellor did not decree the Agreement, but if the Plaintiffs could recover at Law, he would leave them to that Remedy; it was referred to the Parties to agree among themselves, elie to attend again. 2 Chan. Cafes 17. Hill. 31 & 32 Car. 2. Anon. A. upon a Treaty of Marriage taken with A's Daughter of B. was to settle 500l. a Year, and to have 200l. Portion, but B. inquiring, that if A. should die without Issue, M. should have the Inheritance of the Jointure, the same was refused. But afterwards by treaty, A. renewed.
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A. renewed the Treaty himself, and accepted of Articles for payment of 5000 l. and settled a Jointure of 500 l. per Year; and likewise made another Deed in Nature of a Mortgage of all his Estate, as well the Reversion of her Jointure as the Rest, for securing the Payment of 500 l. to her, in Case A died without Issue. A. died within a Partrights after Marriage without Issue. M. by Bill pay'd a Foreclosure of the Redemption on Failure of Payment. And the Defendants, tho' they exhibited their Bill for Relief against this as a Fraud, yet were decreed at the Rolls, to pay that 500 l. by a certain Day without Interest, but with Costs, and if not the Estate to be sold to raise it with Interest from that Day. And this upon a Re-hearing was confirmed by the Ld. Keeper Somers, but gave a Twelve Months further Time for Payment. Upon this an Appeal was to the House of Lords, where for the Appellant was urg'd the Sicklines and Weakness of A. and the Unreasonableness of the Agreement, that A. on his Death-Bed declared, he made no such Agreement, and M. being present did not contradict it. To which it was among other Things answered, that all Bargains are not to be set aside, because not such as the wisest People would make, but there must be Fraud to make their Acts void; that the Marriage was of itself a good Consideration for a Jointure; and Reasonable or Unreasonable is not always the Question in Equity, if one Party was acquainted with the Whole and meant what they did; much less is it sufficient to say, that it was unreasonable as it happened in Event; For if at the Time it was a tolerable Bargain; may, if at the Time the Bargain was the Meaning of the Parties, and each knew what was done, and there was no Deceit upon either, the same must stand; and accordingly the Decree was affirmed. Show. Part. Cafes. 20. Whitfield v. Taylor.


8. Chancery will set aside a Term for Years in favour of a Jointres against a Purchase, tho' it will not in favour of a Lowres. Because a Jointres has a fixed Interest by the Agreement of the Party, but a Lowres has an Interest by Law under particular Circumstances, per Ld. Somers. Mich. 1696. Ch. Prec. 65. in Case of Lady Radnor v. Rotteram.

9. An Injunction was granted against a jointres, [tho' by the Settlement the same] Tenant in Tail after possibility, &c. to stay Waifs, and the Court held, that the being a Jointres within the 11 H. 7. ought to be restrained from aliening, and to granted Injunction to stay suffic Waifs. Abr. Equ. Cafes. 221. pl. 2. Hill. 1701. Cook v. Walford.

10. A Defective Journtes was decreed to be made good against those that claim'd under a Marriage Settlement, and within the Consideration of the Marriage Settlement. Arg. Patch. 8 Geo. 10 Mod. 459. cites it as decreed, per Ld. Somers, in Case of Barkham v. Barkham.

11. A Bill was brought by Remainder-man to be relieved against a Jointure made by Tenant for Life even upon his Death-Bed in Consideration of, and previous to his Marriage by Virtue of a Power referred to him but Ld. C. Parker affilit by Prat Ch. J. and the Master of the Rolls denied Relief; cited by the Master of the Rolls. 2 Wms's Rep. (619.) Trin. 1731. as the Case of Wicherly v. Wicherly. The Reason why Chancery does not relieve against a Marriag Contract for Settlements, Jointures, or other Provisions, tho' they may be very unequal, in favour of the Wife; is because it cannot set the Wife in Status quo, or unmarry the Parties. 2 Wms's Rep. (619.) Trin. 1731. by the Master of the Rolls, in Case of North v. Anfell.

(C) Disputes between her and the Heir.


2. The
Jointress and Jointure.

2. The Heir is not intitled to see any Deeds in the Hands of the Jointress, until her Jointure be confirmed, tho' the Jointure was made after Marriage. But on a Motion that all Deeds, Leases and Writings relating to the Jointure, should be delivered up on confirming a Jointure, it was opposed as to the Leases; because without these the Jointure, tho' the Leases may be expired, there may be Arrears of Rent and Covenant. But the Court ordered all Deeds and Writings and expired Leases to be delivered up, unless particular Reasons be shown to the contrary by the next Seal. Sel. Ch. Cases, in Ed. King's Time. 4. Mich. 11 Geo. 1. Limas v.

(D) Disputes between her and Creditors or Purchasers.

1. Made a Lease for 30 Years, without Consideration, to B. Afterwards A. conveys the Land to his Wife for a Jointure after Marriage. Resolved, because this last Conveyance was voluntary and without Consideration, that the Wife could not avoid it by averring that it was fraudulent. Cited by Beaumont J. as resolved by two Ch. Justices and three other Justices. Cro. E. 445. Mich. 37 & 38 Eliz. C. B. in Case of Upton v. Buffle.


3. A Judgment prior to a Jointure than't protect an Incumbance subsisting (as a Lease, tho' made for a valuable Consideration) and to turn the Debt on the Jointres. Hill. 26 & 27 Car. 2. Chan. Cases 247. Jacob v. Thatcher.

4. Marriage Settlement fairly made and performed, and Portion paid, is not to be impeached in Favour of Creditors. Patch. 30 Car. 2. Fin. R. 358. A fraudulent Settlement made by a Trustee and his Confederate. Rate of the Trust Estates on the Trustee's Daughter in Marriage was set aside. Mich. 32 Car. 2. Fin. R. 469. Smeaton v. Povey and Vankempnett.

5. Jointresses parts with her Jointure in Consideration of the Barons giving a Bond to a Trustee to settle other Lands of equal Value; the Baron dies intestate, and no Settlement made; the Wife takes Administration, and confeids Judgment to the Trustee. Declared the Bond and Judgment to the Trustee good so far as to secure the Like Value, (viz. 451. per Ann.) for the Wife's Life. But the Bond being worded so that the Baron was to have been Tenant in Tail, and so might have barred such Settlement, if made, as to the Children, therefore another Bond-Creditor shall come in before the Children, tho' not till after the Wife. Patch. 1691. 2 Vern. 220. Cottille v. Fripp.

(E) Refusal. In what Cases it may be.

1. THE Wife may refuse a Jointure made after Marriage, and demand her Dower at Common Law. Goldsb. 84. Patch. 30 Eliz. in Case of Colthirt v. Delves.

2. If the Baron makes a Jointure during Coverture, and after deviseeth other Lands in Lieu of Jointure, she may refuse the Jointure, and hold to the Devise and this was held good by the Statute, (tho' it was moved to the
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the contrary, because the Statute is, that she may refuse the Jointure, and hold to her Dower) But they held, that if she once agrees to the Jointure, she cannot waive it afterwards. Goldsb. 84. in Cafe of Colthirft v. Delves.

3. A Jointure was made after Marriage by the Husband, who was not in Pefeffion; but the Father, whose Lands they then were, joined with him, but it was not to take Effect immediately after the Husband's Death, as the Statute requires. The Husband died indeed, living the Father, but charged all his Lands, so that if the Wife waived her Jointure, the Estate would descend to the Heir at Law, and so not liable to Debts. And therefore Parker C. decreed that she should take this Estate for Life under this Settlement, and assign it over in Trust for the Creditors, who should convey to her a Third of the Land of her Husband free from Incumbrances. Pach. 8 Geo. 1. 10 Mod 497. Mills v. Eden.

(F) Refusal. What is a Refusal.

1. By Refusal En Peis, she may waive her Jointure, and hold her to her Dower, and this is a sufficient Election. Goldsb. 84. Pach. 30 Eliz. in Cafe of Colthirft v. Delves.

2. If she once refuse her Jointure in her own House among her Servants, and not to the Her, it is a good Refusal. Goldsb. 84. in Cafe of Colthirft v. Delves.

3. Bringing Wit of Dower without more, is a good Refusal; per Periam J. and he said he had so seen it in Experience. Goldsb. 85. in Cafe of Colthirft v. Delves.

4. A Jointure is made after Coverture. The Baron dies. The Wife does not enter. A Precipe is brought against her. She disclaims or pleads Non-tenure. This is a Refusal of her Jointure. Brog. Reading on Jointures. 96. Left. 9. pl. 1.

5. Land is given to Baron and Feme for their Lives for a Jointure. The Baron dies. She brings Wit of Dower, and appears in Person, or by Attorney screens, this is a Refusal. But otherwise, if she appears not in Person, nor by Attorney; and if she sue the Writ, and the Tenant is not summoned, it is no Refusal; otherwise if the Tenants were summoned. Brog. Reading on Jointures. 96. Left. 9. pl. 2.

6. So if the Heir demands of the the Wife, if she will have her Jointure, and she says No, that she will not have it; or if she say so to a Stranger, this is not a peremptory Refusal; but if she says to upon the Land, whereof she is deceased to the Heir, and prays him to assign her Dower. This is a Refusal peremptory to the Jointure. Brog. Reading on Jointures. 96. Left. 9. pl. 3.

7. An House is assigned to Husband and Wife for a Jointure. The Husband dies. The Wife immediately on the Husband's Death, departs from that House to another, this is no Refusal. Brog. Reading on Jointures. 97. Left. 9. pl. 5.

8. Land is given to the Husband and Wife, rending Rent for a Jointure. The Husband dies. She refuses on Demand to pay the Rent Arrear; yet this is not Refusal of the Jointure. Brog. Reading on Jointures. 97. Left. 9. pl. 5.

(G) Agreement
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(G) Agreement to the Jointure. What is.

1. AND was given to Husband and Wife for their Lives for a Jointure. They levy a Fine to a Stranger. The Husband dies; this is no Agreement. Brog. Reading on Jointures, 97. Left. 10. pl. 1.

2. No to Husband and Wife Infants for a Jointure. The Husband dies; the Wife within Age takes another Husband. She takes the Profits or makes a Lease before Entry, or grants a Rent out of it. This is an Agreement. Brog. Reading on Jointures, 97. Left. 10. pl. 2.

3. Land is given to Husband and Wife for a Jointure. He dies. She before Entry, grants a Rent out of all her Land in D. This' she has no other Land there but her Jointure, yet this is no Agreement. But if the grant a Rent out of her Jointure specifically, this is an Agreement. Brog. Reading on Jointures, 97. Left. 10. pl. 3.

4. Where after the Husband's Death, she before Entry surrendered to the Heirs of the Husband, this is an Agreement. So, Agreement is an Agreement. Brog. Reading on Jointures, 97. Left. 10. pl. 4.

(H) Bar of Dower. In what Cases Jointure is a Bar.

1. There is a Diversity to be observed between a Dower ad Olimm Eccles, or ex Affinitus Patris, and a Jointure, or an Estate made to the Wife in Satisfaction of her Dower; For one of these being attained to, was a Bar of the Dower as the Common Law; but a Jointure was not. For a Right or Title which one hath to a Freehold cannot be barred by Acceptance of collateral Satisfaction. But a Woman cannot have a double Dower, viz. Ad Olimm Eccles &c. and at the Common Law; For the Wife of one Husband can have but one Dower. But the Law is since altered by the following Statute. Co. Lit. 36. a. b.

2. 27 H. 8. cap. 10. 6. Where Persons have purchased, or have ESTATE made of Lands and Hereditaments unto them and to their Wives, and to the Heirs of the Husband, or to the Husband and to the Wife; and to the Heirs of their two Bodies begotten, or to the Heirs of one of their Bodies begotten, or to the Husband and to the Wife for Term of their Lives, or for Term of Life of the Wife, &c. or to any other Person or Persons &c. to the Use of the said Husband and Wife, or to the Use of the Wife for the Jointure of the Wife; every Woman having such Jointure shall not claim any Dower of the Residue of the Lands that were her Husband's.

Part of the Land in England was conveyed to several Persons to Ules, and in as much as the Feme was not divisible of Ules, her Father and Friends, upon her Marriage procured the Baron to take Estate of the Eccles of others failed to his Ule; and the Feme before or after Marriage for their Lives or in Tail for a competent Provision for the Feme for the Death of the Baron; Now this Statute transferred the Polletion to the Ule by which the Barrows were failed accordingly, and consequently if further Provision had not been made, the Femes would have had both Dower and Jointure; For no collateral Satisfaction or Recompence can bar any Right or Title of Inheritance or Franklinment. 4 Rep. 1. b. 2. a. Vernon's Cafe. ——* This is left out in the Abridgments.

Tho' this Statute particularly expresseth those five Forms, viz. 1st. To the Baron and Feme and the Heirs of the Baron. 2dly. To the Baron and Feme and the Heirs of their two Bodies. 3dly. To the Baron and Feme and to the Heirs of the Bodies of one of them. 4thly. To the Baron and Feme for their Lives. 5thly. To the Baron and Feme for the Life of the Feme. Yet these are only for Examples, and not to exclude other Estates to the like Effect; and agreeing with the Intent of the Makers. And tho' the Letter of the Act imports a Joint Estate, and also the Word Jointure therein mentioned implies the same, yet it was resolved that Estate limited to the Baron for Life, Remainder to the Feme for Life, for her Jointure is within the Intent of this Act, it being of one and the same Effect, and the one as beneficial to her as the other. 4 Rep. 2. a. The learned Resolution in Vernon's Cafe.

If a Jointure be made to the Wife, according to the Purview of this Statute it is a Bar of her Dower, so as the Woman shall not have both Jointure and Dower; and to the making of a perfect Jointure within,
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within that Statute, six Things are to be observed. 1st. Her Jointure by the first Limitation is to take Effect for her Life in Possession or Profit presently after the decease of her Husband. 2dly. That it be for the Term of her own Life or greater Estate. 3dly. It must be made to herself, and to no other for her. 4thly. It must be made in Satisfaction of her whole Dower, and not of Part of her Dower. 5thly. It must either be expressed Words to that Effect in Satisfaction of her Dower. And 6thly. It may be made either before or after Marriage. Co. Litt. 36 b. See Wood v. Shirley.

† If Baron makes a Proclaim to the Use of himself for Life, and after to the Use of B. for Life, and after to the Use of his Wife for Life for her Jurecture; this is not within the Act tho' he should die, living the Husband. 4 Rep. 2 b. — So if it be made to a Stranger for his Life, and after to the Wife for Life for her Jurecture. Because at the Time when the Limitation all was before we're out of the Statute, and being uncertain whether her Effe on' would take Effect immediately on the Death of the Baron, as by the Statute it ought, and no subsequent Event can make them within the Act; And therefore, tho' in such Cases, the enters and takes the Profits, yet she shall have Dower in the Residue; For if the Act does not bar her, the Common Law will not. 4 Rep. 2 b. in Vernon's Case. — Co. Litt. 36. b. P. —

§ See Wood v. Shirley.

† For an Effe on' for Life or Lives of one or many others, or to her for 100 or 1000 Years &c. if the so long live, or without such Limitation is no Bar of her Dower, tho' they be expressly made in Satisfaction of her Dower; because 'tis not within the said Statute. Co. Litt. 36 b.

† If an Effe on' be made to others in Fee Simple, or for her Life upon Tryal, so as the Effe remains in them; albeit, it be for her Benefit, and by her Affr, and by express Words to be in full Satisfaction of her Dower, yet this is no Bar of her Dower. Co. Litt. 36 b.

¶ If Lands are conveyed to the Wife before Marriage for Part of her Jointure, and after Marriage more Lands are conveyed to her for her full Jointure, and in Satisfaction of all her Dower, and then the Baron dies; If the Wife waives the Land convey'd to her Use after the Marriage, the she have the Land convey'd as the Marriage, and her Dower also in the Residue; For Land convey'd to her for Part of her Jointure, or in Satisfaction of Part of her Dower, is no Bar (for the Uncertainty) of any Part of her Dower. 4 Rep. 3. a. Vernon's Caso.

|| A Devis' by Will c'an't be averted to be in Satisfaction of her Dower unless it be expressly co' ex'd. Co. Litt. 36 b. — See (I) Foster v. Pittfall.

§. 7. Provided that if any such Woman be heartily exost'd from her Jointure, or any Part thereof, such Woman shall be endowed of as much of the Residue of her Husband's Tenements, as the Lands so exost'd shall amount unto.

But if the Jointure be made before Coverture, the Jointuree cannot waive it after her Baron's Death, and take Dower, and this by Force of this Provifo. 4 Rep. 3. a. the fourth Resol'n in Vernon's Caso.

See (I) Ly Dyer's Remarks as to this Caso being mis-rep't as to its being within this Statute, where it belongs to the Statute of 11 H. 7. 20. — And Ly Dyer farther said, that the Reason reported by Brooke, that Fee Simple is not a Jointure within this Act, is because such Jointure is not spoke of in the Statute; but that this is no Reason in Law for three Causes: 1st. Because the principal Caso at Bar, and divers other Cases put before were out of the Words of the Act, and yet within the Equity and Intention of it. 2dly. Because it agrees with the Description of a Jointure agreed and resolved before. [See (E) and (J) Vernon's Caso.] 3dly. He said, that this Effe in Fee Simple is within the express Letters of the Act; For the Words of the said Provifo are for Term of Life &c or otherwise in Jointure, which Word (otherwise) extends to all other Estates convey'd to the Effe on' not mentioned before in the Act; For all other Estates, which 'd before be beneficial to the Effe on' or more than the Estates mentioned in the Act, arc within this Word (otherwise). For, note that this Word is not indefinite, but (otherwise) in Jointure, i.e. for a Jointure, as much as to say, having all the Effect of Incidents to a Jointure imply'd in the said five Examples, or more. 4 Rep. 3 b. in Vernon's Caso. — § These Words are omitted in the Abridgment of the Statutes, but arc in §. 9 of the Statutes at large. — 4 Rep. 4. in Vernon's Caso, the Restor'd in a Note there found; this is good Law if, well understood; and as to this forme have said; that no Effe devis'd by Will can be a Jointure. 1st. Because at the Time of making this Statute, a Devise could not be made; For the 2 H. 8. transferred the Effe on' to the Use, and no Land was devlos'able till 52 H. 8. so that a Devise of Land, which could not then be made, could not be within the 2 H. 8. Every Jointure intended within 2 H. 8. is made before or during the Coverture, whereas a Devise takes Effect after the Baron's Death. But notwithstanding these Reason's, it has been resolved, that if a Man devis'd to his Effe on' for Life generally, this cannot be averted to be for the Jointure of the Effe on'.
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and in Satisfaction of Dower. 11. Because Devise imports Consideration in it itself, and as it cannot be awarded to the Use of any other than the Devisee, unless expressed in the Will, so neither can it be awarded for a Jointure, unless therein expressed, but shall be taken as a Benevolence, and so is Brooke to be intended. 12. All the Will of Lands by the 32 and 34 H. S. must be in Writing and no Aver-}
8. *Jointure upon Condition* is a Bar of Dower within the Words and Intent of the Act of 27 H. 8. 10. if the Wife after the Death of her Baron accepts it. 4 Rep. 2. b. (h) Mich. 14 & 15 Eliz. Vernon's Cafe.

9. If Baron makes a Feoffment for another Life to the Use of his Feme for her *Jointure*, this is not a Jointure within the 27 H. 8. 10. For it is not for The Life of the Feme, and this may determine without the Act or Default of the Wife, during her Life and so she may be debarred of a Livelyhood. 4 Rep. 2. b. 3. in Vernon's Cafe.

Jointure is an Estate for her Life, and cannot determine without her own Act, and is therefore a Jointure within the Act of 27 H. 8. 10. Ibid.

A. devised all his Lands to his Wife, and died; if entered by Force of the Will, and after took Baron; she brought Dower of Part, and this was pleaded to the Action. Dyer thought it no Plea; for that this Poolefion by the Will was only a Subpoenion of her Dower during the Time, the Estate by the Will being not to begin and last as the Estate now demanded. But Weldon contra, and that the one is no more a Frankenement than the other, and therefore the one extinguishes the other, and he thought it as strong as a Jointure. Benlows thought, that when she had an Interest in the Land upon this Condition, the taking Baron after was a Bar of her Dower, it being her own Act. Mo. 31. pl. 103. Trin 3 Eliz. Anon.

10. Land was settled by J. S. Uncle of the Baron upon the Baron and Feme for a Jointure, and to the Heirs of the Body of the Baron; the Baron dies seized of other Lands in Fee, fee with some Friends of her Deceit, entered privately into the settled Land and claimed it for her Jointure, and yet vacated the Possession and brought Dower of the Whole, and had a full third Part of all assigned out of the other Land by the Sheriff, who was not let into the Delign; after which the entered publicly into the Jointured Land, and brought Trespass against P. the Tenant for keeping her out. P. pleaded the Feoffment of B. and justified; the Plaintiff replied, that before B. any Thing had J. S. was leased and gave to B. and her ut supra; P. rejoined, that the Estate was made for her Jointure, and that after B's Death, and before the Trespass she brought Dower and recovered &c. and averred that the Land conveyed for her Jointure is no Part of the Land assigned for her Dower; Plaintiff sur-rejoined, that before Dower brought the entered claiming it for her Jointure; Defendant by way of Rebutter said, that the should not be admitted to say this against the Record of Recovery on the Writ of Dower; Defendant demurs. It was inquit for the Plaintiff, that the Entry gave her actual Seisin of the Land which cannot be waived or devolved by bringing the Writ of Dower; but it was answered, that, tho' she may not waive, yet the may foreclose and conclude herself from claiming the said Estate, and that she has done here; because the bringing Dower, and Judgment thereupon affirms that she has only Title of Dower and consequently no Estate, and is Esseg to claim any Estate in any Part, of which she demand'd Dower; and this was affirmed per tot. Cur. 4 Rep. 4. b. to 5. b. cited by the Reporter as to the above 18 Eliz. Sharp v. Purlow.

11. If a Jointure be made to a Wife of Lands before the Coverture, and after the Baron and Feme alien by Fine those Lands, the shall not be endowed of any other Lands of her Baron. Co. Litt. 36 b.

But if the Jointure had been made after Marriage, there notwithstanding such Alienation, yet seeing her Estate was originally assignable, and her time of FeeHoldon was not till after the Death of her Baron, she may claim her Dower in the Refidues; whereas in the other Case the Jointure being made before Marriage was not waivable at all. Co. Litt. 36 b. — S. P. agreed per tot. Cur. Bull. 173. Trin 9 Jac. Anon.

12. The Baron covenanted to stand feised to the Use of himself in Title and for Default of such Issue to the Use of M. his Wife for her Life, Remainder over, after which he made a Feoffment to the Use of himself and his Wife for their Lives for a Jointure to her; the Baron died without Issue. This jointure was pleaded in Bar of Dower, but adjudged to be no Bar, because the Feme is remitted and in of her first Estate, and the Jointure avoided. See No. 972. Hill. 10 Jac. Ror. 912. Geo. 4. Cro. J. 408, 409. Trin. 16 Jac. B. R. S. C.

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a Jointure to bar Dower, tho' limited, and the entered and claimed it; For a Jointure to bar Dower ought to be immediate at the Barne's Death, and the Remainder limited after M's Death by the different Partes be in different Possesse of the first Estate in Precedence of a third Peron and is remitted noles Volens to the first Estate, and cites S. P. adjudged 41 E. 3. 17. John Say's Case.

(I) Forfeiture, &c. by 11 H. 7. 20.

11 H. 7. If any Woman which shall have any Estate in Dower, or for a Conveyance by the Baron of her Husband, or to herself, in any Lands or Hereditaments of the Inheritance, or Purchase of her Husband, given to the Husband and Wife in Tait, for Life, by any and his Wife of the Ancestors of the Husband, shall, being sole, or with any other taken and their Husband, discontinue, alien, release or confirm with Warranty, or by covin suffer any Recovery of the same, all such Recoveries, Discontinuances, Alienations, and Warranties, shall be void.

Per Jusiciarum, Quod bona. Br. Dower, pl. 69. cites 6 E. 6.—But D. 248. pl. 6. Contra by three J. against two. Hill. 5 Eliz. in Sir Basset Dennis's Case, but at the end of the Case this of Br. Dower, pl. 69, cited Dyer Ch. J. that he was appointed over to the Feme, where a joint Estate is made to Baron and Feme in Fee, it may be averred, unless expressed in the Conveyance to the contrary, to be pro Junctura contra Br. tit. Dower. D. 317. b. pl. 7. Mich. 14 & 15 Eliz.—And Lord Dyer said, that this Case of Br. was misreported for true, it is that it was recorded, that an Estate in Fee simple conveyed to the Feme was not any jointure within the Statute, yet that it is to be receded within the Statute of 11 H. 7. cap. 22, which it may be extended either in Letter or Intention where Feme has Fee in Fee simple; for it would be repugnant to the Estate and against a Rule in Law to restrain the Alienation of such Feme, nor is it within the Letter or Intent of the Act; but he said that such Estate was a jointure within the Equity of the Statute 7 H. 8. 10, as was refurled in Dunbar's Case.—See Rep. 3 in Vernon's Case.—7 these more of this as to the Stat. 27 H. 8. cap. 10. at (H) Bridg. 156. Arg. cites 4 Rep. 5. it is supposed it was rendered in Quito's Case; there, but I do not observe that it was otherwise than as said by Lord Dyer.—A Man and Woman, being jointants in Fee of a Manor, inter-married, and afterwards lected a Fine thereof to a Stranger, who rendered it to them in Tait, they have three three Daughters; the Baron dies; the Feme takes her own Estate, and they try a and re-take it in special Tait; the Feme dies without Issue by the second Baron; the Daughters enter; a Lefce for Years of the second Baron directs for a Copyholder by his Will, he brings a Repever; the other avoids, and did not love the Feme of the second Baron, and for that Caufe, it was held to be 111; and it was here moved, 11. Whether the first Estate Tait be within the Statute of 11 H. 7, and it was held by all the Judges, that it was not, for it may go to a collateral heir; and this Statute doth not provide, but for this heir in Tait only. Cor. E. 524. Mich. 38 & 29 Eliz. B. R. Laughter v. Humphrey.—S. C. cited D. 248. Morgan pl. 78. says, that this Estate was made in Fee by the Baron to the Feme, and is not any jointure within the Statute of 11 H. 7. Copyhold Lands were forrendered according to the Cutham to the Life of B. and M in his Life or his Heirs lawfully and lawfully to the Barne, who were admitted accordingly. Br. thought that in F. Fee, they be alienated. Two Questions arose: 1st. If Copyhold Lands are within the Statute of 11 H. 7. 20, and 2dly. If Surrender to Baron and Feme and their Heirs lawfully gotten (with Remainder over) be a Fee Tait; as to the fee it was held by Newgate J. and Glyn Ch. J. that they are not; For by Glyn they are not named, nor are they within the little chiefe of this Act; because they cannot convey by Warranty &c. nor any other way than by Surrender, and as to the second Point, Newgate held this to be a Jointure (in H. 8. and 11) and not an Estate Tait, because it is not mentioned of actent Esche, and Warburton J. to the same Intent, but Glyn sees this as a second Point said, he would not deliver any Opinion, the first being so Apparent, and so Judgment was entered accordingly for the Defendant. 2 Sid. 241. 75. Hill 1657. Harv. v. Smith.—S. C. cited Arg. 4. Mod. 8. That the Alienation of a Copyhold which the Feme had jointly with her Husband was adjudged not within the Statute; but where the Baron and Feme were Copholders to them and their Heirs, and the Baron purpures the Feehold to him and his Wife and the Heirs of her issues and children; and the Baron dies leaving Issue, and the Feme enters and fullers a Common Recovery and the Heir may enter by this Statute; because the Copyhold was extinguished by Acceptance of the new Estate. Cor. E. 24. Hill 26 Eliz. C. B. Stockbridge's Case.—If a Man takes away Copyholders in Fee, and then he purpurifies the Feehold to him and his Wife in Tait, this was agreed Arg. to be a Jointure within the Statute; because the Copyhold is extinct, and all this is in the Fee by the Purchaser of the Baron when he accepts the Purchas after the Baron's Death. Palam. 21. Mich. 19 Jac. B. R in Case of Kinafont v. Lloyd.—It is void as to Strangers, but not to Fesouss and Fesouss. Br. Comptroller of Voucher, &c. pl. 1. cites 27. H. 8. 25. by Fletcher.

8. 2. And it shall be lawful to every Person, to whom the Inheritance after the Death of the Woman would appertain, to enter as if no such Discontinuance, Warranty, nor Recovery, had been bid.
Jointrests and Jointure.

S. 3. And if any of the said Husbands and Women do make or suffer any such Discontinuance, Alienations, Warranties, or Recoveries, it shall be lawful to the Persons to whom the Tenements should belong after the Death of the said Women, to enter according to such Title as if the same Women had been dead.

S. 4. Provided that the said Women, after the Death of their Husbands, may re-enter according to their first Estate.

S. 5. And if the Woman at the time of such Discontinuance &c. be Sole, she shall be barred of her Title.

S. 6. And the Person to whom the Title should belong after the Death of the Woman shall immediately enter.

S. 7. Provided also, that the said All extend not to avoid any Recovery, Discontinuance, or Warranty, after the Form aforesaid after this Time had made and suffered, but only where the said Husband and Woman, or either of them now being alive, or any other to their Use, now having Interest and Title to the said Mansions, Lands, Tenements, or other Hereditaments, aliened, discontinuance, or suffered to be recovered after the Form aforesaid, and therefore now taking the Ufes and Profits, or any other Person or Persons to their Use.

S. 8. Provided that this All extend not to any such Recovery or Discontinuance to be had with the Hears next inheritable to the Woman.

S. 9. Or where they, that next after the Death of the Woman should have Estate of Inheritance in the Tenements, be entitled to the said Recoveries, where the same Allent is of Record or enrolld.

S. 10. Provided also, that it shall be lawful to every such Woman, after the Death of her first Husband, to give, sell, or make discontinuance, for Term of her Life only.

P. R. N. C. 72.
H. S. pl. 182.
S. C.

S. C. Bendl.
29. Reports that the Justices held this Café to be directly within the Equity and Meaning of this Statute, and that this Inditure and Recovery counterfeit in Law as an immediate Gift by A. and M. to C. and S. in Tail; and

27. H. 8. 10. enfeoffed W. S. and W. R. to the Use of himself and M. (then) his Wife in Tail special, Remainder to the Use of A. in General Tail, Remainder to A’s right Heirs, then the Statute of 27 H. 8. 10. was made. A. and M. were feised; A. died; A. Pereson and Descendants were brought against M. and Recovery was had against the other by Nent declare the first Day, but not said that Execution was suid; it was held by all the Justices, that this is within the Words of this Statute, but that however if it be not within the Words, it is within the Equity of it; and that the not alleging that Execution was suid of the Recovery is not material; For the Statute speaks of Recovery only, and it is a Recovery, tho’ there be no Execution and the Statute intends Recoveries without Execution, as is made appear by a Proviso in the Statute, which says that the said Statute shall not extend to any Recoveries before had, unless where such Women were then alive, and took the Ufes and Profits of the said Lands then, or any other to their Use &c. whereas if they took the Profits then, it follows of Consequence, that Execution was not made, and to the Statute extends to such Recoveries before Execution. Pl. C. 4. 6. 6. 2. 9. Wimbld v. Talbots.

3. A. before the Statute of 27 H. 8. 10. enfeoffed W. S. and W. R. to the Use of himself and M. (then) his Wife in Tail special, Remainder to the Use of A. in General Tail, Remainder to A’s right Heirs, then the Statute of 27 H. 8. 10. was made. A. and M. were feised; A. died; A. Pereson and Descendants were brought against M. and Recovery was had against the other by Nent declare the first Day, but not said that Execution was suid; it was held by all the Justices, that this is within the Words of this Statute, but that however if it be not within the Words, it is within the Equity of it; and that the not alleging that Execution was suid of the Recovery is not material; For the Statute speaks of Recovery only, and it is a Recovery, tho’ there be no Execution and the Statute intends Recoveries without Execution, as is made appear by a Proviso in the Statute, which says that the said Statute shall not extend to any Recoveries before had, unless where such Women were then alive, and took the Ufes and Profits of the said Lands then, or any other to their Use &c. whereas if they took the Profits then, it follows of Consequence, that Execution was not made, and to the Statute extends to such Recoveries before Execution. Pl. C. 4. 6. 6. 2. 9. Wimbld v. Talbots.

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Jointure and Jointure.

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Simple, and retake Estate in Fee to the second Baron only; the Jury further found Debors the Indenture, that the Indenture, Bargain, and Recovery were as well in Consideration of the Marriage as of the Money; and it was held by Staundforde, Browne, and Brook, (Dyer contra, and has a long Argument) that the Entry of D. was lawful by this Statute; For they expounded the Words (given by the Ancestors &c.) to be any way ascribed to the Woman in Jointure, either for Money (as few Marriages are now made without it,) or else freely; and that the Effect of that which is found by the Alignment of the Title & Quain (viz. as well in Consideration of the Marriage as the Money) is contained in the Indenture, and if their finding not contrariwise thereeto. D. 146. a. pl. 68. to 148. b. pl. 78. P. & M. Villars v. Beaumont.

do not change the Nature of the said Gift, notwithstanding the said Gift was in Remainder; and that therefore the said Fine was void and against this Statute, and so it was adjudged — Kelw. 258. a. pl. 6. S. C.—S. C. cited Mo. 55. pl 251. and says that Plowden said, that this was so adjudged, Per Ignor.

4. Baron and Feme seized in Fee in Right of the Feme levied a Fine Come Co. Litt. 365. ccco &c. with Warranty from them, and the Heirs of the Feme, and the better Grant and to the Heirs of their Bodies, Re.—S. if Feme failed of the right to the right Heirs of the Feme; they had Issue; the Baron died, and his Widow married again and had Issue; the Baron died, and the her second Husband married in Fee and retake &c. This was adjudged, and no Forfeiture; for in this Case the Jointure is made by the Wife upon the Husband and not by the Husband the upon Wife, and therefore to restrain her would be against Reason, and is quite foreign to the Intent of the Act; and 'tis within the Letter of the Act, yet not being within the Purview, the Court awarded that the Plaintiff take nothing by his Writ. Pl. C. 463. a. 464. b. Platch. 15 Eliz. Eyton v. Studd.-after the Marriage, he shall give the Land to her and her intended Husband, with Remainder over in Tail, and to the said, and then the Father gives the Land to his said Son and his Feme, according to the Intent, and they have Issue; after the Husband's Death the levies Fine to other Uses; this is within the Words but not within the Intent of the Act; For the Father was only as an Instrument, and that to make a Jointure to the Baron of the Land of the Feme. Pl. C. 464. b. forec Gar in the Case of Eyton v. Studd.—Before the levying the Fine she was seized in Tail, and the Fine was levied of it in Fee. Kelw. 214. pl. 25. S. C.—Bend. 258. pl. 266. S. C. by Name of Gilbert v. Studd.

5. A. had M. a Daughter, and B. being about to sell Land to C. for 160l. A paid 140l. part of the 160l. in Consideration of C's marrying his Daughter M. and that the Land should be conveyed for her Jointure; thereupon a Conveyance was made to C. and M. and the Heirs Male of their Bodies, and they inter-married and had Issue a Son; C. died, M. and an after-Husband accepted a Fine Sur Conuance de Droit of a Stranger, and rendered to the Stranger for 100 Years, rendering certain Rent, and which was the Ancient Rent; this was decreed a void Leafe, and that the Estate of M. upon the first Purchase was within this Statute; and that the taking the Conveyance with Render of a Stranger for 100 Years made the Estate void by this Statute. Mo. 250. Trin. 28 Eliz. Piggey v. Palmer &c al.

6. A. had 4 Daughters B. C. D. and E. B. was married to J. S.—A. in Consideration of 200l. paid by J. S. the Husband, and of the Marriage conveyed Land of 140l. Value (as was affirmed at the Bar, but the Value was not found by the Verdict) to the Use of A. for Life as to Part, and as to the other Part to the Use of J. S. and B. the Remainder of the Woods to J. S. and B. and the Heirs of the Body of B. to be begotten by J. S. A died, J. S. died having Issue by B. and her second Husband sold the Land. This was held not to be within this Act; For the chief and principal Consideration is the Marriage and the Father's Love to his Daughter, and the Payment of the Money not so much regarded, and so the chief Motion of the Affiance of the Land moved from the Wife and her Father; and to Judgment for the Defendant. Jo. 254. Hill. 7 Car. B. R. Copland v. Piatt.

first move from her Father, and the Preference of the Blood of A. formed the Intent that the Wife's and not the Husband's Heirs should be preferred.
Jointress and Jointure.

7. Baron pays the Charges of the Conveyance; Per Manwood this shall not be paid Purchase within this Act. Dal. 116. pl. 10. 16 Eliz. Anon.

8. If Baron makes Jointure to his Wife to have Assurance of other Lands, this is a Purchase by the Baron within the Statute; per Montoun. Dal. 116. pl. 10.

9. Feme Sole makes Feoffment, to the Intent the Feoffee shall Re-en- feiff her and him whom she shall marry; it is no Purchase of the Baron within the Statute. Dal. 116. pl. 10.

10. If Baron and Feme Exchange, and take other Land in Exchange, it is no Purchase of the Baron. Dal. 116. pl. 10.

11. One Brother, in Consideration of Marriage had between his Brother and M. his Wife, Covenanted to stand feifie to the Use of himself for his Life, and after to the Use of his Brother and his Wife for their Lives; this is a Jointure within the Statute 11 H. 7, as given by the Ancestor of the Baron, and also within the 27 H. 8, which excludes Dower. Pl. C. 300. to 309. b. Mich. 7 & 8 Eliz. Sharington and Pledall v. Strotten.

Cro. E. 2. S. C. 12. A. devised Lands to his Wife in Right of Jointure, the Remainder to a Stranger in Fee, and died; he took another Husband and had Ilifie a Daughter, the Husband and Wife levied a Fine to a Stranger; the Daughter as next Heir by 11 H. 7. entered. It was agreed by the whole Court, than an Estate devised to the Wife, is within the Words, but not within the Meaning of the Statute. 3dly. It was resolved, That no Estate is within the Meaning of the Statute, unless it be for the Jointure of the Wife. 3dly. resolved, That the Meaning of the Statute was, that the Wife so preferred by the Husband should not prejudice the Ilifees, or Heirs of her Husband; and here nothing is left in the Ilifees, or Heirs of the Husband, for as the Wife could not prejudice them; For the Remainder is limited over. 1 Le. 261. 18 Eliz. B. R. Folker v. Pitfall.

14. If Baron is seised of Land in Right of his Wife, and they levy a Fine, and the Conveyee grants a Rent to Baron and Fine in Tail, and the Husband having Ilifie dies, and the Feme attains the Rent; this is out of the Statute of 11 H. 7, for the Rent cometh in lieu of the Land. Cro. E. 2. pl. 4. cites it as adjudged, 21 Eliz.

15. A. conveyed a Manor, and Rectory, and other Lands to B. his Son and Heir Apparent, and M. and their Heirs in Consideration of Marriage intended between them; the Marriage was had, and after they re-affire the Land by Fine to A. who renders to B. and M. and the Heirs of their two Wives; A. died, B. died leaving only three Daughters his Co-heirs, named D. E. and F. — M. and J. S. her second Husband, leased the Rectory by Indenture for 60 Years to W. R. and after by Indenture granted the Reversion of the Rectory and leased the Manor for the Life of M. to O. P., to whom W. R. attorned, and then suffered a Common Recovery; it was by the Advice of Wray and Anderdon Ch. J. decreed in the Court of Wards, that the first Feoffment by A. to B. and M. before Marriage in Fee Simple, was not an Estate within the Statute; but when they re-affire the Fine, this was a Conveyance by each for their Moiety to A. which Moieties they took divided before the Marriage, and then the Render of the Whole to them in special Tail, was, as to a Moiety to B. which he gave by the Fine, the Gift of the Father to the Son and his Wife within this Statute; but as to the Moiety which M. gave by the Fine, and which the Father rendered in special Tail, this was not within this Statute, but that the Recovery of the Feme as to this bound the Iliée, and fo they took it, that the M. and her second Husband came in as Vouches, and not as Tenants, yet such Recovery is a Recovery suffered by M. with her second Baron within this Statute. Mo. 715. Mich. 32 & 33 Eliz. the Queen v. Savage.

The Habendum is absolete and the Use is another Chattel.

16. A Jointress marry’d again and the and her Husband made a Feoff- ment in Fee to B. G. and his Heirs of the Jointure Lands, Habendum to him and his Heirs, to the Use of a Stranger for the Life of the Wife only; adjudged that this was a Forfeiture of her Jointure; For the Estates and the Use of Lands are several Things, and here by this Feoffment the Fee

Simple
Jointures and Joiture.

Simple paßeth to the Feoffees, and the Remainder of the Ufe likewise; For tho' the Ufe is afterwards limited to the Wife for Life, yet the Law limits the Remainder to the Ufe of the Feoffee. 1 Le. 125. * Peerce v. Hoc. 16. A. enfeoff'd J. S. and T. S. of the Manor of D. to the Intent that they give him the free and M. whom he intended to marry, and to the Heirs Male of the Body of A. They convey it accordingly. A. and M. inter-married and have Issue B.—A. dies. —B. in the Life of M. attains Tenant in tail, &c. which shall be divided by Discesen (no Surrender of Portuquit being alleged) suffered a Common Recovery with Single Voucher by Agreement between all to the Intent that the Recoveror's infieoff L. and others to divers Ufes, and that M. for better Assurance should release to them with Warrant, which was done accordingly; Revolved. That this is not within the Meaning of this Aâte, which is to restrain Women from prejudicing the Heirs in Tail, or Remaindermen &c. but not fromcorroborating Eates made by such Heirs, Remaindermen &c. which shall be divided to his or her Benefit, and not to their Prejudice; and such Warranty in such Case is not restrained by this Statute. 3 Rep. 58. b. 60. a. Mich. 37 & 38 Eliz. C. B. Lincoln College Cafe.

S.P. cited by Ploiden as adjudged. Mo. 93. pl. 281. — Rep. 36. b. S. C. by the Name of Sir Geo. Brown's Cafe, says the Leafe by M. was for; Lives. —2 And. 44. S. C. did it was resolved adly, that B. had granted over is Remainder in the Fece only, he might have entered for this Forfeiture by the Express Power of the view of the Allot;For if no Discontinuance had been made, the Lord would have descended to the Life, and therefore he (B.) by the express Letter of the Act shall enter upon the Discontinuance and the Grant of the Remainder, and adly. it was revived. That in this Cafe C. shall enter upon the Discontinuance; For had no Discontinuance been made, he should enjoy the Lord against B and all the Heirs of his Body. 3 Rep. 51. 3. S. C. — Cro. E. 514. S. C. —2 And. 45. S. C. — S. C. cited by Hobart Ch. J. Hob. 256 and said that C. might enter, not by the Possibility of his Eatee arising out of the Entail (for he could not have an Interest in that, because the whole Entail was actually without Charge in the Mother) but by the Fee Simple; and that B. at Tumbridge and Ratehall's Cafe, to the last Tail cannot be aliened by the Mother by reason of the Refrain of 11 H. 5. nor can descend by reason of the Fine by the Life in Tail in her Life. — Mo. 455. S. C. says the Reason of the Judgment was, because the Leafe for a Life was not agreeable to the Statute of 52 H. 8. for Want of Refraining or Rent and by reason of the Remainders.

18. So if the Ancestor of the Baron makes a Feoffment in Fe on Condition, that they give to Baron and Feene in Tail, and the aliens after the Death of her Baron, this is within the Intent, tho' out of the Words of the Statute; For they are in by Feoffment and not by the Ancestor of the Baron; and this was adjudged, as Plowden reported. No. 93. pl. 231. Patch. 12 Eliz.

19 If
Jointure.

19. If the Husband with his own Money purchases, for the Wife's Jointure, Land to them and the Heirs of their two Bodies, Remainder in Fee to the Wife, and they have Issue two Sons and the Husband dies; the Wife suffers a Recovery to the Ufe of the youngest Son, yet the Eldesl shall have the Land by the Statue of Jointure. Brownl. 30.

20. Gift of Land to Thomas and to Mary his Cousin, in Consideration of Service done by Thomas and for other Considerations him moving, to them and the Heirs of their Bodies; This is not a Jointure within the 11 H. 7, the Donor not being any Auncelor of Thomas, and Thomas took nothing by that; but it was a voluntary Recompence given by the Bishop in Reward of the Service paid, and the Statue intended a valuable Consideration. Brownl. 137. Patch. 5 Jac. Ward v. Willoughby.

21. A on Marriage of B. his Son with M. the Daughter of J. covenanted in Consideration of 220L. paid by J. S. and also of the Marriage to be had between B. and M. to convey Land to the Ufe of B. and M. and the Heirs of the Body of the said M. begotten, Remainder to A's right Heirs; the Marriage is had; A. dies before the Affurance; but B. in Performance of A's Covenant made the Affurance accordingly; they have Issue; B. conveyed W. R. and after B. and M. levied a Fine to the said W. R. The Issue enter'd for a Forfeiture by this Statue. Resolved, 1st. That this Conveyance, tho' made for Money paid to A. the Father of B. by J. S. the Father of M. the Wife as well as for the Marriage, is a Jointure within this Statue; and tho' not found expressly to be so, yet shall be faid so. ady. That this was Elate Tail in the Feme, and only for Life in B. g'dly. That the Alienation by M. with B. does not make any Forfeiture within either the Words or Intent of the Statue; For here M. was not Sole, nor was the Alienation with an after-taken Husband, but with the fame who married her after the Conveyance; but Doderidge fayd, that if the Conveyance had been made by A. to M. before Marriage, it would have been, perhaps a more Difficult Solution. But B. joining with M. in the Alienation, they held it to be out of the Intent of the Statue; and this Statue being in Refrain of the Common Law is to be taken ftrictly; and the Intent of it was only to provide against Diffemifion to the Heirs of the Husband contrary to his Intent; and adjudged for the Defendant. Cro. J. 474. Patch. 16 Jac. B. R. Kirkman v. Thompson.

22. Baron and Feme fold the Land of the Feme, and purchas'd other Land with the Money to the Baron and Feme; this was agreed Arg. to be a Jointure within this Statue, because the Money is a Chatell vested in the Baron, which he might distrife of at his Pleasure; and therefore when he
Jointrejs and Jointure.

purchased with it other Land, the Law will not continue it to be any other than a Purchase by the Baron, and so a Jointure to the Feme. Palm. 217, 218. Mich. 19 Jac. in Cause of Kinaton v. Loyd.

23. A. is seized of Land in Fee, having Issue a Daughter, the Land being of the Value of 20l. per Ann. upon Marriage of this Daughter with B. in Consideration of this Marriage and 115l. paid by B. to A. he aliens the said Land to the Use of B. and his said Daughter in Tail; * they marry and have Issue; B. dies; the Wife aliens this Land to a Stranger and well; for it is not a Jointure within 11 H. 7, because it was the Land of her Father. Jenk. 319. pl. 26.

Akinaton v. Loyd. — Cro. J. 624. S. C. accordingly, Mich 19 Jac. in the Exchequer, Kynaton v. Loyd. — Jo. 13. Mich. 18 Jac. S. C. but after the Limitation to the Feme in Tail general, Reports the Limitation over to be to the right Heirs of A. the Father; and it was resolved by all the Barons Utra Voce to be out of the Statute.

24. Baron and Feme Tenants in Tail of the Purchase of the Baron have Issue two Sons; the Baron makes a Feoffment to the Use of himself for Life, Remainder to the Wife for Life, Remainder to the second Son and his Heirs; the Husband dies, and the Feme enters and makes * Feoffment to the Issue of the second Son; the eldest Son enters for the Forfeiture within the Statute 11 H. 7, and it was adjudged without any Difficulty, that his Entry was lawful, and that this Feoffment by the Feme (tho' it be to him) that had the Reversion in Fee is a Forfeiture within the said Statute; For they all agreed, that by the Entry of the Feme the said entry was re-mitted, and that there is not any Difference as to this between Estate at Common Law and this Estate limited to her by the Statute of Uses. Sid. 63. Mich. 13 22.

Car. 2. B. R. Jones v. Philpot.

held it was not being made to him in whom the Reversion in Fee was well lodged by the first Feoffment nor forfeited then the Entry of the eldest Son is lawful as Heir to the first Entail, the first Difentitlement being purged by the Remainder of the Feme and so Quasicumque Vida data he be the second Feoffment by the Feme, Forfeiture or not, the Entry of the first Son was lawful. Lev. 49. Jones v. Philpot. — * Inferred the second Son in Fee. Lev. 49. S. C.

25. A. Man upon his Marriage, made a Settlement, whereby he was Tenant for Life, then to his Wife in special Tail, of Lands of 400l. per Ann. Value, with Remainder to the right Heirs of the Husband; the Husband and Wife joined in having this Settlement, and a new Settlement was made in this Manner, viz. to J. S. and his Heirs in Trust as to Lands of 150l. per Ann. for the Wife and the Heirs of her Body; and for want of such Issue in Trust for the Husband and his Heirs; the Husband died without Issue, and the Wife suffered a Recovery, and devised the Lands for the Payment of her Debts and died without Issue; on a Bill brought by the Heir of the Husband against the Defendants, Creditors of the Wife, the Question was, whether this was such a Jointure made on the Wife, so as to make a Recovery a Forfeiture within the Statute 11 H. 7. For the Defendants it was Objected, that a Court of Equity ought not to give any Affiance, because the Statute makes the Recovery a Forfeiture of her Estate, and gives a Remedy by way of Entry; and in this Case she has only a Trust, and no Estate to forfeit; it was likewise urged, that this Case was out of the Words and Meaning of the Statute; for the Limitation here is to the Wife in General Tail; and on failure of Issue of that Marriage, the Issue by any other Husband, would have had the Land, and might without doubt have suffered a Recovery, and barred the Remainder and the Statute only intended to provide for the Issue of the Husband, whose the Lands were; it was urged that these Lands could not be paid the Husband's; for the Wife by parted with her former Settlement which was 400l. per Ann. for this of 150l. per Ann. was a Purchase of those Lands; and if the Wife, in Consideration of this Settlement had sold Lands of Inheritance of her own, it would not have been within the Statute. On the other Side it was said, that this was to aid a Forfeiture; but
but as the statute makes the sufferer a recovery a forfeiture, and gives an entry to the perfon that has the next estate, so in another place it makes all recoveries suffered by a jointref void; and upon that clause it is proper to come into equity, to have an execution of the truth; and this case is within the words of the statute, for the statute says any estate limited to the wife or to her use; and this statute was before the statute of 11. 8. of u. e., at which time a use was the same thing that a trust is now; next the statute says, limited for life or in tail; now a general tail is as much an intail as a special one, and as much within the words of the statute, and the statute intended to provide for the remainderman as well as the issue; the objection of her being a purchaser, is quite to take away the statute; for so is every jointres, and if she had kept her former jointure that had been under the same restrictions; and of the same opinion was my lord keeper, and decreed accordingly. Trin. 1700. abr. equ. cases 220, 221. symon v. turner.

26. A. on marriage of B. his son with M. settles lands to the use of B. for life, remainder to M. for life, remainder to the heirs of their R. bodies, remainder to B. in fee. B. and his wife by deed and fine mortgage in fee, and subject to the mortgage the lands are resititute to the use of B. for life, and after his and his wife's decease to the heirs of her body by him begotten, remainder to his right heirs; A. dies; M. suffers a common recovery; lord keeper doubted, whether M.'s estate for life by the first settlement, and the limitation to the heirs of her body by the second did not consolidate, and the remainder of several deeds. He said that the authorities are only in the affirmative, viz. that, if by the same deed, it shall consolidate, but not negatively, viz. that they should not if by different deeds; and said that in the case of phug v. fitford, where is no express estate for life limited but arith et by implication, it is held that the estate was consolidated. The court would advise. 2 vern. 486. 489. hill. 1704. clinton v. jackson.

27. lord wright was of opinion that a trust or equity of redemption was within the statute of 11 H. 7. which expressly extends to uses; but if it be a penal statute as the statute of gloucester the heir shall not be aided or assisted in equity. hill. 1704. 2 vern. 489. in case of clinton v. jackson.

(K) forfeiture by 11 H. 7. 20. waived, by what act, and who must take advantage of the forfeiture.

A. in consideration of service and other considerations, gives black acre to B. his servant, and c. his cousin in tail, B. and C. intermarried, and the marriage was found to have been at that time.

Afterwards B. dies, leaving issue D. a son. C. married E. and she with her second husband enclosed D. the issue in tail, and then E. and C. the femme re-entered; D. levied a fine for conveyance & debt to J. S. and after entered upon C. the femme for the forfeiture by this statute; but adjudged for the femme; because D. the son had caused himself to take benefit of the forfeiture by this statute, by his levying a fine. And J. S. the conucre shall not take benefit of the forfeiture; for it was a fine by escheat only and no interest passed by it. In the case in 5 rep. he that levied the fine had a real remainder in him. But in the principal case, D. had only a dry right to an estate after the death of the time.
Jointreys and Jointure.

His Brother. And to note the Difference. And Judgment was given against the Plaintiff. Noy. 122-ward v. Mathew.

S. C. Cro. J. 174. Trin. 5 Jac. B. R. Reports that after E's Death C. re-entered, and afterwards D. levied a Fine Com. cee, &c. to the Defendant, and C. after this enfeoff'd G. her younger Son, and that afterwards D. entered and enfeoff'd the Defendant, and then one R. S. Cousin and Heir of A. the Dower entered, and left to the Defendant, and the younger Son entered upon him. It was resolved that, admitting this a Jointure within this Statue, which it is not, yet here neither the Heir nor Conunee shall take Advantage of the Alienation; For the Feeoffment by C. and E. is defeated by her Entry after E's Death, and the Fine by D. gave no Interest to the Defendant but only by Enfeoff; because D. had nothing at the Time of the Fine, nor the Conunee, yet D. had given his Right to the Entail, and concluded himself, that he cannot enter; and the Conunee cannot, because he has nothing but by Enfeoff, and no Reversion, whereas in Sir Gis. Brown's Case; the Heir in Tilt had a Reversion in Fee remainช which, and by his Fine gave that Reversion to the Conunee.

(L) Equity.

1. B ARON settles in Jointure Lands in Mortgage and dy'd Intestate; he got Administration, but decayed to account for the Personal Estate, and that to be applied towards the Discharge of the Mortgage, but Rents of the Jointure Lands since her Husband's Death not to be brought into the Account, but to be made good by the Defendant (the Heir at Law) with Interest, and the Plaintiff to enjoy the Land during her Life, and after the Account the Defendant to Elect within a limited Time to redeem or nor, and give Notice to the Plaintiff to redeem on Payment of Principal Interest and Costs, and the Defendants the Mortgagees to assign. Fin. R. 97. Hill. 25 Car. 2. Atkins v. Nunn & al.

2. Jointreys paid oj a Mortgage. She was decayed to hold over 'till the or her Executors be satisfied, and Interest to be allowed her. Chan. Cases 271. Trin. 27 & 28 Car. 2. Cornwall v. Mew.

3. Husband after Marriage gives a voluntary Bond to settle a Jointure of 100l. per Ann. and settles Lands accordingly. The Bond is delivered up to be cancelled. The Husband dies, the Jointreys is Existed. The Wife took out Administration. Decreed per Master of the Rolls, that since she was now intitled to Dower, she should recover it at Law, and what that fell short of the Jointure in Value should be retained by her out of the Personal Estate, notwithstanding the Bond was after Marrioge voluntary, and delivered up to be cancelled; For an Agreement, tho' voluntary under Hand and Seal, ought to be decayed by this Court, and the Deliverie up of the Bond by a Feme covert could no way bind her Interest. Vern. 427. Hill. 1686. Beord v. Nutthall.

4. If there be a Jointreys, and a Covenant that her Jointure shall be of such a yearly Value, and it falls short; tho' her Estate be not without Impeachment of Wait, yet the way cannot Wait so far as to make up the Defect of the Jointure, and Equity will not prohibit it. Mich. 1698. Abr. Equ. Cases 221, 222. Carew v. Carew.
Journeys Accounts.

(A) What it is, and Proceeding.


Eliz. C. B. Spencer's Café.

And therefore the Demandant must always swear the cause timely the Time of Abatement of the first Writ, so that it may appear to the Court, if the last Writ was brought by Journeys Accounts. 6 Rep. 11. a. in a Note of the Reporter in Spencer's Café.

3. When a Writ is purchased by Journeys Accounts, it is said in the Replication, (receiving the former Writ, and that it abated, and seeing all in certainty) super qui the Demandant per Dictam computed, recit pulit quodem atnum Bree, &c. For the Allegation of Journeys Accounts is always either by way of Counterplea to ouft the Tenant of Voucher, or by way of Replication, as it most commonly is to ouft the Tenant of the Plea of Nonenure or Jointenancy, or any other Plea accruing upon Matter after the Date of the first Writ. 6 Rep. 10. b. in a Note by the Reporter in Spencer's Café, cites Lib. Intrat.tit. Journeys Accounts. fol. 382. b.

4. In Journeys Accounts you shall never change your Count; and the old Way of Journeys Accounts was to pray a new Writ, and then to proceed on the former Roll. Dicta est iter unius dies. 12 Mod. 229. Mich. 10 W. 3. in C. B. Anon.

5. Fifteen Days was the Time allowed by Common Law; but if it were a Case where an Attorney might be, there must have been longer Time, because he must give Notice to his Principal of the Abatement of the Writ; but the Judges upon Examination of Circumstances are Judges of reasonable Time. Arg. Mich. 13 W. 3. 12 Mod. 575.

—2 Inf. 567, says, the Reason of giving fifteen Days was, that the same was accounted a reasonable Time for the Party summoned &c. to appear in Court from any Part of England. —Writ brought within 30 Days after Abatement of the first is a Recent Prosecution. 1 Salk. 397. Mich. 9 W. 3. C. B. Etobb v. Thoroughgood.

See Fines (H. a)

A Writ by the Journeys Accounts is always where the Writ is abated by the Decree of one of the Plaintiffs or Defendants, or by Reason of Misprision in the first Writ, or by some Default or Misprision in the Clerk, or other like Cause which ought to be manifested in the second Writ. Arg. Cro. J. 394. Mich. 18 Jac. B. R. in Case of Walthall v. Aldrich.

(B) In what Cases.

1. IT lies in no Case where a sole Plaintiff or Demandant dies; there his Heirs or Executors shall never have this Writ, tho' in a Quare Impedit, where the Death after the 6 Months is peremptory. 6 Rep. 10. b. in Spencer's Café, cites 19 E. 2. tit. Darrein Prefentment. 21. F. N. B.

2. Procepe
Journeys Accounts.

2. Precipite quod reddat, the Tenant pleaded Jointenancy, the Demandant averred that at another Time he brought such another Writ against the Tenant, which abated for false Latin, as (dictum) for (dictum) and he purchased this Writ by Journeys Accounts, and the Day of the first Writ of the Part purchased, the Tenant was sole Tenant; and the Tenant dare not demurr but vouch'd, and therefore it feems that it well lies by Journeys.

Br. Journeys, &c. pl. 10. cites 38 E. 3. 4.

3. Precipite quod reddat by Feme against two; the one said, that he was Tenant of the Whole the Day of the Writ purchased, &c. Abique hoc, that the other any thing had and vouch'd, &c. The Demandant said, that the Baron and this Feme brought another such Action against those two, and they pleaded jointly to the Action and the Baron died, and the Feme has freely purchased this Action within 8 Days after the Death of the Baron, Judgment if he shall be received to plead several Tenancy, &c. and the Writ awarded good; Quod Nota. Br. Journeys, &c. pl. 5. cites 43 E. 3. 16.

4. In Dover the Tenant pleaded Non-tenu-re, and the Demandant said, that at another Time he brought such another Writ against him and another, and named him J. W. who pleaded that his Name was J. S. and found for him, by which the Writ abated, and he brought this Writ against them; and averred, that they were Tenants the Day of the first Writ purchased by Journeys Accounts, and the Opinion of the Court was against him, and that he cannot have it by Journeys Accounts; For Myfoiwar is his own Default. Br. Journeys, &c. pl. 9. cites 14 H. 4. 23.


S. P. Ibid.

pl. 14. cites 21 H. 6. S. — S. P. and for for Variance or want of Form; because this was the Default of the Clerk in Chancery, and not of the Demandant; Resolved 6 Rep. 10. a. Hill. 45 Eliz. C. B. in Spencer's Cafe.—And for the like Reason where the Writ abates for Defaults of good Summons, which is the Default of the Sheriff. Ibid. Spencer's Cafe.—If the first Writ abate that the Fault of the Plaintiff, there shall not be a new one by Journeys Accounts, but where it abates by Fault of the Clerk there shall. 12 Mod. 576. 490. pl. 75. For in this Cafe it abates by the Act of God.—In Afs. of two, if one dies, the Writ shall abate, but the Survivor shall have Affire by Journeys Accounts. Jenk. 130. pl. 64. cites 4 E. 4. 9.


In Squar Impedit, by the Baron and Feme, the Writ abated by the Death of the Baron, and the Baron brought another Writ, and Poenity is pleaded in Bar, He may aver that the Church was void within six Months before the first Writ purchased; for it is abated there by the Act of God, and not by the Folly of the Party; per Newton. Br. Journeys, &c. pl. 12. cites 7 H. 6. 16. cites 90. pl. 75. For in this Cafe it abates by the Act of God.—In Afs. of two, if one dies, the Writ shall abate, but the Survivor shall have Affire by Journeys Accounts. Jenk. 130. pl. 64. cites 4 E. 4. 9.

as much as this shall be accounted his own Default, he shall not have a Writ by Journeys Accounts, and agreed, that the Books are clear that the Writ shall abate. * D. 52 a. b. pl. 7. Pacht 52 & 53 H. 8. Anon.—Br. Quae Impedit, pl. 75. cites 7 H. 6. 14. 17.—But it seems by the other Part of the Cafe, (tho' not clearly expres'd) that if this being made a Knight was not the Act of the Plaintiff himself, but that he had been compel'd by the King to be made a Knight, [as any Man having Lands of a certain Value was compellable to be at that Time, and 'till the 12 Th. 2] then he might have had
Journeys Accounts.

had this Writ, Vide Ibid. —— [And after this Case it was enacted by 1 E. 6. cap. 7. that making a Plaintiff, &c. Knight, &c. should not abate the Suit.] —— * S.C. cited 6 Rep. 18. b in Spencer's Case.


10. This Writ shall not be brought, but where the first Writ was served and returned of Record. 6 Rep. 10. b. in Spencer's Case, cites 14 H. 6. 7.

S.P. For the Time of its Attestation must Be served here to the Court, that they may thereby see whether the second Writ be filed out in convenient Time. Arg. 12 Mod. 54. cites 14 H. 6. 7. 6 Rep. 10. b. 9 Ed. 4. 6.

S.P. In Fermentation, and shall avoid reflex Fragments, by which Malefractions the Tenant would have vouch'd in Delay of the Demandant.

11. Praecipe quod reddat is abated by Wager of Law of Non-summis, the Demandant brought another Writ, the Tenant phrased Non-tenure, the Demandant alleged this Matter, and that he has brought this new Writ by Journeys Accounts, and that the Tenant was Tenant the Day of the first Writ purchased; and per Newton, a Man shall have Writ by Journeys Accounts by * Abatement of Writ by Loy Gager of Non-summis. Br. Journeys, &c. pl. 15. cites 22 H. 6. 41.


12. Praecipe quod reddat is brought against the Baron and Feme, and the Writ abated by Death of the Feme; the Demandant shall have a new Writ by Journeys Accounts against the Baron. Br. Journeys, &c. pl. 19. cites 21 H. 6. 42. b.

13. If Writ abates by Default of the Plaintiff, as if he name the Defendant Esquire, where he is a Knight, &c. of which he may have Conscience, he shall not have a new Writ by Journeys Accounts; Contra where he cannot have Conscience thereof as of Jointenancy, &c. Note the Decree. Br. Journeys, &c. pl. 22. cites 32 H. 6. 24.

Spencer's Case. — And cites 32 H. 6. 28. but it seems misprinted [28] for [24].

If the Writ was for Law, that if the Tenant in Praecipe quod reddat pleads Non-tenure, and the Demandant confesses it, that he shall have a new Writ by Journeys Accounts. Br. Journeys, &c. pl. 1. cites 33 H. 6. 2.

14. It was said for Law, that if the Tenant in Praecipe quod reddat pleads Non-tenure, and the Demandant confesses it, that he shall have a new Writ by Journeys Accounts; Because the first Writ was commenced without Cause or any probable Color of Cause. Resolved, 6 Rep. 10. a in Spencer's Case, cites 33 H. 6. 2. But a Praecipe of a Manor being stated by Non-tenure of parcel, he shall have this Writ; Because the Tenant was Tenant of the Kinstom, for which the new Writ is brought, and it may be an Hardship to compel him to know in whom the Estate of every Part of the Manor belongs. Ibid. cites 4 E. 5. 159.

"[There is no such Page, but it seems as if it means [15. b."

15. Formedon; the Tenant at the first Day confessed the Affidavit, and it was alleged for the King, that this Land belonged to the Ward of the King, and prayed that by the Confession of the Tenant himself he shall be fined, because he had usurped upon the Potition of the King; and of this it was doubted, and the Demandant upon this said, that the Defendant had nothing in the Land, and prayed leave to inquire a better Writ, and it was awarded, that he take nothing by his Writ, but he shall not have leave to inquire a better Writ, for this was not the Affidavit, but the Folly of the Party himself. Br. Journeys, &c. pl. 3. cites 33 H. 6. 34.

The Court granted it, but bid the Executives take Care if it lies or not, and in what Form the Writ shall be. Cro. E. 174. Walter Myole's Case.


17. A
Journeys Accounts.

17. A second Writ of Journeys Accounts will not be allowed. 7 Rep. 6:1. b. Mich. 4 Jac. in Kenn's Cafe.

shall have another Writ by Journeys Accounts. Arg. 12 Mod. 574, 575. cites Fitz. Journ. Acc. 13, 16 and Hugh. Ab. 177.

18. A. and B. were Jointenants for Years. B. suffered C. to occupy his Moiety with him, and A. brought a Writ of Partition against B. and C. supposing that B. had granted a Part of his Moiety to C.——C. swears that he was Tenant at Will to B. whereupon the Writ abated. Resolved that A. might have another Writ of Partition against B. by Journeys Accounts; For the Pollution of C. was good Colour for bringing the Writ against him, and A. could not take Notice what Estate C. had, &c. Cro. j. 218. Hill. 6 Jac. B. R. Beadle v. Clerk.

19. If an Affé be within 20 Years after a Difficult, and before Judgment 20 Years past, and then the Damant dies, the Heir cannot have another Affé, but he must have a Writ of Entry; and it will be hard to prove, the Heir can proceed by Journeys Accounts in that Case; for it is another Writ he is intituled to now by the Death of his Ancestor, yet still he may be out of the Statute of Limitations; per Holt Ch. j. 12 Mod. 572, 573. Mich. 13 W. 3. in Case of Hayward v. Kinley.

[See (D) per tot.]

(C) Who shall have it, and against whom.

1. Regularly it lies not but between those that were Parties to the first Writ; as where one of the Plaintiffs or one of the Defendants dies. 6 Rep. 10. b. in Spencer's Cafe.

If a Quaere Influit be well commenced, and the Plaintiff dies after the six Months, the Heir cannot bring a new Writ by Journeys Accounts; per Powell J. Comb. 428. Trim 9 W. 3. Br. R. Ellobb v. Thoroughgood——by Lect. Stat. Limitat. 155. Nor by Contradiction will it lie against his Compain which was Party as a Jointenant——* 12 Mod. 229. S. P. Anon———Per Holt Ch. j. 12 Mod. 572, in Case of Hayward v. Kinley.

2. Formedon by Feme; the Tenant pleaded Non-tenuis the Day of the Writ purchased nor ever after; the Damant said, that A. gave to her Father in Tail who had issue the Damant and Alice and the Father died; the Daughters brought Formedon, and Alice died, by which the Writ abated, and this Damant brought this Writ freely by Journeys Accounts, and averred, that the Tenant was Tenant the Day of the first Writ purchased, Judgment, &c. Per Newton the Writ is good, because the Damant claims as Heir to the Whole immediate to her Father, and not the Moiety as Heir of her Sister; for then it shall not lie by Journeys Accounts. And after the Writ was awarded good for all the first Action; Quod Nosta. Br. Journes, &c. pl. 12. cites H. 6. 16.

3. If a Man brings Action and dies, by which the Writ abates, his Heir shall not have a new Writ by Journeys Accounts; for it seems, that none shall have Action by Journeys Accounts, but one who was Party to the first Writ, and against him who was Party to the first Writ; Per Newton. Br. Journes &c. pl. 12. cites 7 H. 6. 16.

4. But if two Parencers bring Action, and the one dies, the other shall have a new Writ by Journeys Accounts; Per Chant. Br. Journes &c. pl. 12. cites H. 6. 16.

If one and dies; the other who survives and the Issue of the other, shall not have a new Writ by Journeys Accounts, and where the Tenant in the said Action pleads Non-tenuis, he need not aver that he was Tenant the Day of the first Writ purchased; for the Title of the one is descended after; Per Rolf. But Chant. contes Br. Journes &c. pl. 12. cites * H. 6. 16.—* Orig. (see Densett)

- D

5. So
Journeys Accounts.

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5. So if a Man brings Precipe quod reddat against two, and the one dies, he may have another Action against the other by Journeys. Br. Journeys &c. pl. 12. cites 7 H. 6. 16. Per Newton.

6. Quare impedit by A. against B. Incumbent, who was in by the Presentation of the King, and therefore the Writ was brought against him alone, and pending the Writ of Quare Impedit, the Plaintiff died after the six Months past, and he had only the next Presentation by Grant; And by the Justices of C. B. where the Plaintiff died, the Executor shall not have Writ by Journeys Accounts; but contra in some Cae[s where the Defendant died pending the Writ, And this Writ was brought by the Executor after the six Months were past, and the Executor intended to have saved the Matter by the Journeys Accounts, but was not allowed. Br. Journeys &c. pl. 23. cites 4 E. 6. Ogle v. Harrison.

7. In Debt against an Heir, who pleaded Riens per Dissen[t the Day of the &c. The Plaintiff pleaded, that herefore to be fued another Writ of Debt against the same Heir, upon the same Bond, in this Court, and the Defendant was outuled; which Outlawry, for the Insufficiency of the Proclamation, was reversed; and that he freely brought this Writ, and avered, that the Defendant had Affairs the Day of the first Writ purchased; whereupon the Defendant demurred. Hob. 248. Hill. 12 Jac. Spray v. Sherror.

A Precedent was shown to the Court of this Cae[s, and that upon Issue joined, Whether Affairs the Day of the first Writ brought, the Plaintiff had Verdict and Judgment. Cro. J. 359. —And there in Debt against an Administrator Durante minor etate, &c. who pleaded Riens the Day of the Writ, and the Plaintiff shewed Outlawry and Reversal as above, and that he brought another Writ freely, and upon Issue joined, Verdict and Judgment was given for the Plaintiff; and upon Error brought in B. R. the Judgment was affirmed; And all the Court held the Writ well brought by Journeys Accounts; For when he pursues till Defendant be outlawed, the first Original is determined; And when the Outlawry is afterwards discharged, there is not any Default to the Plaintiff. Cro. J. 518. Mich. 18 Jac. B. R. Walthal v. Aldrith — S. C. cited and affirmed to be good Law; because otherwise the Defendant himself would take Advantage of his own ill Plea, which the Law will not suffer. Winch. 82. Patch. 22 Jac. C. B. Anon.

8. A Writ may be brought by Journeys Accounts against an Executor; Per Doderidge, who said it was so adjudged in C. B. in Sharpley and English's Cae[s.

And so may a Writ in Nature of Journeys Accounts be brought by an Executor, but it should be within a Year, unless a reasonable Cae[s is shown. Gibb. 292. Trin. 5 Geo. 2. B. R. Wilcox v. Huggins — It will not lie for the Executor upon Abatement of his Defensor's Writ. 12 Mod. 229. Anon.

9. If Taffator makes A. Executor with Condition, that if he do such Act, then B. shall be Executor; in this Case A. is abolishe Executor, unleas he determine his Office by his own Act; and then B. is not privy to have Journeys Accounts. 1 Salk. 393. Mich. W. 3. C. B. Ellobb v. Thoroughgood.

But of a Suit by Executor Durante Minorit of the Infant Executor he may. 1 Salk. 393. S. C.

(C. 2)
(C. 2) In what Court; and at what Time.

1. NOTE, that a Feme shall not have Advantage of Journeys Accounts but in the same Court in which the first Action was; For if the one Action as Affise of Frethforce, be in the Franchise, which is there abated by Jointenancy, and the other Affise of Novel Dilection is brought in the Guideable before the Justices of Affise, this cannot be by Journeys Accounts; For the first Record is not there. Br. Journeys &c. pl. 20. cites 8 All. 8.

2. In Formden, where Writ is abated by Jointenancy pleaded and confessed by the Demandant, and he purchases another bearing Teste of Date before the third Day and the fourth Day of the Return of the first Writ, this is good, and shall not be intended purchased pending the first; for the Tenant may appear at the first Day, and receive Judgment immediately, and then the Writ is not pending till the fourth Day. Br. Brief. pl. 201. cites 24 E. 3. 28.

3. A Writ of Quare Impedit was abated, and another Writ was brought a Year after. Br. Journeys &c. pl. 25. cites Fitzh. Quare Impedit 32.

4. Where in Delta the Defendant was outlawed, and after the Outlawry was reversed, the Plaintiff ought to bring his Writ of Journeys Accounts immediately after the Reverse of the Judgment in the Outlawry, if he will take Advantage of it. Winch. 82. Palec. 22 Jac. C. B. Anon.

But where the Action was brought by Journeys Accounts about a Year after the Outlawry was declared void, and discharged by Plea, yet Judgment in C. B. upon Error brought in B. R. Cros. C. 294. Hill. S Car. B. R. Finch v. Lamb.

(D) Pleadings in a second Writ.


2. Precipe quod reddat abated by Jointenancy, that the Baron held with the Feme not named in the Writ, and the Demandant brought another by Journeys Accounts, and the Baron and Feme would have pleaded Non-tenure, and could not; Per Thorp. Br. Journeys &c. pl. 11. cites 38 E. 3. 13.

3. Precipe quod reddat is brought against A. who abated the Writ by Jointenancy pleaded with K. and he brought a new Writ by Journeys Accounts freely against both; They may plead Jointenancy again with W. For K. shall not be eftopped; Because he was not Parry to the first Writ, nor by Consequent A. For they ought to join in Plea; by which the Demandant replied and said, that the Day of the first Writ purchased A. and K. were Tenants, abufe hoc that the third, in whom the Tenancy is alleged, any thing bad; and per tro. Curt. this is a good Plea, as well against K. who was not Parry to the first Writ, as against A. who was Parry; Quod Nota; otherwise it would be if this second Writ had not been purchased by Journeys Accounts. Br. Journeys &c. pl. 4. cites 41 E. 3. 4.

4. Precipe quod reddat; the Tenant alleged Non-tenure; the Demandant said, that at another time he brought such another Writ against the Tenant, which was abated by Ley Gage of Non-Summons, and this Writ brought by Journeys Accounts; Judgment if he shall plead Non-tenure &c. And there it is agreed, that Writ lies by Journeys Accounts; and after the Tenant was compelled to take Illeæ, that he was not Tenant the Day of the first Writ purchased, and the Clerks would have added these Words, Non...
Journeys Accounts.


5. Debt was brought as against Executor, which was abated, because the Defendant said, that he was Administrator, and by Journeys Accounts the Plaintiff brought a new Writ against him as Administrator, and the Defendant said, that fully administered the Day of the Writ purchased; and per Wych, he shall say, Fully administered the Day of the first Writ purchased, by reason of the Journeys Accounts, which several agreed; and after the Issue was taken, that Fully administered, Prity; and the others errant. Br. Journeys &c. pl. 7. cites 48 E. 3. 21.

6. In Debt against an Executor, the Defendant pleaded Fully administered, and the Plaintiff said, that at another Time he brought such another Writ against the Defendant, and it was abated, and did not flow the Cause, and that he had Affests the Day of the first Writ purchased; and the Defendant was compelled to answer to it, tho' the first Writ abated by the proper Default of the Plaintiff or not; Quod Nota; and yet in this Case the Plaintiff cannot have Journeys Accounts, as it seems. Br. Journeys &c. pl. 8. cites 2 H. 4. 21.

7. Where Tenant in Tail has Issue two Sons and dies, and A. abates; the eldest Son dies; and the youngest Son brings Forrencon, and makes himself Heir to his Brother after Fiefment made by the Abator to the Life of the Abator, the Writ shall abate. Br. Journeys &c. pl. 12. cites 7 H. 6. 16.

8. Precipe quod reddat; the Tenant pleaded Non-tenure; the Plaintiff replied, that he brought Precipe against this Tenant and A., and at the Grand Cape A. made Default, and this Tenant appeared, and said that he was Tenant of the whole, and tendered to vouch his Lods of Non-Summons, and the Defendant maintained the Writ, and at the Day of the Ven. Fac. the Defendant confessed that the Tenant was Tenant of the whole, and prayed Leave to purchase a better Writ, by which the Writ abated, and this Writ is purchased by Journeys Accounts; Judgment &c. and the Writ awarded good upon this Matter, and the Tenant compelled to answer over. Br. Journeys. pl. 16. cites 22 H. 6. 54.

9. And in ancient times if the Tenant pleaded Joimancency, and the Writ abated by Issue tried of this, he should have new Writ by Journeys Accounts, as well as if he had confessed the Exception, and taken a new Writ by Journeys Accounts; Per Brown. And so it seems, that at this Day a Man shall not have another Writ by Journeys Accounts, but where he confesses the Exception. Br. Journeys &c. pl. 16. cites 22 H. 6. 54.

10. If it does not appear whether the second Writ was by Journeys Accounts, yet per Billing Justice, the Plaintiff may aver it well enough. Br. Journeys &c. pl. 18. cites 9 E. 4. 5.


12. A. brought Cause by Writ original against B. in C. B. and counted upon Affirmpt made 15 Jac. The Original was brought the 19 Jac. and was to the Damage of 500l. The Action was laid in L. and Defendant was authorized. The Outlawry was reversed in C. B. for not returning the Exigent; and a Year after Reversal, A. brought new Action there, and laid it in Suffolk, by Order of the Court, to the Damage of 600l. and he recovered upon Non Affirmpt pleaded 300l. B. aligned Error, that the second Writ was brought after the time limited by the Statute of Limitations of 21 Jac. cap. 16. A. replied, that the second Action was brought within a Year after the Outlawry reversed, and averred that it was for the same Comitie. B. demurred; it was agreed, that if Action be brought within the time, and
Journeys Accounts.

and the Defendant be outlawed, and the time lapsed, and then the Outlawry is revived in C. B. for Default in the Exigent, a new Writ brought within a Year after is good by the Statute. Secondly, it was resolved, that notwithstanding there is a Variance between the first and second Action, the first being in L. and the second in S. and the Damages in the first being 500 l. and in the second 600 l. yet because it was averred, that it was not for the same Action, and this confessed by the Demand, it was good, and the first Judgment was affirmed. * * * * * *

But the other three Justices held these Variances not material to the Action, being transitory, and averred to be for the same Cause; And the the Outlawry is not revived by Error, but avoided by Plac, it is all one within the Intent of the Statute; For the Statute is not where the Outlawry is revived by Error, but where the Outlawry is reversed, so that it be by any Means; and therefore Judgment was affirmed. * * * * * *

1. In Formendon it was agreed, that a Man shall have a new Writ by Journeys Accounts, after the first is abated by Ley Gager of Non-Summons, and shall avoid these Feoffments, by which Feoffments the Tenant would have vouched in Delay of the Demandant. * * * * * *

2. A Hffe by two: the oedies, by which the Writ abates; the other brings * S. P. 6 another Affide by Journeys Accounts, and recovers, he shall have the * Rep. to b. Costs of the first Suit. * * * * * *

(E) Judgment. And what shall be recovered.

1. If Writ of Cognosc be brought against one who pleads Jointenancy with a Stranger, and after the Plaintiff brings a new Writ by Journeys Accounts against both, and recovers against them; Now the Question is, whether he should recover Costs for his Suit in the first Writ? And it was argued that he should, because that at first he did not bring his Writ well, viz. against both, yet the Law gives him such Advantage, that he shall have a new Writ by Journeys &c. for such Feoffments may be made to privately, and to so many Men, that a Man, by common Presumption, cannot have Cognizance who are Tenants, and therefore he shall have the Advantage by Journeys Accounts. And then it follows well, that he shall have the Costs of the first Writ; for by Journeys Accounts, he shall have the same Advantage as he should have in the first Writ. And so in this Case, the Costs shall be severed in like Manner, viz. that he shall recover the Costs of the first Writ against him who alleged the Jointenancy, and the Costs of the second Writ against them both; and so because the Law adjudges in him no Default to such Intent that he shall have the Advantage of Journeys Accounts, it seems he shall have the same Advantage as he ought to have had in the first Writ. But of the other Part it was said, That it is not reasonable, that he shall have the Costs of the first Writ; because the Writ commenced to be lit on the Part of the Demandant; and to cause the Tenant to recompense him for such Writ, which he himself had ill brought, is not reasonable; but otherwise it is where the Writ is abated by the Death of one of the Defendants; for in this Case the Defendant is not in the Plaintiff, and therefore in this Case he shall have Costs in the second Writ. And if a Writ be brought by ease, and the one shall not see, to that he that would sue has a Writ of Summons Ad sequendum simul, and after the other is rummaged, and the one goes forth and recovers, he shall not have Costs for the Suit between the two Plaintiffs, because no Default was in the Tenant for this Suit, and so in the Case here, because the Writ was ill brought by the Act of the Plaintiff, it is no Reason that the Tenant should be charged, and it is not against Reason tho' he shall have Advantage to some Intent by Journeys Accounts, and to other Intent not &c. * * * * * *

7 E

(A) Ipso
(A) *Ipso Facto.*

1. *Ipso Facto* is a legal term meaning *by the very fact,* which implies that a certain state of affairs exists at a particular moment in time. When *Ipso Facto* applies, a fact is considered to be true or existent from the moment it occurs, and it is not necessary to establish it by evidence.

2. Upon an indictment for speaking against the Book of Common Prayer, Fenner J. doubted, whether the Justices of Oyer and Terminer may give judgment of deprivation, tho' the statute says, that the offender shall be deprived *Ipso Facto,* no more than the statute 5 Eliz. 6. 6. Also it does not appear, whether the defendant be curate of the parish where he refused to say divine service, and if he be not, then he is not punishable by the statute. Goldsb. 162. pl. 95. Hill. 43 Eliz. Home's Cafe.

3. In Cate of a deprivation *Ipso Facto,* there ought to be a sentence declaratory of the deprivation, to give notice to our law; per Popham Ch. J. Goldsb. 166. Hill. 43 Eliz.


5. Where Acts of Parliament relate either to matter of record or specialities enter'd into with some ceremony, tho' the statutes make them void, yet it must be understood in a proper manner; and Acts of Parliament do always suppose necessary incidents; but where they relate to *Matters en Puis* as (in the principal case it did) to an election into a corporation, it is very different; per Eyre J. 10 Mod. 185. Trin. 12 Ann. B. R. the Queen v. Buckingham Corporation.

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**Ireland.**

(A) How far bound by the Statutes here.

Acts of Parliament made in England before 10 H. 7, it was enacted, That all statutes made in England before that time should be of force and be put in use in the realm of the 10 H. of Ireland. Co. Lit. 141. B. 7. do not bind them in Ireland; but all Acts made in England before 10 H. 7, do bind them in Ireland by the said Act made in Ireland. 10 H. 7. cap. 22. 12 Rep. 111. Hill. 10 Jac. 2. 2 Stat. 2. says, that by this law (but there cites it as made 11 H. 7.) Magna Charta extends into Ireland——4 Stat. 531. recites the statute more fully, and says, that Acts of Parliament made in England since that time, wherein Ireland is not particularly nam'd or generally included, extend not thereunto.
Ireland.

unto; For tho' it be governed by the same Law, yet it is a distinct Realm or Kingdom, and hath Parliaments there.——S. P. Arg. Cart. 180. 198 cites And 262. Oroke's Cafe.——2 Vent. 4. & 5.——7 Rep. 23. in Calvin's Cafe.——Jenk. 164. pl. 12.——In Acts of Parliament, Ireland shall not be bound without express Words, tho' the Nature and Reason of the Act extends to Ireland. Skm. 519. Trin. 6 W. & M. B. R. in Cafe of Phillips v. Bury.——The Ireland has its own Parliament, yet it is not absolute, & sui juris; For if it were, England has no Power over it, and it would be as free after Conquest and Subjection by England, as before. And that it is a conquer'd Kingdom is not doubted, but admitted in Calun's Cafe several Times &c. Vaugh. 392. Hill. 21 & 22 Car. 2. C. B. per Vaughan Ch. J. in Cafe of Caw v. Ramley.——And ibid. 700 he says, it is a Dominion belonging to the Crown of England. And ibid. 301. That its having a Parliament is Gratia Regis, subject to the Parliament of England.——It is to be considered as a Provincial Government, subordinate to, but not Part of the Realm of England. Mich. 11 Geo. 2. in Cafe of Otway v. Ramley.——And by Statute 6 Geo. 1. cap. 5. & 6. The Kingdom of Ireland ought to be subordinate unto and dependent upon the Imperial Crown of Great Britain, as being indisputably united thereto. And the King's Majesty, with the Consent of the Lords and Commons of Great Britain in Parliament, hath Power to make Laws to bind the People of Ireland. 2. Lands in Ireland are not bound by a Statute in England, but their Jenk. 164. Perons are. Carr. 156. Arg. Pach. 19 Car. 2. C. B. cites 7 Rep. 22. pl. 14. Calvin's Cafe.——And Mo. 796.


(B) Writs. What Writs may go into Ireland.

1. A Writ of Error was brought upon a Judgment given in Ireland. It was held, that a Day ought to be given by Rule of Court to the Plaintiff, to align his Errors, or else to Nonruit him; For the Defendant could have no Sci. Fz. into Ireland. Vent. 53. Hill. 21 and 22 Car. 2. B. R. Anon.

2. In Error of a Judgment in B. R. in Ireland, it was suggested that the Plaintiff was in execution on the Judgment in Ireland. The Court seemed to be of Opinion, that a Habias Corpus might be sent thither to remove him, as Writs Mandatory had been awarded to Calais, and now to Jerfey, Guernfey &c. Vent. 357. Mich. 33 Car. 2. B. R. Anon.

3. If a Writ of Error be brought of a Judgment in Ireland, and Judgment affirmed in B. R. here, No Capias can be in any County of England; Because the Caufe of Action arifes in Ireland, and there the Venue is laid; and therefore the original Capias ought to issue in Ireland, but no Capias could issue out of B. R. in Ireland, and therefore not here; neither an Original nor Tellatam. But the Method is to sue out a Writ, reciting all the Proceedings Here, directed to the Cb. Justice of B. R. in Ireland, and there Execution shall be found out for all; For tho' the Judgment be affirmed Here, yet the Law supposes the Party Complainant in Ireland; For the Coils are but accedent to the Judgment, and such Mandatory Writ determines the Writ of Error here, and restores the Caufe in Ireland; per Holt Ch. J. 12 Mod. 225. Mich. 10 W. 3. Coot v. Lynch.

(C) Power of Englisb Courts over the Lands in Ireland.

1. A Damnuixre, because the Lands lie in Ireland, and there to be determined, over-ruled. Toth. 139, 139. cites 8 Car. Leake v. . . . . . .

2. Exchange
Ireland.

4. Cutlons of Ireland, as for the Widow of one dying without Issue to have a Moity, is not allowable here. Tr. 1672. 3 Ch. Rep. 53. Moor v. Morgan.

5. As to the Profits of Lands in Ireland, a Bill here is good, the Person being in England; For they are in the Personalty. But as to * Partition of Lands, which is in the Reality, he cannot proceed here; For a Commission cannot be awarded into Ireland: And a Bill for Partition is in Nature of a Writ of Partition at the Common Law, which lieth not in England for Lands in Ireland. Hill. 27 & 28 Car. 2. Per Ld Chanc. 2. Chan. Cafes 214. Cartwright v. Petrus.


---2 Chan. Cafes 189. Mich. 6. Jac. 2. S. P. in Cafe of Ld Kildare v. Sir Maurice Euflace.—The Matter of the Rolls thought a Sequestration cannot be granted here of Lands in Ireland for a Contempt of this Court; For that the Proceeds of this Court cannot affect any Lands in Ireland, the Practice in such Cases being to make Affeet, that the Person flanding in Contempt is here in England, and being afterwards taken upon Proceeds, the Court will oblige him to give Bail to abide and perform the Decree. Hill. 11 Geo. 9. Mod. 124. Fryer v. Vermon. S P. And that the obliging him, if found here, to give Security, is a plain Proof that he is not amenable to this Court; For if he was, that Precaution would be unnecesary; And to a particular Sequestration was denied, but a general one granted of Court. Sel. Ch. Cafes, in Ld King's Time. 5. 6. Hill. 11 Geo. 1. S. C.

(D) Power of English Courts over the Persons of Irish Men.

A Fine levied here shall not bind a Man in Ireland; For he is within the Words of the Statute, which provides for Persons out of the Land. Pl. C. 375. Mich. 4 & 5 Eliz. Stowell's Cafe.

2. A Man in Ireland cannot be vouched. 2 Vent. 4 Hill. 21 & 22 Car. 2. C. B.


4. Bill as to Land in Ireland, the Title whereof was under the Act of Settlement there, was exhibited against the Defendant here on his coming to England, and a Ne exact Regno granted, and he was put to answer a Contract made for those Lands in Ireland, and when he departed to Ireland without anwering, he was sent for over by a special Order from the King, and made to answer the Contempt, and to abide the Justice of this Court. Per Finch C. Mich. 1682. Vern. 77. cited in the Cafe of Earl of Arglafs v. Muschamp, as the Cafe of Archer v. Pretton.


---7. Trever
(E) Judgments in Courts there. How far liable to Courts Here.  


And by the Statute of 6 Geo. 1. cap. 5. S. 2. The House of Lords in Ireland have not any Jurisdiction to affirm or reverse any Judgment or Decree made in any Court within the said Kingdom; And all Proceedings before the said House of Lords, upon any Judgment or Decree, are void.  


Jac. B. R. the Bilhop of Ollerie's Cafe.  

3. A Writ of Error was brought to reverse a Judgment given in Ireland, and an Error in Fact was aligned, and try'd in the County next to (I a.) pl. 8. Ireland. The Court ruled the Ventre to be well awarded. Vent. 59.  

Hill. 21 & 22 Car. 2. B. R.  


5. An Action of Debt was brought in the Court of C. B. in Ireland, against an Administratrix, upon a Judgment in the Court of B. R. in England. The Defendent pleaded in Bar a Judgment had against the Intestate, in an Action of Debt upon Bond in the Court of Exchequer in Ireland; and upon Demurrer, there was Judgment for Defendent in C. B. and affirmed in B. R. Upon a Writ of Error in the Court of B. R. in England, the principal Question was, whether Debt lies in Ireland upon a Judgment obtained in B. R. in England; and all the Court inclined strongly that it does not lie; That Ireland is to be considered as a provincial Government, subordinate to, but not Part of, the Realm of England; That Acts of Parliament made here, extend not to Ireland, unless particularly named; much less judgments obtained in the Courts here; nor is it possible they should, because we have no Officers to carry them into Execution there; For the Mandatory Writs issue thither, yet Writs of ordinary Remedy do not, as appears in Vaughan. 292. Besides Debt on a Judgment is a Local Action, and must be brought in the same Court where the Judgment was obtained; a Portiory, not in a different Kingdom. Accordingly the Court were of Opinion to affirm the Judgment; but the Caufe stood over for another Argument. Mich. 11 Geo. 2. Oeway v. Ramfrey.——In Eafter Term following, the Plaintiff in Error declining to speak to it again, Judgment was affirmed, Nifi &c.  

[ See Error, Trial, and other proper Titles. ]
1. A. Seized in Fee of Black Acre, Green Acre, and White Acre has

Issue a Son and two Daughters, and devises Black Acre to the
Son and his Heirs, Green Acre to the eldest Daughter and her Heirs, and
White Acre to the youngest Daughter and her Heirs, and if any of his
Children die without Issue of his or her Body, then the other Surviving shall
have Totam illam partem &c. between them equally to be divided. A.
dies. The eldest Daughter dies leaving Issue, and then the Son dies without
Issue. The Words Totam illam partem give only an Estate for Life. And
per Gawdy J. tho' it was objected, that such Estate for Life in the surviving
youngest Sister is drawn by Defect of the Fee, so as now the Estate li-
mited by the Will is void; it may be answered, that tho' now upon
the Matter it be void, yet ab Initio it was not so; For it became void
by Matter of later Time, viz. by the Defect of the Fee Simple. For
if one of the Daughters had died without Issue in the Life of the Son,
so as her Land had come to the Son and the other Sister, there is no Co-
parcenary; For the Son has all the Fee, and the Sister or the same
is executed, and the other Sister expectatn, and the Sister has a Moiety
for Life, and then the Devise not void. And per Shute J. II both Daugh-
ters had survived the Son, they should have Fee in Black Acre, but not
by the Will, but by Defect in Coparcenary. 2 Lc. 129. Mich. 29 Eliz.

2. Devise of a Term to A. for Life, and after to the Issue of A. and for
Want of Issue of A. to B. was adjudged a good Remainder to B. in B. R.
lately, but reverted in Cam. Scacc. and a Difference taken between such
Limitation to Children, and to the Issue; PerLd Keeper. 2 Chan. Cafes 210.
Mich. 27 Car. 2. in Cafe of Warman v. Seymour, cited as the Cafe of
Peers v. Reeves.

3. A. devises a Term to his Wife for Life, and after her decease to the
Heirs of her Body, and for default to J. S. The Executor attains to the
Legacy; the Wife dies without Issue; Per Finch C. A. meant an Intail
to the Wife which cannot be, becauice then there should be a Perpetuity of a
Term, and tho' there be Difference in Words when Land of Freehold
is devised to one for Life, Remainder afterwards to his Heirs mediately
or immediately, and where a Term is so devised, the Difference is in
Words, the Testator's Meaning is the fame, and now Estates Jointers and
Settlements are of long Terms, and a Similitude is between them,

4. And after their Decease to their Children, are Words of Purchase,
because they work by way of Remainder, and carry but an Estate for
Life; For in Law the Word Issue or Child imports no more. Fin. R.
280. in the Cafe of Warman v. Seyman & al.―cites it as adjudged
fo. 6 Rep. 16. Wild's Cafe.

Limitation and not of Purchase, and so per Rainsford J. it was said to have been adjudged lately in
Cam. Scacc. and a Judgment in B. R. given to the Contrary, reversed upon the Authority of Wild's

5. Issue
II.ue.

5. IIue in a Will is as much as Heirs of his Body, yet sometimes it is a Word of Purchafe; as if a Devise be to a Man for Life and after his IIue, and to the Heirs of such IIue, in such Cafe IIue is a Word of Purchafe; the fame Law of Heir. Skin. 559. Mich. 6 W. & M. B. R. In Cafe of Moor v. Parker.

6. A devised Lands to his second Son and his Heirs for ever, and for want of such Heirs then to the Right Heirs of A.—A. dy'd, the second Son died without IIue, living the Eldcft Son; Adjudged that the second Son had Eftate Tail and no more, because the Words (And for want of such Heirs) are void in Point of Limitation, and impofs no more than want of IIue; because the second Son could never die the without Heirs fo long as his Brothers or any Heirs of his Father were living. Therefore the Heir at Law in this Cafe shall take by Decent, and not by the Will. 1 Salk. 233. Trin. 12 W. 3. B. R. Nottingham v. Jenner.

7. Devise of Lands to A. and B, in Trust for C. for Life with Power to make Leafe, and after C's Deceafe in Trust for the Heirs Male of the Body of C.—Cowper C. decreed only an Eftate for Life to be conveyed to C. and to his firft &c. Sons in Tail Male. But Harcourt K. reverfed that Decree and decreed an Eftate Tail; tho' he admitted that on Marriage Articles founded on the Agreement of Parties, the Husband in fuch Cafe might be only Tenant for Life, but in a Will you muft take the Words as you find them. Patch. 1711. 2 Vern. 679. Balle v. Coleman.

(B) Where the Words IIue, or Heirs of the Body, give an Estate by Purchafe, or Decent by Deed.

1. Where the Heir takes any thing which might have vested in the Ancestor, he shall be in by Decent. Arg. 1 Rep. 98. Pauch. 21 Eliz. in Shelly's Cafe.

2. The word Heir does not serve for a Name of Purchafe if he be not legal Heir, nor the word IIues. The word Son or Daughter will; or Reputed. So in Cafe of Feoffment and Will, tho' they are Balfards. Jenk. 203. pl. 27.

3. An Ufe of a Term for Years in Trust to Husband and Wife, and after their IIue, they then having none, is all one, as if limited to them and the Heirs of their Bodies, and the Ilue takes nothing as a Purchafe; and to their Perpetual Keeper: Chan. Cates 226. Mich. 27 Cat. 2. Bullock v. Knight.

And it was in Trust that the Husband should receive the Profits during his Life, and afterwards that the Wife should, and after that the IIue of their Bodies should receive the Profits, fo long as any IIue of their Bodies should continue.

4. A poftelied of a Term for 2000 Years, in Confideration of Marriage &c. with M. densified to Trustees for 1700 Years Part of the 2000 Years, out of which 1700 Years, a Term of 99 Years was particularly limited to A. for Life, and the Remaining Part of the 1700 Years was declared to be for a Provision of A. and M. and their Children, if A. and M. or any of their IIues should so long live, Remainder to the Heirs of the Body of A. on M. They both died, leaving IIIue three Daughters, B. C. and D. C. and D. got an Assignment of the whole Term, and took Administration to A.—B. brought her Bill. And the Question was, if in such a Case the Heirs should have a third Part with C. and D. And tho' it was intitled for them, that the Trust of the whole Term veiled in A. and was executed in him, and that the Daughters, tho' Heirs of his Body, could not take in this Cafe; yet the Matte of the Rolls conceived, that in regard, a IIue be as fo frequent IIue. It was

S. C. cited 9 Mod. 71.
was not executed to A. and cited the Cafe of Nakes v. Chadwv, and 
of Craefere v. Compton, and the Cafe of Warman v. Speynour, 
where, by Advice of Judges, an Alienation being to one for Life, and then 
to her Illue, it was held; that the Illue took by Purchafe, and Illue was not 
taken to be a Word of Limitation to veit the whole Term in the Mother. 
And yet in legal Understanding, Illue is a Word of Limitation, and not 
of Purchafe; and therefore conceived that tho' in the Principal Cafe, 
the Word (Heirs) is not properly a Word of Purchafe, yet there being a 
paticular Eftate for Life during a particular Term limited to A. the 
Limitation to the Heirs of his Body afterwards on that Marriage, would 
carry it to all the Children equally; and the rather, because it was de-
clared in the Deced, that after A's Death, the Trustees fhouid execute Eftates 
to the Perfon, and Perfon revolvally, that fhouid be interefed according to 
their revolvally Shares therein; which fhou'd that the Children fhould all 
5. A. poffefled of a Term for Years settles it in Truft on Marriage for 
himfelf for Life, Remainder to his Wife for Life, Remainder to the Heirs 
of the Body of the Wife by the Husband; A. dies, leaving B. a Son; Per 
November 1689, mutf govern this Cafe. There the like Limitation was 
adjudged as Words of Purchafe and not of Limitation, and that on view 
of that Precedent, his Lordship had lately decreed accordingly in a like 
Cafe, and fided, it would be in vain to make a Decree to be Revolvis'd on 
an Appeal, and therefore difmiifed the Bill. Trin. 1699. 2 Vern. R. 362. 
Daslorn v. Goodman and Bolt.

6. At Common Law Illue is not a Word of Limitation in Deeds. 2 Inf. 
334. the fame Law in Cafe of an Ufe; For if a Feoffment is made to the 
Ufe of J. S. and his Illue Male, this doth not pafs an Eftate Tail. But 
in Wills it is fomewnes a Word of Limitation, and fomewnes a Word of 
Purchafe, according as the Inventor's Intention appears in the Will. 8 Mod. 

(C) Where the Words I1lue, or Heirs of the Body, are 
only a Designation Personae.

IN Marriage Articles, there was a Limitation to A, for Life with-
out Impeachment of Wiff, and then to the Ufe of the Heirs Male of 
the Body of A, to be begotten, and of the Heirs Male of the Body of 
Such Heirs Male. The firit Words (Heirs Male) are only a Description 
of the Persons who are to take, viz. the first and other Sons; and the sub-
sequent Words denote what Eftate they were to take, viz. to the Heirs 
Male of their Bodies. MS. Tab. cites 5 Feb. 1719. Trevor v. Trevor. 
2. A. on the Marriage of J. S. with M. his Neice, articulated, that for 
the better Advancement of J. S. and his intended Wife, and the Illue of the 
Marriage, he would at the Time of his Death leave, divide, or otherwise 
convey Lands &c. of 30l. a Year to the Heirs of the Body of M. his 
Neice by her filed Husband, and to their Heirs, Provided, that if there 
should be more then one Child, A. might dispose thereof to fuch of 
the Children as he fhould think fit. A. died, living J. S. and M. who had 
seven Children, and demanded the 30l. a Year with the Arrears from 
A's Death. It was objected, that this 30l. a Year being to be leit to the 
Heirs of the Body of M. by J. S. it could not commence 'til M's 
Death; (For Nemo est Haeres Viventis) and that then all her Children 
might
might be dead, or otherwise it was uncertain which would then be her Heir of her Body. But Ld C. King said, that the Court of Equity has a greater Latitude in Contraction of Articles than of Limitations of Estates. And that here the Words (Heirs of the Body of the Niece, by the Husband) shall be Confirmed, (Children) and the rather, because it is said just afterwards and to their Heirs, whereas if there be a Son of the Marriage, it must be his Heirs alone that must take; and tho' in Case of Daughters only, the Words (their Heirs) had been proper, yet here are Sons, and it cannot be intended that the Provision was for Daughters only, when not so expressed; and the Proviso for Proceed of any of the Children, shews that all the Children were to take, unless A. should make an Appointment to any one; and the Preamble being, that the Issue should be advanced as well as the Husband and Wife, all the Issue born at A's Death ought to take, and are intitled to the Arrears from that Time. Hill. 1725. 2 Wms's Rep. 341. Thomas v. Bennet.

Judges.

(A) In what Cases they may be Judges. [In their own Cause.

1. If a Fine be levied to a Justice of Bank, he himself cannot take the Conformity; For he cannot be his own Judge. 8 H. 6. 21.

2. If a Fine be levied by a Justice in Bank, his Name shall not be in the Fine. H. 6. 49. b.

3. So, if a Fine be levied to a Justice of Bank, his Name shall not be in the Fine: Because he shall not be Judge in his own Cause. H. 6. 49. b.

4. So, if a Justice of Bank be sued in Bank, he cannot Record it, but it shall be Recorded by the other Justices. H. 6. 49. b.

5. So, if a Justice of Bank sues there, he cannot Record it, but it shall be Recorded by the other Justices. H. 6. 49. b.

6. If the Chief Justice of Bank be to sue a Writ there, the Writ shall not be in his Name, but in the Name of the Secondary. 8 H. 6. 19. b.


If the Chief Justice of C. B. bring an Action in C. B. as it is his Privilege to do; yet there he must not be named in the whole Proceedings but as Plaintiff, and not so much as the Placita shall be said to be before him; for then it would be Error; and the Placita shall be eram Ed. Nevill, Joanne Powel & Joanne Bincow, [the other Justices] and if he take out the Writ, it must not be so much as Titled in his own Name, but in the Name of the next Senior Judge; per Holt Ch. J. 12 Mod. 688. Hill. 15 W. 3. In Case of the City of London v. Wood,—S. P. Per Holt Ch. J. 2 Salk. 657. in Foxham Tithing's Cane.

7. If an Action be sued in Bank against all the Judges there; in such Case for Necessity they shall be their own Judges. 8 H. 6. 19. b.


Arg. Bridgn.: 21, 12. —— For it is a manifest Contradiction.

8. None may be Judge in his own Cause. 8 H. 6. 19. b. Vite Permodii directa. lib. 2. fol. 1440.
9. This is a Ground in the Feudal Law also, as appears in the Pref-
lections of Wenchebo, cap. 17, fol. 421.
10. If a Fine be levied to a Justice of the Bank, if he himself takes the 
Countenance the Fine is void, 6 P. 6, 21.
11. If the Lord Chancellor makes a Decree between two Strangers in a Thing which concerns himself in Interest, and for himself, it is void; Because he cannot be a Judge in his own Cause. 6 P. 11, in Chancery, between Sir John Egerton, and the Ld. Darby and Kelly, Resolved by the Ld. Chancellor, Coke and Doberridge.
12. If one of the Justices of B. or B. R. brings Action in his own Court and there recovers, this is a good Judgment, tho' the Judge-
ment is given by the Court and to himself, but not by him alone. 6 P. 4. B. R. Per Curiam, in the Baliies of Newcastle's Cafe.
13. So, if one of the Coroner's brings his Action, and after the Cor-
roners give Judgment upon the Outlawry, it is not Erroneous. 6 P. 4. B. R. in the said Cafe, Per Curiam.
14. If a Man brings Action before the Mayor, Bailies, and Steward of a Vill, and after the Mayor is removed, and the Plaintiff is made Mayor, and after he there recovers, this Judgment is not Errone-
ous; _for_ the Judgment is given by the Court, and not by him alone. 6 P. 4. B. R. Per Curiam, the Baliies of Newcastle's Cafe.

This Cafe is 

Law, but 

not for 

the 

Reason here given. 1 
Salk. 398. 

Wood v. 

the Mayor, 

&c. of Lon-
don.

If it is plain this Reason is a sufficient one, but the true Reason is to be seen in 3 H. 4. 49. If 

A. die in the Court of Mayor and Bailiffs, A. is made Mayor, and it is not said in the Record, that 

he was made Mayor, or it do not appear in the Record that he was made Mayor, there, if the Defendant 
do not come to the Court below, and plead this Error in Fact, he shall never after align it for Error; 

but if he had pleaded this Error in Fact, and had been over-ruled in it, he might have a Writ of 

Error; per Holt Ch. J. 12 Mod. 689. Hill. 13 W. 3. in Cafe of City of London v. Wood. 

* S. P. Because he was not sole Judge; _for_ the Court was held before the Plaintiff, who was the 

Mayor, and two Bailiffs, and the Recorders, and so their Act; per Barkdife Lecturer, D. 220. Marg. pl. 

14. cites Hill. 4 H. 4. Rot. 59. Wilchford v. Wiggan._—Action cannot be brought by Mayor and 

Commonalty in a Court held before _the Mayor and Alderman; for_ tho' the Mayor be not sole Plaintiff 

nor sole Judge, yet is he Efficiently Plaintiff and Judge; per Hartell J. 12 Mod. 672. In Cafe of 

City of London v. Wood.

Error out of C. B. The Mayor of London brought Action on the Cafe on a By Law in the Sheriff's 

Court in London, and had Judgment; the Defendant brings Error in the Husting, according to the Custom of 

London, and was bound in a Bond to the Mayor to prosecute it with Effect. The Mayor brought Debt 

in C. B. and Writ of Error now in B. R. and the Question was, whether the Defendant was obliged to 

prosecute the Writ of Error in the Hustings, the Mayor being Judge of that Court, and so Judge and 

Party; Holt Ch. J. held the Bond void. But Powell Contra; He agreed, that regularly a Man can-

not be Judge and Party; but in Cases of Necessity he may. As if a Real Action be brought against all 

the Judges of C. B. But this Cafe differs from that; for the Hustings may be held before 6 Aldermen with- 

out the Mayor, and then it shall be intended that the Mayor was absent, because it does not appear of 

Record. If the Plaintiff in his Replication had replied that the Mayor gave the Judgment, I should have 

been of another Opinion; and it does not appear that the Mayor is a necessary Part of the Court. Powis 

and Gould were of the same Opinion, that the Writ of Error was well brought, and so the Bond 
good; and the Judgment given thereon in C. B. affirmed. 11 Mod. 164. The Mayor of London v. 
Mackreith.

15. Precipe quod reddat against the Abbot of B. who demanded Comu-

dance of the Ples and had it, notwithstanding he was Party, and there 

he prayed Aid of the King, by which the Demandant sued Re-summons 

for failure of Right; For the King will not send a Procedendo, but to 

his own Justices. Wilby said, tho' of the Franchife are the King's Ju-

tices in this Cafe, and so he may write to them, by which the Abbot 
demanded Comunance again, and the Parol was remanded into the Fran-


16. Where the Mayor and Commonalty of D. have Comunace of Ples 

and Affifes, yet in Affises against the Mayor and Commonalty and J. S. they 

cites S. C. shall
shall not have Consuance; because the Mayor and Commonalty is Party, Quod Nota, per Birton J. Br. Patents, pl. 196. cites 31 Ass. 19.

17. Trespass by the Dean and Chapter of D. against T. K. Mayor of D. and others, and the Bailiffs and Citizens of D. came and demanded Consuance by Grant of King H. and the Opinion of the Court was, that they shall not have Consuance, because the Mayor is Party, and shall be his own Judge; Quod Nota. Br. Consuance, pl. 22. cites 38 E. 3. 15.

18. In Affife by two before two Judges, and pending the Affife one Justice died, and one of the Plaintiffs was associated to the other Justice; and it was awarded, that he cannot be Judge and Party, and one Judge cannot take the Affife without a Companion; by which the Judge would have been nonluited, so that his Companion might have proceeded in the Affife for the Moiety; & non allocatur; because he himself cannot record his own Nonstit, nor the other Judge cannot do it without his Companion; wherefore it was advised, that one who is Plaintiff and Judge cannot hold this Plea. And that an especial Affife ought to be awarded before other Justices. Br. Affife, pl. 372. cites 45 Ass. 3.

19. Parol was removed by Writ of the Chancery out of Lincoln, because one of the Bailiffs, who was Judge, was Plaintiff, and this Matter was flown to the Court. Thinning said, they are Judges of Record in Lincoln, and therefore they ought not to furcape by Suppofal * Quia fave, as in a bafe Court, and if they err, Writ of Error lies; and if the Defendant at Lincoln takes Exception, that the Plaintiff is one of the Bailiffs, the Plea shall fly till this Court has determined it, and if they will not allow the Exception, this is Error; by which, by the Affile of all the Justices of C. B. the Parol was remanded. Br. Parol ou ple. pl. 2. cites 2 H. 4. 4.

20. In Trespass it was said, that by the Law a Man shall not be amerced in Court of Lect of the Lord for a Trespass to the Lord; yet by Caufeu this may be good, and especially where the Trespassor pays the Ameircament. Br. Cultoms, pl. 16. cites 12 H. 4. 8. 17: H. 5. 8. but it should be 12 H. 4. 8. pl. 15.

21. Trespass of Goods carried away against T. C. who said, that he is Chancellor of Oxon, and that King R. 2. had granted to J. K. Chancellor of Oxford, and his Successors, that they should have Consuance of all Pleas moved in the King's Court, whereof the one Party was Clerk of the Univerfity, and abiding there, and said that he is a Clerk, viz. Docef of Divinity, and abiding there, and prayed the Consuance; and by the Opinion of the Court he shall not have it, because he is Party, and cannot be an indifferent Judge in his own Caufe; And per Martin and others, the Grant is not good unless it were * licet idem Can/ellarius fuerit pars, and if that be true, yet it is not a good Grant, unless the Grant extends, that then be may depute or constitute another Man to be Judge; For he himself cannot be Judge and Party by these Words, Licet fuerit pars, and the other Justices were in the same Opinion. Br. Patents, pl. 15. cites 8 H. 6. 19.

22. In Deli against the Mayor of the Staple for suffering J. N. condemned in 100 l. to escape; the Defendant demanded Judgment if the Court
Court would take Conquass ; because \textit{by Statute the Mayor of the Staple shall have Connuance of all Pleas touching the Staple; \\& non allocutus; For it is of an Offence done by himself, and does not touch the Staple. Br. Jurisdiction, pl. 1. cites 9 H. 6. 19.

23. The Lord of a Court Baron may have Action of Debt in his own Court, because the Sitters are Judges there, and not the Lord himself nor his Steward. Br. Jurisdiction, pl. 117. cites Fitzh. Det. 177.

24. A Prefcription, that if any Cattle are upon the Demesnes of the Manor doing Damage, the Lord may distress them, and retain the same till Fine made at his Will, this is void; for none shall be Judge in his own Cafe. Co. Litt. S. 212.

25. The Chamberlain of Chester, being sole Judge of Equity, cannot decree any thing wherein himself is Party; for he cannot be Judge in Propr. Causa; but in such Case the Suit shall be heard in Chancery, Coram Domino Rege. 12 Rep. 113. Hill. 11 Jac. Earl of Derby’s Cafe.

26. Trespass for taking of a Bag of Pepper; the Defendant justified as Servant of the Mayor and Commonalty of London for Wharfage due to them by the Custom of London, and that the Plaintiff refused to pay it. The Plaintiff said, that the Custom does not extend to him, because he is a Freeman of the City, and ought not to pay Wharfage; to which the Defendant replied, that the Custom extends to him as well as to Strangers; and upon this Issue was taken; And the Question was, if Writ shall issue to the Mayor and Aldermen to certify the Custom by the Mouth of the Recorder, as is usual, or that it should be tried per Pais. And upon long Debate and Argument, it was resolved, that the Trial should not be by the Mouth of the Recorder; because he was to certify what the Mayor and Aldermen required him, and they are Parties, and the Cafe is their own; wherefore the Trial shall be per Pais. Resolved also, that the Venire Facias shall not issue to the Sheriffs of London nor Middlesex; because the Trials there are by the Freeman; but it shall be to the County adjoining, (viz.) to the Sheriff of Surry. Mo. 871. Trin. 12 Jac. * Day v. Savage.

27. The Admiral, in his Patent, has granted to him \textit{Bona Piratar}; Resolved by all the Judges, that the Goods of Pirates pass by this Grant; and not practical Goods. In this Case the Admiral ought to sue at Common Law, and not in the Admiralty Court. Jenk. 325. pl. 40.

28. Judgment given by a Judge, who is Party in the Suit with another, and so entered of Record, is Error, altho’ several other Judges sit there and give Judgment for the Judge who is Party. Jenk. 95. pl. 74.

29. Where a Judge has an Interess, neither he nor his Deputy can determine a Cause, or sit in Court; and if he does, a Prohibition lies. Mich. 20 Car. 2. Hard. 503. Brookes v. Earl of Rivers.

30. Mayor and Aldermen of London may set a Fine for refusing the Office of Sheriff by a Freeman, though they are to have it themselves. Vent. 187. Hill. 23 & 24 Car. 2. B. R. in Hartwood’s Cafe. cites Eastwick v. Langham.

And to say that one who is free of the Corporation should not be Judge, because he is to \textit{Lot Share of the Penalty}, is as ridiculous as grounds, and since this Objection has had so little Regard with us in B. R. I wonder it should be so much insisted on, especially since it has been also rejected in C. B. Per Holt Ch. J. 12 Mod. 686. In Cafe of City of London v. Wood. — And he agreed, where the City of London claims any Freedom or Franchise to itself, there none of London shall
31. In several Cases the Parties may try their own Jurisdiction, as in the Case of the Chancellor of Cambridge &c. Cumb. 69. Mich. 3 Jac. 2. B. R.

32. A Bishop sues for a Pension before his own Commissary; and a Lord S.P. But it had been held before the Bishop himself; it had been ill. Vent. 3. Lincoln (Bp.) v. Smith.

33. Mayor and Commonalty of London may limit Penalties of By-Laws to themselves, but they cannot be sued for in the Mayor's Court unless the Mayor could be severed, and the Court held before the Aldermen. Cumb. 131. Trin. 1 W. & M. B. R.

34. A Justice of Peace was Surveyor of the Highway, and a Matter concerning his Office coming in Question at the Sessions, he joined in making the Order, and his Name was put to the Caption. Per Holt Ch. J. it ought not to be. 2 Salk. 657. Hill. 3 Annz. B. R. Foxham Tithing's Café.

(B) Their Demeanour.

1. L. H. 4. Rot. Parliamenti Numero 97. The Commons pray, that the Lords Spiritual and Temporal, not the Justices, be not recused hereafter for their Exculp to say, that they dare not nor say the Laws, nor their Intent, for doubt of Death, or that they are not free of themselves; Because they are more bound of Reason to keep their Oath, than to doubt Death, or any Forfeiture.

The adding the two Letters of (C) and (D) seems a Mistake to take the Pleas under those Letters belonging all to this Title of (B) but the same are left here as found in the Original; and what is added here belongs to the said Letters of (B) (C) and (D)

(C) Answer.

1. The King holds all his Lords and Justices for Good, Sufficient, and loyal; and that they will not give other Counsel nor Advice, but what is honest, and just, and probable for him and the Realm; And if any will complain in especial in time to come of the contrary, the King will cause to reform and amend.


3. 1 H. 4. Rot. Parliamenti Numero 99. The Commons pray, that the Chancellor, Treasurer, Clerk of the privy Seal, Justices of the Bench, Barons &c. shall not take Brocage, Prebents, nor Gifts whatsoever, but shall be content of that which they have of the King.

(D) Answer.

1. If they take dishonestly they shall be punished. If a Judge of Record takes Bribe, he shall be indicted for it; and if he be convicted, he shall lose his Office, and be fined and imprisoned. Jenk. 162. pl. 7. cites 27 E. 3. F. N. B. 243.
2. By 2 E. 3. cap. 8. No Command shall be made under the great or little Seal, to disturb or delay common Right; and the Justices shall proceed to do Right notwithstanding such Commands.

3. By 18 E. 3. Stat. 4. The Oath to be given to Justices, when they take their Places, is to this Effect, viz. to serve the King in their Offices, to warn him of any Damage, do Justice, take no Bribe, give no Counsel, where he is a Party, maintain no Suit, nor deny Right (by Command from the King) to procure the King's Profit, and to be answerable to the King in Body, Lands, and Goods, if found in Default.

4. 20 E. 3. cap. 1. Enacts that the King's Justices shall do right to all without respect of Persons, notwithstanding the King's Letters or Commands to the contrary; and if any such be, they shall acquaint the King and his Council therewith; they shall take no Fee but of the King, nor give Counsel where he is a Party; and if they do amiss, they shall be at the King's Will in Body, Lands, and Goods.

5. By 20 E. 3. cap. 2. The like is commanded to the Baron of the Exchequer, and to dispatch Business before them without Delay.

6. 20 E. 3. cap. 3. Enacts that Justices appointed by Commission, and of Affise and Great Delivery, and their Assistants, shall make such Oath as shall be enjoined them by the King's Council, or the Commonalty, before their Commissions be delivered unto them.

7. The Justices have such Pre-eminence, that they ought not to give nor express their Opinions before-hand, but only when it comes before them by due Original in due Form of Law; Quod Nota. Br. Judgment, pl. 137. cites 1 H. 7. 26.

8. The Court will not give a Judgment which they know would be against the Law, altho' the Plaintiff and Defendant do agree to have such a Judgment given; For the Judges are to do equal Justice according to their best Skill, and not to err willfully, and against their Knowledge, to pleae the Parties. 2 L. P. R. 98. cites 3 H. 23 Car. B. R.

(E) What Things are too High for the Judges to determine.

1. 31 H. 6. When it was in Question, whether Thorpe, the Speaker of the House of Commons of Parliament, being taken in Execution between two Sessions, ought to be delivered, of which Com plaint was made by the Commons to the Lords, who demanded of the Judges, whether in this Case the Speaker ought to be delivered by Privilege of Parliament, the Judges answered, that they ought not to determine the Privilege of the said High Court of Parliament.

2. 25 E. 3. cap. 2. And because that many other like Cases of Treafon may happen in time to come, which a Man cannot think nor declare at this present Time, it is accorded that if any other Case supposed Treafon which is not above specified, doth happen before any Justices, the Justices shall tarry without any going to Judgment of the Treafon till the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treafon or Felony.

3. 21
3. 21 R. 2, cap. 12. The Lord William Thurling, Chief Justice of the Common Bench, being demanded whether certain Things done by the Parliament were Treason, answered, That the Declaration of Treason not declared belongs to the Parliament. And so said Richl. and Clapton.

4. 11 R. 2, cap. 3. In Fine it is laid, And though that divers Points be declared for Treason in this Parliament, other then were declared by Statute before, that no Justice have Power to give Judgment of other Cases of Treason, nor in other Manner then they had before the Beginning of this Parliament.

5. 1 H. 4. cap. 10. Where in the Parliament of 21 R. 2, diverse Pains of Treason were ordained by Statute, inasmuch as that there was no Man which did know how he ought to behave himself to do, speak, or say, for Doubt of such Pains; it is accorded and assented by the King, the Lords and Commons, that in no time to come any Treason be judged otherwise than it was ordained per le Statute de Ed. 3.

6. In the Time of H. 1. the Justices of Gaol-Delivery would not proceed in Case of the Death of a Man without the King's Writ. 2 Inil. 43, and says, that in the Record (which he had there before recited) it appears that W. R. Indictatus de Morte W. E. non tuli breve Regis de bono & malo, ido retornatur Gaolae, &c.

(F) Punishable for what.

1. It was presented, that where Commission issued to J. N. and another, that J. N. sat alone without the other, and laid Fines on People; and because it founds in Error, and to be Reverted by Write of Error for the Error in Judgment, therefore it was held that the Indictment was void. Br. Indictm. pl. 17. cites 27 All. 23.

2. Thorpe, Judge of B. R. was at the Will of the King, for his Body, Lands and Goods, because he had done a Thing contrary to his Oath. 2 L. P. R. 90. cites 42 E. 3.

3. A Justice cannot raise a Record nor implead it, nor file an Indictment which is not found, nor give Judgment of Death where the Law does not give it; but if he does this, it is Mispfition and he shall lose his Office, and shall make fine for Mispfition; but it is not Felony. Br. Judges, pl. 93. cites 2 R. 3. 9.

unalligned.—Judge Ingham was in miscevaria Regis for causing a Record to be raised, and making an Amencement of a poor Man set at 6s. 8d. to be but 2s. 4d. 2 T. P. R. 90. cites 2 Rep. 39.

Where a Bill of Indictment of Felony was found Ignoramus, a Judge of Record procured it to be raised, and to be indorsed, Billa vera; This offence is not punishable by the Law; For that would tend to falsify and avoid a Record. Jenk. 162. pl. 7.

4. No Action on the Case will lie against a Judge for what he does as. Salk. 297. 4 Judge. Arg. 2 Roll R. 199. cites 26 Eliz. & 27 All. 73.

5. A Judge ignercently condemns a Man to Death for Felony, when it is not Felony, in a Manor Court, which has the Franchise of Inlandtief; For this Offence the Judge shall be Fined and Imprisoned, and lose his Office; and the the Lord shall lose his Franchise. These Points were resolved in the Star-Chamber, upon an Assembly of all the Judges there, by the Command of King Ric. 3. Jenk. 162. pl. 7.

6. Where Judges are limited to the Subject Matter of their Jurisdiction, and they exceed the Limits of their Jurisdiction, Action lies against them; per Powell J. 2 Latw. 1565. Mich. 4 W. & M. cites Hard. 480. Terry v. Huntington.

7. If
7. If Plead to the Jurisdiction of an Inferior Court be offered as it ought to be before Imparities, and upon Oath, all Proceedings after shall be void, and the Judge and Officer shall be liable to Actions. Per Powell J. 2 Latw. 1567. cites Stat. W. r. 35.

8. Judge is not answerable to the King, or the Party, for Mistakes or Errors of His Judgment, in a Matter of which he has Jurisdiction. 1 Stalk. 397. Trin. 12 W. 3. B. R. Greenwell v. Burwell.

9. All Misdemeanors of Judicial Officers are a Contempt of the Court of B. R. 1 Stalk. 201. Patch. 1 Anna. B. R. Anon.

10. Among the Laws of King Edgar is this, viz. Judex, qui injustum Judicium judicabit alicum, det Regi CXX s, nisi jurare audet, quod rectius judicare necivit. Decem Scriptores Anglicani 872. 1. 3.—The same among the Laws of Canute. Ibid. 924. 1. 2. adds, that—Et Dignitatem suæ Legalitatis emper amittat, si non eam redimat erga Regem, fictet et permetteret. In Delenago Libellus reus fit, si non juget, quod melius necivit. Chronicon Johannis Bromton.

**G** What a Judge may do Extrajudicially.

The Content of the Parties cannot give a Jurisdiction to that Court which they had not before. Arg. Sti. 459. Hill. 1654. B. R. in Case of Cooks v. Chambers.

1. By 3 H. 7. cap. 1. The Lord Chancellor, Treasurer, or Privy Seal, or any two of them, calling to them a Bishop, a Lord of the Council, and the two Cb. Justices, (or two other Justices in their absence) upon Bill of Information put to the Chancellor for the King or any other, for Maintenance, Retainers, Embraceries, untrue Demeaning of Sheriff's, taking Money by Favors, great Riots, or unlawful Assemblies, have Authority to call before them by Write, or Privy Seal, the said Misdemeanors, and them and others to examine, and to punish them according to the Statutes in their Behalf made, in like Manner as Affiliants, if they were cottinis by due Order of Law.

None of them are Judges of this Matter but the Chancellor, Treasurer and Lord Privy Seal by those Words, for the others are not Affiliants, if they were cottinis by due Order of Law, and yet if they are not called it is Error, because the Statute appoints them to be called to it. By all the Justices Br. Judgment, pl. 125. cites S H. 7. 15.—So of the * Statute which Wills, that the Chancellor and Treasurer calling to them two Judges, shall recus Error in the Exchequer, there the Chancellor and Treasurer are Judges, and the others are but Affiliants; by all the Justices. Br. Judgment, pl. 125. cites 8 H. 7. 15.—* S 3 E. 3. 12.

(H) Who shall be said to have Judicial Power.

1. T H E Sheriff in Writ of Enquiry of Waif is * Judge and Officer, and Challenge shall be taken, and if he denies it, Error lies, * Br. Office and Attaint lies of the Verdict. Br. Office and Officers, pl. 4. cites 2 and Officers, H. 4. 2.

Br. Walf. pl. 53. cites S. C.

* Br. Office and Attaint lies of the Verdict. Br. Office and Officers, pl. 4. cites 2

11 H. 4. 82. S. P.—Br. Return de Brief, pl. 38. cites 11 H. 4. 82. S. P.—S. P. And if the Land be

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1. By 3 H. 7. cap. 1. The Lord Chancellor, Treasurer, or Privy Seal, or any two of them, calling to them a Bishop, a Lord of the Council, and the two Cb. Justices, (or two other Justices in their absence) upon Bill of Information put to the Chancellor for the King or any other, for Maintenance, Retainers, Embraceries, untrue Demeaning of Sheriff's, taking Money by Favors, great Riots, or unlawful Assemblies, have Authority to call before them by Write, or Privy Seal, the said Misdemeanors, and them and others to examine, and to punish them according to the Statutes in their Behalf made, in like Manner as Affiliants, if they were cottinis by due Order of Law.

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(I. 2) Constitute or discharged. How.

1. A Man can not be made a Justice by Writ, but by Patent and Commission; but a Justice may be discharged by Writ sub mague sigillo by all the Justices in the Exchequer Chamber. Br. Judges, pl. 19. cites 5 E. 4. 137.


(K) Certificate by Judge of what and how.

The Court allowed this Warrant; and for they knew the Hand Writing of the Judge who attested the Warrant. By all the Judges. Jenk. 174. pl. 43. cites S. C.

2. A Justice removed, and having a new Patent, or not having one, may certify a Warrant of Attorney taken by him being a Justice, and this is well. Jenk. 69. pl. 31.

See Fees (C) pl. 5.

* Br. Fees, pl. 1. cites 34 H. 6. 52.
S. P. Per Littleton.

Nor the Chancellor of England is not bound to make Writs, &c. without his Fee for the Writing, &c.—Br. Cofts, pl. 2. cites S. C. —And yet it is paid there by some, that it is no Plea for the Sheriff to say that he did not serve the Writ, because the Party did not give him his Fee or Costs; and so to see a Diversity between a Judge and Officer. Ibid. —And that where it is written to the Bishop, to certify Bishops, Marriners, or the like, he is only an Officer or Minister, and he shall do it at his own Costs; Contra where the Church is litigious, and he awards inquiry de jure Patronatus; For there he is Judge; Note the Diversity. Ibid. —Br. Quare Impedit. pl. 12. cites S. C.

(L) Fees, &c. to Judges.

1. N * Special Affise the Justices are not bound to sit, but by Wages of the Party. And they may demand more than the Party is able to give. And therefore if one refuses the other may sit, but in a general Affise, they sit at the Wages of the King. Br. Affise, pl. 401. cites 32 H. 6. 10.

2. By the Statute of 18 H. 6. the Fees of the Judges were to be paid out of the first Money which the Customors of the Customs should receive; and this Payment was to be made at a certain Day. If the Customors did before the Day, their Executors were liable for so much as they had received. If the King granted to any Merchant, to retain 10. of the Customs in his Hands, as should be due by him; the Judges in this Cafe might sue the Customors or the Merchant for their Fees; and the King would allow them as much as they had paid; to the one upon Account; to the other upon Petition. Jenk. 167. pl. 24. cites 1 H. 7. 5. 9.

3. But at this Day the Fees of the Judges are paid out of the Exchequer. Jenk. 168. pl. 24. —And Philip Baffet made Jusificus of England, received his Pension of 1000 Marks a Year, out of the Exchequer, as did Hugh Bigod his Predecessor. Dogd. Orig. Jurid. 20. cap. 7.
Judgment.

(A) Judgment. Where a Man may pray and have Judgment against himself.

1. In Action upon the Cause, upon a promise to pay several Sums at several Days, if the Action be brought for Default of Payment at the first Day, and before any other Day of Payment incurs, and the Defendant pleads Non Assumpsit, and it is found against him, neither that he Assumpsit Modo & Forma. But then the Plaintiff would not enter the Judgment for fear that he should be barred to have new Action upon the same Promise, if Default be in the other Payments, yet the Defendant may enter Judgment according to the Verdict if it be will. Mich. 3 Car. II. R. between Shapeland v. Curtis.

and taxing of the Costs by the Judge or Secondary, that makes the Judgment. 2 L. P. R. 194. cites 2, July, Trin. 1690. B. S. Because the Costs are so mentioned in the Judgment,--judg. 114. says, that tho' a Judgment be signed by a Judge or by the Secondary, yet if it be never entered it is no Judgment; For till it is recorded it is no Judgment, and the signing of it is but the Warrant of the Judge or Secondary for the Attorney to enter the Judgment.

† It was ruled, that the Defendant might enter the Judgment or enforce the Plaintiff to be Non-suited. But in the Non-suit it was entered dishonourably, either to pay Costs or commence De novo. Lat. 216. S. C. by Name of Stokeland's Cause.

2. If a Verdict be found for the Defendant, tho' the Defendant will not pray Judgment, yet Judgment shall be given for the Defendant at the Prayer of the Plaintiff, because then he may have his Attainder against the Jury. D. 3 Eliz. 194. S. 34. mentioned there. — S. C. cited 2 Saund. 245. And by Advice it was ruled accordingly; For otherwise the Plaintiff should be deprived of his Remedy by Writ of Error to redress his Grievance, admitting that it was erroneous. Mich. 22 Car. 2. Green v. Cole.

3. In an Action upon the Cause for underwriting the Plaintiff's House, whereby a great Part of it fell in and spoil'd his Goods; Upon Not Guilty pleaded, there was a Verdict for the Plaintiff and Damages. But Plaintiff not being content with his Damages, would not enter up the Judgment upon the Verdict, but brought another Action. But the Court upon Motion, gave Leave to Defendant to enter up Judgment, so as he might plead it to a new Action. Hard. 219. Mich. 13 Car. 2. in Scarce Andrews v. L. P. R. 97. S. P. cites Trin. 22 Car. B. R. For the Plaintiff ought to be content with what the Law gives him.

4. A Mandamus was granted to admit Mr. Kynaston to the Office of Alderman, and Illue being joined upon the Return, at the Affises the Defendant challenged the Array, to which the Plaintiff demurred, and the Judge referred the Demurrer to be argued in Court; this was accordingly done, but the Court not being clear in their Opinion, took Time to consider it. In the mean Time, the Plaintiff being desirous to have the Illue tried, and not wait the Judgment on the Demurrer, moved the Court, that upon his Prayer the Array might be quashed, which the Defendant would not consent to (tho' he had challenged the Array at the Affises). The Court agreed that the Array might be quashed without Defendant's Consent, but declared it might be by Consent, lest it might be thought they had allow'd of the Challenge upon the Merits. But afterwards, the Defendents not agreeing
Judgment.

given) they gave Judgment for the Defendant, in order that Plaintiff might have an Opportunity to bring a Writ of Error. Hill 11 Geo. 2. B. R. cited in the Case of Kynafton v. Mayor &c. of Shrewsbury; at the Case of Thornby v. Fleetwood.

(B) Where a Man may pray and have Judgment, Where Part is found against him.

1. In Trespafs, supposed in two Cloes, the Defendant to the one pleads Not Guilty, and for the other justifies, upon which pleas they are at Issue, and the Issue of the Not Guilty is found for the Plaintiff, and Damages for this assized, and the other Issue is found for the Defendant. The Defendant upon his Prayer shall have Judgment against the Plaintiff as to the Issue found for him, tho' the Plaintiff both not pray Judgment of his Issue against the Defendant. Dy. 3 Cl. 194. 34.

2. If Formedon is brought against two, and the one pleads No Dona pas, and it is found against him, and after the other pleads that the Defendant is a Bastard, and it is found for him, the Defendant shall recover the Moiety; per Nele, which Littleton denied, for the Defendant shall be barred against both by the Bastardry which goes to all: for he has succeeded his Time, but at the Commencement if he had prayed his Judgment of the Moiety, he might have had it, which none denied. Br. Judgment, pl. 38. cites 15 E. 4. 25, 26.

3. In Replevin, the Defendant assessed for Rent. The Plaintiff pleaded Payment of Part, and other Issue was for the Residue. The first Issue was found for the Plaintiff, and Damages and Costs taxed by the Jury; but the other Issue was found for the Avowant. And it was moved that the finding Costs &c. for the Plaintiff is void; for when Part is found for the Avowant, he shall have Return and Damages and Costs, and the Defendant shall have Return where any Part is found for him; and adjudged accordingly. Cro. J. 473. Patch. 16 Jac. B. R. Dent v. Parfo.

(C) For whom Judgment shall be given.

1. In Trespafs for Entry into his Cloze, and taking of certain Boards of Timber, the Defendant pleaded that he has a Cloze adjoining contiguous to the Cloze of the Plaintiff, where the Trespafs is supposed, and that the Tree grew between the said two Cloes, and that the Plaintiff cut it and carried it away into his Cloze where the Trespafs was &c. and made it into Boards, by which he enter'd and retook them (c). To which the Plaintiff replied, that the Tree grew more in his Land than in the Land of the Defendant; upon which the Defendant demurred. Admitting in this Case, that they are Tenants in Common of the Tree, and then by Consequence that the Defendant could not enter into the Cloze of the Plaintiff to re-take it, tho' he might retake it in another Place, so that the Defendant is not guilty of the Trespafs, supposed in the taking of the Boards, but is guilty for Entry into the Cloze of the Plaintiff, yet in as much as the Plea in Bar is intire, and the Replication alto, and the Demurrer upon the whole Judgment
ment shall be given for all against the Plaintiff. Mich. 18 Jac. 2; R. between Masters and Polley. Adjudged upon Demurrer against the Opinion of Montague. (But Nure of this.)

2. If the Plaintiff makes a good Declaration in an Action of Trepass for the taking of Goods, and the Defendant pleads a Prescription for Toll in a bill by Way of Justification, and Plaintiff takes Issue upon the Prescription, and tries it against the Defendant by Jury, the Prescription is not good, so that the Plaintiff cannot have Judgment upon the Verdict, yet he shall have Judgment upon the Plea in Bar; because this is not good, the Plaintiff having a good Declaration. Mich. 13 Car. 2. R. between Bills and Stockton, adjudged in a Bill of Error upon such Judgment, and the first Judgment affirmed accordingly. Intratius Mich. 12 Car. Rot. 989.

3. If an Action of Debt be brought by five Executors, whereof two Cro. C. 420! will not prosecute, upon which they are summoned and sever'd, and afterwards the other three prosecute the Action, being upon an Obligation, and the Defendant pleads Non et Factum, and this is found against him; the Judgment may be for the three Executors only, who prosecute, without naming the other two who are summoned and sever'd; for tho' they continue Executors notwithstanding the Summons and Severance, yet they are out of Court by the Severance. Mich. 11 Car. 2. R. between Apprice and Parkhurst, Adjudged in a Bill of Error upon Judgment in Bank, and the Judgment affirmed accordingly. Intratius Hill. 10 Car. Rot. 716. And when the Judgment was affirmed, there was read the Certificate of two of the Prochonsistrates of Bank, that it was the Practice in Bank to give Judgment in the Manner as this is done:

(D) In what Cases after a Verdict Judgment shall not be given upon the Verdict, but upon the Declaration, Plea, or other Part of the Record.

1. In Action upon the Case for slanderous Words, there is a Plea in Bar, and a Replication, and Issue joined, and a Verdict for the Plaintiff, yet if the Defendant had confessed the Action in his Plea in Bar, and his Plea insufficient in Law, and Issue upon the Replication void in Law, the Plaintiff shall have his Judgment upon the Declaration. Hill. 33 El. Rot. 27. between Lace and Reynolds, in Action upon the Case for these Words, He is a false Knave, and as arrant a Thief as any is in Warwick Gaol; and after Issue and Verdict for the Plaintiff Intratius in the Verba, Et quia uiderit Civis dicit Domini Regis, hoc quod predictus quercus super placitum predicti defendenti modo & foro predicti placitum Danna suae Oclasis Premissorum recuperare debet et quod predictus defendens in placito suo predicto, prout predictus placitum existit, cognoscit Hacenas in Narratione predicta superius allegatas & nullum Sufficientem Hacern in Lege in Sactam suae Premissorum predicti quercus ab Asserta sua predicta habenda placitante,ideo Controversiam est, quod Placitum predicti quercus superius replicando placitum & Civis superiore niter eosdem quercem & defendentem junctum ac Procellius super eundem Civitatem predictum factum nec non Precedentium predictum in iberna predicta reditum predicti quercus euncluenttur & pro nillo habeantur & quod super Cognitum dicti Defendentem in Placito suo predicto ac Hacern in Narratione predicta superius spectat eundem Defendentem per illum querentem

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Judgment.

reuen allegatis predictus quercus recuperet Damna sua; and Writ of Damages awarded, et Judicium inde pro Duercete. Note, a Copy of this Record was shewn to me by Jasper Doddsman.

2. In Debt upon Obligation, if the Defendant acknowledges the Sealing and Delivery of the Obligation, but that he delivered it to J. S. to be kept till certain Conditions performed, and that J. S. delivered it before the Conditions performed, And So not his Deed; upon which Issue is joined, and a Verdict that it is his Deed; yet the Plaintiff shall have no Judgment upon the Verdict; because it is no good Issue, in as much as he could not conclude, And So Not his Deed against his own Confession. But the Plaintiff shall have Judgment upon the Confession of the Defendant in his Plea in Bar, where he has confessed the Deed. 9 B. 6. 37. b. per Curtr. See 6 B. 7. 11. where it is cited and said, that he might relinquish the Issue, and pray Judgment, and he shall have it if he will.

3. In Dower, if Defendant by his Plea confesses that the Baron was sealed, that Dower &c. and Issue taken upon an immaterial Thing, and this is found for the Plaintiff, and Judgment given accordingly; yet in Writ of Error the Court will take the Judgment to be given upon the Confession, and not upon the Verdict. 22 E. 4. 46. b. per Eustam.


4. If Affife gives Verdict at large, and concludes upon the Seisin and Diffiefion, yet the the Court shall adjudge upon the Matter, and not upon the Conclusion; Per Fihf, Quod non negatur. Br. Affife, pl. 411. cites Paich. 32 E. 3. and Fitzh. Affife 99.

5. In Trepass, the Plaintiff counted to the Damage of 10l. and the Jury found Damages 42l. The Plaintiff could not have Judgment but of 10l. as he counted. Br. Judgment, pl. 142. cites 42 E. 3. 3. 7.

6. In Affife, if the Jury gives a Verdict which is dubious, by which the Justices adjourn them to Weinhunfer such a Day, and there the Parties are demanded (as they ought to be) and the Plaintiff is Non-suited, there Judgment shall be given upon the Non-suif, and not upon the Verdict, for then it is Error. Br. Judgment, pl. 141. cites 47 E. 3. 2.

7. Trepass by A. against B. and C. of taking five Boxes with Charters &c. B. pleaded Not Guilty, and C. made Title to himself by Gift, and the Plaintiff traversed the Gift; And so to Issue. B. was found Guilty; and the Issue was found for C. —A. shall not have Judgment against B. tho' the Issue was found against him. For between A. the Plaintiff, and C. it is found that A. had no Title, and the Court Ex Officio ought to give Judgment against the Plaintiff; per Montague Ch. J. Pl. 66. b. in Cafe of Dice v. Banningham, cites 7 E. 4. 31. and Fitzh. tit. Judgment. pl. 50. . . . . . v. Tilly and Woddy.

When by the Replication it appears, that the Plaintiff had no Cause of Aessment, there the Plaintiff never shall.
whom Trefpafs does not lie. For the Statute is Non ideo puniatur De-
have Judg-
menr, tho' the Bar be
infficient. As in Debt upon Obligation with Condition to perform Covenants in an Indenture, the Defendant pleads Performance of all the Covenants generally, where it appears to the Court, that errors of them are in the Negative or Difurrence, and so the Plea in the general Affirmative infficient; yet if the Plaintiff replies, and fows a Breach of one of the Covenants, which of his own foruming is not a Breach, upon which Defendant demurs, Judgment shall be given against the Plaintiff; because upon the whole Record it appears that he has no Cause of Action. For the Bond is conditioned to perform Covenants, and he has fhewn no Breach to give Cause of Action, which the Law premises he would have done had there been any. But when the Bar of the Defendant is infufficient in Substance, and the Defendant replies, and fows the Truth of his Case, but fhews no Matter against himself, but Matter explanatory, or perhaps not material, there the Court shall adjudge upon the whole Record, and the Count being good, Judgment shall be given for the Plaintiff for the Infficiency of the Bar, without any Regard to the Replication. As it a Man pleads Grant by Letters Patent in Bar, which are not fufficient; the Plaintiff by Replication fows another Clause in the said Letters Patent, which is not material, and the Defendant demurs in Law; in this Case Judgment shall be given against the Defendant. Ex &c in fimi lit us. 8 Rep. 152. Patch. 8 Jac. C. B. Turner's Cafe.—als. Turner v. Lawrence.—And See 8 Rep. 120, b, in Dr. Bonham's Cafe.

9. In Debt upon a Bond, they are at Issue, and at another Day the Defendant confefled the Deed when the Inquest appeared, by which they were charged upon the Damages only, and after they came back to give Verdict of Damages, the Plaintiff there shall not be demanded, nor fhall he be non-
ffuted; For the Judgment fhall be now upon the Confession, and not upon the Verdict; For they were not charged upon the Issuie, but only of Damages as an Inquest to inquire of Damages, not an Issue upon Issuie; nota. Br. Non-fuit, pl. 61. cites 16 E. 4. 1.

10. In Debt upon Obligation which was void by the Statute 23 H. 6. 10. the Defendant concluded his Plea with Judgment Si Alio, whereas he ought to have faid, And fo never was his Deed, fo that the Conclusion was无效. Yet Montague Ch. J. faid, that it appearing to them that, upon the Matter in Law, it was a void Deed, the Court Ex Officio ought to give Judgment against the Plaintiff, tho' the Defendant cannot take Ad-
vantale; For it appears to them that the Plaintiff had no Cause of Ac-
tion, and therefore they ought to give Judgment against him. And Ad-

by the Admission or Verdict, yet the Court fhall not proceed to Judgment for the Plaintiff; admitted. D. 119. b. pl. 6. in Cafe of Thrower v. Whetstone.

11. Defendant avowed 12 Jac. for 20l. Rent, supposing that M. U. was felled of the Place where in seas, and granted fuch Rent 23 Eliz. And upon Non concedit, the Jury found a Ipfaith Verdict, that W. U. was felled in Fee, and let that Land 23 Eliz. to M. U. for 21 Years, and lfe felled, granted that Rent, Et f. &c. Tho' the Issue be found Quod concedit, and fo it is for the Avouant, yet because it appears that the Estate out of which the Rent was granted was determined long before the Disfrefs taken, fo that he had not any Title to avow, It was held, that Judgment fhould be for the Plaintiff, tho' the Issue was found against him. Cro. J. 442. Mich. 15 Jac. R. R. Harrison v. Metcalfe.

12. Where the Declaration is good, and the Defendant's Plea is ill; tho' the Plaintiff joins Issue thereupon, and it is found false; yet the Declaration being good, the Plaintiff shall have Judgment. And adjudged accordingly. Cro. C. 25. Mich. 1 Car. C. B. Knight v. Harvy.

13. In an Action of Trefpafs, whereof Defendant pleaded a bad Jufification, Plaintiff took Issue, and Defendant obtained a Verdict. Plaintiff moved in Arrest of Judgment, and the Court heard Counsel on both Sides several Times, and took Time to consider, and in Eafter Term laft made a Rule to stay the Entry of the Judgment on Defendant's Verdict; and that Plaintiff should have Leave to try Judgment, the Trefpafs being confefled by the Plea. Pending the Consideration of the Court, Defendant died, and 1st Term Plaintiff obtained a Rule for Defendant's Executor to flye Cause why he should not enter Judgment, None produce, which Rule was
was made absolute. It was urged for Defendant's Executor, that Plaintiff hath delay'd himself. He was to blame in joining an immaterial Issue; but per Cur. the Party must not suffer by the Court's taking Time to consider. Notes in C. B. 184, 185. Mich. 11 Geo. Craven v. Hanley.—cites Baller v. Delander, Trin. 1 Geo. in B. R. Taylor v. Matthews, Hill. 2 Geo. in B. R.

(E) What Thing will hinder a Judgment after Verdict. Intire Damages.

1. If a Man brings Action upon the Cafe against another upon a Custom for not grinding at his Mill, whereof he is Master for Years, and alleges that the Defendant ground his Grain expended in his House, Diversis diebus & Vicibus between December 12 Ja. and 4 April, 20 Ja. at other Mills, and not at the * Mill of the Plaintiff, against the Custom, and it appears that the Lease of the Plaintiff was made long Time after the 12 Ja. And upon Not Utility pleaded, the Jury found for the Plaintiff, and gave entire Damages. In this Case, the Plaintiff cannot have Judgment; For it shall be intended that the Damages are given not according to the Law, but according to the Allegation of the Plaintiff, who laid his Damages for the whole. Hobart's Report's 236. adjudged between Harbin and Green.

2. Trespafs of Oyer and Terminer of Ravishment of Ward, Battery of Servant, and carrying away his Goods; It was aligned for Error, because the Damages were not appoitioned by the Inquest, nor by the Court; fed non Allocatur; but the first Judgment affirmed. Br. Damages, pl. 109. cites 27 Aff. 35.

3. Trespafs upon the Cafe was brought by three against two, who counted that the Plaintiffs were seiz'd of 14 Acres of Land in B. and of three Acres of Meadow there, and that the Plaintiffs and thofe whose Eftate they have &c. have had, and ought to have, a Way over three Acres of the Defendants to the said Meadow, and that the Defendants have disturbed them, to the Damage of 40$. And the Defendants took the Trespafs severally, and traversed the Preterption, and fo to Hife. And found for the Plaintiffs to the Damage of a Mark; and Thirwit pleaded in Arrest of Judgment, that the Trespafs of the one is not the Trespaft of the other, where the Defendants took the Trespafts severally, and the Damages are assessed intire, where they ought to be sever'd. Per Thirme, this is not much to the Purpofe; but fee, whether the Manure which a Man makes in his own Soil, as here, be Trespafts or not, to have Action upon the Cafe. And after, by Affiant of all the Justices, the Writ was abated by Award. Br. Action Sur le Cafe, pl. 29. cites 2 H. 4. 11.

4. In Detinue, the Plaintiff counted of the Detainer of several Things, and alleged the Value in Gros, and not the several Values of each of them by it felf; the Defendant pleaded Non detinet; a Verdict is found for the Plaintiff, and Damages in a gros Sum; the Plaintiff had Judgment which was affirmed in Error; For the Verdict has made the Count good in this Cafe, as seems to Fitzherbert abridging this Cafe. The Judgment in Detinue is to recover the Thing detained; and if the Sheriff cannot find it, to make the Defendant pay the Plaintiff the Value of the Thing detained, with Damages and Cofts for the Detainer. In the principal Cena, all the Things demanded ought to be delivered, or none of them; For if any Part of them be delivered, the Delivery is void; because there is no Value of that Part found by the Verdict; For the Damages
mages are entire for the Value of the whole. The sure Way is to declare speci-
mally of the Value of every Thing by itself. Jenk. 112. pl. 19, cites 3 H. 6. 43. Waft is cer-
sef, or not demifed, to be in all the Places affigned, as wafted, or when the Recovery in Waft is upon the Grand Difference, but it is otherwife, when the Waft is charged in Several Places, and it is fo found by the Verdict; For in this Cafe several Damages ought to be given. Yet if Waft be alleged in Effect Spurium eftendant, intire Damages may be given. Jenk. 112. pl. 19.

5. Forcible Entry found for the Plaintiff to the Damage of 101. and Costs 3l. Per Straunge, if the Damages are not sever'd in every Action, where a Man recovers Damages, the Justices ought not to give Judgment, and if they do, it is Error; which was denied, per rot. Cur. Brook says, it seems, that his Intent is, that the Damages shall be sever'd from the Costs.


6. Trespafs of Trees cut in two Places, and found for the Plaintiff to the Damage of 40s. the Plaintiff prayed that he might recover the Damages, and so he did; and good per Cur. for Fear of Error. Br. Damages, pl. 149. cites 22 H. 6. 7.

7. In Trespafs of Goods taken against Baron and Feme the Baron pleaded Not Guilty, and he and the Feme pleaded another Plea for the Feme in Juftification, and the first Issue tried in the County where the Writ is brought, and the other in a Foreign County, and both found for the Plaintiff, and Damages entirely given, where the Issue in the Foreign County is Jeofall; the Baron shall have Advantage of the Jeofall, by Readion of the Entier of the Damages; contra, if the Plaintiff had sever'd the Damages.

Br. Damages, pl. 118. cites 5 E. 4. 107.

8. Debt for Damages recovered in Ancient Demise; the Defendant said, that part of the Land was Fane-fee before by Recovery had here in Baue; and byNONE it is a good Plea to all, because the Damages shall be intire; Contra, if they had been sever'd. Br. Damages, pl. 123. cites 8 E. 4. 6.

9. Affife of Land and Rent, Damages are taxed entirely for both; and per Cur. therefore Judgment shall not be given of the Damages. Br. Damages, pl. 201. cites 1 H. 7. 23.

10. In Covenant; the Breach affigned was in two Covenants, and it appeared, that for the one he had no Cause of Action, and for the other he had good Cause, and fuite was jointed upon both, and both found for the Plaintiff, and Damages entirely alledged. The Plaintiff could not have Judgment.


11. Slander was in thefe Words, Thou art a Thief, Murderer, Villain, Blood-fucker, Bankrupt; The Plaintiff had a Verdict for him, and intire Damages alledged; He had Judgment and affirmed in Error; For it is all one Slander, and not at different Times. It is sufficient in this Cafe, if one of the Words will maintain an Action; As in an Action for two Rents, and one is Arrear; So where a Writ is brought for two Things, and it does not hold for one of them. Jenk. 301. cites 11 Rep. 42. Godfrey's Cafe.—And Trin. 8 Jac. B. R. Luker's Cafe.

12. In Trespafs for Battery of the Feme against three; the Defendants pleaded several Pleas, and three Issues being joint'd, one Jury found all three Issues for the Plaintiff, and affiled Damages entirely to 40l. and Judgment given accordingly in B. R. And upon Error alledged, because of the intire Damages upon the several Issues, Judgment was affirmed in the Exchequer Chamber. Cro. J. 354. Mich. 13 Jac. B. R. Matthews v. Cole, Doughtry, &c.

13. For Damages entirely given The Difference is, where a Thing is insufficiently alledged, for which Action may lie, there no Judgment shall be given; But where Action is brought for two Things, for one whereof no Action at all will lie, there Judgment shall be given; And per Doderidge, where a Man can have no Action in Futuro, intire Damage shall be no Flaw; Secus where he may for the time thing. Per Jones J. Palm. 533.

Patich. 4 Car. B. R. Jones v. Powell.

7 L

14. A.
14. A. and B. make mutual Affirmities the 30 Nov. 29 Eliz. to stand to the Award of C. of all Controversies between them; a Judgment among other Things was put into the Award; an Award is made of two Things, that A. shall pay 15 l. to B. at a certain Day in Satisfaction of the said Judgment, and that A. shall make a Release of all Demands to B. until the 1st of February ensuing the said 30th of Nov.—B. brings an Action upon this Affirmity against A. and the Plaintiff declares of the said two Points broken, and it is found with him, and intire Damages are given. Resolved, that the Count was good, altho' the Breach be assigned in two Points; for it is not as a penal Obligation to perform several Things; For in such Case the Plaintiff in his Replication shall assign one Breach only; for that is sufficient to forfeit the Obligation. But in this Case only Damages are recoverable; and they are relative to every Breach, as in Case of many Covenants contained in one Deed. It was resolved, that the intire Damages were ill given, and made the Judgment erroneous, because the Release is of more than was submitted to the Award. These Damages shall be understood to be given for these two Breaches. Understand this Case, that there was no Affirmation taken by the Defendant, that the other Controversies were between the said 30 Nov. and 1st of February. Jenk. 264. pl. 67. cites Doir v. Bedle, 10 Rep. 130 [131. a. & c.] in Osborn's Case.

15. Case &c. against a Parson, wherein the Plaintiff declared, that whereas the Sacrament of the Lord's Supper was to be administered to the Parishioners on such a Sunday, the Defendant licet Sepsius requisi' refused to admit the Plaintiff; And declared also, that he refused to admit him on another Sunday, but laid no Request on the second Actual; After a Verdict for the Plaintiff, and intire Damages for both. This was moved in Arrest of Judgment, and it was arrested accordingly, but no Opinion was given, whether the Action would lie or not. Sid. 34. Patch. 13 Car. 2. C. B. Clovell v. Cardinal.

16. In Trespass; Plaintiff declared of Assault, Battery, and Wounding; Defendant pleaded as to the Force Not Guilty, and as to the Assault and Battery That he was doing such Work and Plaintiff interrupted him, by which Mollier manus &c. and so to illue. The Jury found Defendant guilty De Injuria sua Propria, and so recited the whole Declaration of Assault, Battery, and wounding, (whereas the Wounding was not in illue) et effendant Damna Occasione Transgressivis illius ad 20 l. After several Debates, it was held by all the Court, except Windham J. that it shall be intended, that they have given Damages for all that is in the Declaration, as well the Wounding, which was not in illue, as for the reft, and so Error; For Plaintiff might have demurred upon his Plea. Sid. 96. Mich.

14 Car. 2. B. R. Calvert v. Arnold.

17. Want of mentioning particularly a Confederation of a second Promise, and intire Damages given, will hinder the Plaintiff from having Judgment. Vent. 27. Patch. 21 Car. 2. B. R. Moor v. Lewis.

18. Per Cur. where a Continuando in Trespass is impoible, and intire Damages, Court will intend that nothing was given for the Continuando; becaufe impoible. 12 Mod. 24. Patch. 4 W. & M. Anon.

19. In Trespass for breaking and entering the House of A. B. and taking the Goods of C. D. ad Damnum informam; a Verdict was given for the Plaintiff, and intire Damages. It was moved in Arrest of Judgment, that this Action could not be maintained, especially since the Jury gave intire Damages; For how could the Plaintiff, who had no Right to the House, (for that was in A. B.) recover Damages for the unlawful Entry, or [how can A. B. recover] Damages for the taking the Goods in which he had no Property; For the Property of the Goods was in C. D. And Judgment was arrested. 8 Mod. 375. Patch. 11 Geo. 1726. Maddox v. Taylor.

Action was brought for entering the House of A. and taking the Goods of A. and B. and Judgment was arrested. 8 Mod. 372. cites 3 Cro. but no Page. or Case.

(E. 2)
(E. 2) Judgment refused to be given by the Judges; In what Cases.

1. A SSISE was taken in Pais, and adjourned into Bank, and because the Justices saw Error in the taking of the Affé, therefore they would not give Judgment. Quod Nota. Br. Error, pl. 113. cites 16 Mf. 6.

2. Precipue quod reddet against a poor Man and his henne, who rendered the Action, and for the Sulpicion the Court examined them; and it was found upon this, that the Demandant had brought the like Action against T. E. who vouched an Infant, and the Parol demurred, and that the Tenant had no Title nor Estate, but after Mich. ultimo, and this was in Termino Sanfti Mich. and for these Sulpicions &c. For it may be that the poor Man rendered it by Cavin between the Demandant and him, to defeat T. E. of the Land; therefore they refused Judgment, and commanded the Demandant to sue to the Council, and as they would, the Court would do; for the Justices have been commanded in Parliament to be well advised upon such Cases. Quod Nota. Br. Judgment, pl. 45. cites 39 E. 3. 35.

3. Where a Verdict is imperfect, no Judgment can be given upon it; but the Court will grant a new Ver. &c. to summon another Jury to try the Cause. L. P. R. cit. Judgment. 98. cites Mich. 23 Car. B. R.—For the Parties shall not be compelled to go farther back in their Proceedings, than where the Error was made; and that was by the Jury in finding an imperfect Verdict. Ibid.

(F) Release. What collateral Act will hinder a Judgment, viz. Release to one of the Defendants. See in Titles Error, Release &c. [Several Defendants plead several Pleas &c.]

1. If a Man in Action of Trespass against two, and upon several Pleas pleaded, and several Issues, has a Verdict against one of the Defendants, he may take Judgment against him; and after this Judgment he may relinquish his Suit against the other; For when he has his Judgment against the one, the relinquishing the Judgment against the other cannot abate the Writ. 14 E. 4. 6. 15 E. 4. 26. 27. Dill. 11. B. K. Rot. 1355. between * Parker Plaintiff, and Sir John Lawrence, and others Defendants; After Verdict upon Not Guilt against Lawrence, he took his Judgment against the others, and left the Demurrer upon Justification of the others, and adjudged good in the Exchequer Chamber in Writ of Error. See the same Case Hobart's Reports. 96.

and Execution against the other. Mo. 624. Trim. 42 Eliz. Countes of Warwick v. Atwood and Davis.

2. In Trespass against diverse, if the Defendants plead several Issues, and one Issue is found against one of them, if he releases his Suit against the others before he has Judgment against him who is found guilty, he shall be barred against him also; Because a Release to the others is a Satisfaction of the Trespass. 14 E. 4. 6. Trim. 15 Ja. between * Poole and Shob, in Writ of Error at Serjeant's Inn; Agreed per Curiam (R. But 14 E. 4. 6. 16, that the Writ shall abate) but it
it is clearly a Bar for the Cause afofai'd. 7 • 6. 21. b. 15 C. 4. 26. b. 27. b. Unjudged.

3. The fame Law in a Writ of Difciit against diverse. 9 • 4. 3.

4. So in a Writ of Difciit against diverse, if the releafes to one, who makes Default, he shall bar himself of his Action against the others. Contral. 9 • 4. 3.

5. In Trepsals of Battery against two ; the one pleads Not Guilty, and the other De Jofn Affault Denoife he, and the Jury finds against both, and affails 20 l. Damages against one, and 40 l. Damages against the other, and Costs intire against both ; And the Plaintiff after comes, and Fature fe uterius nole Prosequi against the one, and takes his Judgment for the 40 l. against the other, and all the Costs afoffed. This is not erroneous, tho' the Costs are intire. Hill. 7 Car. 2. R. between Welch and Bishop. Adjudged per Curiam tho' the Nolle Prosequi be before Judgment ; For it is not any Release, especially in this Case, where none of the Pleas go to the whole. Intera-

tur Hill. 6 Car. Rot. 954. And then were shown these Precedents Bich. 4 D. 8. Rot. 545. The Bishop of Oxford brought Action upon the Statutte of W. 1. de Malefactoribus in Parcis a£ain to two, one pleaded a Licence, and the other Not Guilty, and both found for the Plaintiff, a Nolle Prosequi against one, and Judgment against the other. Cr. 3 Car. 2. R. Rot. 1848. Lowman v. Stileman, * and three others. In Trepsals, the three pleaded a Special Plea, whereupon special Hifue was joined, and the other pleaded Not Guilty, and Verdict for the Plaintiff, and Damages 6 l. and Costs 12 l. and Plaintiff re-
linquished his Suit against the one, and had Judgment against the others for Damages and Costs.


7. In Trepsals against Baron and Feme, the Plaintiff cannot relinquish the Suit against the Feme, and take Judgment against the Baron ; For as the Baron shall be charged by the Plea of the Feme, so he shall have Advan-
tage of the Jeofall of the Feme. Br. Repleder pl. 34. cites 5 E. 4. 108.

8. In Action of Trepsals and false Imprisonment &c. against 3, viz. B. C. and D. — B. confessed the Action, C. and D. pleaded Not Guilty, but the Jury found them guilty jointly, and assails several Damages, viz. 1000 l. as to C. and 50 l. as to D. and likewise 50 l. as to B. And then the Plaintiff entered a Nolle Prosequi as to D. and B. and took his Judgment against C. for the 1000 l. The Question was, if this Nolle Prosequi against D. and B. before Judgment was in Nature of a Release, and to a Discharge to all. But it was adjudged for the Plaintiff in B. R. and affirmed in Error in the Exchequer Chamber ; and afterwards, in W. & M. the Judgment was affirmed in Parliament. Carth. 19. Mich. 3 Jac. B. R. Rodney v. Strode & al.

On the Trial the Jury found them all guilty, and assails Damages severally, viz. 20 l. as to him that iudgment, and 200 l. as to the other two. And the Plaintiff entered a Nolle Prosequi as to him who iudgment, and took Judgment against the other two for 200 l. And the Plaintiff had Judgment in B. R. which was confirmed in Error ; For it was held, that the Entry of the Nolle Prosequi bad cured the Defect of that Verdict, Cited Carth. 21. in the Case above, as then lately adjudged in the Case of Trebarefoot v. Greenaway.
(G) Where a Release, or Nolle Prosequi of Part of the Thing demanded, will be a Release of all

1. In Trespass of Battery and Imprisonment &c. If Defendant pleads Not Guilty to part, and a Jutification for the Residue, upon which a Demurrer is joined, the Plaintiff may take Judgment for the Defendant by Award of the Court, in which the Law is for him, and enter a Nolle Prosequi as to the Issue. Cr. 15 Ja. in the Exchequer Chamber, in Writ of Error upon Judgment in B. R. Pet Curiam.


4. A brought Trespa$ against B. C. and D. - B. pleaded not Guilty, and so to Issue. C. and D. justified. Plaintiff replied, and Demurrer was joined. Pending the Demurrer, the Issue was tried against B. and Damages and Judgment against him. After Judgment the Plaintiff entered a Nolle Prosequi against C. and D. Defendants brought Error, and alleged for Error, that the Nolle Prosequi discharged all the Defendants. The Court agreed, that if the Nolle Prosequi had been before Judgment, it had discharged the whole Action, and so it had if the Judgment had been against them all, and then the Plaintiff had entered the Nolle Prosequi against the two; For Nonuit, or Release, or other discharge of one, discharges the rest. But because here the Action was at an End against B. and no Judgment had against C. and D. so as they are divided from B. and are not judged to Damages found against him, it was adjudged, that he was not discharged, and so no Error. Hob. 76. Hill. 11 Jac. in Cam. Secchi.

Parker v. Sir John Lawrence, Nevia, and Wood.

or three, in Trespass or Debt, a Release of Execution against one takes away the whole Execution; For the Execution ought to be Joint, as the Judgment is.

4. Where there are several Issues, a Judgment may be entered as to one, and a Nolle Prosequi as to the other. L. P. R. 114.

(G. 2) Aided by Release of Damages, or what else would make Error.

1. In Affies, the Tenant pleads a Release in a foreign County, by which the Affes is sent into Bank to be tried, and the Release is found against the Tenant; now if the Plaintiff will release his Damages, he shall have Judgment to recover the Land immediately, and if not, the Affes shall be remanded to inquire of Damages. Br. Judgment, pl. 159. cites 6 Aff. 4.

2. Trespa$s of Trees cut at Valentiam 50 l. and Goods carried away at Valentiam &c. at Domnun, in all to 200 l. and the Defendant was acquitted of the Trees, and attainted of the Goods taken at Domnun 38 l. The Plaintiff prayed Judgment of all the Damages, & non allocatur, in as much as the Defendant is acquitted of the Trees, and therefore the Damages shall be abridged, viz. according to 50 l. out of the 200 l. by which the Plaintiff released accordingly and had Judgment of the Residue. Br. Abridgment, pl. 27. cites 38 E. 3. 25.

3. Debt of 100 l. to the Damage of 20 l. the Defendant sued his Law and failed to perform it; by which the Plaintiff had Judgment to recover the Debt,
Judgment.

Debt, but net Damages as be counted; wherefore he releas'd 15l. and then he had Judgment to recover the Debt and Damages to 10l. &c. But it is usual at this Day to give Judgment of all, if it was in Case where the Damages are Principal, and because the Plaintiff had releas'd 10l. therefore Flat Executo but of 10l. Rehide only. Br. Damages, pl. 23. cites 42 E. 3. 11.

4. In Replevins Damages of 10l. sawn found for the taking; the Parry pray'd Judgment; Per Cur. you shall or have it undo you will releas part: For as well as we may increace Damages, so we may abridge the Damages, by which the Plaintiff releas'd all except 5l. But Brooke says, it seems that this is not properly Abridging; and it was upon Issue tried. Br. Abridging, pl. 34. cites * 31 H. 4. 16.

5. In Detinue of a Cheif with Charters the Defendant would have confess'd &c. if the Plaintiff would releas his Damages, and the Plaintiff would have releas'd his Damages, and could not before Judgment, by which the Defendant confess'd &c. and the Court gave Judgment and 20l. Damages, and then the Plaintiff releas'd his Damages; quod nona, and could not before. Br. Damages, pl. 138. cites 11 H. 6. 29.

6. In Debt if a Man confesses part and denies the rest, the Plaintiff shall have Judgment of the Part and of the Damages immediately; but confes Executo; For the Cots are entire, and cannot be discussed till the other Issue be tried, but if they will relinquish the other Issue, he shall have Judgment and Execution immediately of the Part confessed, but shall not have Damages nor Cots; nona, and so he had there. Br. Cots, pl. 17. cites 36 H. 6. 13.

7. Where two Issues are in Trepsals, and one goes to all, and both found for the Plaintiff, there the Plaintiff, to be sure, may releas his Damages for Part and have Judgment for the Rest; for in Trepsals where Diverse Pleas are pleaded, and found for the Plaintiff, and the Damages are fervor, the Plaintiff may releas Part and pray Judgment of the Rest. Br. Trepsals, pl. 292. cites 5 E. 4. 124.

8. In Debt for Arrears of Rent the Plaintiff declared of more than was due, and for a longer Time than upon his own shewing appeared to be due to him; the Defendant perceiving this pleaded Nil decint, but concluded his Plea with hoc paratus est verdictum, and not to the Country, as he ought to do, on purpose that the Plaintiff might declare, which Plaintiff accordingly did, and had Judgment against the Defendant for the ill Conclusion of his Plea; but the Plaintiff afterwards finding his Mitake entered a Remittit for so much in the Declaration as was more than due to him, and took his Judgment for the Rest; The Defendant thereupon brought Error in the Exchequer Chamber, and this very Exception was taken to the Declaration, and many Cases cited to prove that the Plaintiff might releas the Surplusage before Judgment, which if he had neglected, yet the Court ought to give Judgment for so much as was well demanded in the Declaration, and that this seemed agreeable to the Rule in Godfrey's Case, that if a Man brings an Action for several Things, and upon his own shewing it appears, that he cannot have Action for one Thing, the Writ shall not abate for the Whole, but he shall recover for what the Action will lie, and be barred for the Rest. 5 Mod. 214. Arg. cites it as the Cafe of Dupp v. Baskerville.

9. If Judgment be given for more than Plaintiff demands, the Judgment is erroneous; but Plaintiff, in entering up his Judgment, may enter a Remittit damns for Part. L. P. R. tit. Judgment 96. cites Patch. 23 Car. B. R. For to give one more than his due is equally unjust as to deny to give what.
what is his due; and it shall be presumed, the Plaintiff best knows what his Due is, and will demand it to the full; or if he should not, yet it suf-

fices if he will be content to demand less.

10. In Replevin &c. the Defendant avowed the Taking &c. for so much Rent due in Money, and also for so many Hens; and after Issue joined, and a Verdict for the Avowant, it was moved in Arrest of Judgment for that upon the Face of this Avowry it appeared, that the Hens were not due at the Time of the Distress taken, and here the Damages and Costs were intire, but the Plaintiff offered to release the Damages and also Rent for the Hens, and take Judgment only for the Rent in Money, which was opposed, un-

less the Plaintiff would likewise release the Costs; to which it was an-

swered, that there was no Necessity of releasing the Costs, and to prove it

Byns & Newton, Trin. 28 Car. 2. B. R. Rot. 728. was cited, and a

Copy of the Record was produced, where in the like Case the Rent was not due, and all the Damages were released, and the Avowant had Judg-

ment for the Refidue, and also for all the Costs, and the Court was of that Opinion in the principal Case, wherefore the Avowant entred a Re-


(H) How. In what Cases it shall be Conditional.

1. In Right of Ward, if the Ward be within Age the Judgment shall not be Conditional to recover the Value of the Marriage if he be married, but only to recover the Ward and Damages; but if the Ward be married in the mean Time, he shall have Seire facias to recover the Value found. 45 Eliz. 3. 16. b.

2. In Detinue the Judgment shall be Conditional, that is to say, to recover all the Things and Damages, and if any Thing be lost, then, that he shall recover the Value of it. 3 Ch. 6. 43.

3. So in Detinue of Charters the Judgment shall be Conditional. 3 Ch. 6. 43. 7 Ch. 6. 31. M. 21 Jac. 2. R. 862. between Haywood and Peters in a Detinue for an Obligation, Judgment given to recover the Obligation, or so much in Damages, and not to recover the Obligation with Damages if it may be had, and if not, all in Damages, as it ought; and therefore it was reversed in Writ of Error, because upon this Judgment the Sheriff may give to join the Obligation, or so much in Damages at his Pleasure.

4. In Ravishment of Ward, the it be found that the Ward is not married, yet Plaintiff shall recover Damages Conditionally; For he may be married the same Day. 9 Ch. 6. 61. b.

5. In a Detinue, if Judgment be given upon a Nihil dicit, Non sum inforinatum, or by Default, or Stich hat, the Judgment may be good re-
superet the Thing demanded or the Damages, and it is good, tho' it be not to recover the Thing, Si haberi poterit, & if non the Damages, be-
cause it may be made certain by the Writ of Inquiry of it, and the first is but an Award and the Judgment not final till the second Judgment. Stich. 21 Jac. 2. R. agreed per Citian between Petters and Hayward.

Littleton said that the Judgment in Detinue is to recover the Thing de-
manded, and if lost, the Value, which Prior Ch. J. denied ex-

prefly, and said, that in Detinue, or in Debt against Executors, he shall have Judgment of the Thing de-

manded, and shall have Execution, and if the Sheriff returns that the Thing is lost, or destroyed, or a Defeat-
Judgment.

[Text of the page discussing judgments, execution, and relief in cases involving tenants and heirs.]

(H. 2) How. Of Assells Quando acciderint.

1. Debt against an Heir who pleaded that he had nothing but a Reversion expectant on an Estate for Life, the Plaintiff joined with him and took Judgment upon the Confession, and to have Execution when the Reversion falls in Possession; per Holt Ch. J. in delivering the Opinion of the Court. 7 Mod. 43. Trin. 1 Anne. B. R. in the Case of Smith v. Angell.—Cites Herne's, pl. 307.

Assells defend. 8 Rep. 134. in Mary Shipley's Case.—And a special Writ shall issue to extend the whole Land; and it seems that this was the Law before the Statute of W. 2. 15.

(H. 3) Given of one Thing by the Name of another.

1. In Assells, the Judgment was that the Plaintiff recover the Tenements put in View, where the Assell was of Rent, and yet good; and the Writ of Attaint was formed accordingly, and well by Award. Br. Judgment, pl. 71. cites 30 Ass. 24.

(I) How it shall be given. In what Cases Nil Capiat per Breve.


1. If upon a Bar pleaded it be found for the Tenant, the Judgment shall be, Quod Plaintiff nil capiat per Breve. 3 H. 4. 8.

When Judgment is given against the Plaintiff, either in Bar of his Action, or in Abatement of his Writ &c., the Judgment is all one, viz. Nil Capiat per Breve, and it appears by the Record, whether the Plea did go in Bar or to the Writ. Co. Litt. 362. a

2. So
2. So it shall be if the Writ abate for false Latin. 3 D. 4. 3. See Abate.

3. So it shall be if Writ abate for want of the Year, Day, or Place in the Count. 3 D. 4. 3.

4. Where a special Plea is to a Declaration and a Demurrer to that Plea, and Judgment for Defendant, the Judgment must not be that the Plea is good in Law, because that would be a perpetual Bar to the Plaintiff; but it must be Quod querens nil capiat per Billam; and then he may amend his Declaration and bring Action de Novo. L. P. R. tit. Judgment 113.

5. The Defendant in Error pleaded a Release of Errors and upon a Demurrer it was doubted what Judgment should be given; for the first Judgment being erroneous the Court could not affirm it, but per Cur. a Nil capiat per Breve shall be entered. 3 Salk. 214. Trin. 1 W. 3. B. R. Kier v. Clifton.

6. In Debt upon Bond if the Defendant pleads AntesJois acquit in an Action upon the same Bond and the Judgment was, that the Defendant should recover Damages, et est inde finis the court is naught, without saying further Quod querens nil Capiat per Billam; because Disquisition is no Judgment in a Court of Law. Holt's Rep. 397. cites 3 Salk. 213. per Holt Ch. J. Hill. 6 W. 3. B. R. in Banbury's Cafe.

(I. 2) How. Against the Plaintiff. That the Writ shall abate, or that Demandant shall be barred.

1. ENTR'Y in the Quilus of Diffeife done to himself against two, the one appears at the grand Cape, and the other makes Default after Default, and he who appears at the grand Cape pleads Maintenancy with a Stranger, and tenders his Ley Gager of Non-Summons; the Plaintiff maintains his Writ, that the two Diffeised him and took the Profits, and his Action is brought within the Year, and the other said that he did not Diffeise him, which is found against the Plaintiff, Judgment shall be that the Writ shall abate, and not that the Demandant shall be barred, and yet the Diffeisin in Bar had been a good Plea; but as here it comes upon the Idea in Maintenance of the Writ; nota the Divergency. Br. Brief, pl. 236. (bis) cites 14 H. 6. 3. See Abate.

(K) How it shall be given. [And in what Cases two Judgments shall be given in the same Action.]

1. IN an Information by a common Informer upon the Sature of Recency, that the Sum to be recovered is to be divided into three Parts, yet one entire Judgment shall be given for the Whole. 39 Jac. B. per Curiam between Saint John and Sebrell.

2. Debt against three by several Precipes upon one Obligation in which all were bound & quitted in two; they confessed the Action by Attorney, and the Plaintiff had Judgment to recover all in Common, quod nota, and not severely. Br. Detts, pl. 30. cites 41 E. 3. 9.

3. Where the Jury appears and have Day till the next Day, or where a Judgment is to be given, and the Justices said, that if the Defendant casts Protection the next Day, the Judgment shall be entered this Day, but where no Protection, nor such Act comes, it shall be entered the Day after; and so fee that Judgment may be given nine pro tuno, or tune pro nine, and well. Br. Judgment, pl. 83. cites 7 E. 4. 27.

4. In
Judgment.

In diverse Actions a Man shall have two Judgments; as in Dower, the Tenant pays that he has been all Times ready to render Dower; the Defendant shall recover Dower immediately, and the Plaintiff be of the Damages, and another Judgment thereof after. Br. Judgment, pl. 122. cites 13 E. 4. 7. per tot. Cur. except Brian.


Every Judgment must not only be complete, but also Formal; and therefore if a Quo Warranto be brought against the Defendant for Uprising Royal Franchises, and the Court should give Judgment, that he has no Title, yet unless they go on and say Quod abdum excludatur it is ill; Per Holt Ch. J. 3 Salk. 213. Hill. 6 W. 3. B. R. in Banbury's Cafe.

If Trespass is brought of Trespass done in Lands belonging to such an House, tho' it appears at the Trial that the Plaintiff has no Title to the House, yet the Court cannot give Judgment to turn him out; because it was not judic平安 before them; per Holt Ch. J. 3 Salk. 213. Hill. 6 W. 3. B. R. in Banbury's Cafe.

(L) At what Time it shall be given. [Where presently for the Debt &c. on Plea, but not for the Damages till the other Plea tried.]

1. In Affidavit, if upon adjournment in B. the one Party makes Default, before the Court shall give Judgment of the Principal they shall award the Affidavit for Damages; because all shall be one Record, and the Judgment shall not be render'd by Parcels. 17 C. 3. 21. 5.

2. In Action of Warrant if Defendant demurs upon the Count, and this is adjudged against him, yet he shall not have Judgment for the Land till the eject Damages are found; for they are the Principal. 34 Pl. 6. 8.

3. In Trespass against several, if one pleads and is found Guilty by Inquest, Plaintiff may have Judgment against him immediately, and Execution shall cease till the others are Attaint. 44 E. 3. 3. 7. B. adjudged. Concorda 10 P. 6. 10.

4. In Quare Impedit against the Ordinary and others, and the Ordinary pleads that he claims Nothing but as Ordinary; Judgment may be presently against him, that Plaintiff shall have Writ to the Bishop before the Plea in Bar of the others tried. 8 P. 4. 22. 2.

5. In Coinage by Coparceners, if the Release of one be pleaded in Bar, and the pleads Non ehit Faciam, and the other goes to Issue upon the Title, and it is found for her, and Damages assailed, yet the Plaintiff shall have Judgment till the other Issue tried; for it is found for the other Demandants, they shall recover in Common, otherwise but a Holtey. 10 P. 6. 10. adjudged.

6. When a Thing intire is seised by Plea, Judgment may be given immediately of that which is to seise d. 44 E. 3. 18. and
and one confesses the Action and the other pleads to the Writ, the Plaintiff recovered the penalty of the Debt immediately against him who confessed the Action, and to the Debt recovered. Br. Judgment, pl. 84, cites 4 H. 2. 87.

7. As in Scire facias to execute a Judgment of Annuity, if the Parties are at Issue for Part of the Arrearages, and it is to be adjudged against the Defendant upon Demurrer for other Part, Judgment may be of it immediately. 44 C. 3. 18.

8. But such Judgment can not be in Writ of Account. 44 C. 3. 18.

9. In Scire facias by the King to require Letters Patents of a Market, if they are at Demurrer for one Day of the Market, and at Issue for the other, no Judgment shall be upon the Demurrer before the Issue tried; because the Jury shall give Damages for the Whole. 11 D. 4. 5. b.

10. The same Law in Writ of Entry for Cause of the Damages. 11 D. 4. 5. b.

11. The same Law in a Trespass for Cause of Damages. 11 D. 4. 5. b.

12. In Debt upon Contract and Obligation, if Defendant confesses the Action for the Obligation, and Wages his Law for the Contract, Judgment shall be given immediately to recover the Debt upon the Obligation. 3 H. 6. 37. b.

50. In Obligation, and 101. by Contract, the Defendant confessed the Obligation, and tendered his Law of the 10th, and the Plaintiff pray'd his Judgment of the Debt and Damages presently; Per Marten, of the Debt you may, but not of the Damages 'till the Law be done or failed; by which he demurred upon the Law, and the Court adjudged it against him, wherefore he had Judgment immediately of the 50th and of the Damages thereof; Quod Noto, Demurrer by Policy. Br. Damages, pl. 5. cites 4 H. 37. Br. Debr. pl. 202. cites S. C. 3. —Br. Judgment, pl. 4. cites S. C. 3. —Where the Defendant confessed the Obligation, and pleaded Nullit of the Rest. Br. Judgment, pl. 150. cites 42 E. 3. 25. —So in Debt of 10th, the Defendant confessed all except 40th, of which he briefed Acquittance, and the Plaintiff pray'd his Judgment, by which it was awarded that he recover 8l. and be barred of the 40th. For he durst not confess the Acquittance; for then the Writ is abated in form; Per Cur. Quod Noto. And it seems that he might have demurred upon the Acquittance, and then had Judgment of the Rest also. Br. Debr. pl. 5. cites 3 H. 6. 48.

13. But he shall not have Judgment for the Damages 'till the Law Br. Judgment waged or determined; because he may make Default at the Day of the Issue, and to he shall recover Damages twice upon One and the same Original, which is uncontriv'd. 3 H. 6. 37. b. 38. pl. 12.


14. In Debt; if Defendant confesses Parcel of the Debt, and pleads to Br. Judgment for the Rest, the Plaintiff may have Judgment for that which is confessed immediately, if he will release the Damages.

But he shall not have Judgment of the Damages 'till the Issue be tried, tho' it be in Cae to have Damages to be recovered. Br. Judgment, pl. 103. cites 22 H. 6. 45. —Ibid. pl. 150. cites 42 E. 3. 25.

15. So it seems he may have Judgment for the Principal immediately. 18 D. 6. 26.

16. In Nuisance it was said, that in Trespass against two, if the one be attainted of the Trespass before the other appears, the Plaintiff shall not have Judgment 'till the other be convicted also, unless he will release his Suit against the other. Br. Judgment, pl. 128. cites 50 E. 3. 11.

17. If an Ill Bar be adjudged good, and the Demandant reverses it by Writ of Error, he is restored to his Action. Vide elsewhere, whether in such Case the Court did not award that the Demandant shall recover; Brook says, it seems so. Br. Error, pl. 7. cites 9 H. 6. 38. per Rolle. 18. In
Judgment.

18. In Writ of Maje, the Defendant pleaded, that Not Disstained in his Default; there the Plaintiff shall recover by his Acquittal immediately, and Damages when the Issue is tried. Br. Damages, pl. 196. cites 13 E. 4. 6. -

19. Note, there be some Pleas in Bar, upon which the Plaintiff shall have prejudent Judgment. Heath's Max. 57. -

(M) At what Time. [Immediately, upon what Plea of one of the Defendants.]

1. In Ravishment of Ward against diverse, if one be found Guilty to such Damage, the Plaintiff may have Judgment against him of all, relinquishing the Suit against the other. 29 E. 3. 24. b.

2. If in an Action against two one confesseth the Action, yet if the other pleads a Plea which goes in Destruction of the whole Action, Demandant shall not have Judgment against him who confesseth it, 'til the other tried. 7 H. 6. 34.

3. In Debt against two, if one confesseth the Action and the other pleads a Release, Plaintiff shall not have Judgment against him who confesseth the Action 'til the Issue tried. 7 H. 6. 33. b.

4. In Dower against two, if one confesseth the Action, and the other pleads Ne Unques Accouple in lawful Marriage, Demandant shall not have Judgment against him who confesseth, 'til the Issue tried, 'til the Issue tried. 7 H. 6. 34.

5. So in Dower, if one confesseth the Action and the other pleads an Affinment of Rent out of the Land &c. in lieu of Dower; this ought to be tried before Judgment against the other for the Society. For it goes to the Whole. 7 H. 6. 34.

6. In Formedon against two as Heir, if the one confesseth the Action and the other pleads Bailardy in the Demandant, he shall not have Judgment 'til it be tried. Contra 7 H. 6. 34.

7. In
7. If A be plaintiff and B defendant, and B pleads a special plea, which is allowed by law, and then A pleads a new matter of fact, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

8. If B pleads a plea of bar, and then A pleads a new matter of fact, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

9. If B pleads a plea of bar, and then A pleads a new matter of fact, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

10. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

11. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

12. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

13. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

14. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

15. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

16. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

17. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

18. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

19. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

20. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

21. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

22. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

23. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

24. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

25. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

26. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

27. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

28. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

29. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

30. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

31. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

32. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

33. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

34. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

35. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

36. In a suit for debt, if the plaintiff pleads a general demurrer, and the defendant pleads a special plea, the court will adjudge the action as the law directs, and not according to the directions of the defendant. 31 Geo. 1, 14.

(M. 2) Where a verdict is given against one defendant, judgment shall be given immediately, with stay of execution, till the issue is tried against the others.

1. If the verdict is against three, and two appear; and the one pleads one plea, and the other another plea, and the third makes default; and it is found for the plaintiff, and that the third, who made default, had nothing in the fraudulent conveyance; and the opinion of the court was, that the plaintiff should recover against the two, notwithstanding the default of the third. Br. Judg. pl. 140, citing 46 Eliz. 3, 22.

2. If the verdict is against two, and the one makes default after default, and the other pleads release of all actions; the defendant shall have set off the land of the one moiety, yet the release goes to all; per Littleton. See also Br. Judg. pl. 38, citing 15 Eliz. 4, 25 & 26.

Quod Nota.

Br. Damages, pl. 78, citing S. C.
Judgment.

3. Quaere Impedimt against two; the Plaintiff recovered against the one; and had Writ to the Bishop and Damages for half a Year, but Ceflet Execution 'till it be tried between the Plaintiff and the other; For otherwise the Writ shall abate against the other. Br. Judgment, pl. 82. cites 20 E. 4. 1.

(M. 3) Ceflet Executio. Where there is one Defendant only, who pleads several Pleas, and one is found against him, in what Cases the Plaintiff may have Judgment with Ceflet Executio.

1. Debt of 10 l. and counted upon two Obligations, and the Defendant acknowledged the one and denied the other, and of that which was acknowledged he had Judgment to recover, and for the Damages he shall stay 'till the other be tried; quod Nota Bene. Br. Judgment, pl. 139. cites 42 E. 3. 8.

2. Debt of 40 l. whereof 20 l. was upon a Lease for Years, and the Rest by Obligation; They were antifeil, and the first Issue found for the Plaintiff, and pending this, he prayed Judgment of his Damages, and would repleit the Debt and the Cotts 'till the other Issue be tried; but 'tis said, that first he ought to release his Cotts; nevertheless, Quære if it be not mis-reported; for it seems that it should be, that he prayed Judgment of the Debt, and repisited the Damages and Cotts; Quære, For it is said there, that unless he does so, he shall stay 'till the other Issue be tried; quod nota bene inde. Br. Judgment, pl. 145. cites 32 H. 6. 4.

3. In Debt, where the Defendant says as to Parcel, that he has been at all Times ready, and yet is, to pay, and brings the Money into Court, and to the rest pleads in Bar; the Plaintiff may have Judgment of the Parcel conferred immediately, and of Damages; For the Court may Tax them; but Ceflet Executio till the other Issue be tried; for the Coffs shall be entire which cannot be difcuted till the other Issue be tried; per Prior, but for Danby he shall stay from Judgment till the other Issue be tried, by reason of the Damages. Br. Judgment, pl. 53. cites 36 H. 6. 13.

4. Debt in Bank of a Contref made in London; the Defendant pleaded Nichil Debt per Patriam to part, and Release of the Rest made in Middlesex; upon which they were at Issue, and the Release found against the Defendant, and the Plaintiff pray'd his Judgment immediately, before the other Issue tried, and had it, but Ceflet Executio, 'till the Issue be other tried, quod Nota Bene. Br. Judgment. pl. 39. cites 14 H. 7. 7.

(N) When a Plea is good for Part, and ill for other Part, How Judgment shall be given.

If a Plea to the Whole answers but Part, 'tis demurrable; if a Plea to part answers but
be doth not make any answer to the Trespass with the other Bealls, Judgment shall be given against the Defendant for the whole, as well for Trespass with the Bealls as for pulling down the Hedge. [Sachs. n Car. B. R. between Blockley and Skinner; per Curiam adjudicat. Inter tract. 11. 14 Car. Rot. Here this; For it was several Pleas; it seems that the Judgment ought not to be given against the Defendant for pulling down the Hedge.

(N. 2) When a Plea &c. is good for Part and ill for Part, In what Cases Judgment shall be given for what is good.

1. IN Debt upon the Statute 37 H. 8. of Usury for lending 40l. Corruptive against the Form of the Statute ; and that such a Day he lent 20l. &c. against the Statute, but does not say Corruptive; Defendant pleaded Non Debit and found against him. It was moved, that Plaintiff should not have Judgment for either of those Sums, for want of the word Corruptive ; but all the Court held that it being good for Part, he shall have Judgment for that Part; For being for several Sums it is in Nature of two several Actions, and so tho' it be void for the one, it is good enough for the other, it being only a Mislifion in his Writ or Count. Cro. J. 104. Mich. 3 Jac. B. R. Woody v. ......

But afterwards it is where one brings an Action for two Things and focuses by his own Conception that for the one be had not any Cause of Action, or is to have another Action. Ibid. cites to H. 6. 5. 47. E. 3. 2. 9 H. 8. 10. 9 H. 7. 3. 21 H. 7. 53. D. 569. — And it was held that if in the principal Case, the Defendant had demurred upon the Declaration, it had been good for the one and the Plaintiff should have had Judgment for that Part. Cro. J. 104. Woody's Case.

So in Debt against an Executor upon an Obligation of Teflator and upon a Simple Contract, it is good for the Obligation. Ibid. in Woody's Case.

2. Defendant avowed for 5l. Rent due such a Day, and for Sol. Nomine Piena for Non-payment, but laid no actual Demand of the Rent, and concludes that for the same 53l. he did dilate &c. The Court resolved, that this was insufficient for the Pain, which could not be forfeited without actual Demand of the Rent; and yet the Return was adjudged, because he had just Cause to dilate for the Rent, and they appeared to the Court to be several. Hob. 133. Mich. 13 Jac. Howell v. Sambach.

3. In Bill of Debt against an Attorney, the Defendant counted upon three Bonds of so much each; Upon Over of the Condition it appeared that one of them was not payable till after the Action brought; the Jury found for the Plaintiff and alleged entire Damages and Costs; and Per. he cannot have Judgment in Form as it is found; but upon Release of Damages and Costs, Judgment was given for the two first Bonds only; For tho' the Bill was of an entire Sum, yet it appeared by the Court that they were for several Damages; so the whole Suit is not satisfied by the Plaintiff himself; For it is as several Demands and Suits. Tamen Quere if it had been so by Original. Hob. 178. Andrews v. Delahaye.

4. If there are three Replications, and the last of them is superfluous by concluding to the Country, and the Defendant demurs to them generally, it was laid by the Court that the last being superfluous, and the other two being sufficient, the Plaintiff shall have Judgment upon those which are material, and the last is not to the Purpose. Saund. 338. Mich. 21 Car. 2. in Cafe Hancock v. Proud.

5. If an Action of Covenant be brought, and divers Breaches assigned, some good and some ill, if the Defendant demurs upon the entire Declaration, the Plaintiff shall have Judgment for those Breaches which are well assigned, and shall be barred for the Remain. Arg. and of such Opinion was all the Court without any Difficulty. 2 Saund. 360. Trin. 23 Car. 2. in Cafe of Pinkney v. the Inhabitants of East Hundred.

6. In
6. In an Action by a common Carrier on the Statute of Hu and Cry, if the Count was of a Recovery of 29l. in Money and of Goods of the Value of 39l., but did not shew the Particulars of the Goods; nor that they were his own, the Defendant demurred to the whole Declaration, and the Plaintiff's Counsel admitted the Declaration insufficient as to the Goods, but as to the Money, Judgment was given for the Plaintiff, and he entered a Re-mittiss Dampna for the Goods.

2 Saund. 379. Trin. 23 Car. 2. Pinckney v. the Inhabitants of East Hundred.

See (F) pl. 1.

(R. b) &c.

(O) In what Cases a Judgment may be hoftied. [By releasing the Damages either to a sole Defendant, or to one where there are several.]

1. In Affrs. if the Tenant pleads a Release in Bar, and it is found false, if he shall release the Damages, he shall have Judgment to recover the Land immediately, and in the Roll shall be entered, Quod Peteus petri quod non iniquitat de Damn. 22 E. 3. 4. b.

2. In Affrs. against diverse, if Judgment be to be given against one upon his Plea, if the Demandant release his Damages he shall have Judgment against him to recover the Land at his Peril, this it may be that another of the Defendants is Tenant; but this is at the Peril of the Demandant; for if another be Tenant, and Demandant enter upon him by Force of this Recovery, he is a Dilator. 43 Atr. 11. adjudged. 44 Atr. 35. adjudged. 44 E. 3. 23.

3. In Ravishment of Ward against diverse, if the one be found Guilty to a certain Damage, the Plaintiff may have Judgment against him immediately, releasimg his Suit against the others. 29 E. 3. 24. b.

4. In Action of Wait, if the Defendant demurs upon the Count, the Plaintiff shall have Judgment immediately for the Land, if he release the Damages, the Damages are the Principal. 34 H. 6. 8. adjudged.

5. In Trespass against diverse, if the one pleads and be found Guilty, the Plaintiff may, upon his Prayer, have Judgment against him, releasimg his Suit against the others. 44 Atr. 33. 44 E. 3. 24. adjudged. 22 Atr. 59. 29 E. 3. 24. b. accordingly in Ravishment of Ward.

6. In Trespass against diverse, if one pleads a special Plea upon which it is demurred and the other pleads Not Guilty, and after Judgment is given for the Plaintiff upon the Demurrer, and a Writ to Inquire of the Damages forced and the Damages found, the Plaintiff may have Judgment against him for those Damages and releasimg his Action against him who pleaded Not Guilty. Tr. 14 Id. B. R. adjudged between Hobley and Sir Anthony Midday.

7. Trespass against two, who are at Huice, and the Issue is tried against the one before the other, by which the Plaintiff prayed Judgment against him, and released his Suit against the other, wherefore it was awarded that he recover his Damages against the first, &c. 44 E. 3. 7.

8. De-
Judgment.

8. Decies Tantum; the Plaintiff ought to sever his Damages against each Defendant, and for not doing it they were in the Opinion to have awarded a new Inquest, and therefore the Plaintiff released his Damages, and had Judgment. Br. Damages, pl. 30. cites 44 E. 3. 36.

9. Trepass against Baron and Feme, the Baron pleaded Not Guilty, and as in Trepass against the Feme pleaded a foreign Plea, triable in a foreign County, which is Jefual; yet the Plaintiff cannot relinquish the Plea of the Feme and pray Judgment against the Baron upon the first Plea; for he shall have Advantage of the rally, the Jefual of his Feme, because Damages shall not be severed, but shall run from Jury to Jury upon the Baron; for the Baron shall be charged by the Verdict against his Damages for both, and there is if the one be Jefual

and the other be perfect Jefual, yet the Plaintiff shall not relinquish the Jefual which is Jefual and the Judgment against the other, and this by reason of the Entiety of the Damages. Br. Judgment, pl. 77. cites 5 E. 4. 108.

10. Trepasses against two, who pleaded Not Guilty, and at the Iusue facies the one appeared, and the other made Default, and the other pleaded Arbitrement after the left Continuance, and the Plaintiff imparted to it, and had the Inquisition against the other, and found for the Plaintiff, and he prayed Judgment against him, and would have relinquished his Suit against the other, which could not be before Judgment; for then he shall abate his own Suit; but after Judgment he may relinquish his Suit against the other, which was ruled by all the Jurisprudence; by which he had Judgment against him, who was found Guilty, and relinquished his Suit against the other.

Br. Trepas, pl. 331. cites 14 E. 4. 6.

The Plaintiff shall not have his Judgment against one, and relinquish his Suit against the others, unless they are sever'd in the Suit, as he by Procs. Pleading or De-

murrer; but yet in those Cases he shall not release to one before Judgment, but after Judgment he may.

Br. Judgment, pl. 77. cites 5 E. 4. 108.—And in Trepasses against two who plead Not Guilty, there he cannot sever his Judgment, but after Judgment he may sever his Execution or release it. Br. Judgment, pl. 77. cites 5 E. 4. 108.

11. In Trepasses against three two pleaded Gift of the Plaintiff, and to the Iusue, and Proeef against the Jury, who appeared and the Plaintiff alio the one of the two Defendants made Defectus, and the Court recorded the Default, and the third in proper Person came and pleaded a Concord &c. and the Inquest was taken by Default and passed for the Plaintiff; and upon long Argument the Plaintiff had Judgment to recover against those who are Convicted, before the Plea of the Concord which goes to all was tried, and that Execution ceafts till the other Plea be tried; and immediately the Plaintiff released his Suit against the other, and had Execution immediately; quod nota. Br. Judgment, pl. 38. cites 15 E. 4. 25. 26.

(O. 2) Judgment against whom. Where two are sued and one acquitted.

1. It was agreed that in Debt upon an Obligation against two, who plead Non est Factum, and it is found the Debt of the one, and not the Debt of the other, there the Plaintiff shall recover against the one whose Debt is found; quod nota. Br. Barre, pl. 10. cites 40 E. 3. 35.

2. In Præcipio quod reddat against two, the one pleaded in Bar for his Part, and the other pleaded another Plea in Bar which goes to all, as Baltardy in an Action Aunceturrell &c. yet if this be found for him, and the other against the other, there the other shall lose his Part. Contra in Action personal; for there the Plea which goes to all shall be first tried, and shall serve both if it be found for him. Br. Barre, pl. 7. cites 9 H. 6. 46.

7 P.

3. In
In the action against two, the one confesses the action, and the other pleads Arbitriment which is found for him; yet, the plaintiff shall recover damages against him who confessed the action, and shall be barred against the other; per Jennye. Br. Treffips, pl. 165. cites 15 E. 4. 25.

In a Writ of Entry in the Quibols in nature of an Affise brought against the mother and her son within age, the by Attorney, and the son by Guardian, pleaded New Diffisment &c. and it was found that the mother dispossessed the Demandant, but that the Son did not; and the Question was, If judgment should be given of the whole against the mother, or but of a moiety, and the Demandant to be in Misericordia as to the Son? And it seemed by the Opinion of the Court, that it should be given of the whole, and so it was done. D. 312. a. pl. 35. Trin. 12 Eliz. Anon.

Covenant against B. and C. on a Covenant in an Indenture, Artificially to erect an House &c. Judgment was against B. by Default; C. pleaded that he and B. had Artificially erected &c. and so to Issue, and found for C. A Writ to Inquire of Damages was moved for against B. because the Act to be done was to be done by both, and B. is condemned of Non-feasance by the Judgment; but the Court denied it, and held that B. should not be charged with any Damages; For it appears that the Covenant is performed, and C. shall have Costs against the Plaintiff. Sid. 76. Patch. 14. Car. B. R. Boulter v. Ford.

If one bring Debt against two Executors and they plead No Affises; but upon Issue joined it is found that one had Affises at the Time of the Action brought, but that the other had not, the Plaintiff shall have Judgment to recover the Debt against that Executor who was found to have Affises, and a Nil capiar per Billam shall be entered against the Plaintiff as to the other Executor who was found to have no Affises. L. P. R. tit. Judgment, 101. cites Mich. 23 Car. B. R. For the Possession which one Executor has of Tellator's Goods is not the Possession of the other, and so one may have Affises and the other not.

(P) By Prayer.

1. In a Warrantia Chartae brought against an Heir upon a Warranty made by his Ancestor, if the Defendant pleads Riens per Different the Plaintiff may pray Judgment immediately, to recover the Warranty pro loco & temporis. 9. 5. 3a. 25.

2. Debt brought of 20l. by Obligation, and the Rest for Money lent, and to the Obligation the Defendant confessed, therefore the Plaintiff had Judgment immediately of it, and to the Rest be pleaded to the Country. The Plaintiff prayed Judgment of the Damages of that which was confessed, and could not have it till the other be tried; and after at Nisi prius of it the Plaintiff was Non-suited, and yet at the Day in Bank he shall have Judgment of the Damages of that which was confessed, and might have had it at first if he would have released the Suit of the Rest; and so he recovered Debt and Damages upon the same Original upon which he was Non-suited. Br. Damages, pl. 25. cites 42 E. 3. 25.

3. Debt; and counted Part upon a Lease in London, and Part upon a Lease of other Tenements, as in the first they were at Issue in London, and to the Rest...
Judgment.

Rest were at issue in a foreign County, and the first Issue found for the Plaintiff in London to the Damage of 20 d. and Costs 20s. and the Plaintiff came and relinquished the other Issue, prayed Judgment of the Costs and Damages and Debt found in London, and had it by Advice, and released the Rest of the Debt. Br. Judgment, pl. 156. cites 16 H. 7, 17.

4. Indebitatus assumpsit; the Defendant pleaded an Attainer of High Treason in Disability; the Plaintiff replied a Pardon prout for Exemplificationem inde &c. (which was held good) Ex petit Judicium & Damnum, to which it was demurred, and held that there was a Discontinuance by the Misconstruction of the Replication; For an ill Prayer of Judgment is as none. 1 Salk. 177. Pach. 2 W. & M. Bifte v. Harcourt.

(P. 2) Judgment in one Action, where a Bar in other Action. In General.

1. In Replevin it was said for Law, that if several Praecipes good reddat are brought against N. and the one recovers and sets Execution, the other Praecipes good reddat is abated. Br. Brief, pl. 116. cites 7 H. 4, 27.

2. In Debt against Executors, who pleaded Plea Administrat, and found for them, the Plaintiff shall be barr'd; and yet if Goods come to him after by Recovery, or otherwife, he shall have a new Action, and the first Judgment shall not be a Bar. Br. Barre, pl. 23. cites 19 H. 6, 37.


and it is found accordingly, by which he is barr'd; and after the Assets is recovered from him by others the Heir shall have Formedon again, and this Matter is no Bar to him; Contra it seems if he about the Assets and dies, his Heir shall be barred. Br. Barre, pl. 23. cites 19 H. 6, 57.

(P. 3) Judgment in one Action against one Obligee, &c. Where a Bar in another Action against another Obligee, &c.

1. Where three are obliged & Quilbet in tota, and the Obligee impales Br. Dete, one and recoveres, it is no Bar as to another of them if he impales another; pl. 128. cites 24 H. 7, 8, S. C. Contra it; By the Judgment against the one, it is become of Record to him, but as to the others it remains a Writing as it was before. 6 Rep. 45. b. Mich. 8 Jac. B. R. In Sir Anthony Mildmay's Case—And the Nature of the Obligation is not altered by the Recovery, but that the Plaintiff may, upon the same Obligation, have Action against the others. Arg. 6 Rep. 45 in Higgens's Case.—And Ibid. 46. a. This Case was well agreed for the Reason above, and notwithstanding the Judgment, the others may plead Non est Factum.

2. In Trefpafs against B. the Count was, That B. withal com J. S. Vi & Armis made Assault, Battery and Imprisonment upon him the 1 June. The Defendant pleaded Not Guilty as to the Vi & Armis, and as to the Assault &c. he said, that the Plaintiff brought the like Action against the said J. S. for the same Trespa, and had Judgment of Damages and Execution of them, and because it appeared upon the Pleading that it was the same Action, he demanded Judgment at Actio. The Plaintiff demurred, and it was urged that the Offence was several, and therefore Plaintiff might have several Actions, and was not barred by the Judgment in the other Action; But all the Justices resolved, and adjudged the Bar good, and that Defendant shall not have two Satisfactions for one and the same Trespa. 2 Roll. R. 224. Hill. 18 Jac. B. R. Hony v. Rice. (Q)
(Q) In what Actions judgment being given, shall be Bar of others. [Actions of another Sort.]

A Recovery in Allife is no Bar of a Formedon. 6 H. 4. 3.

2. If the Gift be defeated in Allife by Judgment, it shall be a Bar of the Formedon. 6 H. 4. 3. Nure.

3. After the Plaintiff in Appeal of Mayhem has recovered Damages for the Mayhem, he may bring Writ of Trespass of the Battery, and recover Damages for the Battery. And to fee Recovery of Damages in Appeal of Mayhem; for the Mayhem is no Plea in Trespass for the Battery; And so it seems that the Appeal shall not meddle with the Battery, but with the Mayhem only. Br. Trespass, pl. 241. cites 22. Afl. 82.

(Q 2) Judgment given in one Court, where a Bar to an Action in another Court; And what Judgment.

1. Judgment given in a Court Baron upon Writ of Right, Patent is no Plea in Allife, unless it be made to be sent into Chancery, and there to be exemplified, and be shown infra pede magni figlili; For in Allife he shall not have Day to bring it in. Br. Judgment, pl. 112. cites 28 Afl. 14.

2. If in Debt or other Action, where the Defendant pleads Recovery in Court of Frankifhe, or that the Plaintiff is barred in Court of Frankifhe, it is no Plea in this Court, because it is not of Record here; Per Finch, which the other Justices deny'd, and said, that he shall have Advantage of the Record; And otherwife it shall be Michifh. Br. Judgment, pl. 13. cites 46 E. 3. 17.

3. Debt in London upon an Obligation, and the Defendant pleaded Duress at Windsor, and the Plaintiff demurred upon it; Judgment was given, that be fie at the Common Law, and that the Defendant eat infe die, and in Action brought in C. B. the Defendant pleaded this Judgment in Bar &c. Thirwin said, the Judgment goes but to the Jurifdiction, therefore no Plea; But Birton, Hill, Hank, and Cutpeper, held that it goes in Bar, because it was given upon a Plea in Bar; Contrariwise it is given upon
Judgment. 10

upon Pleas to the Writ; for these Words (except fine die) shall have Relation to the Plea or Demurrer, and the Demurrer suppo.s pas was upon a Bar; Quod Nota; but it was not adjudged. Br. Judgment, pl. 16, cites 3 H. 4.

4. But it should be 12 b. pl. 13.

4. In Case upon a Promissory by A. against B. he recovered 86 l. upon which W. R. and W. S. affirmed a Plain Debit in London, and attacked the 86 l. in the Hands of B. and bad Execution. A brought Sci. Fa. against B. — B. pleaded the fact Execution upon the Attachment; A. demurred; and the Plea was adjudged ill; For a Duty which accrues by Matter of Record, cannot be attacked by the Custom of London. And the Law is clear, that Judgments in the King's Courts ought not, nor cannot, by such particular Customs, be defeated and avoided. Le. 29. Trin. 27 Eliz. B. R. Floud v. Perrot.—And there it was laid to be adjudged in a Western Case, that the Custom of Attachment cannot reach any thing of so high a Nature as a Record is. Ibid. 30.

5. In Sci. Fa. upon a Recognizance in Chancery, the Defendant pleaded to Issue, and was sent into B. R. to be tried, and Judgment for him there. Plaintiff brought Debit in C. B. upon this Judgment, and bad Judgment. And after brought Sci. Fa. in B. R. to have Execution there. Defendant pleaded in Bar the Recovery in C. B. But the whole Court held it no Plea, because one Judgment cannot determine another Judgment, which is of equal Nature; And the Plaintiff had Judgment. Cro. E. 5i. Pach. 43 Eliz. Perton.

(Q. 3) Judgment or Recovery in one Action where a Bar in another, tho' brought in a different County of the same Thing.

1. Affiffe in the County of B. the Tenant pleaded in Bar a Recovery by Affife by him against the Plaintiff of the same Tenements in the County of O. and that this new Plaintiff then Tenant, pleaded in Bar by Release of the Ancestor of the Plaintiff with Warranty which was voided by Nonage, and this found for the Plaintiff, by which he recovered against this Plaintiff; Judgment if where he accepted the Land to be in the County of O. he shall be now receiv'd to say that it lies in the County of B. And by the Opinion of Wilby and Scife if this Land was then in Vile, the Plaintiff shall be bound by the Recovery, tho' the Lands lie in another County; but quare, for per Grene it cannot be intended one and the same Land. Br. Judgment, pl. 62. cites 18 All. 16. — and so it was laid in C. B. Anno. 24 H. 8. Ibid.

So affesse. 2. The Tenant pleaded Recovery in another Affiffe of the same Tenements against the Plaintiff in D. and the same Tenements for in Vile, and a good Plea; per Cur. tho' they are in diverse Villes; quod Nota. Br. Judgment, pl. 11. cites 44 E. 3. 45. — S. P. ibid. pl. 11. cites 44 All. 19. but Broke says good M. for the Land in S. and the Land in D. cannot be intended one and the same Land; and in the Time of H. S. Shelly Justice was strong that it was no good. — Affiffe of Land in N. the Defendant said that at another Time he had iff a Affiffe of the same Land in H. against the same Plaintiff, and those Lands but in Vile, and this new Plaintiff took the Tenancy upon him and pleaded in Bar and said that H. and N. were one and the same Ville, and known by the one Name and by the other, and that A. brought Fornemment of those Tenements, and pleaded certain Issue and recovered by Affife tried, and the Estates of the Plaintiff merge between the Title of the said A. and his recovery, Judgment if of such Estate [the shall have] Affife to which the other said that each of the said H. and N. have Ville of themselves, and he to iff, and it was found that they were several Ville, and the Right and Difference, by which it was discovered that this Tenant then Plaintiff recover, and because he has recovered the same Lands against the Plaintiff himself in H. Judgment if Affife, and the Justices held that this recovery of Land in H. is no Plea in Affife of Land in N. and therefore they awarded the Affife, quod nota; and well it as it seems to me, and so held Shelly Justice strongly, 24 H. 8. but said here that the Contrary is in 19 E. 3 but M. 10 E. 5. agrees with this. Br. Judgment, p. 66. cites 23 All. 16. — S. P. For recovery of Land in H. cannot be extended to Land in N. notwithstanding that H. be a Hamlet of N. For Precipie shall be brought in the Vile and not in the Hamlet. Br. Judgment, pl. 65. cites 14 All. 9.
2. A Recovery upon Bailment in the County of D. is no bar of other Demand of the same Chattel in the County of S. upon Bailment there. Br. Barre, pl. 29. cites 21 H. 6. 35.

3. No in Trespass in Middleset it is no Plea that the Plaintiff has recovered for the same Trespass in Surry. For it cannot be intended one and the same Trespass, and the Jury of one County cannot find the Defendant Guilty in another County upon pain of Atraint; and this is of Battery which is local; but contrary it seems in Trespass upon the Cafe upon Affirmat, and such like, which are not local; per all the Justices and all others. Br. Trespass, pl. 269. cites 4 H. 7. 5.

(Q. 4) Judgment or Recovery in one Action where a Bar in another; being brought by the same or by different Persons.

1. In Ca in Vita, the Tenant pleaded that N. brought Affrse against him pending this Writ of a Distress before the Title of the Demandant and be came and recovered the Action, and found against him by Verdict, and the Demandant recovered, and so the Tenant has lost the Tenements pending this Writ, Judgment of the Writ; and because he recoverd the Action, fo no Default in him; therefore the Writ was abated; Brook says, he wonders that he did not allege that the Plaintiff in the Affrse entred or sued Execution, for otherwise it shall not abate the Writ by the Judgment only, as it seems. Br. Brief, pl. 144. cites 21 L. 3. 39.

2. Scire facias against Haven and Fane who made Default; the Fane was received and pleaded a Recovery by a Stranger to the Writ by another Action, who sued Execution; and because the Recovery was upon Nient desire and no Title alleged, therefore no Plea. Br. Brief, pl. 108. cites 7 H. 4. 15.

But if a Declaration be faulty, and Defendant takes no Advantage of it but Pleads a Plea in Bar, and the Plaintiff takes Issue, and the Right of the Matter is found for the Defendant in this Case the Plaintiff shall never bring his Action about again; For he is eyphed by the Verdict; per North Ch. J. ibid.— Or if Plaintiff demurr to the Plea in Bar, there by his Demurrer he confesses the Fact if well pleaded, and this eyphes him as much as a Verdict would; but if the Plea were not good, then there is no Eyphess, and the Court must take Notice of the Defendant's Plea; For upon the Matter as that falls out to be good, or not, the Second Action will be maintainable or not; per North, to which all the other Justices agreed. Mod. 207. ibid.

3. If a Man mistakes his Declaration, and Defendant demurs, it was said by North Ch. J. that there is no Question, but that the Plaintiff may set it right in a second Action. Mod. 207. Trin. 27 Car. 2. C. B. in Cafe of Lepping v. Kedgewin.

4. An Action was brought, and there was a Fault in the Declaration in the not signing of a good Breach in a Covenant; whereupon there was a Demurrer, and Judgment given Quod quernas nil capiant, per Billam sed pro Falfo clamore multo fit maxime in misericordia; afterwards the Plaintiff brings another Action for the same Matter, and assignd the Breach as it ought to be, whereupon the Defendant pleads in Bar the former Action, and that it was barred by the Judgment upon the Demurrer; the Plaintiff replied, that the Judgment was not given upon the Merits of the Case, but upon a Mistake in the Declaration, in not saying [and so forth how it should have been] the Defendant demurred, alleging, That the first Judgment was a Bar, but the Court gave Judgment for the Plaintiff. 2 L. P. R. 107. cites Hill. 34 & 35 Car. 2. B. R. Ret. 84*.

(R)
(R.) In what Cases a Judgment will bar a new Action. See Prelimination.

[In the Case of the King.]

1. If a Quare impedit he abated by Plea it will bar the King to have new Action. 3 D. 4. 3. 11. b.

2. In Quare impedit by the King, if they are at Issue upon Plea in Abatement and found against him, he shall not have new Action. 3 D. 4. 11. b.

(R. 3.) Pleadings. Bar. Judgment in one Action, how to be pleaded in Bar of another Action; and without Execution or not.

1. In Ward, the Defendant pleaded that before this Writ purchased 7. N. brought Writ of Ward against the Defendant and recovered the Ward by Judgment pending this Writ, Judgment of the Writ, and no Plea, without saying that he had Execution. Br. Brief, pl. 59. cites 40 E. 3. 7.

2. In Debt, if a Man pleads a Recovery in Plea real or personal, it is no Br. Trefas, Plea without saying that he had Execution; for he who Recover and does not take Execution upon it, may have a new Original. Br. Barre, pl. 11. cites 43 E. 2. 2. and 20 H. 6. 12. accordingly.

3. In Formemon the Tenant pleaded that pending this Writ 7. N. had recovered the same Land in demand against him by another Writ in Bank, Judgment of the Writ, and admitted for good Matter; But quere if he shall not say that he who recovered had entered upon him? it seems that he shall for without Execution the Writ is not abated. Br. Brief, pl. 85. cites 49 E. 3. 20.

4. Trespassed the Defendant pleaded a Recovery in Ceftavit of the same Land against a Stranger, and the Possession of the Plaintiff meane between the Title of the Ceftavit and the Recovery; Per Cur. you ought to say, that the Possession was meane between the Judgment and the Execution. For where the Action is founded by reason of the Possession as in Affise, and the Defendant pleads Recovery against a Stranger, he shall say that the Possession of the Plaintiff was meane between the Judgment and the Execution, but otherwise it is in Formemon, and the like; For there upon Recovery pleaded against a Stranger he shall say, that the Gift was meane between the Title, the Recovery and the Judgment; Quod nota, by which he said accordingly. Br. Judgment, pl. 83. cites 21 E. 4. 52.

5. The Plaintiff recovered, and had Damages assailed, and afterwards he brought an Action of Debt for those Damages; the Defendant pleaded D. 299. b pl. that after the Judgment the Plaintiff had fined forth an Elegit, which was 54. Patch served, but he did not mention, that it was returned; and yet it was adjudged a good Plea, because it appears on Record, that he made his Election, what Execution to have. Nels. Abr. tit. Judgments, (D) pl. 1. cites D. 299. This Case is, that the Sheriff delivered the Moiety of the Land extended to the Plaintiff without shewing the Return thereof; and then says, Quare if it be Bar, and that it seems it is; For the Plaintiff cannot vary in the suing out Execution from that of which he has made his Election of Record &c. Idea Quare.

In Scio fac. upon a Recovery of Debt and Damages, Defendant pleaded that at another Time the Plaintiff sued Sc. et. and the Sheriff levied the Moiety, Judgment &c. And there it is said that F. fac. is not of Record till the Return of it. Br. Execution, pl. 6. cites 29 H. 6. 24. 25. and 26. — And the same Law is said to be of Ca. fac. Anno. 5. H. 8. and it is not adjudged in the principal Case; but in 21 H. 6. 5. It was Rehearsed again, and there the Plaintiff was compelled to answer the Defendant's Plea, and therefore a good Plea, and so it seems upon taking the Body upon a Ca. fac. where no Writ is returned; but it was said in 21 H. 6. 5. that in 19 E. 3. it was adjudged no Plea. Quare.

(S) Where
(S) When full Judgment is given.

1. If Damages are the principal Thing to be recovered, then the full Judgment is not given till they are returned; but in Debt where a certain Sum is demanded it is otherwise. Le. 309. Palch. 35 Eliz. C. B. Brighton v. Sawle.

(T) In what Cases, one or several Judgments shall be given; and what shall be said one, and what several Judgments.

1. Trespasses against two de Parco fratæ and chasing his Deer, the one was found Guilty at another Day alone, without his Companion, and the other was likewise found Guilty at another Day alone, the first not being with him, and to several Trespasses, and yet the Plaintiff had Judgment to recover against each separately, and was Amerced against them severally. Br. Judgment, pl. 90. cites 47 Eliz. 3. 10.

2. In Debt upon Obligation by several Precipes there shall be several Judgments, and several Damages given, tho' but only one Execution at the Peril of the Plaintiff. Br. Judgment, pl. 23. cites 14 H. 4. 22.


A. brings a Quare Impediment against B. and B. brings an Affile of Darrein

Pretention against A. both for one Pretention, B. hath Judgment in his Suit, A. is Nonfuit. B. shall have two Judgments, both of Writs to the Bishop, and Writs for Damages. Hob. 194. in Case of Winchcombe v. Pulleston.

Trespasses against two, and the Trespass is found to be done at sever al Days, and several Damages are given; the Plaintiff shall have two Judgments for the Damages, and one for the Costs, and the Plaintiff shall not be amerced; for the Day is not material in Trespass, so that the Action is brought after the Trespass was committed. Jenk. 269. pl. 86.

5. Where an Action is against two for a Joint Trespass of Battery, tho' they never in Plea, yet when they are found Guilty of one and the same Battery, one Judgment only ought to be given for the Damages, and the Plaintiff ought to make his Election against whom he would take his Judgment, and so a former Judgment was Reversed. Cro. J. 118. Palch. 4 Jac. B. R. Crane and Hill v. Humberstone.

6. A Feme recovered in Dower, and had Judgment and Writ to enquire of the Damages, (the Judgment being by Default) and Error brought, and pending the Error, the Tenant in the first Action died; the Judgment is affirmed, and Execution of the Lands and Sci. Fa. against the Heir, to whom Cauæ why the Demandant should not have Damages. And the Doubt was, whether Damages should be recovered, the Tenant dying before they were ascertained. And after several Arguments it was adjudged per Cur. that in this Case no Damages shall be recovered; For the Judgment at the Time of the Tenant's Death was wholly compleat as to the Land, and not as to the Damages. And the Judgment to recover the Land, and to recover the Damages are two distinct Judgments. And
(T. 2) *In what Court Judgment shall be given.*

1. **W**HERE Error is in C. B. and a Writ of Error is brought thereof in B. R., there if the Judgment be affirmed, Execution shall be sued in B. R. Br Error, pl. 82. cites 15 E. 4. 18. per Catesby. But where Error is in the Exchequer, and Writ of Error brought before the Chancellor and Treasurer there, when Judgment is given by them, all shall be remedied before the Barons, and there Execution shall be made by express Words of the Statute, and there per Urwick Ch. Baron, the Plaintiff in Writ of Error in such a Matter was Non SUed. Br. ibid.

2. If Office be traversed in Chancery, and they are at Issue, and the Record is sent into B. R. to be tried, (as it ought) and there it is found for the Plaintiff, he shall have Judgment there, and the Record shall not be sent into Chancery again to give Judgment there; for the one and the other is Coram Rege. Br. Judgment, pl. 135. cites 21H. 7. 25.

3. Scire facias was brought in the Petty-bog in Chancery, and as to part Issue was joined and Demurrer joined as to the other Part. The Record was sent into B. R. to try the Issue which was done and Verdict given; and then they argued the Demurrer in B. R. and B. R. gave Judgment upon both. It was objected that the sending the Issue hither was, because Chancery cannot try it, but that the Judgment ought to be given, and the Demurrer argued there. But it was, after Argument, resolved that the Judgment was well given in B. R. upon both, tho' Chancery might have given Judgment upon the Demurrer, before it came hither. Lev. 283. Hill. 21 & 22 Car. 2. B. R. Jefferson v. Dawson.

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(T. 3) Given by several. Where one had no Authority.

1. IN Redissis, Error is brought; the Error assigned is, that A, who is an Inquisitor, with the Coroners was not a Coroner, and yet gave Judgment. This is Error, Where two join in Judgment, when one of them has no Jurisdiction 'tis Error. By the Justices of both Benches. Nemo debet esse immiscere rei alienae. Jenk. 90. pl. 74. cites 32 H. 6. 27.

2. The Record must be believed. Jenk. 90. pl. 74 — So in two Persons submit themselves to the Arbitration of A. and B._A. B. and C. make the Award, it is void; for the Judgment of C might sway the others. Jenk. 90. pl. 74 — And for a Resurgence, when before one who had Power, and another who has no Power, 'tis worth nothing. Jenk. 90. pl. 74.

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(U) New Judgment, in what Cases to be given, and where, and how.

1. IF Judgment be reversed in B. R. for Error, the Party shall proceed there, and shall have Execution there. Br. Jurisdiction, pl. 182. (bis) cites 21 E. 3. 46._and by 9 Att. 9. he may proceed there or have new Original. Br. ibid.

2. Writ of Error is brought upon an ill Issue, and the Court seeing that *in where the Original was not good,* (for it was ex Affirmatione, where is should be Dr. the Tenant misfions.)
Judgment.

head an ill
and the
Court awards
that the De-
mandant
shall
be bar'd,
there in B.
R. upon Er-
or thereof
they shall
adhere that
the Demandant recover. Br. Ihld.——And so see that the Judgment in Writ of Error, is not only
to reverse the erroneous Judgment, and to refer the Party to that which he had left; but to give such Judg-
ment as the Court shall think proper to have given. Quod fait Cancellation per Omnes, and to the Opinion is,
that the Writ shall abate, tho' the Party admits it, and tho' it was not assigned for Error. Br. Ihld.

3. If a Man be outlawed in an Action Personal, and brings a Writ of Error, by which the Record is removed, and he obtains a Pardon, and brings Surety for the, the Plaintiff may now declare in B. R. notwithstanding
that the Statue of * is, that he shall render himself to the Prin-
cess of the Court where the Exigent issued; per Fairfax, Quod non negatur. Br. Error, pl. 133, cites 1 H. 7, 12.

4. Where a Writ in a real Action is abated by Judgment in C. B. and
upon Error brought in B. R. this Judgment is reversed, and the Writ is
adjudged good, Now B. R. shall proceed upon this Writ, and is not
restrained by Magna Charta, Ne Carra Domini Regis defferetur in Jus-
tia eubitia. 4 Init. 72.

5. Where a Writ of Error is brought returnable in Parliament upon a
Judgment given in this Court, and the Judgment is affirmed or reversed
in Parliament, there comes then an Order from the House of Lords, di-
rected to this Court, signifying either the Affirmation or Reversal of the
Judgment, which Affirmation or Reversal is entered upon the Record from
whence the Writ of Error was transmitted, to that this Court may, if it
affirmed, award Execution thereupon; if reversed, award a Writ of Sci-
ta for Restitution thereupon, if the Money be levied, or else give such
Judgment thereupon as ought to have been given. Hill. 23 Car. 1. B. R.
For Execution ought always to Issue out of this Court where the Judg-
ment was given, upon the affirming thereof; and the Writ of Error was
only to try whether the Judgment was good; and not to alter the Way
in making out of Execution. 2 L. P. R. 115.

6. In Cafe of an Indictment, if the Error is only in the Judgment, the
Indictment shall stand, and new Judgment shall be given and entered, and
therefore the Court said, that if Defendant will hear a new Judgment he
ought to come here, and they will give new Judgment against him. Mich. 16 Car. 2. in B. R. Sid. 219, King v. Pym.

7. Judgment in Wall was given in London for the Plaintiff by Direc-
tion of the Deputy Recorder, and afterwards arrested by the Recorder.
Upon which the Plaintiff brought Error before Commissioners, assigned at
St Martin's le Grand. And among other Things it was resolved, that the
Judges Commissioners ought not only to receive the Judgment in the Hift-
grins given for the Defendant, by which the Plaintiff was bar'd, and to
re sist the Plaintiff to his Action, but ought also to give such Judgment,
upon the Record before them, as the Court of Hiftings ought to have given;
and accordingly they gave Judgment for the Plaintiff upon the first
Judgment.

Court of Husings cannot, and to doe therall be a Failure of Right. 2 Sound. 276.—Levis fays, the giving Judgment for the Plaintiff was by Virtue of the Words in the Writ of Error, viz. Ex id bovii quod ad Judicium pertinet fecundum Leges Regni & Consequencevse Caussati prudet. And the no Precedent was produced of such Thing done before, yet the Judges Commissioners faid, they would precome the Caffes of London to be according to the Common Law, if no Precedent be shown to the contrary. Lev. 216. Hill 22 & 24; Col. 2. Cole v. Green. * The Cafe where in this is, and which Point seems to be a Note of the Reporter, is D 573. b. pl. 13. Mich. 22 & 23 Ediz. in 41 Anon. Cafe.

8. If a Judgment be below for the Plaintiff, and Error is brought, But if the and that Judgment reversed, yet if the Record will warrant it, the Court Judgment be against the Plaintiff on the Merits of the Cause that ought to be reversed, and no new Judgment given for the Plaintiff. 1 Salk. 401. Patch. 1 Anne. B. R. Anon.

9. Judgment in Ejection was given in B. R. for the Defendant. The House of Lords reversed the Judgment. The Plaintiff applied to B. R. to enter up the Judgment given by the Lords, and it was urged that a Judgment must be given either by the Lords or B. R. and that the Lords cannot, because they have only a Transcript of the Record, and therefore B. R. must, leat there be a Deject of Justice. Holt Ch. J. said, that the Lords have, in Judgment of Law, the very Record before them, For the Writ fays Recordum & Proceedum, and not Transcriptum. And the Court agreed that they cannot enter a new Judgment for the Plaintiff; Because when they have given Judgment on the Original, they have executed their whole Authority, and there is no Precedent, that ever B. R. entered a new Judgment, where Judgment given here was reversed in Parliament. And afterwards the Lords upon Application made to them, entered the new Judgment. 1 Salk. 493. Trin. 6 Anne. B. R. Phillips v. Berry. which they carried back thither, after having brought it out of the Parliament, in order in B. R. but it was never brought into the Office; per Holt Ch. J.—Cath. 519. S. C.

10. If Judgment be given for the Plaintiff, and that be reversed in Error, the Defendant is in Status quo thereby, and no new Judgment need be given. But if the first Judgment be given for the Defendant, and that is reversed, a new Judgment must be given to put the Plaintiff in Possession of what he demands, per Holt Ch. J. 1 Salk. 493. in Cafe of * Phillips v. Bury.

on Reversal of a Judgment given in B. R. Cath. 520. * S. C.

11. As to new Judgment in B. R. on Reversal in Parliament, Holt said, The Exchequer Chamber would be of the fame Nature of the Lords Houfe, being erected in Imitation of that Jurisdiction, and to supply a Defect in Intervals of Parliament, as is said in the Recital of the Act; but as to a Judgment being given de novo below, there would be a Difference where Judgment is given upon a Denurrer, and where upon a special Verdict, where it is upon a Demurrer, the Courts above ought to give a Judgment for the Plaintiff, (if they reverfe that for the Defendant) and then it is sent down, and a Writ of Enquiry goes, and upon that the Court below give a final Judgment; but where it is upon a Verdict, there if they reverfe a Judgment they ought to give the same Judgment that ought to have been given at first, and that Judgment ought to have been given to the Court below, and thereupon they ought to award Execution; for it is not reasonable to expect the Court below, should give a Judgment contrary to their first Judgment. Skin. 514. 516. Phillips v. Bury.

In Ejection in B. R. If Judgment for the Defendant be reversed on Denurrer, B. R. should enter the new Judgment; but if the Exchequer Chamber could not attend a Writ of Enquiry of Judgments. But if the Judgment was
12. Where upon a Monstrans de Droit the Judgment of the Court is erroneous, if the Remedy be proper the Court ought to give a new Judgment. 615, 616. In the Banker’s Cafe.

(W) Relation, to what Time.

1. If a Writ abates it shall have Relation to the Return of the same Writ, and not to the entire Term, so that Writ purchased the same Term, bearing Tolle after the same Return is good. Br. Relation, pl. 58. cites 7 E. 3. 11. and Fitzh. Brief. 433.

2. In Attaint, the Tenant pleaded, that her Baron, Party to the Writ, died 27th September, Judgment of the Writ; the Plaintiff said, that he is alive, and they had Day in Croftin. Purif. and at the Day, the Plaintiff confessed that the Baron was dead, by which the Writ abated, and menace between the Day of the Death of the Baron, and Croftin. Purif. the Plaintiff brought other Attaint against the Feme folio, and the pleaded, that this was purchased pending the first Writ, and because the Judgment of the Abatement of the first Writ has Relation to the Day of the Death, therefore the second Writ good, which was purchased before the Judgment; For the first was abated in Law before Br. Relation, pl. 9. cites 12 E. 3. 16. [But it should be (21 E. 3. 16.) and there is no such Year in the Book, as 12th.]

3. In Præcipe quod reddat at the Nisi Prius, if the * Plaintiff is Nor-suited and purchases a new Writ, bearing Tolle menace between the Day of the Nisi Prius, and the Day in Bank, this is purchased pending the first Writ, and therefore was abated, notwithstanding the Judgment given at the Day in Bank; For it shall not have Relation to the Nisi Prius, Nota. Br. Judgment, pl. 44. cites 40 E. 3. 38.

4. Special State. la. is brought against Executors upon Recovery against them in Writ of Debt, and at the Day of the Writ of Nisi Prius returned after Verdict the Justices repfite Judgment, and Writ of Error is brought upon the Judgment given in the Writ of Debt bearing Tolle the fourth Day from the Return of the Writ of Nisi Prius in the Sci. fa. yet this does not repfite the Judgment in the Sire fa. For when it is given it shall have Relation to the first Day of the Writ of Nisi Prius returned. Br. Relation, pl. 40. cites 15 H. 6. 6.

5. If a Judgment be on a Plea in Bar, then it shall have Relation to the Plea, and so be applied to that; but if the Plea be to the Writ, then the Judgment shall be applied to the Writ only and not in Bar. So that the Judgment shall always have Relation to the Plea. 8 Rep. 62. Mich. 6 Jac. Beecher’s Cafe.

6. A Judgment shall relate to the * first Day of the Term viz. the Efqay Day; For in Law it is the first Day of the Term, and all legal Acts shall have Relation thereunto; and so a Statute acknowledged 22 July, which was Mefe between the Efqay Day and the first Day of full Term, was adjudged to be potfpon’d to a Judgment in Debt contested the 23d of January. Plea. 72. Hill. 3 Cap. C. B. Stanford v. Cooper.
7. A Rule was made to enter up Judgment upon an old Warrant of Attorney, upon the usual Affidavit, that the Party was alive two or three Days before, and that the Plaintiff believed him to be then living. In fact, the Party, who gave the Warrant of Attorney to confess the judgment, was dead about two Hours before the Motion was made for the Rule. Upon which it was now moved to discharge the Rule, as obtained irregularly, by a Surmise and Imposition upon the Court, for that the Warrant of Attorney was absolutely determined by the Party's Death. But all the Court were of Opinion not to discharge the Rule; For tho' they would not have granted it, had they been apprised of the Party's Death at the Time of the Motion, yet being granted, it falls under the Maxim, *Quod fieri non debit, factum valeat*; and the Judgment is made good by Relation; For the whole Term is considered in Law but as one Day; and all Proceedings in it have Relation to that one Day, which is the first Day; Therefore, as the Party was alive the first Day of the Term, that is sufficient to support the Rule; and the Judgment is well entered up. Mich. 11 Geo. 2. B. R. Chancey v. Needham.

8. A Bond was given for 400 l. The Oblige died the 13th of March, having made the Plaintiffs his Executors, who demanded the Money from the Obliger; but he not being able to pay it immediately, upon the third of April gave a Warrant of Attorney to confess a Judgment for the Debt to the Plaintiffs at their Suit, as Executors of &c., as of the last Hillary Term, the next Easter Term, or any other subsequent Term. Upon the seventh of April they entered up the Judgment as of last Hillary Term, during all which Term the Testator was alive. This appearing to the Court upon a Motion, they were strongly of Opinion, to set aside the Judgment as being ill entered; For the Warrant is to confess a Judgment at the Suit of the Plaintiffs as Executors; and they have entered it up of a Term, when the Testator was alive, at which Time they were not in Being as Executors, and therefore could not have been Plaintiffs by that Description. And tho' Judgment was actually entered in Vacation-time, when there were such Persons Executors as are there described, yet it being a Judgment of the preceding Term, when there were not, nor could be any such Persons in Being, it is bad by the Rule of Relation. Mich. 13 Geo. 2. B. R. Gainsborough v. Folliot.—Note, afterwards the Judgment and Execution taken out upon it were set aside.

(W. 2) Reversed for Fraud in obtaining it, and How it shall be.

1. Disceit upon a Recovery by Default in Quare Impedit; the Orig. in Sheriff returned the Writ forced, *Sc. that the one Summoner the large and small Ed. is (for one) but in the
said, that he was not at the Summons; and the Pledges upon Attachment upon their Examination said, that they knew nothing of the Attachment; and the Mainperners upon the Diathef's said, that they knew nothing of the Diathef's. And it was awarded, that the first Judgment be reversed, and that he be retried again to his Possession, and have Writ to the Bishop to remove the Clerk. Brook says, Quare well; For it seems there, that the Parties were agreed, and that no such Judgment was given before. Br. Disceit, pl. 4. cites 27 H. 6. 5.

2. Disceit was brought by B. against C. because C. recovered against *Orig. (§ 7) by *him in Precept quod reddit by Default. *And [B] had *Preferences against C. *overe are Prec-
Judgment.

_quer, recover,

by Venire facias, and also Venire facias against the old Sheriff, and against the Summons upon the Original, and against the two Veiors, and the two Summons returned at the Grand Cape, and they made Defaults, and the Sheriff returned Pledges upon them, and Distraint issued against the first Defendant and others, upon which comes the first Defendant, (now Defendant) and one of the Summons upon the Original, and two of the Veiors upon the Grand Cape, and the Defendant said, that W. S. who appeared as Summoner is W. S. of S. and he, who was Summoner, is W. S. of C. And so of the Veiors by such an Addition, and so of the others, the which Matter &c. And because the Summoners and Veiors shall not be fore'd to come at another Time, and also it may be that they may die, Priort, by the Advice of other Judges examined them, who said, that they knew nothing of the Summons; and it was said there, that in Cam. Seac. it was the Opinion of all upon the Plea sup'r, that it shall be tried by Examination of the Justices, and not per Paix, and that Judgment in such Cause was given, quod Querens recuperet terram, and that the Defendant and Sheriff Capitaneur. Er. Difcit, pl. 5. cites 33 H. 6. 9.

(X) Reversed in Part, or in all.

1. Judgment in an Annuity was reversed as to the Annuity and Damages, and good for the Arrears. Nov. 117. Anon.———cites 14 E. 3. Seire fac. 122.

2. By a Writ of Error part of the Record may be reversed and stand good in the Reit; as where Error is in the Tuing of Execution; per Paix. Quod non negatur. Br. Error, pl. 7. cites 9 H. 6. 38.

Where there is an Error in Laos in a Record, and another Error in Fait, there they may reverse the Judgment as to the Error in Law, and take Averment of the Reit; per Paix, quod Non Negatur, and therefore it seems that Record may be reversed in Part, and good for the Reit, and this seems to be where the Record is issued in itself, as where a Man pleads several Pleas to several Parties, and otherwise not. Ibid. pl. 27. cites 47 E. 3. 7.

3. A Man had Judgment to recover 150l. and released 20l. of it, and after sued Execution, and the other brought an Audita Querela upon the Release, and defeated all the Execution. But it is otherwise where such Appoitionment of such Suit is done by All in Laos; as in 7 Ed. 4. fol. ultimo The Sheriff levied Parcel of the Debt by Fieri Facias, yet shall he have an Action of the Debt for the Refuiae upon the Record. Ow. 21. 37 Eliz. B. R. In Cafe of Wright v. the Mayor of Wickham.

4. T. S. was found Guilty in an Information Tam pro Rege quam pro sempio, upon the Statute of Liberries; he brought Error, and assigned for Error, that the Statute 8 E. 4. cap. 2. gives the Examination of that Offence to the King's Bench and the Common Bench; but because the King may chafe his Court to sue where he will for his Moliety Sett Jucicus, as to the Moliety of the King, and the Information for that good, but as to the Moliety of the Party, reverfetur. Nov. 117 Anon.———cites 38 Eliz. in the Exchequer, Agar v. Cudinh.

5. In
5. In Affion for Words spoken at two several Times, Defendant pleaded Not Guilty, but found against him and several Damages; and one entire Judgment was given for Damages and Costs; Upon Error brought it was held that for part of the Words the Affion lay not; and the Justices and Barons all conceived that the Judgment should be reversed only Quoad the Damages and also for Damages for the Words not Actionable, and shall be affirmed as to the Costs the Defendant and the Relicue; For all the Costs are due as well where part of the Words are found, as where the Relicue is found; and thereupon Judgment was affirmed * Quoad Part, and reversed Quoad the Relicue. Cro. J. 343. Pach. 12. Jac. in Cam. Seace. Jacob v. Mills.

7. In Information for ingraining Corn, the Defendant as to Part pleaded Not Guilty, and demurred to the Relicue; afterwards, as to that Part which the Defendant pleaded Not Guilty to, the Informer entered a New suit alterius prosequi, and for the other Part, upon Demurrer joined, Judgment was given for the Informer; Upon Error brought it was held that the Entry of the Nolle prosequi by the Informer was Error; For should he have Power to leave off Prosecuting the Suit, it might greatly prejudice the King; but as to the Relicue they affirmed the Judgment and awarded Execution; because the Judgments for those two several Parts were several, and therefore the Judgment may be affirmed in Part, and disaffirmed in Part, as in † Decree and Debt; but Haughton J. doubted if it might be so in Trepass. 2 Roll. R. 136. Mich. 17 Jac. B. R. Smith’s Information.

8. Judgment in Formedon in C. B. upon a Verdict, was Quod recipiet sejusman de uno Mefuage & doubus Arbus Terra & Pofharia, but did not mention severally the Quantity of either; it was moved to affirm the Judgment for the Mefuage, it being certain as to that, tho’ ill for the uncertainty as to the other; but it was held, that tho’ C. B. might have given Judgment for the Mefuage only, yet when they gave an entire Judgment for the Mefuage and Land, this being ill in Part * ought to be reversed for the Whole, and cannot be affirmed for Part, and reversed for the Relicue. Cro. C. 471. Pach. 13 Car. B. R. Goodier v. Platt. ——2 Cardth. 235. S. P. Parker v. Harris.

9. Judgment in Assault and Battery against three; it was assigned for Error, that one was an Infant who should have been pleaded by Guardian, and that Judgment was entirely given against them all, which must be void against the Infant, and fo it, being entire, must be against the others also; Roll Ch. J. said, if it be a Judgment at the Common Law, or where Costs are given by the Statute, if it be reversed as to part it is reversed as to all;
and here is a Keith Judgment given by the Common Law and cannot be
helped; and the Judgment was reversed. *Sty. 121. 125. Ayley v. Catt.
A. Mod. 10. Affirmat, and two several Counts laid; one was on a Promissory
Note, and the Plaintiff counted thereon as on a Bill of Exchange, upon the Cus-
tom of Merchants; Upon Non Affirmat intire Damages were given, and
Judgment accordingly; a Writ of Error being brought in this Court it
was held, 1st. That the Plaintiff could not declare upon the Promissory
Note as upon a Bill of Exchange; and as there could be no such Count or
Action, so there could be no such Damages. 2dly. That they could not
reverse the Judgment in Part, viz. as to the one Count, and affirm it as
to the other, and denied Jacob and Hill's Cafe. Hob. 6. and this
Difference, viz. where the Judgment is partly by the Common Law, and
partly by Statute, it may be reversed in Part; For that which was a Judg-
ment at Common Law will remain a Judgment and be compleat without
the other. 1 Salk. 24. Hill. 1. Anne. B. R. Cutting v. Williams.

(X. 2) Reversed in what Court, and when; and where the
Judgment shall be said reversed or only the Execution.

1. In Precipe quod reddat, Judgment was given by Default at the Grand
Cape, and the Tenant came the fame Term and said that the
Judgment was given when he was in seeking an Attorney to have pleaded to it,
and prayed to be admitted by Attorney, and so he was. See the first Judgment
* repeated, in as much as in one and the same Term the Judgment is in
the Breath of the Judge and not in the Roll; Contra in another Term quod
nota, and therefore in the Cafe above the Justices would not record their

2. Writ of Error was brought of a Judgment upon a Bill of Debt in the
Exchequer, and it was brought before the Chancellor and the Barons ac-
cording to the Statute & 3 El. 3. 12. which wills that the Errors should be
reversed in the Exchequer Chamber before the Chancellor and Treasurer
calling to them the Justices; and there Prior Ch. J. of C. B. and other
Justices of the fame Bench, fat, and gave their Opinions and affirmed the

3. Writ of Error and of Affiant will reverse the first Judgment, but
Audita querela upon a Release after Judgment shall not reverse the Judg-
ment but the Execution. Br. Judgment, pl. 60. cites 6 E. 4. 10.

4. Execution of a Recognizance was awarded in Chancery, Error was
brought in B. R. and Judgment reversed for refuting the Plea of a Dele-
fiance bearing Date before, but delivered after the Recognizance. D. 315.

5. The Defendant against whom Judgment was recovered brought a Writ
of Error, and afterwards got a Reference to the Master to examine the Regular-
ity of the Judgment; the Court upon the Master's Report was of Opin-
ion, that by bringing the Writ of Error the Judgment was admitted to
be regular, and that he should not examine that now; and the Rule was
(X. 3) Reversed for what is General.

1. A Judgment was reversed in this Court for Tautology used in it, Mich. 22 Car. B. R. that is, for repeating the same Thing over and over; for the Law will not suffer Barbarisms in the Proceedings thereof; For that will in the Conclusion bring all Things into Confusion. 2 L. P. R. 95.

(X. 4) Where by reversing the Judgment against the Plaintiff the Original shall revive.

1. If a Judgment be abated by Judgment which is reversed after by Writ of Error in B. R. by this the Original is revived, and the Demandant may declare, and the Tenant answer there. Br. Jurisdiction, pl. 113. cites 1 H. 7, 12.
2. And if a Man be Outlawed in Debt in C. B. which is removed after into B. R. by Error, and the Defendant files Charter of Pardon, and has Process against the Plaintiff who comes, &c. he may declare there; per Car. Br. ibid. 3.

(X. 5) Revived by Scire facias.

1. On a Judgment above a Year's standing, you may have Elegit without a Sci. fa. but not a Fi. Fa. For on the Elegit, they enter their Continuances all along from the Judgment. 2 Show. 235. Mich. 34 Car.

2. If a Judgment be above 10 Years standing, the Plaintiff cannot sue a Sci. fac. without Motion in Court; if under 10 but above 7 he cannot have a Sci. fac. without a Motion at side Bar. 2 Salk. 598. Hill. 7 W. 3.

3. Where Judgment is revived by Motion against Tenant, if Execution be awarded against him there needs no new Rule to revive the Judgment against the Executors, but a Sci. fa. lies of Course. Cumb. 336. Hill. 8 W. 3.

(Y) When to be signed and entered.

1. Four Days after the Plaintiff's Attorney doth bring the Plea into the Court, if the Rule for Judgment is out, he may enter Judgment for his Client by the Course of the Court, Mich. 22 Car. B. R. except the Defendant do then, or before, move something to the Court in arrest and stay of Judgment; but no Judgment upon a Verdict ought to be entered until a Rule given, and such Rule out. 2 L. P. R. 95.
2. When a Special Plea is pleaded, and a Paper-look made up, if the Defendant's Attorney doth not return it to the Plaintiff's Attorney within four Days,
A Judgment may now well be entered in the Vacation as of the precedent Term, and no Mile-trial which was afterwards held well enough; but before the Court had delivered their Opinions one of the Plaintiffs died; it was prayed notwithstanding that Judgment might be entered, there being no Default in the Plaintiffs, but a Delay by Act of the Court, and that it was within the Statute of Car. 2. that the Death of the Party before Verdict and Judgment should not abate the Action, and that it was in the Discretion of the Court, whether to take Notice of the Death in this Case or not; For the Defendant has no Day in Court to plead, there being no Continuances entered after the Return of the Poalfa, and cited it a. i.C. 187. Pope's Cafe, and Lat. 92. And the Court were of Opinion that Judgment ought to be entered, and there being no Continuances, it may be entered as if immediately upon the Return of the Poalfa. Vent. 90. Trin. 22. Car. 2. B. R. Crisp and Jackson v. Mayor &c. of Berwick.


A Judgment to bind the Goods, may be signed after the Defendant's Death, notwithstanding the Statute of Frauds and Perjuries; because the Statute was made only to help Purchasers. 2 L. P. R. 117. cites to the Plaintiff, and two Hours after, before the Judgment signed by the Secondarv Defendant died; resolved the Judgment shall stand, it being for a good Debt. Haym. 18. Trin. 1 Car. 2 B. R. Andrews v. Showell.——A Verdict was given in Easter Term, and before Judgment signed the Plaintiff died; but, Holt Ch. J. said, That shall not hinder the Judgment being entered, provided it be within two Terms after; and the Statute of Frauds &c. only requires the Time of Signing should be entered on the Roll; and that is only for the Benefit of Purchasers; For if Judgment be given in the Vacation, yet it is entered as of Term before and none but a Purchaser shall be admitted to sue, it was fixed at any other Time; and it is the Course of the Court to let all Things be done * in the Vacation as of the Term before. 1 Salk. 491. Trin. 1 Ann. B. R. D. of Norfolk's Cafe.——7 Mod. 39. S. C.——* 6 Mod. 184.

In an Action on the Cafe brought against the Sheriff for a Return of Nulla bona upon a Fieri facias; although Judgment was signed after the Time of Fieri facias, and both the Judgment and Fieri facias were of Hillary Term, but the Judgment not signed until March afterwards, yet it was held good; and the Court declared, that they would not make any Ufe of the Day of signing of the Judgment, but only to relieve Purchasers as the Statute intended. 2 L. P. R. 118. cites Hill. 2 & 3 Jac. 2. Stamper v. Kinley.

A Judgment can not be entered until after the Fie-
Judgment.

shall move for Judgment; which he cannot do without bringing his Pes-
tees into Court, and giving Notice thereof to the Defendant's Attorney,
and he may think himself for this Trouble and Delay, by not bringing in
of his Police as he ought to have done, the like Law is in Cafe of a Writ
of Inquiry. 2 L. P. R. 115.

Defendant to show Cause (if he hath any) why Judgment should not be entered against him, that the
Defendant may have Liberty to offer what he can find out of the Record and Proceedings to Arrest the Judgment
but after the Rule is out, or if Judgment be not arrested, then it may be entered up. 2 L. P. R. 115.

8. Upon a Writ of Inquiry, either on Demurrer or Judgment by Default executed the last Day of the Term, the Plaintiff may enter Judgment the 7th Day after and not before. 1 Salk. 399. Trin. 5 W. & M. Clerk v. Rowland.

Verdict and the Judgment; not that in all Cases there can be a Motion in Arrest as in the Principal
Cafe, where the Verdict or Inquest is the last Day of the Term; but still there may be a Writ of Error
and this Time is allowed for those Purposes; and therefore after Verdict or Writ of Inquiry, the Cause is
for the Plaintiff to give a Rule to enable him to enter his Judgment nisi Cusa, after it is in Contravention infra
Quaemation dies; and in the Principal Cafe, Execution was set aside because it was found out the 4th Day
after the Term, the Writ of Inquiry being executed and returned the last Day. Ibid S. C.

9. After Rule entered, Judgment shall be signed on the eighth Day after inclusively in Hillary and Trinity Term. 12 Mod. 40. Patch. 5 W. & M. Anon.

In Ejectment and Verdict for the Plaintiff the Judgment ought not to be signed till the Rules are out which will be in four Days after the Police returned which happened to be the 6th May: the Plaintiff got it signed on the very Day but it was not executed till after the 6th Day to
that the Defendant had time enough to bring a Writ of Error, or move any Thing in Arrest of Judgment,
yet the Court held the signing Irregular it being before the Day allowed by the Rules of the Court; and tho' it was taken out afterwards that was not Material; and the Judgment was set aside and the Party had Relefnion. 5 Mod. 205. Patch. 8 W. 5. Stanford v. Chamberlaine.

10. Indictment for a Misdemeanor, was tried three Days before the end of the Term and Judgment entered the same Term, so that Defendant had not four Days to move in Arrest of Judgment. The Question was, Whether this Entry was regular, and whether it should not have been stayed till the Term following? And per Holt Ch. J. if there are four Days and more between the Trial and the end of the Term, Judgment ought not to be entered within the four Days; but if the Diminishing is returnable within the Term, and the Party is tried within 2 or 3 Days before the end of the Term, the Judgment shall be entered that Day, tho' there are not 4 Days to move in Arrest of Judgment; and so he said it was settled in the Cafe of
Intitute de Locur upon Conference between Scroggs Ch. J. and Sir Win

11. By the ancient Rules of the Court, the Judgments of one Term ought to be entered on the Roll before the Ensign Day of the next Term; and the late Act of Parliament for docketing of Judgments was only in Imitation of the ancient Course and in Aid of it; per Holt Ch. J. 6 Mod. 154. Trin. 3 Anne. B. R. in Cafe of Herring v. Crocker.

12. The Plaintiff, by a special Injunction out of Chancery, was restrained from signing Judgment near 12 Months after Rule given to plead; he may, after such Injunction dissolved sign Judgment without giving a new Rule to plead. Notes of Cases in C. B. 156. Mich. 6 Geo. 2. Theedham v. Jackfon.


14. If Defendant demands Oyer of an Indenture, which is given, the
Defendant has the same Time to plead after the Declaration is verified by the
Oyer as he had at the time Oyer was demanded, and therefore Judgment be-
ing signed the next Day after Oyer given, and the Oyer having been de-
mended.
manded two Days before the Rule for pleading was out, the Judgment was set aside. Notes of Cases in C. B. 156. Mich. 6 Geo. 2. Theedhaut v. Jackson.

15. The Capias was returnable the 27th of October last, and Judgment signed November the 7th following; it was moved to set aside the Judgment as signed the 12th Day after the Return of the Writ, which was one Day too soon, the Defendant being, by the late Act of Parliament, eight Days to appear after the Return of the Writ, and by the Practice of the Courts four Days afterwards to plead; and the Court made a Rule to new Cape; thereupon it was showed for Cape, that the Declaration was left in the Office De bene esse (pursuant to the Rule of Court made in Michaelmas Term 3 Geo. 2.) on the third of November, and Notice thereof that Day served upon Defendant, and a Rule to plead given the same Day; and on the seventh of November, Defendant not having appeared, Plaintiff, upon the afrais Affidavit, entered an Appearance for him; and afterwards, the same Days, signed Judgment, which the Court held to be regular, and discharged the former Rule. Notes in C. B. 157. Hill. 7 Geo. 2. Charlton v. Handkey and another.

But where the Writ was returnable in eight Days of St. Hilary, January 20, and Declaration filed in the Office De bene esse, January 25, and Notice given Defendant that Day, and a Rule to plead given which was out on Saturday the 26th of January; On Monday Morning the 28th, Plaintiff entered the Defendant's Appearance, and in the Afternoon signed Judgment. The Court, upon hearing Counsel on both Sides, were of Opinion, That by the late Act of Parliament, the Defendant hath eight Days to appear after the Return of the Writ, (viz.) exclusive of the Return-Day, and therefore set aside the Judgment, the Appearance being entered, and Judgment signed the 1st Day too soon. Notes in C. B. 163. Hill. 7 Geo. 2. Bosanquet v. Rondeau.

16. The Writ was returnable tres Mich, and an Appearance entered by the Plaintiff. The Declaration was left in the Office November the 9th, and Rule to plead then given; Notice of the Declaration filed was served upon Defendant November 11th. Defendant moved laft Term to set aside the Judgment, and obtained a Rule to new Cape, which was made absolute upon hearing Counsel on both Sides. The Declaration not being delivered De bene esse, was only well delivered from the Time of the Notice; and before that Time no Rule to plead could be given. Notes in C. B. 172. Hill. 8 Geo. 2. Grey v. Saunders.

S. P. For a Judge's Summons regularly obtained is a Stay of Proceedings till discharged, or other Order made thereupon; but it is an Abuse upon the Judge to apply for his Summons after Rule to plead expired, when no Summons ought to be granted; and therefore this Summons, unduly obtained, is no Stay of Proceedings. Notes in C. B. 185. Mich. 10 Geo. 2. Whitehead v. Shaw. —- The same v. Whitefield.

17. After Rule to plead expired, Defendant obtained, and served a Judge's Summons for Time to plead. Plaintiff's Attorney, notwithstanding the Summons, signed Judgment; Defendant moved to set aside the Judgment, and on showing Cape, the Court held the Judgment to be regular. A Summons for Time, after Rule to plead expired, is not a Superficial or Stay of Proceedings. The Judge was impeded upon; he would not have granted the Summons, had he known the Rule was out. The Judgment is regular, but was set aside on Payment of Costs, pleading the General Issue, and taking upon Notice of Trial. Notes in C. B. 182, 183. Trin. 10 & 11 Geo. 2. Ottrwell v. D'Aeth.

18. Declaration was delivered with Blanks, and Rule to plead given October 24. The 26th, Blanks were filled up, and Defendant at the same time demanded Oyer of the Bond. The 27th, at Eight in the Evening, Oyer was given, and Plea demanded, and 19th Judgment was signed, which was held irregular, and set aside. Defendant ought to have taken Time to plead after Oyer given as remained unexpired of the Rule to plead at the Time of Oyer demanded. Notes in C. B. 183. Mich. 11 Geo. 2. Simpson v. Daillie.

19. It was moved for Leave to enter Judgment upon an old Warrant of Attorney upon an Affidavit, that Defendant, who resided at Jamaica, was living and in good Health, and had been seen and converted with them by the Person who made the Affidavit on the 15th of September last. He
Judgment.

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faced from Jamaica very soon afterwards, and arrived at London the 15th of January following. The Motion was granted. Notes in C. B. 187. Hill. 11 Geo. 2. Roundell v. Powell.

20. In Waite, Plaintiff gave a common Rule to plead, and at the Expiration thereof, without giving a peremptory Rule, signed Judgment. Defendant moved to set the Judgment aside, inferring that a peremptory Rule ought to have been given as in a real Action; and of this Opinion were the Court. The Place waited, as well as Damages, being to be recovered in the Action by the Statute of Gloucester. cap. 5. In mixed Actions a Peremptory Rule is necessary, as well as in Real Actions, (except Replevin) and the Judgment was set aside without Costs. Notes in C. B. 192, 193. Trin. 13 Geo. 2. Wentworth v. Hulter.

(Z) Rules as to Signing &c. of Judgments.

1. A Rule of Court was made upon a Motion at the Bar, that the Secondary should enter a Judgment in a Cause, wherein a Trial was to be held, as a Judgment of the Term next preceding the Term wherein the Trial was to be, and that the Secondary should express in the Rule, that the Rule was made by the Consent of the Plaintiff and Defendant in the Cause; and July 1650. B. S. For Conclusus tollit Errorum; For otherwise the Court would not have made such a Rule to anedate a Judgment, and there was other special Reasons, as I remember, for the doing of it, besides the Consent of the Parties. 2 L. P. R. 104, 105.

2. A Special Plea delivered to the Plaintiff's Attorney, or put into the Office without a Counselor's Hand to it, is no Plea, and the Plaintiff may, if his Rules are out, and no other Plea pleaded, sign his Judgment. 2 L. P. R. 105.

3. A Judgment signed the very Day the Rules were out, tho' not executed until afterwards, was held irregular and set aside. 5 Mod. 205. Stanford v. Chamberlaine.

4. Upon a Sc. Fa. on a Judgment against the Principal, he pleaded Nulli
tiel Record; whereupon the Plaintiff produced the Record, and the Master signed the Roll, Quod quercus protritus Recordatus, and the Plaintiff signed Judgment the very next Day, and took out Execution, which upon Motion was set aside as irregular; Because he ought not to have signed Judgment till four Days after the Record was brought in. 8 Mod. 237. Patch. 10 Geo. Martin v. Henriques.

5. By a Rule made by the Court of King's Bench in Michaelmas Term 1705, it was ordered, that from and after the first Day of the next Hilary Term, every Judgment in Debt, Cafe, Covenant, Trespass, Tresor, or any other Action, shall be entered fairly on the Roll, or an Inquisition thereof, before such Judgment shall be signed by the Secondary, or any Judge of this Court, and the Names of the Plaintiff and Defendant, with the Attorney's Name, shall be entered in a Book, to be kept by the Secretary of the Court for that Purpose; For which nothing shall be paid but the ancient and accustomed Fee for entering such Judgment. 2 L. P. R. 114.


7. If Plaintiff give Rules for signing Judgment, and Rules are out, and no Judgment signed before Effin-Day of next Term, the Plaintiff must give new Rules. 12 Mod. 40. Patch. 5 W. & M. Anon.

If there be a Rule for Judgment in one Term, it must be entered before the Effin-Day of the next Term, or else they must go over to the next Term by Continuance; and enter it as of the second Term. 12 Mod. 495. Patch. 13 W. 3. How v. Action.
8. If there be no Rule to stay Judgment, it may be signed; per Cur. 12 Mod. 371. Pach. 12 W. 3. in Cafe of Butler and Lewin v. . . .

9. Action of Debt on Judgment, and Nulliety Record pleaded. The Case was, Action between Ruffell against Spurrell, tried Trin. 10 Geo. 2. 1736, and final Judgment signed on the Petition that Vacation, viz. October 19, when the Petition was taken away by the Plaintiff's Attorney, and not brought back to the Office, to have the Judgment entered till a few Days before the Motion. It appeared by Affidavit, that Ruffell died in Aultult 1736. And it was moved for Defendant upon Stat. 18 Car. 2. cap. 8. to stay the Entry of Judgment, Plaintiff's Representative being bound by the said Statute to enter it within two Terms after Plaintiff's Death, and this Judgment is not entered yet. Rule being obtained to shew Caufe, it was urged for Plaintiff, that the Fee to the Clerk of the Judgments for entering Judgments was paid at the Time of signing, and the Party may have the Entry made at any Time; and that the Judgment must be looked upon as actually entered from the Time of signing. The Rule was enlarged. And Per Cur. this Practice may be of dangerous Consequence. Purchasers &c. should not be put to search Prothonotaries Books for Minutes of Judgments signed, it ought to be sufficient for them to have Recourfe to the Record. Let a general Rule be drawn up, that after the first Day of next Term All Petitions and Inquisitions, wherein final Judgments are signed, be left with the Prothonotaries, in order that the Judgments may be immediately entered. Notes in C. B. 191, 192. Pach. 12 Geo. 2. Webb, Administrator of Ruffell v. Spurrell.

(Z. 2) Rules as to signing &c. Judgments according to the late Acts.

1. 12 Geo. 1. cap. 29. S. 1. Enacts, that Where the Cause of Action shall not amount to 10l. in a superior Court, or to 40s. in any inferior Court; if the Defendant shall not appear at the Return of the Process, or within four Days after; it shall be lawful for the Plaintiff, upon Affidavit being made and filed of the personal Service of such Process, (which Affidavit shall be filed gratis) to enter a Common Appearance, or file Common Bail for the Defendant, and to proceed thereon, as if such Defendant had entered his Appearance, or filed Common Bail.

2. 5 Geo. 2. cap. 27. S. 1. Enacts, that In all Cases where the Cause of Action shall not amount to 10l. in a superior Court, or to 40s. in any inferior Court the Defendants (a Copy of Process having been served) shall appear at the Return thereof, or within eight Days after, and the Affidavit of Service of such Process may be made before any Judge or Commissioner of the Court, out of which such Process shall issue, or before the proper Officer for entering Common Appearances, or his Deputy; and is to be filed gratis.

3. The
3. The Writ was returnable in Hillary Term, and a Declaration left in the Office the same Term; and afterwards an Appearance enter'd by Plaintiff, according to the Act of Parliament; but no Notice of the Declaration was given till the 12th of April for Defendant to appear the first Day of this Term. It was moved to set aside the Judgment, the Declaration having been left in the Office before the Appearance enter'd, and a Rule Null was granted. Belfield afterwards shewed Cause, and Court discharged the Rule, the Declaration being a Declaration well delivered only from the Time of the Notice; but Court made another Rule to set aside the Judgment, upon paying of Costs, pleading an inexecutable Plea, and taking short Notice of Trial. Notes in C. B. 162. Trin. 6 & 7 Geo. 2. Matthews and Wife, Administratrix, v. Stone.

4. Defendant moved to stay Proceedings in an Action brought for Fees, no Bill of Fees having been delivered, and obtained a Rule Null; but upon shewing Cause, the Court were of Opinion, that they could not consider the Matter as an Irregularity, because it is illegal, and against an Act of Parliament; but set aside the Judgment and Inquiry upon Payment of Costs, bringing the Money into Court, pleading the General Issue, and taking short Notice of Trial. Notes in C. B. 164. Mich. 7 Geo. 2. Welland, an Attorney, v. Rock.

5. The Appearance was regularly entered by Plaintiff, and before Judgment, Defendant employs an Attorney, and gives Notice thereof to Plaintiff's Attorney. The Question was, whether it was necessary to demand a Plea of Defendant's Attorney before Plaintiff could sign Judgment? and the Court was of Opinion, that the Appearance being entered by Plaintiff, he ought to go on upon the Act of Parliament; and it is not necessary in that Case, that a Plea should be demanded. Notes in C. B. 175. Patch. 8 Geo. 2. Jones v. Wilkinson.

6. A Motion was made to set aside the Judgments in these Causes, and the Irregularity complained of was, that the Rules to plead were given before the Notices of the Declarations being left in the Office were forced upon the Defendants, the Appearances having been entered by Plaintiff, and the Proceeding upon the Act of Parliament. It appeared that Plaintiff's Attorney, finding his Mistake, waived his Judgments, struck out the old, and gave new Rules to plead, and after they were expired, signed Judgment again; and the Question was, whether he could do so without Leave of the Court? Per Cur. It is only one Entry upon Record in each Cause, and the former Judgments appear by the Prothonotary's Book, to be signed by Mistake, and the later are regular. Notes in C. B. 178. Mich. 9 Geo. 2. Craven v. Aislabie.—The same v. Anderton.

(A. a) Sign'd and enter'd. In what Cases without Rule or Motion.

1. If a peremptory Rule be given for the Defendant to plead at a certain * S. P. And Day in a Civil Cause, if he do not plead accordingly, the Plaintiff may enter Judgment against him, without moving of the Court: But if * Actions, but it be an Indictment, Information, &c. in the Crown-Office, or in a * Real Person; but * Action, there Judgment cannot be enter'd without a Motion in Court for this extends not to Pleas in Abatement; Because final Judgment is not given on them. 1 Salk. 399. Trin. 9 W. 3. B. R. Cooke v. Cooke.

(B. a) Entry
(B. a) Entry upon Nil dicit, and when.

For the Office is the Place where the Attorneys on both Sides are to inform themselves of the Proceedings in their Clients Causes; and the Delivery of Declarations and Pleas &c. by one Attorney to another in their Client's Causes, is rather Matter of Custody and Civility, than of any Necessity or Duty; yet it is the usual Practice to do it, and very rarely omitted. Quere, If Judgment may not be signed notwithstanding, if the Defendant's Attorney has refused to pay for the Declaration, &c. 2 L. P. R. 94.

2. If any Clerk of this Court will not appear to an Allotion, that is brought here against him, after a Copy of a Bill filed delivered unto him, the Plaintiff may, after his Rules for pleading are out, enter Judgment against him by Nihil dicit. By Woodward, Clerk of the Court; For a Clerk of the Court is supposed to be always present in Court; and therefore, if he will not appear, yet it seems it shall be all one as if he had appeared and refused to plead. Trin. 23 Car. B. R. 2 L. P. R. 97.

(C a) Arrest of Judgment for what; How; and When.

1. T is not a good Exception in Arrest of Judgment, that there is no Warrant of Attorney filed, tho' that be Matter of Record, and may be assigned for Error. The Reason is, because, tho' it be a Matter of Record, yet it is not a Matter of that Record before the Court, but of another. 1 Salk. 77. Trin. 9 W. 3. C. B. Peachy v. Harrison.


3. Arrest of Judgment is either for Matter intrinsic, i.e. such as appears by the Record itself, which will render the Judgment erroneous and reversible; or extrinsic, i.e. some foreign Matter suggested to the Court, which proves the Writ is abated; For it is not enough that it proves the Writ is only abatable. The old Course of taking Advantage in Arrest of Judgment was thus. The Party, after a General Verdict, having a Day in Court (for so he has to Matters of Law, tho' not of Fact,) did align his Exceptions in Arrest of Judgment by Way of Plea; and it was called pleading in Arrest of Judgment. 1 Salk. 77. Patch. 11 W. 3. B. R. Anon.

4. D. was convicted on an Information for Subornation of Perjury, and Judgment entered, Quod capiatur pro Fine; and a Capias issued, whereupon he was taken and brought into Court, where he offered to move in Arrest of Judgment; but the Court was of Opinion it was out of Time; For that the Judgment Quod capiatur was a final Judgment, and the subsequent Entry is only for the Certainty of the Time. 1 Salk. 78. Mich. 1 Ann. the Queen v. Darby.

In this Cafe was cited the first Cafe in Palmer's Reports, which was Patch. 1 Jac. B. R. The Corporation of Dublin's Cafe, upon a Judgment in a Quo Warranto in Ireland, and Error brought thereupon] Where it was said, that a Writ of Error would lie of this Judgment [Quod capiatur pro Fine] before the Fine set. But there is a Note, [of the Reporter as it seems] That there was a Judgment, that he could be called of his False-Life, and he therefore taken Pro free. And it was inflected in the Cafe of the Queen v. Darby, that that was a stronger Cafe than the Cafe of Ejunction; For there in Ejunction Judgment is not complete till Damages are found, and yet a Writ of Error of the Judgment before any Damages are found; Because by the Judgment that is given, the Pleffion is took immediately; and where a Judgment is final for
for any Part. Error will lie. And here they would have the Capias, Pro fine, to be in Nature of an Execution, Quod Holt negativ, because it is not certain. And, he said, that upon an Interlocutory Judgment in Cause of Truants, a Capias pro fine may go, yet after they may move in Arreft of Judgment, and that there are the like of any to the Cause in Question, and it is not like a Judgment good computer; For after such Judgment, you cannot move in Arreft of Judgment; for then there is no more to do but to fee what is behind. And upon the Doubt, Time was given to the next Day. And it was agreed, that if it could not be moved in Arreft of Judgment, yet it might be very well moved in Mitigation of the Fine. 7 Mod. 102, the Queen v. Darby.

5. One should not move in Arreft till the Poafea be brought in, and the Defendant should give Rule upon the Poafea, which is in itself a Notice to bring it in; and it is against the ancient Course of the Court to make a Rule for staying of Judgment till the Poafea be brought in. By the Course of C. B. the Clerk of the Alffe keeps it till the Days for moving in Arreft of Judgment are paff, and the Notice is given to him, and he has his Fee of 6s. 8d. for attending with it; and the Clerk of Alffe ought to deliver the Poafea to none but the Clerk in Court, and Notice to the Clerk in Court is good Notice. 6 Mod. 24: Mich. 2 Ann. B. R. Wood v. Shepherd.

(D. a) Judgment set aside, for what Causes.

1. Judgment was given in Debt upon a Bond against an Executor in C. B. and upon Error brought in B. R. Errors were alignd; and because, upon the Record it did not appear that the Monies are yet payable, Rule was given to reverse the judgment, Nifi &c. And the Counsel of Defendant in Error said, he could not maintain the Judgment, and therefore prayed the Reversal of it for his Client’s Expedition, who intended to bring a new Action; by which it was reversed absolutely. 2 Saund. 106, 108. Pach. 22 Car. 2 Holdip v. Otway.

2. A Feme Cole who lived by her fee, and acted as a Feme Sole, gave a Warrant of Attorney to contend a Judgment &c. and afterwards moved to set aside the Judgment, because the was Covert; but the Court would not relieve her, but put her to her Writ of Error. 1 Salk. 400: Mich. 10 W. 3. B. R: Anon.

3. Upon Payment of Costs, the Court will set aside a Judgment, but it be regularly entered, if the Plaintiff hath not lost a Trial; and so is the Common Course in C. B. 1 Salk. 422: Mich. 3 Ann. B. R. Silted v. Lee.

obtained a Rule to set it aside on Payment of Costs, pleading an Issuable Plea &c. Defendant afterwards pleaded the Statute of Limitations, and Plaintiff moved to set the Plea aside. A Rule was granted to the Plaintiff, and made absolute. The Court never give Leave to plead this Plea after a regular Judgment signed. Defendant must be bound to plead the General Issue, unless in Case of a fair and honest Defence, where a justification is absolutely necessary. Notes in C. B. 181. Hill. 10 Geo 2. Leaver v. Whitcher.—Defendant prevailed to set aside a regular Judgment on Payment of Costs, and prefled to be let in to plead a Special Justification; but Plaintiff having been denied an Affidavit, the Court confed the Defendant to plead the General Issue. Notes in C. B. 186. Hill. 11 Geo 2. Froudchoe v. Armstrong.

4. 5 Geo. cap. 13. Enacts, that Where a Verdict shall be given in any Action in any Court of Record in England or Wales, the Judgment shall not be set aside for any Defect in Form or Substance in any Part of the Proceedings.

5. Baynes moved to set aside the Judgment upon an Affidavit of a Demand of Oyer of the Bond on the 29th of May, (being the same Day whereon a Plead was demanded) and of the Service of Mr Justice Fortescue’s Summons the same Day of Oyer, and Time to plead. Darnal for Plaintiff opposed the Motion, and produced an Affidavit that Oyer was not demanded, nor Summons served till after the Rule for Pleading was out; But the Court refused to make any Rule. Notes in C. B. 161. Trin. 6 & 7 Geo. 2. Furrance v. Brignall.

7 X 6. Motion
6. A Motion was made against Judgment for Plaintiff upon the file of Nulli tiiel Record. The Case was, Plaintiff had mistaken Conquetry in his Declaration; Defendant had pleaded in Abatement, and annexed Alldavit of the Truth of this Plea; Plaintiff brought a new Action, and the Defendant pleaded the former Action depending, upon which Plaintiff of his own Head, without Leave of the Court, entered a Nil capitis per breve. The Officers were ask'd their Opinions, who all agreed it to be constant Practice, and the Court allow'd it. But then another Question arose, whether Plaintiff could have made such an Entry, in Case the first Plea had not been in Abatement. Bonnet and Thompson said, it was confined to Abatements; but Cooke thought it might be in all Cases; the Court said, it was impossible to be so, and held it confined to Abatements, Notes in C. B. 158, 159. Patch. 11 Geo. 2. Osborne v. Haddock.

(D. a. 2.) Set aside for what and how. Irregularity in signing it. Want of, or insufficiency in a Plea.

1. THE Defendant's Attorney left a Note at the House of the Plaintiff's Attorney on a double Penny Stamp in this Manner, (viz.) I plead nil debet, yours, &c. and the Plaintiff's Attorney, without sending Notice to the Defendant's Attorney, that he expessed a Plea in Form, signed Judgment; and upon a Motion to set the Judgment aside, it was held to be regular, and the Note aforesaid to be no Plea. Pleas delivered to Attorneys must be drawn up in the same Manner as to be left in the Office. Notes in C. B. 156. Mich. 6 Geo. 2. Martyn, qui tam v. Skinner.

2. It was moved to set aside a Judgment signed for want of a Plea, upon an Affidavit of the Deliver of a Plea to Plaintiff's Attorney in due Time, which was a Plea of an Outlawry against Plaintiff in B.R. pleaded in Bar; but not sub pede sigilli. In defence of the Motion it was infirned, that the Outlawry not being pleaded sub pede sigilli, Plaintiff was not bound to accept it, and therefore might regularly sign Judgment, and cited 1 Salk. 217. Cartlew 220. The Court ordered it to be moved again; and when the Motion came on the second Time it was argued that the Plea, being pleaded in Bar, and not as a Dilatory, differs it from the Cases quoted on the other Side, and quoted Coke's Inst. 128. 1 Luw. 40. 2 Mod. Atkins and Bayle. It was replied, that Ed. Ch. J. Holt's Words in Carthew and Salkeld, go both to Pleas in Bar and Abatement, where the Outlawry is in another Court; Per Cur. Sir M. Phillippo's Case in Cro.Carr. Robinson 213. 7 Vent. 252. quoted [are of] Pleas in Bar, not Dilatory; Plaintiff cannot take upon him to judge of the Plea in Bar, he should apply to the Court, or demur; Rule made to set aside the Judgment. Notes in C. B. 150. Trin. 6 & 7 Geo. 2. Pantor v. Coppin.

3. A Rule to plead was given in Trinity Term last, and Defendant obtained Time, by Mr. Justice Reeve's Order, to plead 'till the first Day of this Term; and for want of a Plea the Plaintiff signed Judgment of this Term, without giving a new Rule to plead; which the Court held to be regular, the Rule to plead, given last Term, being enlarged by the Judges Order to the first Day of this Term. Notes in C. B. 165. Mich. 7 Geo. 2. Taylor v. Slocomb.

4. The Writ was returnable the first Return of this Term; whereas Defendant appeared by his Attorney, and Plaintiff declared in Yorks, gave a Rule to plead, and, after demanding a Plea, signed Judgment for want thereof in four Days; Defendant moved to set aside the Judgment: And the Question before the Court was, whether in this Case the Defendant should have four or eight Days to plead. And the Court held, that pursuant to the Rule of Court made in Michaelmas-Term, the third of his present
 Judgment.

present Majesty, in all Cases upon Writs returnable, the first or second Return of any Term, if the Plaintiff doth not declare in London or Middlesex, or the Defendant lives about 20 Miles from London, the Defendant hath eight Days Time to plead, and therefore set aside the Judgment. Notes in C. B. 165. Mich. 7 Geo. 2. Launby v. Bradley.

5. Defendant pleaded a Tender, but brought no Money into Court; he gave a Rule to reply, and for want of a Replication signed a Non-pros; Plaintiff looked upon the Plea as a Nullity, the Money not being brought into Court, and signed Judgment after the Non-pros obtained, and now moved to set aside the Non-pros. The Defendant mov'd to set aside the Judgment, intimating that Plaintiff could not regularly sign Judgment 'till the Non-pros. was set aside; and of that Opinion was Sir George Cooke, but the two other Prothonotaries reported the Practice contrary; and the Court was of Opinion, that the Non-pros not being rightly obtained, Plaintiff might proceed in the same Manner, as he might have done in Case such Non-pros was not signed, and consequently the Judgment is regular, and must stand; and the Non-pros being irregular must be set aside. Notes in C. B. 179. Mich. 9 Geo. 2. Bray v. Beoch.

6. After Defendant had procured Time to plead by a Judge's Order, pleading an Unstated Plea, he pleaded a Tender as to part, and Non Assumpsit as to the Rest. Plaintiff looked upon the Plea as a Nullity, and signed Judgment. It was urged that Plaintiff had taken the Plea out of the Office, which was an Acceptance of it; but per Cur. the Plea is a Nullity, and the Judgment is regular. Notes in C. B. 182. Mich. 10 Geo. 2. Lane v. Smith.

and taking Joint Notice of Trial, but did not plead to Issue, and for want thereof Plaintiff signed Judgment. Defendant moved to set aside the Judgment, pleading to Issue, and paying Costs, and obtained a Rule to shew Cause, which was discharged, Plaintiff having left the Benefit of the last Issue. Notes in C. B. 184. Hill 11 Geo. 2. Lovell v. Dyer.

7. Stillingsfleet, Agent for Worral Plaintiff's Attorney, gave Wilmot Defendant's Agent, Time to plead; after which Worral comes to Town himself, calls upon Wilmot for a Plea, and for want thereof signs Judgment before the Time given by Stillingsfleet was expired; this Judgment was held irregular, and set aside. All Matters of this Sort are to be Transacted by the Agents in Town, and not by Country Attorneys. Notes in C. B. 187. Hill 11 Geo. 2. Wallace v. Willington.

8. Defendant pleaded by an Attorney of another Court, and Plaintiff, looking upon the Plea as a Nullity, signed Judgment which was held to be regular; and the Rule to shew Cause why the Judgment should not be set aside was discharged. Notes in C. B. 192. Patch 12 Geo. 2. Turner v. Williams.

(D. a. 3) Set aside, for Irregularity in signing it. Not paying for the Issue, &c.


2. Motion to set aside Judgment signed for not paying for the Issue, By Appointment of the Country Attorney in Town, calling on Defendant's Agent there for a Plea. It appeared, upon shewing Cause, that Defendant had pleaded by his Country Attorney; thereupon the Plaintiff's Attorney in the Country urged the Issue, which Defendant's Attorney refused to pay for; and the Plaintiff's Attorney sent to his Agent in Town to sign Judgment; which was held good, the Defendant's Attorney having undertaken to be the
Se Plaintiff's Attorney sent a Copy of the Issue Book to the Chambers of Defendant's Attorney in Clifford's Inn, on a Friday when Defendant's Attorney and his Clerk were in South-wark attending the Clerk's Court. The Porter of the Inn was left in the Chambers, to whom the Issue Book was tendered, and the Money charged thereon demanded, and he not paying the same, Judgment was signed which was held regular, but was set aside on Payment of Costs, &c. Attorneys must leave proper Perills at their Chambers to do their Business in their Absence. Notes in C.B. 151. Patch. 10 Geo. 2. Rolt v. Way.

3. The Issue Book was left in the Office, and Notice thereof left under the Chancery-Door of Mr. Field Defendant's Attorney the same Day by Mr. Cole Plaintiff's Attorney, who could not that Day find Field, but next Day found him at his Chambers, and gave him Notice that the Issue Book was left in the Office, and demanded the Money due for the same, which Field refused to pay, infilling that the Issue Book ought to be brought to him; whereupon Cole signed Judgment. The Court, upon hearing Counsel on both Sides, and the Report of Prothonotaries Cook and Thomson, held, that Defendant's Attorneys must pay for Issue Books at their Peril; and if they are not to be found, Issue Books may be left in the Office, and discharged the Rule obtained to set aside the Judgment Null; but let Defendant in to try the Merits, and set aside the Judgment upon payment of Costs, pleading the general Issue, and taking short Notice of Trial. Notes in C.B. 163. Mich. 7 Geo. 2. Glatcock v. Martin.

4. Ward, Plaintiff's Attorney, tendered the Issue Book to the Clerk of Horne, Defendant's Attorney, and demanded Payment for entering Defendant's Appearance; Horne's Clerk offered to pay the Kelt of the Money demanded, but refused to pay the Money demanded for entering the Appearance; whereupon Ward signed Judgment; and Defendant moved to set the same aside; per Cur. Defendant's Attorneys must pay the Money charged upon the Issue-Book, which Plaintiff's Attorneys are to receive at their Peril, and therefore Judgment was held to be regular; but, the Merits not having been tried, was set aside upon payment of Costs, pleading the General Issue, and taking short Notice of Trial. Notes in C.B. 166. Mich. 7 Geo. 2. Robinson v. Sparrow.

5. In Ejectment Defendants appeared, pleaded, and enter'd into the Common Rule by Conject, but their Attorney negotiations to pay for the Issue Book, Judgment was signed against Den the Casual Ejector. This Judgment was set aside as irregular. Plaintiff might have signed Judgment against Defendants who had appeared, for Non-payment of the Money for the Issue Book, but not against the Casual Ejector. Notes in C.B. 152. Patch. 10 Geo. 2. Penn on the Demise of Sawell v. Jolly and others.

(D. a. 4) Set aside, for Irregularity in signing it. Not discharging the Summons.

A Summons for Time to plead was served upon Plaintiff's Attorney, who attended at the Time appointed by the Summons, and they'd an Hour; but Defendant's Attorney did not attend; whereupon Plaintiff's Attorney signed Judgment, which was set aside by the Court as irregular, for want of discharging the Summons. Notes in C.B. 159. Patch. 6 Geo. 2. Rivers and others v. Plunlee.

1. A Summons for Time to plead was served upon Plaintiff's Attorney, who attended at the Time appointed by the Summons, and they'd an Hour; but Defendant's Attorney did not attend; whereupon Plaintiff's Attorney signed Judgment, which was set aside by the Court as irregular, for want of discharging the Summons. Notes in C.B. 159. Patch. 6 Geo. 2. Rivers and others v. Plunlee.
(E. a) Set aside for Irregularity in signing it. Want of Notice of Writ or Declaration.

1. Judgment was signed against all the Defendants in a Joint Action, the one of them never had Notice, either of the Writ or Declaration; it was moved to set aside the Judgment, and a Rule was made Nisi; whereupon Eyre shewed for Cause, that a Writ of Inquiry was executed, and therefore the Motion came too late: but per Cur. the Judgment can never be good as to that Defendant who was not served; and therefore the Judgment being joint must be set aside as to all. Notes in C. B. 169. Hill. 7 Geo. 2. Coulson v. Turnbull & al.

2. Capias set out. Hill. Declaration left in the Office January 23d, and Rule to plead given; the 30th, Plaintiff entered Appearance by Affidavit; and the 31st signed Judgment. The Objection to the Regularity of the Judgment was, that no Judgment was made on the Copy of the Declaration left in the Office, signifying that it was left conditionally, or because of it. Judgment was set aside without Costs. Notes in C. B. 188. Hill. 11 Geo. 2. Evans v. Tillam.

(F.a) Motion to set aside Judgment for Irregularity; order to be made.

1. IT was held per Cur. that though Judgment be irregular, Defendant cannot move to set it aside, unless the Motion be made two Days before the Day appointed for the Execution of the Writ of Inquiry of Damages (according to the Report of Prothonotary Thomon, who quoted Smith v. Jenkins, Hill. 5 Geo. 2.) the Irregularity complained of being a Defect in the Notice of the Declaration served on Defendant after Appearance entered by Plaintiff according to the Statute. If the Irregularity be in the Notice subscribed to the Copy of Proceeds, the Motion must be made before Judgment signed; if in the Notice of Declaration, two Days before the Time appointed for the Execution of the Writ of Inquiry. Notes in C. B. 186. Mich. 11 Geo. 2. Grimes v. Cleaver.

(G. a) Void, or only Erroneous.

1. WHERE a Frankentment is Recovered in Court Baron by Plaintiff, but where Judgment is given there of Land, in Error, it is void. Br. Error, pl. 120. cites 22 Alb. 64.

Covenant (which is out of the Jurisdiction of the Court) this is void, and Trespass or Affile lies. Br. ibid.

2. If Precipe quod reddat is brought against my Father, who dies pending the Writ, and I enter as Heir, and after Judgment is given against my Father, and the Demandant enters, I shall not have Affile; for the Judgment against a dead Person is not void, but Error, Quod Nota. Br. Judgment, pl. 113. cites 28 Alb. 17.

3. If Judgments of Affile held Plea of Affile without Original, or Judgments of the Bank by Capias without Original, it is Coram non Judge and void; per Catesby. But per Laicon 'tis good 'till it be reverted by Error. Br. Error, pl. 164. cites 7 E. 4. 3.

Y

4. Outlawry
Judgment.

4. Outlawry in Delict, Trespasses, or the like in C. B. without Original, is not void, but Error; for they are Judges of this Plea, per Littleton. Br. Judgment, pl. 123. cites 19 E. 4. 8.

5. A Judgment which is given contrary to the Verdict which was found in the Cause, is a void Judgment. L. P. R. tit. Judgment 94. cites Mich. 22 Car. B. R. For the Judgment is to be warranted by the Verdict, and is but the Affirmance of the Verdict, and therefore must concur with it in all Things, and not contradiict it. Ibid.

6. There is a Difference where the Judgment is merely void, and where it is Erroneous only. And this depends upon another Distinction, (viz.) where the Court in which the Judgment was obtained, had Cognition of the Cause, and where not. For in the first Case, if the Plaintiff obtains a Judgment, and by his own shewing had no Cause of Action; yet because the Court had Jurisdiction of the Cause, this is only an Erroneous and not a void Judgment. But it is otherwise where the Court had no Jurisdiction of the Cause. Carth. 148. Trin. 2 W. & M. B. R. in Case of Gold & al. v. Strode.

(G. a. 2) Void. In Respect of the Authority or Comission of the Judge.

1. In Affife, where Judgment is given by Commissioners in Action in Nature of Writ of Ward, where their Commission is only of Conspiracy and Falsities it is void, as it seems there, and that he who was privy may have Affife, notwithstanding such Judgment. Br. Judgment, pl. 70. cites 29 All. 26.

2. Where Commission is awarded to hear and determine Causes, &c. and pending this, another Plural Commission is awarded to others of such like Causes, the first Commission does not lose its Force, and Judgment given by it after the second Commission issued, shall not be avoided, nor Coram non Judice 'till Notice comes to them of the second Commission, or 'till the second Commissioners sit by it in Sessions, and put it in Ure; Quod Natura, Br. Judgment, pl. 72. cites 34 All. 8.

3. Where Commission issues of certain Actions or Matters, or between certain Persons, and they hold Plea of other Matters, or between other Persons, it is Coram non Judice. Br. Error, pl. 187. cites 22 E. 4. 30, 31.

(G. a. 3) Void, or only Erroneous. In respect of the Place or Court in which.


Br. Judgment, pl. 123. cites S. C. — S. P. Dav. Rep. 46. b. cites 19 E. 4. 8. 20. E. 4. 15 in the Dean and Chapter of Feme's Cause. — Of Judgment and Execution, in Ancient Demesne of Land, which is Personal; for these are Coram non Judice, and void; per Litt. Ibid. —— S. P. Dav. Rep. 46. b. cites 11 H. 4. 17. —— Contrad 20 Judgment in the Court of Admiralty of a Thing done upon the Land; for it seems that this is no Court of Record, for 'tis held by the Civil Law. But Brook says, it seems therefore to be void, and that Trespass lies. Br. Error, pl. 177. Dav. Rep. 46. b. cites 19 E. 4. 8. 20. E. 4. 15. that it is void. —— But per Litt. 20 E. 4. 16. of the Cause of the Marshal, he may have a Writ of Error or avoid it by Plea at his Pleasable. Br. Ibid. —— S. P. For Writ of Error lies to avoid Judgment in any Cause. Br. Judgment, pl. 123. cites 20 E. 4. 15.


4. Note
3. Note, that where the King grants to them of S. Coninance of Pleas, But Recovery and that they, Siciicet the Burgess, shall not be impleaded for an Act done in Bank of there, but in the same Vill; yet if they are impleaded in Banco or elsewhere, and do not plead their Charter, nor take Advantage thereof, this is a good Judgment and not Error, nor Coram non Judge. Br. Error, pl. 152. cites 9 H. 7. 12.

Defect. Br. ibid.—But Recovery of land in Bank, which lies in Chester, Durham, or Lancashire is void. Br. ibid.—Cancrs in the Cinque Ports; for his good if Exception be not pleaded. Br. ibid.—And the Deferity seems to be, because Ancient Deniisfe and Cinque Ports were derived from the Crown by Grant at first, but the Counties Palatine are Exempt, and the King's Writ runs not there nor in Wales. ibid. by Brooke.

(I. a) Of Confessing Judgments upon Condition &c. and How to acknowledge a Judgment.

1. THE Court for one to acknowledge a Judgment is for him, that doth acknowledge it, to give a General Warrant of Attorney to any Attorney, or some particular Attorney of that Court, where the Judgment is to be acknowledged, to appear for him at his Suit, who is to have the Judgment acknowledged unto him, and to file Common Bail, and receive a Declaration from him, and to plead Non sum Informatus, or by Cognovit Actionem, or to let it pass by Nihil dicit; and thereupon Judgment is entered of Court for Want of a Plea. 14 November 1652. B. S. Non sum Informatus, is as much as to say, that he is not informed by his Client what to plead for him. 2 L. P. R. 103.

2. If the Defendant gives a Judgment with fay of Execution till a certain Day, the Plaintiff may, notwithstanding such Stay of Execution, sue forth a Capias or Fi. Fi. into the County where the Action is laid, returnable before that Day, to enable him at that Day to take a Felitation against the Defendant; but he shall not in that Capias sue out a Capias to warrant a Seire Facts against the Bail, unless by special Agreement, because it is to the Prejudice of a third Person; and the Capias ad Satisfacendum, in that Capias, ought to be delivered to the Sheriff four Days before the Return be put, and after the Return thereof, to be filed. Per Magistratum Livelfy, & alioc &c. Patch. 21 Car. 2. Regis. 2 L. P. R. 102.

3. On Motion to set aside an Execution on a Judgment upon Suggestion of an Agreement made between the Parties after the Judgment given, viz. That the Judgment should be upon such and such Terms. Per Holt Ch. 1. where a Judgment is confessed upon Terms, it being in Effect but a conditional
ditional Judgment, the Court will lay their Hands upon it, and see the Terms performed; but where a Judgment is acknowledged absolutely, and a subsequent Agreement made; the Court will take no Notice of it, but put the Party to his Action upon the Agreement. And in this Case, the Agreement being only under their Hands, it is no Ground for an Audita Querela; and the Court cannot hold Plea of an Agreement upon a Motion. \(^{1}\) Salk. 400. Mich. \(^{10}\) W. 3. B. R. Anon.

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(K. a) Vacated.

1. If a Man takes a Judgment, and the fame is enter'd, he cannot consent to vacate it; because it is a Record. \(^{2}\) L. P. R. cit. Judgment 103. cites Mich. 1649. B. R. But he may acknowledge Satisfaction upon Record, and so make the Judgment fruitless. \(^{3}\) Ibid.

2. It is against the Course of the Court to vacate a Judgment on the left Day of the Term. \(^{4}\) L. P. R. cit. Judgment 105. cites Patch. 1656. Per Glyn Ch. J.

If a Judgment be vacated, because it was now enter'd as Trin. Term left upon a Warrant made this Vacation so to do. And the Reason why it was vacated was, because it may be of great Danger to Purchasers; but some said, it shall be void as to Purchasers, but good against the Party who confessed; Quære, because it seems it cannot be.

3. Note, that a Judgment was vacated; because it was now enter'd as Trin. Term left upon a Warrant made this Vacation so to do. And the Reason why it was vacated was, because it may be of great Danger to Purchasers; but some said, it shall be void as to Purchasers, but good against the Party who confessed; Quære, because it seems it cannot be.

4. If a Judgment be unduly obtained, and sufficient Proof thereof be made unto the Court, the Court will vacate the Judgment, and restore the Party damaged by it, to be in the same Condition that he was in before the Judgment, and oftentimes makes the Aggressor pay Costs. \(^{5}\) L. P. R. 112.

5. An Executor obtained Judgment in Debt in this Court, and was afterwards, upon an Information here, convicted of Forgery the Will. It was also made void by Sentence in the Ecclesiastical Court. The Court ordered the Judgment to be vacated, and the Cause of vacating to be entered upon the Record. \(^{6}\) Vent. 78, Patch. 22 Car. 2. B. R. Anon.

6. In Quære impedit Ifsue was joined between the Parties in Hill. 4 Geo. 2. and afterwards Judgment was entered at the Foot of the Issue for the Plaintiff by Cognovit Actio nem (Relicta Verificatione Pl'iti) by Virtue of a Warrant of Attorney for that Purpofe pretended to be executed by the Defendant Bond, the Validity of which Warrant of Attorney being concluded, an Issue was directed by the Court, to try whether the same was duly executed by Bond or not; and upon Trial, the Jury found it to be a Forgery; whereupon the Court ordered the Judgment entered as aforesaid, by Virtue of the said Warrant of Attorney, to be set aside. The Defendants moved that the said Judgment enter'd upon Record subsequent to the Issue joined might be struck out of the Roll, in order that Defendants might make up the Record for Trial by Proviso. The Court denied to make any Rule, but declared, that the said Judgment might be vacated in a proper Manner by Virtue of the former Rule for setting it aside; and a Vacatur bee. Judic. was accordingly entered on the Margin of the Roll. Notes in C. B. 157. Hill. 6 Geo. 2. Gibbon v. the Bishop of Bath & Wells, & Bond.

(L. a) Final.
Judgment.

(L. a) Final.

1. IT seems that issue taken on Excommunication is peremptory. Sid. 252.

2. If Issue be taken on Dilatory or other Matter in Abatement, and it is found against Demandant, Judgment shall be final. Sid. 252. Pach. 17


3. If upon a Demurrer to a Declaration the Judgment is, Quod quercus nil capere per Billam, sed pro fallo Clamore tuo fit inde in Misericordia; this Judgment is final, and a Bar to any other Action to be brought for the very same Matter: Hill. 34 & 35 Car. 2. Rot. 847. B. R. But the Plaintiff may afterwards make his Declaration right, and then proceed, and the pleading of this Judgment shall be no Bar. But if this Judgment should be pleaded in Bar, then be must reply specially, and shew where the Fault was in his Declaration. 2 L. P. R. 113.

4. Final Judgment is not given on Pleas in Abatement. 1 Salk. 399.


(M. a) In what Cases it shall be said Transfere in Rem see (P. 7) Judicatam.

1. IF a Man has Judgment in C. B. on a Bond, and the Record is removed by Error into B. R. and before any Proceedings on the Writ of Error Plaintiff dies, his Executor shall not have a new Action on the Bond so long as the Judgment remains in Force; For when a Man has brought Debt upon a Bond, and by the ordinary Course of Law has Judgment upon it, the Contract by Specialty, which is of a more base Nature, is by Judgment of the Law changed into a Thing of Record, which is of a higher Nature. And if he that recovers shall have a new Action and new Judgment, he may have fo in infinitum, to the perpetual Vexation of the Defendant, the which in Juris repribatur; besides upon every Judgment the Defendant shall be amerced, and the Amercements may be infinite too, which will be very mischievous; And Interdict Repulsas at fiit Fins litium. 6 Rep. 44. b. Mich. 3 Jac. C. B. Higgens's Cafe. — als. Randal v. Higgens.

the Bond in Court of Record. For the County Court is not of Record, and therefore the Obligation is not changed to any Thing of an higher Nature. But so long as such Judgment remains in Force, the Plaintiff shall not have another Action by Juries in the same Court, by Reason of the infinite Vexation of the Party. 6 Rep. 45. a. b. Higgens's Cafe. — cited Hard. 128.

But where Trepass Vi & Armis was brought in the County Philaine of Lancaster, and the Defendant pleaded in Bar a Recovery for the same Trepass in a Court Baron, and thereupon the Plaintiff demurred, Wild Ch. J. of Affix at Lancaster, upon Adjournment to his Chamber at Sergeant's Inn, held it pleadable in Bar. But Judgment was afterwards given for the Plaintiff. For Trepass Vi & Armis lies not in an inferior Court, and therefore the Judgment there, if it be Vi & Armis is void, and if it be not Vi & Armis, it is not the same Trepass. But he held at above, that Judgment in inferior Court is pleadable in Bar in a superior Court, and he also held, that it is pleadable in Abatement, if it be for the same Thing. 2 Lev. 95. Mich. 15 Car. 2. B. R. Atkinson v. Woodburn.

2. If a Man has Annuity by Deed or Prescription, and brings his Writ of Annuity, and has Judgment: So long as this Judgment remains in Force, he never shall have Writ of Annuity, tho' it be Annuity of Inheritance, but shall have Sci. Fa. upon this Judgment; because the Matter of the Specialty or Prescription is altered into a Thing of a more high Nature. 6 Rep. 45. a. in Higgens's Cafe., cites 37 H. 6. 13. b.


For more Matter relating to Judgments, See Account, Amendment, Damages, Debt, Error, and the several other proper Titles.